



**REGULAR MEETING AGENDA
OF THE
ARVIN CITY COUNCIL / SUCCESSOR AGENCY TO THE
ARVIN COMMUNITY REDEVELOPMENT AGENCY / ARVIN HOUSING
AUTHORITY / ARVIN PUBLIC FINANCING AUTHORITY**

**TUESDAY MAY 01, 2018 6:00p.m.
CITY HALL COUNCIL CHAMBERS
200 CAMPUS DRIVE, ARVIN**

CALL TO ORDER

Mayor Jose Gurrola

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL

Jose Gurrola	Mayor
Jess Ortiz	Mayor Pro Tem
Jazmin Robles	Councilmember
Erika Madrigal	Councilmember
Gabriela Martinez	Councilmember

STAFF

Richard G. Breckinridge	Acting City Manager/Chief of Police
Shannon L. Chaffin	City Attorney – Aleshire & Wynder
Jeff Jones	Finance Director
Adam Ojeda	City Engineer – DeWalt Corporation
Cecilia Vela	City Clerk

PUBLIC COMMENTS:

The meetings of the City Council and all municipal entities, commissions, and boards (“the City”) are open to the public. At regularly scheduled meetings, members of the public may address the City on any item listed on the agenda, or on any non-listed matter over which the City has jurisdiction. At special or emergency meetings, members of the public may only address the City on items listed on the agenda. The City may request speakers to designate a spokesperson to provide public input on behalf of a group, based on the number of people requesting to speak and the business of the City.

In accordance with the Brown Act, all matters to be acted on by the City must be posted at least 72 hours prior to the City meeting. In cases of an emergency, or when a subject matter needs immediate action or comes to the attention of the City subsequent to the agenda being posted, upon making certain findings, the City may act on an item that was not on the posted agenda.

AGENDA STAFF REPORTS AND HANDOUTS:

Staff reports and other disclosable public records related to open session agenda items are available at City Hall, 200 Campus Drive, Arvin, CA 93203 during regular business hours.

CONDUCT IN THE CITY COUNCIL CHAMBERS:

Rules of Decorum for the Public

Members of the audience shall not engage in disorderly or boisterous conduct, including the utterance of loud, threatening or abusive language, clapping, whistling, stamping of feet or other acts which disturb, disrupt, impede or otherwise render the orderly conduct of the City meeting infeasible. A member of the audience engaging in any such conduct shall, at the discretion of the presiding officer or a majority of the City, be subject to ejection from the meeting per Gov. Code Sect. 54954.3(c).

Removal from the Council Chambers

Any person who commits the following acts in respect to a meeting of the City shall be removed from the Council Chambers per Gov. Code Sect. 54954.3(c).

- (a) Disorderly, contemptuous or insolent behavior toward the City or any member thereof, tending to interrupt the due and orderly course of said meeting;
- (b) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due and orderly course of said meeting;
- (c) Disobedience of any lawful order of the Mayor, which shall include an order to be seated or to refrain from addressing the City; and
- (d) Any other unlawful interference with the due and orderly course of said meeting.

AMERICANS with DISABILITIES ACT:

In compliance with the ADA, if you need special assistance to participate in a City meeting or other services offered by the City, please contact the City Clerk’s office, (661) 854-3134. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.

1. Approval of Agenda as To Form.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles _____ CM Madrigal _____ CM Martinez _____ MPT Ortiz _____ Mayor Gurrola _____

2. PUBLIC COMMENTS

(This is the opportunity for the public to address the City Council on any matter on the agenda or any item of interest to the public that is within the subject matter jurisdiction of the City Council.)

3. PRESENTATION(S)

- A. Grimmway School Update
Cole Sampson, Principal

4. CONSENT AGENDA ITEM(S)

- A. Approval of Demand Register(s) of April 13, 2018 – April 26, 2018.
- B. Approval of Payroll Register(s) of April 20, 2018.
- C. Approval of the Minutes of the Regular Meeting(s) of April 17, 2018.
- D. Approval of Letter of Support for Martin Luther King Jr. Freedom Center and Dolores Huerta Foundation Youth and Family Civic Engagement Initiative.
- E. Approval of Proclamation Proclaiming May 2018 as Bike Month in the City of Arvin.
- F. Approval of Letter of Support Regarding Extending Honduras's Temporary Protected Status Designation for Eighteen (18) Months and Authorizing the Mayor to Sign the Letter on Behalf of the City of Arvin.
- G. Approval to Authorize Staff to Seek Planning Commission Review and Recommendation of Updates to the Proposed Ordinance for Adoption of Arvin Municipal Code Text Amendment to Title 17-Zoning, Chapter 17.46 Oil and Gas Production – Repealing Existing Chapter and Adoption of Chapter 17.46 – Text Amendment 2017-04, Oil and Gas Production Regulation of Petroleum Facilities and Recommendation of CEQA Exemption Section 15308, If Any and If Appropriate Given the Nature of the Update, and Then Set the Proposed Ordinance for Public Hearing and Consideration for Introduction (First Reading) at the Next Reasonably Available Council Meeting Given Staff Resources. If No Additional Planning Commission Review is Warranted Given the Nature of the Updates, then Authorize Staff to Set the Proposed Ordinance for Public Hearing and Consideration for Introduction (First Reading) at the Next Reasonably Available Council Meeting Given Staff Resources.

- H. Approval to Authorize the Mayor, in Conjunction with Consultation with the City Manager and Review as to Legal Form by the City Attorney, to Provide Periodic Press Releases to Update the Public Regarding Developments with the Proposed Oil and Gas Ordinance.
- I. Approval of A Resolution of the City Council of the City of Arvin Adopting A List of Projects for the Fiscal Year 2018 – 2019 Funded by SB 1: The Road Repair and Accountability Act of 2017; and Authorizing Related Actions.
- J. A Resolution of the City Council of the City of Arvin to Authorize the Mayor and/or Interim City Manager to Enter Into A Contract with Diamond IT In An Amount Not To Exceed \$56,372.95 for the Purchase of Two Dell Power Edge Servers, Related Software and Installation Charges, and Financing of the Same.
- K. Approval of A Resolution of the City Council of the City of Arvin Approving the First Amendment to the Professional Services Agreement By and Between the City of Arvin and Dewalt Corporation for City Engineer Services.

Staff recommends approval of Consent Agenda.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles _____ CM Madrigal _____ CM Martinez _____ MPT Ortiz _____ Mayor Gurrola _____

5. PUBLIC HEARING ITEM(S)

- A. Public Hearing to Consider Introduction of An Uncodified Ordinance of the City Council of the City of Arvin for A Third Amendment to the Development Agreement with Westminster Capital, Inc. (City Planner/City Attorney)

Staff recommends the City Council consider introducing the Ordinance to be read by title only, open the hearing, allow for public testimony, close the hearing, waive first reading of the Ordinance, and approve the introduction of the Ordinance.

Motion _____ Second _____ Vote _____

Roll Call: CM Robles _____ CM Madrigal _____ CM Martinez _____ MPT Ortiz _____ Mayor Gurrola _____

6. STAFF REPORTS

- A. Annual Report – Transit Department (Finance Director)

7. COUNCIL MEMBER COMMENTS

8. CLOSED SESSION ITEM(S)

- A. Conference with Legal Counsel Anticipated Litigation (Pursuant to Government Code § 54956.9)
Three Potential cases

- B. Conference with Labor Negotiators (Pursuant to Government Code § 54957.6) City Negotiator, Pawan Gill, Human Resources Administrator Employee Organizations: Arvin Police Officers Association (APOA) and Service Employees International Union (SEIU) Local 521

9. ADJOURNMENT

I hereby certify under penalty of perjury under the laws of the State of California that the foregoing agenda was posted on the Arvin City Council Chambers Bulletin Board not less than 72 hours prior to the meeting. Dated April 26, 2018.



Cecilia Vela, City Clerk



Grimmway Academy Arvin

Reimagining Education.

Mission Statement

Grimmway Academy, a K-8 public school, will **close the achievement gap** for students in the rural areas of Kern County by creating an environment for student excellence and well-being.



A California Distinguished Charter School.

Organizational Accomplishments

- Founding of Grimmway Schools Charter Management Organization (CMO) to support School Academic and Operational goals.
- Successful opening of Grimmway Academy Shafter with 440 students K-4.
- Public/Private Grant Awards in excess of \$1.5M including:
 - *Walton Family Foundation*
 - *Public Charter School Grant*
 - *Charter School Growth Fund*
 - *New School Venture Fund*



By the Numbers

- **795 students** enrolled in grades K-8
- **85%** Socioeconomically disadvantaged
- **33%** English Language Learner
- **10%** Special Education students
- Waitlists in multiple grade levels



EVERY CHILD CAN HAVE A BRIGHT FUTURE

Academics

- **Strong focus on Literacy across all subjects**
 - *Success for All* reading and writing program in Grades K-6
 - Learning Software to Support Literacy Acquisition
 - BeGlad and SDAIE in All Classrooms to Support ELL Students
- **Enhanced Math Instruction in all grade levels**
 - *Partnership with Loyola Marymount University Center for Math and Science Teaching*
 - Targeted Instruction in the Learning Lab
 - Math Coaches to support teacher professional development and growth
- **Focus on College-Readiness**
 - *Integrated STEM and Humanities instruction tied to the Edible School Yard.*
 - Middle School Home Room focus on College and Career readiness.
 - Parent Leadership Academy, Family College Trips



EVERY CHILD CAN HAVE A BRIGHT FUTURE

Wellness/Edible Schoolyard

- Three Healthy Meals per Day – Breakfast, Lunch, Snack
- Every Student Participates in Physical Ed
- 12 Lessons in the Edible Schoolyard
- Nutrition Classes for Students and Parents
- Environmental Stewardship
- Engagement of Families in Healthy Eating and Nutrition Awareness



A California Distinguished Charter School.

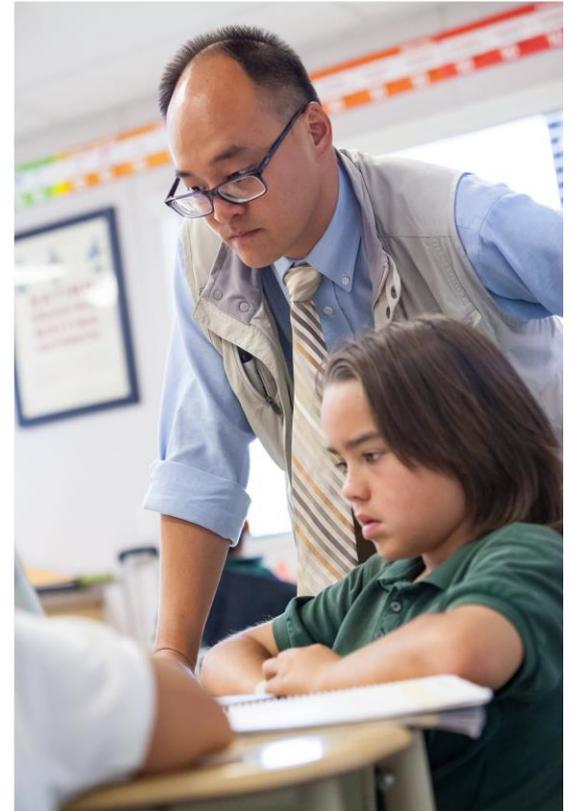
EVERY PARENT CAN BE ENGAGED

- **98% Parental Involvement in all Parent-Teacher Conferences**
- **Family Cooking Classes - 6 nights per year**
- **Parent Leadership Academy**
- **STAR Parents of Grimmway Academy (voting member on GA Board)**
- **School Governance Involvement**
- **School Site Council Participation**
- **Wellness Committee Membership**
- **Parent Forums, such as Understanding Common Core, Family STEM Night, Family Literacy, and Preparing Healthy School Lunches**



EVERY TEACHER CAN BE SUCCESSFUL

- 260+ Hours of Professional Development Each Year
- Outside Professional Development Opportunities
 - California Charter School Association
 - BeGLAD, Kagan, Success For All
 - KCSOS Trainings
- Dedicated New Teacher Coach who provides mentoring, feedback and professional development designed for new teachers/interns



EVERY COMMUNITY CAN FLOURISH

- Comprehensive After-School Program
- Farmers Market on Campus
- Health and Wellness Fairs
- PE, Art, and Music for all Students
Grades K-6
- Project-Based Learning for Middle
School students



Our Scholars Thank You, City of Arvin!





Grimmway Academy is **closing the achievement gap** for students in Kern County by creating an environment for student excellence and well-being.



A California Distinguished Charter School.

Edit List of Invoices - Summary

DEMAND LIST 04/16/2018

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PO Number	Invoice Date	Invoice Description	Invoice Amount
46747	AIRGAS WEST	9952639792	04/17/2018		03/31/2018	RENT CYL IND. LARGE OXYGEN/	69.50
						Vendor Total:	69.50
46748	BSSR, INC.	30604	04/17/2018		04/17/2018	DIESEL/GAS PUMP REPAIR	443.62
						Vendor Total:	443.62
46749	CLEAN CUT LANDSCAPE MANAGEMENT	1278	04/17/2018		04/17/2018	LANDSCAPE MAINTENANCE LLMI	2,500.00
46750	CLEAN CUT LANDSCAPE MANAGEMENT	1279	04/17/2018		03/31/2018	LANDSCAPE MAINTENANCE LLMI	550.00
						Vendor Total:	3,050.00
46751	COPOWER	738777	04/17/2018		04/09/2018	CHIRO SVC. MAY 2018	158.66
						Vendor Total:	158.66
46752	CORELOGIC SOLUTIONS, LLC	81882470	04/17/2018		04/17/2018	METROSCAN MONTHLY DUES	137.50
						Vendor Total:	137.50
46753	DIAMOND IT PREPAID USE 28-397	21531	04/17/2018		03/31/2018	IT SERVICE MARCH 2018	0.00
46754	DIAMOND IT PREPAID USE 28-397	21532	04/17/2018		03/31/2018	IT SERVICE MARCH 2018	0.00
						Vendor Total:	0.00
46755	DIAMOND TECHNOLOGIES, INC	21538	04/17/2018		04/12/2018	MONITORS-CITY CLERK & ENG.	1,297.92
						Vendor Total:	1,297.92
46756	GOLDEN EMPIRE FLEET SERVICE	48683	04/17/2018		04/17/2018	MAINTENANCE FLEET#205	864.37
						Vendor Total:	864.37
46757	GRANITE CONSTRUCTION	1364969	04/17/2018		04/17/2018	POT HOLES REPAIR M&I DEPT.	1,435.00
						Vendor Total:	1,435.00
46762	JOHN N. OSHIMO	ARVIN-2-2018	04/17/2018		04/17/2018	COMM. PLANNING SVC. MAR. 201	2,450.00
						Vendor Total:	2,450.00
46758	KAISER PERMANENTE	CUST ID#000300785-0000 5.5.18	04/17/2018		04/17/2018	MEDICAL INSURANCE MAY 2018	21,576.63
						Vendor Total:	21,576.63
46794	FERNANDO LOPEZ	INTERPRETER SVC MAY 2018	04/17/2018		04/17/2018	COUNCIL MEETING INTERPRETEI	320.00
						Vendor Total:	320.00
46759	MARCOS MEXICAN CUISINE	REFUND RECEIPT#30630	04/17/2018		04/17/2018	BUSINESS LICENSE REIMBURSEI	104.00
						Vendor Total:	104.00
46760	MOUNTAINSIDE DISPOSAL	PROPERTY TAXES 4.10.18	04/17/2018		04/17/2018	PROPERTY TAXES 4.10.18	94,634.32
46761	MOUNTAINSIDE DISPOSAL	496408	04/17/2018		04/17/2018	BIN RENT/ROLL-OFF DUMP	65.30

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
						Vendor Total:	94,699.62
46763	PETTY CASH-ELSA CARDOSO-GUZMAN		04/17/2018		04/17/2018	PETTY CASH 4.12.18	
		PETTY CASH 4.12.18					106.90
						Vendor Total:	106.90
46764	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#4923752229-4 4.12.18					9.86
46765	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#6358251136-4 4.12.18					150.44
46766	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#4601018108-2 4.12.18					773.53
46767	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#9083999874-8 4.12.18					232.99
46768	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#5673737579-2 4.12.18					9.88
46769	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#6747823013-8 4.12.18					98.88
46770	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#7132070819-2 4.12.18					23.29
46771	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#8517683481-1 4.12.18					54.78
46772	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#9132070691-3 4.12.18					34.07
46773	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#4569461468-1 4.12.18					9.86
46774	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#5106956658-9 4.12.18					55.39
46775	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#7235938816-1 4.12.18					349.29
46776	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#1090419141-7 4.12.18					9.86
46777	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#4157630593-6 4.12.18					24.48
46778	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#5242161718-5 4.12.18					81.47
46779	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#6632224172-1 4.12.18					1,820.87
46780	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#2124436632-0 4.12.18					458.19
46781	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#2402723819-5 4.12.18					9.86
46782	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#1840419093-8 4.12.18					10.06
46783	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#1673746179-4 4.12.18					220.29
46784	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#0048737939-8 4.12.18					142.51
46785	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#1486138762-0 4.12.18					146.98
46786	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#2703896446-9 4.12.18					9.87
46787	PG & E		04/17/2018		04/17/2018	SVC. 3.13.18-4.11.18	
		A#1215425391-3 4.12.18					9.87
46788	PG & E		04/17/2018		04/17/2018	SVC. 3.9.18-4.8.18	
		A#8831924329-6 4.9.18					74.29
46789	PG & E		04/17/2018		04/17/2018	SVC. 3.9.18-4.8.18	
		A#4776920476-0 4.9.18					743.68
						Vendor Total:	5,564.54
46790	PITNEY BOWES		04/17/2018		04/17/2018	POSTAGE MACHINE LEASE	
		1007082782					174.80
						Vendor Total:	174.80
46791	SOUTH VALLEY ELECTRICAL		04/17/2018		04/17/2018	ELECTRIC SVC. SMOTHERMON P	
		3529					304.80

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PO Number	Invoice Date	Invoice Description	Invoice Amount	
						Vendor Total:	304.80	
46792	TRINITY SAFETY COMPANY-TSC	87351	04/17/2018		04/17/2018	PPE FOR PERSONNEL	480.37	
						Vendor Total:	480.37	
46793	ZEE MEDICAL SERVICE	34-215094	04/17/2018		04/17/2018	SUPPLIES-POLICE DEPT.	71.45	
						Vendor Total:	71.45	
							Grand Total:	133,309.68
							Less Credit Memos:	0.00
							Net Total:	133,309.68
							Less Hand Check Total:	0.00
							Outstanding Invoice Total:	133,309.68
Total Invoices: 48								

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
46795	ACC BUSINESS	181012612	04/24/2018		04/24/2018	INTERNET ACCESS A#1205939	1,079.80
						Vendor Total:	1,079.80
46796	ADOBE PLAZA REFUND	RECEIPT#30508	04/24/2018		04/24/2018	DEPOSIT REIMBURSEMENT 4.7.18	450.00
						Vendor Total:	450.00
46801	ARVIN POLICE OFFICERS	APOA UNION DUES 4.6.18-4.20.18	04/25/2018		04/25/2018	APOA UNION DUES 4.6.18-4.20.18	600.00
						Vendor Total:	600.00
46839	ARVIN TRUE VALUE	A99479	04/25/2018		04/25/2018	SUPPLIES-GITS PARK	55.09
						Vendor Total:	55.09
46797	AT&T	000011135738	04/25/2018		04/25/2018	CALNET 3 A#9391060015	187.72
46798	AT&T	000011135507	04/25/2018		04/25/2018	CALNET 3 A#9391059040	278.40
46799	AT&T	000011215183	04/25/2018		04/25/2018	CALNET 3 A#9391056024	520.42
46800	AT&T	000011213420	04/25/2018		04/25/2018	CALNET 3 A#9391033189	360.32
						Vendor Total:	1,346.86
46831	BAKERSFIELD CALIFORNIAN	1ARV05 2693312	04/25/2018		04/25/2018	LEGAL PUBLICATION 3.2-3.24	3,497.40
						Vendor Total:	3,497.40
46830	BAKERSFIELD CALIFORNIAN	1ARV54 2693313	04/25/2018		04/25/2018	PUBLICATION 3.1.18-3.5.18	1,661.40
						Vendor Total:	1,661.40
46803	BANK OF AMERICA - SVC CHGS	BOFA SVCS. CHARGES MARCH 2018	04/25/2018		04/25/2018	SVC CHARGES MARCH 2018	472.41
						Vendor Total:	472.41
46804	BLUE SHIELD OF CALIFORNIA	181030034833	04/25/2018		04/25/2018	MEDICAL INSURANCE-MAY 2018	16,677.58
						Vendor Total:	16,677.58
46805	C & T AUTOMOTIVE, INC	900024198	04/25/2018		04/25/2018	MAINTENANCE FLEET#265	134.15
						Vendor Total:	134.15
46806	CENTRAL CALIF. ASSOC. PUBLIC	COA UNION DUES 4.20.18	04/25/2018		04/25/2018	UNION DUES 4.20.18	702.27
						Vendor Total:	702.27
46807	CLARK PEST CONTROL	PEST CONTROL SVC. 4.18.18	04/25/2018		04/25/2018	PEST CONTROL- COMMUNITY	100.00
46808	CLARK PEST CONTROL	PEST CONTROL VETS HALL 4.18.18	04/25/2018		04/25/2018	PEST CONTROL-VETS HALL	8.00
						Vendor Total:	108.00
46840	COMPLETE HARDWARE STORE & MORE	186622	04/25/2018		04/25/2018	LAWN EQUIPMENT -M&I DEPT.	2.73
46841	COMPLETE HARDWARE STORE & MORE	187369	04/25/2018		04/25/2018	SUPPLIES-SMOTHERMON PARK	7.57
46842	COMPLETE HARDWARE STORE & MORE	185576	04/25/2018		04/25/2018	SUPPLIES- PARK	5.49

H - Hand Check

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
						Vendor Total:	15.79
46802	DEPARTMENT OF TRANSPORTATION	SL180794	04/25/2018		04/25/2018	SIGNALS&LIGTHING JAN-MAR 20	982.88
						Vendor Total:	982.88
46809	DEWALT CORPORTATION	1086028	04/25/2018		04/25/2018	ENGINEERING SVC. MARCH 2018	14,921.53
46810	DEWALT CORPORTATION	1086030	04/25/2018		04/25/2018	SYCAMORE DRAINAGE TO#1713	21,085.65
						Vendor Total:	36,007.18
46811	FEDEX	6-157-94360	04/25/2018		04/25/2018	FEDEX SVC. APRIL 2018	364.31
						Vendor Total:	364.31
46812	FRANCHISE TAX BOARD		04/25/2018		04/25/2018	WITHHOLDING 4.20.18	150.00
						Vendor Total:	150.00
46813	GUARDIAN		04/25/2018		04/25/2018	BUNDLE INSURANCE MAY 2018	6,288.47
						Vendor Total:	6,288.47
46814	HESHAM ELSHAZLY		04/25/2018		04/25/2018	MICROWAVE REPLACEMENT-TRA	42.93
						Vendor Total:	42.93
46820	JOHN N. OSHIMO		04/25/2018		04/25/2018	COMM.PLANNING SVC. FEB. 2018	4,690.00
						Vendor Total:	4,690.00
46843	JT2 INC DBA TODD COMPANIES	53091	04/25/2018		04/25/2018	SYCAMORE DRAINAGE PROJECT	30,875.00
						Vendor Total:	30,875.00
46816	JTS TRUCKING REPAIR	216031	04/25/2018		04/25/2018	MAINTENANCE FLEET#209	486.59
46817	JTS TRUCKING REPAIR	216032	04/25/2018		04/25/2018	MAINTENANCE FLEET#211	486.59
						Vendor Total:	973.18
46818	KERN COUNTY SHERIFF'S OFFICE		04/25/2018		04/25/2018	GARNISHMENT 4.20.18	213.24
						Vendor Total:	213.24
46819	MOUNTAINSIDE DISPOSAL		04/25/2018		04/25/2018	PROPERTY TAXES 4.17.18	268,962.32
						Vendor Total:	268,962.32
46835	O'REILLY AUTOMOTIVE, INC	4451-344626	04/25/2018		04/25/2018	MAINTENANCE FLEET#304	15.35
46836	O'REILLY AUTOMOTIVE, INC	4451-345890	04/25/2018		04/25/2018	BUCKET TRUCK	51.95
46837	O'REILLY AUTOMOTIVE, INC	4451-342458	04/25/2018		04/25/2018	BUCKET TRUCK - CORE RETURN	-22.00
						Vendor Total:	45.30
46821	PG & E		04/25/2018		04/25/2018	SVC. 3.16.18-4.16.18	4,867.55
						Vendor Total:	4,867.55

Edit List of Invoices - Summary

DEMAND LIST 04/24/2018

Date: 04/25/2018

Time: 2:16 pm

Page: 3

City of Arvin

Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
46822	PG & E		04/25/2018		04/25/2018	SVC. 3.16.18-4.16.18	
		A#3232674778-2	4.16.18				2,161.58
46823	PG & E		04/25/2018		04/25/2018	SVC. 3.16.18-4.16.18	
		A#3441010184-3	4.16.18				180.30
46824	PG & E		04/25/2018		04/25/2018	SVC. 3.16.18-4.16.18	
		A#4891617948-3	4.16.18				169.02
46825	PG & E		04/25/2018		04/25/2018	SVC. 3.16.18-4.16.18	
		A#6226711721-6	4.16.18				86.18
46826	PG & E		04/25/2018		04/25/2018	SVC. 3.16.18-4.16.18	
		A#4121972200-0	4.16.18				246.55
						Vendor Total:	7,711.18
46815	PRINTING SYSTEMS		04/25/2018		04/25/2018	OFFICE SUPPLIES-CITY HALL	
		201777					161.52
						Vendor Total:	161.52
46827	PURCHASE POWER		04/25/2018		04/25/2018	POSTAGE REFILL 4.11.18	
		A#8000-9000-0054-0157	4.11.1				1,712.00
						Vendor Total:	1,712.00
46828	QUAD KNOFF, INC		04/25/2018		04/25/2018	PROFESSIONAL SVC. 2017-25	
		170295					285.12
						Vendor Total:	285.12
46829	SULLIVAN, WORKMAN & DEE, LLP		04/25/2018		04/25/2018	SETTLEMENT PARK&RIDE PROJE	
		SETTLEMENT OF COA VS SINGH					116,500.00
						Vendor Total:	116,500.00
46832	TOYOTA FINANCIAL SERVICES		04/25/2018		04/25/2018	LEASE PAYMENT 4.13.18	
		A#002 6595452	4.13.18				256.04
						Vendor Total:	256.04
46833	TRAFFIC MANAGEMENT, INC		04/25/2018		04/25/2018	FENCE SIGNS-COA	
		13-0497385					257.40
46838	TRAFFIC MANAGEMENT, INC		04/25/2018		04/25/2018	PAINT STREET LINES -M&I DEPT.	
		13-0498590					596.37
						Vendor Total:	853.77
46834	VANTAGE POINT TRANSFER AGENTS		04/25/2018		04/25/2018	457K LOAN/CONTRIBUTION 4.20.1	
		457K LOAN/CONTRIBUTION 4.20.18					257.95
						Vendor Total:	257.95
Grand Total:							504,155.14
Less Credit Memos:							-22.00
Net Total:							504,133.14
Less Hand Check Total:							472.41
Outstanding Invoice Total:							503,660.73
<div style="display: flex; justify-content: space-between;"> Total Invoices: 49 </div>							

COST REPORT

Emp. Code Desc.: CITY OF ARVIN
 From 04/20/2018 to 04/20/20
 City of Arvin

PAYROLL 4-20-18

Date: 4/26/2018
 Time: 10:00:05

Employee Name	Employee ID	PER3E	FUTA	MC	MC1	PER1E	PER2D	PER2E	PER2M	Other
		PER3E	PER5E	PER6E	PER9E	PERCP	PERS	PERS1	PERS2	Total
		PERS3	PERS4	PERS5	PERS6	PERS8	PERS9	SS	SS1	
		SUTA								
Grand Total:	Employee Count: 50	0.00	0.00	1,497.67	573.89	0.00	573.56	0.00	790.53	0.00
		1,602.05	119.59	0.00	0.00	571.02	0.00	0.00	2,472.45	23,493.24
		2,862.02	0.00	0.00	1,692.69	1,760.96	0.00	6,287.20	2,689.61	
		0.00								

EARNINGS REPORT

Emp. Code Desc.: CITY OF ARVIN
 From 04/20/2018 to 04/20/20
 City of Arvin

PAYROLL 4-20-18

Date: 4/26/2018
 Time: 9:59:35

Employee Name	Employee ID	15X	1X	1XFTO	25X	2X	3X	ADJ	ADLCO	Other
		ADMLV	ALLOW	BERV	BNFT1	COMP	CTO	CTYWK	DEGRE	Total
		DIFFL	FH	FTO	HLPER	HOL	HP1X	INSUR	JURY	
		LONG	MILIT	MISC	PBD	PBD3	PBDCO	PERE	PERS	
		PHALW	POST	PTO	REG	RETOT	RETRO	SCKCO	SEVR	
		SHOEA	SICK	SRO	STDBY	TRAIN	TUPGR	UACL	UAPEP	
		UNADV	URCL	URPEP	VAC	VACCO	VACTO	WRKCO	STLMT	
Grand Total:	Employee Count: 50	0.00	10,119.56	0.00	0.00	2,153.93	0.00	0.00	0.00	0.00
		0.00	0.00	488.88	761.60	0.00	386.30	0.00	230.79	125,475.41
		232.05	0.00	0.00	0.00	0.00	0.00	1,978.21	0.00	
		2,381.51	0.00	0.00	104.79	152.87	0.00	0.00	0.00	
		225.00	762.85	0.00	93,073.12	741.26	7,451.32	0.00	0.00	
		0.00	1,591.69	0.00	0.00	0.00	129.28	0.00	0.00	
		90.78	0.00	0.00	2,419.62	0.00	0.00	0.00	0.00	

REGULAR MEETING MINUTES

**ARVIN CITY COUNCIL / SUCCESSOR AGENCY TO THE
ARVIN COMMUNITY REDEVELOPMENT AGENCY / ARVIN HOUSING AUTHORITY /
ARVIN PUBLIC FINANCING AUTHORITY**

APRIL 17, 2018

CALL TO ORDER @ 6:00PM

PLEDGE OF ALLEGIANCE

INVOCATION

ROLL CALL: CM Martinez arrive late after roll call; CM Madrigal arrived late during Discussion Item 4A; All present.

