OROVILLE CITY COUNCIL
Council Chambers
1735 Montgomery Street
Oroville, CA. 95965

February 06, 2024
REGULAR MEETING
CLOSED SESSION 4:00 PM
OPEN SESSION 4:30 PM
AGENDA

PUBLIC ACCESS AND PARTICIPATION

Please review the options below for ways to participate or observe the Council Meetings.

To Observe the Meeting:

1. Live Feed: https://www.youtube.com/channel/UCAoRW34swYl85UBfYqT7IbQ/
2. Zoom Link: https://zoom.us/j/96870319529?pwd=dW9kMGRZSFo5MFFNQk5wVDUzRkRrZz09
3. Zoom Application: Meeting ID: 968 7031 9529 Passcode: 67684553
4. By Phone: Telephone: 1-669-900-6833 Meeting ID: 968 7031 9529 Passcode: 67684553

To Provide Comment to the Council:

1. Attend the meeting in person
2. Send an Email by 2:00 PM the day of the meeting to publiccomment@cityoforoville.org. All comments emailed will be provided to the Council Members for their consideration.

If you would like to address the Council at this meeting, you are requested to complete the blue speaker request form (located on the wall by the agendas) and hand it to the City Clerk, who is seated on the right of the Council Chamber. The form assists the Clerk with minute taking and assists the Mayor or presiding chair in conducting an orderly meeting. Providing personal information on the form is voluntary. For scheduled agenda items, *please submit the form prior to the conclusion of the staff presentation for that item.* Council has established time limitations of three (3) minutes per speaker on all items and an overall time limit of thirty minutes for non-agenda items. If more than 10 speaker cards are submitted for an item, the time limitation would be reduced to one and a half (1.5) minutes per speaker for that item. If more than 15 speaker cards are submitted for non-agenda items, the first 15 speakers will be randomly selected to speak at the beginning of the meeting, with the remaining speakers given an opportunity at the end. **(California Government Code §54954.3(b))**. Pursuant to Government Code Section 54954.2, the Council is prohibited from taking action except for a brief response from the Council or staff to statements or questions relating to a non-agenda item.

CALL TO ORDER / ROLL CALL

Council Members: Tracy Johnstone, Krysi Riggs, Scott Thomson, Janet Goodson, Shawn Webber, Vice Mayor Eric Smith, Mayor David Pittman

CLOSED SESSION

The Council will hold a Closed Session on the following:

1. Pursuant to Government Code Section 54957(b), the Council will meet with the Personnel Officer and City Attorney to consider the annual evaluation of performance related to the following positions: All Department Heads

2. Pursuant to Government Code section 54956.9(d)(2), the Council will meet with the City Administrator and City Attorney regarding potential exposure to litigation – One case.

3. Pursuant to Government Code Section 54957.6, the Council will meet with the Personnel Officer and City Attorney to discuss labor negotiations related to the following bargaining units: All Represented Units.

OPEN SESSION

1. Announcement from Closed Session

2. Pledge of Allegiance

3. Adoption of Agenda

PRESENTATIONS AND PROCLAMATIONS

None this meeting.

PUBLIC COMMUNICATION – HEARING OF NON-AGENDA ITEMS

This is the time to address the Council about any item not listed on the agenda. If you wish to address the Council on an item listed on the agenda, please follow the directions listed above.

REPORTS / DISCUSSIONS

1. Council Announcements and Reports

2. Administration Reports

CONSENT CALENDAR

Consent Calendar **items 1 - 4** are adopted in one action by the Council. Items that are removed will be discussed and voted on immediately after adoption of Consent Calendar items.

1. Extension and Addition to the Exclusive Negotiating Agreement (ENA) with Veterans Housing Development Corporation (VHDC)

Council may consider extending the ENA with VHDC until February 28, 2027 to develop affordable housing for veterans and their families.

ACTION REQUESTED -

ADOPT RESOLUTION NO. 9228 – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA AUTHORIZING AND DIRECTING THE MAYOR TO EXTEND THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF OROVILLE AND VETERANS HOUSING DEVELOPMENT CORPORATION UNTIL FEBRUARY 28, 2027.

2. Exempt Surplus Land

The City Council may consider approving resolutions declaring the City-owned properties listed below as Exempt Surplus Land and making associated findings.

· Oro Dam Lot 1-Orange/Highlands (APN 033-232-001) .14 acres

· Oro Dam Lot 2-Orange (APN 033-232-021) .18 acres

· 3555 Argonaut Ave (APN 033-462-032) .14 acres

· 3265 Glen Ave. (APN 068-300-095) .35 acres

· 1130 Pomona Ave. (APN 012-135-140) .16 acres

· 1550 and 1560 Veatch St. (APN 012-133-009) .21 acres

· 1218 Bird St. (APN 012-076-007) .14 acres

ACTION REQUESTED -

1. ADOPT RESOLUTION NO. 9225 - A RESOLUTION DECLARING THE PROPERTY LOCATED AT ORO DAM LOT AT ORANGE/HIGHLANDS (APN 033-232-001) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

2. ADOPT RESOLUTION NO. 9224 - A RESOLUTION DECLARING THE PROPERTY LOCATED AT ORO DAM LOT AT ORANGE (APN 033-232-021) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

3. ADOPT RESOLUTION NO. 9222 - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 3555 ARGONAUT AVENUE (APN 033-462-032) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

4. ADOPT RESOLUTION NO. 9223 - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 3265 GLEN AVENUE (APN 068-300-095) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

5. ADOPT RESOLUTION NO. 9221- A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1130 POMONA AVENUE (APN 012-135-140) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

6. ADOPT RESOLUTION NO. 9226 - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1550 AND 1560 VEATCH STREET (APN 012-133-009) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

7. ADOPT RESOLUTION NO. 9227 - A RESOLUTION DECLARING THE PROPERTY LOCATED 1218 BIRD STREET (APN 012-076-007) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

3. Contract with Chavan & Associates, LLP. for Professional Auditing Services

The Council may consider the authorization of an auditing agreement with Chavan & Associates, LLP.

ACTION REQUESTED -

APPROVE AGREEMENT 3493 AND AUTHORIZE THE FINANCE DIRECTOR TO SIGN THE ENGAGEMENT LETTER WITH CHAVAN & ASSOCIATES FOR PROFESSIONAL AUDITING SERVICES.

4. Authorization to Purchase Two Tool Sets for the Mechanic Shop

Staff is seeking Council approval to purchase two comprehensive, professional tool sets for maintaining the City's vehicles and machinery, playing a crucial role in diagnosing and repairing City-owned assets.

ACTION REQUESTED -

AUTHORIZE THE DIRECTOR OF PUBLIC WORKS TO PURCHASE TWO MECHANIC TOOL KITS.

REGULAR BUSINESS

5. Award of Contract to Lamon Construction, Inc. for the State Route 162 ATP Pedestrian Mobility And Safety Improvement Project

The Council may direct staff to award a construction contract to Lamon Construction, Inc. for Construction of the State Route-162 (SR-162) ATP Pedestrian Mobility and Safety Improvement Project.

ACTION REQUESTED –

DIRECT THE CITY ADMINISTRATOR TO AWARD THE CONSTRUCTION CONTRACT LAMON CONSTRUCTION INC. FOR CONSTRUCTION ON THE SR-162 PEDESTRIAN SAFETY AND MOBILITY PROJECT.

6. CalFire Contract Amendment to Include Fire Equipment Service and Repairs

Staff is seeking Council approval to amend the contract with CalFire, incorporating fire equipment servicing and repairs. This initiative is to enhance our fire services, while ensuring the effective maintenance of critical equipment.

ACTION REQUESTED -

APPROVE THE CONTRACT AMENDMENT WITH CALFIRE TO INCLUDE FIRE EQUIPMENT SERVICES AND REPAIRS.

7. Purchase of 655 Cal Oak and Associated Budget Adjustments

The City has finalized the acquisition of the 655 Cal Oak property for the new Corporation Yard. City staff is providing an update on funding sources, their utilization, and will be outlining the next steps for transitioning to the new facility.

ACTION REQUESTED -

STAFF IS REQUESTING THAT THE OROVILLE CITY COUNCIL APPROVE THE PURCHASE OF 655 CAL OAK WITH THE FOLLOWING FUNDING:

· $1,066,284.45 - REDEVELOPMENT AGENCY BOND PROCEEDS

· $688,724.25 – SEWER ENTERPRISE FUNDS (25%)

· $999,888.30 – LOCAL FISCAL RECOVERY FUNDS; AND

APPROVE THE FOLLOWING EXPENDITURES:

· $250,000 - MECHANIC SHOP INFILL WORK

· $200,000 - ADMINISTRATIVE BUILDING INFILL WORK

· $500,000 - PERIMETER FENCING

· $400,000 - EMERGENCY GENERATOR

· $250,000 - DECOMMISSION EXISTING SITE AND GRADING

· $400,000 – ADDRESSING FUEL ISLAND SITUATION (MOVE CURRENT TANK, PURCHASE NEW TANK OR MOVE TO CARDLOCK FACILITY)

· $16,000 - SHELVING, MATERIAL RACKS AND AIR COMPRESSOR

BY UTILIZING THE FOLLOWING FUNDS:

· $504,000 – SEWER ENTERPRISE FUND (25%)

· $1,512,000 – LOCAL FISCAL RECOVERY FUND

8. **Establish the Mission Esperanza Project as a Project with Great Community Benefit and Consider the Development Impact and Art in Public Spaces Fees**

The City Council may consider the Development Impact and Art in Public Spaces fees associated with new development projects and defer the frontage improvement costs until change ownership, for the Oroville Rescue Mission and the Mission Esperanza project.

ACTION REQUESTED -

WAIVE THE DEVELOPMENT IMPACT AND ART IN PUBLIC SPACES FEES; AND

DEFER THE FRONTAGE IMPROVEMENTS UNTIL CHANGE OWNERSHIP; AND

ACKNOWLEDGE THE MISSION ESPERANZA PROJECT AS A PROJECT WITH SUBSTANTIAL COMMUNITY BENEFIT AND ADOPT A RESOLUTION WAIVING DEVELOPMENT AND ART IN PUBLIC SPACES FEES, AS WELL AS FRONTAGE IMPROVEMENT COSTS ASSOCIATED WITH THE PROJECT.

9. **Amendment to the Lease Agreement Between the City of Oroville and the YMCA of Superior California for Operations at the Convention Center**

The Council may consider Resolution No. 9216 (Attachment 1) to amend the lease agreement (Attachment 2) with the YMCA of Superior California (YMCA) for the operation of the convention center.

ACTION REQUESTED -

DIRECT THE MAYOR TO EXECUTE THE ATTACHED AMENDMENT TO AGREEMENT 3317.

10. **Opportunity to Compete for Funding of a Microgrid Designed to Provide Energy Resiliency During Disaster Events**

The Council will receive information regarding a grant opportunity for funding of a microgrid through a program sponsored by Pacific Gas and Electric (PG&E) to provide energy resiliency to the City during disasters.

ACTION REQUESTED -

RECEIVE INFORMATION RELATED TO A RESILIENCY MICROGRID AND DIRECT STAFF TO RETURN TO COUNCIL ON FEBRUARY 20, 2024, WITH AN AGREEMENT BETWEEN THE CITY AND OURENERGY TO PURSUE FUNDING THROUGH THE PG&E MICROGRID INCENTIVE PROGRAM.

PUBLIC HEARINGS

The Public Hearing Procedure is as follows:

- Mayor or Chairperson opens the public hearing and staff will present the item and answer Council questions.
- The hearing is opened for public comment limited to three (3) minutes per speaker. In the event of more than ten (10) speakers, time will be limited to one and a half (1.5) minutes. Under Government Code 54954.3, the time for each presentation may be limited.
- Speakers are requested to provide a speaker card to the City Clerk
- Public comment session is closed and then the Council will debate and take action
- Those wishing to speak at the public hearings below, but unable to attend before 5pm, may request that the council consider holding the public hearing after 5pm by emailing cityclerk@cityoforoville.org or calling 530-538-2535. Please submit request 24 hours before the meeting.
- Individuals may email comments for council consideration to publiccomment@cityoforoville.org

11. 5:00PM - Agreement for City's Participation in the SCIP and BOLD Programs

The Council will consider entering a Joint Power Authority (JPA) agreement with two agencies in order to provide developers access to pooled bond opportunities which will provide low-cost financing for infrastructure improvements and impact fees.

ACTION REQUESTED -

DIRECT THE CITY ADMINISTRATOR TO ENTER A JPA AGREEMENT WITH THE CSCDA AND THE CMFA AGENCIES.

12. 5:15PM - Modifications to the Community Development Block Grant (CDBG) Owner-Occupied Rehabilitation Loan Program Guidelines

The Council will conduct a public hearing to solicit comments regarding requested modifications to the CDBG Home Rehabilitation Loan Program Guidelines.

ACTION REQUESTED -

ADOPT RESOLUTION NO. 9217 - A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING MODIFICATIONS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT HOME REHABILITATION PROGRAM GUIDELINES.

13. 5:15PM - First Reading of an Amendment of Oroville Municipal Code Section 17.16.150 – Mobile Food Vending

The City Council will consider amending Municipal Code Section 17.16.150 ("Mobile Food Vending") to set development standards for multiple food vendors at one location. The Planning Commission recommended approval of these modifications at its regular meeting of November 16, 2023 after consideration of the staff report, Planning Commissioner comments, and public comment. If approved by the City Council, the City Council will hold a second hearing to formally adopt the ordinance amending Municipal Code Section 17.16.150.

ACTION REQUESTED -

ADOPT A CATEGORICAL EXEMPTION FOR AMENDMENTS TO MUNICIPAL CODE SECTION 17.156.150.

PUBLIC COMMUNICATION – HEARING OF NON-AGENDA ITEMS

This is the time to address the Council about any item not listed on the agenda. If you wish to address the Council on an item listed on the agenda, please follow the directions listed above.

FUTURE AGENDA ITEMS / CORRESPONDENCE

1. Future Agenda Items
2. Correspondence

ADJOURN THE MEETING

The meeting will be adjourned. A regular meeting of the Oroville City Council will be held on February 20, 2024 at 4:00PM.

Accommodating Those Individuals with Special Needs – In compliance with the Americans with Disabilities Act, the City of Oroville encourages those with disabilities to participate fully in the public meeting process. If you have a special need in order to allow you to attend or participate in our public meetings, please contact the City Clerk at (530) 538-2535, well in advance of the regular meeting you wish to attend, so that we may make every reasonable effort to accommodate you. Documents distributed for public session items, less than 72 hours prior to meeting, are available for public inspection at City Hall, 1735 Montgomery Street, Oroville, California.

Recordings - All meetings are recorded and broadcast live on cityoforoville.org and YouTube.

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **AMY BERGSTRAND, DIRECTOR**
BUSINESS ASSISTANCE/HOUSING DEVELOPMENT

RE: **EXTENSION AND ADDITION TO THE EXCLUSIVE NEGOTIATING AGREEMENT (ENA) WITH VETERANS HOUSING DEVELOPMENT CORPORATION (VHDC)**

DATE: **FEBRUARY 6, 2024**

SUMMARY

Council may consider extending the ENA with VHDC until February 28, 2027 to develop affordable housing for veterans and their families.

DISCUSSION

On November 19, 2019, Council approved an ENA with VHDC to transfer eight (8) Successor Agency Housing properties to rehabilitate and/or newly construct units for affordable housing to income qualified veterans.

The ENA consisted of multiple projects that would encompass three (3) phases. The first phase would transfer five (5) single-family homes and two (2) residential vacant lots, to VHDC. The single-family homes would be rehabilitated and sold to an income-qualified veteran. VHDC will build homes on the remaining two properties to sell to income-qualified veterans. To date, three (3) properties have been transferred to VHDC, two are in the process of either locating an eligible applicant or pending escrow and the vacant lots on Veatch and Pomona will be built and sold after the existing homes have been sold.

At the January 4, 2022, council meeting, City Council extended the ENA to January 2023 and added the commercial property know as the City's Corp yard (phase II) consisting of 3.9 acres to develop a permanent supportive housing multi-family project for veterans. VHDC is in the process of determining the financing structure for this project and intends to apply for various grants in 2024.

The third phase involves the previously transferred vacant commercial lot (711 Montgomery St) that was rezoned to allow for single-family duplexes/condo type homes that would be sold to income qualified veteran residents. This project has been stalled due to the financing structure. VHDC needs to find three (3) qualified buyers prior to

the applicant obtaining a CalVet Construction loan to build. Once the first three are built, they can move to the next three and so on, until twelve are built and the project is finished. VHDC is currently researching a different funding stream that could be easier to manage.

Lastly, VHDC has obtained a new development partner and plan on using the City's previously approved Housing Program Fund loan to start predevelopment work. During the 2024 calendar year, VHDC intends to apply for HOME American Rescue Plan Program (HOME-ARP), and 9% Low Income Housing Tax Credits (LIHTC), Veterans Housing and Homelessness Prevention (VHHP), USDA and Home Depot grant funds to complete the funding structure for this project.

More time is needed to finalize these process and property transfers.

FISCAL IMPACT

There is no General Fund Impact

RECOMMENDATION

Adopt Resolution No. xxxx – A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA AUTHORIZING AND DIRECTING THE MAYOR TO EXTEND THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF OROVILLE AND VETERANS HOUSING DEVELOPMENT CORPORATION UNTIL FEBRUARY 28, 2027.

ATTACHMENTS

1- Resolution No. xxxx
2- ENA Addendum 2

CITY OF OROVILLE
RESOLUTION NO. 9228

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA AUTHORIZING AND DIRECTING THE MAYOR TO EXTEND THE EXCLUSIVE NEGOTIATING AGREEMENT BETWEEN THE CITY OF OROVILLE AND VETERANS HOUSING DEVELOPMENT CORPORATION UNTIL FEBRUARY 28, 2027

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The Mayor is authorized and directed to extend the Exclusive Negotiating Agreement between the City of Oroville and the Veterans Housing Development Corporation until February 28, 2027.

2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Oroville at a regular meeting on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

_____
David Pittman, Mayor

APPROVED AS TO FORM:

_____
Scott E. Huber, City Attorney

ATTEST:

_____
Kayla Reaster, Assistant City Clerk

ADDENDUM TWO (2) TO EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
Extension and Property Addition.
(APN Nos. SEE ATTACHED EXHIBIT I)

This Addendum ("Addendum") dated February 6, 2024, is to the Exclusive Negotiating Rights Agreement ("ENA") between the City of Oroville ("City") and Veterans Housing Development Corporation ("Developer"). The purpose of this addendum is to extend the original ENA executed November 19, 2019, and amended January 4, 2022. In consideration of the terms and conditions herein, the City and the Developer agree that the ENA shall be amended as follows:

1. This addendum will extend the original ENA negotiation period as stated in Article 1 section 1.2 through February 28, 2027.

2. Conflicts between the ENA, Addendum 1 and this Addendum shall be controlled by this Addendum. All other provisions within the ENA shall remain in full force and effect.

CITY:

CITY OF OROVILLE, CALIFORNIA, a municipal corporation

By: _____
David Pittman, Mayor

APPROVED AS TO FORM:

By: _____
Scott E Huber City Attorney

DEVELOPER:

VETERANS HOUSING DEVELOPMENT CORPORATION, a California nonprofit public benefit corporation

By: _____
Brad Long, Executive Director and Authorized Signatory

EXHIBIT I

Updated List of Properties included on the ENA

1. 3555 Argonaut Ave (APN 033-462-032) .14 acres
2. 3265 Glen Ave. (APN 068-300-095) .35 acres
3. 1130 Pomona Ave. (APN 012-135-140) .16 acres
4. 1550 and 1560 Veatch St. (APN 012-133-009) .21 acres
5. 711 Montgomery St.(APN 012-064-001) .64 acres
6. 1275 Mitchell Ave. (APN 035-250-002)

OROVILLE CITY COUNCIL
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **AMY BERGSTRAND, DIRECTOR**
BUSINESS ASSISTANCE/HOUSING DEVELOPMENT
DAVID G. RITCHIE, ASST. CITY ATTORNEY

RE: **CONSIDERATION OF RESOLUTIONS DECLARING CITY OWNED PROPERTIES AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The City Council may consider approving resolutions declaring the City-owned properties listed below as Exempt Surplus Land and making associated findings.

- Oro Dam Lot 1-Orange/Highlands (APN 033-232-001) .14 acres
- Oro Dam Lot 2-Orange (APN 033-232-021) .18 acres
- 3555 Argonaut Ave (APN 033-462-032) .14 acres
- 3265 Glen Ave. (APN 068-300-095) .35 acres
- 1130 Pomona Ave. (APN 012-135-140) .16 acres
- 1550 and 1560 Veatch St. (APN 012-133-009) .21 acres
- 1218 Bird St. (APN 012-076-007) .14 acres

The attached resolutions (one for each property) make certain findings and declare each parcel as exempt surplus with reference to the sections of Government Code authorizing the exemptions.

DISCUSSION

In order to satisfy the requirements for such a declaration that the properties are *exempt surplus* land, the City Council must make certain findings. Government Code Section 52441(f)(1)(B) allows surplus land to be declared as exempt from the surplus land Act if that land is less than one-half acre in area and is not contiguous to land owned by the state or local agency that is used for open space or low and moderate income housing purposes. The City may then dispose of the property for that purpose at less than fair market value and under conditions that the City deems to be best suited to the provision of such housing.

In addition, Government Section 37364 further authorizes a City, notwithstanding a City Charter or other provision of law, to sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property at less than fair market value to provide that affordable housing and under whatever terms and conditions the City deems best suited to the provision of such housing. A property meeting those requirements may be declared exempt surplus land pursuant to Government Code Section 54221(f)(1)(A).

Each of the above-listed properties meet one or the other criteria and a Resolution making the appropriate findings for each is submitted with City staff's recommendation for Council adoption.

FISCAL IMPACT

No General Fund Impact

RECOMMENDATIONS

1. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED AT ORO DAM LOT AT ORANGE/HIGHLANDS (APN 033-232-001) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

2. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED AT ORO DAM LOT AT ORANGE (APN 033-232-021) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

3. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 3555 ARGONAUT AVENUE (APN 033-462-032) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

4. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 3265 GLEN AVENUE (APN 068-300-095) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

5. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1130 POMONA AVENUE (APN 012-135-140) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

6. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1550 AND 1560 VEATCH STREET (APN 012-133-009) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

7. Adopt Resolution No. _____ - A RESOLUTION DECLARING THE PROPERTY LOCATED 1218 BIRD STREET (APN 012-076-007) AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

ATTACHMENTS

1. Resolution No.
2. Resolution No.
3. Resolution No.
4. Resolution No.
5. Resolution No.
6. Resolution No.
7. Resolution No.
8. Parcel Detail and Maps

OROVILLE CITY COUNCIL
RESOLUTION NO. 9226

A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1550 and 1560 VEATCH STREET APN 012-133-009 AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a parcel (.21 Acres on the parcel detail, shown as .20 Acres on the parcel map) located at Oro Dam, APN 012-133-009; and

WHEREAS Government Code Section 54221(f)(1)(B) authorizes a City to declare property of less than one-half Acre, that is not contiguous to land owned by the state or other local agency that is used for open space or low and moderate income housing purposes, to be disposed of as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that the vacant .21 Acre parcel owned by the City and located at 1550 and 1560 Veatch Street, APN 012-133-009 is less than one-half acre in area, and not contiguous to land owned by a state or local agency that is used for open space or low and moderate income housing purposes, as defined in Government Code Section 54221(e).

2. That the City Council of the City of Oroville declares the vacant .21 Acre parcel owned by the City and located at 1550 and 1560 Veatch Street, APN 012-133-009, in Oroville CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(B).

3. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed with disposition of the property; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9221

A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1130 POMONA AVENUE AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a property of .16 Acres (as shown in the parcel detail) located at 1130 Pomona Avenue, APN 012-135-140 (shown as .15 Acres on the parcel map); and

WHEREAS the City has explored the use of the property for providing affordable housing via transfer to the Veteran's Housing Development Corporation; and

WHEREAS the State Legislature, in Government Code Section 37364 reaffirmed its finding that provision of housing for all Californians is a concern of vital statewide importance; and

WHEREAS Section 37364 further authorizes a City, notwithstanding a City Charter or other provision of law, to sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property at less than fair market value to provide that affordable housing and under whatever terms and conditions the City deems best suited to the provision of such housing; and

WHEREAS Government Code Section 54221(f)(1)(A) authorizes a City to declare property to be disposed of pursuant to Section 37364 as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that the .16 Acre property located at 1130 Pomona Avenue, APN 012-135-140 owned by the City can be used to provide housing affordable to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code.

2. The City Council of the City of Oroville finds that the use of the property for provision of affordable housing is in the best interests of the City and its citizens.

3. That the City Council of the City of Oroville declares the .16 Acre property located at 1130 Pomona Avenue, APN 012-135-140 in the City of Oroville, CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(A).

4. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed

with disposition of the property for purposes of providing affordable housing in compliance with Government Code Section 37364; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9222

A RESOLUTION DECLARING THE PROPERTY LOCATED AT 3555 ARGONAUT AVENUE AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a .14 Acre property located at 3555 Argonaut Avenue, APN 033-462-032; and

WHEREAS the City has explored the use of the property for providing affordable housing via transfer to the Veteran's Housing Development Corporation; and

WHEREAS the State Legislature, in Government Code Section 37364 reaffirmed its finding that provision of housing for all Californians is a concern of vital statewide importance; and

WHEREAS Section 37364 further authorizes a City, notwithstanding a City Charter or other provision of law, to sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property at less than fair market value to provide that affordable housing and under whatever terms and conditions the City deems best suited to the provision of such housing; and

WHEREAS Government Code Section 54221(f)(1)(A) authorizes a City to declare property to be disposed of pursuant to Section 37364 as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that the .14 Acre property located at 3555 Argonaut Avenue, APN 033-462-032 owned by the City can be used to provide housing affordable to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code.

2. The City Council of the City of Oroville finds that the use of the property for provision of affordable housing is in the best interests of the City and its citizens.

3. That the City Council of the City of Oroville declares the .14 Acre property located at 3555 Argonaut Avenue, APN 033-462-032 in the City of Oroville, CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(A).

4. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed with disposition of the property for purposes of providing affordable

housing in compliance with Government Code Section 37364; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9223

A RESOLUTION DECLARING THE PROPERTY LOCATED AT 3265 GLEN AVENUE AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a property of .35 Acres (as shown in the parcel detail) located at 3265 Glen Avenue, APN 068-300-095 (shown as .34 Acres on the parcel map); and

WHEREAS the City has explored the use of the property for providing affordable housing via transfer to the Veteran's Housing Development Corporation; and

WHEREAS the State Legislature, in Government Code Section 37364 reaffirmed its finding that provision of housing for all Californians is a concern of vital statewide importance; and

WHEREAS Section 37364 further authorizes a City, notwithstanding a City Charter or other provision of law, to sell, lease, exchange, quitclaim, convey, or otherwise dispose of the real property at less than fair market value to provide that affordable housing and under whatever terms and conditions the City deems best suited to the provision of such housing; and

WHEREAS Government Code Section 54221(f)(1)(A) authorizes a City to declare property to be disposed of pursuant to Section 37364 as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that .35 Acre property located at 3265 Glen Avenue, APN 068-300-095 owned by the City can be used to provide housing affordable to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code.

2. The City Council of the City of Oroville finds that the use of the property for provision of affordable housing is in the best interests of the City and its citizens.

3. That the City Council of the City of Oroville declares the .35 Acre property located at 3265 Glen Avenue, APN 068-300-095 in the City of Oroville, CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(A).

4. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed

with disposition of the property for purposes of providing affordable housing in compliance with Government Code Section 37364; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9227

A RESOLUTION DECLARING THE PROPERTY LOCATED AT 1218 BIRD STREET APN 012-076-007 AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a parcel (.14 Acres on the parcel detail, shown as .12 Acres on the parcel map) located at 1218 Bird Street, APN 012-076-007; and

WHEREAS Government Code Section 54221(f)(1)(B) authorizes a City to declare property of less than one-half Acre, that is not contiguous to land owned by the state or other local agency that is used for open space or low and moderate income housing purposes, to be disposed of as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that the .14 Acre parcel owned by the City and located at 1218 Bird Street, APN 012-076-007 is less than one-half acre in area, and not contiguous to land owned by a state or local agency that is used for open space or low and moderate income housing purposes, as defined in Government Code Section 54221(e).

2. That the City Council of the City of Oroville declares the .14 Acre parcel owned by the City and located at 1218 Bird Street, APN 012-076-007, in Oroville CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(B).

3. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed with disposition of the property; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9225

A RESOLUTION DECLARING THE PROPERTY LOCATED AT ORO DAM APN 033-232-021 AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a parcel (.19 Acres on the parcel detail, shown as .18 Acres on the parcel map) located at Oro Dam, APN 033-232-021; and

WHEREAS the City has explored the use of the property for alley access for existing adjacent properties; and

WHEREAS Government Code Section 54221(f)(1)(B) authorizes a City to declare property of less than one-half Acre, that is not contiguous to land owned by the state or other local agency that is used for open space or low and moderate income housing purposes, to be disposed of as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that the vacant .19 Acre parcel owned by the City and both located at Oro Dam, APN 033-232-021 is less than one-half acre in area, and not contiguous to land owned by a state or local agency that is used for open space or low and moderate income housing purposes, as defined in Government Code Section 54221(e).

2. That the City Council of the City of Oroville declares the vacant .19 Acre parcel located at Oro Dam, APN 033-232-021, in Oroville CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(B).

3. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed with disposition of the property; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9224

A RESOLUTION DECLARING THE PROPERTY LOCATED AT ORO DAM APN 033-232-001 AS EXEMPT SURPLUS LAND AND MAKING ASSOCIATED FINDINGS

WHEREAS the City of Oroville owns a .14 Acre property located at Oro Dam, APN 033-232-001; and

WHEREAS the City has explored the use of the property for alley access for existing adjacent properties; and

WHEREAS Government Code Section 54221(f)(1)(B) authorizes a City to declare property of less than one-half Acre that is not contiguous to land owned by the state or other local agency that is used for open space or low and moderate income housing purposes to be disposed of as "Exempt Surplus Land"; now

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The City Council of the City of Oroville finds that the vacant .14 Acre parcel owned by the City and located at Oro Dam, APN 033-232-001 is less than one-half acre in area and not contiguous to land owned by a state or local agency that is used for open space or low and moderate income housing purposes as defined in Government Code Section 54221(e).

2. That the City Council of the City of Oroville declares the vacant .14 Acre parcel located at Oro Dam, APN 033-232-001, in Oroville CA as "Exempt Surplus Land" pursuant to Government Code section 54221(f)(1)(B).

3. That the City Council of the City of Oroville, hereby authorizes and directs staff to take all steps necessary and required to proceed with disposition of the property; and to bring forth the agreement for purchase and sale or otherwise for disposal of the property to the City Council for final approval.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **RUTH DUNCAN, ASSISTANT CITY ADMINISTRATOR - ADMINISTRATIVE SERVICES**

RE: **CONTRACT WITH CHAVAN & ASSOCIATES, LLP. FOR PROFESSIONAL AUDITING SERVICES**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The Council may consider the authorization of an auditing agreement with Chavan & Associates, LLP.

DISCUSSION

On October 11, 2023, the City issued a request for proposals (RFP) for professional auditing services. An annual audit is a requirement of the Governmental Accounting Standards Board. Many of our funding sources also require us to issue independently audited financial statements.

The RFP submittal deadline was December 1, 2023. In summary the City received two proposals. One was from our existing auditors Chavan & Associates, and the other from Badawi & Associates.

Audit RFP Results

Firm	Chavan & Associates	Badawi & Associates
Date responded	12/1/2023	12/1/2023
Fees:		
Audit	25,500.00	28,060.00
ACFR	Included	Included
Single Audit	3,000.00	4,825.00
Appropriation limit	1,000.00	1,425.00
St Controller Rpts	5,000.00	5,625.00
Total	$ 34,500.00	$ 39,935.00

After reviewing the proposals, our current auditors, Chavan & Associates, was determined to be the best option at this time.

On May 6, 2014, the Council approved an auditor rotation policy that allows our current auditing firm to continue with the City after a competitive bid process if they assign a new audit manager. Chavan & Associates will comply and assign a new audit manager other than the one we have worked with over the last five years.

The terms of the proposal is for a three-year agreement with an option of two additional years. Fiscal years ending 2024, 2025, 2026, and the option of 2027 and 2028.

FISCAL IMPACT

Professonal Auditing Services costs as follows:

Year 1 June 30, 2024 $34,500
Year 2 June 30, 2025 $36,500
Year 3 June 30, 2026 $37,000
Optional:
Year 4 June 30, 2027 $39,500
Year 5 June 30, 2028 $40,500

This cost will be budgeted in the Finance Department budget 100.1090.6360

RECOMMENDATION

Approve agreement and authorize the Finance Director to sign the engagement letter with Chavan & Associates for professional auditing services.

ATTACHMENTS

Engagement Letter Chavan & Associates, LLP

Chavan and Associates, llp
Certified Public Accountants

January 20, 2024

City of Oroville
1735 Montgomery Street Oroville,
CA 95965

We are pleased to confirm our understanding of the services we are to provide for the City of Oroville (the "City") for the fiscal years ending June 30, 2024, 2025 and 2026, with options for 2027 and 2028. We will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City and the related notes to the financial statements, which collectively comprise the City's basic financial statements. In addition, we will audit the City's compliance over major federal award programs, and perform the services as noted in **Exhibit A,** as applicable each fiscal year. We are pleased to confirm our acceptance of this audit engagement by means of this letter. Our audits will be conducted with the objectives of our expressing an opinion on each opinion unit and an opinion on compliance regarding the City's major federal award programs.

Accounting principles generally accepted in the United States of America, (U.S. GAAP), as promulgated by the Governmental Accounting Standards Board (GASB), require that the items noted below be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the GASB, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the required supplementary information (RSI) in accordance with auditing standards generally accepted in the United States of America, (U.S. GAAS). These limited procedures will consist primarily of inquiries of management regarding their methods of measurement and presentation and comparing the information for consistency with management's responses to our inquiries. We will not express an opinion or provide any form of assurance on the RSI. The following RSI is required by U.S. GAAP and will be subjected to certain limited procedures but will not be audited:

1. Management's discussion and analysis.
2. Major fund budget to actual schedules.
3. Pension schedules.
4. Other postemployment benefit schedules.

Supplementary Information Other than RSI

Supplementary information other than RSI will accompany the City's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audit of the basic financial statements and perform certain additional procedures, including

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comparing and reconciling the supplementary information to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with U.S. GAAS.
We intend to provide an opinion on the following supplementary information in relation to the financial statements as a whole:

1. Nonmajor governmental fund combining balance sheets and statements of revenues, expenditures and changes in fund balances.
2. Nonmajor budgetary comparison schedules.
3. Proprietary funds combining balance sheets and statements of revenues, expenditures and changes in net position, and cash flows, as applicable.
4. Fiduciary fund statements, as applicable.

Also, the document we submit to you will include the following other additional information that will not be subjected to the auditing procedures applied in our audit of the basic financial statements:

1. ACFR introductory section.
2. Statistical tables.

Schedule of Expenditures of Federal Awards

We will subject the schedule of expenditures of federal awards to the auditing procedures applied in our audit of the basic financial statements and certain additional procedures, including comparing and reconciling the schedule to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and additional procedures in accordance with auditing standards generally accepted in the United States of America. We intend to provide an opinion on whether the schedule of expenditures of federal awards is presented fairly in all material respects in relation to the financial statements as a whole.

Data Collection Form

Prior to the completion of our engagement, we will complete the sections of the Data Collection Form that are our responsibility. The form will summarize our audit findings, amounts and conclusions. It is management's responsibility to submit a reporting package including financial statements, schedule of expenditure of federal awards, summary schedule of prior audit findings and corrective action plan along with the Data Collection Form to the federal audit clearinghouse. The financial reporting package must be text searchable, unencrypted, and unlocked. Otherwise, the reporting package will not be accepted by the federal audit clearinghouse. We will assist you in

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the electronic submission and certification. You may request from us copies of our report for you to include with the reporting package submitted to pass-through entities.

The Data Collection Form is required to be submitted within the *earlier* of 30 days after receipt of our auditors' reports or nine months after the end of the audit period, unless specifically waived by a federal cognizant or oversight agency for audits. Data Collection Forms submitted untimely are one of the factors in assessing programs at a higher risk.

Audit of the Financial Statements

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (U.S. GAAS), the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States of America (GAGAS), and the audit requirements of Title 2 U.S. Code of Federal Regulations (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether the basic financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to error, fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. If appropriate, our procedures will therefore include tests of documentary evidence that support the transactions recorded in the accounts. As part of our audit process, we will request written representations from your attorneys, and they may bill you for responding. At the conclusion of our audit, we will also request certain written representations from you about the financial statements and related matters.

Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance (whether caused by errors, fraudulent financial reporting, misappropriation of assets, detected abuse, or violations of laws or governmental regulations) may not be detected exists, even though the audit is properly planned and performed in accordance with U.S. GAAS and *Government Auditing Standards* of the Comptroller General of the United States of America. Please note that the determination of abuse is subjective and *Government Auditing Standards* does not require auditors to detect abuse.

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In making our risk assessments, we consider internal control relevant to the City's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the City's internal control. However, we will communicate to you in writing concerning any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we have identified during the audit. Our responsibility as auditors is limited to the period(s) covered by our audit and does not extend to any other periods.

We will issue a written report upon completion of our audit of the City's basic financial statements. Our report will be addressed to the governing body of the City. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the basic financial statements are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or to issue a report as a result of this engagement.

In accordance with the requirements of *Government Auditing Standards*, we will also issue a written report describing the scope of our testing over internal control over financial reporting and over compliance with laws, regulations, and provisions of grants and contracts, including the results of that testing. However, providing an opinion on internal control and compliance over financial reporting will not be an objective of the audit and, therefore, no such opinion will be expressed.

Audit of Major Program Compliance

Our audit of the City's major federal award program(s) compliance will be conducted in accordance with the requirements of the Single Audit Act, as amended; and the provisions of U.S. Office of Management and Budget's (OMB) Uniform Guidance; and will include tests of accounting records, a determination of major programs in accordance with Uniform Guidance, and other procedures we consider necessary to enable us to express such an opinion on major federal award program compliance and to render the required reports. We cannot provide assurance that an unmodified opinion on compliance will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion or withdraw from the engagement.

Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the City has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major federal award programs. Our procedures will consist of determining major federal programs and performing the applicable procedures described in the *OMB Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City's major programs. The purpose of those procedures

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will be to express an opinion on the City's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to Uniform Guidance.

Also, as required by the Uniform Guidance, we will perform tests of controls to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each of the City's major federal award programs. However, our tests will be less in scope than would be necessary to render an opinion on these controls and, accordingly, no opinion will be expressed in our report.

We will issue a report on compliance that will include an opinion or disclaimer of opinion regarding the City's major federal award programs, and a report on internal controls over compliance that will report any significant deficiencies and material weaknesses identified; however, such report will not express an opinion on internal control.

Management's Responsibilities

Our audit will be conducted on the basis that management acknowledge and understand that they have responsibility:

1. For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America;
2. For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to error fraudulent financial reporting, misappropriation of assets, or violations of laws, governmental regulations, grant agreements, or contractual agreements;
3. For identifying, in its accounts, all federal awards received and expended during the period and the federal programs under which they were received, including federal awards and funding increments received in accordance with the Uniform Guidance generally received after December 26, 2014;
4. For maintaining records that adequately identify the source and application of funds for federally funded activities;
5. For preparing the schedule of expenses of federal awards (including notes and noncash assistance received) in accordance with the Uniform Guidance requirements;
6. For the design, implementation, and maintenance of internal control over federal awards;
7. For establishing and maintaining effective internal control over federal awards that provides reasonable assurance that the nonfederal entity is managing federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal awards;
8. For identifying and ensuring that the City complies with laws, regulations, grants, and contracts applicable to its activities and its federal award programs and implementing systems designed to achieve compliance with applicable laws, regulations, grants, and contracts applicable to activities and its federal award programs;

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9. For disclosing accurately, currently, and completely the financial results of each federal award in accordance with the requirements of the award;
10. For identifying and providing report copies of previous audits, attestation engagements, or other studies that directly relate to the objectives of the audit, including whether related recommendations have been implemented;
11. For taking prompt action when instances of noncompliance are identified;
12. For addressing the findings and recommendations of auditors, for establishing and maintaining a process to track the status of such findings and recommendations and taking corrective action on reported audit findings from prior periods and preparing a summary schedule of prior audit findings;
13. For following up and taking corrective action on current year audit findings and preparing a corrective action plan for such findings;
14. For submitting the reporting package and data collection form to the appropriate parties;
15. For making the auditor aware of any significant vendor / contractor relationships where the vendor / contractor is responsible for program compliance;
16. To provide us with:
    a. Access to all information of which management is aware that is relevant to the preparation and fair presentation of the financial statements, and relevant to federal award programs, such as records, documentation, and other matters;
    b. Additional information that we may request from management for the purpose of the audit; and
    c. Unrestricted access to persons within the City from whom we determine it necessary to obtain audit evidence.
17. For including the auditor's report in any document containing basic financial statements that indicates that such basic financial statements have been audited by the City's auditor;
18. For adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the current year period(s) under audit are immaterial, both individually and in the aggregate, to the financial statements as a whole;
19. For acceptance of nonattest services, including identifying the proper party to oversee nonattest work;
20. For maintaining adequate records, selecting and applying accounting principles, and safeguarding assets;
21. For informing us of any known or suspected fraud affecting the City involving management, employees with significant role in internal control and others where fraud could have a material effect on compliance and the financials;
22. For the accuracy and completeness of all information provided;

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23. For taking reasonable measures to safeguard protected personally identifiable and other sensitive information; and
24. For confirming your understanding of your responsibilities as defined in this letter to us in your management representation letter.