1. Approval of Agenda as To Form.

Motion to approve the agenda with removal of Consent Agenda Item 3G.

Motion Mayor Gurrola Second CM Martinez Vote 4-0

2. PUBLIC COMMENTS

(This is the opportunity for the public to address the City Council on any matter on the agenda or any item of interest to the public that is within the subject matter jurisdiction of the City Council.)

NONE

3. CONSENT AGENDA ITEM(S)

- A.** Approval of Demand Register(s) of March 30, 2018 – April 12, 2018.
- B.** Approval of Payroll Register(s) of April 06, 2018.
- C.** Approval of the Minutes of the Regular Meeting(s) of March 20, 2018 and April 03, 2018 and Special Meeting(s) of March 27, 2018.
- D.** Approval of A Proclamation Proclaiming April 2018 as Sexual Assault Awareness Month in the City of Arvin.
- E.** Approval of A Proclamation Proclaiming April 16 – 27, 2018 as High School Voter Registration Education Weeks.
- F.** Approval of Letters of Support for Funding for Valley Fever Institute at Kern Medical.
- G.** Approval of Letter of Support AB 1764 (Salas) Related to Relinquishing State Route 184 (SR-184) from CalTrans to the City of Bakersfield and Kern County

Respectively, Allowing These Agencies to Expedite General Maintenance Projects As Well As Other Projects Along the Road Necessary to Improve Public Safety.

Above Consent Agenda Item 3G was removed from the agenda.

- H. Approval of A Resolution of the City Council of the City of Arvin Dispensing With Further Public Bidding for the Water Element and Authorizing the City Manager to Execute an Agreement with Collins & Schoettler for the Water Element Planning Project.

Resolution No. 2018-28
Agreement No. 2018-10

Staff recommends approval of Consent Agenda.

Consent Agenda Item 3G was removed from the Agenda.

Motion to approve Consent Agenda Items 3A, 3B, 3C, 3D, 3E, 3F, and 3H.

Motion MPT Ortiz

Second CM Martinez

Vote 4-0

4. DISCUSSION ITEM(S)

- A. Cannabis Ordinance Update (Finance Director)

5. STAFF REPORTS

- A. Monthly Financial Report – March 2018 (Finance Director)

6. COUNCIL MEMBER COMMENTS

7. CLOSED SESSION ITEM(S)

- A. Public Employee - Appointment (Pursuant to Government Code §54957)
Title: City Manager
- B. Conference with Legal Counsel Anticipated Litigation (Pursuant to Government Code § 54956.9)
Three Potential cases
- C. Conference with Labor Negotiators (Pursuant to Government Code § 54957.6) City Negotiator, Pawan Gill, Human Resources Administrator
Employee Organizations: Arvin Police Officers Association (APOA) and Service Employees International Union (SEIU) Local 521

CLOSED SESSION REPORT BY CITY ATTORNEY:

No reportable action.

8. ADJOURNED @ 7:20PM

Respectfully submitted,

Cecilia Vela, City Clerk



CITY OF ARVIN

April 17, 2018

MAYOR

Jose Gurrola

MAYOR PRO TEM

Jess Ortiz

COUNCIL MEMBERS

Jazmin Robles

Erika Madrigal

Gabriela Martinez

INTERIM CITY MANAGER

Jerry Breckinridge

TO: The Honorable Senator Toni Atkins
Senate President pro Tempore

The Honorable Anthony Rendon
Speaker of the Assembly

The Honorable Holly Mitchell
Chair, Senate Budget Fiscal and Review Committee

The Honorable Phillip Ting
Chair, Assembly Budget Committee

RE: Letter of Support for the Martin Luther King Jr Freedom Center and Dolores Huerta Foundation Youth and Family Civic Engagement Initiative

Please accept this letter of support for a California State Budget General Fund appropriation for \$2,000,000 for the Martin Luther King Jr. Freedom Center and the Dolores Huerta Foundation's *Youth and Family Civic Engagement Initiative*, a statewide collaborative model to address civic engagement disparities for low-income, highly vulnerable youth and families of California.

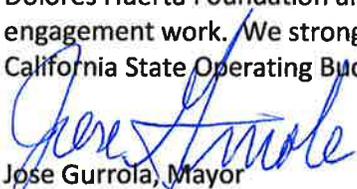
The Youth and Family Civic Engagement Initiative will increase civic participation among low-income, disenfranchised youth and their families in targeted regions throughout our state, thereby reducing civic engagement disparities, and strengthening democratic institutions. This initiative will emphasize the role of local leadership and its central role in the strengthening of democracy: voter education and engagement, culturally informed civic campaigns, community problem solving, improving infrastructure, and the teaching and learning of values and ethics essential to civility and community progress.

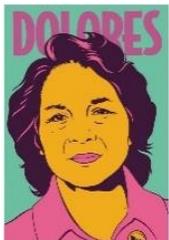
This initiative comes at a time of great need in our local communities. Low-income rural and urban communities share a lack of trust and understanding of government and civic institutions. A universal deficit in the understanding of civic policies and procedures inclines our citizenry to non-participation in the fundamental systems and structures designed to assist with community development and wellness.

California is the home to some of the most powerful and longstanding civic engagement efforts targeting low-income people and the Martin Luther King Jr. Freedom Center and the Dolores Huerta Foundation are leaders in the stewardship and cultivation of our state's civic engagement work. We strongly support inclusion of this appropriation in the 2018/2019 California State Operating Budget.

Phone (661) 854-3134
Fax (661) 854-0817

200 Campus Drive
P.O. Box 548
Arvin, California 93203


Jose Gurrola, Mayor
City of Arvin



Martin Luther King Jr. Freedom Center & Dolores Huerta Foundation Youth and Family Civic Engagement Initiative



Budget Request

Budget Request: We are requesting a state budget investment of \$2,000,000 per year to support the Youth and Family Civic Engagement Initiative.

Purpose: The Youth and Family Civic Engagement Initiative will increase understanding of government and civic institutions and increase civic participation among low-income, disenfranchised youth and their families in targeted regions throughout the state for the purpose of reducing racial and socio-economic disparities.

About the Initiative: The Youth and Family Civic Engagement Initiative is a statewide project of the Martin Luther King Jr Freedom Center, Oakland, and the Dolores Huerta Foundation, Bakersfield, CA, that increases and enhances civic engagement among youth and families to improve community development in Contra Costa, Alameda, Kern, and Fresno counties. Through research-informed best practices, our organizations train youth and family civic engagement leadership cohorts to, in turn, engage their community in culturally informed civic campaigns.

The Problem: Low-income rural and urban communities share a lack of trust and understanding of government and civic institutions. A participation gap in the absolute level of participation, and the inequality of participation, are both linked to the quality of democratic governance required for meaningful community-based problem solving. Lack of citizen engagement directly fuels recidivism, truancy, alienation in foster care, unemployment rates, food deserts, health and mental health gaps, homelessness, transience, violent crimes, disruptive social affiliations, and decaying streets and infrastructure. These indices propel mistrust in government and disenfranchisement from relationships and mechanisms for constructive community engagement.

Intergenerational community-based civic engagement and civic learning connects young people with solutions to these perplexing realities. The benefits and merits of voting, volunteering, serving and taking on an active role in community problem solving are well documented. They extend from positive impacts on social-emotional learning, self-esteem, public speaking, team-building skills, and academic achievement on the personal level, into the broader fabric of community: stronger participation, inclusion, cooperation, and equity—basic tenants of democracy.

Compared to non-voters, voters are more likely to volunteer, stay informed on local affairs, and benefit from greater social resources. Those who are civically engaged have reduced recidivism rates, higher employment rates with favorable mental and physical health status benefits. They tend to have stronger social connections, leading to a greater quality of life and longevity. For students at the Martin Luther King Jr Freedom Center and the Dolores Huerta Foundation, collectively 95% African American, Latino, immigrant and second language English speaking students and 86% low income, severe racial and socio-economic disparities confound these critical gaps in educational outcomes and civic participation.

Initiative Details: We are seeking funding for the Youth and Family Civic Engagement Initiative to prepare low-income, disenfranchised youth and families for sustained civic engagement in the counties of Contra Costa, Alameda, Kern, and Fresno, California. Middle and high school aged students attend civics classes and leadership encounters, participate in civic engagement projects in collaboration with community-based organizations and local agencies, and promote personal change as an avenue for social transformation. In addition to voter education and registration, the young people engaged in the initiative will be taught to speak in public venues, study and advance community-based problem solving, and create social relationships required for academic excellence and civic duty. This citizenship and social change effort assists schools, communities, and community stakeholders in assuring meaningful roles for our young people in the advancement of civility and democracy.

With support from this budget request, we will engage 200 middle and high school students, 50 from each region, in the initiative's leadership cohort. Martin Luther King Jr Freedom Center and the Dolores Huerta Foundation staff will also engage families of selected students to ensure success of youth participants and to promote civic engagement among family members. Cohort members will participate in civics classes and trainings: out-of-school civic engagement leadership classes, on-going school and home visits, participation in civic projects in collaboration with community-based organizations and local agencies. Participants will simultaneously select to be a part of civic engagement of their choice including integrated voting, public education, and school to civic engagement pipeline activities.

With funding from the California General Fund, we will achieve the following:

- 200 low-income, representationally diverse young people acquire leadership and academic skills required for academic excellence
- 200 students and their family members participate in meaningful civic engagement, public speaking and cultural leadership encounters
- 1,000 youth and family members engage in 10,000 hours of voter education, registration and get out the vote activities increasing voter registration by 30% amongst youth under the age of 25, and by 5% amongst adult community members in respective schools or regions
- Twelve community events feature youth speakers on themes relating to civic engagement, voter enfranchisement and other issues of social and community concern in respective regions
- Urban and rural diverse youth of California featured as key-note speakers in six statewide events throughout the year, accessing media, blogs and public news avenues for dissemination of the initiative
- Leadership pathway for young people to secure internships and employment opportunities in the public and private sectors.

For More Information:

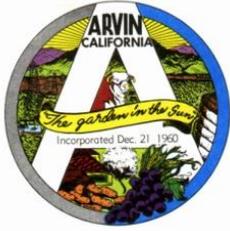
For more information about our request for funding, please contact

Dr. Karen Bohlke, Director Government and External Relations

Martin Luther King Jr Freedom Center
www.mlkfreedomcenter.org
karen@mlkfreedomcenter.org
w: 510 434 3988, cell: 206 755 3677

Camila Chavez, Executive Director

Dolores Huerta Foundation
www.doloreshuerta.org
Cchavez@doloreshuerta.org
w: 661 322 3033 x1211, cell: 415 377 4184



PROCLAMATION

BIKE MONTH May 2018

Whereas, the bicycle is an economical, healthy, convenient, and environmentally sound form of transportation and an excellent tool for recreation and enjoyment of Arvin's scenic beauty; and

Whereas, throughout the month of May, the residents of Arvin and its visitors will experience the joys of bicycling through educational programs, races, commuting events, charity events, or by simply getting out and going for a ride; and

Whereas, Arvin's flat road and proximity to bikeable trails attracts bicyclists each year, providing economic health, transportation, tourism, and scenic benefits; and

Whereas, creating a bicycling-friendly community has been shown to improve citizens' health, well-being, and quality of life, growing the economy of Arvin, attracting tourism dollars, improving traffic safety, supporting student learning outcomes, and reducing pollution, congestion, and wear and tear on our streets and roads; and

Whereas, Bike Arvin, Bike Bakersfield, the League of American Bicyclists, schools, parks and recreation departments, police departments, public health districts, hospitals, companies and civic groups will be promoting bicycling during the month of May 2018; and

Whereas, these groups are also promoting bicycle tourism year round to attract more visitors to enjoy our local restaurants, hotels, retail establishments, and cultural and scenic attractions; and

Whereas, these groups are also promoting greater public awareness of bicycle operation and safety education in an effort to reduce collisions, injuries, and fatalities and improve health and safety for everyone on the road; and

Now therefore, We, the City Council of the City of Arvin, California, do hereby proclaim

May 2018 as Bike Month in Arvin,

and I urge all residents to join me in this special observance.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the City of Arvin to be affixed this 01st day of May 2018.

Jose Gurrola, Mayor
City of Arvin



The Honorable Kirstjen Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, D.C. 20528

The Honorable John Sullivan
Deputy Secretary
U.S. Department of State
2201 C Street NW
Washington, D.C. 20520

April xx, 2018

Dear Secretary Nielsen and Deputy Secretary Sullivan:

We, the undersigned mayors and county executives of the Cities for Action coalition, urge you to extend Honduras's Temporary Protected Status (TPS) designation for 18 months. Cities for Action is a national, bipartisan coalition of over 175 cities and counties that advocates for policies that protect and support our immigrant residents. Approximately 57,000 Honduran TPS recipients have lived in the United States since at least 1998, many of whom reside in and contribute to the cities and counties we represent. We are gravely concerned that failure to extend Honduran TPS will lead to the separation of families, negatively impacting thousands of children and causing irreparable harm to Hondurans who call our communities home. We encourage you to make the humanitarian and practical-minded decision to extend Honduras's TPS designation.

Honduras's TPS status applies to a limited group of Hondurans who were living in the United States when Hurricane Mitch devastated the country in 1998. The storm killed more than 5,000 people, wiped out the majority of Honduras's infrastructure, and destroyed 70% of its crops. Hundreds of landslides and the worst flooding of the twentieth century were followed by outbreaks of cholera and Dengue fever. At the time, Honduran President Carlos Roberto Flores estimated that the hurricane reversed 50 years of progress in the country. The conditions in Honduras have deteriorated further with the rise of mosquito-borne diseases following Tropical Storm Hanna in 2008 and a catastrophic drought that caused food insecurity and economic recession. The Bush and Obama Administrations repeatedly extended Honduras' TPS designation, recognizing that the devastation and the country's incomplete recovery efforts hobbled Honduras's ability to safely reabsorb its nationals.



Honduran TPS holders have established lives and families in our communities despite continued uncertainty over the future of Honduras and their own TPS designation. Honduran TPS recipients, on average, have lived in the U.S. for over 20 years and have an estimated 53,500 U.S.-born children. With a labor force participation rate of nearly 85 percent, most Honduran TPS recipients are employed in the fields of construction, landscaping, hospital care, child care, and food services – building and supporting our cities and our residents. Despite living in limbo with a temporary status that in many cases cannot lead to permanent residency, over 9,000 Honduran TPS recipients have purchased a home with a mortgage. Our cities value the immense contributions of Honduran TPS recipients – as family members, workers, and homeowners - and we urge you to provide a measure of certainty to our fellow residents with an extension of TPS status.

As city and county leaders, the safety and well-being of our residents is of utmost importance. We recognize that Honduran TPS holders are well-established residents with deep ties to our communities through their families, jobs, and homes. We advise you to recognize the extraordinary hardship that forcing these individuals to return to Honduras would cause and the social and fiscal impacts of separating families and removing workers in our communities. Therefore, we urge you to extend Honduras's TPS designation for a full 18 months.

Sincerely,



CITY OF ARVIN Staff Report

Meeting Date: May 1, 2018

TO: Arvin City Council

FROM: R. Jerry Breckinridge, Interim City Manager

SUBJECT: Authorization and Direction Regarding an Ordinance for Adoption of Arvin Municipal Code Text Amendment to Title 17-Zoning, Chapter 17.46 Oil and Gas Production - Repealing existing chapter and adoption of Chapter 17.46 – Text Amendment 2017-04, Oil and Gas Production Regulation of Petroleum Facilities and recommendation of CEQA Exemption Section 15308

RECOMMENDATION:

Authorize Staff to seek Planning Commission review and recommendation of updates to the proposed ordinance, if any and if appropriate given the nature of the update, and then set the proposed ordinance for public hearing and consideration for introduction (first reading) at the next reasonably available Council meeting given Staff resources. If no additional Planning Commission review is warranted given the nature of the updates, then authorize Staff to set the proposed ordinance for public hearing and consideration for introduction (first reading) at the next reasonably available Council meeting given Staff resources.

BACKGROUND:

The City's original petroleum facilities and operations code was adopted in 1965 and consisted of only a few pages of regulations. Since that time, the character of the community has changed significantly, growing to over 20,000 residents and adding many high quality residential neighborhoods, as well as new commercial and business developments located in or adjacent to active oil fields. Oil and gas production technologies have also changed significantly.

The City Council has been actively addressing community concerns regarding inconsistent land uses involving oil and gas operations. As part of this process, during a public meeting on January 10, 2017, the City Council provided initial direction to City Staff to commence a complete and comprehensive review to update the Municipal Code regarding oil and gas operations and to study and address all modern-day drilling issues and applications. Staff completed a comprehensive review of the existing oil and gas ordinance. Thereafter, at another public meeting on September 19, 2017, the City Council adopted Resolution No. 2017-92 Initiating Code Amendments to Title 17 -Zoning which included amendment to Chapter 17.46 Oil and Gas Production. Notice of Planning Commission consideration of the proposed ordinance was published in the Arvin Tiller, and the Planning Commission held a public hearing on October 30, 2017, after which it recommended approval of the proposed ordinance. After another public hearing on November 07, 2017, the City Council held the first reading and voted

to introduce the proposed ordinance. The City Council then considered the proposed ordinance for final adoption at another public hearing on November 21, 2017.

Despite multiple public hearings and notices in the newspaper, and without having made any objection at prior hearings, various petroleum operators raised for the first time during the November 21, 2017, hearing that they did not have sufficient time or notice to review the proposed ordinance. The City Council also noted that errata previously recommended for approval by the Planning Commission had not been incorporated in the proposed ordinance. The City Council then continued the item to a future meeting to allow for time for Staff to meet interested parties of the oil and gas industries and to return with the errata that was formerly approved by the Planning Commission to be included as part of the proposed ordinance.

Staff believe that more than sufficient time has since been provided to oil and gas operators, and other parties, to review the proposed ordinance in detail. Additionally, staff are actively moving forward with meeting or holding a workshop for interested parties of the oil and gas industries. This process may result in recommended updates to the proposed ordinance. If so, Staff is seeking authorization from the City Council to return the updated proposed ordinance to the Planning Commission for review and recommendation as may be appropriate given the nature of any updates. Upon recommendation of the Planning Commission, Staff set the proposed ordinance for public hearing and consideration for introduction (first reading) at the next reasonably available Council meeting given Staff resources. If no additional Planning Commission review is warranted given the nature of the updates, then Staff are proposing to set the proposed ordinance for public hearing and consideration for introduction (first reading) at the next reasonably available Council meeting given Staff resources.

FINANCIAL IMPACT:

Some staff time will be expended in preparing the ordinance for Planning Commission or City Council review.



CITY OF ARVIN Staff Report

Meeting Date: May 1, 2018

<p>TO: Arvin City Council</p> <p>FROM: R. Jerry Breckinridge, Interim City Manager</p> <p>SUBJECT: Authorization for the Mayor to Provide Press Releases to Update the Public Regarding the Oil and Gas Code</p>

BACKGROUND:

There has been significant public and petroleum industry interest in the proposed update to the Oil and Gas Production Regulation of Petroleum Facilities ordinance. While notices provide information consistent with the minimum requirements set by law, they are often limited in informational scope. In order to address this issue, press releases may help allow for a more involved and informed public process.

RECOMMENDATION:

Authorize the Mayor, in conjunction with consultation with the City Manager and review as to legal form by the City Attorney, to provide periodic press releases to update the community regarding developments with the proposed oil and gas ordinance update.

FINANCIAL IMPACT:

Some staff time may be expended in preparing or processing press release(s).



CITY OF ARVIN

Agenda Report

Meeting Date: 5-01-2018

TO:	City Council
FROM:	Jeff Jones, Finance Director R. Jerry Breckinridge, Interim City Manager
SUBJECT:	A Resolution of the City Council of the City of Arvin Adopting a List of Projects for Fiscal Year 2018-2019 Funded by SB-1: The Road Repair and Accountability Act of 2017

Background:

The City of Arvin provides road maintenance services to the citizens of Arvin. The City plans to rehabilitate the streets and roads in Arvin using SB1 Funds; the Road Repair and Accountability Act. The Streets and Highway Code (SHC) Section 2032.5(a) articulates that the objective of the Local Streets and Roads Program is to address deferred maintenance on the local streets and roads through prioritization and delivery of basic road maintenance and rehabilitation projects as well as critical safety projects.

To receive its apportionment of road maintenance funds from the Controller, the City of Arvin must submit and adopt a list of projects to the California Transportation Commission (CTC) by May 1, 2018.

The SB1 program is a funding source road projects fiscal year 2018/2019 with funding commencing as early as May 1, 2018.

Recommendation:

Staff recommends the City Council adopt the Resolution.

Fiscal Impact:

Staff has determined the submission of the list of projects for SB1 funds to the CTC has significant positive financial impact for implementing road rehabilitation projects for fiscal year 2018-2019.

Attachments:

- 1) A Resolution of the City Council of the City of Arvin Adopting a List of Projects for Fiscal Year 2018-2019 Funded by SB-1: The Road Repair and Accountability Act of 2017
- 2) Attachment "A" List of Projects

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2018-19 FUNDED BY SB 1: THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017; AND AUTHORIZING RELATED ACTIONS.

WHEREAS, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

WHEREAS, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

WHEREAS, the City must adopt a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, in the City budget, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement; and

WHEREAS, the City, will receive and estimated \$480,000 in RMRA funding in Fiscal Year 2018-19 from SB 1; and

WHEREAS, this is the second year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB 1; and

WHEREAS, the City has undergone a robust public process to ensure public input into our community's transportation priorities/the project list; and

WHEREAS, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used on the most high-priority and cost-effective projects that also meet the community's priorities for transportation investment; and

WHEREAS, the funding from SB 1 will help the City maintain and rehabilitate multiple streets, roads, sidewalks, crosswalks, and add active transportation infrastructure throughout the City this year and hundreds of similar projects into the future; and

WHEREAS, the 2016 California Statewide Local Streets and Roads Needs Assessment found that the City's streets and roads are in an "at-risk/poor" condition and this revenue will help us increase the overall quality of our road system and over the next decade will bring our streets and roads into a "good" or "better" condition; and

WHEREAS, the SB 1 project list and overall investment in our local streets and roads infrastructure with a focus on basic maintenance and safety, investing in complete streets infrastructure, and using cutting-edge technology, materials and practices, will have significant positive co-benefits statewide.

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NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVIN AS FOLLOWS:

Section 1: The City Manager or his designee, is hereby authorized to submit all required documents to the California Transportation Commission to apply for SB1 Funds.

Section 2: The City Manager, or his designee, is hereby authorized and empowered to execute in the name of the City of Arvin all program documents including, but not limited to, applications, agreements, amendments and request for payments, necessary to secure SB1 funds and implement the approved project from the RMRA program, subject to approval as to legal form by the City Attorney.

Section 3: The foregoing recitals are true and correct.

Section 4: The Road Maintenance and Rehabilitation Act (RMRA) fund is created as a special revenue fund of the City for the accounting and reporting of all proceed receipts and uses accounting and reporting related to this program.

Section 5: The fiscal year 2018-19 list of projects planned to be funded with Road Maintenance and Rehabilitation Account revenues are included as Attachment "A".

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a regular meeting thereof held on the 01st day of May 2018 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, **DO HEREBY CERTIFY** that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

ATTACHMENT "A" 2018-2019 SB1 PROJECT LIST

Agency	Program	Funding FY	Package	PPNo	Project Type	Title	Description	Location	Est Completion Pre Con	Est Completion Con	Est Useful Life Min	Est Useful Life Max	Submit Date	Status	TOTAL SF	COST	
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP005	Road Maintenance & Rehabilitation	Franklin Avenue Microsurfacing	Microsurfacing pavement rehabilitation between A Street and Butte Avenue.	Franklin Avenue between A Street and Butte Avenue.	01/2019	04/2019	5	10	01/05/2018	Reviewed	70000	140000	
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP006	Road Maintenance & Rehabilitation	S. Hill Street Microsurfacing	Microsurfacing pavement rehabilitation between SR-223 and Haven Drive.	S. Hill Street between SR-223 and Haven Drive.	01/2019	04/2019	5	10	01/05/2018	Reviewed	48000	96000	
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP012	Road Maintenance & Rehabilitation	Walnut Drive Microsurfacing	Microsurfacing pavement rehabilitation between Franklin Street and SR-223.	Walnut Drive between Franklin Street and SR-223.	01/2019	04/2019	5	10	01/05/2018	Reviewed	120000	240000	NOTE: LIMITS CHANGED TO CA223 to Franklin
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP026	Road Maintenance & Rehabilitation	Franklin Street FDR	Full depth pavement rehabilitation between S. A Street and Meyer Street.	Franklin Street between S. A Street and Meyer Street.	04/2019	08/2019	10	20	01/05/2018	Reviewed	80000	480000	NOTE: LIMITS CHANGED TO MEYER TO A ST
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP034	Road Maintenance & Rehabilitation	Pothold filling throughout city	Filling potholes throughout the city, where needed.	Throughout the city.	N/A	12/2019	1	3	01/05/2018	Reviewed			
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP035	Road Maintenance & Rehabilitation	Purchase hot mix truck and plate compactor	City needs to purchase a hot mix truck and walk behind plate compactor to allow for more efficient and reliable patches of potholes throughout the city.	Applicable to entire city.	N/A	12/2018	20	20	01/05/2018	Reviewed			
City of Arvin	Local Streets and Roads Program	17/18	LSR-2018-5370	PP037	Complete Streets Components	Varsity Road widening	Widen Varsity Road in front of high school to fully orinally planned 60 foot width by installing an additional 10 feet of pavement atop of the current shoulder, and install new curb, butter, and sidewalk.	Varsity Road between Campus Drive and Mahin Drive.	04/2019	08/2019	20	30	01/05/2018	Reviewed	22500	150000	NOTE: cost is for the new AC only as ATP will not pay for this



CITY OF ARVIN Staff Report

Meeting Date: May 1, 2018

TO: Arvin City Council

FROM: Jeff Jones, Finance Director
R. Jerry Breckinridge, Interim City Manager

SUBJECT: A Resolution of the City Council of the City of Arvin to authorize the Mayor and/or Interim City Manager to enter into a contract with Diamond IT in an amount not to exceed \$56,791.23 for the purchase of two Dell Power Edge Servers and related software and installation charges, and financing of the same.

BACKGROUND: The City of Arvin needs to establish a program where continuity of computer resources (servers) is maintained.

The average life of a server is 5 years. Two of the three servers (one purchased in 2011, the other in 2012) have reached the end of their life. The third server, purchased in February 2014, will reach its end of life early next year.

Servers that have reached the end of their life run the risk of failure. Such failure will then jeopardize the City's key data along with productivity of City staff.

City staff has identified Diamond IT as the vendor for this purchase. Diamond IT currently is under contract by the City for its routine Information Technology (IT) services.

The City has obtained a quote from Diamond IT for the proposed sale to the City of two Dell Power Edge Servers and related software and installation charges for the amount of \$56,791.23. The quote is included as Exhibit "A" to the attached proposed resolution, and provides further details regarding the servers and related equipment and services that the City is considering purchasing.

The City is authorized to contract directly with Diamond IT for this purchase under Section 3.08.070 of the Arvin Municipal Code (AMC). The specific authority from the AMC is as follows:

- 3.08.070 (B)... Bidding or open market procedure may be dispensed with only when:
- (6). Piggyback purchasing procedures, whereby the City has the ability to "piggyback" contracts for products and equipment, entered into by other governmental agencies (Municipality, County, or State) through a competitive bid. The Purchasing Division will obtain documentation to verify the contract and bid process. All products or equipment purchased under this provision must substantially meet the technical specifications of the bid. Major deviations from the product specification will not be allowed. However, minor modifications which result in a price differential of five percent (5%) or less are authorized. Such contracts include, but are not limited to, contracts to purchase products and services under the California Multiple Award Schedules (CMAS) or Federal General Services Administration (GSA) contracts.

Diamond IT has established a California Multiple Award Schedule ("CMAS"), identified as CMAS contract number 3-17-70-3241B, pertaining to the sale of Dell products to state and local government agencies, and has provided a copy to the City, which is included as Exhibit "B" to the attached proposed resolution. The City has confirmed that DiamondIT's CMAS contract number 3-17-70-3241B authorizes 01159.0001/469242.1 Diamond IT server staff report 5.1.18.jvj

the City to purchase the servers without engaging in further competitive bidding or open market procedures pursuant to the purchasing exception set forth in AMC 3.08.070 (B) (6) and applicable state law.

The proposed resolution would authorize the Mayor and/or Interim City Manager to enter into an agreement with Diamond IT for an amount not to exceed \$56,791.23 for the purchase of the two Dell Power Edge Servers, along with the required software and installation support for the servers, contingent upon negotiation to ensure the protection of the City's best interests and the satisfaction of certain requirements set forth in the resolution.

Specifically, the resolution provides that the agreement shall be contingent upon the City obtaining suitable financing, such as from Great American Financing, to allow payments to be made over time in a total amount not to exceed \$56,791.23 plus reasonable interest, and upon inclusion of a provision in the agreement stating that the City will own the servers without any encumbrance upon the final payment. The resolution also provides that the agreement, not the quote, shall govern the terms of the purchase transaction, and shall be consistent with the existing agreement between the City and DiamondIT. The resolution also requires the agreement, and the associated financing agreement, to be approved as to legal form by the City Attorney, and authorizes the Mayor and Interim City Manager to approve the agreements as to their material terms and to execute such agreements on behalf of the City, subject to satisfaction of the requirements and contingencies set forth in the resolution.

FINANCIAL IMPACT: The total cost of the project is \$56,791.23. The City intends to enter into a lease agreement over 4 years at \$1,300.91 per month in order to better balance cash flow and expenses. About 20% of this project is estimated to be recovered via Administrative Cost Allocation to various funds and projects over the 4 year term of the lease.

RECOMMENDATION:

Staff recommends that the City Council adopt the attached resolution authorizing the Mayor and Interim City Manager to enter into a purchase agreement with Diamond IT in amount not to exceed \$56,791.23.

ATTACHMENTS:

(1) A Resolution of the City Council of the City of Arvin to Authorize the Mayor and/or Interim City Manager to Enter into a Contract with DiamondIT in an Amount Not to Exceed \$56,791.23 for the Purchase of Two Dell Power Edge Servers, Related Software and Installation Charges, and Financing of the Same.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN TO AUTHORIZE THE MAYOR AND/OR INTERIM CITY MANAGER TO ENTER INTO A CONTRACT WITH DIAMOND IT IN AN AMOUNT NOT TO EXCEED \$56,791.23 FOR THE PURCHASE OF TWO DELL POWER EDGE SERVERS, RELATED SOFTWARE AND INSTALLATION CHARGES, AND FINANCING OF THE SAME

WHEREAS, the City of Arvin (“City”) needs to establish a program where continuity of computer resources (servers) is maintained; and

WHEREAS, the average life of a server is 5 years, and

WHEREAS, two of the three servers of the City Administration, one purchased in 2011 and the other purchased in 2012, have reached the end of their life cycle, and are in need of replacement; and

WHEREAS, servers that have reached the end of their life cycle run the risk of failure, jeopardizing the City’s key data along with the productivity of City staff; and

WHEREAS, the City has identified Diamond Technologies, Inc., dba DiamondIT (“DiamondIT”) as a possible vendor of the necessary servers, and has obtained a quote from Diamond IT (attached hereto as Exhibit “A”) (the “Quote”) for the proposed sale to the City of two Dell Power Edge Servers and related software, equipment and installation services, as identified in the Quote (the “Servers”), for the amount of \$56,791.23; and

WHEREAS, purchasing the servers would allow the City to replace its existing servers and to thereby protect the City’s key data and the productivity of City staff, and facilitate the efficient ongoing operation of the City Administration; and

WHEREAS, the City currently has Agreement No. 2015-18, a “Professional Services Agreement for Computer System and Information Technology Installation, Repair and Maintenance” (the “PSA”) in place with DiamondIT for the provision of routine information technology (IT) services to the City; and

WHEREAS, Public Contract Code (PCC) Sections 10298-10299 authorize cities to contract with certain suppliers, which have established California Multiple Award Schedules (“CMAS”), without engaging in further competitive bidding, because all pricing, products and/or services offered pursuant to an established CMAS have been previously bid and awarded on an existing Federal General Services Administration (“GSA”) multiple award schedule, and the CMAS holder, to establish the CMAS, must offer to provide products and/or services at prices based on the GSA schedule; and

WHEREAS, Section 3.08.070(B)(6) of the Arvin Municipal Code (AMC), consistent with Public Contract Code Sections 10298-10299, provides that the City may dispense with normal competitive bidding or open market procedures when the City uses “piggyback purchasing procedures, whereby the City has the ability to ‘piggyback’ contracts for products and equipment, entered into by other governmental agencies (Municipality, County, or State) through a competitive bid . . . Such contracts include, but are not limited to, contracts to purchase products and services under the California Multiple Award Schedules (CMAS) or Federal General Services Administration (GSA) contracts; and

WHEREAS, pursuant to authorization of the California Department of General Services, DiamondIT has established a California Multiple Award Schedule (“CMAS”), identified as CMAS Contract No. 3-17-7-3241B, which pertains to the sale of Dell products by DiamondIT;

WHEREAS, DiamondIT has provided CMAS Contract No. 3-17-7-3241B, a copy of which is attached hereto as Exhibit “B,” to the City; and

WHEREAS, the City has determined that CMAS Contract No. 3-17-7-3241B complies with AMC 3.08.070(B)(6) and authorizes the City to purchase new Dell servers from DiamondIT without engaging in bidding or open market procedures.

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

1. The above recitals are true and correct and incorporated by this reference.
2. The City Council finds that, pursuant to Section 3.08.070(B)(6) of the Arvin Municipal Code, it may dispense with the normal competitive bidding or open market procedures in purchasing the Servers from DiamondIT.
3. That the City Council authorizes the Mayor and Interim City Manager to negotiate and enter into an agreement with Diamond IT, in an amount not to exceed \$56,791.23, for the purchase of the Servers. The negotiated purchase agreement, not the terms of the Quote, shall supersede and shall govern the purchase transaction. The negotiated agreement shall be consistent with, and shall not vary or conflict with the terms of, the PSA. Further, this authorization is contingent upon: (1) the City obtaining suitable financing, such as from Great American Financing, to allow for payments to be made over time in a total amount not to exceed \$56,791.23, plus applicable reasonable interest; and (2) inclusion of a provision in the agreement to the effect that the City will own the Servers without any encumbrance upon the final payment.
4. The Mayor and Interim City Manager are authorized to approve and execute, as to their material terms, the agreement with Diamond IT for the purchase of the Servers and the associated financing agreement on behalf of the City. The agreements shall also be subject to review and approval of the agreements as to legal form by the City Attorney. The agreements shall not be effective unless and until so approved by the City Attorney and executed by the Mayor or Interim City Manager upon satisfaction of the requirements and contingencies identified herein.
5. This Resolution shall take effect immediately upon passage.

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a regular meeting thereof held on the 01st day of May 2018 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT "A"

QUOTE FROM DIAMONDIT



We have prepared a quote for you

Network Server Upgrade

Quote # 003126
Version 1

Prepared for:

City of Arvin

Jeffrey Jones
jeffjones@arvin.org

Friday, April 20, 2018

City of Arvin
Jeffrey Jones
200 Campus Dr
Arvin, CA 93203
jeffjones@arvin.org

Dear Jeffrey,

The following proposal is provided with DiamondIT's recommendation to upgrade the aged server infrastructure for the City of Arvin. Our proposal includes design plans that support the City's computer use needs but also offer productivity improvement to the City's staff as well as adding layers of protection to prevent downtime due to hardware failure.

Please review our proposal and contact us with any questions you have.

Sincerely,

Cory Ferguson
Business Development Manager
DiamondIT

▶ Statement of Work

Following is the list of the servers (physical & virtual) currently in use at the City of Arvin:

Server name / Role	Operating System	Hardware Specs	Purchase date
COA – DC01 – Domain Controller	Windows Server 2008 R2	HP Proliant DL 380P Gen 8	Aug 2012
COA – FB01 – Accounting Server	Windows Server 2012 R2 Standard	HP Proliant DL320e Gen 8	Feb 2014
COA Mail 2 – Email Server	Windows Server 2008 R2	Virtual Vachine Server	NA
CoA SQL01 – SQL Server	Windows Server 2008 R2	HP Proliant ML150G6	Jan 2011
Primary 01 – DC (offline)	Windows Server 2003 SP2	HP Proliant ML150G6	Sept 2006

The average life of server hardware is 5 years. Three of the four physical servers in use have reached their end of life. The average cost to replace server hardware ranges from \$5000 to \$15000 depending on the system requirements. The current server configuration does not include a system to ensure network uptime. If a server experiences hardware failure access to City data is denied until the server is repaired.

The manufacturer warranty for the COA-FB01 Accounting Server expired Feb 20, 2017. The remaining servers have expired. It is recommended that all critical application servers remain under manufacturer warranty to minimize down time in sourcing hardware for repairs. Currently finding replacement parts for these servers will result in extended downtime and productivity loss.

DiamondIT recommends replacing the following servers:

- COA – DC01 – Domain Controller
- COA - FB1 - Accounting Server
- COA Mail 2 – Email Server
- CoA SQL01 – SQL Server
- Primary 01 – DC (offline)

We propose to not purchase 5 new physical servers but to purchase 2 new server head units, add a shared storage source, and virtualize all server roles on the new server hardware. We will implement a virtual server environment to replace the legacy server hardware currently in using VMWare's VSphere virtualization software. A virtual machine (VM) is a software implementation of a machine (i.e. a computer) that executes programs like a physical machine. Adding the new accounting system in this virtual server design will reduce installation time, hardware capital expense and management costs.

The new servers and storage solution will be configured in a fault tolerant server design. This server design will reduce the number of physical servers from the 5 currently in use to 2 servers. The design allows for growth by 50% without the need to reinvest in additional hardware.

A very important feature to our solution is the addition of a hardware redundant Highly Available (HA) network design. This Highly Available server design will protect against critical hardware failures that traditionally interrupt business operations. Company data and the virtual machines are stored on the shared storage system which improves also improves performance as the configuration allows users faster access to company data, thereby increasing end user productivity.

The HP DL320e server will be re purposed as a secondary Domain Controller and virtualization management server. Additional memory will need to be added to the HP DL320e server.

The new server design will include; Three virtual machine (VM) servers created to manage; COA-DC01, COA-FB1, and COA SQL01. Primary 01 will serve as the secondary Domain Controller and will be installed on the HP DL320 server. The secondary Domain

Controller ensures business continuity in the event of a critical hardware failure to the main Domain Controller system.

DiamondIT has recommended that COA Mail 2 be moved to DiamondIT's hosted MS Exchange solution. Having Email services hosted reduces the resource requirements and overall costs of managing a local Email server. Additional benefits of our hosted Microsoft Exchange solution include:

- 24x7x365 access to company email even during local network outages.
- Backup & retrieval – Email is backed up daily allowing for quick recovery of lost or deleted emails
- Shared contacts – Share contacts City wide with all users in the Global Address List
- Shared calendar - Share your calendar or view others' calendars, making scheduling a breeze.
- Server hardware and software not required
- MS Exchange Software upgrades included

Note: Please note this project does not include the Operating System upgrade for the servers. Our proposed plan upgrades the server hardware, which involves transferring the physical servers to virtual machine servers. No software upgrades will be completed during this project.

The following servers use Microsoft Windows Server 2008 R2 Operating Systems:

- COA-DC01
- COA SQL01

Windows 2008 will reach end of life by January 14, 2020. This software must be upgraded before this date.

Scope of Work

The following Scope of Work details the major tasks associated with this project

- Prep VRTX Storage and host servers by Installing & Configuring Vmware ESXi with latest driver updates
- Installation of firmware updates on server
- Installation of VMWare on two host servers
- Installation of latest patches
- Registration of licensing
- Network redundancy configuration
- AD integration setup
- Install open manage integration
- Setup Cluster, HA ("High Availability")
- Test Failover

Hardware Installation - During this phase, the new environment will be physically installed in the server room. Installation of Dell Blade Server and storage hardware

Physical to Virtual migration of the following servers:

- COA –DC01
- COA – FB01
- COA SQL01

Setup VMWare Management Server on repurposed HP DL320e server hardware:

- Upgrade Memory on HP DL320e
- Install & Configure ESXi
- Create Virtual Server vCenter Server Appliance
- Setup static IP and DNS records
- Join ESX Servers to vCenter
- Setup Alarm notification
- Setup HA and VM Monitoring
- Setup vCenter using best practices

Install and configure Windows 2016 Secondary Domain Controller Virtual Machine on HP DL320e Gen 8 server.

Properly retire and remove all legacy hardware at the end of the project. Existing servers, ISCSI Switches and HP SAN will be removed.

STANDARD ASSUMPTIONS & EXCLUSIONS:

Diamond Technologies may make certain assumptions while specifying the Services and deliverable's detailed in this SOW. It is the Customer's responsibility to identify any incorrect assumptions or take immediate action which will make all of Diamond Technologies' assumptions correct. Diamond Technologies has made the following specific assumptions while specifying the Services detailed in this SOW:

- If the assumptions used to develop the SOW are found to be incorrect, the parties agree to meet and negotiate, in good faith, equitable changes to the SOW, Service Levels and/or Fee Schedule, as appropriate.
- The prices for the Services are based on Customer's environment as known by Diamond Technologies at the time of execution of this SOW. If the volumes, consumption factors or requirements change by +/- five (5%) percent, Diamond Technologies will adjust the pricing to reflect these changes.
- No preexisting conditions exist that will prevent or delay the successful completion of the work included in this scope.
- Capacity at existing patch panel and PoE switch is available to accommodate additional equipment/wiring installations.
- Existing cabling, low voltage, and data drops will be used and are available in required locations.
- Additional services requested outside the above mentioned scope will require a signed Change Order and approval by Client and will be billed as quoted.
- All services will be provided during 8am to 5pm Monday thru Friday. If after hours or weekend service is required additional hourly rate will be increased by 1.5 per hour factor.
- DiamondIT staff will be allowed access to client location to complete necessary installation requirements.
- DiamondIT does not warranty installed hardware. All equipment installed is warranted by manufacturer and subject to manufacturing warranty policies.
- DiamondIT reserves the right to sub-contract as needed based on project type, project specialization and scheduling.
- Coordination with utility & service providers or remote sites is excluded unless otherwise specified in the scope of work.
- Low voltage and cabling is excluded unless otherwise specified in the scope of work.
- Electrical power/UPS upgrades/changes or special requirements are excluded.
- HVAC upgrades/changes or special requirements are excluded.
- Custom programming and software development are excluded.
- Expedited shipping is excluded unless otherwise stated in this proposal (overnight, 2-day, red, orange or other express shipping types).
- Diamond Technologies reserves the right to sub-contract portions or all of the requested Services.

- Diamond Technologies' pricing does not assume the responsibility of any Customer or third party personnel, hardware, software, equipment or other assets currently utilized in the Customer's operating environment.
- Diamond Technologies is not responsible for project or Service delivery delays caused by Customer facility or personnel challenges.

Hardware

Item	Description	Price	Qty	Ext. Price
Hardware	Dell PowerEdge VRTX	\$22,000.00	1	\$22,000.00
Hardware	Dell PowerEdge M630 VRTX	\$4,995.00	2	\$9,990.00
Hardware	HP Memory Upgrade	\$200.00	10	\$2,000.00

Subtotal: \$33,990.00

Software

Item	Description	Price	Qty	Ext. Price
Software	OLP GOVT WIN SVR STD CORE 2016 2LICS NL CORE LICs	\$88.00	20	\$1,760.00
Software	VMWare Essentials Plus	\$4,495.00	1	\$4,495.00
Software	VMWare Essentials 1 YR Basic Support	\$944.00	3	\$2,832.00

Subtotal: \$9,087.00

Services

Item	Description	Price	Qty	Ext. Price
Consulting	Installation and Configuration Fee	\$11,200.00	1	\$11,200.00

Subtotal: \$11,200.00

Network Server Upgrade



Prepared by:

DiamondIT
 Cory Ferguson
 (661) 833-5600
 Fax (661) 833-5608
 cferguson@diamondit.pro

Prepared for:

City of Arvin
 200 Campus Dr
 Arvin, CA 93203
 Jeffrey Jones
 jeffjones@arvin.org
 (661) 854-3134

Quote Information:

Quote #: 003126
 Version: 1
 Delivery Date: 04/20/2018
 Expiration Date: 03/31/2018

Quote Summary

Description	Amount
Hardware	\$33,990.00
Software	\$9,087.00
Services	\$11,200.00

Subtotal: \$54,277.00
Shipping: \$49.95
Tax: \$2,464.28
Total: \$56,791.23

GreatAmerica Financing

Description	No. of Payments		Amount
36 Months, \$1 Lease, 0 Advance Payments	36	Monthly	\$1,677.45
48 Months, \$1 Lease, 0 Advance Payments	48	Monthly	\$1,300.91
60 Months, \$1 Lease, 0 Advance Payments	60	Monthly	\$1,075.73

Terms and Conditions

The enclosed materials are proprietary to Diamond Technologies Inc. ("DiamondIT"), and are therefore copyrighted material. The materials are presented for the purpose of agreement to services and may not be disclosed in any manner to anyone other than the addressee and employees or an authorized representative of the herein addressed firm hereafter referred to as "Client".

This Quote is time sensitive and are therefore considered firm for 30 days from date of quote. DiamondIT reserves the right to modify any of the enclosed or related details thereafter. This Quote and pricing outlined herein is only valid when purchased as a complete hardware, software, and service solution unless otherwise agreed to by the Account Manager.

Hardware/Software Purchases: Due to the fast paced nature of technology and the unique needs of each project, DiamondIT does not typically stock Hardware and Software. Thus, all hardware and software orders require advance payment and will be ordered within one business day of payment being received. Returns may only occur with an RMA. RMA's may not be issued for all items. Assuming we are able to return the product to the distributor or manufacturer, a restocking fee will typically apply to allowed returns.

This order shall not be cancelable by Client for delays in delivery until fifteen days after written notice of such intention shall actually been received by DiamondIT. Client shall be obligated to accept any portion of the goods shipped or delivered by DiamondIT during such period. All claims for goods or delay in delivery shall be deemed waived unless made in writing delivered to DiamondIT within ten (10) days after receipt of goods by Buyer.

DIAMONDIT MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED EXCEPT FOR ANY MANUFACTURER'S WARRANTY. THE SERVICES ARE MADE AVAILABLE "AS IS" AND "AS AVAILABLE". DIAMONDIT EXPRESSLY DISCLAIMS ANY OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, NONINFRINGEMENT, COURSE OF DEALING OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DIAMONDIT WILL NOT BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, AND UNDER WHATEVER CAUSE OF ACTION OR THEORY OF LIABILITY EVEN IF DIAMONDIT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DIAMOND'S TOTAL AGGREGATE LIABILITY AND YOUR SOLE REMEDY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR THE SERVICES IS LIMITED TO THE VALUE OF THE SERVICE AGREEMENT

Unless stated otherwise, a separate Service Agreement defines the terms and conditions for ongoing service, maintenance and supplies.

While we do our best to quote based on the conditions we know, the final pricing and configuration may need to be adjusted to include items such as: additional products, licenses, professional services, shipping or taxes. If this is a project, please plan a fifteen percent contingency fee for any potentials change orders. This is to ensure the project can proceed with minimal interruption. Additional information may be required from you in order to more accurately quote this solution. These may include: floorplans, network diagrams, local, long distance and Internet access bills, site surveys, etc. We reserve the right to cancel orders arising from pricing or other errors.

Please remit payment to:
Diamond Technologies, Inc.
PO Box 9007
Bakersfield CA 93389

Invoice Terms: Services will be invoiced on a monthly basis for actual Services performed unless noted otherwise. Payment is due upon receipt. You may pay invoices by check or any other method we approve in writing. Checks that are not honored by the applicable financial institution will have a returned check fee of \$50.00 or the maximum amount allowed by law and we may require all future payments be by cashier's check, money order or credit card (at our election). If you fail to pay any invoice within ten days of the invoice date, we may suspend some or all of the Services. If you fail to pay any invoice within fourteen days of the invoice date, we may immediately terminate this Agreement. We reserve the right to charge a fee on any late payments, equal to the greater of the amount of (1) interest calculated at the lesser of 1.5% per month or the maximum rate permitted by law, or (2) \$25.00

Expenses: Customer will be responsible for any Service related expenses including actual, reasonable and necessary travel and lodging expenses DiamondIT incurs, as invoiced at the time of incurrence, in connection with delivering the Services.

Taxes: DiamondIT's pricing may not include applicable taxes. You are solely responsible for paying any taxes, governmental fees and assessments arising under this Agreement or from the Services, including any national, state or local sales, use, value-added, excise, withholding or other taxes, duties, tariffs or fees assessed in connection with this Agreement by any authority ("Taxes"), except for taxes on our income. If we pay any Taxes that are your responsibility, you will reimburse us immediately upon demand.

Scope Changes: Additional fees will apply for any Adds/Moves or Changes requested by Client and added to the scope of the Services. Any additional work that is required outside the scope of this Quote requires written approval by Client and DiamondIT.

Services Scheduling: Services may not be scheduled or commenced until the Purchase Order (if any) and signed Quote are received by DiamondIT. Upon receipt of a signed Quote and Purchase Order, a DiamondIT Project Manager will typically contact you within 3 business days to begin Services scheduling. Services Scheduling will be based upon Client's schedule preferences/requirements and the availability of required resources.

Pricing: The terms offered by DiamondIT under this Quote (including but not limited to the pricing) shall be valid for thirty (30) days following initial delivery of this Quote to Client. In the event this Quote is executed by Client after such thirty (30) day period, DiamondIT may in its sole discretion, (i) accept the Quote on the stated terms or (ii) reject such Quote and may provide Client with a revised Quote setting forth any necessary updates to the terms of the previous Quote.

Termination: Client may terminate this Quote for convenience upon providing DiamondIT with thirty (30) days written notice. Upon any termination of this Quote or the associated Agreement, Customer shall pay all of DiamondIT's unpaid fees and out-of-pocket expenses accrued through the effective date of such termination. Client may be subject to additional termination fees as specified in any applicable Service Agreements. If Client fails to perform any payment obligations hereunder and such failure remains un-remedied for fifteen (15) days, DiamondIT may suspend its performance until payment is received or terminate this Quote and the associated Agreement upon written notice.

Order of Precedence: This Quote, together with the Purchase Order (if any) and any Service Agreement, states all of the rights and responsibilities of, and supersedes all prior and contemporaneous oral and written communications between DiamondIT and Client regarding this Service. The use of pre-printed forms, such as Purchase Orders, will be for convenience only, and all pre-printed terms and conditions stated on such forms will not apply to this Agreement. Should a conflict arise between the terms of the Purchase Order, Quote and Agreement, the following order of precedence shall be followed: first, Agreement No. 2015-18 City of Arvin Professional Services Agreements for Computer System and Information Technology Installation, Repair and Maintenance, second the quote, and third the Purchase Order (if any); provided, however, that any terms and conditions printed on the Purchase Order shall not apply. Under no circumstances shall any conditions on the quote or the Purchase Order (if any) modify or supersede the requirements of Agreement No. 2015-18 City of Arvin Professional Services Agreements for Computer System and Information Technology Installation, Repair and Maintenance.

DiamondIT will perform the services outlined in this document according to our understanding of your desired results as agreed upon by both Client and DiamondIT.

If DiamondIT encounters any configuration or migration issues outside of the scope, as defined above, we will immediately

notify the Client and take the appropriate action to redefine the scope of work and adjust the time and materials required accordingly.