With regard to the supplementary information and schedule of expenditures of federal awards (SEFA) referred to above, you acknowledge and understand your responsibility (a) for the preparation of the supplementary information and SEFA in accordance with the applicable criteria, (b) to provide us with the appropriate written representations regarding the supplementary information and SEFA, (c) to include our report on the supplementary information and the SEFA in any document that contains the supplementary information and that indicates that we have reported on such supplementary information and the SEFA, and (d) to present the supplementary information and the SEFA with the audited financial statements, or if the supplementary information and the SEFA will not be presented with the audited financial statements, to make the audited financial statements readily available to the intended users of the supplementary information and the SEFA no later than the date of issuance by you of the supplementary information and the SEFA and our reports thereon.

As part of our audit process, we will request from management, written confirmation concerning representations made to us in connection with the audit. We understand that your employees will prepare all confirmations we request and will locate any documents or invoices selected by us for testing.

If you intend to publish or otherwise reproduce the financial statements and make reference to our firm, you agree to provide us with printers' proofs or masters for our review and approval before printing. You also agree to provide us with a copy of the final reproduced material for our approval before it is distributed.

Audit Administration and Fees

Our all-inclusive maximum fee for these services will be as follows **(see Exhibit A)**:

Fiscal year ending June 30, 2024	$34,500
Fiscal year ending June 30, 2025	$36,500
Fiscal year ending June 30, 2026	$37,000
Fiscal year ending June 30, 2027 (optional)	$39,500
Fiscal year ending June 30, 2028 (optional)	$40,500

Our fees include out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.).

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Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit as follows:

Engagement Partner	$250 per hour
Associate Partner	$200 per hour
Manager/Supervisor	$125 per hour
Staff Auditor	$100 per hour
Administrative	$100 per hour

Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes thirty days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report.

You will be obligated to compensate us for all time expended and to reimburse us for all out-ofpocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If cooperation is not provided as anticipated and at a level that hinders the progress of the services to be provided, we retain the right to terminate the contract for cause with thirty (30) days' notice. During that time, the City will have the opportunity to provide the cooperation required to complete the audit and C&A may rescind the cancellation.

If the services to be performed by C&A are not performed in an acceptable manner to the City, the City may cancel this contract for cause by providing notice to C&A, giving at least thirty (30) days' notice of the proposed cancellation and the reasons for same. During that time period, C&A may seek to bring the performance of services to a level that is acceptable to the City, and the

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City may rescind the cancellation if such action is in City's best interest. Notwithstanding the above provisions, the City may, upon the expiration of thirty (30) days written notice to C&A, terminate the agreement at will. Payment for services or goods received prior to termination shall be made by the City provided those goods or services were provided in a manner acceptable to the City. Payment for those goods and services shall not be unreasonably withheld.

Sheldon Chavan, CPA, is the engagement partner for the audit services specified in this letter. His responsibilities include supervising Chavan & Associates LLP's services performed as part of this engagement and signing or authorizing another qualified firm representative to sign the audit report.

Other Matters

During the course of the engagement, we may communicate with you or your personnel via fax or e-mail, and you should be aware that communication in those mediums contains a risk of misdirected or intercepted communications.

Regarding the electronic dissemination of audited financial statements, including financial statements published electronically on your Internet website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

The audit documentation for this engagement is the property of Chavan & Associates LLP and constitutes confidential information. However, we may be requested to make certain audit documentation available to state and federal agencies and the U.S. Government Accountability Office pursuant to authority given to it by law or regulation, or to peer reviewers. If requested, access to such audit documentation will be provided under the supervision of Chavan & Associates LLP's personnel. Furthermore, upon request, we may provide copies of selected audit documentation to these agencies and regulators. The regulators and agencies may intend, or decide, to distribute the copies of information contained therein to others, including other governmental agencies. We agree to retain our audit documentation or work papers for a period of at least seven years from the date of our report.

We will be available during the year to consult with you on financial management and accounting matters of a routine nature. You agree to inform us of facts that may affect the financial statements of which you may become aware during the period from the date of the auditor's report to the date the financial statements are issued.

With respect to any nonattest services we perform, the City's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a

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competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities. Nonattest services include the preparation of the audited financial statements, note disclosures, supplemental information (as noted above), conversion entries, audit adjusting entries, a template MD&A with tables, the schedule of expenditures of federal awards, the data collection form, the state controller's annual reports; statistical schedules that are derived from the audited financial statements. These items will be prepared from information prepared and provided by the City during our audit, such as the City's trial balance.

We will not assume management responsibilities on behalf of the City. However, we will provide advice and recommendations to assist management in performing its responsibilities.

Our responsibilities and limitations of the engagement are as follows:

- We will perform the services in accordance with applicable professional standards, including GAAS, GAGAS and Uniform Guidance as previously noted.
- This engagement is limited to the services previously outlined. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities, including determining account coding and approving journal entries. Our firm will advise the City with regard to the nonattest services provided, but the City must make all decisions with regard to those matters.

Government Auditing Standards require that we document an assessment of the skills, knowledge, and experience of management, should we participate in any form of preparation of the basic financial statements and related schedules or disclosures as these actions are deemed a non-audit service.

During the course of the audit, we may observe opportunities for economy in, or improved controls over, your operations. We will bring such matters to the attention of the appropriate level of management, either orally or in writing.

At the conclusion of our audit engagement, we will communicate to management and the Council the following significant items from the audit:

- Our view about the qualitative aspects of the City's significant accounting practices;
- Significant difficulties, if any, encountered during the audit;
- Uncorrected misstatements, other than those we believe are trivial, if any;
- Disagreements with management, if any;

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- Other findings or issues, if any, arising from the audit that are, in our professional judgment, significant and relevant to those charged with governance regarding their oversight of the financial reporting process;
- Material, corrected misstatements that were brought to the attention of management as a result of our audit procedures;
- Representations we requested from management;
- Management's consultations with other accountants, if any; and
- Significant issues, if any, arising from the audit that were discussed, or the subject of correspondence, with management.

In accordance with the requirements of *Government Auditing Standards*, a copy of our latest external peer review report of our firm is available upon request or on our website.

If the foregoing is in accordance with your understanding, please indicate your agreement by signing this letter and emailing it to us at info@cnallp.com, or following the DocuSign link. If you have any questions, please let us know.

We appreciate the opportunity to be your financial statement auditors and look forward to working with you and your staff.

Very truly yours,

C & A LLP

Sheldon Chavan, CPA, Managing Partner Chavan
& Associates, LLP

RESPONSE:

This letter correctly sets forth the understanding of the City of Oroville.

Signature:

Title:

Date:

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Chavan and Associates, llp
Certified Public Accountants

Exhibit A

					Optional	
Services	**Hours**	**2024**	**2025**	**2026**	**2027**	**2028**
City Audit, ACFR and Management Letters	204	$ 25,500	$ 27,500	$ 28,000	$ 30,000	$ 31,000
Single Audit	30	3,000	3,000	3,000	3,000	3,000
GANN Appropriation Limit	8	1,000	1,000	1,000	1,000	1,000
Conversion Entries	N/A	Included	Included	Included	Included	Included
GASB consultation and guidance	N/A	Included	Included	Included	Included	Included
Present Reports to Council and Committees	N/A	Included	Included	Included	Included	Included
Meals, Lodging and Transportation	N/A	Included	Included	Included	Included	Included
Subtotal Base Audit	**242**	**29,500**	**31,500**	**32,000**	**34,000**	**35,000**
AFTR (SCO)	16	3,000	3,000	3,000	3,250	3,250
ASR (SCO)	8	2,000	2,000		2,250	2,250
				2,000		
Total All-Inclusive Maximum Price	**266**	**$ 34,500**	**$ 36,500**	**$ 37,000**	**$ 39,500**	**$ 40,500**

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CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **FRED MAYO – DIRECTOR OF PUBLIC WORKS**

RE: **AUTHORIZATION TO PURCHASE TWO TOOL SETS FOR THE MECHANIC SHOP**

DATE: **FEBRUARY 6, 2024**

SUMMARY

Staff is seeking Council approval to purchase two comprehensive, professional tool sets for maintaining the City's vehicles and machinery, playing a crucial role in diagnosing and repairing City-owned assets.

DISCUSSION

The City mechanic shop has historically required that our mechanics bring their own tool kits. However, acknowledging the growing complexity of vehicle systems, there is now a recognized need to standardize our mechanic tool sets. Providing City-provided tools is crucial to ensuring the shop is well-equipped for tasks and remains current in this evolving industry. Standardizing tool sets simplify inventory and enhance efficiency, as each kit contains the same tools. This approach eliminates the practice of borrowing tools among mechanics. The comprehensive tool kits are modeled after those in Caltrans mechanic shops in the region, as their fleet's equipment diversity closely resembles ours.

Staff is requesting that the Oroville City Council issue authorization to the Director of Public Works to purchase tool sets.

FISCAL IMPACT

The total cost of tool sets is anticipated to be around $50,000.00 and was not included in this year's budget; however, funds are available in accounts 10011909 other supplies and 4004000 other supplies and may require a budget adjustment to cover future shortfalls.

RECOMMENDATION

Authorize the Director of Public Works purchase two mechanic tool kits.

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **FRED MAYO, PUBLIC WORKS DIRECTOR**

RE: **AWARD OF CONTRACT TO LAMON CONSTRUCTION, INC. FOR THE STATE ROUTE 162 ATP PEDESTRIAN MOBILITY AND SAFETY IMPROVEMENT PROJECT**

DATE: **FEBRUARY 6, 2023**

SUMMARY

The Council may direct staff to award a construction contract to Lamon Construction, Inc. for Construction of the State Route-162 (SR-162) ATP Pedestrian Mobility and Safety Improvement Project.

DISCUSSION

The SR-162 ATP Pedestrian Mobility and Safety Improvement Project started in 2015 with the City pursuing an ATP Cycle 3 through the California Transportation Commission (CTC) and Caltrans. The ATP grant was approved and awarded the City $3,411,000.00. A Capacity Management and Air Quality (CMAQ) grant is also allocated to cover a portion of the design cost. All together the project grants provides for $3,951,000 to design, construct, and manage a contractor to implement bicycle, pedestrian, and mobility improvements from Feather River Park, west of Hwy 70 to Foothill Blvd, along SR 162. This includes sidewalk closures, pedestrian crossings, bike lanes, and pedestrian signal improvements along the corridor.

In June of 2023 the design work was completed, and City Staff requested authorization from Caltrans and the Federal Highway Administration (FHWA) to proceed to advertise for construction bids. On September 14, 2023, Caltrans and FHWA gave the City permission to begin advertising for construction bids.

Advertising began on September 26, 2023, and closed December 7, 2023. City received one bid from Lamon Construction, Inc. for the total cost of $6,299,330.00.The Engineer’s Estimate was $5,687,862.40 with contingencies. Staff recommends allocating a contingency of $950,670.00 approximately (15%) for field changes and adjustments due to unforeseen circumstances, for a total not to exceed amount of $7,250,000.00.

FISCAL IMPACT

The funds in the amount of $450,000.00 will come from Fund 117 Local Transportation Fund, $480,000.00 from Fund 113 SB1 Road Maintenance and Rehabilitation Account, $359,000.00 from Fund 112 RSTP, $2,100,000.00 from Traffic Impact Fee Funds, $450,000.00 from Fund 100 General Fund (DWR Settlement money), $3,411,000.00 will be funded by Cycle 3 ATP Grant Reimbursement, for a total amount of $7,250,000.00.

RECOMMENDATION

Staff recommends that the Council direct the City Administrator to award the construction contract Lamon Construction Inc. for Construction on the SR-162 Pedestrian Safety and Mobility Project.

ATTACHMENTS

Bid Summary

Construction Contract

SR-162 ATP Pedestrian Mobility and Safety Improvement Project	Date: 12/7/23
Federal Project Number: ATP CML 5142(036)	Time: 2:00
Advertised Bid Closing Date: December 7, 2023 at 2:00PM	Opened By: Joshua Freitas

Contractor	Bid Amount
Lamon Construction Co. Inc	6,299,330.00

PROJECT CONTRACT

THIS PROJECT CONTRACT (the "contract" or "Contract") is made and entered into this day of February 06, 2024, by and between City of Oroville (referred to herein as the "Owner" or the "City") and Lamon Construction, Inc. (the "Contractor").

WITNESSETH: That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other as follows:

1. THE CONTRACT DOCUMENTS.

The complete contract is comprised of and may or may not include: Invitation for Bids; Information for Bidders; Bid Schedule; Proposal Form; Bidder's Bond; Contract; General Conditions; Special Provisions; Technical Provisions; Payment Bond; Performance Bond; Notice of Award; Notice to Proceed; Change Orders; Supplemental Drawings Issued; Drawings; Specifications and Contract Documents; All addenda or bulletins issued during the time of bidding or forming a part of the documents loaned to the bidder for preparation of the bid; The complete plans and provisions, regulations, ordinances, codes, and laws incorporated therein or herein by reference or otherwise applicable to the Project.

All the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract are hereinafter referred to collectively as the Contract Documents.

2. THE WORK.

Contractor agrees to furnish all tools, apparatus, facilities, equipment, labor, and materials (except that specifically mentioned as being furnished by others) necessary to perform and complete the work in a "good and workmanlike manner" as called for, and in the manner designated in, and in strict conformity with the Plans, Detail Specifications, and other Contract Documents which are identified by the signatures of the parties to this Contract and are, collectively, entitled:

"SR-162 ATP Pedestrian Mobility and Safety Improvement Project"

3. CONTRACT PRICE.

The City agrees to pay, and the Contractor agrees to accept, in full payment for the work above agreed to be done, the following compensation: $6,299,330.00. In no event shall Contractor's compensation exceed the amount of $6,299,330.00 without additional written authorization from the City. Payment by City under this Agreement shall not be deemed a waiver of defects in Consultant's services, even if such defects were known to the City at the time of payment.

For the purpose of fixing the amount of bonds referred to in the Instructions to Bidders, it is estimated by both Parties that the total contract price shall be based on the Contractor's Base Bid amount.

4. DISPUTES PERTAINING TO PAYMENT FOR WORK.

Should any dispute arise respecting the true value of any work done or any work omitted, or of any extra work which the Contractor may be required to do or respecting the size of any payment to the Contractor during the performance of this Contract, the dispute shall be informally mediated between the parties. Following such mediation, either party may file an action exclusively in the Butte County Superior Court or in the United States District Court, Eastern District of California. Under no condition shall there be a cessation of work by the Contractor during any such dispute. This article does not exclude recovery of damages by either party for delays.

5. PAYMENT.

Not later than the 20th day of each calendar month, the Contractor shall make a partial payment request to the City on the basis of an estimate approved by the Engineer of the work performed since the last partial payment request during the preceding month by the Contractor with five percent (5%) of the amount of each such estimate retained by the City, until completion of the Project and the recordation of a Notice of Completion of all work covered by this Contract. The City shall make any partial payments provided for in this contract to the Contractor within 30 days of the City's receipt of an undisputed and properly executed partial payment request from the Contractor. The City shall pay the Contractor interest on the amount of any portion of a partial payment, excluding retention amounts, not made to the Contractor within 30 days of the City's receipt of an undisputed and properly executed partial payment request from the Contractor at the legal rate set forth in California Code of Civil Procedure Section 685.010. Upon receipt of a partial payment request from the Contractor, the City shall review the partial payment request for the purpose of determining whether or not the partial payment request is a proper partial payment request. Any partial payment request determined by the City not to be a proper partial payment request suitable for payment shall be returned to the Contractor by the City within 14 days of the City's receipt of such partial payment request. A partial payment request returned to the Contractor by the City under the provisions of this section shall be accompanied by a written document setting forth the reason(s) why the partial payment request is not proper. The number of days for the City to make a certain partial payment provided for in this Contract, without incurring interest pursuant to this section, shall be reduced by the number of days by which the City exceeds the 14 day return period for such partial payment request, if determined to be improper, as set forth in this section. For the purposes of this section, a "partial payment" means all payments due to the Contractor under this contract, exclusive of that portion of the final payment designated as retention earnings. Also, for the purposes of this section, a partial payment request shall be considered properly executed by the City if funds are available to pay the partial payment request and payment is not delayed due to an audit inquiry by the City's financial officer. The City will release Contractor's retention earnings within 45 days after recordation of Notice of Completion, as defined in California Civil Code Section 3093. Recordation of a Notice of Completion for the Project by the City shall constitute the City's acceptance of the Project work.

6. TIME FOR COMPLETION.

All work under this contract shall be completed within a period of 150 working days from the date of the Contractor's receipt of a Notice to Proceed from the City.

7. EXTENSION OF TIME.

If the Contractor is delayed by acts of negligence of the City, or its employees or those under it by contract or otherwise, or by changes ordered in the work, or by strikes, lockouts, fire, unavoidable casualties, or any causes beyond the Contractor's control, or by delay authorized by the City, or by any justifiable cause which the Engineer shall authorize, then the Contractor shall make out a written claim addressed to the City setting forth the reason for the delay and the extension of the time requested and forward a copy of the claim to the Engineer for approval. The Engineer will evaluate the claim and if the claim is justifiable, will request the City's approval. No such extension will be allowed unless a written claim therefore has been made within 3 days after the delay became apparent.

If the Contractor fails or refuses to complete the work within the time specified, including authorized extensions, there shall be deducted from monies due the Contractor, not as a penalty, but as liquidated damages the sum of Six Thousand Seven Hundred Dollars ($6,700.00) for each calendar day subsequent to the time specified for each project and the time the work is actually completed and accepted. Delays caused by adverse weather conditions or conditions for which the Owner is clearly responsible will be added to the contract time.

8. LABOR PROVISIONS.

The project is subject to both federal and state prevailing wages. The Contractor shall pay laborers the higher of either the federal or state prevailing wage rate determination for the trades to be utilized. The contractor and all subcontractors on the project shall complete electronic reporting of prevailing wage rate reports through the Department of Industrial Relations, with copies of such reports to be provided to the City.

9. CONTRACT WORK HOURS AND SAFETY STANDARDS REQUIREMENTS.

As used in the following provision, the term “laborers” and “mechanics” include watchmen and guards.

a. Overtime Requirements. Neither the Contractor nor any subcontractor contracting for any part of the Project which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek, whichever is greater.

b. Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in paragraph a. above, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the City for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph a. above, in the sum of $2,700 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph a. above.

c. Withholding for Unpaid Wages and Liquidated Damages. The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or

cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph b. above.

d. Working conditions. Neither the Contractor nor any subcontractor may require any laborer or mechanic employed in the performance of any contract to work in surroundings or under working conditions that are unsanitary, hazardous or dangerous to his health or safety as determined under construction safety and health standards (29 CFR Part 1926) issued by the Department of Labor.

e. Subcontracts. The Contractor and any subcontractor shall insert in any subcontracts the clauses set forth in paragraphs a. through d. and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs a. through d.

10. NONDISCRIMINATION.

The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

11. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PROVISIONS.

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as recipient deems appropriate.

The Contractor agrees to pay each subcontractor under this contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the Contractor receives from City. The Contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

12. CIVIL RIGHTS.

The Contractor assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance. This Provision binds the Contractor from the bid solicitation period through the completion of the contract. This provision shall be inserted in all subcontracts, subleases and other agreements at all tiers.

13. SOLICITATIONS FOR SUBCONTRACTS, INCLUDING PROCUREMENTS OF MATERIALS AND EQUIPMENT.

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.

14. INFORMATION AND REPORTS.

The Contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the City and shall set forth what efforts it has made to obtain the information.

15. SANCTIONS FOR NONCOMPLIANCE.

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this contract, the City shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:

a. Withholding of payments to the Contractor under the contract until the Contractor complies, and/or

b. Cancellation, termination or suspension of the contract, in whole or in part.

16. INSPECTION OF RECORDS.

The Contractor shall maintain an acceptable cost accounting system. The City, the Federal Aviation Administration, the Comptroller General of the United States or any of their duly authorized representatives shall have access to any books, documents, paper, and records of the Contractor which are directly pertinent to this Contract or the Project for the purposes of making an audit, examination, excerpts, and transcriptions. The Contractor shall maintain all required records for 3 years after the City makes final payment and all other pending matters are closed.

17. RIGHTS IN INVENTIONS.

All rights to inventions and materials, if any, generated under this contract are subject to regulations issued by the City. Information regarding these rights is available from the City.

18. BREACH OF CONTRACT TERMS.

Any violation or breach of terms of this Contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this Contract or such other action that may be

necessary to enforce the rights of the City under this Contract. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

19. TERMINATION OF CONTRACT BY CITY

a. The City may, by written notice, terminate this Contract in whole or in part at any time, either for the City's convenience or because of the Contractor's failure to fulfill its contract obligations. Upon receipt of such notice, services shall be immediately discontinued (unless the notice directs otherwise) and all materials as may have been accumulated in performing this Contract, whether completed or in process, delivered to the City.

b. If the termination is for the convenience of the City, an equitable adjustment in the contract price shall be made, but no amount shall be allowed for anticipated profit on unperformed services.

c. If the termination is due to failure to fulfill the Contractor's obligations, the City may take over the work and prosecute the same to completion by contract or otherwise. In such case, the Contractor shall be liable to the City for any additional cost occasioned to the City thereby.

d. If, after notice of termination for failure to fulfill contract obligations, it is determined that the Contractor had not so failed, the termination shall be deemed to have been affected for the convenience of the City. In such event, adjustment in the contract price shall be made as provided in the second paragraph of this clause.

e. The rights and remedies of the City provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

20. INCORPORATION OF PROVISIONS.

The Contractor shall include the provisions of this contract in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations of directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the City may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the City to enter into such litigation to protect the interests of the City and, in addition, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

21. CONTRACTOR CLAIMS OF $375,000 OR LESS.

Claims by the Contractor relating to the Project for (a) a time extension, (b) money or damages arising from work done by, or on behalf of, the Contractor on the Project for which payment is not expressly provided for or to which the Contractor is not otherwise entitled, or (c) an amount that is disputed by the City, with a value of $375,000 or less, are subject to the claims procedures set forth in California Public Contract Code Sections 20104, et seq., except as otherwise provided in this Contract and the incorporated documents, conditions and specifications.

22. LOBBYING AND INFLUENCING FEDERAL EMPLOYEES.

a. No Federal appropriated funds shall be paid, by or on behalf of the Contractor or its subcontractors, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant or the amendment or modification of any Federal grant.

b. If any funds other than Federal appropriated funds have been paid or will be paid by the Contractor or its subcontractors to any person for influencing or attempting to influence an officer or employee of the City, any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal grant, the contractor shall complete and submit Standard Form-LLL, “Disclosure of Lobby Activities,” in accordance with its instructions.

23. ASSIGNMENT OF CERTAIN RIGHTS TO THE CITY.

In entering into this Contract or a subcontract to supply goods, services, or materials pursuant to this Contract, the Contractor and/or subcontractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to this Contract or the subcontract. This assignment shall be made and become effective at the time the City tenders final payment to the Contractor, without further acknowledgement by the parties.

24. ENERGY CONSERVATION REQUIREMENTS

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency that are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

IN WITNESS WHEREOF, two identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties herein above named, on the day and year first herein written.

AGENCY: City of Oroville (First Party)

By: _____

Brian Ring

City Administrator

(Official Title)

CONTRACTOR: _____ (Second Party)

By: _____

(Authorized Representative)

_____

(Official Title)

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **FRED MAYO – DIRECTOR OF PUBLIC WORKS**

RE: **CALFIRE CONTRACT AMENDMENT TO INCLUDE FIRE EQUIPMENT SERVICE AND REPAIRS**

DATE: **FEBRUARY 6, 2024**

SUMMARY

Staff is seeking Council approval to amend the contract with CalFire, incorporating fire equipment servicing and repairs. This initiative is to enhance our fire services, while ensuring the effective maintenance of critical equipment.

DISCUSSION

The City mechanic shop has traditionally operated with two mechanics and one senior mechanic. Recognizing the increasing complexity of staffing and workload management, there is an identified need to enhance the level of service for our fire equipment fleet.

Our fleet consists of specialized purpose-built apparatuses, each presenting unique diagnostic and repair challenges as the equipment ages. The contract includes access to a State-owned repair facility that is open seven days a week and offers 24-hour roadside service. Another critical consideration for this contract amendment is to streamline diagnostics, repairs, and routine maintenance, including A, B, and C service schedules, efficiently and on time, minimizing potential delays at the shop or third-party repair facilities. This enhancement is crucial to maintaining a well-functioning fleet and upholding public safety.

FISCAL IMPACT

The forecasted amendment cost for this fiscal year is $ 94,000.00 dollars. Savings in wages will offset the program cost by approximately $59,900 dollars, reducing the cost for this fiscal year to $34,100.00 dollars. The full contract price is $225,000 per year. Cost-sharing with other cities may reduce maintenance costs in future years. There is potential for cost and time savings for parts and other repair items with the CalFire purchasing sourcing contracts. Costs for this fiscal year can be absorbed in this year’s budget.

RECOMMENDATION

Staff is requesting that the Oroville City Council approve the contract amendment with CalFire to include fire equipment services and repairs.

COOPERATIVE FIRE PROGRAMS
FIRE PROTECTION REIMBURSEMENT AGREEMENT AMENDMENT
LG-1A REV. 1/2023

AGREEMENT NUMBER	AMENDMENT NUMBER
3492	
2CA05716	**1**

☒ CHECK HERE IF ADDITIONAL PAGES ARE ATTACHED 5 Pages

1. This Agreement is entered into between the State Agency and the Local Agency named below:

STATE AGENCY'S NAME
California Department of Forestry and Fire Protection – (CAL FIRE)

LOCAL AGENCY'S NAME
City of Oroville

2. The term of this Agreement is: July 1, 2022 through June 30, 2025

3. The maximum amount of this Agreement is: $ 15,061,548.00
Fifteen million, sixty one thousand, five hundred forty eight dollars and zero cents

4. The parties agree to comply with the terms and conditions of the following exhibits which are by this reference made a part of the Agreement.

This amendment increases the maximum amount of this agreement by $265,415, from $14,796,133, to $15,061,548 due to the addition of a position within this agreement (Heavy Equipment Mechanic, Range B). The increase of the position costs (see attached Exhibit D) is added to the original contract amount, with four months in Fiscal Year 23/24 and twelve months in Fiscal Year 24/25. The amended total will not exceed $15,061,548.00.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

LOCAL AGENCY

LOCAL AGENCY'S NAME
City of Oroville

BY *(Authorized Signature)* ✍ | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING
David Pittman, Mayor

ADDRESS
1735 Montgomery St., Oroville, CA 95965

STATE OF CALIFORNIA

AGENCY NAME
California Department of Forestry and Fire Protection

BY *(Authorized Signature)* ✍ | DATE SIGNED *(Do not type)*

PRINTED NAME AND TITLE OF PERSON SIGNING
Matthew Sully, Assistant Deputy Director, Cooperative Fire

ADDRESS P.O. Box 944246, Sacramento, CA 94244-2460

California Department of General Services Use Only

Unit: Butte Unit

Contract Name: City of Oroville

Contract No.: 2CA05716-A1

Page No.: 1

Original Agreement Total	**$14,796,133**
New Agreement Total	**$15,061,548**

ORIGINAL CONTRACT

Fiscal Year 22/23	
27160 PS Total	$4,722,490
27160 OE Total	$114,475
TOTAL	**$4,836,965**

Fiscal Year 23/24	
PS 1 Total	$4,816,940
OE 1 Total	$114,475
TOTAL	**$4,931,415**

Fiscal Year 24/25 (+2%)	
PS 1 Total	$4,913,279
OE 1 Total	$114,475
TOTAL	**$5,027,753**

AMENDMENT WITH ADDED HEM

Fiscal Year 22/23	
27160 PS Total	$4,722,490
27160 OE Total	$114,475
TOTAL	**$4,836,965**

Fiscal Year 23/24	
27160 PS Total	$4,881,301
27160 OE Total	$116,868
TOTAL	**$4,998,168**

Fiscal Year 24/25 (+2%)	
PS 1 Total	$5,105,154
OE 1 Total	$121,260
TOTAL	**$5,226,415**

Fiscal Year:	**2023**		**Sub Total**	**$57,414**	**Contract Name:**	City of Oroville	
Index:	**2100**	**Unit:** Butte Unit	**Admin**	**$6,947**			
PCA	**27160**		**Total**	**$64,361**	**Contract No.:**	2CA05716-A1	
PRC:	**4142**				**Page No.:**		2
Comments	FY 23-24 (4 Mo HEM added)		Overtime Total:	$2,153			

This is a Schedule A - 4142 of the Cooperative Agreement, dated July 1, 2023 between *"City of Oroville"* and The California Department of Forestry and Fire Protection (CAL FIRE)

CAL FIRE Unit Chief	Garrett Sjolund
CAL FIRE Region Chief	George Morris III

Staff Benefit Rate as of 7/1/23 for POF Classifications	**93.93%**
Staff Benefit Rate as of 7/1/23 for SAF Classifications	**67.28%**
Staff Benefit Rate as of 7/1/23 for MIS Classifications	**82.09%**

Number of Positions	Classification/ad-ons (Pick From List)	RET.	Period	Salary Months	Salary Rate	Total Salary	EDWC Rate	EDWC Periods	Total EDWC	Salary Benefits	FFI UI	EDWC Benefits	Total Salary & EDWC	Total Position Cost
1	Heavy Equipment Mechanic, Range B	MIS		4	$6,623	$26,492	$0	0	$0	$21,747	$0	$0	$48,239	$57,414
1	Commercial Drivers License Pay Differential	MIS		4	$302	$1,208			$0	$992		$0	$2,200	
1	Fire Mission Pay Differential - HEM Range B	MIS		4	$662	$2,648			$0	$2,174		$0	$4,822	
		MIS			$0	$0			$0	$0		$0	$0	
		MIS			$0	$0			$0	$0		$0	$0	
	Overtime	MIS				$2,000			$0	$153		$0	$2,153	
					$0	$0	$0	0	$0	$0	$0	$0	$0	$0
					$0	$0			$0	$0		$0	$0	
					$0	$0			$0	$0		$0	$0	
					$0	$0			$0	$0		$0	$0	
					$0	$0			$0	$0		$0	$0	
	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
					$0	$0	$0	0	$0	$0	$0	$0	$0	$0
					$0	$0			$0	$0		$0	$0	
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					$0	$0			$0	$0		$0	$0	
					$0	$0			$0	$0		$0	$0	
	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
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					$0	$0			$0	$0		$0	$0	
	Overtime								$0	$0		$0	$0	

Fiscal Year: 2023
Index: 2100
PCA: 27160
PRC: 4142

Uniform Benefits	**$0**
Sub Total	**$2,134**
Admin	**$258**
Total	**$2,393**

Contract Name: City of Oroville
Contract No.: 2CA05716-A1
Page No.: 3

Comments

This is a Schedule A - 4142 of the Cooperative Agreement, dated July 1, 2023 between "City of Oroville" and The California Department of Forestry and Fire Protection (CAL FIRE)

						1.45%	
Category (Pick from List)	**Details**	**Number**	**Months**	**Rate**	**Sub-Total**	**Uniform Benefits**	**Total**
UNIFORM ALLOWANCE FOR HEM	HEM	1.00	4.00	$56	$ 223		$ 223
GENERAL EXPENSE	Boot Allowance	1.00	1.00	$175	$ 175		$ 175
COVERALLS FOR HFEO	1	1.00	4.00	$9	$ 36		$ 36
VEHICLE OPERATIONS		1.00	4.00	$425	$ 1,700		$ 1,700

Fiscal Year:	**2024**		**Sub Total**	**$171,165**	**Contract Name:** City of Oroville
Index:	**2100**	**Unit:** Butte Unit	**Admin**	**$20,711**	
PCA	**27160**		**Total**	**$191,875**	**Contract No.:** 2CA05716-A1
PRC:	**4142**				**Page No.:** 4
Comments	FY 24-25 (12 Mo HFEO added)		Overtime Total:	$5,383	

This is a Schedule A - 4142 of the Cooperative Agreement, dated July 1, 2023 between *"City of Oroville"* and The California Department of Forestry and Fire Protection (CAL FIRE)

CAL FIRE Unit Chief	Garrett Sjolund
CAL FIRE Region Chief	George Morris III

Staff Benefit Rate as of 7/1/23 for POF Classifications	**93.93%**
Staff Benefit Rate as of 7/1/23 for SAF Classifications	**67.28%**
Staff Benefit Rate as of 7/1/23 for MIS Classifications	**82.09%**

Number of Positions	Classification/ad-ons (Pick From List)	RET.	Period	Salary Months	Salary Rate	Total Salary	EDWC Rate	EDWC Periods	Total EDWC	Salary Benefits	FFI UI	EDWC Benefits	Total Salary & EDWC	Total Position Cost
1	Heavy Equipment Mechanic, Range B	MIS		12	$6,623	$79,476	$0	0	$0	$65,242	$0	$0	$144,718	$171,165
1	Commercial Drivers License Pay Differential	MIS		12	$302	$3,624			$0	$2,975		$0	$6,599	
1	Fire Mission Pay Differential - HEM Range B	MIS		12	$662	$7,944			$0	$6,521		$0	$14,465	
		MIS			$0	$0			$0	$0		$0	$0	
		MIS			$0	$0			$0	$0		$0	$0	
	Overtime	MIS				$5,000			$0	$383		$0	$5,383	
					$0	$0	$0	0	$0	$0	$0	$0	$0	$0
					$0	$0			$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
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	Overtime								$0	$0		$0	$0	
					$0	$0	$0	0	$0	$0	$0	$0	$0	$0
					$0	$0			$0	$0		$0	$0	
					$0	$0			$0	$0		$0	$0	

Fiscal Year: 2023
Index: 2100
PCA: 27160
PRC: 4142

Uniform Benefits	**$0**
Sub Total	**$6,053**
Admin	**$732**
Total	**$6,785**

Contract Name: City of Oroville
Contract No.: 2CA05716-A1
Page No.: 5

Comments
This is a Schedule A - 4142 of the Cooperative Agreement, dated July 1, 2023 between "City of Oroville" and The California Department of Forestry and Fire Protection (CAL FIRE)

						1.45%	
Category (Pick from List)	**Details**	**Number**	**Months**	**Rate**	**Sub-Total**	**Uniform Benefits**	**Total**
UNIFORM ALLOWANCE FOR HEM	HEM	1.00	12.00	$56	$ 670		$ 670
GENERAL EXPENSE	Boot Allowance	1.00	1.00	$175	$ 175		$ 175
COVERALLS FOR HFEO	1	1.00	12.00	$9	$ 108		$ 108
VEHICLE OPERATIONS		1.00	12.00	$425	$ 5,100		$ 5,100

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **FRED MAYO – DIRECTOR OF PUBLIC WORKS**

RE: **PURCHASE OF 655 CAL OAK AND ASSOCIATED BUDGET ADJUSTMENTS**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The City has finalized the acquisition of the 655 Cal Oak property for the new Corporation Yard. City staff is providing an update on funding sources, their utilization, and will be outlining the next steps for transitioning to the new facility.

DISCUSSION

As previously directed by the Council at its December 5th, 2023 regular Council Meeting the acquisition of the new corporation yard facility with identified funding sources has been completed for $2,754,897. Staff are recommending that the acquisition of the property be accounted for from the following funds:

- $1,066,284.45- Redevelopment Agency Express Bonds Proceeds
- $688,724.25- Sewer Enterprise Funds (25%)
- $999,888.30- local Fiscal Recovery Funds

In addition to the purchase of the property, there are planned improvements for the new property as well as planned improvements for the current property on Mitchell. Those improvement in the following, along with estimated expenses totaling $2,016,000:

- $250,000 - Mechanic shop infill work
- $200,000 - Administrative building infill work
- $500,000 - Perimeter fencing
- $400,000 - Emergency Generator
- $250,000 - Decommission existing site and grading
- $400,000 – Addressing fuel island situation (move current tank, purchase new tank or move to cardlock facility)
- $16,000 - Shelving, material racks and air compressor

Staff will return at later dates with firm numbers for each of these tasks. These expenditures are planned to be accounted for with the following funds:

- $504,000 - Sewer Enterprise Fund (25%)
- $1,512,000 - Local Fiscal Recovery Fund

We had requested you to consider also using funds from the City Revolving Loan fund, however, at this time staff do not see that being necessary. Should circumstances change resulting in the need to use those funds, staff would return with such a request.

FISCAL IMPACT

Utilization of the following funds:

- $1,066,284.45 - Redevelopment Agency Express Bond Proceeds;
- $1,192,724.25 – Sewer Enterprise Fund; and
- $2,511,888.30 – Local Fiscal Recovery Fund; and

RECOMMENDATION

Staff is requesting that the Oroville City Council approve the purchase of 655 Cal Oak with the following funding:

- $1,066,284.45 - Redevelopment Agency Express Bond Proceeds
- $688,724.25 – Sewer Enterprise funds (25%)
- $999,888.30 – Local Fiscal Recovery Funds; and

Approve the following expenditures:

- $250,000 - Mechanic shop infill work
- $200,000 - Administrative building infill work
- $500,000 - Perimeter fencing
- $400,000 - Emergency Generator
- $250,000 - Decommission existing site and grading
- $400,000 – Addressing fuel island situation (move current tank, purchase new tank or move to cardlock facility)
- $16,000 - Shelving, material racks and air compressor

By utilizing the following funds:

- $504,000 – Sewer Enterprise Fund (25%)
- $1,512,000 – Local Fiscal Recovery Fund

New PW Administration Building

PW Ready Room

Computer Workstation for PW Staff

New Office Space

Front Entrance to PW Administration Building

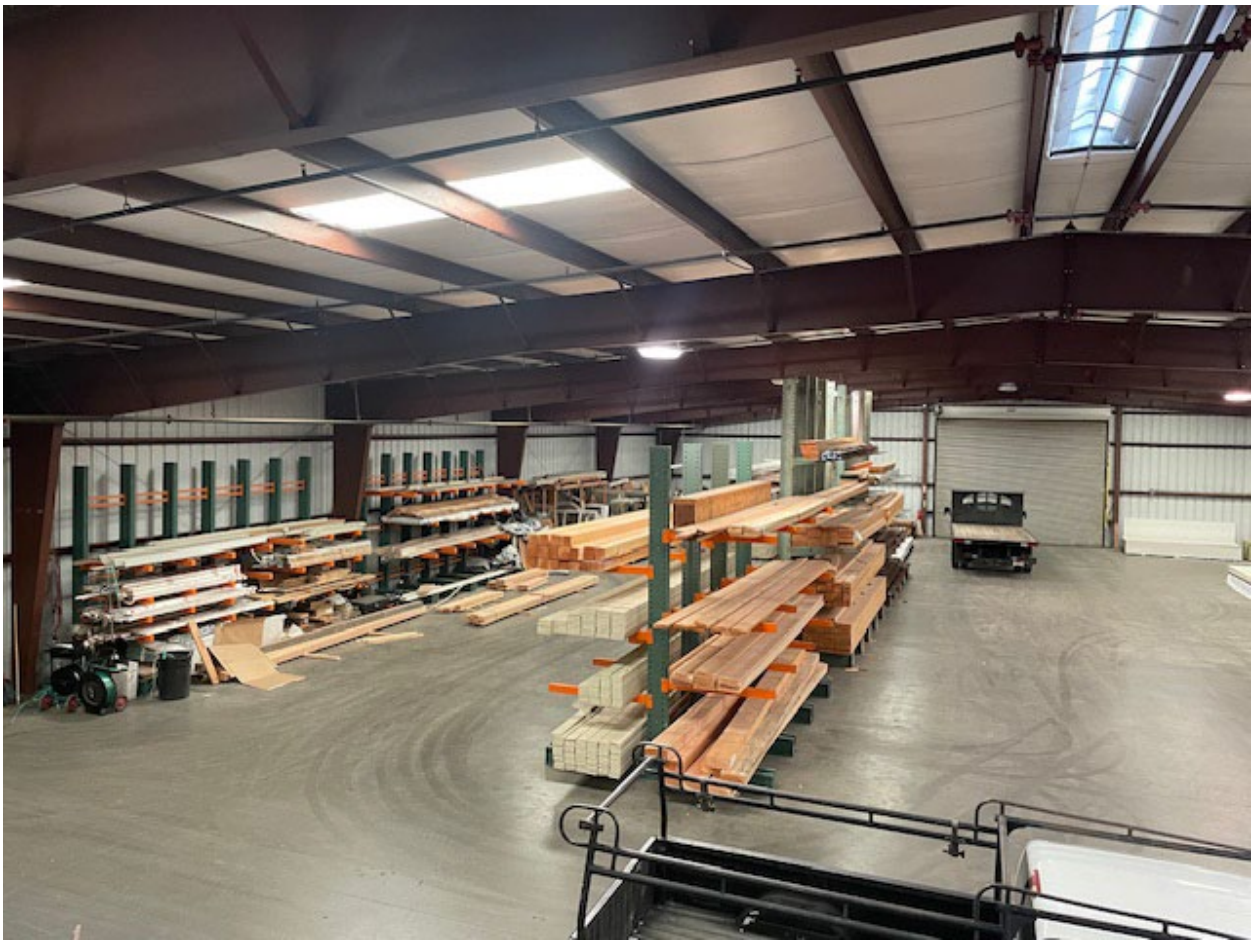
Breakroom

Office Space Inside PW Administration Building

Exterior Shot of Main Warehouse

Exterior Shot Main Warehouse with Overhang

Mezzanine Inside Warehouse with Office Space and Restroom



Interior Photo of Main Warehouse

Parts Inventory Shelving Underneath Mezzanine Main Warehouse

Large Equipment Covered Parking

Future Small Equipment Shed and Parking

Mezzanine with Shelving

Mechanic Shop

Potential Public and Employee Parking Lot at the Cal Oak Entrance

Material Laydown Yard

Aerial of 655 Cal Oak Road

Mezzanine with Shelving

Mechanic Shop

Potential Public and Employee Parking Lot at the Cal Oak Entrance

Material Laydown Yard

Aerial of 655 Cal Oak Road

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **AMY BERGSTRAND, DIRECTOR**
BUSINESS ASSISTANCE/HOUSING DEVELOPMENT

RE: **ESTABLISH THE MISSION ESPERANZA PROJECT AS A PROJECT WITH GREAT COMMUNITY BENEFIT AND CONSIDER DEFERRING THE DEVELOPMENT IMPACT AND ART IN PUBLIC SPACES FEES AND FRONTAGE IMPROVEMENT REQUIREMENTS**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The City Council may consider defer the Development Impact and Art in Public Spaces fees associated with new development projects and defer the frontage improvement costs until the change in use or the change in ownership, for the Oroville Rescue Mission (ORM) and the Mission Esperanza project.