This Agreement is governed by the laws of the State of California, excluding conflicts of laws principles. Any action arising under or related to this Agreement in excess of \$7,500.00 will be resolved in Bakersfield, California in accord with the Commercial Dispute Resolution Procedures of the American Arbitration Association and the Optional Rules for Emergency Measures of Protection. The arbitration will be decided by a single arbitrator whose decision will be final and binding and may be enforced in any court of competent jurisdiction. The arbitration will be kept confidential except as required by law. Each party will be entitled to take up to three depositions. The prevailing party is entitled to reasonable attorneys' fees and costs. Any cause of action arising out of or related to this Agreement must be commenced within one year after the cause of action arose or such cause of action is barred. ANY CLAIM OR CAUSE OF ACTION, REGARDLESS OF FORM, MUST BE BROUGHT NO MORE THAN ONE YEAR AFTER IT AROSE, OTHERWISE THE CLAIM OR CAUSE OF ACTION SHALL BE BARRED, EXCEPT THAT THE FOREGOING LIMITATION AND THE ARBITRATION PROVISION SHALL NOT APPLY TO THE ENFORCEMENT BY US OF ANY OF OUR INTELLECTUAL PROPERTY RIGHTS.

Client acknowledges that DiamondIT has invested to recruit and develop the skilled technicians and consultants assigned to service Client and that this is a costly and time-consuming endeavor. If, at any time during or within two (2) years following the termination of this Agreement – measured from the last extension thereof – the client wishes to directly or indirectly employ any technician who shall have provided service to Client, Client shall first pay DiamondIT the sum of \$40,000 per technician, which reflects the reasonable value of Diamond's time and costs.

You agree that we may publicly disclose that we are providing Services to you and may use your name and logo to identify you as our customer in promotional materials, including press releases. We will not use your name or logo in a manner that suggests an endorsement or affiliation.

I have read and agree to the Terms and Conditions provided. I am an authorized agent with authority to enter into this agreement with DiamondIT. I hereby confirm to you that the information and arrangements outlined and the terms of payment are acceptable to us. Our deposit is attached. This agreement cannot be canceled or modified without written permissions. Support Services rates are subject to change with notification.

Signature

Date

EXHIBIT "B"

DIAMONDIT CMAS CONTRACT NO. 3-17-7-3241B

April 1, 2017

Mr. Matt Mayo
DiamondIT
PO Box 9007
Bakersfield, CA 93389

Subject: DiamondIT's California Multiple Award Schedule (CMAS)

CMAS Contract No.: 3-17-70-3241B
CMAS Contract Term: April 1, 2017 through February 28, 2021
Base GSA Schedule No.: GS-35F-059DA

The State of California is pleased to accept your firm's offer to establish a California Multiple Award Schedule (CMAS) contract, which we have assigned the CMAS contract number and term identified above. This contract number must be shown on each invoice rendered. Additionally, this letter shall not be construed as a commitment to purchase any or all of the State's requirements from your firm. Prior approval from the State is required for all news releases regarding this contract.

It is your firm's responsibility to furnish, upon request, a copy of this CMAS contract to State and local government agencies. A complete CMAS contract includes the following: **1)** this acceptance letter, **2)** CMAS cover pages (which includes the signature page, ordering instructions and special provisions, and any attachments or exhibits as prepared by the CMAS Unit), **3)** CMAS terms and conditions, **4)** Federal GSA terms and conditions, and **5)** product/service listing and prices. The CMAS Unit strongly recommends that government agencies place orders with Contractors who provide ALL of the contract elements described above.

To manage this contract, Contractors are directed to the "CMAS Contract Management and Information Guide", which can be accessed at www.dgs.ca.gov/pd/programs/leveraged/cmas.aspx, and then select the "For Suppliers/Contractors" tab. This guide covers CMAS Quarterly Reports, amendments, extensions, renewals, Contractor's change of address or contact person, company name change requests, and marketing your CMAS contract.

It is the Contractor's responsibility to submit detailed CMAS Quarterly Reports (along with any applicable incentive fees) on a timely basis.

THE NEXT QUARTERLY REPORT DUE FOR THIS CONTRACT IS Q2-2017 (APRIL-JUNE)
DUE BY JULY 15, 2017.

The "Approved CMAS Contractor" logo is only available to CMAS contract holders for display at conferences or other marketing material. A login and password is required to download the logo. Go to <http://www.dgs.ca.gov/pd/Resources/FormsResourcesLibrary.aspx>, and then select "Reference Material"; click on "CMAS Logos" under the heading "Marketing Tools". At the prompt, enter the login "cmassupplier" and the password "cmas010194".

Should you have any questions regarding this contract, please contact me at 916/375-4387. Thank you for your continued cooperation and support of the CMAS Program.


MARISA TRUAX, Program Analyst
California Multiple Award Schedules Unit

State of California
MULTIPLE AWARD SCHEDULE
Diamond Technologies, Inc. doing business as
DiamondIT

CONTRACT NUMBER:	3-17-70-3241B
SUPPLEMENT NO.:	N/A
CMAS CONTRACT TERM:	4/01/2017 through 02/28/2020
CONTRACT CATEGORY:	Information Technology Goods & Services
APPLICABLE TERMS & CONDITIONS:	September 8, 2014
MAXIMUM ORDER LIMIT:	\$500,000
FOR USE BY:	State & Local Government Agencies
BASE GSA SCHEDULE NO.:	GS-35F-059DA
BASE SCHEDULE HOLDER:	Dell Marketing L.P.

This contract provides for the purchase and warranty of hardware, installation, maintenance and repair, and software and software maintenance as a product. (See page 2 for the specific brands and restrictions applicable to this contract.)

NOTICE: Products and/or services on this CMAS may be available on a Mandatory Statewide Contracts. If this is the case, the use of this CMAS is restricted unless the State agency has an approved exemption as explained in the Statewide Contract User Instructions. Information regarding Statewide Contracts can be obtained at the website www.documents.dgs.ca.gov/pd/contracts/contractindexlisting.pdf. This requirement is not applicable to local government entities.

ANY REFERENCE TO A SPECIFIC MANUFACTURER'S OR PUBLISHER'S WARRANTY OR TERMS AND CONDITIONS AS SHOWN IN THE BASE DELL MARKETING L.P. GSA SCHEDULE ARE NOT APPLICABLE TO THIS CMAS CONTRACT.

The most current Ordering Instructions and Special Provisions and CMAS Terms and Conditions, products and/or services and pricing are included herein. All purchase orders issued under this contract incorporate the following Ordering Instructions and Special Provisions and CMAS Terms and Conditions dated September 8, 2014.

Agency non-compliance with the requirements of this contract may result in the loss of delegated authority to use the CMAS program.

Contractor non-compliance with the requirements of this contract may result in contract termination.



MARISA TRUAX, Program Analyst, California Multiple Award Schedules Unit

Effective Date: **4/01/2017**

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

CMAS PRODUCT & SERVICE CODES

The CMAS Product & Service Codes listed below are for marketing purposes only. Review this CMAS contract and the base contract identified below for the products and/or services available on this contract.

Brand-Dell
Computer-Laptop
Computer-PC
Hardware-Computer
Hardware-Tablet
Monitor-Computer
Printer
Printer-Accessories
Server-Network
Memory-Storage

AVAILABLE PRODUCTS AND/OR SERVICES

Only products from the manufacturer(s) listed below are available within the scope of this contract:

Dell

The ordering agency must verify all products and/or services are currently available on the base GSA schedule at the GSA eLibrary. Access the GSA eLibrary at www.gsaelibrary.gsa.gov.

EXCLUDED PRODUCTS AND/OR SERVICES

Software as a Service (SaaS), Platform as a Service (PaaS), Infrastructure as a Service (IaaS), software maintenance as a service, training courses, Information Technology (IT) professional consulting services, and leasing of product are not available under this contract.

CMAS BASE CONTRACT

This CMAS contract is based on some or all of the products and/or services and prices from GSA Schedule No. GS-35F-059DA (DELL MARKETING L.P.) with a GSA term of 11/20/2015 through 11/19/2020. The term of this CMAS contract incorporates an extension of three months beyond the expiration of the base GSA contract, and is shown in the "CMAS Term Dates" on page 1.

Replace "Dell Marketing L.P." with "DiamondIT" where "Dell Marketing L.P." is referenced in the federal (or other) GSA multiple award Contract Terms and Conditions.

ISSUE PURCHASE ORDER TO

Agency purchase orders must be mailed to the following address, or faxed to **(661) 833-5608**:

**DiamondIT
PO Box 9007
Bakersfield, CA 93389
Attn: Mike Leftwich**

Agencies with questions regarding products and/or services may contact the contractor as follows:

**Phone: (661) 833-5600 Ext 1217
E-mail: mleftwich@diamondit.pro**

CALIFORNIA SELLER'S PERMIT

DiamondIT's California Seller's Permit No. is 100622553. Prior to placing an order with this company, agencies should verify that this permit is still valid at the following website: www.boe.ca.gov.

CONTRACT PRICES

The maximum prices allowed for the products and/or services available in this CMAS contract are those set forth in the base contract identified on page 2 of this contract.

The ordering agency is encouraged to seek prices lower than those on this CMAS contract. When responding to an agency's Request for Offer (RFO), the contractor can offer lower prices to be competitive.

WARRANTY

For warranties, see the federal GSA schedule and the CMAS Terms and Conditions, General Provisions, CMAS Warranty.

DELIVERY

5-120 days after receipt of order, or as negotiated between agency and contractor and included in the purchase order, or as otherwise stipulated in the contract.

SHIPPING INSTRUCTIONS

F.O.B. (Free On Board) Destination. Seller pays the freight charges.

PURCHASING AUTHORITY DOLLAR THRESHOLD

No CMAS order may be executed by a State agency that exceeds that agency's CMAS purchasing authority threshold or the CMAS maximum order limit, whichever is less.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

HOW TO USE CMAS CONTRACTS

Agencies must adhere to the detailed requirements in the State Contracting Manual (SCM) when using CMAS contracts. The requirements for the following bullets are in the SCM, Volume 2, Chapter 6 (for non-IT) and the SCM, Volume 3, Chapter 6 (for IT):

- Develop a Request for Offer, which includes a Scope of Work (SOW), and Bidder Declaration form. For information on the Bidder Declaration requirements, see the SCM, Volume 2, Section 3.5.7 and Volume 3, Section 3.4.7.
- Search for potential CMAS contractors at www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, select "Find a CMAS Contract".
- Solicit offers from a minimum of 3 CMAS contractors including one small business and/or DVBE, if available, who are authorized to sell the products and/or services needed.
- If soliciting offers from a certified DVBE, include the Disabled Veteran Business Enterprise Declarations form (Std. 843) in the Request for Offer. This declaration must be completed and returned by the DVBE prime contractor and/or any DVBE subcontractors. (See the SCM Volumes 2 and 3, Chapter 3).
- This is not a bid transaction, so the small business preference, DVBE participation goals, protest language, intents to award, evaluation criteria, advertising, etc., are not applicable.
- If less than 3 offers are received, State agencies must document their file with the reasons why the other suppliers solicited did not respond with an offer.
- Assess the offers received using best value methodology, with cost as one of the criteria.
- Issue a Purchase Order to the selected contractor.
- For CMAS transactions under \$5,000 only one offer is required if the State agency can establish and document that the price is fair and reasonable.

Local governments set their own order limits, and are not bound by the order limits on the cover page of this contract.

SPLITTING ORDERS

Splitting orders to avoid any monetary limitations is prohibited.

Do not circumvent normal procurement methods by splitting purchases into a series of delegated purchase orders (PCC § 10329).

Splitting a project into small projects to avoid either fiscal or procedural controls is prohibited (SAM 4819.34).

MINIMUM ORDER LIMITATION

There is no minimum dollar value limitation on orders placed under this contract.

ORDERING PROCEDURES

1. Order Form

State agencies shall use a Contract/Delegation Purchase Order (Std. 65) for purchases and services.

Local governments shall, in lieu of the State's Purchase Order (Std. 65), use their own purchase order document.

Electronic copies of the State Standard Forms can be found at the Office of State Publishing website. The site provides information on the various forms and use with the Adobe Acrobat Reader. Beyond the Reader capabilities, Adobe Acrobat advanced features may be utilized if you have Adobe Business Tools or Adobe Acrobat 4.0 installed on your computer. Direct link to the Standard Form 65 www.dgs.ca.gov/dgs/Programs/Services/Forms/FM/C/Search.aspx.

2. Purchase Orders

The agency is required to complete and distribute the order form. For services, the agency shall modify the information contained on the order to include the service period (start and end date), and the monthly cost (or other intermittent cost), and any other information pertinent to the services being provided. The cost for each line item should be included in the order, not just system totals.

The contractor must immediately reject orders that are not accurate. Discrepancies are to be negotiated and incorporated into the order prior to the products and services being delivered.

3. Service and Delivery after Contract Expiration

The purchase order must be issued before the CMAS contract end term expires. However, delivery of the products or completion of the services may be after the contract end term expires (unless otherwise specifically stated in the contract), but must be as provided for in the contract and as specified in the purchase order.

4. Multiple Contracts on STD. 65 Order Form

Agencies may include multiple CMAS contracts from the same contractor on a single Std. 65 Contract/Delegation Purchase Order. For guidelines, see the SCM, Volumes 2 & 3, Chapter 6.B4.1.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

5. Amendments to Agency's Purchase Orders

Agency purchase orders cannot be amended if the CMAS contract has expired.

The SCM, Volumes 2 & 3, Chapter 6.A5.0 provides the following direction regarding amendments to all types of CMAS purchase orders:

Original orders, which include options for changes (e.g., quantity or time), that were evaluated and considered in the selection for award during the RFO process, may be amended consistent with the terms of the original order, provided that the original order allowed for amendments. If the original order did not evaluate options, then amendments are not allowed unless an NCB is approved for those amendments.

Amendments unique to non-IT services are covered in the SCM, Volume 2, Chapter 6.B2.9 as follows:

If the original contract permitted amendments, but did not specify the changes (e.g., quantity and/or time), it may be amended. This only applies to the first amendment. The time shall not exceed one year, or add not more than 30% of the original order value and may not exceed \$250,000. If the original contract did not have language permitting amendments, the NCB process must be followed.

Also, see the SCM, Volumes 2 & 3, Chapter 8, Topic 6, for more information on amending purchase orders.

CONTRACTOR OWNERSHIP INFORMATION

DiamondIT is a certified small business enterprise. Their Office of Small Business and DVBE Services (OSDS) certification #1014465 expires on 11/30/2017.

If this certification has expired, the current expiration date for this company's certification should be verified at caleprocure.ca.gov/pages/index.aspx or by contacting the Office of Small Business and DVBE Services at (916) 375-4940. Note that some companies have been assigned a new certification number, so use the company name and/or certification number when checking status on-line.

SMALL BUSINESS MUST BE CONSIDERED

Prior to placing orders under the CMAS program, State agencies shall whenever practicable first consider offers from small businesses that have established CMAS contracts [GC Section 14846(b)]. NOTE: The Department of General Services auditors will request substantiation of compliance with this requirement when agency files are reviewed.

The following website lists CMAS Small Business and Disabled Veteran Partners www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, then select "Find a CMAS Contractor".

In response to our commitment to increase participation by small businesses, the Department of General Services **waives the administrative fee (a fee currently charged to customer agencies to support the CMAS program) for orders to certified small business enterprises.**

See the current fees in the DGS Price Book at www.dgs.ca.gov/ofs/Pricebook.aspx.

SMALL BUSINESS/DVBE - TRACKING

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the Contractor subcontracts a commercially useful function to a certified small business or DVBE. The Contractor will provide the ordering agency with the name of the small business or DVBE used and the dollar amount the ordering agency can apply towards its small business or DVBE goal.

SMALL BUSINESS/DVBE - SUBCONTRACTING

1. The amount an ordering agency can claim towards achieving its small business or DVBE goals is the dollar amount of the subcontract award made by the Contractor to each small business or DVBE.
2. The Contractor will provide an ordering agency with the following information at the time the order is quoted:
 - a. The Contractor will state that, as the prime Contractor, it shall be responsible for the overall execution of the fulfillment of the order.
 - b. The Contractor will indicate to the ordering agency how the order meets the small business or DVBE goal, as follows:
 - List the name of each company that is certified by the Office of Small Business and DVBE Certification that it intends to subcontract a commercially useful function to; and
 - Include the small business or DVBE certification number of each company listed, and attach a copy of each certification; and
 - Indicate the dollar amount of each subcontract with a small business or DVBE that may be claimed by the ordering agency towards the small business or DVBE goal; and
 - Indicate what commercially useful function the small business or DVBE subcontractor will be providing towards fulfillment of the order.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

3. The ordering agency's purchase order must be addressed to the prime Contractor, and the purchase order must reference the information provided by the prime Contractor as outlined above.

NEW EQUIPMENT REQUIRED

The State will procure new equipment. All equipment must be new (or warranted as newly manufactured) and the latest model in current production. Used, shopworn, demonstrator, prototype, or discontinued models are not acceptable.

Where Federal Energy Management Program (FEMP) standards are available, all State agencies shall purchase only those products that meet the recommended standards. All products displaying the Energy Star label meet the FEMP standards.

SPECIAL MANUFACTURED GOODS

Any contract for goods to be manufactured by the contractor specifically for the State and not suitable for sale to others may require progress payments.

PRODUCT INSTALLATION

The contractor is fully responsible for all installation services performed under the CMAS contract. Product installations must be performed by manufacturer authorized personnel and meet manufacturer documented specifications.

The prime contractor, as well as any subcontractors, must hold any certifications and/or licenses required for the project.

TRADE-IN EQUIPMENT

Trade-ins at open market price may be considered. The product description and trade-in allowance must be identified on the purchase order.

Agencies are required to adhere to SAM 3520 through 3520.6, Disposal of Personal Property and Surplus Personal Property, as applicable, when trade-ins are considered. A Property Survey Report, Std. 152, must be submitted for approval prior to disposition of any State-owned personal property, including general office furniture regardless of the acquisition value, or if the property was recorded or capitalized for accounting purposes.

ELECTRONIC WASTE RECYCLING

The Electronic Waste Recycling Act of 2003 requires retailers to collect a recycling fee from consumers on covered electronic devices starting January 1, 2005. California Public Resources Code, Section 42463(f) defines a "covered electronic device" as a video display device containing a screen greater than four inches measured diagonally. See the code identified above for more information and exceptions to this definition.

The Integrated Waste Management Board is implementing this new legislation, and the Board of Equalization is responsible for collecting these recycling fees from retailers. See the following two websites for more information on this topic:

www.ciwmb.ca.gov/Electronics/Act2003/

www.boe.ca.gov/sptaxprog/ewaste.htm

The electronic waste recycling fee must be shown as a line item on the agency purchase order before the Contractor can include it on their invoice.

PRODUCTIVE USE REQUIREMENTS

The customer in-use requirement applies to all procurements of information technology equipment and software, per the SCM, Volume 3, Chapter 2, Section 2.B6.2.

Each equipment or software component must be in current operation for a paying customer and the paying customer must be external to the contractor's organization (not owned by the contractor and not owning the contractor).

To substantiate compliance with the Productive Use Requirements, the contractor must provide upon request the name and address of a customer installation and the name and telephone number of a contact person.

The elapsed time such equipment or software must have been in operation is based upon the importance of the equipment or software for system operation and its cost. The following designates product categories and the required period of time for equipment or software operation prior to approval of the replacement item on CMAS.

Category 1 - Critical Software: Critical software is software that is required to control the overall operation of a computer system or peripheral equipment. Included in this category are operating systems, data base management systems, language interpreters, assemblers and compilers, communications software, and other essential system software.

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	8 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

Category 2 - All Information Technology Equipment and Non-Critical Software: Information technology equipment is defined in SAM Section 4819.2.

<u>Cost</u>	<u>Prior Operation</u>
More than \$100,000	6 months
\$10,000 up to \$100,000	4 months
Less than \$10,000	1 month

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

**OPEN MARKET/INCIDENTAL, NON-SCHEDULE
ITEMS**

The only time that open market/incidental, non-schedule items may be included in a CMAS order is when they fall under the parameters of the Not Specifically Priced (NSP) Items provision. If the NSP provision is not included in the schedule, or the products and/or services required do not qualify under the parameters of the NSP provision, the products and/or services must be procured separate from CMAS.

NOT SPECIFICALLY PRICED (NSP) ITEMS

Contractors must be authorized providers of the hardware, software and/or services they offer under the Not Specifically Priced (NSP) Items provision.

Agency and contractor use of the NSP provision is subject to the following requirements:

1. Purchase orders containing only NSP items are prohibited.
2. A purchase order containing NSP items may be issued only if it results in the lowest overall alternative to the State.
3. NSP items shall be clearly identified in the order. Any product or service already specifically priced and included in the contract may not be identified as an NSP item.
4. Maximum Order Limitation: For orders \$250,000, or less, the total dollar value of all NSP items included in a purchase order shall not exceed \$5,000. For orders exceeding \$250,000, and at the option of the contractor, the total dollar value of all NSP items in a purchase order shall not exceed 5% of the total cost of the order, or \$25,000 whichever is lower.
5. An NSP item included in an order issued against a contract is subject to all of the terms and conditions set forth in the contract.
6. Trade-ins, upgrades, involving the swapping of boards, are permissible, where the contract makes specific provisions for this action. In those instances where it is permitted, the purchase order must include the replacement item and a notation that the purchase involves the swapping of a board.

The following NSP items ARE SPECIFICALLY EXCLUDED from any order issued under this contract:

1. Items not intended for use in directly supporting the priced items included in the same order. An NSP item must be subordinate to the specifically priced item that it is supporting. For example, a cable, which is not otherwise specifically priced in the contract, is subordinate to a specifically priced printer or facsimile machine, and is eligible to be an NSP item subject to that cable meeting the remaining NSP requirements. However, a printer or facsimile machine, which is not otherwise specifically priced in the contract, is not subordinate to a specifically priced cable, and is not eligible to be an NSP item.
2. Supply type items, except for the minimum amount necessary to provide initial support to the priced items included in the same order.
3. Items that do not meet the Productive Use Requirements for information technology products, per the SCM, Volume 3, Chapter 2, Section 2.B6.2.
4. Any other item or class of items specifically excluded from the scope of this contract.
5. Public Works components NOT incidental to the total purchase order amount.
6. Products or services the contractor is NOT factory authorized or otherwise certified or trained to provide.
7. Follow-on consultant services that were previously recommended or suggested by the same contractor.

The contractor is required to reject purchase orders containing NSP items that do not conform to the above requirements. The contractor will promptly notify the agency issuing the non-conforming order of its non-acceptance and the reasons for its non-acceptance.

**STATE AND LOCAL GOVERNMENTS CAN USE
CMAS**

State and local government agency use of CMAS contracts is optional. A local government is any city, county, city and county, district, or other local governmental body or corporation, including UC, CSU, K-12 schools and community colleges empowered to expend public funds. While the State makes this contract available, each local government agency should make its own determination whether the CMAS program is consistent with their procurement policies and regulations.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

UPDATES AND/OR CHANGES

A CMAS amendment is not required for updates and/or changes once the update and/or change becomes effective for the federal GSA schedule, except as follows:

- A CMAS amendment is required when the contract is based on products and/or services from another contractor's multiple award contract and the contractor wants to add a new manufacturer's products and/or services.
- A CMAS amendment is required for new federal contract terms and conditions that constitute a material difference from existing contract terms and conditions. A material change has a potentially significant effect on the delivery, quantity or quality of items provided, the amount paid to the contractor or on the cost to the State.
- A CMAS amendment is required for changes to contracts that require California Prison Industry Authority (CALPIA) approval.

A CMAS amendment is required to update and/or change terms and conditions and/or products and services based on a non-federal GSA multiple award contract.

SELF-DELETING FEDERAL GSA TERMS AND CONDITIONS

Instructions, or terms and conditions that appear in the Special Items or other provisions of the federal GSA and apply to the purchase, license, or rental (as applicable) of products or services by the U.S. Government in the United States, and/or to any overseas location shall be self-deleting. (Example: "Examinations of Records" provision).

Federal regulations and standards, such as Federal Acquisition Regulation (FAR), Federal Information Resources Management Regulation (FIRMR), Federal Information Processing Standards (FIPS), General Services Administration Regulation (GSAR), or Federal Installment Payment Agreement (FIPA) shall be self-deleting. Federal blanket orders and small order procedures are not applicable.

ORDER OF PRECEDENCE

The CMAS Terms and Conditions shall prevail if there is a conflict between the terms and conditions of the contractor's federal GSA, (or other multiple award contract), packaging, invoices, catalogs, brochures, technical data sheets or other documents (see CMAS Terms and Conditions, CONFLICT OF TERMS).

APPLICABLE CODES, POLICIES AND GUIDELINES

All California codes, policies, and guidelines are applicable. THE USE OF CMAS DOES NOT REDUCE OR RELIEVE STATE AGENCIES OF THEIR RESPONSIBILITY TO MEET STATEWIDE REQUIREMENTS REGARDING CONTRACTING OR THE PROCUREMENT OF GOODS OR SERVICES. Most procurement and contract codes, policies, and guidelines are incorporated into CMAS contracts. Nonetheless, there is no guarantee that every possible requirement that pertains to all the different and unique State processes has been included.

STATEWIDE PROCUREMENT REQUIREMENTS

Agencies must carefully review and adhere to all statewide procurement requirements in the SCM, Volumes 2 and 3, such as:

- Automated Accounting System requirements of State Administrative Manual (SAM) Section 7260-62.
- Productive Use Requirements, per the SCM, Volume 3, Chapter 2, Section 2.B6.2.
- SAM Sections 4819.41 and 4832 certifications for information technology procurements and compliance with policies.
- Services may not be paid for in advance.
- Agencies are required to file with the Department of Fair Employment and Housing (DFEH) a Contract Award Report Std. 16 for each order over \$5,000 within 10 days of award, including supplements that exceed \$5,000.
- Pursuant to Public Contract Code Section 10359 State agencies are to report all Consulting Services Contract activity for the preceding fiscal year to DGS and the six legislative committees and individuals that are listed on the annual memorandum from DGS.
- Pursuant to Unemployment Insurance Code Section 1088.8, State and local government agencies must report to the Employment Development Department (EDD) all payments for services that equal \$600 or more to independent sole proprietor contractors. See the Contractor's Std. 204, Payee Data Record, to determine sole proprietorship. For inquiries regarding this subject, contact EDD at (916) 651-6945 for technical questions or (888) 745-3886 for information and forms.
- Annual small business and disabled veteran reports.
- Post evaluation reports. Public Contract Code 10369 requires State agencies to prepare post evaluations on form Std. 4 for all completed non-IT consulting services contracts of more than \$5,000. Copies of negative evaluations for non-IT consulting services only must be sent to the DGS, Office of Legal Services. The Bureau of State Audits requires State agencies annually to certify compliance with these requirements.

**CALIFORNIA MULTIPLE AWARD SCHEDULE (CMAS)
DIAMONDIT
CMAS NO. 3-17-70-3241B**

**ETHNICITY/RACE/GENDER REPORTING
REQUIREMENT**

Effective January 1, 2007, in accordance with Public Contract Code 10111, State agencies are to capture information on ethnicity, race, and gender of business owners (not subcontractors) for all awarded contracts, including CAL-Card transactions. Each department is required to independently report this information to the Governor and the Legislature on an annual basis.

Agencies are responsible for developing their own guidelines and forms for collecting and reporting this information,

Contractor participation is voluntary.

PAYMENTS AND INVOICES

1. Payment Terms

Payment terms for this contract are net 45 days.

Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of goods or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.

2. Payee Data Record (Std. 204)

Each State accounting office must have a copy of the Contractor's Payee Data Record (Std. 204) in order to process payment of invoices. Contractors are required to provide a copy of their Std. 204 upon request from an agency customer. Agencies should forward a copy of the Std. 204 to their accounting office. Without the Std. 204, payment may be unnecessarily delayed.