DISCUSSION

The City of Oroville has been awarded two (2) rounds of Encampment Resolution Funding in support of the development of emergency shelter beds and services to serve chronically homeless and at-risk persons in the City of Oroville. The project also has financial support from both City and County ARPA funds.

Although the project is utilizing an existing facility and land, the project has run into several construction components that are substantially increasing the overall cost of the project and there simply isn't sufficient funding to cover all of the costs of the project without causing detriment to the programmatic side of the project (services).

The Mission Esperanza project will help the city meet its emergency shelter housing needs which will provide safe space for unsheltered persons to go to get their basic needs met. There is prevailing public interest and support for the project and the benefits it will bring to the community.

This project is of significant importance to the greater residents of the city, to the unsheltered population and to local businesses. The project demonstrates a significant benefit to the City as a whole and should be considered for a deferral of fees for both the development impact and art in public spaces fees, along with the deferral of frontage improvements.

This fee deferral request is being presented to Council in an effort to grant some financial relief and to help preserve the economic viability of the project.

There is substantial support from the community, the City and the County for a project that will bring about extraordinary charitable, civic, educational, and other similar benefits to the community. Staff recommend that the agreement for deferral of fees contains a requirement that the fees become due and payable to the City by the project owner/operator if the property is either converted to a use different from providing emergency shelter and related services, or if the property is sold.

The ORM requests that development impact and Art in Public Spaces fees associated with this development project be deferred and the frontage improvement requirements be deferred until either a change in use, or until a change of ownership. This will prevent overall up-front project costs from exceeding the available budget, but also will expedite the timeline for getting this project open and operating; every task extends the timeline for completion and frontage improvements are not necessary to the operation of the project.

FISCAL IMPACT

The cost to the City of a beneficial community project depends on many factors including the category of development structures, impact fees eligible for deferral and other factors. The estimated impact fees are approximately $45,385 for the commercial office space and all structures; including the 30 pallet shelters and accessible pallet shelters.

The preliminary estimate for fees due to SCOR are $235,330 that include the connection fees and sewer capacity study. The Art in Public Places Fee, School District Fees and LOAPUD fees will be determined by the total project cost when the plans have been finalized.

RECOMMENDATION

1. Defer the development impact and art in public spaces fees until change in use or change in ownership; and

2. Defer the frontage improvements until change in use or change in ownership; and

3. Acknowledge the Mission Esperanza project as a project with substantial community benefit and adopt a resolution waiving deferring development and art in public spaces fees, as well as frontage improvement costs associated with the project.

ATTACHMENTS

1. Letter from ORM requesting frontage improvements be deferred until change in ownership.

January 22, 2024

Oroville City Council
1735 Montgomery Street
Oroville, CA 95965

Re: Deferral of Frontage Improvements

Dear Mayor Pittman-

As you know, the Oroville Rescue Mission has been working diligently with the City of Oroville and Butte Construction Company to development the Mission Esperanza Project. This project will provide a vast array of both public and private services to Oroville's most vulnerable residents, as well as providing up to 105 beds of congregate and non-congregate shelter to persons identified as unsheltered.

This project has the potential of providing great community benefit by building bed capacity and services for unsheltered individuals, but also by providing a means to meet the basic needs of persons who may be struggling with activities of daily life. The project will address a large encampment area in the city and will remediate that site/area once all persons residing in the area have been connected to services that they need and are eligible for. This action, alone, will improve those individual's lives, but also provide a way for the project to remediate the impacts of homelessness within the encampment area while providing linkages to needed services to improve the lives of those that really desire assistance.

The costs to build the Mission Esperanza project are getting extremely close to exceeding the capital development budget and we really need to focus on the components of the project which impact the overall outcome of those that it will serve, while continuing to ensure participant health and safety. It is for budgetary purposes, as well as timeline purposes, that the Oroville Rescue Mission kindly requests that the frontage improvement costs be deferred until change of ownership. Frontage improvements will not improve the outcomes of the project for program participants but has the potential of intruding on service provision if development costs continue to increase. If the project site ends up changing hands or its intended purpose at a future date, the new owners can be held responsible for any required frontage improvements at that time.

Should you have any questions, or want to discuss the matter further, please reach out to me at (530) 624-8032 or to Suzi Kochems, consultant at (530) 228-7811.

Respectfully submitted,

Allan Dikes
Executive Director

CITY OF OROVILLE
RESOLUTION NO. 9220

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE, CALIFORNIA AUTHORIZING THE DEFERRAL OF DEVELOPMENT IMPACT AND ART IN PUBLIC SPACES FEES AND FRONTAGE IMPROVEMENT REQUIREMENTS DIRECTLY RELATED TO THE DEVELOPMENT OF THE MISSION ESPERANZA PROJECT

WHEREAS, on September 4, 2018, the City Council adopted Resolution 8745 declaring a shelter crisis pursuant to SB 850 (Chapter 48, Statutes of 2018 and Government Code §8698.2); and

WHEREAS, the City of Oroville has developed a homelessness plan and has undertaken multiple efforts at the local level to combat homelessness; and

WHEREAS, although the City of Oroville has been awarded Encampment Resolution Funding and American Rescue Plan Act funds for the development of the Mission Esperanza Project, funds are limited; and

WHEREAS, the costs of the capital improvements are nearly exceeding the development budget; and

WHEREAS, the Mission Esperanza Project will provide substantial community benefit.

NOW, THEREFORE, BE IT RESOLVED by the Oroville City Council as follows:

1. The Mayor is hereby authorized and directed to defer the development impact and art in public spaces fees, as well as to defer the frontage improvement costs, until either a chance in use or a change of ownership, for the Mission Esperanza project.

2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the City Council of the City of Oroville at a regular meeting on February 6, 2024, by the following vote:

CITY OF OROVILLE
RESOLUTION NO. 9220

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **PATRICK PIATT, COMMUNITY DEVELOPMENT DIRECTOR**

RE: **AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE CITY OF OROVILLE AND THE YMCA OF SUPERIOR CALIFORNIA FOR OPERATIONS AT THE CONVENTION CENTER**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The Council may consider amending the lease agreement with the YMCA of Superior California (YMCA) for the operation of the convention center.

DISCUSSION

The City of Oroville entered into an exclusive lease agreement (Attachment 3) with the YMCA to operate programs from the Oroville Convention Center (previously known as the Municipal Auditorium) in May of 2020. The lease agreement provided the YMCA the full use of the facility to operate programs for all age groups in exchange for lease payments (based on program revenue), and for assuming the responsibilities as managers promoting the facility, booking events, and providing routine maintenance. In addition, the YMCA would pay for all utilities associated with the convention center.

Due to a fire caused by an arsonist there was an extensive amount of damage to the facility and additional issues were discovered during the repair of the fire damage. Payments to the City had been suspended until the reconstruction was complete.

After reviewing the agreement, staff began a dialogue with the YMCA regarding lease and utility payments. Through this discussion, the YMCA informed the City that they had been operating at a financial loss and making payments for the use of the facility would not be possible.

The YMCA provides subsidies for residents and families that are unable to afford the full program fees. It is part of the general YMCA operating policies to provide subsidies which allow everyone in a community, particularly children and seniors, to have access to organized exercise and after school programs.

The recommended amendments to Agreement 3317 are being presented to Council to support the presence of the YMCA within the Oroville community and to encourage the YMCA to continue providing access to the services and the community members served, that may lose the social and health benefits provided by the YMCA. Attachment 2 is a redlined version of the original agreement illustrating the proposed changes.

City staff will revisit the agreement with the YMCA staff on a quarterly basis to evaluate activities, operations, and revenues to determine if an adjustment to rent or the cost of utilities is warranted, and to work with the YMCA towards their success and longevity as a provider of services to the Oroville community.

FISCAL IMPACT

The City will assume responsibility for the costs of utilities and insurance of the building.

RECOMMENDATION:

Direct the Mayor to execute the attached Amendment to Agreement #3317.

ATTACHMENTS:

1. Resolution No. _____ to amend Agreement 3317
2. Draft Amendment to Agreement #3317
3. Original Agreement #3317 Redlined

CITY OF OROVILLE
RESOLUTION NO. 9216

FIRST AMENDMENT TO AGREEMENT 3317 BETWEEN THE CITY OF OROVILLE AND THE YMCA OF SUPERIOR CALIFORNIA

This Amendment, dated **February 6, 2024**, is to the Agreement 3317 ("Agreement") effective May 21,2020, between the City of Oroville ("City") and the YMCA of Superior California (YMCA),

In consideration of the terms and conditions herein, the City and YMCA agree that the Agreement shall be amended as follows:

1. Amendments to the Original agreement are found in the attached amended Agreement #3317.

2. Conflicts between this Amended Agreement and the Agreement shall be controlled by this Amendment. All other provisions within the Agreement not modified by this Amendment shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

_____ _____
David Pittman, Mayor YMCA Director

APPROVED AS TO FORM:

_____
Scott E. Huber, City Attorney

CITY OF OROVILLE
RESOLUTION NO. 8863

A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXCUTE AN EXCLUSIVE OPERATING / LEASE AGREEMENT WITH THE YMCA OF SUPERIOR CALIFORNIA FOR THE OPERATION OF THE MUNICIPAL AUDITORIUM LOCATED AT 1200 MYERST STREET, OROVILLE

(Agreement No. 3317)

NOW THEREFORE, be it hereby resolved by the Oroville City Council as follows:

1. The Mayor is hereby authorized and directed to execute an exclusive operating/ lease agreement with the YMCA of Superior California for the operation of the Municipal Auditorium located at 1200 Myers Street, Oroville.

2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the Oroville City Council at a special meeting on May 21, 2020, by the following vote:

AYES: Hatley, Smith, Goodson, Draper, Pittman, Thomson, Reynolds

NOES: None

ABSTAIN: None

ABSENT: None

Chuck Reynolds, Mayor

ATTEST:

Bill LaGrone, City Clerk

APPWM

Scott E. Huber, City Attorney

CITY OF OROVILLE PUBLIC FACILITY
EXCLUSIVE OPERATING AND LEASE AGREEMENT

THIS EXCLUSIVE OPERATING AND LEASE AGREEMENT is made this 21st day of May, 2020, between the City of Oroville ("Landlord"), and The YMCA of Superior California ("Tenant").

BUSINESS TERMS

Landlord:	**CITY OF OROVILLE**
Tenant:	**THE YMCA OF SUPERIOR CALIFORNIA**
Premises:	Municipal Auditorium 1200 Myers Street
Permitted Use:	Mixed Use Commercial
Current Zoning:	CI - Limited Commercial
Term:	1 Years, Q months, plus an option to renew for 4 consecutive one-year terms.
Renewal Option:	The renewal option may be subject to a rate adjustment to be determined before the end of the first one-year period. The first year of this amended agreement is a joint effort of the City and the Tenant to determine the viability of this endeavor.
Base Rent:	In year one of the amended agreement the rent will be zero. Future rent to be reconsidered on an ongoing bases through a collaboration between City and YMCA staff. Rent will be determined by mutual agreement and based upon net revenue, if any, generated as a result of the use of this facility.
Net Lease:	Tenant is to pay for all taxes and insurances required for program activities and share in common area maintenance charges.

Security Deposit:	To be determined by amendment of this Agreement. Security Deposit is held to mitigate damage that may result to the Premise from business operations. Deposit is returned in full with no interest when Premise has been vacated and inspected by the City of Oroville to assess its condition.
Rent Commencement:	Rent, as subject to Paragraph 4, shall commence at any time that a determination has been made that rental payments are financially viable.
Possession:	July 1, 2020, or after completion of fire damage repairs, whichever is later.
Condition of Premises:	The Landlord is to provide Tenant the Premises in its "as is" condition, after repair of fire damage. Tenant is willing to take the Premises in "as is" condition subject to conducting a thorough assessment of the condition of the Premises by Tenant. Any additional improvements by the Tenant shall be at Tenant's sole cost and expense. A Tenant Improvement Plan shall be submitted to the City for approval prior to work being performed.
Building Signage:	Signage shall be in conformance with the Zoning Code, sign regulations, and approved by Landlord prior to installation or placement per section 12 of this agreement. All signage shall be at the Tenant's expense.

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other Terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease Term, subject to the Terms, covenants and conditions of this Lease.

2. **Acceptance of Premises.** Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants, and restrictions. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. In no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items

that are Landlord's responsibility, including items relating to unrepaired fire damage.

3. **Use.** The Premises shall be used only for the purpose of providing activities consistent with current activities provided by the YMCA. The facility will primarily be used for, but not limited to, physical exercise activities for all ages. The facility will be utilized for all activities that will enhance the quality of life for all the citizens of the City of Oroville. Tenant will use the Premises in a careful, safe, and proper manner and will not commit waste, overload the floor or structure of the Premises, or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Premises. Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans with Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements") unless such Legal Requirements are met due to their "grandfathered" nature. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's use or occupation of the Premises unless such Legal Requirements are met due to their "grandfathered" nature. Tenant must receive Landlord's written authorization and approval for all alteration or modifications to the Premises. Tenant is responsible for compliance with all Americans with Disabilities requirement related to tenants programing and uses. Landlord is responsible for American with Disabilities requirements related to structural changes as required by law and not met due to a "Grandfathered" exception.

4. **Base Rent.** Tenant shall not be required to pay an initial Base Rent in the amount set forth above. If at some point it has been determined that rent payments are viable due to increased revenues the first month's Base Rent, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by check of immediately available funds before 4:00 p.m., Pacific Time, at City of Oroville, Finance Department, 1735 Montgomery Street, Oroville, California, 95965, or as Landlord may from time to time designate to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as maybe expressly provide in this lease. If Tenant is delinquent in any monthly

installment of Base Rent for more than 5 business days, Tenant shall pay to Landlord on demand a late charge equal to 5 percent of such delinquent sum. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **Security Deposit.** Tenant shall deposit with Landlord the sum set forth above. The first monthly installment shall be due concurrently with the extension of this Lease for year two. The second monthly installment shall be due with Tenant's payments beginning with the commencement of rent. The security deposit shall be held by Landlord as security for the faithful performance by Tenant of all the terms, covenants, and conditions to be performed by Tenant. The security deposit shall not be assigned, transferred, or encumbered by Tenant, and any attempt to do so shall not be binding upon Landlord. If, at any time during the Term of this Lease, any rent or portion of any rent payable by Tenant to Landlord shall not be timely paid, then, Landlord may, at its option (but shall not be required to), appropriate and apply any portion of the security deposit to the payment of such overdue rent. Under no circumstances shall Tenant apply the security deposit as Rent for the final months of the Lease. In the event of the failure of Tenant to keep and perform any of the Terms, covenants and conditions of this Lease to be kept and performed by Tenant, then, at the option of Landlord, Landlord may (but shall not be required to) appropriate and apply the security deposit, or so much so as may be necessary, to compensate Landlord for all loss or damage sustained or suffered by Landlord due to such default on the part of Tenant. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the purposes set forth herein, or for any other lawful purpose, then Tenant shall, within IO days after written demand by Landlord, deliver to Landlord a sufficient sum in cash to restore the security deposit to the original sum of the security deposit. Landlord shall not be obligated to keep the security deposit in a separate fund but may commingle the security deposit with its own funds. The failure of the Tenant to maintain the security deposit in the initial amount as stated above shall constitute a failure to pay rent and shall carry with it the consequences set forth in this Lease for failure to pay rent. Upon expiration of the Lease, the security deposit, if not applied toward the payment of Rent in arrears or toward the payment of damages suffered by Landlord by reason of Tenant's breach of this Lease, is to be returned to Tenant without interest, but in no event shall the security deposit be returned until Tenant has vacated the Leased Premises, delivered possession thereof to Landlord, and fully satisfied Tenant's obligations under this Lease.

6. **Utilities.** Until it is further determined that the YMCA has the financial capacity to pay for utilities at the Convention Center, Landlord shall cover the cost of all utilities except for the phone, cable, and internet services required for the operations of the YMCA. Until further determination, Landlord shall be responsible for the costs of water, trash, electrical, and gas.

7. **Taxes.** If any such tax or excise is levied or assessed directly against Tenant, including but not limited to possessory tax, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or

assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant.

8. **Insurance.** Landlord shall maintain all risk insurance covering risk property insurance and the full replacement cost of the building and may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. The Premise or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Premise or Building will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary because of Tenant's use of the Premises.

Tenant, at its expense, shall maintain during the Lease Term: all risk property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial liability insurance, with a minimum limit of $1,000,000 per occurrence and a minimum umbrella limit of $1,000,000, for a total minimum combined general liability and umbrella limit of $2,000,000 (together with such additional umbrella coverage as Landlord may reasonably require) for property damage, personal injuries, or deaths of persons occurring in or about the Premises. Landlord may from time to time require reasonable increases in any such limits. The commercial liability policies shall name Landlord as an additional insured, insure on an occurrence and not a claims-made basis, be issued by insurance companies which are reasonably acceptable to Landlord, not be cancelable unless 30 days' prior written notice shall have been given to Landlord, contain a hostile fire endorsement and a contractual liability endorsement and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). SUCH POLICIES OR CERTIFICATES THEREOF SHALL BE DELIVERED TO LANDLORD BY TENANT UPON COMMENCEMENT OF THE LEASE TERM AND UPON EACH_RENEWAL OF SAID_INSURANCE.

The all-risk property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees, and contractors, in connection with any loss or damage thereby insured against. Neither party nor its officers, directors, employees, managers, agents, invitees, or contractors shall be liable to the other for loss or damage caused by any risk coverable by all risk property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all c1aims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

9. **Construction Allowance.** None.

10. **Landlord's Repairs.** Landlord shall maintain, at its expense, the structural soundness of the roof, foundation, and exterior walls of the building in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. The term "walls" as used in this Paragraph 11 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, or office entries. Tenant shall promptly give Landlord written notice of any repair required by Landlord, after which Landlord shall have a reasonable opportunity to repair.

11. **Tenant-Made Alterations and Trade Fixtures.** Any alterations, additions, or improvements made by or on behalf of the Tenant to the Premises ("Tenant-Made Alterations") shall be subject to Landlord's prior written consent and at the expense of the tenant.

12. **Signs.** Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's approval and conform in all respects to Landlord's requirements.

13. **Parking.** Off-street parking is provided by Landlord. Public parking is available to Tenant in City owned parking lots located near Premises.

14. **Restoration.** If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 6 months, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take 6 months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

15. **Condemnation.** If any part of the Premises should be taken for any public or quasi- public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), and the Taking would prevent or materially interfere with Tenant's use of the Premises or in Landlord's judgment would materially interfere with or impair its ownership or operation of the Premise, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures, if a separate award for such items is made to Tenant.

16. **Assignment and Subletting.** Without Landlord's prior written consent, which Landlord shall not unreasonably withhold, Tenant shall not assign this

lease or sublease the Premises or any part thereof or mortgage, pledge, or hypothecate *its* leasehold interest or grant any concession or license within the Premises and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this paragraph, a transfer of the ownership interests resulting in a change of control of Tenant shal1 be deemed an assignment of this Lease. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with any assignment or sublease in an amount not to exceed $1,500. Upon Landlord's receipt of Tenant's written notice of a desire to assign or sublet the Premises, or any part thereof (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within 15 days after receipt of Tenant's notice, terminate this Lease with respect to the space described in Tenant's notice, as of the date specified in Tenant's notice for the commencement of the proposed assignment or sublease. If Landlord so terminates the Lease, Landlord may enter into a lease directly with the proposed sublessee or assignee. Tenant may withdraw its notice to sublease or assign by notifying Landlord within 10 days after Landlord has given Tenant notice of such termination, in which case the Lease shall not terminate but shall continue.

It shall be reasonable for the Landlord to withhold its consent to any assignment or sublease in any of the following instances: (i) an Event of Default has occurred and is continuing that would not be cured upon the proposed sublease or assignment; (ii) the assignee or sublessee does not have a net worth which is consistent with net worth of other tenant's which Landlord is entering into leases with in the Premise; (iii) the intended use of the Premises by the assignee or sublessee is not consistent with the use provision herein; (iv) occupancy of the Premises by the assignee or sublessee would, in Landlord's opinion, violate an agreement binding upon Landlord with regard to the identity of tenants, usage in the Premise, or similar matters; (v) the identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Premise; (vi) the assignment or sublet is to another tenant in the Premise and is at rates which are below those charged by Landlord for comparable space in the Premise and Landlord has space available in the Premise to accommodate the tenant's needs; (vii) in the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease; (viii) the proposed assignee or sublessee is a governmental agency; or (ix) there is vacant space in the Premise suitable for lease to the proposed sublessee or assignee. Tenant and Landlord acknowledge that each of the foregoing criteria are reasonable as of the date of execution of this Lease. The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may request.

Notwithstanding any assignment or subletting, Tenant shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or subletting's). In the event

that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease, then Tenant sha11 be bound and obligated to pay Landlord as additional rent hereunder fifty percent (50%) of such excess rental and other excess consideration ("Profit") within 10 days following receipt of each month's Profit thereofby Tenant. Profit shall be further defined to take into consideration all of Tenant's costs in any assignment of subletting including but not limited to real estate commissions, legal fees, marketing costs, any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee.

If this Lease be assigned or if the Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

17. **Indemnification.** Except for the negligence of Landlord, its agents, employees or contractors, and to the extent permitted by law, Tenant agrees to indemnify, defend and hold harmless Landlord, and Landlord's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Premise and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations.

18. **Inspection and Access.** Landlord and its agents, representatives, and contractors may enter the Premises with prior notice at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last 4 months of the Lease Term, to prospective tenants. Landlord may erect or post a suitable sign on the Premises stating the Premises are available to let. Landlord may grant easements, make public dedications, designate common areas and create restrictions on or about the

Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

19. **Quiet Enjoyment.** If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

20. **Surrender.** Upon termination of the Lease Term or earlier Termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. AH obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and obligations concerning the condition and repair of the Premises.

21. **Holding Over.** If Tenant retains possession of the Premises after the termination of the Lease Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other Terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to 150 percent the Base Rent in effect on the Termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided shall not be construed as consent for Tenant to retain possession of the Premises. "Possession of the Premises" shall continue until, among other things, Tenant has delivered all keys to the Premises to Landlord, Landlord has completed and total dominion and control over the Premises, and Tenant has completely fulfilled all obligations required of it upon termination of the Lease as set forth in this Lease, including, without limitation, those concerning the condition and repair of the Premises.

22. **Events of Default.** Each of the following events shall be an event of default ("Event of Default") by Tenant under this Lease:

Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of 30 business days from the date such payment was due.

Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief'); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

Any insurance required to be maintained by the Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

Tenant shall not occupy or shall vacate the Premises or shall fail to continuously operate its business at the Premises for the permitted use set forth herein, whether or not Tenant is in monetary or other default under this Lease. Tenant's vacating of the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (a) insure that Tenant's insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (b) insure that the Premises are secured and not subject to vandalism, and (c) insure that the Premises will be properly maintained after such vacation. Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

There shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise permitted in this Lease.

Tenant shall fail to discharge any lien placed upon the Premises in violation of this Lease within 30 days after Tenant's receipt of notice of any such lien or encumbrance is filed against the Premises.

Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 24, and except as otherwise expressly provided herein, such default shall continue for more than 30 days after Landlord shall have given Tenant written notice of such default.

23. **Landlord's Remedies.** Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity not to exceed 90 days after tenant has vacated premises. Upon the Termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all of the furniture, fixtures and equipment at the Premises.

Except as otherwise provided in the next paragraph, if Tenant breaches this Lease and abandons the Premises prior to the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of an Event of Default by Tenant under this Lease, this Lease shall terminate. Upon such termination, Landlord may recover from Tenant the following, as provided in Section 1951.2 of the Civil Code of California: (i) the worth at the time of award of the unpaid Base Rent and other charges under this Lease that had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the reasonable value of the unpaid Base Rent and other charges under this Lease which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award by which the reasonable value of the unpaid Base Rent and other charges under this Lease for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom. As used herein, the following terms are defined: (a) the "worth at the time of award" of the amounts referred to in Sections (i) and (ii) is computed by allowing interest at the lesser of IO percent per annum or the maximum lawful rate. The "worth at the time of award" of the amount referred to in Section (iii) is computed by discounting such amount at the discount rate of the Federa1 Reserve Bank of San Francisco at the time of award plus one percent; (b) the "time of award" as used in c1auses (i), (ii), and (iii) above is the date on which judgment is entered by a court of competent jurisdiction; (c) The "reasonable value" of the amount referred to in clause (ii) above is computed by determining the mathematical product of (1) the "reasonable annual rental value" (as defined herein) and (2) the number of years, including fractional parts thereof, between the date of termination and the time of award. The "reasonable value" of the amount referred to in clause (iii) is computed by determining the mathematical product of (1) the annual Base Rent and other charges under this Lease and (2) the number of years including fractional parts thereof remaining in the balance of the term of this Lease after the time of award.

Even though Tenant has breached this Lease and abandoned the Premises, this Lease sha11 continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover rent as it becomes due. This remedy is intended to be the remedy described in California Civil Code Section 1951.4 and the following provision from such Civil Code Section is hereby repeated: "The Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations)." Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be affected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific Terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Premise before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

24. **Tenant's Remedies/Limitation of Liability.** Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 15 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 15 days, then after such period of time as is reasonably necessary). All obligations of Landlord herew1der shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The Term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Premise, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

25. **Waiver of Jury Trial** TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

26. **Subordination.** This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any mortgage, now existing or hereafter created on or against the Premise or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attom to any such holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confining such subordination and such instruments of atonement as shall be requested by any such holder. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

27. **Mechanic's Liens.** Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perform labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within 30 days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such 30-day period. Landlord may require tenant to provide to Landlord all documents to establish payment by Tenant for all work performed by third parties.

28. **Estoppel Certificates.** Tenant agrees, from time to time, within 10 days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the Termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease. No cure or grace period provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate.

29. **Environmental Requirements.** Except for Hazardous Material contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not permit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Premise by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The Term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive

Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, byproducts, or residues generated, resulting, or produced therefrom.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises and loss of rental income from the Premise), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

30. **Rules and Regulations.** Tenant shall, at all times during the Lease Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any

liability or obligation for the breach of any rules or regulations by other tenants in the Premise.

31. **Security Service.** Tenant acknowledges and agrees that, while Landlord may patrol the Premise, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

32. **Force Majeure.** Landlord shall not be held responsible for delays in the performance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord ("Force Majeure").

33. **Entire Agreement.** This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

34. **Severability.** If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

35. **Brokers.** Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the broker, if any, set forth on the first page of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

36. **Miscellaneous.**

(a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by certified mail, return receipt requested, or by hand-delivery addressed to the parties at their addresses below, and with a copy sent to Landlord at City of Oroville, Attn: City Administrator, 1735 Montgomery Street, Oroville, California, 95965. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery. Any issues regarding the safe use and operation of the facility as a result of a defect or damage to the facility shall be reported immediately to the Landlord or Landlord's representative either in person or by telephone.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) The nominal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(f) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(h) Any amount not paid by Tenant within 5 days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or IO percent per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease.

If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comp]y with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(i) Construction and interpretation of this Lease shall be governed by the laws of the state in which the Premise is located, excluding any principles of conflicts of laws.

G) Time is of the essence as to the performance of Tenant's obligations under this Lease.

(k) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the Terms of this Lease, such exhibits or addenda shall control.

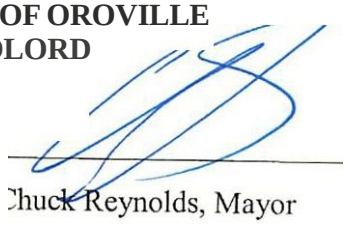
(1) In the event either party hereto initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

(n) In the event the total square footage and/or the footprint of the Leased Premises is modified by Landlord for purposes of practicality in compliance with any state or federal law, including but not limited to the Americans with Disabilities Act, Tenant agrees to accept such modifications without compensation. In the event Tenant reasonably believes such modifications prevent Tenant's Use of the Premises Tenant's sole remedy is to meet and confer with Landlord to seek voluntary modification of the Lease.

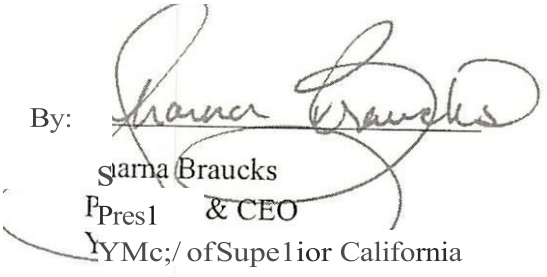
37. **Landlord's Lien/Security Interest.** Tenant hereby grants Landlord a security interest, and this Lease constitutes a security agreement, within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises are situated as to all of Tenant's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course of business) as security for all of Tenant's obligations hereunder, including, without limitation, the obligation to pay rent. Such encumbered includes specifically all trade and other fixtures for the purpose of this Paragraph and inventory, equipment, contract rights, accounts receivable and the proceeds thereof. In order to perfect such security interest, Tenant shall execute such financing statements and file the same at Tenant's expense at the state and county Uniform Commercial Code filing offices as often as Landlord in its discretion shall require; and Tenant hereby irrevocably appoints Landlord its agent for the purpose of executing and filing such financing statements on Tenant's behalf as Landlord shall deem necessary.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

CITY OF OROVILLE
LANDLORD

By: 
Chuck Reynolds, Mayor

YMCA OF SUPERJOR CALIFORNLA

By: 
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Pres1 & CEO
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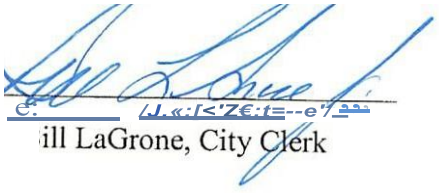
ATTEST

By: 
ill LaGrone, City Clerk

::PRO

Scott E. Huber, City Attorney

CITY OF OROVILLE
RESOLUTION NO. 8863

A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXCUTE AN EXCLUSIVE OPERATING / LEASE AGREEMENT WITH THE YMCA OF SUPERIOR CALIFORNIA FOR THE OPERATION OF THE MUNICIPAL AUDITORIUM LOCATED AT 1200 MYERST STREET, OROVILLE

(Agreement No. 3317)

NOW THEREFORE, be it hereby resolved by the Oroville City Council as follows:

1. The Mayor is hereby authorized and directed to execute an exclusive operating/ lease agreement with the YMCA of Superior California for the operation of the Municipal Auditorium located at 1200 Myers Street, Oroville.

2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the Oroville City Council at a special meeting on May 21, 2020, by the following vote:

AYES: Hatley, Smith, Goodson, Draper, Pittman, Thomson, Reynolds

NOES: None

ABSTAIN: None

ABSENT: None

Chuck Reynolds, Mayor

ATTEST:

APPWM

Scott E. Huber, City Attorney

Bill LaGrone, City Clerk

CITY OF OROVILLE PUBLIC FACILITY
EXCLUSIVE OPERATING AND LEASE AGREEMENT

THIS EXCLUSIVE OPERATING AND LEASE AGREEMENT is made this 21st day of May, 2020, between the City of Oroville ("Landlord"), and The YMCA of Superior California ("Tenant").

BUSINESS TERMS

Landlord:	**CITY OF OROVILLE**
Tenant:	**THE YMCA OF SUPERIOR CALIFORNIA**
Premises:	Municipal Auditorium 1200 Myers Street
Permitted Use:	Mixed Use Commercial
Current Zoning:	CI - Limited Commercial
Term:	.l Years, Q months, plus an option to renew for .4 consecutive one year terms.
Renewal Option:	The renewal option ~~shall~~ may be subject to a rate adjustment~~.~~ ~~The~~ to be determined ~~after~~ before the end of the first one-year period. The first year of this amended agreement is a joint effort of the City and the ~~Tenn~~Termant to determine the viability of this endeavor.
Base Rent:	In ~~Y~~year~~ -~~one of the amended agreement the rent will be zero. Future rent to be ~~determined~~ reconsidered on a quarterly bases through a collaboration between City and YMCA staff~~in year two of this agreement~~. Rent will be ~~detennined~~ by mutual agreement and based upon net revenue, if any, generated as a result of use of this facility.
Net Lease:	Tenant is to pay for all taxes and~~,~~ insurances required for program activities~~,~~ ~~-~~and share in common area maintenance charges. ~~The tenant is responsible for all occupancy costs for the Premise.~~

Security Deposit:	To be determined by amendment of this Agreement. Security Deposit is held to mitigate damage that may result to the Premise from business operations. Deposit is returned in full with no interest when Premise has been vacated and inspected by the City of Oroville to assess its condition.
Rent Commencement:	Rent, as subject to Paragraph 4, shall commence at any such time ~~on July 1~~, ~~2021~~, ~~or one year after the Landlord's completion of the construction and repair of fire damage, whichever is later~~ that a determination has been made that rental payments are financially viable.
Possession:	July 1, 2020 or after completion of fire damage repairs, whichever is later.
Condition of Premises:	The Landlord is to provide Tenant the Premises in its "as is" condition, after repair of fire damage. Tenant is willing to take the Premises in "as is" condition subject to conducting a thorough assessment of the condition of the Premises by Tenant. Any additional improvements by Tenant shall be at Tenant's sole cost and expense. A Tenant Improvement Plan shall be submitted to the City for approval prior to work being performed.
Building Signage:	Signage shall be in conformance with the Zoning Code, sign regulations, and approved by Landlord prior to installation or placement per section 12 of this agreement. All signage shall be at Tenant's expense.

1. **Granting Clause.** In consideration of the obligation of Tenant to pay rent as herein provided and in consideration of the other ~~tenn~~Terms, covenants, and conditions hereof, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises, to have and to hold for the Lease ~~Tenn~~Term, subject to the ~~tenn~~Terms, covenants and conditions of this Lease.

2. **Acceptance of Premises.** Tenant shall accept the Premises in its condition as of the Commencement Date, subject to all applicable laws, ordinances, regulations, covenants and restrictions. Landlord has made no representation or warranty as to the suitability of the Premises for the conduct of Tenant's business, and Tenant waives any implied warranty that the Premises are suitable for Tenant's intended purposes. In no event shall Landlord have any obligation for any defects in the Premises or any limitation on its use. The taking of possession of the

Premises shall be conclusive evidence that Tenant accepts the Premises and that the Premises were in good condition at the time possession was taken except for items

that are Landlord's responsibility, including items relating to unrepaired fire damage.

3. **Use.** The Premises shall be used only for the purpose of providing activities consistent with current activities provided by the YMCA. The facility will primarily be used for, but not limited to, physical exercise activities for all ages. The facility will be utilized for all activities that will enhance the quality of life for all the citizens of the City of Oroville. Tenant will use the Premises in a careful, ~~safe~~safe, and proper manner and will not commit waste, overload the floor or structure of the Premises or subject the Premises to use that would damage the Premises. Tenant shall not permit any objectionable or unpleasant odors, smoke, dust, gas, noise, or vibrations to emanate from the Premises, or take any other action that would constitute a nuisance or would disturb, unreasonably interfere with, or endanger Landlord or any tenants of the Premises. Tenant, at its sole expense, shall use and occupy the Premises in compliance with all laws, including, without limitation, the Americans With Disabilities Act, orders, judgments, ordinances, regulations, codes, directives, permits, licenses, covenants and restrictions now or hereafter applicable to the Premises (collectively, "Legal Requirements") unless such Legal Requirements are met due to their "grandfathered" nature. Tenant shall, at its expense, make any alterations or modifications, within or without the Premises, that are required by Legal Requirements related to Tenant's use or occupation of the Premises unless such Legal Requirements are met due to their "grandfathered" nature. Tenant must receive Landlord's written authorization and approval for all alteration or modifications to the Premises. Tenant is responsible for compliance with all Americans with Disabilities requirement related to tenants programing and uses. Landlord is responsible for American with Disabilities requirements related to structural changes as required by law and not met due to a "Grandfathered" exception.

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4. **Base Rent.** Tenant shall not be required to pay an initial Base Rent in the amount set forth above. If at some point it has been determined that rent payments are viable due to increased revenues ~~In the second year of this Lease,~~ the first month's Base Rent, and the first monthly installment of estimated Operating Expenses (as hereafter defined) shall be due and payable on the date hereof, and Tenant promises to pay to Landlord in advance, without demand, deduction or set-off, monthly installments of Base Rent on or before the first day of each calendar month succeeding the Commencement Date. Payments of Base Rent for any fractional calendar month shall be prorated. All payments required to be made by Tenant to Landlord hereunder (or to such other party as Landlord may from time to time specify in writing) shall be made by check of immediately available funds before 4:00 p.m., Pacific Time, at City of Oroville, Finance Department, 1735 Montgomery Street, Oroville, California, 95965, or as Landlord may from time to time designate to Tenant in writing. The obligation of Tenant to pay Base Rent and other sums to Landlord and the obligations of Landlord under this Lease are

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independent obligations. Tenant shall have no right at any time to abate, reduce, or set-off any rent due hereunder except as may be

expressly provided in this Lease. If Tenant is delinquent in any monthly installment of Base Rent for more than 5 business days, Tenant shall pay to Landlord on demand a late charge equal to 5 percent of such delinquent sum. The provision for such late charge shall be in addition to all of Landlord's other rights and remedies hereunder or at law and shall not be construed as a penalty.

5. **Security Deposit.** Tenant shall deposit with Landlord the sum set forth above. The first monthly installment shall be due concurrently with the extension of this Lease for year two. The second monthly instalJment shall be due with Tenant's payments beginning with the commencement of rent. The security deposit shall be held by Landlord as security for the faithful performance by Tenant of all of the terms, covenants and conditions to be performed by Tenant. The security deposit shall not be assigned, transferred or encumbered by Tenant, and any attempt to do so shall not be binding upon Landlord. If, at any time during the ~~tenn~~Term of this Lease, any rent or portion of any rent payable by Tenant to Landlord shall not be timely paid, then, Landlord may, at its option (but shall not be required to), appropriate and apply any portion of the security deposit to the payment of such overdue rent. Under no circumstances shall Tenant apply the security deposit as Rent for the final months of the Lease. In the event of the failure of Tenant to keep and perfonn any of the ~~tenn~~Terms, covenants and conditions of this Lease to be kept and performed by Tenant, then, at the option of Landlord, Landlord may (but shall not be required to) appropriate and apply the security deposit, or so much so as may be necessary, to compensate Landlord for all loss or damage sustained or suffered by Landlord due to such default on the part of Tenant. Should the entire security deposit, or any portion thereof, be appropriated and applied by Landlord for the purposes set forth herein, or for any other lawful purpose, then Tenant shall, within IO days after written demand by Landlord, deliver to Landlord a sufficient sum in cash to restore the security deposit to the original sum of the security deposit. Landlord shall not be obligated to keep the security deposit in a separate fund but may commingle the security deposit with its own funds. The failure of Tenant to maintain the security deposit in the initial amount as stated above shall constitute a failure to pay rent and shall carry with it the consequences set forth in this Lease for failure to pay rent. Upon expiration of the Lease, the security deposit, if not applied toward the payment of Rent in arrears or toward the payment of damages suffered by Landlord by reason of Tenant's breach of this Lease, is to be returned to Tenant without interest, but in no event shall the security deposit be returned until Tenant has vacated the Leased Premises, delivered possession thereof to Landlord, and fully satisfied Tenant's obligations under this Lease.

~~6**Utilities.** Landlord will pay agreed upon amount of utilities due to the co-location of City Services at facility. Tenant shall pay for all water, gas, electricity, heat, light, power, telephone, sprinkler services, refuse and trash collection, and other utilities and services used on the Premises, all maintenance charges for utilities, and any other similar charges for utilities imposed by any governmental entity or utility provider, together with any taxes, penalties, surcharges or the like pertaining to Tenant's use of the Premises, above agreed~~

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~~upon prorated amount. Landlord may cause Tenant's expense any utilities to be separately metered or charged directly~~

6. **Utilities.** Until it is further determined that the YMCA has the financial capacity to pay for utilities at the Convention Center, Landlord shall cover the cost of all utilities except for the phone, cable, and internet services required for the operations of the YMCA. Until further determination, Landlord shall be responsible for the costs of water, trash, electrical, and gas.

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7. **Taxes.** If any such tax or excise is levied or assessed directly against Tenant, including but not limited to possessory tax, then Tenant shall be responsible for and shall pay the same at such times and in such manner as the taxing authority shall require. Tenant shall be liable for all taxes levied or assessed against any personal property or fixtures placed in the Premises, whether levied or assessed against Landlord or Tenant.

8. **Insurance.** Landlord shall maintain all risk ~~property~~ insurance covering ~~the full replacement cost of the Building. Landlord~~ risk property insurance and the full replacement cost of the building and may, but is not obligated to, maintain such other insurance and additional coverages as it may deem necessary, including, but not limited to, commercial liability insurance and rent loss insurance. ~~All such insurance shall be included as part of the Operating Expenses charged to Tenant~~. The Premise or Building may be included in a blanket policy (in which case the cost of such insurance allocable to the Premise or Building will be determined by Landlord based upon the insurer's cost calculations). Tenant shall also reimburse Landlord for any increased premiums or additional insurance which Landlord reasonably deems necessary as a result of Tenant's use of the Premises.

Tenant, at its expense, shall maintain during the Lease Term~~nn~~: all risk property insurance covering the full replacement cost of all property and improvements installed or placed in the Premises by Tenant at Tenant's expense; workers' compensation insurance with no less than the minimum limits required by law; employer's liability insurance with such limits as required by law; and commercial liability insurance, with a minimum limit of $1,000,000 per occurrence and a minimum umbrella limit of $1,000,000, for a total minimum combined general liability and umbrella limit of $2,000,000 (together with such additional umbrella coverage as Landlord may reasonably require) for property damage, personal injuries, or deaths of persons occurring in or about the Premises. Landlord may from time to time require reasonable increases in any such limits. The commercial liability policies shall name Landlord as an additional insured, insure on an occurrence and not a claims-made basis, be issued by insurance companies which are reasonably acceptable to Landlord, not be cancelable unless 30 days' prior written notice shall have been given to Landlord, contain a hostile fire endorsement and a contractual liability endorsement and provide primary coverage to Landlord (any policy issued to Landlord providing duplicate or similar coverage shall be deemed excess over Tenant's policies). SUCH POLICIES OR CERTIFICATES THEREOF SHALL BE DELIVERED TO LANDLORD BY TENANT UPON COMMENCEMENT OF THE LEASE TERM AND UPON EACH RENEWAL OF SAID INSURANCE.

The all-risk property insurance obtained by Landlord and Tenant shall include a waiver of subrogation by the insurers and all rights based upon an assignment from its insured, against Landlord or Tenant, their officers, directors, employees, managers, agents, invitees and contractors, in connection with any loss or damage thereby insured against. Neither party nor its officers, directors, employees, managers, agents, invitees or contractors shall be liable to the other for loss or damage caused by any risk coverable by all risk property insurance, and each party waives any claims against the other party, and its officers, directors, employees, managers, agents, invitees and contractors for such loss or damage. The failure of a party to insure its property shall not void this waiver. Landlord and its agents, employees and contractors shall not be liable for, and Tenant hereby waives all c1aims against such parties for, business interruption and losses occasioned thereby sustained by Tenant or any person claiming through Tenant resulting from any accident or occurrence in or upon the Premises from any cause whatsoever, including without limitation, damage caused in whole or in part, directly or indirectly, by the negligence of Landlord or its agents, employees or contractors.

9. Construction Allowance. None.

10. Landlord's Repairs. Landlord shall maintain, at its expense, the structural soundness of the roof, foundation, and exterior walls of the Building in good repair, reasonable wear and tear and uninsured losses and damages caused by Tenant, its agents and contractors excluded. The term "walls" as used in this Paragraph 11 shall not include windows, glass or plate glass, doors or overhead doors, special store fronts, or office entries. Tenant shall promptly give Landlord written notice of any repair required by Landlord, after which Landlord shall have a reasonable opportunity to repair.

11. Tenant-Made Alterations and Trade Fixtures. Any alterations, additions, or improvements made by or on behalf of Tenant to the Premises ("Tenant-Made Alterations") shall be subject to Landlord's prior written consent and at the expense of the tenant.

12. Signs. Tenant shall not make any changes to the exterior of the Premises, install any exterior lights, decorations, balloons, flags, pennants, banners, or painting, or erect or install any signs, windows or door lettering, placards, decorations, or advertising media of any type which can be viewed from the exterior of the Premises, without Landlord's prior written consent. Upon surrender or vacation of the Premises, Tenant shall have removed all signs and repair, paint, and/or replace the building facia surface to which its signs are attached. Tenant shall obtain all applicable governmental permits and approvals for sign and exterior treatments. All signs, decorations, advertising media, blinds, draperies and other window treatment or bars or other security installations visible from outside the Premises shall be subject to Landlord's approval and conform in all respects to Landlord's requirements.

13. Parking. Off-street parking is provided by Landlord. Public parking is available to Tenant in City owned parking lots located near Premises.

14. Restoration. If at any time during the Lease Term the Premises are damaged by a fire or other casualty, Landlord shall notify Tenant within 60 days after such damage as to the amount of time Landlord reasonably estimates it will take to restore the Premises. If the restoration time is estimated to exceed 6 months, either Landlord or Tenant may elect to terminate this Lease upon notice to the other party given no later than 30 days after Landlord's notice. If neither party elects to terminate this Lease or if Landlord estimates that restoration will take 6 months or less, then, subject to receipt of sufficient insurance proceeds, Landlord shall promptly restore the Premises excluding the improvements installed by Tenant or by Landlord and paid by Tenant, subject to delays arising from the collection of insurance proceeds or from Force Majeure events. Tenant at Tenant's expense shall promptly perform, subject to delays arising from the collection of insurance proceeds, or from Force Majeure events, all repairs or restoration not required to be done by Landlord and shall promptly re-enter the Premises and commence doing business in accordance with this Lease. Notwithstanding the foregoing, either party may terminate this Lease if the Premises are damaged during the last year of the Lease Term and Landlord reasonably estimates that it will take more than one month to repair such damage. Base Rent and Operating Expenses shall be abated for the period of repair and restoration in the proportion which the area of the Premises, if any, which is not usable by Tenant bears to the total area of the Premises. Such abatement shall be the sole remedy of Tenant, and except as provided herein, Tenant waives any right to terminate the Lease by reason of damage or casualty loss.

15. Condenmation. If any part of the Premises should be taken for any public or quasi- public use under governmental law, ordinance, or regulation, or by right of eminent domain, or by private purchase in lieu thereof (a "Taking" or "Taken"), and the Taking would prevent or materially interfere with Tenant's use of the Premises or in Landlord's judgment would materially interfere with or impair its ownership or operation of the Premise, then upon written notice by Landlord this Lease shall terminate and Base Rent shall be apportioned as of said date. If part of the Premises shall be Taken, and this Lease is not terminated as provided above, the Base Rent payable hereunder during the unexpired Lease Term shall be reduced to such extent as may be fair and reasonable under the circumstances. In the event of any such Taking, Landlord shall be entitled to receive the entire price or award from any such Taking without any payment to Tenant, and Tenant hereby assigns to Landlord Tenant's interest, if any, in such award. Tenant shall have the right, to the extent that same shall not diminish Landlord's award, to make a separate claim against the condemning authority (but not Landlord) for such compensation as may be separately awarded or recoverable by Tenant for moving expenses and damage to Tenant's Trade Fixtures, if a separate award for such items is made to Tenant.

16. Assignment and Subletting. Without Landlord's prior written consent, which Landlord shall not unreasonably withhold, Tenant shall not assign this

Lease or

sublease the Premises or any part thereof or mortgage, pledge, or hypothecate *its* leasehold interest or grant any concession or license within the Premises and any attempt to do any of the foregoing shall be void and of no effect. For purposes of this paragraph, a transfer of the ownership interests resulting in a change of control of Tenant shal1 be deemed an assignment of this Lease. Tenant shall reimburse Landlord for all of Landlord's reasonable out-of-pocket expenses in connection with any assignment or sublease in an amount not to exceed $1,500. Upon Landlord's receipt of Tenant's written notice of a desire to assign or sublet the Premises, or any part thereof (other than to a Tenant Affiliate), Landlord may, by giving written notice to Tenant within 15 days after receipt of Tenant's notice, terminate this Lease with respect to the space described in Tenant's notice, as of the date specified in Tenant's notice for the commencement of the proposed assignment or sublease. If Landlord so terminates the Lease, Landlord may enter into a lease directly with the proposed sublessee or assignee. Tenant may withdraw its notice to sublease or assign by notifying Landlord within 10 days after Landlord has given Tenant notice of such termination, in which case the Lease shall not terminate but shall continue.

It shall be reasonable for the Landlord to withhold its consent to any assignment or sublease in any of the following instances: (i) an Event of Default has occurred and is continuing that would not be cured upon the proposed sublease or assignment; (ii) the assignee or sublessee does not have a net worth which is consistent with net worth of other tenant's which Landlord is entering into leases with in the Premise; (iii) the intended use of the Premises by the assignee or sublessee is not consistent with the use provision herein; (iv) occupancy of the Premises by the assignee or sublessee would, in Landlord's opinion, violate an agreement binding upon Landlord with regard to the identity of tenants, usage in the Premise, or similar matters; (v) the identity or business reputation of the assignee or sublessee will, in the good faith judgment of Landlord, tend to damage the goodwill or reputation of the Premise; (vi) the assignment or sublet is to another tenant in the Premise and is at rates which are below those charged by Landlord for comparable space in the Premise and Landlord has space available in the Premise to accommodate the tenant's needs; (vii) in the case of a sublease, the subtenant has not acknowledged that the Lease controls over any inconsistent provision in the sublease; (viii) the proposed assignee or sublessee is a governmental agency; or (ix) there is vacant space in the Premise suitable for lease to the proposed sublessee or assignee. Tenant and Landlord acknowledge that each of the foregoing criteria are reasonable as of the date of execution of this Lease. The foregoing criteria shall not exclude any other reasonable basis for Landlord to refuse its consent to such assignment or sublease. Any approved assignment or sublease shall be expressly subject to the terms and conditions of this Lease. Tenant shall provide to Landlord all information concerning the assignee or sublessee as Landlord may request.

Notwithstanding any assignment or subletting, Tenant shall at all times remain fully responsible and liable for the payment of the rent and for compliance with all of Tenant's other obligations under this Lease (regardless of whether Landlord's approval has been obtained for any such assignments or subletting's). In the event

that the rent due and payable by a sublessee or assignee (or a combination of the rental payable under such sublease or assignment plus any bonus or other consideration therefor or incident thereto) exceeds the rental payable under this Lease, then Tenant sha11 be bound and obligated to pay Landlord as additional rent hereunder fifty percent (50%) of such excess rental and other excess consideration ("Profit") within 10 days following receipt of each month's Profit thereofby Tenant. Profit shall be further defined to take into consideration all of Tenant's costs in any assignment of subletting including but not limited to real estate commissions, legal fees, marketing costs, any improvement allowance or other economic concession (planning allowance, moving expenses, etc.), paid by Tenant to sublessee or assignee.

If this Lease be assigned or if the Premises be subleased (whether in whole or in part) or in the event of the mortgage, pledge, or hypothecation of Tenant's leasehold interest or grant of any concession or license within the Premises or if the Premises be occupied in whole or in part by anyone other than Tenant, then upon a default by Tenant hereunder Landlord may collect rent from the assignee, sublessee, mortgagee, pledgee, party to whom the leasehold interest was hypothecated, concessionee or licensee or other occupant and, except to the extent set forth in the preceding paragraph, apply the amount collected to the next rent payable hereunder; and all such rentals collected by Tenant shall be held in trust for Landlord and immediately forwarded to Landlord. No such transaction or collection of rent or application thereof by Landlord, however, shall be deemed a waiver of these provisions or a release of Tenant from the further performance by Tenant of its covenants, duties, or obligations hereunder.

17. Indemnification. Except for the negligence of Landlord, its agents, employees or contractors, and to the extent permitted by law, Tenant agrees to indemnify, defend and hold harmless Landlord, and Landlord's agents, employees and contractors, from and against any and all losses, liabilities, damages, costs and expenses (including attorneys' fees) resulting from claims by third parties for injuries to any person and damage to or theft or misappropriation or loss of property occurring in or about the Premise and arising from the use and occupancy of the Premises or from any activity, work, or thing done, permitted or suffered by Tenant in or about the Premises or due to any other act or omission of Tenant, its subtenants, assignees, invitees, employees, contractors and agents. The furnishing of insurance required hereunder shall not be deemed to limit Tenant's obligations.

18. Inspection and Access. Landlord and its agents, representatives, and contractors may enter the Premises with prior notice at any reasonable time to inspect the Premises and to make such repairs as may be required or permitted pursuant to this Lease and for any other business purpose. Landlord and Landlord's representatives may enter the Premises during business hours for the purpose of showing the Premises to prospective purchasers and, during the last 4 months of the Lease Term, to prospective tenants. Landlord may erect or post a suitable sign on the Premises stating the Premises are available to let. Landlord may grant easements, make public dedications, designate common areas and create

restrictions on or about the

Premises, provided that no such easement, dedication, designation or restriction materially interferes with Tenant's use or occupancy of the Premises. At Landlord's request, Tenant shall execute such instruments as may be necessary for such easements, dedications or restrictions.

19. Quiet Enjoyment. If Tenant shall perform all of the covenants and agreements herein required to be performed by Tenant, Tenant shall, subject to the terms of this Lease, at all times during the Lease Term, have peaceful and quiet enjoyment of the Premises against any person claiming by, through or under Landlord.

20. Surrender. Upon termination of the Lease Term or earlier ~~tenn~~Termination of Tenant's right of possession, Tenant shall surrender the Premises to Landlord in the same condition as received, broom clean, ordinary wear and tear and casualty loss and condemnation. Any Trade Fixtures, Tenant-Made Alterations and property not so removed by Tenant as permitted or required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property. AH obligations of Tenant hereunder not fully performed as of the termination of the Lease Term shall survive the termination of the Lease Term, including without limitation, indemnity obligations, payment obligations with respect to Operating Expenses and obligations concerning the condition and repair of the Premises.

21. Holding Over. If Tenant retains possession of the Premises after the termination of the Lease ~~Tenn~~Term, unless otherwise agreed in writing, such possession shall be subject to immediate termination by Landlord at any time, and all of the other ~~tenn~~Terms and provisions of this Lease (excluding any expansion or renewal option or other similar right or option) shall be applicable during such holdover period, except that Tenant shall pay Landlord from time to time, upon demand, as Base Rent for the holdover period, an amount equal to 150 percent the Base Rent in effect on the ~~tenn~~Termination date, computed on a monthly basis for each month or part thereof during such holding over. All other payments shall continue under the terms of this Lease. In addition, Tenant shall be liable for all damages incurred by Landlord as a result of such holding over. No holding over by Tenant, whether with or without consent of Landlord, shall operate to extend this Lease except as otherwise expressly provided shall not be construed as consent for Tenant to retain possession of the Premises. "Possession of the Premises" shall continue until, among other things, Tenant has delivered all keys to the Premises to Landlord, Landlord has complete and total dominion and control over the Premises, and Tenant has completely fulfilled all obligations required of it upon termination of the Lease as set forth in this Lease, including, without limitation, those concerning the condition and repair of the Premises.

22. Events of Default. Each of the following events shall be an event of default ("Event of Default") by Tenant under this Lease:

Tenant shall fail to pay any installment of Base Rent or any other payment required herein when due, and such failure shall continue for a period of 30 business days from the date such payment was due.

Tenant or any guarantor or surety of Tenant's obligations hereunder shall (A) make a general assignment for the benefit of creditors; (B) commence any case, proceeding or other action seeking to have an order for relief entered on its behalf as a debtor or to adjudicate it as bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, liquidation, dissolution or composition of it or its debts or seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or of any substantial part of its property (collectively a "proceeding for relief'); (C) become the subject of any proceeding for relief which is not dismissed within 60 days of its filing or entry; or (D) die or suffer a legal disability (if Tenant, guarantor, or surety is an individual) or be dissolved or otherwise fail to maintain its legal existence (if Tenant, guarantor or surety is a corporation, partnership or other entity).

Any insurance required to be maintained by Tenant pursuant to this Lease shall be cancelled or terminated or shall expire or shall be reduced or materially changed, except, in each case, as permitted in this Lease.

Tenant shall not occupy or shall vacate the Premises or shall fail to continuously operate its business at the Premises for the permitted use set forth herein, whether or not Tenant is in monetary or other default under this Lease. Tenant's vacating of the Premises shall not constitute an Event of Default if, prior to vacating the Premises, Tenant has made arrangements reasonably acceptable to Landlord to (a) insure that Tenant's insurance for the Premises will not be voided or cancelled with respect to the Premises as a result of such vacancy, (b) insure that the Premises are secured and not subject to vandalism, and (c) insure that the Premises will be proper!y maintained after such vacation. Tenant shall inspect the Premises at least once each month and report monthly in writing to Landlord on the condition of the Premises.

There shall occur any assignment, subleasing or other transfer of Tenant's interest in or with respect to this Lease except as otherwise pennitted in this Lease.

Tenant shall fail to discharge any lien placed upon the Premises in violation of this Lease within 30 days after Tenant's receipt of notice of any such lien or encumbrance is filed against the Premises.

Tenant shall fail to comply with any provision of this Lease other than those specifically referred to in this Paragraph 24, and except as otherwise expressly provided herein, such default shall continue for more than 30 days after Landlord shall have given Tenant written notice of such default.

23. Landlord's Remedies. Upon each occurrence of an Event of Default and so long as such Event of Default shall be continuing, Landlord may at any time thereafter at its election: terminate this Lease or Tenant's right of possession, (but Tenant shall remain liable as hereinafter provided) and/or pursue any other remedies at law or in equity not to exceed 90 days after tenant has vacated premises. Upon the ~~tenn~~Termination of this Lease or termination of Tenant's right of possession, it shall be lawful for Landlord, without formal demand or notice of any kind, to re-enter the Premises by summary dispossession proceedings or any other action or proceeding authorized by law and to remove Tenant and all persons and property therefrom. If Landlord re-enters the Premises, Landlord shall have the right to keep in place and use, or remove and store, all of the furniture, fixtures and equipment at the Premises.

Except as otherwise provided in the next paragraph, if Tenant breaches this Lease and abandons the Premises prior to the end of the term hereof, or if Tenant's right to possession is terminated by Landlord because of an Event of Default by Tenant under this Lease, this Lease shall terminate. Upon such termination, Landlord may recover from Tenant the following, as provided in Section 1951.2 of the Civil Code of California: (i) the worth at the time of award of the unpaid Base Rent and other charges under this Lease that had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the reasonable value of the unpaid Base Rent and other charges under this Lease which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award by which the reasonable value of the unpaid Base Rent and other charges under this Lease for the balance of the term of this Lease after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; and (iv) any other amount necessary to compensate Landlord for aII the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or that in the ordinary course of things would be likely to result therefrom. As used herein, the following terms are defined: (a) the "worth at the time of award" of the amounts referred to in Sections (i) and (ii) is computed by allowing interest at the lesser of IO percent per annum or the maximum lawfu] rate. The "worth at the time of award" of the amount referred to in Section (iii) is computed by discounting such amount at the discount rate of the Federa1 Reserve Bank of San Francisco at the time of award plus one percent; (b) the "time of award" as used in c1auses (i), (ii), and (iii) above is the date on which judgment is entered by a court of competent jurisdiction; (c) The "reasonable value" of the amount referred to in clause (ii) above is computed by determining the mathematical product of (1) the "reasonable annual rental value" (as defined herein) and (2) the number of years, including fractional parts thereof, between the date of termination and the time of award. The "reasonable value" of the amount referred to in clause (iii) is computed by determining the mathematical product of (1) the annual Base Rent and other charges under this Lease and (2) the number of years including fractional parts thereof remaining in the balance of the term of this Lease after the time of award.

Even though Tenant has breached this Lease and abandoned the Premises, this Lease sha11 continue in effect for so long as Landlord does not terminate Tenant's right to possession, and Landlord may enforce all its rights and remedies under this Lease, including the right to recover rent as it becomes due. This remedy is intended to be the remedy described in California Civil Code Section 1951.4 and the following provision from such Civil Code Section is hereby repeated: "The Lessor has the remedy described in California Civil Code Section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations)." Any such payments due Landlord shall be made upon demand therefor from time to time and Tenant agrees that Landlord may file suit to recover any sums falling due from time to time. Notwithstanding any such reletting without termination, Landlord may at any time thereafter elect in writing to terminate this Lease for such previous breach.

Exercise by Landlord of any one or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Premises and/or a termination of this Lease by Landlord, whether by agreement or by operation of law, it being understood that such surrender and/or termination can be affected only by the written agreement of Landlord and Tenant. Any law, usage, or custom to the contrary notwithstanding, Landlord shall have the right at all times to enforce the provisions of this Lease in strict accordance with the terms hereof; and the failure of Landlord at any time to enforce its rights under this Lease strictly in accordance with same shall not be construed as having created a custom in any way or manner contrary to the specific ~~tenn~~Terms, provisions, and covenants of this Lease or as having modified the same. Tenant and Landlord further agree that forbearance or waiver by Landlord to enforce its rights pursuant to this Lease or at law or in equity, shall not be a waiver of Landlord's right to enforce one or more of its rights in connection with any subsequent default. A receipt by Landlord of rent or other payment with knowledge of the breach of any covenant hereof shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in writing and signed by Landlord. To the greatest extent permitted by law, Tenant waives the service of notice of Landlord's intention to re-enter as provided for in any statute, or to institute legal proceedings to that end, and also waives all right of redemption in case Tenant shall be dispossessed by a judgment or by warrant of any court or judge. The terms "enter," "re-enter," "entry" or "re-entry," as used in this Lease, are not restricted to their technical legal meanings. Any reletting of the Premises shall be on such terms and conditions as Landlord in its sole discretion may determine (including without limitation a term different than the remaining Lease Term, rental concessions, alterations and repair of the Premises, lease of less than the entire Premises to any tenant and leasing any or all other portions of the Premise before reletting the Premises). Landlord shall not be liable, nor shall Tenant's obligations hereunder be diminished because of, Landlord's failure to relet the Premises or collect rent due in respect of such reletting.

24. Tenant's Remedies/Limitation of Liability. Landlord shall not be in default hereunder unless Landlord fails to perform any of its obligations hereunder within 15 days after written notice from Tenant specifying such failure (unless such performance will, due to the nature of the obligation, require a period of time in excess of 15 days, then after such period of time as is reasonably necessary). All obligations of Landlord herew1der shall be construed as covenants, not conditions; and, except as may be otherwise expressly provided in this Lease, Tenant may not terminate this Lease for breach of Landlord's obligations hereunder. All obligations of Landlord under this Lease will be binding upon Landlord only during the period of its ownership of the Premises and not thereafter. The ~~tenn~~Term "Landlord" in this Lease shall mean only the owner, for the time being of the Premises, and in the event of the transfer by such owner of its interest in the Premises, such owner shall thereupon be released and discharged from all obligations of Landlord thereafter accruing, but such obligations shall be binding during the Lease ~~Tenn~~Term upon each new owner for the duration of such owner's ownership. Any liability of Landlord under this Lease shall be limited solely to its interest in the Premise, and in no event shall any personal liability be asserted against Landlord in connection with this Lease nor shall any recourse be had to any other property or assets of Landlord.

25. Waiver of Jury Trial TENANT AND LANDLORD WAIVE ANY RIGHT TO TRIAL BY JURY OR TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, BETWEEN LANDLORD AND TENANT ARISING OUT OF THIS LEASE OR ANY OTHER INSTRUMENT, DOCUMENT, OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HEREWITH OR THE TRANSACTIONS RELATED HERETO.

26. Subordination. This Lease and Tenant's interest and rights hereunder are and shall be subject and subordinate at all times to the lien of any mortgage, now existing or hereafter created on or against the Premise or the Premises, and all amendments, restatements, renewals, modifications, consolidations, refinancing, assignments and extensions thereof, without the necessity of any further instrument or act on the part of Tenant. Tenant agrees, at the election of the holder of any such mortgage, to attom to any such holder. Tenant agrees upon demand to execute, acknowledge and deliver such instruments, confinning such subordination and such instruments of attomment as shall be requested by any such holder. Notwithstanding the foregoing, any such holder may at any time subordinate its mortgage to this Lease, without Tenant's consent, by notice in writing to Tenant, and thereupon this Lease shall be deemed prior to such mortgage without regard to their respective dates of execution, delivery or recording and in that event such holder shall have the same rights with respect to this Lease as though this Lease had been executed prior to the execution, delivery and recording of such mortgage and had been assigned to such holder. The term "mortgage" whenever used in this Lease shall be deemed to include deeds of trust, security assignments and any other encumbrances, and any reference to the "holder" of a mortgage shall be deemed to include the beneficiary under a deed of trust.

27. Mechanic's Liens. Tenant has no express or implied authority to create or place any lien or encumbrance of any kind upon, or in any manner to bind the interest of Landlord or Tenant in, the Premises or to charge the rentals payable hereunder for any claim in favor of any person dealing with Tenant, including those who may furnish materials or perfonn labor for any construction or repairs. Tenant covenants and agrees that it will pay or cause to be paid all sums legally due and payable by it on account of any labor performed or materials furnished in connection with any work performed on the Premises and that it will save and hold Landlord harmless from all loss, cost or expense based on or arising out of asserted claims or liens against the leasehold estate or against the interest of Landlord in the Premises or under this Lease. Tenant shall give Landlord immediate written notice of the placing of any lien or encumbrance against the Premises and cause such lien or encumbrance to be discharged within 30 days of the filing or recording thereof; provided, however, Tenant may contest such liens or encumbrances as long as such contest prevents foreclosure of the lien or encumbrance and Tenant causes such lien or encumbrance to be bonded or insured over in a manner satisfactory to Landlord within such 30-day period. Landlord may require tenant to provide to Landlord all documents to establish payment by Tenant for all work performed by third parties.

28. Estoppel Certificates. Tenant agrees, from time to time, within 10 days after request of Landlord, to execute and deliver to Landlord, or Landlord's designee, any estoppel certificate requested by Landlord, stating that this Lease is in full force and effect, the date to which rent has been paid, that Landlord is not in default hereunder (or specifying in detail the nature of Landlord's default), the ~~tenn~~Termination date of this Lease and such other matters pertaining to this Lease as may be requested by Landlord. Tenant's obligation to furnish each estoppel certificate in a timely fashion is a material inducement for Landlord's execution of this Lease. No cure or grace period provided in this Lease shall apply to Tenant's obligations to timely deliver an estoppel certificate.

29. Environmental Requirements. Except for Hazardous Material contained in products used by Tenant in de minimis quantities for ordinary cleaning and office purposes, Tenant shall not pennit or cause any party to bring any Hazardous Material upon the Premises or transport, store, use, generate, manufacture or release any Hazardous Material in or about the Premises without Landlord's prior written consent. Tenant, at its sole cost and expense, shall operate its business in the Premises in strict compliance with all Environmental Requirements and shall remediate in a manner satisfactory to Landlord any Hazardous Materials released on or from the Premise by Tenant, its agents, employees, contractors, subtenants or invitees. Tenant shall complete and certify to disclosure statements as requested by Landlord from time to time relating to Tenant's transportation, storage, use, generation, manufacture or release of Hazardous Materials on the Premises. The ~~tenn~~Term "Environmental Requirements" means all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, orders or other similar enactments of any governmental authority or agency regulating or relating to health, safety, or environmental conditions on, under, or about the Premises or the environment, including without limitation, the following: the Comprehensive

Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder. The term "Hazardous Materials" means and includes any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, under any Environmental Requirements, asbestos and petroleum, including crude oil or any fraction thereof, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas). As defined in Environmental Requirements, Tenant is and shall be deemed to be the "operator" of Tenant's "facility" and the "owner" of all Hazardous Materials brought on the Premises by Tenant, its agents, employees, contractors or invitees, and the wastes, byproducts, or residues generated, resulting, or produced therefrom.

Tenant shall indemnify, defend, and hold Landlord harmless from and against any and all losses (including, without limitation, diminution in value of the Premises and loss of rental income from the Premise), claims, demands, actions, suits, damages (including, without limitation, punitive damages), expenses (including, without limitation, remediation, removal, repair, corrective action, or cleanup expenses), and costs (including, without limitation, actual attorneys' fees, consultant fees or expert fees and including, without limitation, removal or management of any asbestos brought into the property or disturbed in breach of the requirements, regardless of whether such removal or management is required by law) which are brought or recoverable against, or suffered or incurred by Landlord as a result of any release of Hazardous Materials for which Tenant is obligated to remediate as provided above or any other breach of the requirements by Tenant, its agents, employees, contractors, subtenants, assignees or invitees, regardless of whether Tenant had knowledge of such noncompliance. The obligations of Tenant shall survive any termination of this Lease.

Landlord shall have access to, and a right to perform inspections and tests of, the Premises to determine Tenant's compliance with Environmental Requirements, its obligations, or the environmental condition of the Premises. Access shall be granted to Landlord upon Landlord's prior notice to Tenant and at such times so as to minimize, so far as may be reasonable under the circumstances, any disturbance to Tenant's operations. Such inspections and tests shall be conducted at Landlord's expense, unless such inspections or tests reveal that Tenant has not complied with any Environmental Requirement, in which case Tenant shall reimburse Landlord for the reasonable cost of such inspection and tests. Landlord's receipt of or satisfaction with any environmental assessment in no way waives any rights that Landlord holds against Tenant.

30. Rules and Regulations. Tenant shall, at all times during the Lease ~~Tenn~~Term and any extension thereof, comply with all reasonable rules and regulations at any time or from time to time established by Landlord covering use of the Premises. The current rules and regulations are attached hereto. In the event of any conflict between said rules and regulations and other provisions of this Lease, the other terms and provisions of this Lease shall control. Landlord shall not have any

liability or obligation for the breach of any rules or regulations by other tenants in the Premise.

31. Security Service. Tenant acknowledges and agrees that, while Landlord may patrol the Premise, Landlord is not providing any security services with respect to the Premises and that Landlord shall not be liable to Tenant for, and Tenant waives any claim against Landlord with respect to, any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or any other breach of security with respect to the Premises.

32. Force Majeure. Landlord shall not be held responsible for delays in the perfonnance of its obligations hereunder when caused by strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, delay in issuance of permits, enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of Landlord ("Force Majeure").

33. Entire Agreement. This Lease constitutes the complete agreement of Landlord and Tenant with respect to the subject matter hereof. No representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, which are not contained herein, and any prior agreements, promises, negotiations, or representations are superseded by this Lease. This Lease may not be amended except by an instrument in writing signed by both parties hereto.

34. Severability. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws, then and in that event, it is the intention of the parties hereto that the remainder of this Lease shall not be affected thereby. It is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

35. Brokers. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, other than the broker, if any, set forth on the first page of this Lease, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction.

36. Miscellaneous.

(a) Any payments or charges due from Tenant to Landlord hereunder shall be considered rent for all purposes of this Lease.

(b) If and when included within the term "Tenant," as used in this instrument, there is more than one person, firm or corporation, each shall be jointly and severally liable for the obligations of Tenant.

(c) All notices required or permitted to be given under this Lease shall be in writing and shall be sent by certified mail, return receipt requested, or by hand-delivery addressed to the parties at their addresses below, and with a copy sent to Landlord at City of Oroville, Attn: City Administrator, 1735 Montgomery Street, Oroville, California, 95965. Either party may by notice given aforesaid change its address for all subsequent notices. Except where otherwise expressly provided to the contrary, notice shall be deemed given upon delivery. Any issues regarding the safe use and operation of the facility as a result of a defect or damage to the facility shall be reported immediately to the Landlord or Landlord's representative either in person or by telephone.

(d) Except as otherwise expressly provided in this Lease or as otherwise required by law, Landlord retains the absolute right to withhold any consent or approval.

(e) The ~~nonnal~~nominal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease or any exhibits or amendments hereto.

(f) The submission by Landlord to Tenant of this Lease shall have no binding force or effect, shall not constitute an option for the leasing of the Premises, nor confer any right or impose any obligations upon either party until execution of this Lease by both parties.

(g) Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

(h) Any amount not paid by Tenant within 5 days after its due date in accordance with the terms of this Lease shall bear interest from such due date until paid in full at the lesser of the highest rate permitted by applicable law or IO percent per year. It is expressly the intent of Landlord and Tenant at all times to comply with applicable law governing the maximum rate or amount of any interest payable on or in connection with this Lease.

If applicable law is ever judicially interpreted so as to render usurious any interest called for under this Lease, or contracted for, charged, taken, reserved, or received with respect to this Lease, then it is Landlord's and Tenant's express intent that all excess amounts theretofore collected by Landlord be credited on the applicable obligation (or, if the obligation has been or would thereby be paid in full, refunded to Tenant), and the provisions of this Lease immediately shall be deemed reformed and the amounts thereafter collectible hereunder reduced, without the necessity of the execution of any new document, so as to comp]y with the applicable law, but so as to permit the recovery of the fullest amount otherwise called for hereunder.

(i) Construction and interpretation of this Lease shall~~U~~ be governed by the laws of the state in which the Premise is located, excluding any principles of conflicts of laws.

G) Time is of the essence as to the performance of Tenant's obligations under this Lease.

(k) All exhibits and addenda attached hereto are hereby incorporated into this Lease and made a part hereof. In the event of any conflict between such exhibits or addenda and the ~~tenn~~Terms of this Lease, such exhibits or addenda shall control.

(1) In the event either party hereto initiates litigation to enforce the terms and provisions of this Lease, the non-prevailing party in such action shall reimburse the prevailing party for its reasonable attorney's fees, filing fees, and court costs.

(n) In the event the total square footage and/or the footprint of the Leased Premises is modified by Landlord for purposes of practicality in compliance with any state or federal law, including but not limited to the Americans with Disabilities Act, Tenant agrees to accept such modifications without compensation. In the event Tenant reasonably believes such modifications prevent Tenant's Use of the Premises Tenant's sole remedy is to meet and confer with Landlord to seek voluntary modification of the Lease.

37. Landlord's Lien/Security Interest. Tenant hereby grants Landlord a security interest, and this Lease constitutes a security agreement, within the meaning of and pursuant to the Uniform Commercial Code of the state in which the Premises are situated as to all of Tenant's property situated in, or upon, or used in connection with the Premises (except merchandise sold in the ordinary course ofbusiness) as security for all of Tenant's obligations hereunder, including, without limitation, the obligation to pay rent. Such encumbered includes specifically all trade and other fixtures for the purpose of this Paragraph and inventory, equipment, contract rights, accounts receivable and the proceeds thereof. In order to perfect such security interest, Tenant shall execute such financing statements and file the same at Tenant's expense at the state and county Uniform Commercial Code filing offices as often as Landlord in its discretion shall require; and Tenant hereby irrevocably appoints Landlord its agent for the purpose of executing and filing such financing statements on Tenant's behalf as Landlord shall deem necessary.

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

CITY OF OROVILLE
LANDLORD

By: _____
Chuck Reynolds, Mayor

YMCA OF SUPERJOR CALIFORNLA

By: _____
Sarna Braucks
P Pres1 & CEO
YMc;/ ofSupe1ior California

ATTEST

By: _____
ill LaGrone, City Clerk

::PRO

Scott E. Huber, City Attorney

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **PATRICK PIATT, COMMUNITY DEVELOPMENT DIRECTOR**

RE: **OPPORTUNITY TO COMPETE FOR FUNDING OF A MICROGRID DESIGNED TO PROVIDE ENERGY RESILIENCY DURING DISASTER EVENTS**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The Council will receive information regarding a grant opportunity for funding of a microgrid through a program sponsored by Pacific Gas and Electric (PG&E) to provide energy resiliency to the City during disasters.

DISCUSSION

The State of California Public Utilities Commission (CPUC) has mandated that the big three investor-owned utilities (IOUs), (PG&E, Southern California Edison, and San Diego Gas and Electric), operating within the State provide new programs and grants for communities that are within the defined CPUC high-risk disaster zones (Attachment 1) for the purposes of energy resiliency during disasters. The overall ruling stems from SB 1339 “a bill enacted in 018, directs the California Public Utilities Commission, in consultation with the California Energy Commission and California Independent System Operator, to undertake a number of activities to further develop policies related to microgrids. The legislation added Chapter 4.5, Sections 8370-8372 to California's Public Utilities Code.” https://www.cpuc.ca.gov/resiliencyandmicrogrids/

The current program under PG&E is referred to as the Microgrid Incentive Program (MIP) https://www.pge.com/mip

The MIP provides a pathway for Communities, Tribes and community-based organizations to apply for up to $18M in grant funding to develop community microgrids that serve at least two different customers meeting the requirements of being critical community facilities, to be powered by a new community microgrid project.

The OurEnergy team assessed a number of communities throughout the State to determine which cities may have high potential to meet the criteria of the program and determined that the City of Oroville is a candidate with a high probability of success. OurEnergy reached out to staff to present the opportunity and has been working with staff through the preliminary steps towards approval.

After further review the OurEnergy team determined that a meeting with PGE would be appropriate to explore the City's potential for funding. PGE has provided feedback that the City of Oroville meets the requirements of the program.

There are a series of grants provided through this program leading to the total of up to $18M per project. The first grant provides reimbursement of up to $25,000 for writing and submitting a competitive grant application. If the grant application scores well and is successful, then the City of Oroville may be awarded additional funding toward the development of a resiliency microgrid that will allow the continued operation of the City's critical facilities during disasters.

Once constructed, the City could own the system or contract with a third party to own and operate the system, and would receive all the energy benefits the system generated by offsetting a portion of the City's energy needs during normal 'blue sky" operations, and then could "island" those facilities within the microgrid area during times of PG&E grid outages. (Attachment 2). An island is a designated area that would remain energized in the event of a power outage due to a disaster. Attachment 2 is a map of the proposed "island" for Oroville which contains critical facilities that would remain energized. The facilities that have been identified are the Public Safety facility and the sewage treatment plant as the most critical to remain online. Also included in the request but in a second tier of critical consideration would be the Oroville Corporation Yard, hospital, and tribal health facilities. Lastly, the Convention Center and Oroville High School would be included as shelter locations and City Hall would also be included.

FISCAL IMPACT

If staff is directed by Council to proceed a non-refundable deposit of $5,000 to OurEnergy would be requested for a good faith display of interest.

RECOMMENDATION

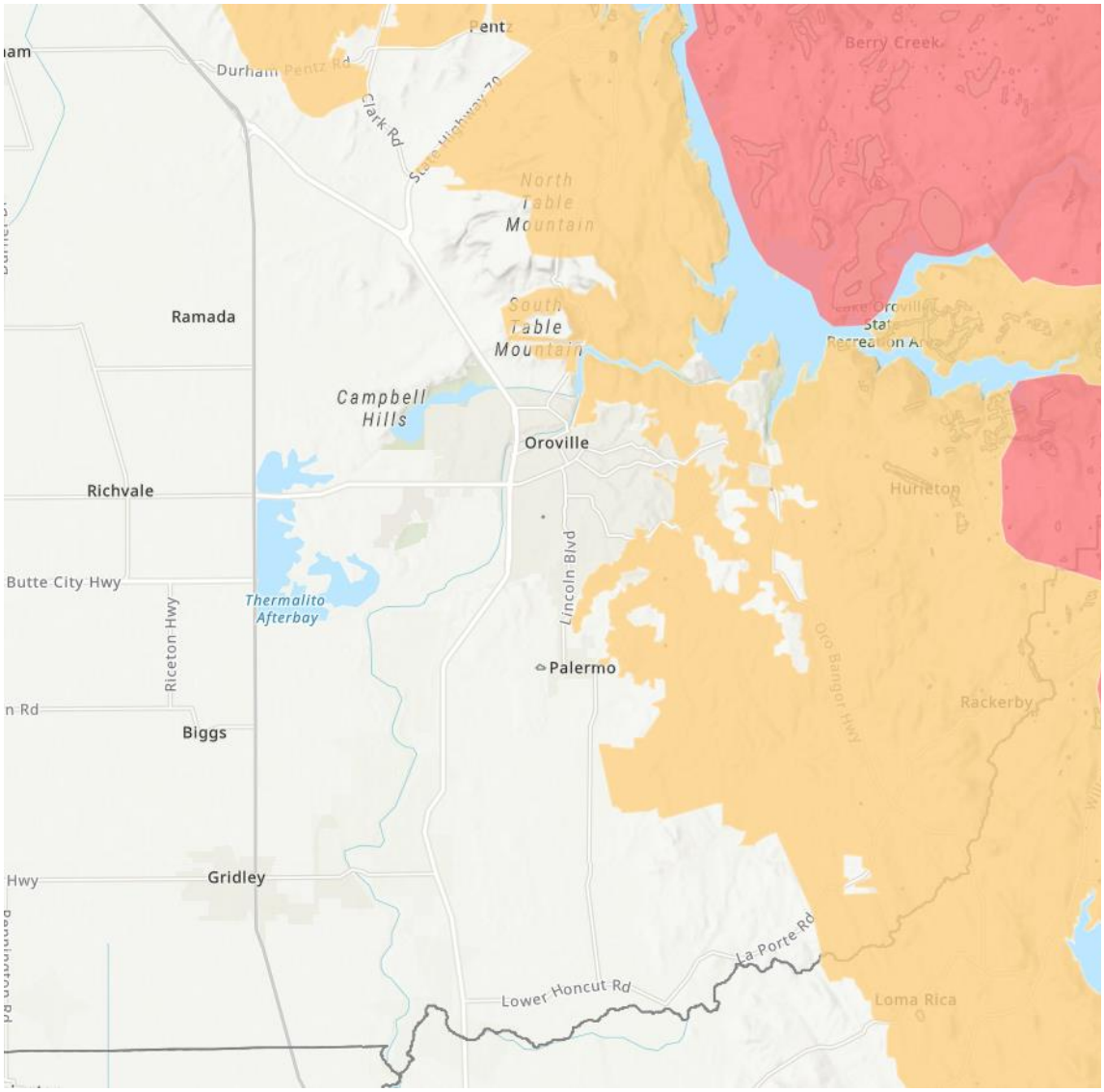
Receive information related to a resiliency microgrid and direct staff to return to Council on February 20, 2024, with an agreement between the City and OurEnergy to pursue funding through the PG&E Microgrid Incentive Program.