3. DGS Administrative and Incentive Fees

Orders from State Agencies:

The Department of General Services (DGS) will bill each State agency directly an administrative fee for use of CMAS contracts. The administrative fee should NOT be included in the order total, nor remitted before an invoice is received from DGS. This administrative fee is waived for CMAS purchase orders issued to California certified small businesses.

See the current administrative fees in the DGS Price Book at www.dgs.ca.gov/ofs/Pricebook.aspx.

Orders from Local Government Agencies:

Effective for CMAS orders dated 1/1/2010 or later, CMAS contractors, who are not California certified small businesses, are required to remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

4. Contractor Invoices

Unless otherwise stipulated, the contractor must send their invoices to the agency address set forth in the purchase order. Invoices shall be submitted in triplicate and shall include the following:

- Contract number
- Agency purchase order number
- Agency Bill Code
- Line item number
- Unit price
- Extended line item price
- Invoice total

State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

The company name on the CMAS contract, purchase order and invoice must match or the State Controller's Office will not approve payment.

5. Advance Payments

Advance payment is allowed for services only under limited, narrowly defined circumstances, e.g., between specific departments and certain types of non-profit organizations, or when paying another government agency (GC 11256 - 11263 and 11019).

It is NOT acceptable to pay in advance, except software maintenance and license fees, which are considered a subscription, may be paid in advance if a provision addressing payment in advance is included in the purchase order.

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Warranty upgrades and extensions may also be paid for in advance, one time.

6. Credit Card

DiamondIT accepts the State of California credit card (CAL-Card).

A Purchasing Authority Purchase Order (Std. 65) is required even when the ordering department chooses to pay the contractor via the CAL-Card. Also, the DGS administrative fee is applicable for all CMAS orders to suppliers not California certified as a small business.

7. Lease/Purchase Analysis

State agencies must complete a Lease/Purchase Analysis (LPA) to determine best value when contemplating a lease/rental, and retain a copy for future audit purposes (SAM 3700). Approval by the Department of General Services is not required.

8. Leasing

Except for Federal Lease to Own Purchase (LTOP) and hardware rental provisions with no residual value owed at end term (\$1 residual value is acceptable), Federal GSA Lease provisions are NOT available through CMAS because the rates and contract terms and conditions are not acceptable or applicable to the State.

SEAT Management financing options are NOT available through this contract.

As an alternative, agencies may consider financing through the State's financial marketplace GS \$Mart™. All terms and conditions and lenders are pre-approved for easy financing. The GS \$Mart™ Internet address is www.dgs.ca.gov/pd/programs/statefinancialmarketplace.aspx. Buyers may contact the GS \$Mart™ Administrator, Patrick Mullen by phone at (916) 375-4617 or e-mail at patrick.mullen@dgs.ca.gov for further information.

9. Maintenance Tax

The Board of Equalization has ruled that in accordance with Section 1655 of the Sales and Use Tax Regulations of the Business Taxes Law Guide, that whenever optional maintenance contracts include consumable supplies, such supplies are subject to sales tax.

Generally, the State has two options:

1. For contracts that provide for maintenance services (i.e., the furnishing of labor and parts necessary to maintain equipment), the charges for the provision of maintenance services are not taxable.

2. For contracts that provide for maintenance services and consumable supply items (e.g., toner, developer, and staples), the provision of the consumable supplies is considered a taxable sale of tangible personal property. Therefore, State agencies awarding optional maintenance contracts are responsible for paying the applicable sales tax on the consumable supplies utilized during the performance period of the maintenance contract.

The contractor will be required to itemize the taxed consumables for State accounting purposes.

CONTRACTOR QUARTERLY REPORT PROCESS

Contractors are required to submit a detailed CMAS Business Activity Report on a quarterly basis to the CMAS Unit. See Attachment B for a copy of this form and instructions.

This report shall be mailed to:

Department of General Services
Procurement Division – CMAS Unit
Attention: Quarterly Report Processing
PO Box 989052, MS 2-202
West Sacramento, CA 95798-9052

Reports that include checks for incentive fees or that exceed a total of 5 pages must be mailed and shall not be faxed or e-mailed. All other reports may be faxed or e-mailed to the attention of Quarterly Report Processing as follows:

CMAS Unit Fax Number: (916) 375-4663
CMAS Unit E-Mail: cmas@dgs.ca.gov

For the full instructions on completing and submitting CMAS Quarterly Business Activity Reports, and a soft copy of a blank quarterly report form, go to www.dgs.ca.gov/pd/Programs/Leveraged/CMAS.aspx, and then select "For Suppliers/Contractors".

Important things to remember regarding CMAS Quarterly Business Activity Reports (referred to as "reports" below):

- A report is required for each CMAS contract each quarter, even when no new purchase orders are received in the quarter.
- A separate report is required for each CMAS contract.
- Each purchase order must be reported only once in the quarter identified by the purchase order date, regardless of when the services were performed, the products were delivered, the invoice was sent, or the payment was received.
- Purchase orders from State and local government agencies must be separated on the report, as shown in the instructions.

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- Contractors must report the sales activity for all resellers listed on their CMAS contract.
- Any report that does not follow the required format or excludes required information will be deemed incomplete and returned to the contractor for corrections.
- Taxes and freight must not be included in the report.
- Contractors who are not California certified small businesses must attach to their quarterly report a check covering the required incentive fee for all CMAS sales to local government agencies (see more information below).
- New contracts, contract renewals or extensions, and contract modifications will be approved only if the contractor has submitted all required quarterly reports and incentive fees.

CMAS Quarterly Business Activity Reports are due in the CMAS Unit within two weeks after the end of each quarter as shown below:

Quarter 1	Jan 1 to March 31	Due April 15
Quarter 2	April 1 to June 30	Due July 15
Quarter 3	July 1 to Sept 30	Due Oct 15
Quarter 4	Oct 1 to Dec 31	Due Jan 15

CONTRACTOR QUARTERLY INCENTIVE FEES

CMAS contractors who are not California certified small businesses must remit to the DGS an incentive fee equal to 1% of the total of all local government agency orders (excluding sales tax and freight) placed against their CMAS contract(s). This incentive fee is in lieu of local government agencies being billed the above referenced DGS administrative fee.

CMAS contractors cannot charge local government agencies an additional 1% charge on a separate line item to cover the incentive fee. The contractor must include the 1% incentive fee in the price of the products or services offered, and the line item prices must not exceed the applicable GSA prices.

A local government agency is any city, county, district, or other local governmental body, including the California State University (CSU) and University of California (UC) systems, K-12 public schools and community colleges empowered to expend public funds.

This incentive fee is waived for CMAS purchase orders issued to California certified small businesses.

The check covering this fee shall be made payable to the Department of General Services, CMAS Unit, and mailed to the CMAS Unit along with the applicable Quarterly Report. See the provision in this contract entitled "Contractor Quarterly Report Process" for information on when and where to send these checks and reports.

CONTRACTOR PROVIDES COPY OF THE CONTRACT AND SUPPLEMENTS

CMAS contractors are required to provide the entire contract that consists of the following:

- Cover pages with DGS logo and CMAS analyst's signature, and Ordering Instructions and Special Provisions.
- California CMAS Terms and Conditions.
- Federal GSA Terms and Conditions.
- Federal GSA products, services, and price list.
- Supplements, if applicable.

It is important for the agency to confirm that the required products, services, and prices are included in the contract and are at or below contract rates. To streamline substantiation that the needed items are in the contract, the agencies should ask the contractor to identify the specific pages from the contract pricelist that include the required products, services, and prices. Agencies should save these pages for their file documentation.

CONTRACTORS ACTING AS FISCAL AGENTS ARE PROHIBITED

When a subcontractor ultimately provides all of the products or performs all of the services that a contractor has agreed to provide, and the prime contractor only handles the invoicing of expenditures, then the prime contractor's role becomes that of a fiscal agent because it is merely administrative in nature, and does not provide a Commercially Useful Function (CUF). It is unacceptable to use fiscal agents in this manner because the agency is paying unnecessary administrative costs.

AGENCY RESPONSIBILITY

Agencies must contact contractors to obtain copies of the contracts and compare them for a best value purchasing decision.

Each agency is responsible for its own contracting program and purchasing decisions, including use of the CMAS program and associated outcomes.

This responsibility includes, but is not necessarily limited to, ensuring the necessity of the services, securing appropriate funding, complying with laws and policies, preparing the purchase order in a manner that safeguards the State's interests, obtaining required approvals, and documenting compliance with Government Code 19130.b (3) for outsourcing services.

It is the responsibility of each agency to consult as applicable with their legal staff and contracting offices for advice depending upon the scope or complexity of the purchase order.

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If you do not have legal services available to you within your agency, the DGS Office of Legal Services is available to provide services on a contractual basis.

CONFLICT OF INTEREST

Agencies must evaluate the proposed purchase order to determine if there are any potential conflict of interest issues. See the attached CMAS Terms and Conditions, Conflict of Interest, for more information.

FEDERAL DEBARMENT

When federal funds are being expended, the agency is required to obtain (retain in file) a signed "Federal Debarment" certification from the contractor before the purchase order is issued.

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants; responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

LIQUIDATED DAMAGES FOR LATE DELIVERY

The value of the liquidated damages cannot be a penalty, must be mutually agreed upon by agency and contractor and included in the purchase order to be applicable.

ACCEPTANCE TESTING CRITERIA

If the agency wants to include acceptance testing for all newly installed technology systems, and individual equipment, and machines which are added or field modified (modification of a machine from one model to another) after a successful performance period, the test criteria must be included in the purchase order to be applicable.

AMERICANS WITH DISABILITY ACT (ADA)

Section 504 of the Rehabilitation Act of 1973 as amended; Title VI and VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act, 42 USC 12101; California Code of Regulations, Title 2, Title 22; California Government Code, Sections 11135, et seq.; and other federal and State laws, and Executive Orders prohibit discrimination. All programs, activities, employment opportunities, and services must be made available to all persons, including persons with disabilities. See Attachment A for Procurement Division's ADA Compliance Policy of Nondiscrimination on the Basis of Disability.

Individual government agencies are responsible for self-compliance with ADA regulations.

Contractor sponsored events must provide reasonable accommodations for persons with disabilities.

DGS PROCUREMENT DIVISION CONTACT AND PHONE NUMBER

Department of General Services
Procurement Division, CMAS Unit
707 Third Street, 2nd Floor, MS 202
West Sacramento, CA 95605-2811

Phone # (916) 375-4363
Fax # (916) 375-4663

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ATTACHMENT A

ADA NOTICE

**Procurement Division (State Department of General Services)
AMERICANS WITH DISABILITIES ACT (ADA) COMPLIANCE
POLICY OF NONDISCRIMINATION ON THE BASIS OF DISABILITY**

To meet and carry out compliance with the nondiscrimination requirements of the Americans With Disabilities Act (ADA), it is the policy of the Procurement Division (within the State Department of General Services) to make every effort to ensure that its programs, activities, and services are available to all persons, including persons with disabilities.

For persons with a disability needing a reasonable accommodation to participate in the Procurement process, or for persons having questions regarding reasonable accommodations for the Procurement process, please contact the Procurement Division at (916) 375-4400 (main office); the Procurement Division TTY/TDD (telephone device for the deaf) or California Relay Service numbers which are listed below. You may also contact directly the Procurement Division contact person who is handling this procurement.

IMPORTANT: TO ENSURE THAT WE CAN MEET YOUR NEED, IT IS BEST THAT WE RECEIVE YOUR REQUEST AT LEAST 10 WORKING DAYS BEFORE THE SCHEDULED EVENT (i.e., MEETING, CONFERENCE, WORKSHOP, etc.) OR DEADLINE DUE-DATE FOR PROCUREMENT DOCUMENTS.

The Procurement Division TTY telephone numbers are:

Sacramento Office: (916) 376-1891
Fullerton Office: (714) 773-2093

The California Relay Service Telephone Numbers are:

Voice 1-800-735-2922 or 1-888-877-5379
TTY: 1-800-735-2929 or 1-888-877-5378
Speech-to-Speech: 1-800-854-7784

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Contractor Name: _____ Reporting Calendar Year: _____ Revision
 Contract Number: _____ Reporting Quarter: Q1 (Jan-Mar) Q2 (Apr-Jun) Q3 (Jul-Sep) Q4 (Oct-Dec)
 For Questions Regarding This Report Contact:
 Name: _____
 Phone Number: _____
 E-mail: _____

Check Here if No New Orders for This Quarter

STATE AGENCY PURCHASES						
State Agency Name	Purchase Order Number	Purchase Order Date	Agency Billing Code	Agency Contact	Agency Address	Phone Number

Total State Agency Dollars Reported for Quarter: \$ _____

LOCAL GOVERNMENT AGENCY PURCHASES						
Local Government Agency Name	Purchase Order Number	Purchase Order Date	Total Dollars Per Purchase Order	Agency Contact	Agency Address	Phone Number

Total Local Government Agency Dollars for Quarter: \$ _____ 1% Remitted to DGS (does not apply to CA certified SIBs): \$ _____

Total of State and Local Government Agency Dollars Reported for this Quarter: \$ _____

ATTACHMENT B

CMAS QUARTERLY BUSINESS ACTIVITY REPORT

Instructions for completing the CMAS Quarterly Business Activity Report

1. Complete the top of the form with the appropriate information for your company.
2. **Agency Name** - Identify the State agency or Local Government agency that issued the order.
3. **Purchase Order Number** - Identify the purchase order number (and amendment number if applicable) on the order form. This is not your invoice number. This is the number the State agency or Local Government agency assigns to the order.
4. **Purchase Order Date** - Identify the date the purchase order was issued, as shown on the order. This is not the date you received, accepted, or invoiced the order.
5. **Agency Billing Code** - Identify the State agency billing code. This is a five-digit number identified on the upper right hand corner of the Std. 65 purchase order form. You must identify this number on all purchases made by State of California agencies. Billing codes are not applicable to Local Government agencies.
6. **Total Dollars Per PO** - Identify the total dollars of the order excluding tax and freight. Tax must NOT be included in the quarterly report, even if the agency includes tax on the purchase order. The total dollars per order should indicate the entire purchase order amount (less tax and freight) regardless of when you invoice order, perform services, deliver product, or receive payment.
7. **Agency Contact** - Identify the ordering agency's contact person on the purchase order.
8. **Agency Address** - Identify the ordering agency's address on the purchase order.
9. **Phone Number** - Identify the phone number for the ordering agency's contact person.
10. **Total State Sales & Total Local Sales** - Separately identify the total State dollars and/or Local Government agency dollars (pre-tax) for all orders placed in quarter.
11. **1% Remitted to DGS** - Identify 1% of the total Local Government agency dollars reported for the quarter. This is the amount to be remitted to DGS by contractors who are not California certified small businesses.
12. **Grand Total** - Identify the total of all State and Local Government agency dollars reported for the quarter.

Notes:

- A report is required for each CMAS contract, each quarter, even when there are no new orders for the quarter.
- Quarterly reports are due two weeks after the end of the quarter.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work the following terms shall be given the meaning shown, unless context requires otherwise.
- a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
 - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
 - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer, that is not connected by the Contractor.
 - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
 - e) **"Buyer"** means the State's authorized contracting official.
 - f) **"Commercial Hardware"** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - g) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
 - h) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
 - i) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
 - j) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
 - k) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
 - l) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
 - m) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
 - n) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
 - o) **"Documentation"** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
 - p) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or subsystem, including its Hardware and Operating Software (if any).
 - q) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
 - r) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
- t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
- u) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
- v) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
- w) **"Machine"** means an individual unit of a Data Processing System or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
- z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
- aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
- bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.
- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives,

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

- Including without limitation any department, agency, or other unit of the government of the State of California.
- nn) "System" means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) "U.S. Intellectual Property Rights" means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.
2. **CONTRACT FORMATION:** If this Contract results from a Letter of Offer, then Contractor's offer is deemed a firm offer and this Contract document is the State's acceptance of that offer.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
- a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
- b) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
- e) To the extent that this Contract falls within the scope of Government Code Section 11135, Contractor hereby agrees to respond to and resolve any complaint brought to its attention, regarding accessibility of its products or services.
8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
- a) The State will notify Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

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9. CMAS -- ASSIGNMENT:

- a) This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, State will not unreasonably prohibit Contractor from freely assigning its right to payment, provided that Contractor remains responsible for its obligations hereunder.
- b) Should the State desire financing of the assets provided hereunder through GS\$Mart, the State's financial marketplace, the Contractor agrees to assign to a State-designated lender its right to receive payment from the State for the assets in exchange for payment by the lender of the cash purchase price for the assets. Upon notice to do so from the State-designated lender at any time prior to payment by the State for the assets, the Contractor will execute and deliver to the State-designated lender an assignment agreement and any additional documents necessary for the State selected financing plan. The State-designated lender will pay the Contractor according to the terms of the Contractor's invoice upon acceptance of the assets by the State.

10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.

11. **CMAS -- ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:

- a) These General Provisions - Information Technology (in the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
- b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
- c) Other Special Provisions;
- d) Federal GSA (or other multiple award) terms and conditions;
- e) Statement of work, including any specifications incorporated by reference herein; and
- f) All other attachments incorporated in the Contract by reference.

12. PACKING AND SHIPMENT:

- a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
 - i) show the number of the container and the total number of containers in the shipment; and
 - ii) the number of the container in which the packing sheet has been enclosed.
- b) All shipments by Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
- c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.

13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.

- a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
- b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
- c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.

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14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to the State at law or in equity.
15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
- a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of Contractor's quality assurance System or other similar business practices related to performance of the Contract.
 - b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
 - c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
 - d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source.
 - e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
17. **SAMPLES:**
- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products offered and/or specified in the Contract.
 - b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at Contractor's expense.
18. **CMAS -- WARRANTY:** The following warranty language is in addition to the warranty language provided in the federal GSA Multiple Award Schedule or other base Contract used to establish this CMAS Contract. When there is a conflict between the language, the following warranty language overrides.
- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that its Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
 - b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of

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harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.

- c) Unless otherwise specified in the Statement of Work:
- (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
 - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by Contractor, or (C) misuse by the State.
 - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through an such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and Contractor's sole obligation will be limited to:
- i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
 - ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection e)(ii) above will not exceed the limits on Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
19. SAFETY AND ACCIDENT PREVENTION: In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.
20. INSURANCE: The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificate(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.
21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:
- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
 - b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
 - c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING,

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TRANSPORTATION TO CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.

22. TERMINATION FOR THE CONVENIENCE OF THE STATE:

- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
- b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
 - (i) Stop work as specified in the Notice of Termination.
 - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
 - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
 - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
- c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
- d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
- e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts: provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
 - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
 - (ii) The total of:
 - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to Deliverables or services paid or to be paid;
 - B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
 - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.

- f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.

23. TERMINATION FOR DEFAULT:

- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
 - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
 - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
 - iii) Perform any of the other provisions of this Contract.
- b) The State's right to terminate this Contract under subsection a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
- c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
- d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:

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- (i) completed Deliverables,
- (ii) partially completed Deliverables, and,
- (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.

- e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

24. **FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:

- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to Contractor or to make a claim against the Contractor therefore.

26. LIMITATION OF LIABILITY:

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule Contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations"; (ii) to liability under the General Provisions entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by

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Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that Contractor's liability for such damages arises out of sub-section b)(i), b)(ii), or b)(iv) above.
- 27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**
- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.
- 28. INDEMNIFICATION:** The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:
- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- 29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.
- 30. REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
- 31. TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
- 32. NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
- 33. CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
- 34. CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to

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the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.

35. **NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.

36. DOCUMENTATION

- a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
- b) If the Contractor is unable to perform maintenance on the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the

Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

37. RIGHTS IN WORK PRODUCT:

- a) All inventions, discoveries, Intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
- b) Software and other materials developed or otherwise obtained by or for Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with Contractor's or its affiliates' ownership of Pre-Existing Materials.
- c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
- d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
- e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are

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competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.

38. **SOFTWARE LICENSE:** Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").
- a) The State may use the Software Products in the conduct of its own business, and any division thereof
 - b) The license granted above authorized the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.
 - c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
 - d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.
39. **PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:** The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.
40. **RIGHT TO COPY OR MODIFY:**
- a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
 - b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.
41. **FUTURE RELEASES:** Unless otherwise specifically provided in the Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price not greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.
42. **ENCRYPTION/CPU ID AUTHORIZATION CODES:**
- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the Contractor will provide all codes to the State with delivery of the Software.
 - b) In case of an inoperative CPU, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
 - c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-

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mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section. The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State. Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:
- i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
 - ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.
- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor at its option and expense either to procure for the State the right to continue using

the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
- (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
 - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
 - (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
 - (iv) The combination or utilization of Software furnished hereunder with non-Contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately

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reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.

- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.
- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of Contractor's demand, it shall be deemed a final decision adverse to Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in the subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention.

The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later. The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
 - (i) Cancel the Stop Work Order; or
 - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
 - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
 - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.

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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.

46. **EXAMINATION AND AUDIT:** Contractor agrees that the State, or its designated representative shall have the right to review and copy any records and supporting documentation pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.

47. **FOLLOW-ON CONTRACTS:**

- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- (i) will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
 - (ii) will not act as consultant to any person or entity that does receive a Contract described in subsection (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- (i) development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
 - (ii) development or design of test requirements;
 - (iii) evaluation of test data;
 - (iv) direction of or evaluation of another Contractor;
 - (v) provision of formal recommendations regarding the acquisition of Information Technology products or services; or
 - (vi) provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the

Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.

- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:

- (i) to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
- (ii) where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.

- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.

48. **PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10363.

49. **COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.

50. **NONDISCRIMINATION CLAUSE:**

- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate,

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harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:

The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.

52. ASSIGNMENT OF ANTITRUST ACTIONS:

Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:

- a) In submitting an offer to the State, the supplier offers and agrees that if the offer is accepted, it will assign to the State 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. 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, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action

assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the offer price, less the expenses incurred in obtaining that portion of the recovery.

- c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
- (i) the assignee has not been injured thereby; or
 - (ii) the assignee declines to file a court action for the cause of action.

53. DRUG-FREE WORKPLACE CERTIFICATION:

The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
- b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
- (i) the dangers of drug abuse in the workplace;
 - (ii) the person's or organization's policy of maintaining a drug-free workplace;
 - (iii) any available counseling, rehabilitation and employee assistance programs; and,
 - (iv) penalties that may be imposed upon employees for drug abuse violations.
- c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
- (i) will receive a copy of the company's drug-free policy statement; and,
 - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.

54. FOUR-DIGIT DATE COMPLIANCE:

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating

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to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

55. SWEATFREE CODE OF CONDUCT:

- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.
- b) Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a).

56. **RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of postconsumer material as defined in the Public Contract Code (PCC) Section 12200-12209, in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).

57. **CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:

- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

58. **AMERICAN WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).

59. **ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.

60. **USE TAX COLLECTION:** In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.

61. **EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to Contract with the State.

62. **DOMESTIC PARTNERS:** For Contracts over \$100,000 executed or amended after January 1, 2007, the Contractor certifies that the Contractor is in compliance with Public Contract Code Section 10295.3.

63. **SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the

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awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

- b) If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

64. **LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).)

ADDITIONAL CMAS TERMS AND CONDITIONS

65. **CMAS -- CONTRACTOR'S LICENSE REQUIREMENTS:**

Contracts that include installation or the wording "Furnish and Install" require at the time of Contract award that Contractors possess a valid California State Contractor's License. If sub-Contractors are used, they must also possess a valid California State Contractor's License. All businesses which construct or alter any building, highway, road, parking facility, railroad, excavation, or other structure in California must be licensed by the California State License Board (CSLB) if the total cost (labor and materials) of the project is \$500.00 or more. Failure to be licensed or to keep the license current and in good standing shall be grounds for Contract revocation.

66. **CMAS -- PUBLIC WORKS REQUIREMENTS (LABOR/INSTALLATION):**

- a) Prior to the commencement of performance, the Contractor must obtain and provide to the State, a payment bond, on Standard Form 807, when the Contract involves a public works expenditure (labor/installation costs) in excess of \$5,000. Such bond shall be in a sum not less than one hundred percent (100%) of the Contract price.
- b) In accordance with the provisions of Section 1773 of the California Labor Code, the Contractor shall, conform and stipulates to the general prevailing rate of wages, including employer benefits as defined in Section 1773.1

of the California Labor Code, applicable to the classes of labor to be used for public works such as at the delivery site for the assembly and installation of the equipment or materials under the purchase order. Pursuant to Section 1770 of the California Labor Code, the Department of Industrial Relations has ascertained the general prevailing rate of wages in the county in which the work is to be done, to be as listed in the booklet entitled General Prevailing Wage Rates. The booklet is compiled monthly and copies of the same are available from the Department of Industrial Relations, Prevailing Wage Unit at www.dir.ca.gov (select Statistics & Research) or (415) 703-4774. The booklet is required to be posted at the job site.

- c) The Contractor hereby certifies by signing this Contract that:

i) Contractor has met or will comply with the standards of affirmative compliance with the Non-Discrimination Clause Requirements included herein;

ii) Contractor is aware of the provisions of Section 3700 of the Labor Code that require every employer to be insured against liability for workmen's compensation or to undertake self-insurance in accordance with the provisions of that Code, and Contractor will comply with such provisions before commencing the performance of the work of the purchase order.

- d) Laws to be Observed

i) Labor

Pursuant to Section 1775 of the California Labor Code the Contractor shall, as a penalty to the State or Political subdivision on whose behalf the purchase order is made or awarded, forfeit not more than fifty (\$50.00) for each calendar day, or portions thereof, for each worker paid by him or subcontractor under him, less than the prevailing wage so stipulated; and in addition, the Contractor further agrees to pay to each workman the difference between the actual amount paid for each calendar day, or portions thereof, and the stipulated prevailing wage rate for the same. This provision shall not apply to properly indentured apprentices.

Pursuant to Sections 1810-1815 of the California Labor Code, inclusive, it is further agreed that the maximum hours a worker is to be employed is limited to eight hours a day and forty hours a week and the Contractor shall forfeit, as a penalty to the State, twenty-five (\$25) for each worker employed in the execution of the purchase order for each calendar day during which a workman is required or permitted to labor more than eight hours in any calendar day or more than forty hours in any calendar week, in

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

violation of California Labor Code Sections 1810-1815, inclusive.

- ii) **Worker's Compensation Insurance**
The Contractor will be required to secure the payment of compensation to its employees in accordance with the provisions of Labor Code Section 3700.
- iii) **Travel and Subsistence Payments**
Travel and subsistence payments shall be paid to each worker needed to execute the work, as such travel and subsistence payments are defined in the applicable collective bargaining agreements filed in accordance with Labor Code Section 1773.8.
- iv) **Apprentices**
Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the California Labor Code and Title 8, California Administrative Code Section 200 et seq. Each Contractor and/or subcontractor must, prior to commencement of the public works Contract/purchase order, contact the Division of Apprenticeship Standards, 525 Golden Gate Avenue, San Francisco, CA, or one of its branch offices to insure compliance and complete understanding of the law regarding apprentices and specifically the required ratio thereunder. Responsibility for compliance with this section lies with the prime Contractor.
- v) **Payroll**
The Contractor shall keep an accurate payroll record showing the name, social security account, and work classification specific and straight time and overtime hours worked by each employee. A certified copy of the employee's payroll record shall be available for inspection as specified in Section 1776 of the California Labor Code.