ATTACHMENTS

1. Screenshot of CPUC High-Fire zone as relates to Oroville
2. Map of identified location of resiliency microgrid (still under refinement)

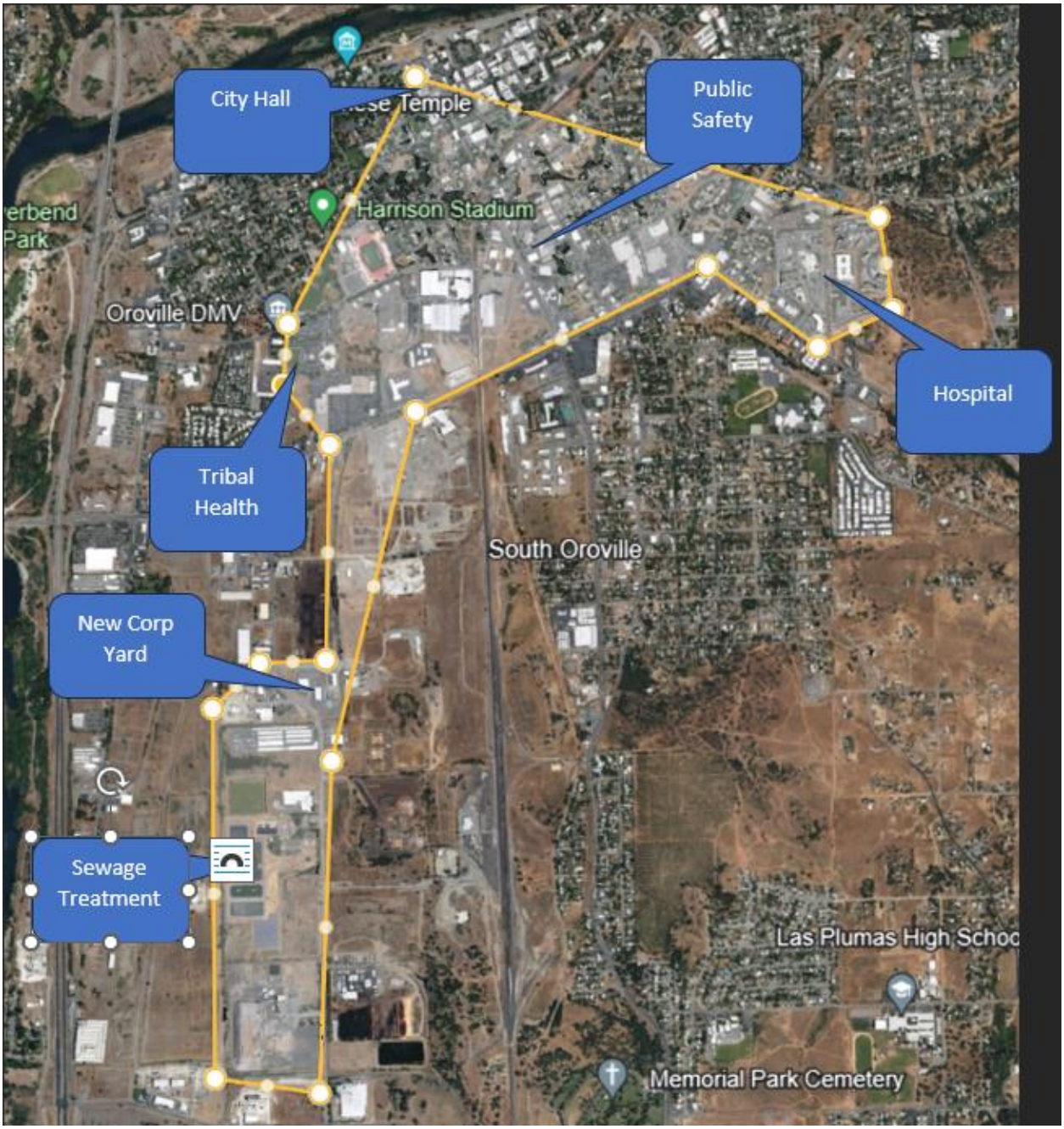
Attachment 1

Screenshot of CPUC High-Fire Thread District Map
https://capuc.maps.arcgis.com/apps/webappviewer/index.html?id=5bdb921d747a46929d9f00dbdb6d0fa2



Attachment 2

Draft Proposed "Island" encompassing critical facilities



CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND COUNCIL MEMBERS**

FROM: **PATRICK PIATT, COMMUNITY DEVELOPMENT DIRECTOR**

RE: **ADOPTION OF RESOLUTIONS FOR THE CITY'S PARTICIPATION IN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM (SCIP) AND BOND OPPORTUNITIES FOR LAND DEVELOPMENT (BOLD) PROGRAMS**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The Council consider adopting Resolutions to provide developers access to pooled bond opportunities which will provide low-cost financing for infrastructure improvements and impact fees.

DISCUSSION

In California there are two JPAs that issue pooled bonds which provide access to funding for developers whose projects are generally not large enough to justify a bond issuance. The two agencies are the California Statewide Communities Development Authority (CSCDA), that operates the Statewide Community Infrastructure Program (SCIP) and the California Municipal Finance Authority (CMFA) that operates the Bond Opportunities for Land Development (BOLD) program. The typical funding is between $500,000 and $5,000,000 for activities such as grading, new streets, curb, gutter, and sidewalks, and for impact fees.

The public hearing is the first step for eligibility along with adoption of resolutions, to enable developers to participate in the SCIP and BOLD programs. Once available to a community, a developer may apply to participate in an upcoming bond issuance, which occurs three times annually for the SCIP program and twice annually for the BOLD program.

The perspective participating agency (CSCDA or CMFA) performs all underwriting activities and requires that the developer own the land and have incurred expenses toward the development. The bonds are secured against the value of the land and the improvements. Before the improvements are accepted by the local jurisdiction, submittals are presented to city staff to verify that all work has been completed per the city standards and all obligations to contractors that performed work on those improvements have been satisfied.

An equal amount of the bond is apportioned to the purchasers of each parcel receiving the benefit of the improvements within the development and are paid back through the tax rolls. At

any time, a homeowner has the ability to buy out their portion of the bond by providing a lump sum payment.

The City would also have the option of participating in a bond issuance for public projects to provide street improvements such as paving, lighting, curb, gutter, and sidewalks as long as the public improvements will have a useful life of five-years or greater, and those community members that will benefit from the improvements have agreed to pay for the improvements as part of their annual property tax bill after approval through a public process.

At the end of each development project, time is allotted for staff to verify that all conditions have been met and all financial obligations to material suppliers and contractors that provided services for the installation of the public improvements have been met and no outstanding debt for those services remain.

FISCAL IMPACT

There are no fiscal impacts as a result of the City's participation in these programs other than some staff related time to review completion of projects before final payments are made.

RECOMMENDATION

Adopt the attached Resolutions to allow participation in the SCIP and BOLD programs and direct the City Administrator to complete the process for participation in the SCIP and BOLD program with their perspective JPAs.

ATTACHMENTS

1. Resolution to join the CSCDA/SCIP Program
2. Executed CSCDA JPA Agreement
3. Resolution to join the CMFA/BOLD Program
4. Executed CMFA JPA Agreement

OROVILLE CITY COUNCIL
RESOLUTION NO. 9218

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS AND SPECIAL TAXES AND TO FORM ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES DISTRICTS WITHIN THE TERRITORY OF THE CITY OF OROVILLE; EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF COMMUNITY FACILITIES DISTRICT FINANCINGS; APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Municipal Finance Authority (the "CMFA") is a joint exercise of powers authority, the members of which include numerous cities, counties and other local agencies in the State of California (the "State"); and

WHEREAS, City of Oroville (the "City") is currently a member of CMFA in good standing; and

WHEREAS, the CMFA has established the Bond Opportunities for Land Development Program (the "BOLD Program") to allow the financing of certain public facilities and/or development impact fees that finance public facilities (together, the "Improvements") levied by local agencies in the State through the levy of special taxes under the Mello-Roos Community Facilities Act of 1982, as amended (the "Act"); and

WHEREAS, the CMFA from time to time may be requested by owners of land within the City to utilize the BOLD Program for the financing of Improvements related to new development within the City, which Improvements will be owned and/or operated by the City; and

WHEREAS, the City desires to allow the owners of property to be developed within the City to participate in the BOLD Program ("Participating Developers") and to allow the CMFA to conduct proceedings under the Act to form community facilities districts ("CFDs") from time to time under the Act, to levy special taxes within such CFDs, and to issue bonds secured by such special taxes under the Act to finance the Improvements, provided that such Participating Developers vote in favor of the levy of such special taxes and bonded indebtedness; and

WHEREAS, property owners within the jurisdiction of the City may in the future elect to be Participating Developers upon obtaining approval of the CMFA, and the CMFA may conduct proceedings under the Act to form CFDs, levy special taxes within such CFDs and issue bonds secured by such special taxes to finance Improvements; and

WHEREAS, the City will not be responsible for the conduct of any proceedings under the Act for the formation of any CFD; the levy or collection of special taxes for any CFD or any required remedial action in the case of delinquencies in any special tax payments; or the issuance, sale or administration of any bonds issued in connection with the BOLD Program; and

WHEREAS, the City finds that the BOLD program offered by the CMFA can provide significant public benefits, and in conformance with Government Code Section 6586.5 relating to the issuance of bonds by a joint powers authority of which the City is a member, notice was published at least five days prior to the adoption of this resolution at a public hearing, which was duly conducted by the Oroville City Council concerning the significant public benefits of the BOLD Program and the bond financing of the Improvements from time to time; and

WHEREAS, bonds of BOLD Program CFDs are issued through CMFA, with no involvement of the City needed other than approving the use of the program and, prior to actual issuance of bonds, entering into an agreement to acquire the public facilities or fees to be paid for with the bond proceeds; CMFA authorizes and issues the bonds in their name and awards their sale to the bond underwriter (Piper Sandler & Co.) per the underwriter's credit requirements; CMFA's financing team provides the bond documentation and the Official Statement through its bond counsel and disclosure counsel, Jones Hall; and

WHEREAS, by participating in BOLD, the City will not be liable to repay the bonds issued by CMFA or the special taxes imposed on the participating properties and has no contractual relationship with bond owners or the bond trustee; and

WHEREAS, upon issuance of the bonds, proceeds are a funding source for direct payment of impact fees or to otherwise reimburse developer costs for public facilities associated with new development; once the bond issuance occurs, bond proceeds are available to be disbursed pursuant to a joint community facilities agreement and/or acquisition agreement between CMFA and the City for each project, the form of which is subject to approval by City staff, and the bond proceeds are held by a bond trustee or fiscal agent and become available to a Participating Developer as directed by the City for use on public capital improvements benefitting development in the City.

BE IT HEREBY RESOLVED by the City Council of the City of Oroville as follows:

Section 1. The use of the BOLD Program in connection with the financing of Improvements is hereby authorized and approved. The appropriate officials and staff are hereby authorized and directed to allow BOLD Program participation to be available to property owners who are subject to the payment of fees for new development and/or who are conditioned to install public improvements in connection with new development.

Section 2. The City hereby finds and declares that the issuance of bonds by the CMFA in connection with the BOLD Program will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs and the more efficient delivery of local agency services to residential and commercial development within the City.

Section 3. In connection with the issuance of bonds from time to time by the CFMA for the BOLD Program, a form of acquisition agreement, joint community facilities agreements or similar agreement will be required to be entered into, and the form of such agreement will be subject to approval by the City Administrator, Community Development Director or their respective designees. The Oroville City Council finds and declares that entrance into each such agreement will constitute a "joint community facilities agreement" for purposes of the Act and shall be beneficial to residents of the City. Any such agreement may include, directly or by reference, City standards, policies and procedures applicable to the financing of public facilities constructed by developers for acquisition by the City.

Section 4. The appropriate officials and staff of the City are hereby authorized and directed to allow and approve BOLD Program participation by requesting property owners that are required to install public improvements and/or the payment of fees in connection with new development in the City, including signing developer applications or other documents evidencing the official intent of the City to reimburse itself in connection with each project from the proceeds of tax-exempt obligations issued by CMFA as part of the BOLD Program, and to advise such owners requesting participation in BOLD that the City has approved the BOLD Program; provided, that the CMFA shall be responsible for providing applications and processing of documentation and related materials at its own expense.

Section 5. This Resolution shall take effect immediately upon its adoption. The City Clerk is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of CMFA.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

OROVILLE CITY COUNCIL
RESOLUTION NO. 9219

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OROVILLE AUTHORIZING THE CITY TO JOIN THE STATEWIDE COMMUNITY INFRASTRUCTURE PROGRAM; AUTHORIZING THE CALIFORNIA STATEWIDE COMMUNITIES DEVELOPMENT AUTHORITY TO ACCEPT APPLICATIONS FROM PROPERTY OWNERS, CONDUCT SPECIAL ASSESSMENT PROCEEDINGS AND LEVY ASSESSMENTS AND SPECIAL TAXES AND TO FORM ASSESSMENT DISTRICTS AND COMMUNITY FACILITIES DISTRICTS WITHIN THE TERRITORY OF THE CITY OF OROVILLE; EMBODYING A JOINT COMMUNITY FACILITIES AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF COMMUNITY FACILITIES DISTRICT FINANCINGS; APPROVING FORM OF ACQUISITION AGREEMENT FOR USE WHEN APPLICABLE; AND AUTHORIZING RELATED ACTIONS

WHEREAS, the California Statewide Communities Development Authority (the "Authority") is a joint exercise of powers authority, lawfully formed and operating within the State pursuant to an agreement (the "Joint Powers Agreement") entered into as of June 1, 1988 under the authority of Title 1, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code (the "JPA Law"), the members of which include numerous cities, counties and local agencies in the State of California, including the City of Oroville (the "City"); and

WHEREAS, the Joint Powers Agreement authorizes the Authority to undertake financing programs under any applicable provisions of State law to promote economic development, the stimulation of economic activity, and the increase of the tax base within the jurisdictional boundaries of its members (such members, the "Program Participants"); and

WHEREAS, as one of the Programs under the Joint Powers Agreement, the Authority has established the Statewide Community Infrastructure Program ("SCIP") to allow the financing of certain public capital improvements to be constructed by or on behalf of property owners for acquisition by the City or another public agency (the "Improvements") and improvements eligible for funding from certain development impact fees (the "Fees") levied in accordance with the Mitigation Fee Act (California Government Code Sections 66000 and following) and other authority providing for the levy of fees on new development to pay for public capital improvements (collectively, the "Fee Act") through the levy of special assessments pursuant to the Municipal Improvement Act of 1913 (Streets and Highways Code Sections 10000 and following) (the "1913 Act") and the issuance of improvement bonds (the "Local Obligations") under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) (the "1915 Act") upon the security of the unpaid special assessments; and

WHEREAS, the "Mello-Roos Community Facilities Act of 1982," being Chapter 2.5, Part 1, Division 2, Title 5 (beginning with Section 53311) of the Government Code of the State (the "Mello-Roos Act") is an applicable provision of State law available to, among other things, finance public improvements necessary to meet increased demands placed upon local agencies as a result of development; and

WHEREAS, the Authority also uses SCIP to allow the financing of Fees and Improvements through the levy of special taxes and the issuance of Local Obligations under the Mello-Roos Act upon the security of the special taxes; and

WHEREAS, the City desires to allow the owners of property being developed within its jurisdiction ("Participating Developers") to participate in SCIP and to allow the Authority to conduct proceedings and to form community facilities districts ("CFDs") and to issue Local Obligations under the Mello-Roos Act, as well as to conduct assessment proceedings to form assessment districts ("Assessment Districts") under the 1913 Act and to issue Local Obligations under the 1915 Act, to finance Fees levied on such properties and Improvements, provided that such Participating Developers voluntarily agree to participate and consent to the levy of such assessments or special taxes, as applicable; and

WHEREAS, from time to time when eligible property owners within the jurisdiction of the City elect to be Participating Developers, the Authority will conduct proceedings under the 1913 Act and the Mello-Roos Act and issue Local Obligations under the 1915 Act and the Mello-Roos Act to finance Fees payable by such property owners and Improvements and, at the conclusion of such proceedings, will levy assessments or special taxes, as applicable on such property within the territory of the City; and

WHEREAS, both the Authority and the City are "local agencies" under the Mello-Roos Act; and

WHEREAS, the Mello-Roos Act permits two or more local agencies to enter into a joint community facilities agreement to exercise any power authorized by the Mello-Roos Act; and

WHEREAS, the City desires to enter into such an agreement with the Authority to authorize the Authority to form CFDs from time to time within the territorial limits of the City to finance Fees payable by such property owners and Improvements; and

WHEREAS, there has been presented to this meeting a proposed form of Resolution of Intention to be adopted by the Authority in connection with assessment proceedings (the "ROI"), a copy of which is attached hereto as Exhibit A, and the territory within which assessments may be levied for SCIP (provided that each Participating Developer consents to such assessment) shall be coterminous with the City's official boundaries of record at the time of adoption of such ROI (the "Proposed Boundaries"), and reference is hereby made to such boundaries for the plat or map required to be included in this Resolution pursuant to Section 10104 of the Streets and Highways Code; and

WHEREAS, there has also been presented to this meeting a proposed form of Acquisition Agreement (the "Acquisition Agreement"), a copy of which is attached hereto as Exhibit B, to be approved as to form for use with respect to any Improvements to be constructed and installed by a Participating Developer and for which the Participating Developer requests acquisition financing as part of its SCIP application; and

WHEREAS, the City will not be responsible for the conduct of any proceedings; the levy or collection of assessments or special taxes or any required remedial action in the case of

delinquencies in such assessment or special tax payments; or the issuance, sale or administration of the Local Obligations or any other bonds issued in connection with SCIP; and

WHEREAS, pursuant to SCIP, the Authority periodically issues Local Obligations on behalf of the local agency participants in SCIP to provide financing for the Fees and Improvements and then concurrently issues its revenue bonds pursuant to the Marks-Roos Local Bond Pooling Act of 1985, consisting of Article 4 (commencing with Section 6584) of Chapter 5, Division 7, Title 1 of the California Government Code (the "Marks-Roos Act"), the proceeds of which are used to purchase the Local Obligations; and

WHEREAS, pursuant to Government Code Section 6586.5, notice was published at least five days prior to the adoption of this resolution at a public hearing, which was duly conducted by this City Council concerning the significant public benefits of SCIP and the financing of the Improvements and the public capital improvements to be paid for with the proceeds of the Fees;

BE IT HEREBY RESOLVED by the City Council of the City of Oroville as follows:

Section 1. This resolution shall constitute full "local approval," under Section 9 of the Joint Powers Agreement, and under the Authority's Local Goals and Policies (defined below), for the Authority to undertake and conduct proceedings in accordance herewith and under the Mello Roos Act to form CFDs with boundaries that shall be coterminous with the City's official boundaries of record at the time of such proceedings or any portion thereof (the "Proposed Boundaries"), and to authorize a special tax and to issue bonds with respect thereto; provided that the Participating Developers, who shall be the legal owners of such property at the time of formation of the CFD, execute a written consent to the levy of special tax in connection with SCIP by the Authority and execute a ballot in favor of the formation of such CFD and the Mello-Roos Act.

Section 2. The City hereby consents to the conduct of special assessment proceedings by the Authority in connection with SCIP pursuant to the 1913 Act and the issuance of Local Obligations under the 1915 Act on any property within the Proposed Boundaries; provided, that:

(1) Such proceedings are conducted pursuant to one or more Resolutions of Intention in substantially the form of the ROI; and

(2) The Participating Developers, who shall be the legal owners of such property at the time of the formation of the Assessment District, execute a written consent to the levy of assessments in connection with SCIP by the Authority and execute an assessment ballot in favor of such assessment in compliance with the requirements of Section 4 of Article XIIID of the State Constitution.

Section 3. The Joint Powers Agreement, together with the terms and provisions of this resolution, shall together constitute a separate joint community facilities agreement between the City and the Authority under the Mello-Roos Act for each CFD formed. As, without this resolution, the Authority has no power to finance City Fees and/or City Improvements (as such terms are defined herein) in proceedings under the Mello-Roos Act to form the CFD, adoption by

the Commission of the Authority of each Resolution of Intention to form a CFD under the Mello-Roos Act to finance City Fees and City Improvements shall constitute acceptance of the terms hereof by the Authority with respect to such CFD.

Section 4. This resolution and the agreement it embodies are determined to be beneficial to the residents/customers of the City and are in the best interests of the residents of the City, and of the future residents of the area within the proposed CFDs and Assessment Districts. The City hereby finds and declares that the issuance of revenue bonds by the Authority to purchase Local Obligations in connection with SCIP will provide significant public benefits, including without limitation, savings in effective interest rate, bond preparation, bond underwriting and bond issuance costs, and the more efficient delivery of local agency services to residential and commercial development within the City.

Section 5. The Authority has adopted Local Goals and Policies as required by Section 53312.7 of the Mello-Roos Act. The City approves the use of those Local Goals and Policies in connection with the formation of CFDs. The City hereby agrees that the Authority may act in lieu of the City under those Local Goals and Policies in forming and administering the CFDs.

Section 6. The Authority has prepared and will update from time to time the "SCIP Manual of Procedures" (the "Manual"), and the City will handle Fee revenues and funds for Improvements for properties participating in SCIP in accordance with the procedures set forth in the Manual.

Section 7. Pursuant to the Mello-Roos Act and this resolution, the Authority may conduct proceedings under the Mello-Roos Act to form the CFDs and to have such CFDs authorize the financing of any or all of the facilities and Fees set forth on Exhibit C, attached hereto. All of the facilities, whether to be financed directly or through Fees, shall be facilities that have an expected useful life of five years or longer and are facilities that the City or other local public agencies, as the case may be, are authorized by law to construct, own or operate, or to which they may contribute revenue. Exhibit C may be modified from time to time by written agreement between an authorized representative of the Authority and of the City. The facilities are referred to herein as the "Improvements," and the Improvements to be owned by the City are referred to as the "City Improvements." The Fees paid or to be paid to the City are referred to as the "City Fees."

Section 8. For Fees paid or to be paid to another agency by any particular CFD (an "Other Local Agency"), the Authority will obtain the written consent of that Other Local Agency before issuing Local Obligations to fund such Fees, as required by the Mello-Roos Act. For the Improvements to be owned by an Other Local Agency, the Authority will separately identify them in its proceedings, and will enter into a joint community facilities agreement with such Other Local Agency prior to issuing Local Obligations to finance such Improvements, as required by the Mello-Roos Act. Each joint community facilities agreement with each Other Local Agency will contain a provision that the Other Local Agency will provide indemnification to the City to the same extent that the City provides indemnification to the Other Local Agency under the terms of this resolution.

Section 9. At the time of formation of each CFD, the City will certify to the Commission of the Authority that all of the City Improvements including the improvements to be constructed or acquired with the proceeds of City Fees to be funded by such CFD are necessary to

meet increased demands placed upon the City as a result of development occurring or expected to occur within the proposed CFDs in the form attached hereto as Exhibit D. Any appropriate officer or staff of the City is authorized to execute and deliver such certificate in substantially the form attached hereto as Exhibit D, with such changes as such signatory shall approve. Joint community facilities agreements with other local agencies will each contain a requirement that each Other Local Agency will make identical certification in connection with respect to the Improvements to be owned by, and Fees paid or to be paid to, such Other Local Agency equivalent to that made by the City in this paragraph.

Section 10. The Authority will apply the special tax collections initially as required by the documents under which any Local Obligations are issued; and thereafter, to the extent not provided in the Local Obligations documents, may pay its own reasonable administrative costs incurred in the administration of the CFDs. The Authority will remit any special tax revenues from any particular CFD remaining after the final retirement of all related Local Obligations to the City and to the other local agencies in the proportions specified in the Authority's proceedings. The City will apply any such special tax revenues it receives for authorized City Improvements or City Fees and its own administrative costs only as permitted by the Mello-Roos Act. The joint community facilities agreements with each Other Local Agency must require the Other Local Agency to apply the special tax revenues they receive for their authorized Improvements and Fees under the CFDs and for their own related administrative costs only as permitted by the Mello-Roos Act.

Section 11. The Authority will administer the CFDs, including employing and paying all consultants, annually levying the special tax and all aspects of paying and administering the Local Obligations, and complying with all State and Federal requirements appertaining to the proceedings, including the requirements of the United States Internal Revenue Code. The City will cooperate fully with the Authority in respect of the requirements of the Internal Revenue Code and to the extent information is required of the City to enable the Authority to perform its disclosure and continuing disclosure obligations with respect to the Local Obligations and any revenue bonds, although the City will not participate in nor be considered to be a participant in the proceedings respecting the CFDs (other than as a party to the agreement embodied by this resolution) nor will the City be or be considered to be an issuer of the Local Obligations nor any revenue bonds. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Other Local Agency.

Section 12. In the event the Authority completes issuance and sale of Local Obligations, and Local Obligation proceeds become available to finance the Improvements, the Authority shall establish and maintain a special fund for each development project (the "Acquisition and Construction Fund"). The portion of Local Obligation proceeds which is intended to be utilized to finance the Improvements and Fees shall be deposited in the Acquisition and Construction Fund. The Acquisition and Construction Fund will be available both for City Improvements and City Fees and for the Improvements and Fees pertaining to each Other Local Agency. Subaccounts shall be created as necessary.

Section 13. As respects the Authority and each Other Local Agency, the City agrees to fully administer, and to take full governmental responsibility for, the construction or acquisition of the City Improvements and for the administration and expenditure of the City Fees including

but not limited to environmental review, approval of plans and specifications, bid requirements, performance and payment bond requirements, insurance requirements, contract and construction administration, staking, inspection, acquisition of necessary property interests in real or personal property, the holding back and administration of retention payments, punch list administration, and the Authority and each Other Local Agency shall have no responsibility in that regard. The City reserves the right, as respects each Participating Developer, to require the Participating Developer to contract with the City to assume any portion or all of this responsibility. The Authority is required to obtain provisions equivalent to this paragraph in the joint community facilities agreement with each Other Local Agency.

Section 14. The City agrees to indemnify and to hold the Authority, its other members, and its other members' officers, agents and employees, and each Other Local Agency and their officers, agents and employees (collectively, the "Indemnified Parties") harmless from any and all claims, suits and damages (including costs and reasonable attorneys' fees) arising out of the design, engineering, construction and installation of the City Improvements and the improvements to be financed or acquired with the City Fees. The City reserves the right, as respects each Participating Developer, to require the Participating Developer to assume by contract with the City any portion or all of this responsibility. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Other Local Agency naming the City and its officers, agents and employees as Indemnified Parties with respect to each Other Local Agency's respective Improvements and the improvements to be constructed or acquired with each Other Local Agency's Fees.

Section 15. As respects the Authority and each Other Local Agency, the City agrees – once the City Improvements are constructed according to the approved plans and specifications, and the City and the Participating Developer have put in place their agreed arrangements for the funding of maintenance of the City Improvements – to accept ownership of the City Improvements, to take maintenance responsibility for the City Improvements, and to indemnify and hold harmless the Indemnified Parties to the extent provided in the preceding paragraph from any and all claims, etc., arising out of the use and maintenance of the City Improvements. The City reserves the right, as respects the Participating Developer, to require the Participating Developer by contract with the City to assume any portion or all of this responsibility. The Authority is required to obtain a provision equivalent to this paragraph in all joint community facilities agreements with each Other Local Agency naming the City and its officers, agents and employees as Indemnified Parties.

Section 16. The City acknowledges the requirement of the Mello-Roos Act that if the City Improvements are not completed prior to the adoption by the Commission of the Authority of the Resolution of Formation of the CFD for each respective development project, the City Improvements must be constructed as if they had been constructed under the direction and supervision, or under the authority of, the City. The City acknowledges that this means all City Improvements must be constructed under contracts that require the payment of prevailing wages as required by Section 1720 and following of the Labor Code of the State of California. The Authority makes no representation that this requirement is the only applicable legal requirement in this regard. The City reserves the right, as respects the Participating Developer, to assign appropriate responsibility for compliance with this paragraph to the Participating Developer.

Section 17. The form of the Acquisition Agreement attached hereto as Exhibit B is hereby approved, and the [City Administrator] or [the City Administrator]'s designee (each, an "Authorized Officer") is authorized to execute, and deliver to the Participating Developer, the Acquisition Agreement on behalf of the City in substantially that form, with such changes as shall be approved by the Authorized Officer after consultation with the City Attorney and the Authority's bond counsel, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 18. After completion of the City Improvements and appropriate arrangements for the maintenance of the City Improvements, or any discrete portion thereof as provided in Section 53313.51 of the Mello-Roos Act and in the Acquisition Agreement, to the satisfaction of the City, and in conjunction with the City's acceptance thereof, acquisition of the City Improvements shall be undertaken as provided in the Acquisition Agreement.

Section 19. The City hereby consents to the formation of the CFDs in accordance with this resolution and consents to the assumption of jurisdiction by the Authority for the proceedings respecting the CFDs with the understanding that the Authority will hereafter take each and every step required for or suitable for consummation of the proceedings, the levy, collection and enforcement of the special tax, and the issuance, sale, delivery and administration of the Local Obligations, all at no cost to the City and without binding or obligating the City's general fund or taxing authority.

Section 20. The terms of the Agreement embodied by this resolution may be amended by a writing duly authorized, executed and delivered by the City and the Authority, except that no amendment may be made after the issuance of the Local Obligations by the Authority that would be detrimental to the interests of the bondholders without complying with all of the bondholder consent provisions for the amendment of the bond resolutions, bond indentures or like instruments governing the issuance, delivery and administration of all outstanding Local Obligations.

Section 21. Except to the extent of the indemnifications extended to each Other Local Agency in the Agreement embodied by this resolution, and the City's agreement to take responsibility for and ownership of the City Improvements, no person or entity, including the Participating Developer, shall be deemed to be a third party beneficiary of this resolution, and nothing in this resolution (either express or implied) is intended to confer upon any person or entity other than the Authority and the City (and their respective successors and assigns) any rights, remedies, obligations or liabilities under or by reason of this resolution.

Section 22. The City shall be identified as a third-party beneficiary of all joint community facilities agreements between the Authority and each Other Local Agency to the extent of the indemnification provisions and the provisions whereby each Other Local Agency agrees to take responsibility for and ownership of their Improvements.

Section 23. The appropriate officials and staff of the City are hereby authorized and directed to make SCIP applications available to all property owners who are subject to Fees for new development within the City and/or who are conditioned to install Improvements and to inform such owners of their option to participate in SCIP; provided, that the Authority shall be responsible for providing such applications and related materials at its own expense. The staff

persons listed on the attached Exhibit E, together with any other staff persons chosen by the [City Administrator] from time to time, are hereby designated as the contact persons for the Authority in connection with SCIP.

Section 24. The appropriate officials and staff of the City are hereby authorized and directed to execute and deliver such closing certificates, requisitions, agreements and related documents, including but not limited to such documents as may be required by bond counsel in connection with the participation in SCIP of any districts, authorities or other third-party entities entitled to own Improvements and/or to levy and collect fees on new development to pay for public capital improvements within the jurisdiction of the City, as are reasonably required by the Authority in accordance with the Manual to implement SCIP and to evidence compliance with the requirements of federal and state law in connection with the issuance by the Authority of the Local Obligations and any other bonds for SCIP. To that end, and pursuant to Treasury Regulations Section 1.150-2, the staff persons listed on Exhibit E, or other staff person acting in the same capacity for the City with respect to SCIP, are hereby authorized and designated to declare the official intent of the City with respect to the public capital improvements to be paid or reimbursed through participation in SCIP.

Section 25. This Resolution shall take effect immediately upon its adoption. The City Clerk of the City of Oroville is hereby authorized and directed to transmit a certified copy of this resolution to the Secretary of the Authority. This resolution shall remain in force with respect to any Assessment District and CFD formed until all Local Obligations have been retired and the authority to levy the special tax conferred by any CFD proceedings and to levy the assessment conferred by any assessment proceedings has ended or is otherwise terminated.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting held on February 6, 2024 by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

David Pittman, Mayor

APPROVED AS TO FORM:

Scott E. Huber, City Attorney

ATTEST:

Kayla Reaster, Assistant City Clerk

CITY OF OROVILLE

RESOLUTION NO. 4497

A RESOLUTION APPROVING, AUTHORIZING AND DIRECTING EXECUTION OF AN AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

WHEREAS, the City has expressed an interest in participating in an economic development financing program in conjunction with the parties to that certain Joint Exercise of Power Agreement Between Certain Counties in California Creating the California Counties Industrial Development Authority, dated as of November 18, 1987 (the "Original Agreement"); and

WHEREAS, due to broadened sponsorship for the programs (the "Programs") to be undertaken pursuant to the Original Agreement, it has been determined to amend and restate the Original Agreement pursuant to that certain Amended and Restated Joint Exercise of Powers Agreement Relating to the California Statewide Communities Development Authority, dated as of June 1, 1988 (the "Amended Agreement") to, inter alia, change the name of the authority established pursuant to Original Agreement and to modify the governance thereof; and

WHEREAS, there is now before this City Council the form of the Amended Agreement; and

WHEREAS, the City proposes to participate in the Programs and desires that certain projects to be located within the City be financed pursuant to the Programs and it is in the public interest and for the public benefit that the City do so; and

WHEREAS, the Amended Agreement has been filed with the City and the members of the City Council, with the aid of its staff, have reviewed said document.

NOW, THEREFORE, it is hereby RESOLVED, ORDERED AND DETERMINED, as follows:

SECTION 1. The Amended Agreement, Exhibit "A", is hereby approved and the Mayor, City Administrator and Director of Community Development are hereby authorized and directed to execute said document, with such changes, insertions and omissions as may be approved by such official, and the City Clerk or Deputy City Clerk is hereby authorized and directed to affix the City's seal to said document and to attest thereto.

SECTION 2. The Mayor, City Administrator, the City Clerk and Director of Community Development and all other proper officers and officials of the City are hereby authorized and directed to execute such other agreements, documents and certificates, and to perform such other acts and deeds, as may be necessary or convenient to effect the purposes of this Resolution and the transactions herein authorized.

SECTION 3. This Resolution shall take effect from and after its date of adoption.

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PASSED AND ADOPTED by the Oroville City Council at an adjourned meeting on May 15, 1990 by the following vote;

AYES: Diver, Harvey, Sears, Stevens, Thomas, Rossas, Roberts

NOES: None

ABSTAIN: None

ABSENT: None

Norman F. Roberts Jr.
Mayor

ATTEST:

Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement is made in the State of California, under the Constitution and laws of such state and is to be so construed.

This Agreement is the complete and exclusive statement of the agreement among the parties hereto, which supercedes and merges all prior proposals, understandings, and other agreements, including, without limitation, the Initial Agreement, whether oral, written, or implied in conduct, between and among the parties relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their official seals to be hereto affixed, as of the day and year first above written.

Program Participant:

City of Oroville

By _____

Name: Dennis D. Diver

Title: Mayor of the City of Oroville

[SEAL]

ATTEST:

By _____

Name: Ruth Ann Dabner

Title: Deputy City Clerk

JOINT EXERCISE OF POWERS AGREEMENT RELATING TO THE CALIFORNIA MUNICIPAL FINANCE AUTHORITY

THIS AGREEMENT, dated as of January 1, 2004, among the parties executing this Agreement (all such parties, except those which have withdrawn as provided herein, are referred to as the "Members" and those parties initially executing this Agreement are referred to as the "Initial Members"):

WITNESSETH

WHEREAS, pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (in effect as of the date hereof and as the same may from time to time be amended or supplemented, the "Joint Exercise of Powers Act"), two or more public agencies may by agreement jointly exercise any power common to the contracting parties; and

WHEREAS, each of the Members is a "public agency" as that term is defined in Section 6500 of the Joint Exercise of Powers Act; and

WHEREAS, each of the Members is empowered by law to promote economic, cultural and community development, including, without limitation, the promotion of opportunities for the creation or retention of employment, the stimulation of economic activity, the increase of the tax base, and the promotion of opportunities for education, cultural improvement and public health, safety and general welfare; and

WHEREAS, each of the Members may accomplish the purposes and objectives described in the preceding preamble by various means, including through making grants, loans or providing other financial assistance to governmental and nonprofit organizations; and

WHEREAS, each Member is also empowered by law to acquire and dispose of real property for a public purpose; and

WHEREAS, the Joint Exercise of Powers Act authorizes the Members to create a joint exercise of powers entity with the authority to exercise any powers common to the Members, as specified in this Agreement and to exercise the additional powers granted to it in the Joint Exercise of Powers Act and any other applicable provisions of the laws of the State of California; and

WHEREAS, a public entity established pursuant to the Joint Exercise of Powers Act is empowered to issue or execute bonds, notes, commercial paper or any other evidences of indebtedness, including leases or installment sale agreements or certificates of participation therein (herein "Bonds"), and to otherwise undertake financing programs under the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California to accomplish its public purposes; and

WHEREAS, the Members have determined to specifically authorize a public entity authorized pursuant to the Joint Exercise of Powers Act to issue Bonds pursuant to the Joint Exercise of Powers Act or other applicable provisions of the laws of the State of California; and

WHEREAS, it is the desire of the Members to use a public entity established pursuant to the Joint Exercise of Powers Act to undertake the financing and/or refinancing of projects of any nature, including, but not limited to, capital or working capital projects, insurance, liability or retirement programs or facilitating Members use of existing or new financial instruments and mechanisms; and

WHEREAS, it is further the intention of the Members that the projects undertaken will result in significant public benefits to the inhabitants of the jurisdictions of the Members; and

WHEREAS, by this Agreement, each Member desires to create and establish the "California Municipal Finance Authority" for the purposes set forth herein and to exercise the powers provided herein;

NOW, THEREFORE, the Members, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Purpose.

This Agreement is made pursuant to the provisions of the Joint Exercise of Powers Act. The purpose of this Agreement is to establish a public entity for the joint exercise of powers common to the Members and for the exercise of additional powers given to a joint powers entity under the Joint Powers Act or any other applicable law, including, but not limited to, the issuance of Bonds for any purpose or activity permitted under the Joint Exercise of Powers Act or any other applicable law. Such purpose will be accomplished and said power exercised in the manner hereinafter set forth.

Section 2. Term.

This Agreement shall become effective in accordance with Section 17 as of the date hereof and shall continue in full force and effect until such time as it is terminated in writing by all the Members; provided, however, that this Agreement shall not terminate or be terminated until all Bonds issued or caused to be issued by the Authority (defined below) shall no longer be outstanding under the terms of the indenture, trust agreement or other instrument pursuant to which such Bonds are issued, or unless a successor to the Authority assumes all of the Authority's debts, liabilities and obligations.

Section 3. Authority.

A. CREATION AND POWERS OF AUTHORITY.

Pursuant to the Joint Exercise of Powers Act, there is hereby created a public entity to be known as the "California Municipal Finance Authority" (the "Authority"), and said Authority shall be a public entity separate and apart from the Members. Its

debts, liabilities and obligations do not constitute debts, liabilities or obligations of any Members.

B. BOARD.

The Authority shall be administered by the Board of Directors (the "Board," or the "Directors" and each a "Director") of the California Foundation for Stronger Communities, a nonprofit public benefit corporation organized under the laws of the State of California (the "Foundation"), with each such Director serving in his or her individual capacity as a Director of the Board. The Board shall be the administering agency of this Agreement and, as such, shall be vested with the powers set forth herein, and shall administer this Agreement in accordance with the purposes and functions provided herein. The number of Directors, the appointment of Directors, alternates and successors, their respective terms of office, and all other provisions relating to the qualification and office of the Directors shall be as provided in the Articles and Bylaws of the Foundation, or by resolution of the Board adopted in accordance with the Bylaws of the Foundation.

All references in this Agreement to any Director shall be deemed to refer to and include the applicable alternate Director, if any, when so acting in place of a regularly appointed Director.

Directors may receive reasonable compensation for serving as such, and shall be entitled to reimbursement for any expenses actually incurred in connection with serving as a Director, if the Board shall determine that such expenses shall be reimbursed and there are unencumbered funds available for such purpose.

The Foundation may be removed as administering agent hereunder and replaced at any time by amendment of this Agreement approved as provided in Section 16; provided that a successor administering agent of this Agreement has been appointed and accepted its duties and responsibilities under this Agreement.

C. OFFICERS; DUTIES; OFFICIAL BONDS.

The officers of the Authority shall be the Chair, Vice-Chair, Secretary and Treasurer (defined below). The Board, in its capacity as administering agent of this Agreement, shall elect a Chair, a Vice-Chair, and a Secretary of the Authority from among Directors to serve until such officer is re-elected or a successor to such office is elected by the Board. The Board shall appoint one or more of its officers or employees to serve as treasurer, auditor, and controller of the Authority (the "Treasurer") pursuant to Section 6505.6 of the Joint Exercise of Powers Act to serve until such officer is re-elected or a successor to such office is elected by the Board.

Subject to the applicable provisions of any resolution, indenture, trust agreement or other instrument or proceeding authorizing or securing Bonds (each such resolution, indenture, trust agreement, instrument and proceeding being herein referred to as an "Indenture") providing for a trustee or other fiscal agent, and except as may otherwise be

specified by resolution of the Board, the Treasurer is designated as the depositary of the Authority to have custody of all money of the Authority, from whatever source derived and shall have the powers, duties and responsibilities specified in Sections 6505, 6505.5 and 6509.5 of the Joint Exercise of Powers Act.

The Treasurer of the Authority is designated as the public officer or person who has charge of, handles, or has access to any property of the Authority, and such officer shall file an official bond with the Secretary of the Authority in the amount specified by resolution of the Board but in no event less than $1,000.

The Board shall have the power to appoint such other officers and employees as it may deem necessary and to retain independent counsel, consultants and accountants.

The Board shall have the power, by resolution, to the extent permitted by the Joint Exercise of Power Act or any other applicable law, to delegate any of its functions to one or more of the Directors or officers, employees or agents of the Authority and to cause any of said Directors, officers, employees or agents to take any actions and execute any documents or instruments for and in the name and on behalf of the Board or the Authority.

D. MEETINGS OF THE BOARD.

(1) Ralph M. Brown Act.

All meetings of the Board, including, without limitation, regular, adjourned regular, special, and adjourned special meetings shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the Government Code of the State of California), or any successor legislation hereinafter enacted (the "Brown Act").

(2) Regular Meetings.

The Board shall provide for its regular meetings; provided, however, it shall hold at least one regular meeting each year. The date, hour and place of the holding of the regular meetings shall be fixed by resolution of the Board. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(3) Special Meetings.

Special meetings of the Board may be called in accordance with the provisions of Section 54956 of the Government Code of the State of California. To the extent permitted by the Brown Act, such meetings may be held by telephone conference.

(4) Minutes.

The Secretary of the Authority shall cause to be kept minutes of the regular, adjourned regular, special, and adjourned special meetings of the Board and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Director.