67. CMAS -- TERMINATION OF CMAS CONTRACT:

- a) The State may terminate this CMAS Contract at any time upon 30 days prior written notice.
- b) If the Contractor's GSA Multiple Award Schedule is terminated within the term of the CMAS Contract, the CMAS Contract shall also be considered terminated on the same date.
- c) Prior to the expiration of this CMAS Contract, this Contract may be terminated for the convenience of both parties by mutual consent.
- d) This provision shall not relieve the Contractor of the obligation to perform under any purchase order or other similar ordering document executed prior to the termination becoming effective.

68. **CMAS -- CONTRACT AMOUNT:** There is no guarantee of minimum purchase of Contractor's products or services by the State.

69. **CMAS -- Debarment Certification (Federally Funded Contracts):** When Federal funds are being expended, the prospective recipient of Federal assistance funds is required to certify to the Buyer, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

70. **CMAS -- PURCHASE ORDERS FUNDED IN WHOLE OR PART BY THE FEDERAL GOVERNMENT:** All Contracts (including individual orders), except for State construction projects, which are funded in whole or in part by the federal government may be canceled with 30 day notice, and are subject to the following:

- a) It is mutually understood between the parties that this Contract (order) may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Contract (order) were executed after that determination was made.
- b) This Contract (order) is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal year during which the order was generated for the purposes of this program. In addition, this Contract (order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress that may affect the provisions, terms or funding of this Contract (order) in any manner.
- c) It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Contract (order) shall be amended to reflect any reduction in funds. The department has the option to void the Contract (order) under the 30-day cancellation clause or to amend the Contract to reflect any reduction of funds.

71. CMAS -- CONFLICT OF INTEREST:

- a) **Current State Employees (Public Contract Code Section 10410):**
 - i) No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any State agency, unless the employment, activity or enterprise is required as a condition of regular State employment.
 - ii) No officer or employee shall Contract on his or her own behalf as an independent Contractor with any State agency to provide Goods or services.
- b) **Former State Employees (Public Contract Code Section 10411):**
 - i) For the two-year period from the date he or she left State employment, no former State officer or

CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS) GENERAL PROVISIONS - INFORMATION TECHNOLOGY

employee may enter into a Contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency.

- ii) For the twelve-month period from the date he or she left State employment, no former State officer or employee may enter into a Contract with any State agency if he or she was employed by that State agency in a policy-making position in the same general subject area as the proposed Contract within the twelve-month period prior to his or her leaving State service.

72. CMAS -- SUBCONTRACTING REQUIREMENTS:

Any subcontractor that the CMAS supplier chooses to use in fulfilling the requirements of this Contract (order), and which is expected to receive more than ten (10) percent of value of the Contract/purchase order, must also meet all Contractual, administrative, and technical requirements of the Contract (order), as applicable.

73. CMAS -- RENTAL AGREEMENTS:

The State does not agree to:

- Indemnify a Contractor;
- Assume responsibility for matters beyond its control;
- Agree to make payments in advance;
- Accept any other provision creating a contingent liability against the State; or
- Agree to obtain insurance to protect the Contractor.

The State's responsibility for repairs and liability for damage or loss is restricted to that made necessary by or resulting from the negligent act or omission of the State or its officers, employees, or agents.

If the Contractor maintains the equipment, the Contractor must keep the equipment in good working order and make all necessary repairs and adjustments without qualification. The State may terminate for default or cease paying rent should the Contractor fail to maintain the equipment properly.

Personal property taxes are not generally reimbursed when leasing equipment (SAM 8736).

74. CMAS -- LEASE (Lease \$Mart™): If an agency desires to lease through Lease \$Mart™, the Contractor agrees to sell to lessor the assets at the same price as they agree to sell to the State.

75. CMAS -- PROGRESS PAYMENTS & RISK ASSESSMENT: In accordance with PCC 12112 agencies are required to withhold not less than 10 percent of the Contract price until final delivery and acceptance of the Goods or services, for any Contract that provides for progress payments in a

Contract for IT Goods or services to be manufactured or performed by a Contractor especially for the State and not suitable for sale to others in the ordinary course of the Contractor's business.

Interim Risk Assessment guidelines and financial protection measures are detailed in PCC 12112 for agencies to use to determine their applicability to agency projects.

76. CMAS -- QUARTERLY REPORTS: Contractors are required to submit quarterly business activity reports, as specified in this Contract, even when there is no activity. A separate report is required for each Contract, as differentiated by alpha suffix.

77. CMAS -- CONTRACTOR EVALUATION: In accordance with PCC 10367 and 10369, performance of the Contractor under orders issued against this Contract will be evaluated. The ordering agency shall complete a written evaluation, and if the Contractor did not satisfactorily perform the work specified, a copy of the evaluation will be sent to the DGS, Office of Legal Services.

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW. THESE SPECIAL PROVISIONS ARE TO BE ATTACHED TO THE GENERAL PROVISIONS – INFORMATION TECHNOLOGY AND ACCOMPANIED BY, AT MINIMUM, A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA). STATE AGENCIES MUST FIRST:

- A. CLASSIFY THEIR DATA PURSUANT TO THE CALIFORNIA STATE ADMINISTRATIVE MANUAL (SAM) 5305.5;
- B. CONSIDER THE FACTORS TO BE TAKEN INTO ACCOUNT WHEN SELECTING A PARTICULAR TECHNOLOGICAL APPROACH, IN ACCORDANCE WITH SAM 4981.1, 4983 AND 4983.1 AND THEN;
- C. MODIFY THESE SPECIAL PROVISIONS THROUGH THE SOW AND/OR SLA TO MEET THE NEEDS OF EACH ACQUISITION.

1. Definitions

- a) "Cloud Software as a Service (SaaS)" - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) "Cloud Platform as a Service (PaaS)" - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) "Cloud Infrastructure as a Service (IaaS)" - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) "Data" - means any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) "Data Breach" - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- f) "Recovery Point Objective (RPO)" - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- g) "Recovery Time Objective (RTO)" - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

2. Terms

SaaS AVAILABILITY: Unless otherwise stated in the Statement of Work,

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- d) Contractor shall provide advance written notice to the State in the manner set forth in the Statement of Work of any major upgrades or changes that will affect the SaaS availability.

3. DATA AVAILABILITY: Unless otherwise stated in the Statement of Work,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the Data as a result of:
 - 1) Acts or omission of Contractor;
 - 2) Acts or omissions of third parties working on behalf of Contractor;

**CALIFORNIA MULTIPLE AWARD SCHEDULES (CMAS)
STATE MODEL
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS
(Software as a Service)**

- 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
 - 4) Power outages or other telecommunications or internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
4. SaaS and DATA SECURITY:
- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:
 - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
 - 2) Compliance with the following:
 - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
 - ii. Security provisions of the California State Administrative Manual (Chapters 5100 and 5300) and the California Statewide Information Management Manual (Sections 58C, 58D, 66B, 5305A, 5310A and B, 5325A and B, 5330A, B and C, 5340A, B and C, 5360B);
 - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request; and
 - iv. Privacy provisions of the Federal Privacy Act of 1974;
 - 3) Compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines.
 - b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
 - c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
 - d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
 - e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
 - f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Security Officer.
- 5) ENCRYPTION: Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.
- 6) DATA LOCATION: Unless otherwise stated in the Statement of Work and approved in advance by the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.
- 7) RIGHTS TO DATA: The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

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- 8) **TRANSITION PERIOD:**
- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
 - b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
 - c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.
 - d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
 - e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.
 - f) The State at its option, may purchase additional transition services as agreed upon in the SOW.
- 9) **DATA BREACH:** Unless otherwise stated in the Statement of Work,
- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
 - 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;
 - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
 - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
 - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.
 - b) Contractor will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.
 - c) Contractor shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - d) Notwithstanding anything to the contrary in the General Provisions - Information Technology, in performing services under this Contract, and to the extent authorized by the State in the Statement of Work, Contractor may be permitted by the State to use systems, or may be granted access to the State systems, which store, transmit or process State owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code Section 1798.29 (g). If the Contractor causes or knowingly experiences a breach of the security of such Data, Contractor shall immediately report any breach of security of such system to the State following discovery or notification of the breach in the security of such Data. The State's Chief Information Security Officer, or designee, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.
 - e) Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 10) **DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,
- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:
 - 1) The scale and quantity of the Data loss;
 - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
 - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
 - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.

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- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
 - c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.
- 11) **EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:
- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's SaaS, operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the State.
 - b) The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
 - 1) Operating system/network vulnerability scans,
 - 2) Web application vulnerability scans,
 - 3) Database application vulnerability scans, and
 - 4) Any other scans to be performed by the State or representatives on behalf of the State.
 - c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, State-approved third party perform an information security audit. The audit results shall be shared with the State within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.
- 12) **DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN APPROVING THE FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF ARVIN AND THE DEWALT CORPORATION FOR CITY ENGINEER SERVICES

WHEREAS, the City of Arvin (“City”) and the DeWalt Corporation (“DeWalt”) entered into that certain Professional Services Agreement dated on or about September 1, 2017 (“Agreement”) whereby DeWalt agreed to provide City Engineering Services; and

WHEREAS, City and DeWalt now desire to update and amend the Agreement.

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

1. The City Council of the City of Arvin approves the “First Amendment To Professional Services Agreement” attached as Exhibit “A,” and authorizes the Mayor or City Manager to execute the same on behalf of the City of Arvin.
2. The City Council finds that this approval is in the best interests of the City of Arvin.
3. This resolution shall be effective upon adoption.

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a regular meeting thereof held on the 01st day of May, 2018 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____

JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____

SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Attachment:

Exhibit A: First Amendment To Professional Services Agreement.

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.



CITY OF ARVIN Staff Report

Meeting Date: May 1, 2018

TO: Arvin City Council

FROM: Adam Ojeda, P.E., Interim City Engineer
Jerry Breckinridge, Interim City Manager

SUBJECT: First Amendment To Professional Services Agreement

BACKGROUND:

The City of Arvin entered into a professional services agreement with DeWalt Corporation (DWC) on September 1st of 2017 for general engineering and survey services following the termination of their agreement with the previous engineering consultant for the same services. At the time, the intent of this agreement was going to be on an interim basis while the City of Arvin advertised a request for proposals and qualifications (RFP/RFQ) for a long-term agreement for the same services. As such, the maximum term of the agreement was intended to be one year, and the contract sum was \$15,000.00. At the time that the agreement was executed, the hope was that the RFP/RFQ process would take approximately 2 months.

At this time, the City is still working through the RFP/RFQ process, and the interim agreement is now in its eighth month. At the same time, the original contract sum has been exceeded while the City has continued to request work from DWC. At the direction of the City Manager, DWC has prepared a task order to account for the additional work and costs that have been expended beyond the original \$15,000.00 contract sum, and to request additional compensation for the coming month(s) at which point another task order for general engineering and survey services may be requested, if necessary.

To date, the City has received invoices in the amount of \$61,825.03. Of this amount, \$46,903.05 has been paid. This amount includes the applicable 10% discount the city is entitled to per the agreement. Previously, the city has approved task order 1803 that also was to be paid from general funds in the amount of \$5,900.00. Considering the original \$15,000.00 authorization under this interim agreement, it is necessary to receive authorization for **\$40,925.03** in addition to funds to account for work that will occur in the coming month(s).

The \$61,825.03 mentioned above is after the 10% discount has been applied. As such, to date, \$68,000.00 (rounded) have been expended by DWC between September 1st and the end of March; seven complete months. This amounts to \$9,700.00 (rounded) per month. Therefore, it makes sense to forecast \$10,000.00 per month with the understanding that this number will fluctuate from month-to-month. Future work task order authorization will need to account for the months April through August (5 months) or approximately \$50,000.00 worth of effort. In an effort to minimize the need for future task order authorization, it makes sense to request authorization for **\$30,174.97**, and then an additional request may be made prior to the

termination of the agreement, if necessary. This number is requested, as opposed to an even \$30,000 so that the final amended contract price is an even number per the following breakdown:

\$15,000.00	Approved in the original Agreement
\$ 5,900.00	Approved by Task Order 1803
\$40,925.03	Work in excess of previous authorizations already provided to date (10% discount applied)
\$30,174.97	Anticipated future work from April-June (10% discount will be applied)
\$92,000.00	New Contract Sum

Considering the original contact amount and task order 1803, the net request in new money to be authorized is **\$71,100.00**.

In coordinating with City Staff, it is understood that the most appropriate action to accomplish this would be to formally amend sections 2.1 and 2.3 of the agreement. Therefore, a proposed first amendment to the professional services agreement is attached to this report in addition to a resolution for consideration and approval by the City Council.

FINANCIAL IMPACT:

Additional general funds shall pay for time and materials not to exceed \$71,100.00 which accounts for a new contract sum of \$92,000.00.

RECOMMENDATION:

Staff recommends the approval of the first amendment to the professional services agreement between DeWalt Corporation and the City of Arvin.

ATTACHMENTS:

City of Arvin First Amendment to Professional Services Agreement
Resolution
Financial Spreadsheet
Original executed PSA

AGREEMENT NO. _____

**CITY OF ARVIN
FIRST AMENDMENT TO
PROFESSIONAL SERVICES AGREEMENT
(CITY ENGINEERING SERVICES)**

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT (herein “First Amendment”) is made and entered into this ____ day of _____, 2018, by and between the CITY OF ARVIN, a California municipal corporation herein (“City”) and DeWalt Corporation, a California corporation herein (“Consultant”).

RECITALS

- A. The parties entered into a Professional Services Agreement dated September 1, 2017 (“Agreement”) for the provision of engineering services; and
- B. The parties now desire to enter into this First Amendment to amend the Agreement to update the Contract Sum and to clarify that general services may be authorized by Task Order.

AGREEMENT

In consideration of the foregoing Recitals and for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the City and Consultant agree as follows:

- 1. Section 2.1 of the Agreement is amended to read in entirety as follows:
 - 2.1 Contract Sum. Subject to any limitations set forth in this Agreement, the City agrees to pay consultant in the amounts specified within Exhibit “A” attached hereto and incorporated herein by reference, but not exceeding the maximum contract amount of Ninety One Thousand, Nine Hundred and Twenty Five Dollars and Three Cents (\$91,925.03) (“Contract Sum”), unless additional compensation is approved pursuant to Section 2.3. For a period of three (3) years from the effective date of this Agreement, the Consultant shall charge the City at a ten (10%) percent discounted rate from the rates and fees set forth in Exhibit “A”.
- 2. Section 2.3 of the Agreement is amended to read in its entirety as follows:
 - 2.3 Additional Services. The City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent

(5%) of the Contract Sum or twenty-five thousand dollars (\$25,000.00), whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by majority vote of the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in Exhibit "A" or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to Exhibit "A" may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor, unless a Task Order is approved in writing by the City Council. A Task Order approved by writing by the City Council may also be used to amend the Contract Sum.

3. Incorporated Provisions. A copy of the Agreement (Exhibit A) is attached hereto and, except as otherwise amended in this Second Amendment, are incorporated as though set forth in full herein.

4. Full Force and Effect. Except as expressly provided in this First Amendment, all other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF ARVIN, a municipal corporation

CONSULTANT:

R. Jerry Breckinridge, Interim City Manager

Jeffery A. Gutierrez, President

ATTEST:

Cecilia Vela, City Clerk

Michael Todd Wood, Director of Engineering

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

Two signatures are required if a corporation.

Shannon Chaffin, City Attorney

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

[END OF SIGNATURES]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF KERN

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER _____ TITLE(S)	_____ TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> GENERAL <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ NUMBER OF PAGES
	_____ DATE OF DOCUMENT
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF KERN

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER _____ <div style="text-align: center;">TITLE(S)</div>	_____ <div style="text-align: center;">TITLE OR TYPE OF DOCUMENT</div>
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> <input type="checkbox"/> GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____ _____	_____ <div style="text-align: center;">NUMBER OF PAGES</div>
SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	_____ <div style="text-align: center;">DATE OF DOCUMENT</div>
	_____ <div style="text-align: center;">SIGNER(S) OTHER THAN NAMED ABOVE</div>

EXHIBIT "A"

PROFESSIONAL SERVICES AGREEMENT

CITY OF ARVIN
PROFESSIONAL SERVICES AGREEMENT FOR

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into this 13th day of Sept., 2017, by and between the CITY OF ARVIN, a California municipal corporation herein ("City") and DeWalt Corporation, a California corporation herein ("Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth within Exhibit "A" attached hereto and incorporated herein by reference. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by similar firms performing similar work in the same geographic area (California Central Valley) under similar circumstances.

Consultant agrees that during the term of this Agreement either the person designated as the City Engineer or the Assistant City Engineer in this Agreement shall attend all regular meetings of the Arvin City Council, at no charge to the City, unless attendance is excused by the City Manager.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all applicable ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

1.5 Prevailing Wage. Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations,

Title 8, Section 1600, et seq., (“Prevailing Wage Laws”), which require the payment of prevailing wage rates and the performance of other requirements on “Public Works” and “Maintenance” projects. If the Services are being performed as part of an applicable “Public Works” or “Maintenance” project, as defined by the Prevailing Wage Laws, and if the total compensation is one thousand dollars (\$1,000.00) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant’s principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

2. COMPENSATION

2.1 Contract Sum. Subject to any limitations set forth in this Agreement, the City agrees to pay consultant in the amounts specified within Exhibit “A” attached hereto and incorporated herein by reference, but not exceeding the maximum contract amount of \$15,000.00 Dollars, (“Contract Sum”), unless additional compensation is approved pursuant to Section 2.3. For City funded Task Order projects, for a period of three (3) years from the effective date of this Agreement, the Consultant shall charge the City at a fifteen (15%) percent discounted rate from the rates and fees set forth in Exhibit “A”.

2.2 Invoices. Each month Consultant shall furnish to the City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by the City Manager. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-Consultant contracts. Sub-Consultant charges shall also be detailed by such categories. Consultant shall not invoice the City for any duplicate services performed by more than one person.

The City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed, the City will use its best efforts to cause Consultant to be paid subject to the limitations established in Exhibit “A” within thirty (30) days of receipt of Consultant’s correct and undisputed invoice; however, Consultant acknowledges and agrees that due to the City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by the City, the original invoice shall be returned by the City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or pursuant to any applicable ordinances, resolutions, statutes, rules, and/or regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

2.3 Additional Services. The City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Agreement Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Agreement Sum or twenty-five thousand dollars (\$25,000.00), whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by majority vote of the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in Exhibit "A" or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to Exhibit "A" may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor, unless a Task Order is approved in writing by the City Council.

2.4 Task Orders.

- (a) The City shall assign to Consultant specific projects through issuance of Task Orders in the form set forth by the City Manager.
- (b) After the City identifies a project to be performed under this Agreement, the City shall prepare a draft Task Order; less the cost estimate. A draft Task Order will identify the scope of services, expected results, project deliverables, period of performance, project schedule and will designate a City Project Coordinator. The City will deliver the draft Task Order to the Consultant for review. The Consultant shall return the draft Task Order within ten (10) calendar days along with a Cost Estimate, including a written estimate of the number of hours and hourly rates per staff person, any anticipated reimbursable expenses, overhead, fee if any, and total dollar amount. After agreement has been reached between the City Staff and the Consultant on the negotiable items and total cost and the City Council has approved same; the finalized Task Order shall be signed by both the City and the Consultant.
- (c) Unless otherwise specified in the Consultant's Cost Estimate approved by the City, the Consultant shall be reimbursed for hours worked at the rates specified in Exhibit "A", subject to any applicable discounts set forth in Exhibit "A". The specified hourly rates shall include direct salary costs, employee benefits, overhead and fee.
- (d) In addition, unless otherwise specified in the Consultant's Cost Estimate approved by the City, the Consultant shall be reimbursed for incurred direct costs other than salary costs, and other costs at the rates and amounts set forth in Exhibit "A", subject to any applicable discounts set forth in Exhibit "A".
- (e) Reimbursement for transportation and subsistence costs shall not exceed the rates as specified in the approved Cost Proposal contained in the Task Order.

- (f) When milestone cost estimates are included in the approved Cost Proposal, the Consultant shall obtain prior written approval for a revised milestone cost estimate from the Contract Officer before exceeding such estimate.
- (g) Progress payments and reimbursements shall be made in accordance with this Agreement.
- (h) A Task Order is of no force or effect until returned to the City, approved by the City Council and signed by an authorized representative of the City. No expenditures are authorized on a Task Order Project and work shall not commence until a Task Order for that project has been properly approved and executed by the City.
- (i) The total amount payable by the City for an individual Task Order shall not exceed the amount agreed to in the Task Order, unless authorized in writing by the City Council.
- (j) The total amount payable by the City for any Task Order resulting from this Agreement, shall not exceed one hundred thousand dollars (\$100,000.00). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under this Agreement through a Task Order(s).
- (k) All subcontracts in excess of twenty-five thousand dollars (\$25,000.00) shall contain the above provisions.

2.5 Projects Funded with State or Federal Funds. For any projects assigned to Consultant that are funded with State and/or Federal funds, Consultant agrees to comply with any other terms upon which the award of the funds are conditioned.

2.6 Inspection and Acceptance of Projects. City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. The City shall reject or accept Consultant's work within forty-five (45) days after submission. The City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. The City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by the City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to those sections pertaining to indemnification and insurance, respectively.

2.7 Further Responsibilities of the Parties. The Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement, and to act in good faith to execute all instruments, prepare all documents, and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. No party shall be responsible for the service of the other unless specified herein.

3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "C" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding thirty (30) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance attached hereto as Exhibit "C".

4. COORDINATION OF WORK

4.1 Representative of Consultant. Michael Todd Wood is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

City Engineer	Adam Ojeda, RCE
Assistant City Engineer	Michael Todd Wood, RCE
City Surveyor	Aaron Byrd, PLS

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for the City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of the City. Additionally, Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subConsultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify the City of any changes in Consultant's staff and subConsultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Contract Officer. The City Manager, or his/her designee, is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The City Manager shall have the right to designate another Contract Officer by providing written notice to Consultant.

4.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of the City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Consultant. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent Consultant of the City with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of the City, or that it is a member of a joint enterprise with the City. Consultant shall have no authority to bind the City in any manner, and expressly waives any benefits that may otherwise accrue to the City's employees.

5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to the City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of the City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than one million dollars (\$1,000,000.00) per occurrence or if a general

aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of one hundred thousand dollars (\$100,000.00) per person and three hundred thousand (\$300,000.00) per occurrence and property damage liability limits of one hundred fifty thousand dollars (\$150,000.00) per occurrence or (ii) combined single limit liability of one million dollars (\$1,000,000.00). Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional five (5) year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(f) SubConsultants. Consultant shall include all subConsultants as insureds under its policies or shall furnish separate certificates and certified endorsements for each subConsultant. All coverages for subConsultants shall be subject to all of the requirements stated herein.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by the City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing ten (10) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with

Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. The City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to the City. At the option of the City, either the insurer shall reduce or eliminate any deductibles or self-insured retentions as respect to the City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its officers, agents, employees, agents, subConsultants, or invitees, provided for herein ("indemnitors"), or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

5.3 Performance Bond. Concurrently with execution of this Agreement, and if required in Exhibit "B", Consultant shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement. The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Consultant promptly and faithfully performs all terms and conditions of this Agreement.

6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Consultant shall keep, and require subConsultants to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to the City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of the City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

6.3 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Officer.

(b) Consultant shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives the City notice of such court order or subpoena.

(c) If Consultant provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify the City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. The City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

6.4 Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. section 101, such documents and materials are hereby deemed "works made for hire" for the City.

7. **ENFORCEMENT OF AGREEMENT AND TERMINATION**

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of California, County of Kern.

7.2 Disputes; Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to

Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code sections 905 et. seq. and 910 et. seq., in order to pursue any legal action under this Agreement.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to the City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the limitations established in Exhibit "A" or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation rates established within Exhibit "A" and any approved Task Order. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, the City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and the City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.6 Retention of Funds. Consultant hereby authorizes the City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate the City for any losses, costs, liabilities, or damages suffered by the City, and (ii) all amounts for which the City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, the City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of the City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect the City as elsewhere provided herein.

8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, ancestry, or other protected class.

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

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Arvin, 200 Campus Drive, California 93203 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

8.4 Integration and Amendment. This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void. Consultant further agrees and shall comply with all statutes and precedent governing contracting with a public agency such as the City.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such

invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees and costs, whether or not the matter proceeds to judgment.

8.8 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

8.9 Conflict of Interest. Consultant covenants that neither it, nor any officer, principal or employees of its firm, has or shall acquire an interest that would conflict in any manner with the interests of the City or which would in any way hinder Consultant's performance of services under this Agreement.

8.10 Unauthorized Aliens. Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

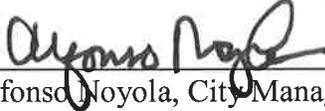
8.11 Counterparts. This Agreement may be executed in counterparts, including by electronically transmitted signature, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

8.12 Voluntary Agreement. Consultant and the City each represent that they have read this Agreement in full and understand and voluntarily agree to all provisions herein. The parties further declare that prior to signing this Agreement they each had the opportunity to apprise themselves of relevant information, through sources of their own selection, including

consultation with legal counsel of their choosing if desired, in deciding whether to execute this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

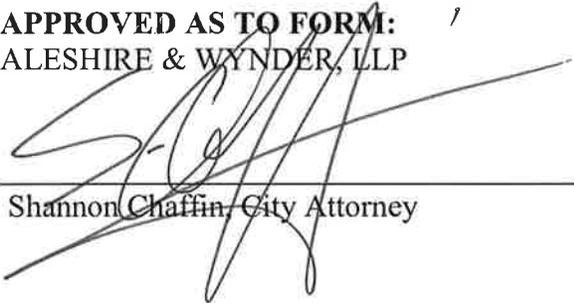
CITY:
CITY OF ARVIN, a municipal corporation



Alfonso Noyola, City Manager

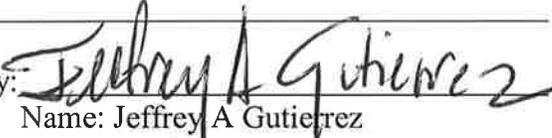
ATTEST:


Cecilia Vela, City Clerk

APPROVED AS TO FORM: /
ALESHIRE & WYNDER, LLP


Shannon Chaffin, City Attorney

CONSULTANT:

By: 

Name: Jeffrey A Gutierrez
Title: President

By: 

Name: Michael Todd Wood
Title: Director of Engineering

Address: _____
1930 22nd Street

Bakersfield, CA 93301

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

[END OF SIGNATURES]

EXHIBIT "A"

SCOPE OF SERVICES AND SCHEDULE OF COMPENSATION



2017 Fee Schedule

OFFICE

Forensic Research/Expert Testimony	\$ 235.00	per hour
Principal Engineer	\$ 175.00	per hour
Registered Civil Engineer	\$ 150.00	per hour
Licensed Land Surveyor	\$ 150.00	per hour
Staff Engineer	\$ 125.00	per hour
Engineering Technician	\$ 115.00	per hour
Draftsperson	\$ 95.00	per hour
Qualified SWPPP Developer	\$ 135.00	per hour
Qualified SWPPP Practitioner	\$ 120.00	per hour
SWPPP Technician	\$ 95.00	per hour
Senior 3D Modeling Technician	\$ 125.00	per hour
3D Modeling Technician	\$ 110.00	per hour
Project Administrator	\$ 120.00	per hour
Clerical	\$ 75.00	per hour

FIELD

3-Man Survey Crew	\$ 230.00	per hour
2-Man Survey Crew	\$ 210.00	per hour
1-Man Survey Crew	\$ 130.00	per hour
GIS Attribute Collection	\$ 150.00	per hour
Construction Inspection	\$ 120.00	per hour
Construction Field Manager	\$ 115.00	per hour
Survey Coordinator	\$ 115.00	per hour
Survey Technician	\$ 95.00	per hour
3D Laser Scanning Crew	\$ 220.00	per hour

Miscellaneous/Reimbursables

All Terrain Vehicle & Trailer	\$ 75.00	per hour per day/per
H2S Monitor	\$ 10.00	man
Outside Consultant		Actual cost
Materials/Reproduction		Cost plus 10%
Fees, Permits, Etc.		Cost plus 10%
Subsistence	\$75.00	per person/per day
Travel (hotel)		Cost plus 10%
Mileage	\$0.90	per vehicle/per mile
Courier		employees hourly rate + Mileage

EXHIBIT "B"

SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

EXHIBIT "C"

SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the following schedule:

		<u>Days to Perform</u>	<u>Deadline Date</u>
A.	Task A	_____	_____
B.	Task B	_____	_____
C.	Task C	_____	_____

II. Consultant shall deliver the following tangible work products to the City by the following dates.

- A.**
- B.**
- C.**

III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN APPROVING THE FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BY AND BETWEEN THE CITY OF ARVIN AND THE DEWALT CORPORATION FOR CITY ENGINEER SERVICES

WHEREAS, the City of Arvin (“City”) and the DeWalt Corporation (“DeWalt”) entered into that certain Professional Services Agreement dated on or about September 1, 2017 (“Agreement”) whereby DeWalt agreed to provide City Engineering Services; and

WHEREAS, City and DeWalt now desire to update and amend the Agreement.

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

1. The City Council of the City of Arvin approves the “First Amendment To Professional Services Agreement” attached as Exhibit “A,” and authorizes the Mayor or City Manager to execute the same on behalf of the City of Arvin.
2. The City Council finds that this approval is in the best interests of the City of Arvin.
3. This resolution shall be effective upon adoption.

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I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Arvin at a regular meeting thereof held on the 01st day of May, 2018 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Attachment:

Exhibit A: First Amendment To Professional Services Agreement.

I, _____, City Clerk of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.



2017-2018 PROJECT SHEET

Proj. #: **17-142**

Project: **General Engineering**

Project Lead: **Adam Ojeda**

Dept.: **Engineering**

BREAKDOWN OF PROJECT COST AND FUNDING SOURCES

Cost Summary	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Future Yrs	TOTAL
Engineering Task Order 1713	\$15,000						\$15,000
Engineering Task Order 1803	\$5,900						\$5,900
First Amendment to PSA	\$71,100						\$71,100
							\$0
							\$0
TOTAL COST	\$92,000	\$0	\$0	\$0	\$0	\$0	\$92,000

Funding Source(s)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Future Yrs	TOTAL
General Funds	\$92,000						\$92,000
							\$0
TOTAL FUNDING SOURCES	\$92,000	\$0	\$0	\$0	\$0	\$0	\$92,000

1. Briefly Describe and provide justification for this Capital Project Request.

This is not a capital improvement project.

2. Describe the project status and completed work.

General engineering work is performed on an on-call basis.

3. Describe any anticipated grants related to the project.

n/a

4. What impact will the project have on annual operation expenses? Please quantify and describe.

	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	Future Yrs	TOTAL
Projected Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Map and/or pictures of Project/Project Area



**CITY OF ARVIN
City Council**

Meeting Date: May 1, 2018

TO: City Council

**FROM: R. Jerry Breckinridge, Police Chief and Interim City Manager
Shannon Chaffin, City Attorney**

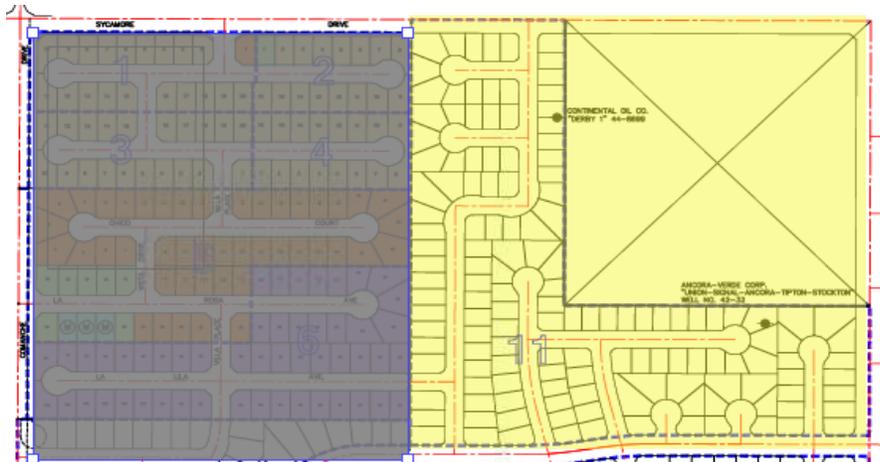
**SUBJECT: Public Hearing To Consider Introduction of An Uncodified Ordinance
Of the City Council Of the City of Arvin For A Third Amendment To
The Development Agreement with Westminster Capital, LLC**

RECOMMENDATION:

Staff recommends the City Council consider introducing the Ordinance to be read by title only, open the hearing, allow for public testimony, close the hearing, waive first reading of the Ordinance, and approve the introduction of the Ordinance.

BACKGROUND:

The City of Arvin previously entered into a Development Agreement with Sycamore Villas, LLC, in July 3, 2003. The Development Agreement was amended, and Westminster Capital, Inc. (“Developer”)



subsequently acquired Sycamore Villa LLC’s remaining portion of the property subject to the Development Agreement. The remaining portion of the property includes the areas referred to as Phase 11 consisting of APN 189-350-36 – 8.53 acres; APN 189-350-37 – 10.67 acres APN 189-350-58 – 21.33 acres, and APN

189-350-67 – 3.40 acres. A total of 44 +/- Acres. The property is located in the southwest portion of the city, and depiction of the location of the property is shown herein.

With a new property in place, City Staff and the Developer assessed the project and its requirements. As a result, the Developer requested an amendment to the Development agreement related to its property (“Third Amendment”). Th proposed Third amendment would:

- Confirm the fee of \$2,300.00 per single family lot as was previously approved and set by prior amendments to the Development Agreement.
- Provide for mutual release of all past claims related to the property, and acknowledgement the City and Developer are not currently in default of the Development Agreement as amended.
- Extends the Development Agreement to the year 2026.
- Require the Developer to comply with its Annual Review and other requires of the Development Agreement as amended.

The proposed Third Amendment complies with the policies of the City’s General Plan and is consistent with all applicable provisions of the General Plan. The proposed Third Amendment also complies with the requirements of California Government Code Sections 65865 through 65869.5. Staff have reviewed the Third Amendment, and found it will not be detrimental, or cause adverse effects, to the adjacent property owners, residents, or the general public, since the project will be substantially constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended. Finally, the proposed Third Amendment does not alter the clear and substantial benefit to the residents of the City of the project, since the proposed amendment makes not substantive changes to the project or to the Development Agreement.

The Planning Commission held a Special Meeting and Public Hearing on April 4, 2018 to review and consider the Notice of Exemption for the project, including the Third Amendment to Development Agreement for Westminster Capital, LLC. No person spoke in opposition toward the project, and the Planning Commission adopted Resolution No. APC2018-03 recommending the City Council adopt the Notice of Exemption and approve all components of the project, including the Third Amendment.

In addition to the public hearing notices and outreach described in the Planning Commission report, dated April 4, 2018, the City Council Public Hearing was noticed as required by law, by providing a public hearing notice to the Bakersfield Californian for publication on April 13, 2018 for the May 1, 2018 City Council public hearing and by mailing the public hearing notice to all property owners within 300 feet of the project boundaries.

ENVIRONMENTAL DETERMINATION:

The City has environmentally assessed the Third Amendment, and determined that there is not possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act (“CEQA”).

The Third Amendment is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party’s status under the previously adopted Development Agreement as amended.

ATTACHMENT(S)/EXHIBIT(S):

Attachment 1 - Uncodified Ordinance of the City Council of the City of Arvin For A Third Amendment To The Development Agreement with Westminster Capital, LLC, Exhibit A 3rd Amendment

Attachment 2 - Planning Commission Resolution No 2018-03 adopted April 4, 2018

Attachment 3 – Documents considered by the Planning Commission and Planning Commission Resolution.

Attachment 4 – City Council Public Hearing Notice Published on April 13, 2018

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH WESTMINSTER CAPITAL, INC.

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5, which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC, had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Ceilo, LLC, and transferred its obligations and rights to K. Hovnanian at Ceilo, LLC, thereunder, and K. Hovnanian at Ceilo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Ceilo, LLC as a party (including a Third Amendment to Development Agreement referred to herein as the "Hovnanian Third Amendment"), and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, LeOra LLC obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc., obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a portion of the property previously owned by Sycamore Villas, LLC that was not was not at any time owned by LeOra, LLC or K. Hovnanian at Ceilo, LLC; and

WHEREAS, Westminster Capital, Inc., desires to clarify its status as a successor in

interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Westminster Capital, Inc., desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating to Westminster Capital, Inc.; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed the Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City properly notified the April 4, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Planning Commission conducted a duly noticed public hearing on April 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which the Planning Commission adopted Resolution 2018-03, recommending the City Council adopt this Ordinance; and

WHEREAS, the City properly noticed the May 1, 2018 hearing before the City Council for the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Council conducted a duly noticed public hearing on May 1, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which this Ordinance was introduced by the City Council; and

WHEREAS, the City Council considered this matter on May 15, 2018, at which time all interested parties were given another opportunity to be heard and present evidence regarding the proposed Third Amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARVIN DOES

ORDAIN AS FOLLOWS:

Section 1. The City Council determines pursuant to CEQA Guidelines Section 15061(b)(3) that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment, and is not subject to the California Environmental Quality Act (CEQA), as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

Section 2. The City Council finds the proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement.

Section 3. The City Council finds the proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for Westminster Capital, Inc., and the City.

Section 4. The City Council finds the proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.

Section 5. The City Council finds proposed the Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.

Section 6. The City Council finds the proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

Section 7. For the foregoing reasons, and based on the information contained in any staff report, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby adopts this Ordinance and approves the proposed Third Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 9. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 1st day of May 2018, and adopted the Ordinance after the second reading at a regular meeting held on the 15th day of May 2018, by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Exhibit A: Third Amendment To Development Agreement

I, _____, City Clerk of the City of Arvin, California, DO
HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT A

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO
(Document exempt from recording fees
pursuant to Cal. Gov. Code §27383)

CITY OF ARVIN
Attn: City Clerk
200 Campus Drive
Arvin, CA 93203

(Space Above This Line for Recorder's Office Use Only)

AGREEMENT NO. 2018-

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is made and entered into effective as of March 20, 2018, and entered into by or between WESTMINSTER CAPITAL, INC., a Delaware corporation ("Developer"), and the CITY OF ARVIN, a municipal corporation ("the City"). Developer and the City are collectively referred to herein as ("Parties").

RECITALS

A. The City previously entered into a Development Agreement with Sycamore Villas, LLC, ("Sycamore") pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement").

B. Thereafter, K. Hovnanian at Cielo LLC represented it acquired title for a certain portion of the property from Sycamore Villas, LLC that was subject to the Development Agreement on November 11, 2005 ("KHAC Property"). The KHAC Property is not subject to this Third Amendment.

C. The Development Agreement was subsequently amended effective July 24th, 2007, by document entitled "Amendment To The Development Agreement," Agreement No. 2007-18, which was recorded on October 9, 2007, in the Kern County Official Records as Document Number 0207204984 ("First Amendment").

D. The Development Agreement was again subsequently amended and entered into as the June 12, 2009, by document entitled "Second Amendment To Development Agreement," Agreement No. 2009-26, which was recorded on December 18, 2009, in the Kern County Official Records as Document Number 0209185187 ("Second Amendment").

E. Thereafter, Developer subsequently obtained the rights and obligations under the Development Agreement for all remaining portions of the property legally described in Exhibit "A" attached hereto ("Property"), which is a portion of the property previously owned by Sycamore Villas that was not at any time KHAC Property.

F. Effective November 1, 2016, the City and K. Hovnanian at Cielo LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement," (Agreement No. 2016-42), which was recorded on December 8, 2016, in the Kern County Official Records as Document Number 0216176492 ("Hovnanian Third Amendment"). The Hovnanian Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

G. Effective May 5, 2017, the City and LeOra LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement,"

(Agreement No. 2017-06), which was recorded by the City on May 25, 2017, in the Kern County Official Records as Document Number 217066767, and recorded by LeOra LLC on June 13, 2017, in the Kern County Official Records as Document Number 217075798, ("LeOra Third Amendment"). The LeOra Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the either the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

H. The Parties now desire to enter into this Third Amendment to the Development Agreement. For reference purposes only, the Parties have identified this amendment as the "Third Amendment to Development Agreement" ("Third Amendment" or "Westminster Third Amendment").

I. This Third Amendment specifically applies only to the real property legally described in Exhibit A to this Third Amendment.

J. The City has determined that this Third Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the General Plan. For the reasons recited herein, the City and Developer have determined that the project is a development for which an amendment to the Development Agreement is appropriate. It is also the intent of the Parties to clarify obligations for the Property and to resolve any potential claims against the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Third Agreement as if set forth in full herein.

2. Fees. The total cost for all permits, inspections, checks, fees and other charges associated in any way with the development of real property or the construction of improvements on lots thereon (collectively, "Fees") for single family residential lots within the Property shall remain capped at \$2,300 per lot in accordance with Section 5 of the First Amendment and shall not be affected by this Third Amendment. To the extent fees have not been addressed by the First Amendment, such as those related to non-single family residential lots, the Fees shall remain as set forth in the Development Agreement, Paragraph 3.6 (Exactions).

3. Term. Section 2.2 of the Development Agreement shall be amended to extend the term by an additional three (3) year period to July 3, 2026. Should a moratorium or any similar restriction on the issuance of building permits be imposed by any municipal or government agency that is applicable to the Property, the term of the Development Agreement shall be extended for a period equal to the length of the moratorium or restriction.

4. Notices. Section 12.1 of the Development Agreement shall be amended to change the address of the Developer, as follows:

Developer: Westminster Capital, Inc.
233 Wilshire Boulevard, Suite 525
Santa Monica, CA 90401
Attention: Greg Belzberg

With a copy to: Keenan Behrle
233 Wilshire Boulevard, Suite 400
Santa Monica, CA 90401

5. Remainder Unchanged. Except as specifically modified and amended in this Third Amendment, the Development Agreement as amended by the Parties remains in full force and effect and is binding upon the Parties.

6. Release. Parties, individually, and on behalf of its successors, trustees, creditors, and assigns, completely releases, acquits, and forever discharges the other Party, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the governing board or council,

from any and all claims, rights, demands, obligations, liabilities, claims or causes of action of any and every kind, nature and character, whether known or unknown, whether in law or in equity, which it may have had, or ever had, or could in the future have against the other Party for any act or omission that occurred prior to entering into the Third Amendment, and which are in any way related to the Development Agreement as amended. This release contained herein is made notwithstanding Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties expressly acknowledges that this release is intended to include without limitation, all claims and causes of action that a Party does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action for any acts, omissions or events which are in any way related to the Development Agreement as previously amended and occurred prior to the effective date of the Third Amendment. To be clear, and notwithstanding any other language in this Third Amendment, ~~this release only applies to claims, etc., related to i) the Development Agreement as amended; and ii) the Property.~~ Further, no claims arising after the date of this Third Amendment (i.e., future claims) are being released by either Party.

7. No Default. The Parties each represent and warrant to the other that, as of the date of this Third Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement. Nothing in this Paragraph shall constitute a waiver of Developer's obligations to comply with the Development Agreement, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.

8. Continuing Obligations. Developer shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

9. No Admission of Liability. This Third Amendment and compliance with it, shall not operate or be construed as an admission by the City of any liability, misconduct, or wrongdoing whatsoever.

10. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

11. Successors. This Third Amendment shall be binding upon and inure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties have duly executed this Third Amendment on the day and year first above written.

CITY OF ARVIN,
a municipal corporation

By: _____
Jose Gurrola, Mayor

_____, 2018

ATTEST:

Cecilia Vela, City Clerk

WESTMINSTER CAPITAL, INC.,
a Delaware corporation

By: _____
Greggory Beizberg, President and CEO

3/13/2018

Note: Developer's signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Shannon Chaffin, City Attorney

applicable to developer's business entity.

APPROVED AS TO FORM:

By: _____
Name:
Title:

Exhibit A
Legal Description of Developer Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: APN 189-351-36 [PARCEL 1272 OF TRACT 5816]

PARCEL 1 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL B: APN 189-351-58 & 67 [CONSISTING OF 140 LOTS IN TRACT 5816, PHASE 11]

PARCEL 1 OF PARCEL MAP 11401 IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED MAY 16, 2006 IN BOOK 54, PAGES 192 THROUGH 194, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL C: APN 189-351-37 [PARCEL 1273 OF TRACT 5816]

PARCEL 2 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89° 49' 13" WEST ALONG SAID NORTH LINE A DISTANCE OF 305.08 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 965.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 964.92 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 305.00 FEET TO A POINT WHICH LIES 660.00 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE NORTH 00° 10' 47" EAST A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)

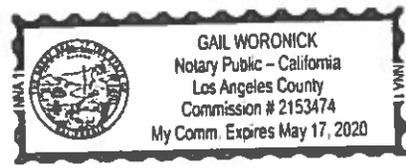
On 3/13/18 before me, Gail Woronick, Notary Public
Date Here Insert Name and Title of the Officer

personally appeared Greggory Belzberg
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Gail Woronick
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Shannon Chaffin, City Attorney

applicable to developer's business entity.

APPROVED AS TO FORM:

By: K. Beale
Name: KEENAN BEALE
Title: Attorney at Law

RESOLUTION NO. APC 2018-03

**A RESOLUTION OF THE ARVIN PLANNING COMMISSION
RECOMMENDING THE CITY COUNCIL APPROVE THE UNCODIFIED
ORDINANCE FOR THIRD AMENDMENT BY AND BETWEEN
WESTMINSTER CAPITAL, INC. AND THE CITY OF ARVIN OF THE
DEVELOPMENT AGREEMENT BETWEEN SYCAMORE VILLAS, LLC,
AND THE CITY OF ARVIN, CONCERNING TRACT 5816, RECORDED
ON JULY 3, 2003 AS AMENDED**

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Cielo, LLC, and transferred its obligations and rights to K. Hovnanian at Cielo, LLC, thereunder, and K. Hovnanian at Cielo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Cielo, LLC as a party, and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, Leora, LLC obtained the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc., obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a portion of the property

previously owned by Sycamore Villas, LLC that was not was not at any time owned by LeOra, LLC or K. Hovnanian at Cielo, LLC; and

WHEREAS, Westminster Capital, Inc., desires to clarify its status as a successor in interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Westminster Capital, Inc., desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating to Westminster Capital, Inc.; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed the Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant, adverse physical effect on the environment, and is not subject to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City properly noticed the April 4, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on April 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Arvin as follows:

1. The above recitals are true and correct.
2. The Planning Commission recommends that the City Council find that approval of the Third Amendment is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

3. The Planning Commission recommends the City Council approve the proposed Third Amendment and uncodified ordinance attached hereto as Exhibit "A," and recommends the City Council make the following attendant findings:

- a. The proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. The proposed land uses and the density are also compliant per this requirement. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan.
- b. The proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for applicant and city. The amendment establishes obligations of the developer for infrastructure improvements as specified in the Development Agreement, payment to the City, transfers a drainage basin to the city which enhances the Storm Drainage Master Plan, provides first right of refusal to the developer for excess dirt from the development, and relieves developer of certain obligations for park improvements.
- c. The proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.
- d. The proposed Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.
- e. The proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

4. This Resolution shall become effective immediately.

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I **HEREBY CERTIFY** that the foregoing Resolution was passed and adopted by the Planning Commission of the City of Arvin at a special meeting thereof held on the 04th day of April 2018 by the following vote:

AYES: PC Rivera, PC Martinez, Chair Trujillo

NOES: _____

ABSTAIN: _____

ABSENT: PC Tinoco, VC Zavala

ATTEST:



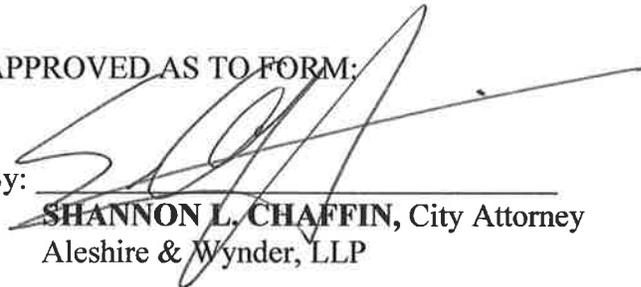
CECILIA VELA, Secretary

ARVIN PLANNING COMMISSION

By: 

OLIVIA TRUJILLO, Chairperson

APPROVED AS TO FORM:

By: 

SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Attachment: An Uncodified Ordinance Of The City Council Of The City Of Arvin For A Third Amendment To The Development Agreement With Westminster Capital, Inc. (with attached Third Amendment).

I, _____, Secretary of the Planning Commission of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the Planning Commission of the City of Arvin on the date and by the vote indicated herein.

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH WESTMINSTER CAPITAL, INC.

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5, which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC, had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Ceilo, LLC, and transferred its obligations and rights to K. Hovnanian at Ceilo, LLC, thereunder, and K. Hovnanian at Ceilo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Ceilo, LLC as a party (including a Third Amendment to Development Agreement referred to herein as the "Hovnanian Third Amendment"), and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, LeOra LLC obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc., obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a portion of the property previously owned by Sycamore Villas, LLC that was not was not at any time owned by LeOra, LLC or K. Hovnanian at Ceilo, LLC; and

WHEREAS, Westminster Capital, Inc., desires to clarify its status as a successor in interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Westminster Capital, Inc., desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating to Westminster Capital, Inc.; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed the Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City properly notified the April 4, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Planning Commission conducted a duly noticed public hearing on April 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which the Planning Commission adopted Resolution [], recommending the City Council adopt this Ordinance; and

WHEREAS, the City properly noticed the April 17, 2018 hearing before the City Council for the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Council conducted a duly noticed public hearing on April 17, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which this Ordinance was introduced by the City Council; and

WHEREAS, the City Council considered this matter on May 1, 2018, at which time all interested parties were given another opportunity to be heard and present evidence regarding the proposed Third Amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARVIN DOES ORDAIN AS FOLLOWS:

Section 1. The City Council determines pursuant to CEQA Guidelines Section 15061(b)(3) that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment, and is not subject to the California Environmental Quality Act (CEQA), as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

Section 2. The City Council finds the proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement.

Section 3. The City Council finds the proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for Westminster Capital, Inc., and the City.

Section 4. The City Council finds the proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.

Section 5. The City Council finds proposed the Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.

Section 6. The City Council finds the proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

Section 7. For the foregoing reasons, and based on the information contained in any staff report, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby adopts this Ordinance and approves the proposed Third Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 9. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 17th day of April 2018, and adopted the Ordinance after the second reading at a regular meeting held on the ____ day of May 2018, by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Exhibit A: Third Amendment To Development Agreement

I, _____, City Clerk of the City of Arvin, California, DO
HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and
adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT A

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO
(Document exempt from recording fees
pursuant to Cal. Gov. Code §27383)

CITY OF ARVIN
Attn: City Clerk
200 Campus Drive
Arvin, CA 93203

(Space Above This Line for Recorder's Office Use Only)

AGREEMENT NO. 2018-

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is made and entered into effective as of March 20, 2018, and entered into by or between WESTMINSTER CAPITAL, INC., a Delaware corporation ("Developer"), and the CITY OF ARVIN, a municipal corporation ("the City"). Developer and the City are collectively referred to herein as ("Parties").

RECITALS

A. The City previously entered into a Development Agreement with Sycamore Villas, LLC, ("Sycamore") pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement").

B. Thereafter, K. Hovnanian at Cielo LLC represented it acquired title for a certain portion of the property from Sycamore Villas, LLC that was subject to the Development Agreement on November 11, 2005 ("KHAC Property"). The KHAC Property is not subject to this Third Amendment.

C. The Development Agreement was subsequently amended effective July 24th, 2007, by document entitled "Amendment To The Development Agreement," Agreement No. 2007-18, which was recorded on October 9, 2007, in the Kern County Official Records as Document Number 0207204984 ("First Amendment").

D. The Development Agreement was again subsequently amended and entered into as the June 12, 2009, by document entitled "Second Amendment To Development Agreement," Agreement No. 2009-26, which was recorded on December 18, 2009, in the Kern County Official Records as Document Number 0209185187 ("Second Amendment").

E. Thereafter, Developer subsequently obtained the rights and obligations under the Development Agreement for all remaining portions of the property legally described in Exhibit "A" attached hereto ("Property"), which is a portion of the property previously owned by Sycamore Villas that was not was not at any time KHAC Property.

F. Effective November 1, 2016, the City and K. Hovnanian at Cielo LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement," (Agreement No. 2016-42), which was recorded on December 8, 2016, in the Kern County Official Records as Document Number 0216176492 ("Hovnanian Third Amendment"). The Hovnanian Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

G. Effective May 5, 2017, the City and LeOra LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement,"

(Agreement No. 2017-06), which was recorded by the City on May 25, 2017, in the Kern County Official Records as Document Number 217066767, and recorded by LeOra LLC on June 13, 2017, in the Kern County Official Records as Document Number 217075798, ("LeOra Third Amendment"). The LeOra Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the either the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

H. The Parties now desire to enter into this Third Amendment to the Development Agreement. For reference purposes only, the Parties have identified this amendment as the "Third Amendment to Development Agreement" ("Third Amendment" or "Westminster Third Amendment").

I. This Third Amendment specifically applies only to the real property legally described in Exhibit A to this Third Amendment.

J. The City has determined that this Third Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the General Plan. For the reasons recited herein, the City and Developer have determined that the project is a development for which an amendment to the Development Agreement is appropriate. It is also the intent of the Parties to clarify obligations for the Property and to resolve any potential claims against the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Third Agreement as if set forth in full herein.

2. Fees. The total cost for all permits, inspections, checks, fees and other charges associated in any way with the development of real property or the construction of improvements on lots thereon (collectively, "Fees") for single family residential lots within the Property shall remain capped at \$2,300 per lot in accordance with Section 5 of the First Amendment and shall not be affected by this Third Amendment. To the extent fees have not been addressed by the First Amendment, such as those related to non-single family residential lots, the Fees shall remain as set forth in the Development Agreement, Paragraph 3.6 (Exactions).

3. Term. Section 2.2 of the Development Agreement shall be amended to extend the term by an additional three (3) year period to July 3, 2026. Should a moratorium or any similar restriction on the issuance of building permits be imposed by any municipal or government agency that is applicable to the Property, the term of the Development Agreement shall be extended for a period equal to the length of the moratorium or restriction.

4. Notices. Section 12.1 of the Development Agreement shall be amended to change the address of the Developer, as follows:

Developer: Westminster Capital, Inc.
233 Wilshire Boulevard, Suite 525
Santa Monica, CA 90401
Attention: Greg Belzberg

With a copy to: Keenan Behrle
233 Wilshire Boulevard, Suite 400
Santa Monica, CA 90401

5. Remainder Unchanged. Except as specifically modified and amended in this Third Amendment, the Development Agreement as amended by the Parties remains in full force and effect and is binding upon the Parties.