(5) Quorum.

A majority of the Board shall constitute a quorum for the transaction of business. No action may be taken by the Board except upon the affirmative vote of a majority of the Directors constituting a quorum, except that less than a quorum may adjourn a meeting to another time and place.

E. RULES AND REGULATIONS.

The Authority may adopt, from time to time, by resolution of the Board such rules and regulations for the conduct of its meetings and affairs as may be required.

Section 4. Powers.

The Authority shall have the power, in its own name, to exercise the common powers of the Members and to exercise all additional powers given to a joint powers entity under any of the laws of the State of California, including, but not limited to, the Joint Exercise of Powers Act, for any purpose authorized under this Agreement. Such powers shall include the common powers specified in this Agreement and may be exercised in the manner and according to the method provided in this Agreement. The Authority is hereby authorized to do all acts necessary for the exercise of such power, including, but not limited to, any of all of the following: to make and enter into contracts; to employ agents and employees; to acquire, construct, provide for maintenance and operation of, or maintain and operate, any buildings, works or improvements; to acquire, hold or dispose of property wherever located; to incur debts, liabilities or obligations; to receive gifts, contributions and donations of property, funds, services, and other forms of assistance from person, firms, corporations and any governmental entity; to sue and be sued in its own name; to make grants, loans or provide other financial assistance to governmental and nonprofit organizations (e.g., the Members or the Foundation) to accomplish any of its purposes; and generally to do any and all things necessary or convenient to accomplish its purposes.

Without limiting the generality of the foregoing, the Authority may issue or cause to be issued Bonds, and pledge any property or revenues as security to the extent permitted under the Joint Exercise of Powers Act, or any other applicable provision of law; provided, however, the Authority shall not issue Bonds with respect to any project located in the jurisdiction of one or more Members unless the governing body of any such Member, or its duly authorized representative, shall approve, conditionally or unconditionally, the project, including the issuance of Bonds therefor. Such approval may be evidenced by resolution, certificate, order, report or such other means of written approval of such project as may be selected by the Member (or its authorized representative) whose approval is required. No such approval shall be required in

connection with Bonds that refund Bonds previously issued by the Authority and approved by the governing board of a Member.

The manner in which the Authority shall exercise its powers and perform its duties is and shall be subject to the restrictions upon the manner in which a California general law city could exercise such powers and perform such duties. The manner in which the Authority shall exercise its powers and perform its duties shall not be subject to any restrictions applicable to the manner in which any other public agency could exercise such powers or perform such duties, whether such agency is a party to this Agreement or not.

Section 5. Fiscal Year.

For the purposes of this Agreement, the term "Fiscal Year" shall mean the fiscal year as established from time to time by resolution of the Board, being, at the date of this Agreement, the period from July 1 to and including the following June 30, except for the first Fiscal Year which shall be the period from the date of this Agreement to June 30, 2004.

Section 6. Disposition of Assets.

At the end of the term hereof or upon the earlier termination of this Agreement as set forth in Section 2, after payment of all expenses and liabilities of the Authority, all property of the Authority both real and personal shall automatically vest in the Members in the manner and amount determined by the Board in its sole discretion and shall thereafter remain the sole property of the Members; provided, however, that any surplus money on hand shall be returned in proportion to the contributions made by the Members.

Section 7. Bonds.

From time to time the Authority shall issue Bonds, in one or more series, for the purpose of exercising its powers and raising the funds necessary to carry out its purposes under this Agreement.

The services of bond counsel, financing consultants and other consultants and advisors working on the projects and/or their financing shall be used by the Authority. The expenses of the Board shall be paid from the proceeds of the Bonds or any other unencumbered funds of the Authority available for such purpose.

Section 8. Bonds Only Limited and Special Obligations of Authority.

The Bonds, together with the interest and premium, if any, thereon, shall not be deemed to constitute a debt of any Member or pledge of the faith and credit of the Members or the Authority. The Bonds shall be only special obligations of the Authority, and the Authority shall under no circumstances be obligated to pay the Bonds except from revenues and other funds pledged therefor. Neither the Members nor the Authority shall be obligated to pay the principal of, premium, if any, or interest on the Bonds, or other costs incidental thereto, except from the revenues and funds pledged therefor, and neither the faith and credit nor the taxing power of the Members nor the faith and credit of the Authority shall be pledged to the payment of the

principal of, premium, if any, or interest on the Bonds nor shall the Members or the Authority in any manner be obligated to make any appropriation for such payment.

No covenant or agreement contained in any Bond or related document shall be deemed to be a covenant or agreement of any Director, or any officer, employee or agent of the Authority in his or her individual capacity and neither the Board of the Authority nor any Director or officer thereof executing the Bonds shall be liable personally on any Bond or be subject to any personal liability or accountability by reason of the issuance of any Bonds.

Section 9. Accounts and Reports.

All funds of the Authority shall be strictly accounted for. The Authority shall establish and maintain such funds and accounts as may be required by good accounting practice and by any provision of any Indenture (to the extent such duties are not assigned to a trustee of Bonds). The books and records of the Authority shall be open to inspection at all reasonable times by each Member.

The Treasurer of the Authority shall cause an independent audit to be made of the books of accounts and financial records of the Authority by a certified public accountant or public accountant in compliance with the provisions of Section 6505 of the Joint Exercise of Powers Act. In each case the minimum requirements of the audit shall be those prescribed by the State Controller for special districts under Section 26909 of the Government Code of the State of California and shall conform to generally accepted auditing standards. When such an audit of accounts and records is made by a certified public accountant or public accountant, a report thereof shall be filed as a public record with each Member and also with the county auditor of each county in which a Member is located; provided, however, that to the extent permitted by law, the Authority may, instead of filing such report with each Member and such county auditor, elect to post such report as a public record electronically on a website designated by the Authority. Such report if made shall be filed within 12 months of the end of the Fiscal Year or Years under examination.

The Treasurer is hereby directed to report in writing on the first day of July, October, January, and April of each year to the Board and the Members which report shall describe the amount of money held by the Treasurer for the Authority, the amount of receipts since the last such report, and the amount paid out since the last such report (which may exclude amounts held by a trustee or other fiduciary in connection with any Bonds to the extent that such trustee or other fiduciary provided regular reports covering such amounts.)

Any costs of the audit, including contracts with, or employment of, certified public accountants or public accountants in making an audit pursuant to this Section, shall be borne by the Authority and shall be a charge against any unencumbered funds of the Authority available for that purpose.

In any Fiscal Year the Board may, by resolution adopted by unanimous vote, replace the annual special audit with an audit covering a two-year period.

Section 10. Funds.

Subject to the applicable provisions of any Indenture, which may provide for a trustee or other fiduciary to receive, have custody of and disburse Authority funds, the Treasurer of the Authority shall receive, have the custody of and disburse Authority funds pursuant to the accounting procedures developed under Sections 3.C and 9, and shall make the disbursements required by this Agreement or otherwise necessary to carry out any of the provisions of purposes of this Agreement.

Section 11. Notices.

Notices and other communications hereunder to the Members shall be sufficient if delivered to the clerk of the governing body of each Member; provided, however, that to the extent permitted by law, the Authority may, provide notices and other communications and postings electronically (including, without limitation, through email or by posting to a website).

Section 12. Additional Members/Withdrawal of Members.

Qualifying public agencies may be added as parties to this Agreement and become Members upon: (1) the filing by such public agency with the Authority of an executed counterpart of this Agreement, together with a copy of the resolution of the governing body of such public agency approving this Agreement and the execution and delivery hereof; and (2) adoption of a resolution of the Board approving the addition of such public agency as a Member. Upon satisfaction of such conditions, the Board shall file such executed counterpart of this Agreement as an amendment hereto, effective upon such filing.

A Member may withdraw from this Agreement upon written notice to the Board; provided, however, that no such withdrawal shall result in the dissolution of the Authority so long as any Bonds remain outstanding. Any such withdrawal shall be effective only upon receipt of the notice of withdrawal by the Board which shall acknowledge receipt of such notice of withdrawal in writing and shall file such notice as an amendment to this Agreement effective upon such filing.

Section 13. Indemnification.

To the full extent permitted by law, the Board may authorize indemnification by the Authority of any person who is or was a Director or an officer, employee of other agent of the Authority, and who was or is a party or is threatened to be made a party to a proceeding by reason of the fact that such person is or was such a Director or an officer, employee or other agent of the Authority, against expenses, including attorneys fees, judgments, fines, settlements and other amounts actually and reasonably incurred in connection with such proceeding, if such person acted in good faith in a manner such person reasonably believed to be in the best interests of the Authority and, in the case of a criminal proceeding, had no reasonable cause to believe the conduct of such person was unlawful and, in the case of an action by or in the right of the Authority, acted with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

Section 14. Contributions and Advances.

Contributions or advances of public funds and of the use of personnel, equipment or property may be made to the Authority by the Members for any of the purposes of this Agreement. Payment of public funds may be made to defray the cost of any such contribution or advance. Any such advance may be made subject to repayment, and in such case shall be repaid, in the manner agreed upon by the Authority and the Member making such advance at the time of such advance. It is mutually understood and agreed to that no Member has any obligation to make advances or contributions to the Authority to provide for the costs and expenses of administration of the Authority, even though any Member may do so. The Members understand and agree that a portion of the funds of the Authority that otherwise may be allocated or distributed to the Members may instead be used to make grants, loans or provide other financial assistance to governmental units and nonprofit organizations (e.g., the Foundation) to accomplish any of the governmental unit's or nonprofit organization's purposes.

Section 15. Immunities.

All of the privileges and immunities from liabilities, exemptions from laws, ordinances and rules, and other benefits which apply to the activity of officers, agents or employees of Members when performing their respective functions within the territorial limits of their respective public agencies, shall apply to the same degree and extent to the Directors, officers, employees, agents or other representatives of the Authority while engaged in the performance of any of their functions or duties under the provisions of this Agreement.

Section 16. Amendments.

Except as provided in Section 12 above, this Agreement shall not be amended, modified, or altered, unless the negative consent of each of the Members is obtained. To obtain the negative consent of each of the Members, the following negative consent procedure shall be followed: (a) the Authority shall provide each Member with a notice at least sixty (60) days prior to the date such proposed amendment is to become effective explaining the nature of such proposed amendment and this negative consent procedure; (b) the Authority shall provide each Member who did not respond a reminder notice with a notice at least thirty (30) days prior to the date such proposed amendment is to become effective; and (c) if no Member objects to the proposed amendment in writing within sixty (60) days after the initial notice, the proposed amendment shall become effective with respect to all Members.

Section 17. Effectiveness.

This Agreement shall become effective and be in full force and effect and a legal, valid and binding obligation of each of the Members on the date that the Board shall have received from two of the Initial Members an executed counterpart of this Agreement, together with a certified copy of a resolution of the governing body of each such Initial Member approving this Agreement and the execution and delivery hereof.

Section 18. Partial Invalidity.

If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants and conditions of this Agreement shall not be affected thereby, and shall be valid and enforceable to the fullest extent permitted by law.

Section 19. Successors.

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto. Except to the extent expressly provided herein, no Member may assign any right or obligation hereunder without the consent of the other Members.

Section 20. Miscellaneous.

This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

The section headings herein are for convenience only and are not to be construed as modifying or governing the language in the section referred to.

Wherever in this Agreement any consent or approval is required, the same shall not be unreasonably withheld.

This Agreement shall be governed under the laws of the State of California.

This Agreement is the complete and exclusive statement of the agreement among the Members, which supercedes and merges all prior proposals, understandings, and other agreements, whether oral, written, or implied in conduct, between and among the Members relating to the subject matter of this Agreement.

IN WITNESS WHEREOF, the City of Oroville has caused this Agreement to be executed and attested by its duly authorized representatives as of the 17 day of November, 2020.

Member:

CITY OF OROVILLE

By _____
Name: Chuck Reynolds
Title: Mayor

ATTEST:

By _____
Name: Jackie Glover
Title: Assistant City Clerk

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND CITY COUNCIL MEMBERS**

FROM: **AMY BERGSTRAND, DIRECTOR BUSINESS ASSISTANCE/HOUSING DEVELOPMENT**

RE: **MODIFICATIONS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) OWNER-OCCUPIED REHABILITATION LOAN PROGRAM GUIDELINES**

DATE: **FEBRUARY 6, 2024**

SUMMARY

The Council will conduct a public hearing to solicit comments regarding requested modifications to the CDBG Home Rehabilitation Loan Program Guidelines.

DISCUSSION

Staff seeking direction from City Council regarding modifications to the CDBG Owner-occupied Rehabilitation Loan Program Guidelines that have been requested by the Housing Loan Advisory Committee. The changes include changing the interest rate of all new loans for the next five years from three percent (3%) to zero percent (0%) and changing the type of repayment options. After the five-year term, staff and the Loan Advisory Committee will decide if the 0% interest should remain in effect.

Currently the program has three repayment options that are determined by the applicant's housing expense ratio and ability to pay. These are a fully amortized loan, interest only, or deferred for five years, whereafter staff will re-evaluate the homeowner's income and ability to make payments. Staff recommends two repayment options; fully amortized or deferred until title transfer.

FISCAL IMPACT

The potential loss of revenue from the accrued interest that would otherwise return the program income fund at payoff or transfer that allows the City to assist additional eligible applicants and/or programs. Additionally, these funds pay for up to 8% of the received program income that can be used to pay staff time to administer the programs and loan portfolio management.

RECOMMENDATION

Adopt Resolution No. xxxx - A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING MODIFICATIONS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT HOME REHABILITATION PROGRAM GUIDELINES;

Or

Keep loan programs at 3%, with two repayment options; fully amortized or deferred until title transfer.

ATTACHMENTS

A- Resolution No. XXXX
B- CDBG Home Rehabilitation Loan Program Guidelines.

CITY OF OROVILLE
RESOLUTION NO. 9217

A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING MODIFICATIONS TO THE COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) OWNER-OCCUPIED REHABILITATION LOAN PROGRAM GUIDELINES

BE IT HEREBY RESOLVED by the Oroville City Council as follows:

1. The Oroville City Council hereby authorizes the modification to the Community Development Block Grant Home Rehabilitation Loan Program. A copy of the changes to the CDBG Home Rehabilitation Loan Program Guidelines has been attached hereto as Exhibit "A".

2. The City Clerk shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the Oroville City Council at a regular meeting on February 6, 2024, by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman

NOES: None

ABSTAIN: None

ABSENT: None

_____
David Pittman, Mayor

APPROVED AS TO FORM:

_____
Scott E. Huber, City Attorney

ATTEST:

_____
Kayla Reaster, Assistant City Clerk

City of Oroville

Community Development Block Grant

OWNER-OCCUPIED REHABILITATION PROGRAM GUIDELINES

Approved by February 29, 2024

Table of Contents

City of Oroville

COMMUNITY DEVELOPMENT BLOCK GRANT

HOUSING REHABILITATION PROGRAM GUIDELINES

The *City of Oroville* Housing Rehabilitation Program, (here after called “Lender”), funded by State Community Development Block Grant (CDBG) Program, is designed to expand the supply of decent, safe, sanitary and affordable housing; to correct health and safety hazards in deteriorated housing; and to extend the useful life of existing housing units. Loans and grants are available to achieve cost-effective repairs for low-income owner-occupied homes.

FAIR HOUSING

This program will be implemented in ways consistent with the Lender’s commitment to Fair Housing. No person shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Community Development Block Grant (CDBG) funds on the basis of their religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (children), physical or mental disability, sexual orientation, or other arbitrary cause.

TEMPORARY RELOCATION

The program excludes owner-investor properties by this reference and therefore Relocation benefits to tenants is excluded from the program. Owner occupants are not eligible for temporary relocation benefits, unless health and safety threats are determined to exist by the project coordinator/construction supervisor.

CONFLICT OF INTEREST

No member of the governing body of the locality and no other official, employee, or agent of the City of Oroville government who exercises policy, decision-making functions, or responsibilities in connection with the planning and implementation of the

program shall directly or indirectly be eligible for this program, unless the application for assistance has been reviewed and approved according to applicable California Department of Housing and Community Development (HCD) guidelines. This ineligibility shall continue for one year after an individual's relationship with the *City of Oroville* ends.

A contractor with a vested interest in the property cannot bid on a rehabilitation job. Owner/builder construction projects will not be allowed under this program. All work must be completed by a licensed contractor.

APPLICANT ELIGIBILITY

- Owner-Occupied Applicant
- Must be existing homeowner and occupy the residence. Proof of occupancy will be required.

INCOME ELIGIBILITY

Income eligibility is based on the occupant's gross annual income must be less than 80 percent of the area's median income. These limits can be located on the HCD website and are updated annually.

Owner Occupant

To be eligible, household income must be equal to, or less than, the applicable HCD income guidelines. Owner will be required to provide income documentation as detailed in the "Annual Household Income Definition/Income Limits" attached at the end of these Guidelines.

PROPERTY ELIGIBILITY

Location

Units to be rehabilitated must be located within current *city limits of Oroville.*

Property Taxes

Property Taxes must be paid and current in order to be eligible for a rehabilitation loan. No funds may be used to pay property taxes. If the taxes are not current, the

applicant must show the payments have been made and present evidence to be eligible.

Evidence of Ownership

"Ownership" means any of the following interests in residential real property:

- Fee simple interest
- 99-year leasehold interest in the property
- Ownership or membership in a condominium, cooperative or mutual housing project.

Property Types

To be eligible, the housing must be the primary residence of income-eligible occupants.

Eligible property types of residence can include:

- Multiple housing units where at least one unit is occupied by income-eligible homeowner or tenants.
- Traditional single-family housing, condominiums, manufactured or mobile homes.
- Structures may be either attached or detached.

*If CDBG funds are used to assist units in a two-to-four-unit property, where some of the units are occupied by ineligible tenants, then CDBG funds can only be used on the LMI occupied units.

REHABILITATION STANDARDS

All repair work will meet Uniform Building Code standards. The priority will be the elimination of health and safety hazards. Additionally, all repair work will comply with any special design or construction standards established by the City of Oroville to preserve historic buildings. Rehabilitation work should incorporate energy efficient/green building materials.

In the case of multi-family units in which the owner occupant is income eligible, but a tenant is not, the rehabilitation shall be limited to those that benefit the overall structure (roof, exterior changes) and the interior changes for the income eligible household only. The priority will be the elimination of health and safety hazards and code compliance.

PROPERTY IMPROVEMENTS

The goal of the Lender's rehabilitation program is to remove deficiencies, improve energy efficiency, remediate lead-based paint, extend the useful life of the property and/or comply with any special design or construction standards established by the Lender to preserve historic buildings. All improvements must be physically attached to the property and permanent in nature. General property improvements should be limited to 15 percent of the rehabilitation loan amount. Luxury items are not permitted. If building materials that are normally considered "luxury items" are necessary due to a medical condition of a household member or for reasons of accessibility, the Lender may approve the use of such materials.

Examples of eligible improvements include foundation construction and repair, electrical repair or rewiring, plumbing repair, roof repair or replacement, heating system installation and repair, window and door replacement and repair, repair of structurally significant damaged wood, and floor coverings where it poses a hazard and water/sewer laterals.

Examples of non-eligible improvements include swimming pools, patios and patio covers, room additions that are for leisure, landscaping upgrades, hot-tubs, custom cabinets and high-end appliances.

Examples of general property improvements include improvements that bring the property into compliance with local zoning requirements, fence repairs, exterior paint or items to improve the appearance of the property but are not health and safety items.

LEAD-BASED PAINT

Program participants rehabilitating homes constructed prior to January 1, 1978 must be provided with the proper disclosure notification concerning lead-based paint (LBP) hazards. Whenever pre-1978 houses are rehabilitated under CDBG, please refer to Title 24 Code of Federal Regulations (24 CFR) §570.608 , Lead-based paint for guidance. The costs associated with meeting these requirements may be eligible to be paid for with CDBG funds, if available.

MANUFACTURED HOUSING UNIT/MOBILE HOME REHABILITATION

CDBG funds may be used for the rehabilitation of an owner-occupied mobile home if they are considered part of the community's permanent housing stock.

RECONSTRUCTION

CDBG funds may be used to demolish and reconstruct an income eligible-owned and occupied residential structures. Reconstruction is defined as the demolition and construction of a structure. The City of Oroville must document that the reconstruction costs are less than newly constructed housing and that the estimated cost of the reconstructed housing (including demolition, site preparation and temporary relocation) is less than the fair market value of the reconstructed housing and land combined. All units will be replaced on a like-for-like basis. Expansions will only be allowed if overcrowding exists.

RESIDENCY REQUIREMENTS

Owner Occupant

Owner occupants will be required to submit to the Lender between *January 1 and 31st* of each year for the term of the loan:

1. *Proof of occupancy in the form of a copy of a current utility bill.*
2. Statement of unit's continued use as a residence.
3. Declaration that other title holders do not reside on the premises, if applicable.

4. Insurance and taxes are paid current.

In the event that an owner occupant sells, transfers title, or discontinues residence in the rehabilitated property, the loan is due and payable, unless one of the following applies:

1. If the owner occupant sells or otherwise transfers title of the property to a qualified income household, the Lender may consider refinancing the loan balance and subordinating the loan and continuing all or part of the lien as a Deferred Payment Loan.
2. If the owner occupant dies, and if the heir to the property lives in the house and is income eligible, the heir may be permitted, upon approval of the Lender to refinance the loan at the rate and terms the heir qualifies for under current participation guidelines.
3. If the owner occupant dies and the heir is not income eligible, the loan is due and payable.
4. If an owner occupant wants to convert full use of the rehabilitated property to any commercial or nonresidential use, the loan is due and payable. Refer to “Loan Servicing Policies and Procedures” attached at the end of these Guidelines.

FINANCING

Maximum Loan Amount

The maximum loan amount is $75,000. The Loan Advisory Committee (LAC) has the authority to approve outside the maximum loan amount if the cost to bring the home up to Health and Safety Standards is greater.

The loan amount may include:

- construction contract (the accepted bid price for the cost of materials and labor);
- construction contingency;
- drafting and engineering fees, if any;
- appraisal and termite inspection charges;
- credit report review fees;
- permit fees and related building fees,
- site preparation for replacement housing;
- pre-project inspections,
- lead remediation/work,
- escrow, closing and recording fees; title report and title insurance, title updates.

CDBG funds may not be used to pay for property taxes.

Maximum Loan-to-Value Ratio

The maximum encumbrance is limited to 100 percent of the property's after-rehabilitation value (determined by after rehab appraisal) or less as determined by the Lender's policy.

Loan Security

1. A Deed of Trust and Promissory Note will secure loans. Also, a Loan Agreement and Regulatory Agreement will be required. A mobile home on a permanent foundation will require a Statement of Lien, promissory note, loan agreement and regulatory agreement.

2. All owners listed on the benefiting property title are required to sign the Deed of Trust, Promissory Note, rehabilitation contract documents, and other related loan documents, whether or not they reside on the property.

3. All Lender loans, which are not in first position on title, will require a Request for Notice of Default to be recorded as part of the transaction.

Financing Terms

Owner-Occupied Property

Financing terms are made flexible to allow for maximum affordability. There are two types of financing available.

To the extent that an amortized loan payment will not cause housing costs to exceed 35 percent of gross monthly income, rehabilitation costs will ordinarily be financed *as a 0 percent simple interest, fully amortized loan.*

In the event the household cannot afford a loan payment, the rehabilitation loan will be financed *at 0 percent simple interest with payments, deferred until title transfer.*

LOAN REQUIREMENTS

Loan Documentation

The Lender shall determine the loan amount based on the consideration of:

1. The selected bid contractual amount
2. 10 percent contingency
3. Plan or drawing preparation, if any
4. Pre-project inspections (termite report, LBP inspection)
5. Escrow and title policy costs
6. Recording, credit report, and appraisal fees

The Lender shall provide the owner with the loan disclosure information.

Once the owner has approved the disclosure, the Lender shall process the loan for approval. The approval process shall require approval by the *Loan Advisory Committee*.

The owner shall be notified of approval and/or denial.

Loan Approval

A loan package will be prepared by the Lender that: confirms the Applicant and property eligibility; documents the equity in and the encumbrances on the property; lists the estimated loan and construction costs; and includes any other information particular to the loan. By preparing a loan package using all the income and property eligibility, the determination of the amount and rates and terms of the CDBG loan will be outlined for the *Loan Advisory Committee* to review.

In order to obtain CDBG financing, Applicants must meet all property and eligibility guidelines in effect at the time of loan approval. Applicants will be provided written notification of approval or denial. Reason for denial will be provided to the Applicant in writing.

Loan Settlement

1. The Applicant shall sign the following: Deed of Trust, Promissory Note, Regulatory Agreement, Loan Estimate and Closing Disclosure Statement, Rescission Notice, Loan Agreement, Request for Notice of Default and Sale (if applicable)
2. The *City Administrator*, acting on the behalf of the Lender, shall sign the loan documents as required.
3. If after the 3-day rescission period the Applicant does not rescind the loan,
    A. the Deed of Trust and Request for Notices shall be recorded at the *Butte County* Recorder's Office. The Applicant shall sign the Construction agreement and Notice to Proceed.
    B. Title insurance shall be requested and received.
4. The original loan documents shall be filed with the *City of Oroville*. The following documents shall be included: Promissory Note, Deed of Trust, Loan Agreement, and Regulatory Agreement.
5. The construction documents shall be filed with the City of Oroville
7. The Lender shall deposit loan funds into *an escrow account with a reputable title company, unless the loan amount is too small to warrant incursion of escrow fees.*

Loan Servicing

Refer to “Loan Servicing Policies and Procedures” attached at the end of these Guidelines.

DEFAULT AND FORECLOSURE

If a Borrower defaults on a loan, and foreclosure procedures are instituted, they shall be carried out according to the CDBG Foreclosure Policy as described in the “Loan Servicing Policies and Procedures” attached at the end of these Guidelines.

INSURANCE

Standard Property Insurance

Borrower must maintain property insurance coverage naming the Lender as loss payee in first position or additional insured if the loan is a second mortgage. If Borrower fails to maintain the necessary insurance, the Lender is notified in writing by the insurance company. If this occurs the Lender may take out forced place insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower’s new insurance.

Fire Insurance

The Borrower shall maintain fire insurance on the property for the duration of the loan(s). This insurance must be an amount adequate to cover all encumbrances on the property. The insurer must identify the Lender as Loss Payee for the amount of the loan(s). A binder shall be provided to the Lender. In the event the Borrower fails to make the fire insurance premium payments in a timely fashion, the Lender at its option may make such payments for a period not to exceed 60 days. The Lender may, in its discretion and upon the showing of special circumstances, make such premium payments for a longer period of time. Should the Lender make any payments, it may, in its sole discretion, add such payments to the principal amount that the Borrower is obligated to repay the Lender under this program.

Flood Insurance

Properties located in a flood zone will not be eligible for funding under this program

OUTREACH/APPLICANT LIST

Outreach

When loan funds are available, the Lender shall conduct a periodic program to advertise and promote the Housing Rehabilitation Program so that all those in need of rehabilitation assistance are aware of the Lender's program. Efforts will be made to contact special needs households such as: elderly, single parent households, women, disabled, and minorities.

Applicant List

- Applications shall be received and processed as quickly as possible.
- Applicants shall be placed on the Applicant list at the time they apply for the program.
- Applicants shall provide information needed for the income and property verification process and what improvements are needed in a timely manner. If information is not forthcoming in a reasonable time period, the Applicant shall be informed that their position on the Applicant list may be affected.
- Unless there are emergency conditions that warrant more immediate action, projects will be funded based on the order of which the applications are received and deemed eligible.

CONTRACTING PROCEDURES

- All housing rehabilitation work must be carried out using the adopted Housing Rehabilitation Program Guidelines.
- The Lender will prepare the bid package and assist the Borrower in negotiating the contract.
- The Borrower will select the contractor. The Borrower will initial each page and sign the last page of work items, thereby attesting to the fact that the Borrower was made aware of the improvements to be made to the property.

- All general and sub-contractors must be checked and cleared with HUD'S federal debarred list of contractors *and be registered with SAM.gov*.
- All general and sub-contractors must be actively licensed and bonded with the State of California.
- All general and sub-contractors must have public liability insurance to the Lender's required limits, and if applicable, maintain Workers' Compensation and Employer Liability insurance to the extent required by State Law.
- All general and sub-contractors must comply with CDBG federal and state regulations.
- A Notice of Completion must be recorded with the County Recorder.

DISPUTE RESOLUTION/APPEALS PROCEDURE

Any person/household applying for a rehabilitation loan through the CDBG program has the right to appeal if their application is denied. In addition, during pre-construction, construction or post-construction periods, the Borrower has a similar right to have any disputes heard and resolved.

Rehabilitation program representatives are primarily responsible to assure that the program is implemented in compliance with state and federal regulations in a timely and responsible manner. This includes developing accurate and professional files, work write-ups and contract documents. Program representatives attend the meeting between the homeowner and the contractor when the contract documents are signed and facilitate in the clarification and/or corrections of proposed work, so a clear understanding is established between both parties.

During and after completion of construction, the contractor's work is monitored for code compliance by the Lender Building Inspector and for quality by the Housing Rehabilitation Inspector.

The contractual obligation for rehabilitation is ultimately between the contractor and the homeowner. If a situation occurs where the two parties are in conflict, the following procedure will occur:

Before any intervention occurs, the homeowner or contractor shall communicate perceived problems or complaints directly to the other party. In an attempt to resolve the differences, each will give the other an opportunity to respond or correct the problem.

If the first attempt fails, the homeowner or contractor may ask the *Program Representative or designee* to informally intervene. This intervention might include telephone call(s) to the contractor or homeowner, meeting(s) at the job site or in the office, or other actions as seem appropriate, including such things as the establishment of written working guidelines, or other post-contractual agreement.

If the *Program Representative or designee* is unable to satisfactorily resolve the homeowner-contractor differences, the homeowner, contractor, or program representative will contact HCD detailing the problem. In cases of building code compliance or questions of construction quality, the building inspector might also be contacted.

It must be recognized that the homeowner has other options which they may choose to utilize, including contacting the Contractors State Licensing Board and submitting a complaint.

Any controversy between the parties that cannot be settled through the informal intervention process outlined above shall be submitted to binding arbitration. Costs for the arbitration will be borne by the loser, or subject to the terms of the arbitration agreement.

The parties shall attempt to agree on a single arbitrator to hear the dispute. If they cannot agree each party shall appoint an arbitrator. If the two arbitrators cannot agree then they shall appoint a third arbitrator whose decision shall be final and binding. The cost of the arbitration shall be borne by the losing party unless the arbitrator otherwise determines.

The arbitration shall be conducted in accordance with the rules of the American Arbitration Association then in force. The parties expressly agree that the arbitration shall be subject to and governed by, the Federal Arbitration Act, Title IX, USC 1 et seq.

Rehabilitation Program Representatives have authorization to override the Borrower's decision and accept work in accordance with complaints procedures if the Borrower makes unreasonable requests or demands of the Contractor, and the Contractor has satisfied all the requirements of the Rehabilitation Program.

WALK-AWAY POLICY

The purpose of the Walk-Away Policy is to prevent investment in a home which is so deteriorated that all necessary improvements cannot be achieved within the maximum allowable funding level. When it is determined that it is not economically feasible or possible to bring the unit up to local code and meet HUD's Lead Based Paint standards, the Rehabilitation Program Representative should choose to walk away from the project.

AMENDMENTS

Amendments to these Guidelines may be made by the Lender and submitted to HCD for approval.

EXCEPTIONS/PROCEDURES FOR EXCEPTIONAL CIRCUMSTANCES

Any case to which a standard policy or procedure, as stated in the guidelines, does not apply or an Applicant treated differently from others would be an exception.

In the event of extraordinary or special circumstances, the Loan Committee may grant an exception to the guidelines as long as the exception does not violate the regulations of the funding sources.

The Program staff may initiate consideration of an exception and prepare a report. This report shall contain a narrative, including staff's recommended course of action and any written or verbal information supplied by the Applicant. The request shall be presented to the Loan Committee for decision and consideration.

CURRENT HUD/INCOME LIMITS

For consistency in calculating household incomes, the Lender will use the most current income limits available when determining household income. The CDBG income limits are updated annually.

ATTACHMENT A

HOUSING REHABILITATION PROGRAM SINGLE FAMILY TEMPORARY RELOCATION PLAN

The Housing and Community Development Act of 1974, as amended, and the National Affordable Housing Act of 1990, require all grantees of Community Development Block Grant (CDBG) funds or Home Investment Partnership (HOME) funds to follow a written Residential Anti-displacement and Relocation Assistance Plan (Plan) for any activities which could lead to displacement of occupants whose property is receiving funds from these or other federal funding source. Having been developed in response to both aforesaid federal legislations, this Plan is intended to inform the public of the compliance of the *City of Oroville* with the requirements of federal regulations 24 CFR 570.606 under state recipient requirements and Section 104(d) of the Housing and Community Development Act of 1974 and 24 CFR 92 of the HOME federal regulations. The Plan will outline reasonable steps, which the *City of Oroville* will take to minimize displacement and ensure compliance with all applicable federal and state relocation requirements. The *City of Oroville* governing body has adopted this plan via a formal resolution.

This Plan will affect rehabilitation activities funded by the U.S. Department of Housing and Urban Development (HUD) under the following program titles: HOME, CDBG, Urban Development Action Grant (UDAG), Special Purpose Grants, Section 108 Loan Guarantee Program, and such other grants as HUD may designate as applicable, which take place within the *Oroville City*- limits.

The *City of Oroville* will provide permanent relocation benefits to all eligible “displaced” households either owner occupied or rental occupied units which are permanently displaced by the housing rehabilitation program. In addition, the *City of Oroville* will replace all eligible occupied and vacant occupiable low-income group dwelling units demolished or converted to a use other than low-income group housing as a direct

result of rehabilitation activities. This applies to all units assisted with funds provided under the Housing and Community Development Act of 1974, as amended, and as described in the Federal Regulations 24 CFR 570.496(a), Relocation, Displacement and Acquisition: Final Rule dated July 18, 1990 (Section 104(d)) and 49 CFR Part 24, Uniform Relocation Assistance (URA) and Real Property Acquisition Regulations Final Rule and Notice (URA) dated March 2, 1989.

All *City of Oroville* programs/projects will be implemented in ways consistent with the *City of Oroville's* commitment to Fair Housing. Participants will not be discriminated against on the basis of race, color, religion, age, ancestry, national origin, sex, familial status, or handicap. The *City of Oroville}* will provide equal relocation assistance available 1) to each eligible income household displaced by the demolition or rehabilitation of housing or by the conversion of an eligible income household dwelling to another use as a direct result of assisted activities; and 2) to each eligible income person temporarily relocated as a direct result of activities funded by HUD programs.

Minimizing Permanent Displacement and Temporary Relocation Resulting from Housing Rehabilitation or Reconstruction Activities

Consistent with the goals and objectives of activities assisted under the Act, the *City of Oroville* will take the following steps to minimize the displacement of persons from their homes during housing rehabilitation or reconstruction funded by HUD programs:

- Provide proper notices with counseling and referral services to all tenants so that they understand their relocation rights and receive the proper benefits. When necessary, assist permanently displaced persons to find alternate housing in the neighborhood.
- Stage rehabilitation of assisted households to allow owner occupants and/or tenants to remain during minor rehabilitation.

- Encourage owner investors to temporarily relocate tenants to other available safe and sanitary vacant units on the project site area during the course of rehabilitation or pay expenses on behalf of replaced tenants.
- Work with area landlords, real estate brokers, and/or hotel/motel managements to locate vacancies for households facing temporary relocation.
- When necessary, use public funds, such as CDBG funds, to pay moving costs and provide relocation/displacement payments to households permanently displaced by assisted activities.

Lead Based Paint Mitigation Which Causes Temporary Relocation

On September 15, 2000, the Final Rule for Lead Based Paint Hazard Control went into effect. Among other things, it requires that federally funded rehabilitation must use safe work practices so that occupants and workers can be protected from lead hazards. At no time should the tenant-occupant(s) be present in work areas or designated adjacent areas while LHC activities are taking place in any dwelling unit interior, common area, or exterior. As such, occupants may not be allowed to remain in their units during the time that lead-based paint hazards are being created or treated. Once work that causes lead hazards has been completed, and the unit passes clearance, the occupants can return. The tenant-occupants may not reoccupy a work area or adjacent area until post-lead hazard reduction clearance standards have been achieved and verified with laboratory results. The final rule allows for certain exceptions:

- The work will not disturb lead-based paint, or create dust-lead or soil-lead hazard; or
- The work is on exterior only and openings are sealed to prevent dust from entering the home, the work area is cleaned after the work is completed, and the residents have alternative lead-free entry; or
- The interior work will be completed in one period of less than 8-daytime hours and the work site is contained to prevent the release of dust into other areas of the home; or

- The interior work will be completed within 5 calendar days, the work site is contained to prevent the release of dust, the worksite and areas within 10 feet of the worksite are cleaned at the end of each day to remove any visible dust and debris, and the residents have safe access to kitchen and bath and bedrooms.

If temporary relocation benefits are not provided because the {City/County} believes that the project meets one of the above criteria, then proper documentation must be provided in the rehabilitation project file to show compliance. It is up to the {City/County} to ensure that the owner occupant or tenant in the project does not get impacted by lead paint mitigation efforts. In most cases where lead paint mitigation is taking place, occupants (tenants or owners) will be strongly encouraged to relocate even for just a few days until a final lead clearance can be issued by a certified lead-based paint assessor. Occupants who are temporarily relocated because of lead based paint mitigation are entitled to the same relocation benefits as those who are relocated because of substantial rehabilitation or reconstruction activities.

Temporary Relocation of Owner Occupants

Owner occupants are not allowed to stay in units which are hazardous environments during lead-based paint mitigation. When their home is having lead-based paint mitigation work done which will not make it safe to live in, then they are eligible for temporary relocation benefits which will be provided as a grant. In the same way, a unit requiring substantial rehabilitation (with or without lead based paint mitigation) which will not allow the family to access a bath or kitchen facility, or if the unit is being demolished and reconstructed, then the family will be eligible for temporary relocation benefits which will be provided as a grant. The amount of the benefit to be paid should be cost appropriate to the conditions.

Owner occupants will be encouraged to move in with family or friends during the course of rehabilitation, since they are voluntarily participating in the program. The housing rehabilitation loan specialist and/or the rehabilitation construction specialist will complete a temporary relocation benefits form to document that the owner occupant

understands that they must relocate during the course of construction and what benefits they wish to be reimbursed for as part of their relocation.

Rehabilitation Activities Requiring Permanent Displacement

The *City of Oroville* rehabilitation program will not typically trigger permanent displacement and permanent displacement activities fall outside of the scope of this plan. If a case of permanent displacement is encountered, then the staff that is responsible for the rehabilitation program will consult with *City of Oroville's* legal counsel to decide if they have the capacity to conduct the permanent displacement activity. If local staff does not have the capacity, then a professional relocation consultant will be hired to do the counseling and benefit determination and implementation. If local staff does wish to do the permanent displacement activity, then they will consult and follow the HUD Relocation Handbook 1378.

Rehabilitation Which Triggers Replacement Housing

If the *City of Oroville* rehabilitation program assists a property where one or more units are eliminated then under Section 104 (d) of the Housing and Community Act of 1974, as amended applies and the *City of Oroville* is required to replace those lost units. An example of this would be a duplex unit which is converted into a single-family unit. In all cases where rehabilitation activities will reduce the number of housing units in the jurisdiction, then the *City of Oroville* must document that any lost units are replaced, and any occupants of reduced units are given permanent relocation benefits. (This does not apply to reconstruction or replacement housing done under a rehabilitation program where the existing unit(s) is demolished and replaced with a structure equal in size without in loss number of units or bedrooms.)

Replacement housing will be provided within three years after the commencement of the demolition or conversion. Before entering into a contract committing the *City of Oroville* to provide funds for an activity that will directly result in such demolition or conversion, the City of Oroville will make this activity public (through a noticed public hearing and/or publication in a newspaper of general circulation) and submit to the

California Department of Housing and Community Development or the appropriate federal authority the following information in writing:

- A description of the proposed assisted activity;
- The location on a map and the approximate number of dwelling units by size (number of bedrooms) that will be demolished or converted to a use other than as targeted income group dwelling units as a direct result of the assisted activity;
- A time schedule for the commencement and completion of the demolition or conversion;
- The location on a map and the approximate number of dwelling units by size (number of bedrooms) that will be provided as replacement dwelling units;
- The source of funding and a time schedule for the provision of the replacement dwelling units;
- The basis for concluding that each replacement dwelling unit will remain a targeted income group dwelling unit for at least 10 years from the date of initial occupancy; and,
- Information demonstrating that any proposed replacement of dwelling units with smaller dwelling units (e.g., a two-bedroom unit with two one-bedroom units) is consistent with the housing needs of targeted income group households in the jurisdiction.

The *Management Analyst* at the *City of Oroville* is responsible for tracking the replacement of housing and ensuring that it is provided within the required period. The *City of Oroville* is responsible for ensuring requirements are met for notification and provision of relocation assistance, as described in Section 570.606, to any targeted income group displaced by the demolition of any dwelling unit or the conversion of a targeted income group dwelling unit to another use in connection with an assisted activity.

Record Keeping and Relocation Disclosures/Notifications

The City of Oroville will maintain records of occupants of Federally funded rehabilitated, reconstructed or demolished property from the start to completion of the project to

demonstrate compliance with section 104(d), URA and applicable program regulations. Each rehabilitation project, which dictates temporary or permanent or replacement activities, will have a project description and documentation of assistance provided. (See sample forms in HUD Relocation Handbook 1378, Chapter 1, Appendix 11, form HUD-40054)

Appropriate advisory services will include reasonable advance written notice of (a) the date and approximate duration of the temporary relocation; (b) the address of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period; (c) the terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling.

Notices shall be written in plain, understandable primary language of the persons involved. Persons who are unable to read and understand the notice (e.g. illiterate, foreign language, or impaired vision or other disability) will be provided with appropriate translation/communication. Each notice will indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help. The notices and process below are only for temporary relocation. If permanent relocation is involved, then other sets of notice and noticing process and relocation benefits must be applied (See HUD relocation handbook 1378 for those forms and procedures) The Temporary Relocation Advisory Notices to be provided are as follows:

General Information Notice

As soon as feasible when an owner investor is applying for Federal financing for rehabilitation, reconstruction, or demolition, the tenant of a housing unit will be mailed, or hand delivered a General Information Notice that the project has been proposed and that the tenant will be able to occupy their present house upon completion of rehabilitation. The tenant will be informed that the rent after rehabilitation will not exceed current rent or 30 percent of their average monthly gross household income. The tenant will be informed that if he or she is required to move temporarily so that the rehabilitation can be completed, suitable housing will be made available and they will be reimbursed for all reasonable extra expenses.

The tenant will be cautioned that they will not be provided relocation assistance if they decide to move for personal reasons.

Notice of Non-Displacement

As soon as feasible when the rehabilitation application has been approved, the tenant will be informed that they will not be permanently displaced and that they are eligible for temporary relocation benefits because of lead based paint mitigation or substantial rehabilitation, or reconstruction of their unit. The tenant will also again be cautioned not to move for personal reasons during rehabilitation, or risk losing relocation assistance.

Disclosure to Occupants of Temporary Relocation Benefits

This form is completed to document that the City of Oroville is following its adopted temporary relocation plan for owner occupants and tenants.

Other Relocation/Displacement Notices

The above three notices are required for temporary relocation. If the City of Oroville is attempting to provide permanent displacement benefits, then there are a number of other forms which are required. Staff will consult HUD's Relocation Handbook 1378 and ensure that all the proper notices are provided for persons who are permanently displaced as a result of housing rehabilitation activities funded by CDBG or other federal programs.

ATTACHMENT B

ANNUAL HOUSEHOLD INCOME DEFINITION

For the purposes of determining eligibility in accordance with HCD income guidelines,

Annual Income **will** include, for all members of the household:

- Gross wages and salary before deductions.
- Net money income from self-employment.
- Cash income received from such sources as rental units, Social Security benefits, pensions, and periodic income from insurance policy annuities.
- Periodic cash benefits from public assistance and other compensation, including AFDC, SSI, Worker's Compensation, State Disability Insurance and Unemployment benefits.
- Interest earned on savings and investments.

Annual Income will **not** include:

- Non-cash income such as food stamps or vouchers received for the purpose of food or housing.
- Capital gains or losses.
- One-time unearned income such as scholarship and fellowship grants; accident, health or casualty insurance proceeds; prizes or gifts; inheritances.
- Payments designated specifically for medical or other costs, foster children or their non-disposable income.
- Income from employment of children under the age of 18.
- Payment for the care of foster children.

This is not meant to be a complete list.

The *City of Oroville* will make the final decision in situations where the classification of income is not clear-cut. Any exceptions or other deviations from this definition of annual income will be considered by the *City of Oroville*

The City of Oroville shall use the Income Guidelines published each year by HUD and HCD.

The maximum gross annual income for an eligible household shall be 80 percent of the area median income for the household size.

ATTACHMENT C

LOAN SERVICING POLICES AND PROCEDURES

The City of Oroville here after called “Lender” has adopted these policies and procedures in order to preserve its financial interest in properties, whose “Borrowers” have been assisted with public funds. The Lender will to the greatest extent possible follow these policies and procedures, but each loan will be evaluated and handled on a case-by-case basis. The Lender has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions which are associated with them.

The policies and procedures are broken down into the follow areas: 1) making required payments or paying off a loan’s principle and interest; 2) required payment of property taxes and insurance; 3) required Request for Notice of Default on all second mortgages; 4) required Rent Limitation Agreement and monitoring of investor properties; 5) loans with annual occupancy restrictions and certifications 6) required noticing and limitations on any changes in title or use of property; 7) required noticing and process for requesting a subordination during a refinance; 8) process of foreclosure in case of default on the loan.

Loan Repayments and Discounting of Notes

The Lender will collect monthly payments from those borrowers who are obligated to do so under an Installment Note, which are amortized promissory notes. Late fees will be charged for payments received after the assigned monthly date. The Lender will provide the Borrower a debt amortization schedule and will maintain said schedule to account for the loan repayments and any penalties.

For Straight Notes, which are deferred payment loans; the Lender may accept voluntary payments on the loan. Loan payments will be credited to the interest first and then to principal. The borrower may repay the loan balance at any time with no penalty.

The Lender will maintain an accurate listing of all loans including but not limited to the following information, borrower's name, address, date of loan, amount of principal, calculation of interest, total payoff amount and date of payoff.

Lender is notified that the Borrower intends to pay off a loan, the Lender will provide the payoff amount, including the amount of interest accrued up to the day identified as the payoff date.

The Lender will process and record a Substitution of Trustee and Full Reconveyance upon loan satisfaction.

When the rehabilitation project is completed and the amount used to complete the project is less than the amount loaned, the Lender will notify the title company holding the escrow account to refund the unused balance to the Lender. The Lender will reduce the amount of principal accordingly and recalculate the interest.

Payment of Property Taxes and Insurance

As part of keeping the loan from going into default, borrower must maintain property insurance coverage naming the Lender as loss payee in first position or additional insured if the loan is a second mortgage. If borrower fails to maintain the necessary insurance, the Lender is notified in writing by the insurance company. If this occurs the Lender may take out forced place insurance to cover the property while the Borrower puts a new insurance policy in place. All costs for installing the necessary insurance will be added to the loan balance at time of installation of Borrower's new insurance.

When a property is located in a 100-year flood plain, the Borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance will be required at close of escrow. The lender may check the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the Borrower fails to maintain payment of property taxes, then the lender may pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the loan. Wherever possible, the Lender encourages Borrower to have impound accounts set up with their first mortgagee wherein they pay their taxes and insurance as part of their monthly mortgage payment.

All Borrowers will be evaluated semi-annually by the Lender to confirm timely payments of property taxes. In January and May of each year the Lender will access the County Treasurer-Tax Collector website and view the Borrower's tax bill to determine if tax payments have been made.

Required Request for Notice of Default

When the Borrower's loan is in second position behind an existing first mortgage, it is the Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires any senior lien holder listed in the notice to notify the lender of initiation of a foreclosure action. The Lender will then have time to contact the Borrower and assist them in bringing the first loan current. The Lender can also monitor the foreclosure process and go through the necessary analysis to determine if the loan can be made whole or preserved. When the Lender is in a third position and receives notification of foreclosure from only one senior lien holder, it is in their best interest to contact any other senior lien holders regarding the status of their loans.

Annual Occupancy Restrictions and Certifications

All owner-occupied Borrowers will be evaluated annually by the Lender to confirm continuous owner occupancy status. Owner occupant Borrowers will be required to submit to the City of Oroville each year for the term of the loan:

- Proof of occupancy in the form of a copy of a current utility bill.

- Statement of unit's continued use as a residence.
- Declaration that other title holders do not reside on the premises.

These loan terms are incorporated in the original note and deed of trust. In the event that an owner occupant sells, transfers title, or discontinues residence in the rehabilitated property, the loan is due and payable.

Required Noticing and Restrictions on Any Changes of Title or Occupancy

In all cases where there is a change in title or occupancy or use, the Borrower must notify the Lender in writing of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original program terms and conditions such that it remains available as an affordable home for low-income families. These types of changes are typical when Borrowers do estate planning (adding a relative to title) or if a Borrower dies and property is transferred to heirs or when the property is sold or transferred as part of a business transaction. In some cases, the Borrower may move and turn the property into a rental unit without notifying the Lender. Changes in title or occupancy must be in keeping with the objective of benefit to the income qualified families.

Owner-Occupant to Owner-Occupant

Change from owner-occupant to owner-occupant occurs at a sale. When a new owner-occupant is not low-income, the loan is not assumable, and the loan balance is immediately due and payable. If the new owner-occupant qualifies as low-income, the purchaser may assume all loan repayment obligations of the original owner-occupant, subject to the approval of the *Lender's Loan Advisory Committee*.

If a transfer of the property occurs through inheritance, the heir (as owner-occupant) may be provided the opportunity to assume the loan at an interest rate based on family size and household income, provided the heir is income qualified. If the heir intends to occupy the property and is not income qualified, the balance of the loan is due and payable. If the heir intends to act as an owner-investor, the balance of the

loan may be converted to an owner/investor interest rate and loan term and a rent limitation agreement is signed and recorded on title. All such changes are subject to the review and approval of the Lender's.

Owner-Occupant to Owner-Investor

Change from owner-occupant to owner-investor is not allowed.

Conversion to use other than residential use is not allowable where the full use of the property is changed from residential to commercial or other. In some cases, Borrowers may request that the Lender allow for a partial conversion where some of the residence is used for a business, but the family still resides in the property. Partial conversions can be allowed if it is reviewed and approved by any and all agencies required by local statute. If the use of the property is converted to a fully non-residential use, the loan balance is due and payable.

Requests for Subordinations

When a Borrower has a primary mortgage recorded in a senior position to the City of Oroville's loan and wishes to refinance the primary loan, they must submit a written subordination request to the Lender City of Oroville. The Lender will only subordinate their loan when there is no "cash out" as part of the refinance. Cash out means there are no additional charges on the transaction above loan and escrow closing fees. There can be no third-party debt pay offs or additional encumbrance on the property above traditional refinance transaction costs. Furthermore, the refinance should lower the housing cost of the family with a lower interest rate and the total indebtedness on the property should not exceed the current market value.

Upon receiving the proper documentation from the refinance agency, the request will be considered by the Loan Committee for review and approval. Upon approval, the escrow company will provide the proper subordination document
for execution and recordation.

Process for Loan Foreclosure

Upon any condition of loan default: 1) nonpayment; 2) lack of insurance or property tax payment; 3) violation of rent limitation agreement; 4) change in title or use without approval; 5) default on senior loans, the Lender will send out a letter to the Borrower notifying them of the default situation. If the default situation continues then the Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and the Lender is notified via a Request for Notice of Default, the Lender, who is the junior lien holder, may cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount or payoff amount must be obtained by contacting the senior lien holder. This amount will include all delinquent payments, late charges and fees to date. Lender must confer with Borrower to determine if, upon paying the senior lien holder current, the Borrower can provide future payments. If this is the case, then the Lender may cure the foreclosure and add the costs to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Lender determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then staff must determine if it is cost effective to protect their position by paying off the senior lien holder in total and restructure the debt such that the unit is made affordable to the Borrower. If the Lender does not have sufficient funds to pay the senior lien holder in full, then they may choose to cure the senior lien holder and foreclose on the property themselves. As long as there is sufficient value in the property, the Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

If the Lender decides to reinstate, the senior lien holder will accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Lender fails to reinstate the senior lien holder

before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Lender, after exercising due diligence, determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, the Lender's lien may be eliminated due to insufficient sales proceeds.

Lender as Senior Lien holder

When the Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. Attempts will be made to assist the homeowner in bringing and keeping the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Lender may consider foreclosure. Lender’s staff will consider the following factors before initiating foreclosure:

- Can the loan be cured, and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- Can the Borrower refinance with a private lender and pay off the Lender?
- Can the Borrower sell the property and pay off the Lender?
- Does the balance warrant foreclosure? (If the balance is under $5,000, the expense to foreclose may not be worth pursuing.)
- Will the sales price of home "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly yard maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the balance is substantial and all of the above factors have been considered, the Lender may opt to initiate foreclosure. The Borrower must receive, by certified mail, a thirty-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Lender to prevent foreclosure (such as, funds to bring a delinquent Below Market Interest Rate (BMIR) current or pay off a DPL).

At the end of 30 days, the Lender should contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the owner and junior lien holders. The service will advise the Lender of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the owner to cancel foreclosure proceedings. The service will keep the Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Lender could sell the home themselves under a homebuyer program or use it for an affordable rental property managed by a local housing authority or use it for transitional housing facility or other eligible use. The Lender could contract with a local real estate broker to list and sell the home and use those funds for program income eligible uses.

CITY OF OROVILLE
STAFF REPORT

TO: **MAYOR PITTMAN AND CITY COUNCIL MEMBERS**

FROM: **PATRICK PIATT, COMMUNITY DEVELOPMENT DIRECTOR,**
LARK MCNEILL, INTERWEST PLANNING GROUP

RE: **FIRST READING OF AN AMENDMENT OF OROVILLE MUNICIPAL CODE SECTION 17.16.150 – MOBILE FOOD VENDING**

DATE: **February 6, 2024**

SUMMARY

The City Council will consider amending Municipal Code Section 17.16.150 ("Mobile Food Vending") to set development standards for multiple food vendors at one location. The Planning Commission recommended approval of these modifications at its regular meeting of November 16, 2023, after consideration of the staff report, Planning Commissioner comments, and public comment. If approved by the City Council, the City Council will hold a second hearing to formally adopt the ordinance amending Municipal Code Section 17.16.150.

DISCUSSION

The proposed modifications to Municipal Code Section 17.16.150 are Staff initiated ordinance changes to regulate more than one mobile food vendor (MFV) at one location at one time after receiving a few inquiries to have more than one MFV on one property at the same time. Staff proposes calling this land use "mobile food vendor village" (MFVV). The intent of is to allow the city to regulate more than one MFV at a time on private property as an business similar to restaurants in buildings, to protect adjacent private property and to ensure that these uses do not generate litter, create unsafe traffic patterns, and create a need for additional law enforcement.

MFVVs are popular in other California communities, and if properly managed, can inject new energy into neighborhoods where they are located. MFVVs can become very popular monthly events, with multiple mobile food vendors and live music at one location. MFVs and MFVVs offer a quick and easy way to earn modest revenue on a property with little effort or expenditure by the property owner.

The Planning Commission held a workshop on the proposed amendments to 17.16.150 on September 28, 2023. Issues raised during the September 28, 2023, Planning Commission workshop included comments from the Planning Commissioners and Scott Bullard.

The commissioners raised the following issues regarding MFVV in Oroville:

1. Unfair business advantage to property owners with MFVV on their property, they don't pay property taxes on the restaurant use on their property. Property owners with constructed restaurants must pay property taxes on the property including structures, as well as paying water, sewer, and storm water runoff fees charged by the sewer and water purveyor. This is a fact that cannot be mitigated. The draft ordinance does not permit a MFVV to be created in the downtown area.

2. How to control MFVV clients' access to the MFVV site. The proposed modifications include development standards including the use of sawhorse or other temporary barriers to direct traffic into one point of ingress/egress to each MFVV on undeveloped sites. Traffic ingress and egress on existing developed properties is already controlled by curb, gutter, sidewalks, landscaping and driveways. *The Commission modified staff's recommendation to allow the Zoning Administrator to require temporary barriers on a case-by-case basis dependent on the proposed location for the MFVV.*

3. How many MFV would be allowed at each site. The Commission chose not to make a recommendation as to whether a limit should be set on the number of MFVs for each permitted site.

4. Limiting business hours. The draft ordinance limits a MFVV to operating between 6 a.m. and 10 p.m. The current ordinance limits MFV to operating between 7 a.m. and 10 p.m.

5. Concentration of MFVV. The Commission did not voice interest in limiting the concentration of MFVV in the city limits, so staff removed this from the original proposed modifications.

Public Comment to the Planning Commission: Mr. Scott Hubbard submitted two letters dated October 18 and November 7, 2023, commenting on the draft amendments to Municipal Code 17.16.150. Staff reviewed both letters and incorporated changes to the ordinance where the changes were in the best interests of the community. Staff did not recommend changing the number of mobile food vendors meeting the definition of MFVV due to the need for consistency in the number of mobile food vendors at one location, and to lessen ambiguity for code enforcement staff. Staff strongly believes that any definition of mobile food vendors other than "more than one mobile food vendor at the same location at one time" will make code enforcement difficult. The proposed regulations place modest responsibilities on the property owner of an approved MFVV site to maintain the property in a clean and sanitary manner.

The ordinance requires all existing MFVs to obtain new mobile food vendor permits within 180 days after the ordinance revisions go into effect. This will enable the city to bring all properties that now operate with more than one mobile food vendor to be brought into compliance with Municipal Code Section 17.16.010 (Mobile Food Vendors), as amended.

Letter from Scott Hubbard dated January 30, 2024

Defined Terms: Mr. Hubbard asks that the draft ordinance not include the term "mobile food vendor". He suggests that the draft ordinance replace it with the term "Mobile Food Facility". The Planning Commission recommended approval of the draft ordinance which includes the term "mobile food vendor". The City Council may decide to eliminate the term "mobile food vendor" from the draft ordinance and use the State of California Health and Safety Code definition of Mobile Food Facility below:

California Health and Safety Code (Cal Code) Chapter 2: Definitions 113831. Mobile food facility "MOBILE FOOD FACILITY" means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. "Mobile food facility" does not include a "transporter" used to transport packaged food from a food facility, or other approved source to the consumer.

Number of vendors: Mr. Hubbard requests that the definition of MFV be modified to read:

"Mobile food vending villages (MFVV) are defined as more than ~~one~~ *four* mobile food vendors parked on a private property for more than one hour at a time." The Planning Commission did not approve his prior request to define a MFVV as four or more MFVs on site at one time.

As staff explained at the Planning Commission meeting on November 16, 2023, it is easier for code enforcement to determine if a violation exists when the definition of a MFVV is more than one mobile food vending vehicle. If the ordinance defined a MFVV as four or more MFVs at one time on one site, it can become a shell game with vendors rotating around the site or stating that they were "just leaving" or "just setting up" because another vendor on the site is "supposed to be leaving" or "isn't allowed to be here". This can become an enforcement headache. It is clearer if the definition is "two or more MFVs". The intent is to ensure the ordinance is easy to understand and clear **to all.** City resources are stretched as they are. Furthermore, this ordinance contains few regulations for MFVVs in order to create opportunities for orderly economic growth throughout the community.

Section 16.150.010. F.4. Paved or Chip Sealing Mr. Hubbard requests to remove the requirement for paved or chip sealing for MFVVs. This ordinance is intended to regulate MFVVs from two to multiple MFVs at one time at one site. In some instances, paved or chip sealed surface is not necessary to control dust or prevent degrading the property surface. In other instances, a larger MFVV will necessitate a paved or chip sealed parking surface. The draft ordinance allows the Zoning Administrator to determine which parking surface is appropriate for the number of MFVs approved with each minor use permit application. Staff believes that it is appropriate to leave the proposed language as written.

Section 16.150. F.13. Signage Mr. Hubbard requests that MFVVs be allowed to submit sign permits according to the sign ordinance. Mr. Hubbard states that MFVVs should have the same signage allowances as shopping centers. However, MFVVs are not shopping centers. They have no permanent structures on site. They are not required to provide handicapped parking, public restrooms, or landscaping. MFVVs serve food to go. Furthermore, the signage on many MFV vehicles exceeds the maximum allowable wall signage of 10% of the wall square footage (OMC 17.20.120 Requirements for commercial and mixed-use districts). The city does not regulate the allowable wall signage on the MFV vehicles. Staff does not believe that MFVs are unduly restricted in their First Amendment rights by the draft ordinance under consideration and by the City's existing sign ordinance.

Property Barrier Mr. Hubbard requests to remove any requirement for a temporary or permanent barrier to demarcate the property lines between the MFVV location and adjacent properties. The draft ordinance allows the Zoning Administrator to require temporary or permanent barriers on a case-by case basis.

FISCAL IMPACT

Any approved mobile food vendor village will be subject to all customary application fees.

RECOMMENDATION

1. Adopt a Categorical Exemption for amendments to Municipal Code Section 17.16.150.

2. Adopt Resolution 9215 — FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE AMENDING SECTION 17.16.150 ("MOBILE FOOD VENDING") REGULATING MOBILE FOOD VENDORS AT ONE LOCATION (MOBILE FOOD VENDOR VILLAGE)

ATTACHMENTS

1. Draft City Council resolution 9215, First reading of an ordinance - proposed amendments to Municipal Code Section 17.16.150
2. Notice of Exemption (CEQA)
3. Planning Commission packet from the November 16, 2023, Planning Commission meeting
4. Scott Hubbard letter dated January 30, 2024
5. Existing Mobile Food Vending Ordinance for reference

CITY OF OROVILLE
RESOLUTION NO.
9215

FIRST READING OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OROVILLE AMENDING SECTION 17.16.150 MOBILE FOOD VENDING

WHEREAS mobile food vendor villages are popular public events which provide economic opportunities throughout California; and

WHEREAS the City of Oroville Municipal Code Section 17.16.150 currently contains few regulations to protect public safety or protect adjacent properties from activities generated by multiple food trucks at one location; and

WHEREAS the City of Oroville Planning Commission held a workshop on a draft mobile food vendor village on September 28, 2023; and

WHEREAS the City of Oroville Planning Commission held a public hearing on proposed modifications to Section 17.16.150 of the City of Oroville Municipal Code, received public comment, and recommended adoption of a Notice of Exemption for modifications to Municipal Code Section 17.15.160, and the modifications to Municipal Code Section 17.15.160 to the City Council on November 16, 2023; **and**

WHEREAS, at a duly noticed public hearing on February 6, 2024, the City Council considered the recommendation of the Planning Commission, property owners, and members of the public who are potentially affected by the changes described herein, and considered the City's staff report regarding the proposed Amendment.

The Council of the City of Oroville do ordain as follows:

Section 1. Section 17.16.150 of the Oroville Municipal Code is amended as indicated in Exhibit 1 to this Ordinance.

Section 2. This ordinance shall become effective on March 6, 2024, or 30 days after the second reading is approved, whichever comes later.

Section 3. The City Clerk shall attest to the adoption of this ordinance.

(Continued on next page)

PASSED AND ADOPTED by the City Council of the City of Oroville at a regular meeting held on February 6, 2024, by the following vote:

AYES: Council Members Johnstone, Riggs, Thomson, Goodson, Webber, Vice Mayor Smith, Mayor Pittman.

NOES: None

ABSENT: None

ABSTAIN: None

_____

Mayor, David Pittman

APPROVED AS TO FORM:

_____

City Attorney, Scott E. Huber

ATTEST:

_____

Assistant City Clerk, Kayla Reaster

EXHIBIT 1

17.16.150 Mobile food vending

A. Purpose. The purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity, and general welfare by requiring that new and existing mobile food vendors provide the community and customers with a minimum level of cleanliness, quality and security. These regulations differentiate the difference between a single mobile food vendor at one location, and multiple mobile food vendors at one location.

Single mobile vendors may be permitted to operate by administrative permit approval on private property located within Office (O), Neighborhood Commercial (CN), Limited Commercial (C-1), Highway Commercial (CH), Commercial Light Manufacturing (CLM), Intensive Commercial (C-2), Neighborhood Mixed Use (MXN), Corridor Mixed Use (MXC), Intensive Industrial (M-2), Airport Business Park (ABP), and Open Space (OS) zoning districts subject to the following regulations.

Mobile food vending villages may be permitted to operate by Minor Conditional Use Permit on private property located within Office (O), Neighborhood Commercial (CN), Limited Commercial (C-1), Highway Commercial (CH), Commercial Light Manufacturing (CLM), Intensive Commercial (C-2), Neighborhood Mixed Use (MXN), Corridor Mixed Use (MXC), Intensive Industrial (M-2), Airport Business Park (ABP), and Open Space (OS) zoning districts subject to the following regulations. Mobile food vending villages on city owned property other than public rights-of-way are exempt from the requirement for a Minor Conditional Use Permit but must comply with the same regulations as mobile food vending villages contained in this Section.

B. Definitions. Mobile food vending villages (MFVV) are defined as more than one mobile food vending vehicle parked on a private property for more than one hour at a time. Vending stations are defined as the vehicle the mobile food vendor uses to sell food.

C. Permit requirements.

1. A single mobile food vendor at any one location shall be required to obtain an administrative permit as provided in this chapter. The permit application shall include the authorization of each property owner where the mobile food vendor intends to vend.

2. Minor Conditional Use Permit. Mobile food vending villages shall require the approval of a Minor Conditional Use Permit (MCUP). The approval shall be specific to a location and shall not be transferable to other locations or operators. The permit application shall include the authorization of each property owner where the mobile food vendor intends to vend. Operation of a mobile food

vending village shall not be permitted pursuant to California Senate Bill No. 946, as specified in Government Code Sections 51036 – 51039, Sidewalk Vendors.

3. Business Tax Certificate. Every mobile food vendor shall obtain a Business Tax Certificate prior to operation.

4. Butte County Environmental Health. A valid permit from the Butte County Environmental Health Department is required and shall be displayed at the mobile food vending vehicle.

5. Building Division and Fire Department. All necessary permits and approvals from the Building Division and the Fire Department shall be obtained prior to operation of a mobile food vending village.

6. Permit and license display. At all times while vending, a valid business license shall be displayed at the mobile food vending vehicle.

D. Location and hours of operation.

1. Location. No mobile food vendor village shall be located within 300 feet of any residential use or as determined by the Minor Use Permit.

2. Hours. Hours of operation for mobile food vending businesses shall be between 6:00 a.m. and 10:00 p.m., or as specified in the Minor Use Permit conditions of approval for that site.

E. Condition of Vending Station.

1. All mobile food vendors shall always display a current business tax certificate and the health department permit in plain view on the exterior of the vending station. In addition, the mobile food vendor shall always have a letter of permission from the owner of the subject property available in the mobile food vehicle.

2. The vending station shall always be maintained in operating condition.

3. The vending station shall not include a permanent foundation or other feature that would constitute an improvement to real property.

4. The vending station shall not discharge any materials onto the sidewalk, gutter, or storm drains.

F. Standards and design criteria. The following standards and design criteria shall apply to all mobile food vendors:

1. All mobile food vending shall be conducted entirely upon private property and not within any public right-of-way.

2. On developed lots, individual mobile food vendors in the mobile food vendor village shall not operate in parking spaces required to meet minimum

parking requirements for any other business on the subject site; block any parking required to adequately serve other businesses, or any driveways or aisles for vehicular circulation on the subject site.

3. Applications for mobile food vending villages shall include the location and description of any proposed outdoor dining area, including tables, chairs, and shade structures.

4. If the proposed location is on an unimproved property, the area that the mobile food vendors will be parked on shall be paved or chip sealed. Other hard surfaces may be approved by the Zoning Administrator in the conditions of approval for the minor use permit.

5. All mobile food vendors shall maintain a 10-foot minimum setback from the property lines and public sidewalks, curbs, and gutters.

6. No temporary or permanent chairs, tables, shade structures or other site furniture is permitted except as specified in the Mobile Food Vendor Village Minor Conditional Use permit conditions of approval. Shade structures may require prior approval from the Fire Department dependent on shade structure size and materials.

7. Individual mobile food vendors within a mobile food vendor village shall maintain their immediate sales location in a clean and hazard-free condition.

8. Single mobile food vendors shall keep the subject property and adjacent right-of-way free of litter within 200 feet of the vehicle.

9. All refuse shall be removed from the site and properly disposed of daily.

10. All mobile vendors shall provide covered garbage, recycling, and compost container(s) as required by the Butte County Environmental Health Department. No garbage, recycling, and compost containers will be permitted to remain on-site unless it is stored within a solid storage structure.

11. No single mobile vendor shall use, play, or employ any sound outcry, amplifier, loudspeaker, radio or any other instrument or device to produce sound in connection with the promotion of a vending operation.

12. No more than two hundred (200) square feet within a mobile food vendor village site or on property adjacent to a mobile food vendor village site shall be occupied by musical instruments, equipment, or bandstand. No music is allowed if there are less than two mobile food vendors at the site while music is being played or amplified.

13. Signage for single mobile food vendors shall be located on the vending equipment and is subject to the requirements of City of Oroville Municipal Code, Chapter 17.20, Signs. Mobile food vendor villages shall be permitted a maximum

of two A-frame signs subject to the requirements of City of Oroville Municipal Code, Chapter 17.20, Signs.

14. No mobile food vendor shall sell alcoholic beverages, non-food items, cannabis products, or illegal drugs.

15. After the permitted hours of operation, all mobile food vendors located on undeveloped property shall remove their mobile food vending equipment and trash containers, including the mobile vehicle itself, off-site or within an approved, enclosed structure on site. Mobile food vendors located on the same property as their commissary may store their vehicles overnight on the same property.

16. Optional on-site storage structures may be permitted as conditioned within the Minor Conditional Use permit. All structures shall be placed on a concrete foundation. Building permits shall be issued for the structures as determined by the City Building Code. One metal storage container no larger than 200 square feet may be placed on-site for use by the mobile food vendors. The storage container shall always be painted dull beige or as specified within the conditions of approval of the MCUP. Any graffiti painted on the storage container shall be repainted with the base wall color within forty-eight (48) hours' notice by the City to the property owner by the property owner. A deposit of $5,000.00 shall be deposited with the City Finance Department prior to placing the metal storage container on-site to guarantee that the container(s) will be removed from the site when the mobile food vendor use on the site discontinues for more than thirty (30) days.

17. Mobile food vendors will not encroach on a public sidewalk or curb with any part of a vehicle, wagon, trailer or truck or any other equipment related to the operation of the business.

18. To prevent the activities of the mobile food vendor village from intruding onto the public street or adjacent properties, the Zoning Administrator may determine that permanent or temporary barriers shall be installed along street frontages or property lines based on the location of the proposed mobile food vendor village. This barrier shall be installed and maintained by the property owner. Failure to maintain the barrier shall be reason for revocation of the MCUP if the property owner fails to remedy the barrier condition within fourteen (14) days of receiving written notice from the city to repair/replace the designated barrier.

G. Revocation The MCUP may be modified or revoked by the Zoning Administrator, pursuant to Oroville Municipal Code Section 17.40.020.C should the Zoning Administrator determine that: 1) the use or conditions under which it is being operated or maintained is detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity; 2) the property is operated or maintained so as to constitute a public nuisance; or 3) the use is operated in

violation of the conditions of the CUP. The Planning Commission may revoke the conditional use permit if the Commission was the acting body for the conditional use permit.

H. Approvals. All City issued mobile food vendor permits (administrative, ministerial, or conditional use permit approval) issued after the effective date of this ordinance shall be valid for a period of one year from the date of approval. Any existing City issued mobile food vendor permits as of the date this ordinance becomes effective shall expire 180 days after the date of the effective date of this ordinance. All mobile food vendors must apply for a new mobile food vendor permit within 180 days of the effective date of this ordinance and comply with all regulations in this Section.

HUBBARD
A Professional Corporation

January 30, 2024

***via* electronic mail only**
cityclerk@cityoforoville.org

City of Oroville City Council
Office of the City Clerk
1735 Montgomery Street
Oroville, Ca 95965

RE: Proposed changes to Section 17.16.150

Greetings:

On January 16, 2024, the City Council considered amending Municipal Code Section 17.16.150 ("Mobile Food Vending") to set development standards for multiple food vendors at one location. Specifically, the Planning Commission recommended approval of these modifications at its regular meeting of November 16, 2023, after consideration of the staff report, Planning Commissioner comments, and public comment. The City Council held public hearing that day (January 16), and ultimately continued the proposal to the regularly scheduled February 6, 2024 meeting so the public could provide further comment. By way of the instant missive, we wish to take advantage of that continuance and formally suggest edits to the proposed ordinance.

Wes Ervin, Principal Planner. As a preliminary matter, our family would like to thank Wes Ervin and his team for the assistance they provided in regards to this endeavor. They were dedicated, courteous, and responsive to our concerns. And while we didn't see eye-to-eye on everything, their hard work and professionalism cannot be overstated. It is thanks to their efforts that this project has become a reality. Words cannot express our gratitude so, for that reason, we will simply say, "thank you."

Defined Terms, (§ B). Consistency may be the hobgoblin of little minds but, in the realm of statutory construction, its golden. In this instance, if the City Council is considering a wholesale rewrite of § 17.16.150, we would suggest changing the term, *mobile food vendor,* to, *mobile food facility*, so as to bring it (the ordinance) in-line with state law and county regulations.[1] This change would eliminate any ambiguity and allow the reader to determine whether the code is applicable to their vehicle.

[1] *See, e.g.,* Calif. Health & Safety Code § 113831(a), *and County of Butte, Mobile Food Facility Informational Packet* (May 16, 2023)

Number of Vendors, (§ B). The new ordinance defines, *mobile food vending villages,* as more than one mobile food vending vehicle parked on a private property for more than one hour at a time. We believe that definition is too broad. Two trucks are not a village. In fact, there are properties in the city successfully operate three trucks without disrupting the surrounding businesses. Similarly, there are landlords with a single vehicle who may wish to avail themselves of the added benefit bestowed upon villages. Our original recommendation was that villages are mandatory for four or more vendors; and optional for three or less. We maintain that recommendation here.[2]

Paved or Chip-sealing, (§ F.4). The new ordinance requires that unimproved property be paved if a mobile food vendor will be parked upon it (although the zoning administrator may approve other hard surfaces).[3] Speaking from experience, we would ask the Council to reconsider this requirement. During the California State Fair, our trailers were located on pavement and pavement absorbs heat. That heat all but eliminated foot traffic at the fair and made working within the trailer unbearable. By requiring *all* mobile food vendors pave their locations, the ordinance will create those same unbearable working conditions and dissuade customers from visiting their facilities.[4] It also dissuades mobile vendors from locating in areas that already underserved – *i.e.,* rural areas without commercial development. And while there may indeed be a need for ground cover in some locations (*e.g.*, gravel, road base), making pavement the default standard strikes us as ill-advised and, for these reasons, we maintain our opposition to this requirement.

Signage, (§ F.13). The new ordinance requires that all vehicle signage be located on the vending equipment, and limits villages to two A-frame signs. Both are expected to comply with the requirements of Chapter 17.20 of the City of Oroville Municipal Code (Signs). At first blush, while requiring signage to comply with the Chapter 17.20 seems reasonable, restricting the types signs posted on private property – *i.e.*, when compared to other similar commercial entities – strikes us as a First Amendment violation. By way of example, it would be unreasonable to limit a shopping center with two or more restaurants to two A-frame signs, and we believe it would be unreasonable to do so here. Ergo, we would request that the Council edit this passage so that mobile food trucks and villages are held to the same standards as other commercial entities under Chapter 17.20.

[2] Should the City Council adopt our suggestion, we'd further recommend using the term, *designated site*, instead of *mobile food vending villages.*

[3] The proposed ordinance allows for pavement *or* chip-sealing. Because our analysis applies with equal force to either, we will apply the singular term, *pavement*, when referring to both.

[4] We are prepared to offer testimony from third-party vendors, who will confirm that they are forced to close during the summer because the heat radiating from the pavement creates an unsafe working environment.

HUBBARD
A Professional Corporation

Property Barrier, (§ F.18). Finally, the proposed ordinance requires a demarcated barrier to prevent activities from intruding onto the public street or adjacent properties. We recommend removing that language.[5] Setting aside the fact that barrier-free access is a hallmark of any public marketplace, demarcated barriers surrounding the property are cost prohibited in large parcels, such as shopping centers with multiple property owners sharing common areas. Furthermore, the boundary of the village is already defined by a 10-foot setback (§ F.5). Adding a physical barrier not only creates a "belt and suspenders" solution to the boundary problem, but makes it more difficult (and needlessly so) for customers to access the trailers in a business model where ease of access is key. It is for these reasons that we maintain our objection to this standard.

Kindest regards,

HUBBARD, APC

_____/
Scottlynn J Hubbard
cc (email only):

Josh Hubbard, lawofzen@aol.com
Wes Ervin, City Planner, wervin@cityoforoville.org
Brian Ring, City Administrator, bring@cityoforoville.org
Scott Huber, City Attorney, cityattorney@cityoforoville.org

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[5] Our original response dated October 18, 2023, stated:

> Property Barrier, (§ E.18). The proposed ordinance also requires a demarcated barrier – determined by the City and installed by the property owner – to prevent "activities" at the designated site from intruding onto the public street or adjacent properties. We disagree. Barrier-free access is a hallmark of any public marketplace. Again, by way of example, farmers markets would be far less attractive if they were surrounded by a permanent fence to prevent those activities – *i.e.*, selling food and goods to the general public – from intruding upon the surrounding streets. We would instead recommend a designed setback, *e.g.*, 10 to 15 feet from the edge of the street to the property – which would allow pedestrian traffic, preserve the integrity of the surrounding public areas, and still create an inviting atmosphere for customers.

Op.cit (bold omitted) (underline added) (italics in original).

City of Oroville
COMMUNITY DEVELOPMENT DEPARTMENT

1735 Montgomery Street
Oroville, CA 95965-4897
(530) 538-2430 FAX (530) 538-2426
www.cityoforoville.org

ATTACHMENT 2

NOTICE OF EXEMPTION

TO:	Butte County Clerk 25 County Center Drive Oroville, CA 95965	**FROM:**	City of Oroville 1735 Montgomery Street Oroville, CA 95965

Project Title: Amendments to Section 17.16.150 of the City of Oroville Municipal Code regarding mobile food vendors

Project Location – selected commercial and industrial zones city wide.

Project Location – City: City of Oroville

Project Location – County: Butte

Description of Nature, Purpose, and beneficiaries of project: Adoption of a city-wide ordinance

Name of Public Agency Approving Project: City of Oroville

Name of Person or Agency Carrying Out Project: unidentified applicants for mobile food vendor villages

Exempt Status (Check One):

☐ Ministerial (Sec. 21080(b)(1); 15268)
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a))
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
☒ Categorical Exemption: State type & section number:
- Existing Facilities, Title 14, CCR, §15303(c).

☐ Statutory Exemption: State code number:

Reasons why project is exempt: This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review as follows:

New Construction or Conversion of Small Structures, Title 14, CCR, §15303

15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES
Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:
(a) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. *This project does not involve new structures per se, it involves the use of multiple food trucks and possibly metal storage containers for use connected to a mobile food vendor village on individual parcels.*

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Lead Agency Contact Person: Wes Ervin

Telephone: (530) 538-2408

Signature: _____

Date: _____

☒ Signed by Lead Agency
☐ Signed by Applicant

City of Oroville

COMMUNITY DEVELOPMENT DEPARTMENT
1735 Montgomery Street
Oroville, CA 95965-4897
(530) 538-2430 FAX (530) 538-2426
www.cityoforoville.org

PLANNING COMMISSION STAFF REPORT **Thursday, November 16, 2023**

RE: Draft Mobile Food Vendor Village Ordinance	
SUMMARY: The Oroville Planning Commission will review and make a recommendation to the Oroville City Council regarding modifications to Municipal Code Section 17.16.150 regulating mobile food vendors at one location (Mobile Food Vendor Village).	
RECOMMENDATION: Staff recommends the following actions: 1. **Conduct a Public Hearing** on the proposed ordinance changes. 2. **Adopt the Notice of Exemption** as the appropriate level of environmental review in accordance with the California Environmental Quality Act (CEQA); 3. **Adopt** the recommended Findings for the proposed ordinance changes; 4. **Adopt** Resolution No. P2023-21 with recommendations to the City Council	
APPLICANT: City of Oroville	
LOCATION: potentially multiple sites	**GENERAL PLAN:** commercial and industrial designations **ZONING:** potentially multiple sites **FLOOD ZONE:** n/a no structures involved
ENVIRONMENTAL DETERMINATION: Categorically Exempt per Section 15303(a) of Title 14, California Code of Regulations.	
REPORT PREPARED BY: Lark McNeill, Senior Planner Interwest Planning Group	**REVIEWED BY:** Patrick Piatt, Director Community Development Department

PROJECT DESCRIPTION AND BACKGROUND

Currently, the City of Oroville zoning ordinance has few standards for mobile food vendors (MFV). Staff initiated the proposed modifications to Municipal Code (MC) Section 17.16.150 that would create standards for more than one mobile food vendor

on a site, (commonly known in more urban areas as a mobile food vendor village (MFVV)), on privately owned property in the City. *The intent of the proposed modifications is not for the City to create an MFVV.* The intent is to allow the city to regulate more than one MFV at a time on private property to protect adjacent private property and to ensure that these uses do not generate litter, create unsafe pedestrian crossings, and create a need for additional law enforcement. The Planning Commission held a workshop on a draft MFVV ordinance at its September 28, 2023, regular meeting. A member of the public indicated that it would be appropriate to modify MC Section 17.15.160 instead, and staff agreed. The Commission should review this report, proposed notice of exemption (attached), the draft modifications to MC Section 17.15.160 (attached), consider public testimony, and make a recommendation to the City Council regarding the proposed modifications.

Issues raised during September 28, 2023 Planning Commission meeting

The commissioners raised the following issues regarding MFVV in Oroville:

1. Unfair business advantage to business owners with MFVV on their sites, they don't pay property taxes on the restaurant use on their property. Property owners with constructed restaurants must pay property taxes on the property including structures, as well as paying water, sewer, and storm water runoff fees charged by the sewer and water purveyor. *This is a fact that cannot be mitigated. The draft ordinance does not permit a MFVV to be created in the downtown area.*
2. How to control MFVV clients' access to the MFVV site. *The proposed modifications includes development standards including the use of sawhorse or other temporary barriers to direct traffic into one point of ingress/egress to each MFVV on undeveloped sites. Traffic ingress and egress on existing developed properties is already controlled by curb, gutter, sidewalks, landscaping and driveways.*
3. How many MFV would be allowed at each site. *The Commission needs to make a recommendation as to whether a limit should be set on the number of MFVs for each permitted site.*
4. Limiting business hours. *The draft ordinance limits a MFVV to operating between 6 a.m. and 10 p.m.*
5. Concentration of MFVV. The Commission did not voice interest in limiting the concentration of MFVV in the city limits, so staff removed this from the proposed modifications.

DISCUSSION

Section 17.16.150 regulates mobile food vendors, and currently provides little regulation of these uses to protect adjacent properties. Staff initiated ordinance changes to regulate more than one mobile food vendor at one location at one time. Staff proposes calling this land use "mobile food vendor village" (MFVV). If approved, the city may receive applications for a MFVV in an office park or an existing developed or undeveloped lot. MFVVs are popular in other California communities, and if properly managed, can inject new energy into neighborhoods where they are located. It was

necessary to draft comprehensive development standards that would accommodate any situation, whether it is two or twenty MFVs at one MFVV.

Developed properties typically have curbs, traffic aisles, and landscape areas which help to direct traffic within the property. It is important to provide traffic barriers on vacant properties to direct traffic onto and from the site. The city needs to prevent potentially unsafe traffic patterns onto and from an undeveloped site as clients access the MFVV through the use of temporary barriers such as sawhorses or construction traffic barricades. For example, vehicles must not attempt to access a MFVV within 25 feet of an intersection.

MFVs and MFVVs offer a quick and easy way to earn modest revenue on a property with no or little effort or expenditure by the property owner. It is important to have one entity responsible for maintaining the cleanliness and orderliness of each approved MFVV site. Mobile food vendors are mobile. They are in the business of selling food and beverages. The property owner is ultimately responsible for maintaining the property. Expecting various mobile food truck vendors to maintain the site can be problematic for city enforcement of the conditions of approval. Furthermore, the entity benefiting from the MFVV is the property owner. Therefore, the proposed modifications were drafted with the property owner as the responsible party for maintaining and operating each MFVV site. It is important that MFVV are not allowed to create litter, traffic, or dust nuisances in a neighborhood.

MFVV in the urban areas can become very popular monthly events, with multiple mobile food vendors and live music at one location. In case MFVVs become this popular in Oroville, there is a development standard in the ordinance which permits a 200 square foot area within the MFVV, or on adjacent property, to be occupied by live or amplified music while more than one MFV is at the MFVV site. Outdoor music is permitted consistent with the normally acceptable decibel levels outlined in the Noise and Safety Element of the Oroville General Plan, and may be permitted as determined by the conditions of approval.

Scott Bullard letters October 18, and November 7, 2023. This item was scheduled for a public hearing on October 26, 2023. Scott Bullard submitted a letter on October 18, 2023, with numerous comments from the September 28, 2023, Planning Commission workshop. The October 26 Planning Commission packet was to be finalized October 19 and distributed to the Planning Commission. This item was continued from the October 26, 2023, meeting to the November 16, 2023, Planning Commission meeting to allow time for staff to consider Mr. Bullard's letter. Mr. Bullard submitted another letter on November 7, 2023, after he reviewed the draft staff report for the November 16 Planning Commission meeting.

Staff reviewed both letters and incorporated changes to the ordinance where the changes were in the best interests of the community.

Number of vendors

Mr. Bullard requests that the number of MFVs constituting a MFVV at one location at one time be changed from two or more to four or more. Staff sees no compelling reason to change the definition of MFVV. If the number of MFVs constituting a MFVV is chosen, it can become difficult for code enforcement staff to respond to complaints that a MFVV exists on a property without city use permit approval as different MFVs can come and go as they please. It is simpler to define a MFVV as any number greater than one.

MFV parking surface

Mr. Bullard requested changes to the draft ordinance (November 7, 2023, letter) regarding required MFV vehicle parking surfaces. The draft ordinance allows a variety of surfaces for MFV to be parked as determined by the Zoning Administrator. Staff believes no changes are necessary to this section of the ordinance.

Signage

One of Mr. Bullard's comments was regarding signage. He felt that the proposed ordinance was too restrictive. The public is familiar with the vibrant colors and signage used on mobile food vendor vehicles. Staff believes this is adequate signage for single MFVs at one location. Staff revised the draft ordinance to allow two A-frame signs for a MFVV as permitted in the City's existing Sign ordinance.

Perceived Conflicting requirements for mobile food vendors/ambiguity.

The existing Municipal Code uses the term "mobile food vendor". Staff saw no compelling reason to change the wording as requested by Mr. Bullard in his November

7, 2023, letter. Staff used appropriate multiple terms (mobile food vendor, mobile food vending businesses, mobile food vendor village) in the ordinance because they have multiple definitions and uses. Staff proposes a definition of vending station for clarity.

Mobile food vehicle overnight storage

Mr. Bullard's November 7, 2023, letter requests removal of language regarding the overnight storage of mobile food vendor vehicles. Staff reviewed the mobile food village ordinances from several cities and counties. The requirement to remove the mobile food vehicles from the site overnight is a common requirement in those ordinances, unless the mobile food vendor is vending on the same site as their commissary. Staff agrees that mobile food vehicle owners have a compelling reason to secure their vehicles from theft or vandalism. Staff recommends leaving the requirement that mobile food vendor vehicles be removed from the property unless they are located on the same property as their commissary.

Barriers

The intent of the proposed modifications is to create development standards for two or more MFV on one property whether the property is developed or undeveloped. Developed properties typically have traffic control barriers such as parking aisles and spaces, and curbs, gutter, and sidewalk. Undeveloped properties typically have none of these features. In addition, the 10' vehicle setback from the property line proposed by Mr. Bullard is incorporated into the proposed modifications before the Planning Commission this evening, staff continues to recommend temporary barriers whenever two or more MVF are parked on one property adjacent to the public rights-of-way and on adjacent property lines to protect the public (particularly pedestrians) from vehicles haphazardly entering or exiting the property, as well as confining the MFVV activity to the permitted property. MFVV are attractive to out of school children, and pedestrians as well as motoring traffic and the city is obligated to prevent the creation of public traffic hazards.

Furthermore, some potential applicants have stated that their patrons would be allowed to use the restroom facilities of adjacent businesses. If that statement is part of the use permit application, staff recommends that written authorization from the adjacent businesses and property owners should be provided with the application for a mobile food vendor village to verify this statement.

Health and Safety issues

The City may impose its own requirements as deemed necessary to protect public health, safety, and welfare. Other public agencies which permit MFVVs have imposed conditions regarding propane storage, handwashing stations, placement of fire extinguishers, etc. However, all references to health and safety items such as handwashing stations, fire extinguishers, propane storage and the prohibition of drinking straws and polystyrene foam containers contained in the previous draft ordinance have been eliminated from the attached ordinance as they are covered by existing County and State regulations.

FISCAL IMPACT
None. Any approved mobile food vendor village will be subject to all customary application fees.

PUBLIC NOTICE
The meeting date, time, and project description were published in the Oroville Mercury Register and posted at City Hall.

RECOMMENDATION: That the Planning Commission adopt/modify Resolution P2023-21, based on the findings in that resolution, and forward their recommendation to the City Council for action.

ATTACHMENTS
1. Resolution P2023-21
2. Notice of Exemption (CEQA)
3. Draft changes to Section 17.16.150
4. Letter from Scott Hubbard dated October 18, 2023
5. Letter from Scott Hubbard dated November 7, 2023

ATTACHMENT 1

CITY OF OROVILLE
PLANNING COMMISSION RESOLUTION NO. P23-21

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OROVILLE, CALIFORNIA, recommending to the City of Oroville City Council modifications to Municipal Code Section 17.15.160 regarding mobile food vendors.

WHEREAS, mobile food vendor villages are popular public events which provide economic opportunities throughout California; and

WHEREAS, the City of Oroville Municipal Code Section 17.16.150 currently contains few regulations to protect public safety or protect adjacent properties from activities generated by multiple food trucks at one location; and

WHEREAS, the City of Oroville Planning Commission held a workshop on a draft mobile food vendor village on September 28, 2023; and

WHEREAS, the City of Oroville Planning Commission held a public hearing on proposed modifications to Section 17.16.150 of the City of Oroville Municipal Code, received public comment, and recommended adoption of a Notice of Exemption for modifications to Municipal Code Section 17.15.160, and the modifications to Municipal Code Section 17.15.160 to the City Council on November 16, 2023.

FINDINGS:

1. The draft ordinance is categorically exempt from the California Environmental Quality Act pursuant to Section 15303(a), New Construction or Conversion of Small Structures, Title 14, CCR, §15303. The proposed modifications to Section 17.16.150 of the City of Oroville Municipal Code do not involve new structures per se; they improve regulations for the use of multiple food trucks and possibly metal storage containers for use connected to a mobile food vendor village on individual parcels as approved.

2. The proposed development standards contained in the draft ordinance will protect public safety through development standards to direct pedestrians to safe ingress and egress points, and to prevent traffic nuisances with safe ingress and egress points.

3. The proposed standards contained in the draft ordinance will protect the adjacent properties from litter, noise, and dust.

4. The proposed mobile food vendor villages will be consistent with the underlying commercial and industrial zone districts in which they will be located.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission as follows:

Section 1. That the Planning Commission recommends the City Council adoption of a Notice of Exemption pursuant to Section 15303(a), New Construction or Conversion of Small Structures, Title 14, CCR, §15303. The proposed modifications to Municipal Code Section 17.16.150 do not involve new structures per se; the changes address the use of multiple food trucks and possibly metal storage containers for use connected to a mobile food vendor village on individual parcels as approved.

Section 2. The Planning Commission recommends that the City Council adopt the proposed modifications to Municipal Code Section 17.16.150 which primarily expand development standards for multiple food vendors at one location.

Section 3. The undersigned shall attest to the adoption of this Resolution.

PASSED AND ADOPTED by the Planning Commission of the City of Oroville at a regular meeting on November 16, 2023, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Carl Durling, Chairperson

ATTEST:

_____
Patrick Piatt, Director of Community Development

City of Oroville
COMMUNITY DEVELOPMENT DEPARTMENT

1735 Montgomery Street
Oroville, CA 95965-4897
(530) 538-2430 FAX (530) 538-2426
www.cityoforoville.org

ATTACHMENT 2

NOTICE OF EXEMPTION

TO:	Butte County Clerk 25 County Center Drive Oroville, CA 95965	**FROM:**	City of Oroville 1735 Montgomery Street Oroville, CA 95965

Project Title: Amendments to Section 17.16.150 of the City of Oroville Municipal Code regarding mobile food vendors

Project Location – selected commercial and industrial zones city wide.

Project Location – City: City of Oroville

Project Location – County: Butte

Description of Nature, Purpose, and beneficiaries of project: Adoption of a city-wide ordinance

Name of Public Agency Approving Project: City of Oroville

Name of Person or Agency Carrying Out Project: unidentified applicants for mobile food vendor villages

Exempt Status (Check One):

☐ Ministerial (Sec. 21080(b)(1); 15268)
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a))
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c))
☒ Categorical Exemption: State type & section number:
- Existing Facilities, Title 14, CCR, §15303(c).

☐ Statutory Exemption: State code number:

Reasons why project is exempt: This action has been determined to be exempt from the California Environmental Quality Act (CEQA) review as follows:

New Construction or Conversion of Small Structures, Title 14, CCR, §15303

15303. NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES
Class 3 consists of construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. The numbers of structures described in this section are the maximum allowable on any legal parcel. Examples of this exemption include, but are not limited to:
(a) A store, motel, office, restaurant or similar structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 square feet in floor area on sites zoned for such use if not involving the use of significant amounts of hazardous substances where all necessary public services and facilities are available and the surrounding area is not environmentally sensitive. *This project does not involve new structures per se, it involves the use of multiple food trucks and possibly metal storage containers for use connected to a mobile food vendor village on individual parcels.*

1. Attach certified document of exemption finding.
2. Has a notice of exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Lead Agency Contact Person: Wes Ervin

Telephone: (530) 538-2408

Signature: _____

Date: _____

☒ Signed by Lead Agency
☐ Signed by Applicant

Proposed changes to Section 17.16.150 **Attachment No. 3**

17.16.150 Mobile food vending

A. Purpose. The purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity and general welfare by requiring that new and existing mobile food vendors provide the community and customers with a minimum level of cleanliness, quality and security. These regulations differentiate the difference between a single mobile food vendor at one location, and multiple mobile food vendors at one location.

Single mobile vendors may be permitted to operate by administrative permit approval on private property located within Office (O), Neighborhood Commercial (CN), Limited Commercial (C-1), Highway Commercial (CH), Commercial Light Manufacturing (CLM), Intensive Commercial (C-2), Neighborhood Mixed Use (MXN), Corridor Mixed Use (MXC), Intensive Industrial (M-2), Airport Business Park (ABP), and Open Space (OS) zoning districts subject to the following regulations.

Mobile food vending villages may be permitted to operate by Minor Conditional Use Permit on private property located within Office (O), Neighborhood Commercial (CN), Limited Commercial (C-1), Highway Commercial (CH), Commercial Light Manufacturing (CLM), Intensive Commercial (C-2), Neighborhood Mixed Use (MXN), Corridor Mixed Use (MXC), Intensive Industrial (M-2), Airport Business Park (ABP), and Open Space (OS) zoning districts subject to the following regulations. Mobile food vending villages on city owned property other than public rights-of-way are exempt from the requirement for a Minor Conditional Use Permit but must comply with the same regulations as mobile food vending villages contained in this Section.

B. **Definitions**. Mobile food vending villages (MFVV) are defined as more than one mobile food vending vehicle parked on a private property for more than one hour at a time. Vending stations are defined as the vehicle the mobile food vendor uses to sell food.

C. **Permit requirements**.

1. A single mobile food vendor at any one location shall be required to obtain an administrative permit as provided in this chapter. The permit application shall include the authorization of each property owner where the mobile food vendor intends to vend.

2. Minor Conditional Use Permit. Mobile food vending villages shall require the approval of a Minor Conditional Use Permit (MCUP). The approval shall be specific to a location and shall not be transferable to other locations or operators. The permit application shall include the authorization of each property owner where the mobile food vendor intends to vend. Operation of a mobile food vending village shall not be permitted pursuant to California Senate Bill No. 946, as specified in Government Code Sections 51036 – 51039, Sidewalk Vendors.

3. Business Tax Certificate. Every mobile food vendor shall obtain a Business Tax Certificate prior to operation.

4. Butte County Environmental Health. A valid permit from the Butte County Environmental Health Department is required and shall be displayed at the mobile food vending vehicle.

5. Building Division and Fire Department. All necessary permits and approvals from the Building Division and the Fire Department shall be obtained prior to operation of a mobile food vending village.

6. Permit and license display. At all times while vending, a valid business license shall be displayed at the mobile food vending vehicle.

D. Location and hours of operation.

1. Location. No mobile food vendor village shall be located within 300 feet of any residential use or as determined by the Minor Use Permit.
2. Hours. Hours of operation for mobile food vending businesses shall be between 6:00 a.m. and 10:00 p.m., or as specified in the Minor Use Permit conditions of approval for that site.

E. **Condition of Vending Station**.

1. All mobile food vendors shall always display a current business tax certificate and the health department permit in plain view on the exterior of the vending station. In addition, the mobile food vendor shall always have a letter of permission from the owner of the subject property available in the mobile food vehicle.
2. The vending station shall always be maintained in operating condition.
3. The vending station shall not include a permanent foundation or other feature that would constitute an improvement to real property.
4. The vending station shall not discharge any materials onto the sidewalk, gutter, or storm drains.

F. **Standards and design criteria**. The following standards and design criteria shall apply to all mobile food vendors:

1. All mobile food vending shall be conducted entirely upon private property and not within any public right-of-way.
2. On developed lots, individual mobile food vendors in the mobile food vendor village shall not operate in parking spaces required to meet minimum parking requirements for any other business on the subject site; block any parking required to adequately serve other businesses, or any driveways or aisles for vehicular circulation on the subject site.
3. Applications for mobile food vending villages shall include the location and description of any proposed outdoor dining area, including tables, chairs, and shade structures.
4. If the proposed location is on an unimproved property, the area that the mobile food vendors will be parked on shall be paved or chip sealed. Other hard surfaces may be approved by the Zoning Administrator in the conditions of approval for the minor use permit.
5. All mobile food vendors shall maintain a 10-foot minimum setback from the property lines and public sidewalks, curbs, and gutters.
6. No temporary or permanent chairs, tables, shade structures or other site furniture is permitted except as specified in the Mobile Food Vendor Village Minor Conditional Use permit conditions of approval. Shade structures may require prior approval from the Fire Department dependent on shade structure size and materials.

7. Individual mobile food vendors within a mobile food vendor village shall maintain their immediate sales location in a clean and hazard-free condition.
8. Single mobile food vendors shall keep the subject property and adjacent right-of-way free of litter within 200 feet of the vehicle.
9. All refuse shall be removed from the site and properly disposed of daily.
10. All mobile vendors shall provide covered garbage, recycling, and compost container(s) as required by the Butte County Environmental Health Department. No garbage, recycling, and compost containers will be permitted to remain on-site unless it is stored within a solid storage structure.
11. No single mobile vendor shall use, play, or employ any sound outcry, amplifier, loudspeaker, radio or any other instrument or device to produce sound in connection with the promotion of a vending operation.
12. No more than two hundred (200) square feet within a mobile food vendor village site or on property adjacent to a mobile food vendor village site shall be occupied by musical instruments, equipment, or bandstand. No music is allowed if there are less than two mobile food vendors at the site while music is being played or amplified.
13. Signage for single mobile food vendors shall be located on the vending equipment and is subject to the requirements of City of Oroville Municipal Code, Chapter 17.20, Signs. Mobile food vendor villages shall be permitted a maximum of two A-frame signs subject to the requirements of City of Oroville Municipal Code, Chapter 17.20, Signs.
14. No mobile food vendor shall sell alcoholic beverages, non-food items, cannabis products, or illegal drugs.
15. After the permitted hours of operation, all mobile food vendors located on undeveloped property shall remove their mobile food vending equipment and trash containers, including the mobile vehicle itself, off-site or within an approved, enclosed structure on site. Mobile food vendors located on the same property as their commissary may store their vehicles overnight on the same property.
16. Optional on-site storage structures may be permitted as conditioned within the Minor Conditional Use permit. All structures shall be placed on a concrete foundation. Building permits shall be issued for the structures as determined by the City Building Code. One metal storage container no larger than 200 square feet may be placed on-site for use by the mobile food vendors. The storage container shall always be painted dull beige or as specified within the conditions of approval of the MCUP. Any graffiti painted on the storage container shall be repainted with the base wall color within forty-eight (48) hours' notice by the City to the property owner by the property owner. A deposit of $5,000.00 shall be deposited with the City Finance Department prior to placing the metal storage container on-site to guarantee that the container(s) will be removed from the site when the mobile food vendor use on the site discontinues for more than thirty (30) days.
17. Mobile food vendors will not encroach on a public sidewalk or curb with any part of a vehicle, wagon, trailer or truck or any other equipment related to the operation of the business.
18. To prevent the activities of the mobile food vendor village from intruding onto the public street or adjacent properties, the property lines shall be demarcated by a permanent or temporary barrier determined by the City based on the location of the proposed mobile

food vendor village. This barrier shall be installed and maintained by the property owner. Failure to maintain the barrier shall be reason for revocation of the MCUP if the property owner fails to remedy the barrier condition within fourteen (14) days of receiving written notice from the city to repair/replace the designated barrier.

G. Revocation The MCUP may be modified or revoked by the Zoning Administrator, pursuant to Oroville Municipal Code Section 17.40.020.C should the Zoning Administrator determine that: 1) the use or conditions under which it is being operated or maintained is detrimental to the public health, welfare, or materially injurious to property or improvements in the vicinity; 2) the property is operated or maintained so as to constitute a public nuisance; or 3) the use is operated in violation of the conditions of the CUP. The Planning Commission may revoke the conditional use permit if the Commission was the acting body for the conditional use permit.

H. Approvals. All City issued mobile food vendor permits (administrative, ministerial, or conditional use permit approval) issued after the effective date of this ordinance shall be valid for a period of one year from the date of approval. Any existing City issued mobile food vendor permits as of the date this ordinance becomes effective shall expire 180 days after the date of the effective date of this ordinance. All mobile food vendors must apply for a new mobile food vendor permit within 180 days of the effective date of this ordinance and comply with all regulations in this Section.

Attachment No. 4

HUBBARD
A Professional Corporation

October 18, 2023

***via* electronic mail only**
wervin@cityoforoville.org

Oroville Planning Commission
City of Oroville
1735 Montgomery Street
Oroville, CA 95965
c/o Wes Ervin, Principal Planner

RE: (Draft) Mobile Food Vending Villages Ordinance

Greetings:

On September 26, 2023, the Oroville Planning Commission invited a written response to the proposed ordinance. By way of the instant missive, we are accepting that invitation. Upon review, the Commission will see that we've made three overarching recommendations:

First, we replaced the term *mobile food truck village* with *designate site*; and opened the application process to everyone. Specifically, designated sites are simply properties (pre-approved by the City) that allow additional benefits to mobile food vendors – *e.g.*, expanded hours, on-site storage, use of tables and chairs. While property owners with four or more mobile food vendors on a site are required to apply for "designated" status, owners with three or less may also do so.

Second, we extrapolated requirements from the proposed ordinance, which applied to mobile food vendors regardless of where they are located, and incorporated them (those requirements) into the existing one. In essence, creating two proposed ordinance – one focused solely on mobile food vendors, the other on designated sites.

Finally, we brought the proposed ordinance in-line with existing city and county standards.

All of these issues are discussed in greater detail below. Please feel free to contact me if you have any question or wish to discuss this matter further.

Kindest regards,

HUBBARD, APC

_____/
Scottly J Hubbard

cc (email only):

Josh Hubbard, lawofzen@aol.com
Brian Ring, City Administrator, bring@cityoforoville.org
Scott Huber, City Attorney, cityattorney@cityoforoville.org

HUBBARD
A Professional Corporation

ANALYSIS

Conflicting requirements for mobile food vendors. One of the biggest issues of the proposed ordinance (OMC § 17.16.160) is that it creates different standards for mobile food vendors depending their location. By way of example, mobile food vendors at a designated vending site cannot use polystyrene and drinking straws, but all other vendors can. In another example, vendors at a designated site must obtain a hazardous materials permit if their propane tank exceeds 10-gallons, yet, no such requirement exists for other vendors. In still another example, vendors at a designated site cannot play music, while all other vendors can. Two different standards thus exist for the same vendors and therein lies the rub of the proposed ordinance. If a standard is worth adopting, then it should be applied with equal force to all mobile food trucks – not just those located at designated sites. There are, of course, exceptions to this rule, *e.g.*, when tables and chairs are permitted, but they (the exceptions) should be narrowly tailored and always run with the site. We would recommend a single standard for mobile food vendors (regardless of location) and use § 17.16.160 to carve out exceptions for vendors on designated sites.[1]

Ambiguity, (§ D.2). Consistency may be the hobgoblin of little minds, but its invaluable for statutory construction. The proposed ordinance, however, vacillates when identifying multi-vendor food sites, using the terms *mobile food vending villages,* (§ B); *mobile food facility*, (§ C.1); and *mobile food vending location*, (§ D.2) interchangeably. Similarly, the proposed ordinance uses multiple terms for food vendors, including *mobile food vendor,* (§ E.10); *mobile vendor,* (§ E.6); *mobile food vending vehicle*, (§ B); and *mobile food vending businesses*, (§ D.3). To avoid confusion, we recommend amending the new ordinance to use a single term, *designated site,* for the former; and another, *mobile food vendor,* for the latter.[2]

Hours of Operation, (§ D.3). Hours of operation for mobile food vendors are be between 7:00 a.m. and 10:00 p.m. As explained during the hearing, however, there are instances where expanding the hours of operation are consistent with surrounding community's activities. For example, Home Depot opens at 6:00 a.m. but mobile vendors outside of the store cannot sell until 7:00 a.m. We recommend permitting operations at designated sites upon an affirmative showing by the property owner that such operations are consistent with surrounding community's activities.

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1 Suggested changes to bifurcate the proposed ordinance are attached to this response.

2 Long term, the City should consider replacing the term, *mobile food vendor,* with, *mobile food facility,* which is consistent with both county regulations and California law. *See, e.g.,* Calif. Health & Safety Code § 113831(a) ("'Mobile Food Facility' [] means any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. 'Mobile food facility' does not include a 'transporter' used to transport packaged food from a food facility, or other approved source to the consumer.").

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A Professional Corporation

Paving, (§ E.2). The proposed ordinance also requires that designated sites be entirely paved. But paving isn't the only way to drain surface-water and prevent soil erosion. Gravel and road base perform the same function at a fraction of the cost. More importantly, they don't trap heat and are friendlier to the environment. For that reason, we'd ask the Commission to expand this ordinance to include other mediums.

No Polystyrene Foam / No Drinking Straws, (§ E.4). Polystyrene and drinking straws are also banned under the proposed ordinances. We believe both bans should be removed. Dealing with each element seriatim, polystyrene is neither illegal in Butte County nor has Oroville taken affirmative steps to eliminate it. Nevertheless, the proposed ordinance bans mobile food vendors at designated sites (and only vendors at those sites) from using polystyrene containers. No other food facilities are affected. Similarly, Assembly Bill (AB) 1884 prohibits full-service restaurants in California from providing single-use plastic straws unless requested by the consumers.[3] Again, the law doesn't bar drinking straws – it just prohibits restaurants from handing them out automatically. Nevertheless, like polystyrene, mobile food vendors at designated sites (and only those vendors) are prohibited from offering drinking straws to customers. While there may indeed be a valid reason for banning polystyrene and drinking straws in Oroville, it should be applied with equal force to everyone. We would thus recommend eliminating the ban, or expanding it to all food providers.

Handwashing Stations / Public Toilets, (§ E.8). Property owners are required to install (and maintain) portable handwashing stations and public toilets on the site under the proposed ordinance. By and large, this ordinance mirrors a similar requirement by the County.[4] Where the two regulations diverge, however, is that the proposed ordinance prohibits the use of restroom facilities already secured by vendors "within proximity" of the site. We suggest removing this distinction. The purpose behind the proposed ordinance is to eliminate pedestrian traffic across arterial streets; and avoid off-site managers arbitrarily denying use of their facilities. Yet, mobile food vendors have secured handwashing stations and public restrooms under the County's requirement for over a decade without incident. We would thus recommend striking this provision in its entirety or, in the alternative, amending the ordinance to mirror county requirements.

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A Professional Corporation

[3] Stat. 2018, Chap. 576 (AB 1884), § 1.

[4] *County of Butte, Mobile Food Facility Informational Packet*, p.3 (May 16, 2023) ("Facility [must be] located within 200 feet of available toilet and hand washing facilities.").

Fire extinguishers, (§ E.11). Mobile vendors cooking food are required to maintain a working-fire extinguishers under the proposed ordinance. But Butte County already requires that mobile food vendors have fire extinguishers.[5] Nothing is gained by repeating that requirement here and, worse, such repetition risks generating conflicting standards and enforcement. Ergo, we would recommend striking this provision in its entirety or, in the alternative, amending the ordinance to mirror county requirements.

Storage, (§§ E.13 & E.14). While we are not opposed to storage containers on a designated site, they would not be our first choice for a secure location. As such, we request the proposed ordinance be amended to reflect that nothing within that section prohibits other methods to secure property on-site.

Propane Gas, (§ E.16). Mobile food vendors on a designated site are also required to obtain a hazardous materials permit when using or storing quantities of liquid propane gas equal to or exceed ten (10) gallons for their business. This requirement is also problematic, as the State of California Division of Occupational Safety and Health exercises sole jurisdiction over propane tanks, which includes the storage and handling of liquid gas;[6] and the Division doesn't issue permits for tanks below 125 gallons that are maintained in accordance with DOT regulations.[7] And while the *Mobile Food Facility Permit Application* does inquire as to whether propane will be used to supply power, that is the extent of Butte County's permitting process on the issue.[8] In other words, there is no permit to obtain and no process to obtain it. It is for these reasons we suggest removing the hazardous materials permit requirement from the final ordinance.

Property Barrier, (§ E.18). The proposed ordinance also requires a demarcated barrier – determined by the City and installed by the property owner – to prevent "activities" at the designated site from intruding onto the public street or adjacent properties. We disagree. Barrier-free access is a hallmark of any public marketplace. Again, by way of example, farmers markets would be far less attractive if they were surrounded by a permanent fence to prevent those activities – *i.e.*, selling food and goods to the general public – from intruding upon the surrounding streets. We would instead recommend a designed setback, *e.g.*, 10 to 15 feet from the edge of the street to the property – which would allow pedestrian traffic, preserve the integrity of the surrounding public areas, and still create an inviting atmosphere for customers.

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[5] *Id*. at p.5 (May 16, 2023) ("Minimum 10BC fire extinguisher provided for heating and cooking equipment. … Fire extinguishing capacity is rated in accordance with ANSI/UL 711: Rating and Fire Testing of Fire Extinguishers. The ratings are described using numbers preceding the class letter. The number preceding the B indicates the size of fire in square feet that an ordinary user should be able to extinguish. The letter C indicates that the extinguishing agent will not conduct electricity.").

[6] Calif. Code. Reg., Titl 8, §§ 450 *et seq.*

[7] *Id.* at § 470(a).

[8] https://www.buttecounty.net/DocumentCenter/View/3765/Mobile-Food-Facility-Application-PDF?bidId= (last viewed Oct. 6, 2023).

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PROPOSED ORDINANCE

17.16.150 Mobile food vending.

A. **Purpose**. The purpose of these ordinances is to promote the health, safety, comfort, convenience, prosperity and general welfare by requiring that new and existing mobile food vendors provide the community and customers with a minimum level of cleanliness, quality and security.

B. **Definition. "**Mobile food vendor" is defined as any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail; and is consistent with "mobile food facility," as defined by Calif. Health & Safety Code § 113831.

C. **Permit Required**.

1. Administrative Permit. Mobile food vendors shall obtain an administrative permit as provided in this chapter. The permit application shall include the authorization of each property owner where the mobile food vendor intends to operate.

2. Business Tax Certificate. Every mobile food vendor shall obtain a Business Tax Certificate prior to operation.

3. Butte County Environmental Health. A valid permit from the Butte County Environmental Health Department is required and shall be displayed at all times.

4. Permit and license display. A valid business license is required and shall be displayed at all times.

D. **Location**.

1. Mobile food vendors shall be conducted entirely upon private property and visible from the street.

2. Mobile food vendors shall not: operate in parking spaces required to meet minimum parking requirements for any other business; block any parking required to adequately serve other businesses, or any driveways or aisles for vehicular circulation; or encroach on a public sidewalk, curb or right-of way.

E. **Condition of Vending Station**.

1. The vending station shall be maintained in operating condition at all times.

2. No mobile food vendor shall sell alcoholic beverages, non-food items, cannabis products, or illegal drugs.

3. No permanent foundation (or other feature that would constitute an improvement to real property) is permitted, except when the mobile food vendor is located on a designated site, as define by this chapter.

4. Mobile food vendors who use, play, or employ any sound outcry, amplifier, loudspeaker, music, or any other instrument or device to promote operations shall do so in a manner consistent with the Noise and Safety Element of the Oroville General Plan.

5. All signage shall be located on the vending equipment, except when the vendor is located on a designated site, as define by this chapter.

F. **Condition of Site.**

1. Mobile food vendors shall maintain their immediate sales location in a clean and hazard free condition.

2. No chairs, tables, fences or other site furniture, including permanent and temporary furniture, shall be permitted in conjunction with mobile food vendor, except when the vendor is located on a designated site, as define by this chapter.

3. After permitted hours of operation, all equipment and trash containers shall be stored off-site or within an approved on-site structure.

G. **Litter Control.**

1. The mobile food vendor shall provide a minimum of two 32-gallon litter receptacles within 15 feet of the vending station.

2. The mobile food vendor shall keep the subject property and adjacent right-of-way free of litter within 200 feet of the vehicle.

3. All refuse shall be removed from the site and properly disposed of on a daily basis.

4. The vending station shall not discharge any materials onto the sidewalk, gutter or storm drains.

H. **Hours of Operation**. The mobile food vendor's operations shall not be conducted before 7:00 a.m. or after 10:00 p.m.

17.16.155 Designated mobile food vending site.

A. **Definition.** "Designated site" is defined as private property approved by the City to allow one or more mobile food vendor(s) to sell goods for more than one hour at a time.

B. **Permit Required**. Designated sites shall obtain a Minor Conditional Use Permit (MCUP), as provided in this chapter, if the property is used by four or more mobile food vendors. Applications shall include the location and description of any proposed outdoor dining area, including tables, chairs, and shade structures. The permitted number of mobile food vendors within each MCUP will be determined in the MCUP. This approval shall be specific to a location and shall not be transferable to other locations or operators. All necessary permits and approvals from the Building Division and the Fire Department shall be obtained prior to operation. Property owners with three or fewer vendors at a site may, but are not required to, obtain a permit under this section.

C. **Location**.

1. Designated sites may be permitted to operate on private property located within Office (O), Neighborhood Commercial (CN), Limited Commercial (C-1), Highway Commercial (CH), Commercial Light Manufacturing (CLM), Intensive Commercial (C-2), Neighborhood Mixed Use (MXN), Corridor Mixed Use (MXC), Intensive Industrial (M-2), and Airport Business Park (ABP) zoning districts.

2. No designated site shall locate within 300 feet of any residential use (or as determined by the Minor Use Permit); or within 200 feet of another approved designated site, as measured between the mobile food vendors.

3. No designated site shall be permitted on public property under this Section and California Senate Bill No. 946, as specified in Government Code Sections 51036 – 51039, Sidewalk Vendors. This prohibition extends to public rights of way.

4. All mobile food vendors at a designated site shall maintain a 10-foot minimum setback from the edge of the property.

D. **Condition of Site**.

1. Exterior storage of refuse, equipment or materials associated with the mobile food vendor is are prohibited, except as provided by this section.

2. Chairs, tables, fences or other site furniture, including permanent and temporary furniture, are permitted in conjunction with mobile food vending, subject to MCUP approval.

3. Mobile food vendors may place signs on designated sites, subject to the requirements of Chapter 17.20, Signs, and written approval of the site's property owner(s).

4. The designated site must be improved to allow surface-water drainage and prevent soil erosion.

E. **Storage.** One metal storage container no larger than 200 square feet may be placed on-site for use by the mobile food vendors. The storage container shall be always painted dull beige or as specified within the conditions of approval of the MCUP. Any graffiti painted on the storage container shall be repainted with the base wall color within forty-eight (48) hours' notice by the City to the property owner by the property owner. A deposit of $5,000.00 shall be deposited with the City Finance Department prior to placing the metal storage container on-site to guarantee that the container(s) will be removed from the site when the mobile food vendor use on the site discontinues for more than thirty (30) days. Nothing in this section shall prevent a property owner from requesting an alternative storage or other enclosed structure on site.

F. **Hours of Operation**. The designated site's operations shall not be conducted before 7:00 a.m. or after 10:00 p.m. Operations may be conducted beyond those hours, upon an affirmative showing by the property owner that such operations are consistent with surrounding community's activities.

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Attachment 5

November 7, 2023

***via* electronic mail only**
wervin@cityoforoville.org

Oroville Planning Commission
City of Oroville
1735 Montgomery Street
Oroville, CA 95965
c/o Wes Ervin, Principal Planner

RE: Proposed changes to Section 17.16.150

Greetings:

Thank you for the (revised) changes to OMC § 17.16.150, dated November 6, 2023. As promised, our written response is attached below.

Defined Terms, (§ B). As a preliminary matter, if the Planning Commission is considering a wholesale rewrite of § 17.16.150, we would suggest changing the term, *mobile food vendor,* to, *mobile food facility*, so as to bring it (the term) in-line with state law and county regulations.[1] This change would eliminate any ambiguity and allow the reader to determine whether the code is applicable.

Number of Vendors, (§ B). The new ordinance defines, *mobile food vending villages,* as more than one mobile food vending vehicle parked on a private property for more than one hour at a time. We believe that definition is too broad. Two trucks are not a village. In fact, there are properties in the city successfully operate three trucks without disrupting the surrounding businesses. Our original recommendation was that villages are mandatory for four or more vendors; and optional for three or less. We maintain that recommendation.[2]

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[1] *See, e.g.,* Calif. Health & Safety Code § 113831(a), *and County of Butte, Mobile Food Facility Informational Packet* (May 16, 2023)

[2] We also renew our suggestion that the Planning Commission adopt the term, *designated site*, instead of *mobile food vending villages.*

Paved or Chip-sealing, (§ F.4). The new ordinance requires that unimproved property be paved if a mobile food vendor will be parked upon it (although the zoning administrator may approve other hard surfaces).[3] Speaking from experience, we would ask the Commission to reconsider this requirement. During the California State Fair, our trailers were located on pavement and pavement absorbs heat. That heat all but eliminated foot traffic at the fair and made working within the trailer unbearable. By requiring *all* mobile food vendors pave their locations, the ordinance will create those same unbearable working conditions and dissuade customers from visiting their facilities.[4] It also dissuades mobile vendors from locating in areas that already underserved – *i.e.,* rural areas without commercial development. And while there may indeed be a need for ground cover (*e.g.*, gravel, road base) in some locations, making pavement the default standard for all locations strikes us as ill-advised and, for these reasons, we maintain our opposition to this standard.

Signage, (§ F.13). The new ordinance requires that all signage be located on the vending equipment and comply with the requirements of Chapter 17.20 of the City of Oroville Municipal Code (Signs). Time constraints preclude me from conducting an in-depth analysis on this language. At first blush, while requiring signage to comply with the Chapter 17.20 seems permissible, prohibiting property owners from placing signs on private property – *i.e.*, promoting the village and vendors located thereon, strikes us as a First Amendment violation. We would recommend you carve out an exception on that ground.

Mobile Vehicle Removal, (§ F.15). Finally, the proposed ordinance requires that mobile vehicles be stored off-site (or within an approved, enclosed structure on-site) after the permitted hours of operation. We recommend eliminating this requirement. Unless the site contains a designated commissary, the mobile food vendor is already required to remove the vehicle under county regulations.[5] Furthermore, in those instances where a commissary is on-site, the onus falls onto the vendor to ensure that their vehicle is secured. Phrased somewhat differently, inside or out, ordinance or not, it is the vendor's responsibility to protect their vehicle from break-ins. And it is for this reason that we recommend removing the section.

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[3] The proposed ordinance allows for pavement *or* chip-sealing. Because our analysis applies with equal force to either, we will apply the singular term, *pavement*, when referring to both.

[4] We are prepared to offer testimony from third-party vendors, who will confirm that they are forced to close during the summer because the heat radiating from the pavement creates an unsafe working environment.

[5] *County of Butte, Mobile Food Facility Informational Packet*, p.4 (May 16, 2023) ("Operational Requirements -- Report to an approved Commissary each operating day.")

Property Barrier, (§ F.18). The proposed ordinance continues to require a demarcated barrier to prevent activities from intruding onto the public street or adjacent properties. And, again, we recommend removing that language.[6] Setting aside the fact that barrier-free access is a hallmark of any public marketplace, demarcated barriers surrounding the property are cost prohibited in large parcels, such as shopping centers with multiple property owners sharing common areas. Furthermore, the boundary of the village is already defined by a 10-foot setback (§ F.5). Adding a physical barrier not only creates a "belt and suspenders" solution to the boundary problem, but makes it more difficult (and needlessly so) for customers to access the trailers in a business model where ease of access is key. It is for these reasons that we maintain our objection to this standard.

Kindest regards,

HUBBARD, APC

_____/
Scottlynn J Hubbard
cc (email only):

Josh Hubbard, lawofzen@aol.com
Brian Ring, City Administrator, bring@cityoforoville.org
Scott Huber, City Attorney, cityattorney@cityoforoville.org

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[6] Our original response dated October 18, 2023, stated:

> Property Barrier, (§ E.18). The proposed ordinance also requires a demarcated barrier – determined by the City and installed by the property owner – to prevent "activities" at the designated site from intruding onto the public street or adjacent properties. We disagree. Barrier-free access is a hallmark of any public marketplace. Again, by way of example, farmers markets would be far less attractive if they were surrounded by a permanent fence to prevent those activities – *i.e.*, selling food and goods to the general public – from intruding upon the surrounding streets. We would instead recommend a designed setback, *e.g.*, 10 to 15 feet from the edge of the street to the property – which would allow pedestrian traffic, preserve the integrity of the surrounding public areas, and still create an inviting atmosphere for customers.

Op.cit (bold omitted) (underline added) (italics in original).

17.16.150 Mobile *food* vending.

A. **Purpose**. The purpose of these regulations is to promote the health, safety, comfort, convenience, prosperity and general welfare by requiring that new and existing mobile *food* vendors provide the community and customers with a minimum level of cleanliness, quality and security.

B. **Permit Required**. Mobile *food* vendors shall be required to obtain an administrative permit as provided in this chapter. The permit application shall include the authorization of each property owner where the mobile *food* vendor intends to vend.

C. **Location**.

1. The mobile *food* vendor shall not operate in parking spaces required to meet minimum parking requirements for any other business.

2. The mobile *food* vendor shall not block any parking required to adequately serve other businesses, or any driveways or aisles for vehicular circulation.

3. The mobile *food* vendor shall be visible from the street.

D. **Condition of Vending Station**.

1. The mobile *food* vendor shall display a current business tax certificate and health department permit in plain view at all times on the exterior of the vending station. In addition, the mobile *food* vendor shall have a letter of permission from the owner of the subject property available at all times.

2. The vending station shall be maintained in operating condition at all times.

3. The vending station shall not include a permanent foundation or other feature that would constitute an improvement to real property.

4. The vending station shall not discharge any materials onto the sidewalk, gutter or storm drains.

E. **Condition and Appearance of Site**.

1. Exterior storage of refuse, equipment or materials associated with the mobile *food* vendor is prohibited, except for litter receptacles required by this section.

2. No chairs, tables, fences or other site furniture, including permanent and temporary furniture, shall be permitted in conjunction with mobile *food* vending establishments.

F. **Litter Control**.

1. The mobile *food* vendor shall provide a minimum of two 32-gallon litter receptacles within 15 feet of the vending station.

2. The mobile *food* vendor shall keep the subject property and adjacent right-of-way free of litter within 200 feet of the vehicle.

3. All refuse shall be removed from the site and properly disposed of on a daily basis.

G. **Hours of Operation**. The mobile *food* vendor's operations shall not be conducted before 7:00 a.m. or after 10:00 p.m. (Ord. 1749 § 4; Ord. 1819 § 4, 2017)

Contact:

City Clerk: 530-538-2535