6. Release. Parties, individually, and on behalf of its successors, trustees, creditors, and assigns, completely releases, acquits, and forever discharges the other Party, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the governing board or council,

from any and all claims, rights, demands, obligations, liabilities, claims or causes of action of any and every kind, nature and character, whether known or unknown, whether in law or in equity, which it may have had, or ever had, or could in the future have against the other Party for any act or omission that occurred prior to entering into the Third Amendment, and which are in any way related to the Development Agreement as amended. This release contained herein is made notwithstanding Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties expressly acknowledges that this release is intended to include without limitation, all claims and causes of action that a Party does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action for any acts, omissions or events which are in any way related to the Development Agreement as previously amended and occurred prior to the effective date of the Third Amendment. To be clear, and notwithstanding any other language in this Third Amendment, this release only applies to claims, etc., related to i) the Development Agreement as amended; and ii) the Property. Further, no claims arising after the date of this Third Amendment (i.e., future claims) are being released by either Party.

7. No Default. The Parties each represent and warrant to the other that, as of the date of this Third Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement. Nothing in this Paragraph shall constitute a waiver of Developer's obligations to comply with the Development Agreement, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.

8. Continuing Obligations. Developer shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

9. No Admission of Liability. This Third Amendment and compliance with it, shall not operate or be construed as an admission by the City of any liability, misconduct, or wrongdoing whatsoever.

10. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

11. Successors. This Third Amendment shall be binding upon and inure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties have duly executed this Third Amendment on the day and year first above written.

CITY OF ARVIN,
a municipal corporation

By: _____
Jose Gurrola, Mayor

_____, 2018

ATTEST:

Cecilia Vela, City Clerk

WESTMINSTER CAPITAL, INC.,
a Delaware corporation

By: _____
Greggory Betzberg, President and CEO

3/13, 2018

Note: Developer's signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations

See attached for notary.

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Shannon Chaffin, City Attorney

applicable to developer's business entity.

APPROVED AS TO FORM:

By: K. Beale
Name: KEVIN BEALE
Title: Attorney at Law

Exhibit A
Legal Description of Developer Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: APN 189-351-36 [PARCEL 1272 OF TRACT 5816]

PARCEL 1 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL B: APN 189-351-58 & 67 [CONSISTING OF 140 LOTS IN TRACT 5816, PHASE 11]

PARCEL 1 OF PARCEL MAP 11401 IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED MAY 16, 2006 IN BOOK 54, PAGES 192 THROUGH 194, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL C: APN 189-351-37 [PARCEL 1273 OF TRACT 5816]

PARCEL 2 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89° 49' 13" WEST ALONG SAID NORTH LINE A DISTANCE OF 305.08 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 965.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 964.92 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 305.00 FEET TO A POINT WHICH LIES 660.00 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE NORTH 00° 10' 47" EAST A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

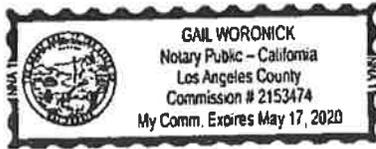
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)
On 5/13/18 before me, Gail Woronick, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Greggory Belzberg
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____

Signer's Name: _____

Corporate Officer — Title(s): _____

Partner — Limited General

Individual Attorney in Fact

Trustee Guardian or Conservator

Other: _____

Signer Is Representing: _____



**CITY OF ARVIN
Planning Commission**

Special Meeting Date: April 4, 2018

TO: Arvin Planning Commission Members
FROM: R. Jerry Breckinridge, Police Chief and Interim City Manager
Shannon Chaffin, City Attorney
SUBJECT: Resolution of the Arvin Planning Commission recommending the City Council i.) Approve the Uncodified Ordinance for Third Amendment by and between Westminster Capital, Inc., and the City of Arvin of the Development Agreement between Sycamore Villas, LLC, and the City of Arvin, concerning Tract 5816, recorded on July 3, 2003 as amended and ii.) accept the Notice of Exemption as the appropriate environmental document.

RECOMMENDATION:

Staff recommends that the Planning Commission of the City of Arvin (“Planning Commission”) adopt the attached Resolution of the Arvin Planning Commission recommending the City Council i.) Approve the Uncodified Ordinance for Third Amendment by and between Westminster Capital, Inc., and the City of Arvin of the Development Agreement between Sycamore Villas, LLC, and the City of Arvin, concerning Tract 5816, recorded on July 3, 2003 as amended and ii.) accept the Notice of Exemption as the appropriate environmental document.

BACKGROUND:

The City of Arvin previously entered into a Development Agreement with Sycamore Villas, LLC, in July 3, 2003. The Development Agreement was amended, and Westminster Capital, Inc. (“Developer”) subsequently acquired Sycamore Villa LLC’s remaining portion of the property subject to the Development Agreement. The remaining portion of the property includes the areas referred to as Phase 11 consisting of APN 189-350-36 – 8.53 acres; APN 189-350-37 – 10.67 acres APN 189-350-58 – 21.33 acres, and APN



189-350-67 – 3.40 acres. A total of 44 +/- Acres. The property is located in the southwest portion of the city, and depiction of the location of the property is shown herein.

With a new property in place, City Staff and the Developer assessed the project and its requirements. As a result, the Developer requested an amendment to the Development agreement related to its property (“Third Amendment”). The proposed Third amendment would:

- Confirm the fee of \$2,300.00 per single family lot as was previously approved and set by prior amendments to the Development Agreement.
- Provide for mutual release of all past claims related to the property, and acknowledgement the City and Developer are not currently in default of the Development Agreement as amended.
- Extends the Development Agreement to the year 2026.
- Require the Developer to comply with its Annual Review and other requires of the Development Agreement as amended.

The proposed Third Amendment complies with the policies of the City’s General Plan and is consistent with all applicable provisions of the General Plan. The proposed Third Amendment also complies with the requirements of California Government Code Sections 65865 through 65869.5. Staff have reviewed the Third Amendment, and found it will not be detrimental, or cause adverse effects, to the adjacent property owners, residents, or the general public, since the project will be substantially constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended. Finally, the proposed Third Amendment does not alter the clear and substantial benefit to the residents of the City of the project, since the proposed amendment makes not substantive changes to the project or to the Development Agreement.

ENVIRONMENTAL DETERMINATION:

The City has environmentally assessed the Third Amendment, and determined that there is not possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act (“CEQA”).

The Third Amendment is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party’s status under the previously adopted Development Agreement as amended.

ATTACHMENT(S)/EXHIBIT(S):

Attachment 1 Resolution of the Arvin Planning Commission recommending the City Council Approve i.) the Uncodified Ordinance for Third Amendment by and between Westminster Capital, Inc., and the City of Arvin of the Development Agreement between Sycamore Villas, LLC, and the City of Arvin, concerning Tract 5816, recorded on July 3, 2003 as amended and ii.) accept the Notice of Exemption as the appropriate environmental document.

Attachment 2. Notice of Exemption – Third Development Agreement amendment – Westminster Capital Inc. and City of Arvin.

Attachment 3: Planning Commission Public Hearing Notice

Exhibit A: Uncodified Ordinance for Third Amendment by and between Westminster Capital, Inc., and the City of Arvin of the Development Agreement between Sycamore Villas, LLC, and the City of Arvin, concerning Tract 5816, recorded on July 3, 2003 as amended

RESOLUTION NO. _____

**A RESOLUTION OF THE ARVIN PLANNING COMMISSION
RECOMMENDING THE CITY COUNCIL APPROVE THE
UNCODIFIED ORDINANCE FOR THIRD AMENDMENT BY AND
BETWEEN WESTMINSTER CAPITAL, INC. AND THE CITY OF ARVIN
OF THE DEVELOPMENT AGREEMENT BETWEEN SYCAMORE
VILLAS, LLC, AND THE CITY OF ARVIN, CONCERNING TRACT 5816,
RECORDED ON JULY 3, 2003 AS AMENDED**

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Ceilo, LLC, and transferred its obligations and rights to K. Hovnanian at Ceilo, LLC, thereunder, and K. Hovnanian at Ceilo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Ceilo, LLC as a party, and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, Leora, LLC obtained the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc., obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a portion of the

property previously owned by Sycamore Villas, LLC that was not was not at any time owned by LeOra, LLC or K. Hovnanian at Ceilo, LLC; and

WHEREAS, Westminster Capital, Inc., desires to clarify its status as a successor in interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Westminster Capital, Inc., desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating to Westminster Capital, Inc.; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed the Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant, adverse physical effect on the environment, and is not subject to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City properly noticed the April 4, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the Planning Commission conducted a duly noticed public hearing on April 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment.

NOW, THEREFORE, BE IT RESOLVED by the Planning Commission of the City of Arvin as follows:

1. The above recitals are true and correct.
2. The Planning Commission recommends that the City Council find that approval of the Third Amendment is exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(3) in that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

3. The Planning Commission recommends the City Council approve the proposed Third Amendment and uncodified ordinance attached hereto as Exhibit "A," and recommends the City Council make the following attendant findings:

- a. The proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. The proposed land uses and the density are also compliant per this requirement. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan.
- b. The proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for applicant and city. The amendment establishes obligations of the developer for infrastructure improvements as specified in the Development Agreement, payment to the City, transfers a drainage basin to the city which enhances the Storm Drainage Master Plan, provides first right of refusal to the developer for excess dirt from the development, and relieves developer of certain obligations for park improvements.
- c. The proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.
- d. The proposed Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.
- e. The proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

4. This Resolution shall become effective immediately.

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I HEREBY CERTIFY that the foregoing Resolution was passed and adopted by the Planning Commission of the City of Arvin at a special meeting thereof held on the 04th day of April 2018 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST:

CECILIA VELA, Secretary

ARVIN PLANNING COMMISSION

By: _____
OLIVIA TRUJILLO, Chairperson

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Attachment: An Uncodified Ordinance Of The City Council Of The City Of Arvin For A Third Amendment To The Development Agreement With Westminster Capital, Inc. (with attached Third Amendment).

I, _____, Secretary of the Planning Commission of the City of Arvin, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Resolution passed and adopted by the Planning Commission of the City of Arvin on the date and by the vote indicated herein.

NOTICE OF EXEMPTION

TO: Office of Planning and Research
P.O Box 3044
1400 Tenth Street, Room 121
Sacramento, CA 95814

FROM: City of Arvin
Community Development Department
141 Plumtree Drive
Arvin, Ca 93203
Jake Raper, City Planner – Contract Planner JAS
Consultants

County Assessor/Clerk-Recorder
County of Kern
1115 Truxtun Avenue
1st Floor
Bakersfield, CA 93301

PROJECT FILE ONLY

Project Title/Location: Development Agreement Amendment – 3rd Westminster Capital LLC and City of Arvin – Tract 5816/ County of Kern

Description of Nature, Purpose, and Beneficiaries of Project: Uncodified Ordinance for Third Amendment by and between Westminster Capital, Inc., and the City of Arvin of the Development Agreement between Sycamore Villas, LLC, and the City of Arvin, concerning Tract 5816, recorded on July 3, 2003 as amended .

Beneficiaries of the Project are: Westminster Capital LLC and City of Arvin

Name of Public Agency Approving Project: Arvin Planning Commission- 200 Campus Drive, Arvin, CA 93202,

Name of Person or Agency Carrying Out Project: City of Arvin

Exempt Status:

- Ministerial (Section 21080(b); 15268)
- Declared Emergency (Section 21080(b)(3); 15269(a))
- Emergency Project (Section 21080(b)(4); 15269(b)(c))
- Categorical Exemption - State type and section number (see below)
- Statutory Exemption - State type and section number (see below)
- General Rule Exemption (Section 15061(b) (3))

Reasons why project is exempt: Pursuant to Title 14 of the California Code of Regulations, Section 15061 (b)(3), that this project is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it is not a project which has the potential for causing a significant effect on the environment. The Planning Commission recommended and City Council therefore directs that the Notice of Exemption be filed with Kern County Clerk in accordance with the CEQA Guidelines.

Lead Agency Contact Person: Jake Raper, City Planner, Community Development Department, Arvin, CA 8=93203 **Area Code/Telephone/Ext.:** 661- 854-2822

Determination made by: Shannon Chaffin, City Attorney March 21, 2018
Name Title Date

Lead Agency: City of Arvin Signed by Lead Agency Signed by Applicant Date Received for filing March 21, 2017

Public Hearing Notice
City of Arvin Planning Commission

Date: April 4, 2018

Place: City of Arvin Council Chambers, 200 Campus Drive, Arvin, CA 93203

Time: 6:00 PM

Notice is hereby given that the Planning Commission of the City of Arvin will conduct the hearings at the date, place and time mentioned above for the following items:

1. Third Amendment to Development Agreement (“Third Amendment”) between Westminster Capital, Inc., a Delaware Corporation, and the City of Arvin. This is an amendment to the original Development Agreement recorded July 3, 2003, and affects the property generally depicted in the diagram below. Planning Commission will provide a recommendation to the City Council as to this item, including that the Third Amendment is exempt from the requirements of the California Environmental Quality Act under CEQA Guidelines section 15061(b)(3).

Project Location/Diagram: The Third Amendment covers the property generally depicted here, located South of Sycamore Drive on the West Side of Meyer Street:



Applicant/Property
Owner: Applicant
Representative: Keenan Behrle, 233 Wilshire Boulevard, Suite 400 Santa Monica, CA 90401.
Property Owner: Westminster Capital, Inc. (Greg Belzberg) 233 Wilshire Boulevard, Suite 525 Santa Monica, CA 90401

Any person wishing to address the Commission may provide oral and/or written testimony at the meeting, or submit written comments to the Community Development Department at the above said address.

Notice Limiting Legal Challenge: Written comments must be received at the above address at, or prior to the meeting date and time. If you challenge the City’s action on these projects in court, you may be limited to raising those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City at or prior to the Public Hearing (Government Code Section 65009).

Cecilia Vela
Secretary to the Arvin Planning Commission
Published: Bakersfield Californian, March 24, 2018

ORDINANCE NO. _____

AN UNCODIFIED ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN FOR A THIRD AMENDMENT TO THE DEVELOPMENT AGREEMENT WITH WESTMINSTER CAPITAL, INC.

WHEREAS, California Government Code Section 65864 *et seq.* authorizes cities to enter into development agreements with private property owners; and

WHEREAS, the City of Arvin City Council (the "City Council") previously entered into a Development Agreement with Sycamore Villas, LLC, pursuant to the authority of Government Code Sections 65864 through 65869.5, which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement"); and

WHEREAS, under the Development Agreement, Sycamore Villas, LLC, had the right to sell, assign or transfer the Development Agreement, and all of its rights, duties and obligation thereunder, to any person, including a portion thereof; and

WHEREAS, Sycamore Villas, LLC, sold a portion of the property subject to the Development Agreement to K. Hovnanian at Ceilo, LLC, and transferred its obligations and rights to K. Hovnanian at Ceilo, LLC, thereunder, and K. Hovnanian at Ceilo, LLC, is a successor in interest to that portion of the property; and

WHEREAS, pursuant to Government Code Section 65868, development agreements may be amended; and

WHEREAS, the Development Agreement was subsequently amended, some amendments with Sycamore Villas, LLC, or K. Hovnanian at Ceilo, LLC as a party (including a Third Amendment to Development Agreement referred to herein as the "Hovnanian Third Amendment"), and some without, depending on the portion of the property subject to the Development Agreement being affected; and

WHEREAS, LeOra LLC obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, Phases 5, 9 and 10 along with the rights and obligations as established by the Development Agreement established for Tract 5816; and

WHEREAS, the City and LeOra LLC amended the Development Agreement ("LeOra Third Amendment"); and

WHEREAS, Westminster Capital, Inc., obtained a portion of the development rights previously held by Sycamore Villas, LLC, for Tract 5816, which is a portion of the property previously owned by Sycamore Villas, LLC that was not at any time owned by LeOra, LLC or K. Hovnanian at Ceilo, LLC; and

WHEREAS, Westminster Capital, Inc., desires to clarify its status as a successor in interest as to its portion of the former Sycamore Villas, LLC, property by entering into a Third Amendment to the Development Agreement as amended; and

WHEREAS, the City and Westminster Capital, Inc., desire to establish mutually beneficial obligations and benefits subject to the Third Amendment to the Development Agreement, and to do so by an amendment of the Development Agreement; and

WHEREAS, for the purposes of reference only, this amendment to the Development Agreement has been identified as the "Third Amendment to Development Agreement" ("Third Amendment") relating to Westminster Capital, Inc.; and

WHEREAS, neither the LeOra Third Amendment, nor the Hovnanian Third Amendment are subject to this Third Amendment, nor does this Third Amendment affect either the LeOra Third Amendment or the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement; and

WHEREAS, the City has environmentally assessed the Third Amendment, and determined that there is no possibility that the Third Amendment may have a significant physical effect on the environment, and is not subject to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the City properly notified the April 4, 2018 Planning Commission special meeting to consider the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Planning Commission conducted a duly noticed public hearing on April 4, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which the Planning Commission adopted Resolution [], recommending the City Council adopt this Ordinance; and

WHEREAS, the City properly noticed the April 17, 2018 hearing before the City Council for the proposed Amendment pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within 300 feet of the proposed projects; and

WHEREAS, the City Council conducted a duly noticed public hearing on April 17, 2018, at which time all interested parties were given an opportunity to be heard and present evidence regarding the proposed Third Amendment, and after which this Ordinance was introduced by the City Council; and

WHEREAS, the City Council considered this matter on May 1, 2018, at which time all interested parties were given another opportunity to be heard and present evidence regarding the proposed Third Amendment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ARVIN DOES ORDAIN AS FOLLOWS:

Section 1. The City Council determines pursuant to CEQA Guidelines Section 15061(b)(3) that that it can be seen with certainty that there is no possibility that the Third Amendment will have a significant, adverse, physical effect on the environment, and is not subject to the California Environmental Quality Act (CEQA), as the Third Amendment does not modify any physical aspect of the previously approved project, and merely affirms the party's status under the previously adopted Development Agreement as amended.

Section 2. The City Council finds the proposed Third Amendment to the Development Agreement complies with the policies of the City's General Plan. Accordingly, the revision to the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement.

Section 3. The City Council finds the proposed Third Amendment to the Development Agreement establishes mutual beneficial obligations and benefits for Westminster Capital, Inc., and the City.

Section 4. The City Council finds the proposed Third Amendment to the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5.

Section 5. The City Council finds proposed the Third Amendment to the Development Agreement will not be detrimental, or cause adverse effects, to adjacent property owners, residents, or the general public, since the Project will be constructed in accordance with the plans and entitlements that were approved previously by the City, and development of any future phases will be subject to further review and consistency with the Development Agreement as amended.

Section 6. The City Council finds the proposed Third Amendment to the Development Agreement does not alter the clear and substantial benefit to the residents of the City of the Project, since the proposed amendment makes no substantive changes to the Project or to the Development Agreement.

Section 7. For the foregoing reasons, and based on the information contained in any staff report, supporting documentation, minutes and other records of the proceedings, all of which are incorporated herein by this reference, the City Council hereby adopts this Ordinance and approves the proposed Third Amendment to the Development Agreement, which amendment is attached hereto as Exhibit "A" and incorporated herein by this reference.

Section 8. The City Clerk shall certify to the adoption of this Ordinance and cause it to be published, in accordance with Government Code, Section 36933, or as otherwise required by law.

Section 9. This ordinance shall take effect and be in full force and effect from and after thirty (30) days after its final passage and adoption.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 17th day of April 2018, and adopted the Ordinance after the second reading at a regular meeting held on the ____ day of May 2018, by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

CECILIA VELA, City Clerk

CITY OF ARVIN

By: _____
JOSE GURROLA, Mayor

APPROVED AS TO FORM:

By: _____
SHANNON L. CHAFFIN, City Attorney
Aleshire & Wynder, LLP

Exhibit A: Third Amendment To Development Agreement

I, _____, City Clerk of the City of Arvin, California, DO
HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Arvin on the date and by the vote indicated herein.

EXHIBIT A

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO
(Document exempt from recording fees
pursuant to Cal. Gov. Code §27383)

CITY OF ARVIN
Attn: City Clerk
200 Campus Drive
Arvin, CA 93203

(Space Above This Line for Recorder's Office Use Only)

AGREEMENT NO. 2018-

THIRD AMENDMENT TO DEVELOPMENT AGREEMENT

This Third Amendment to Development Agreement ("Third Amendment") is made and entered into effective as of March 20, 2018, and entered into by or between WESTMINSTER CAPITAL, INC., a Delaware corporation ("Developer"), and the CITY OF ARVIN, a municipal corporation ("the City"). Developer and the City are collectively referred to herein as ("Parties").

RECITALS

A. The City previously entered into a Development Agreement with Sycamore Villas, LLC, ("Sycamore") pursuant to the authority of Government Code Sections 65864 through 65869.5 which was recorded on July 3, 2003, in the Kern County Official Records as Document Number 0203133456, ("Development Agreement").

B. Thereafter, K. Hovnanian at Cielo LLC represented it acquired title for a certain portion of the property from Sycamore Villas, LLC that was subject to the Development Agreement on November 11, 2005 ("KHAC Property"). The KHAC Property is not subject to this Third Amendment.

C. The Development Agreement was subsequently amended effective July 24th, 2007, by document entitled "Amendment To The Development Agreement," Agreement No. 2007-18, which was recorded on October 9, 2007, in the Kern County Official Records as Document Number 0207204984 ("First Amendment").

D. The Development Agreement was again subsequently amended and entered into as the June 12, 2009, by document entitled "Second Amendment To Development Agreement," Agreement No. 2009-26, which was recorded on December 18, 2009, in the Kern County Official Records as Document Number 0209185187 ("Second Amendment").

E. Thereafter, Developer subsequently obtained the rights and obligations under the Development Agreement for all remaining portions of the property legally described in Exhibit "A" attached hereto ("Property"), which is a portion of the property previously owned by Sycamore Villas that was not was not at any time KHAC Property.

F. Effective November 1, 2016, the City and K. Hovnanian at Cielo LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement," (Agreement No. 2016-42), which was recorded on December 8, 2016, in the Kern County Official Records as Document Number 0216176492 ("Hovnanian Third Amendment"). The Hovnanian Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

G. Effective May 5, 2017, the City and LeOra LLC amended the Development Agreement by document entitled for the sake of reference "Third Amendment to Development Agreement,"

(Agreement No. 2017-06), which was recorded by the City on May 25, 2017, in the Kern County Official Records as Document Number 217066767, and recorded by LeOra LLC on June 13, 2017, in the Kern County Official Records as Document Number 217075798, ("LeOra Third Amendment"). The LeOra Third Amendment is not subject to this Third Amendment, nor does this Third Amendment affect the either the Hovnanian Third Amendment, as each involves separate property subject to the Development Agreement.

H. The Parties now desire to enter into this Third Amendment to the Development Agreement. For reference purposes only, the Parties have identified this amendment as the "Third Amendment to Development Agreement" ("Third Amendment" or "Westminster Third Amendment").

I. This Third Amendment specifically applies only to the real property legally described in Exhibit A to this Third Amendment.

J. The City has determined that this Third Amendment furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the General Plan. For the reasons recited herein, the City and Developer have determined that the project is a development for which an amendment to the Development Agreement is appropriate. It is also the intent of the Parties to clarify obligations for the Property and to resolve any potential claims against the City.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Third Agreement as if set forth in full herein.

2. Fees. The total cost for all permits, inspections, checks, fees and other charges associated in any way with the development of real property or the construction of improvements on lots thereon (collectively, "Fees") for single family residential lots within the Property shall remain capped at \$2,300 per lot in accordance with Section 5 of the First Amendment and shall not be affected by this Third Amendment. To the extent fees have not been addressed by the First Amendment, such as those related to non-single family residential lots, the Fees shall remain as set forth in the Development Agreement, Paragraph 3.6 (Exactions).

3. Term. Section 2.2 of the Development Agreement shall be amended to extend the term by an additional three (3) year period to July 3, 2026. Should a moratorium or any similar restriction on the issuance of building permits be imposed by any municipal or government agency that is applicable to the Property, the term of the Development Agreement shall be extended for a period equal to the length of the moratorium or restriction.

4. Notices. Section 12.1 of the Development Agreement shall be amended to change the address of the Developer, as follows:

Developer: Westminster Capital, Inc.
233 Wilshire Boulevard, Suite 525
Santa Monica, CA 90401
Attention: Greg Belzberg

With a copy to: Keenan Behrle
233 Wilshire Boulevard, Suite 400
Santa Monica, CA 90401

5. Remainder Unchanged. Except as specifically modified and amended in this Third Amendment, the Development Agreement as amended by the Parties remains in full force and effect and is binding upon the Parties.

6. Release. Parties, individually, and on behalf of its successors, trustees, creditors, and assigns, completely releases, acquits, and forever discharges the other Party, its agents, officers, employees, attorneys, successors, predecessors, insurers, and members of the governing board or council,

from any and all claims, rights, demands, obligations, liabilities, claims or causes of action of any and every kind, nature and character, whether known or unknown, whether in law or in equity, which it may have had, or ever had, or could in the future have against the other Party for any act or omission that occurred prior to entering into the Third Amendment, and which are in any way related to the Development Agreement as amended. This release contained herein is made notwithstanding Section 1542 of the California Civil Code which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The Parties expressly acknowledges that this release is intended to include without limitation, all claims and causes of action that a Party does not know or suspect to exist in his favor and that this release contemplates the extinguishment of all such claims and causes of action for any acts, omissions or events which are in any way related to the Development Agreement as previously amended and occurred prior to the effective date of the Third Amendment. To be clear, and notwithstanding any other language in this Third Amendment, this release only applies to claims, etc., related to i) the Development Agreement as amended; and ii) the Property. Further, no claims arising after the date of this Third Amendment (i.e., future claims) are being released by either Party.

7. No Default. The Parties each represent and warrant to the other that, as of the date of this Third Amendment, neither Party is aware of any breach or default (or with the giving of notice or the passage of time, of any event that could constitute a breach or default) of the other Party under the Development Agreement. Nothing in this Paragraph shall constitute a waiver of Developer's obligations to comply with the Development Agreement, including obligations to install any improvements that may be required by the Development Agreement as amended by the Parties, notwithstanding the passage of time.

8. Continuing Obligations. Developer shall comply with its Annual Review and other requirements of the Development Agreement as amended by the Parties.

9. No Admission of Liability. This Third Amendment and compliance with it, shall not operate or be construed as an admission by the City of any liability, misconduct, or wrongdoing whatsoever.

10. Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original, but all together shall constitute but one and the same agreement.

11. Successors. This Third Amendment shall be binding upon and inure to the benefit of the heirs, executors, successors and assigns of the Parties hereto.

IN WITNESS WHEREOF, the Parties have duly executed this Third Amendment on the day and year first above written.

CITY OF ARVIN,
a municipal corporation

By: _____
Jose Gurrola, Mayor

_____, 2018

ATTEST:

Cecilia Vela, City Clerk

WESTMINSTER CAPITAL, INC.,
a Delaware corporation

By: _____
Greggory Beitzberg, President and CEO

3/13, 2018

Note: Developer's signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations

See attached for notary.

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Shannon Chaffin, City Attorney

applicable to developer's business entity.

APPROVED AS TO FORM:

By: _____
Name:
Title:

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

By: _____
Shannon Chaffin, City Attorney

applicable to developer's business entity.

APPROVED AS TO FORM:

By: K. Beale
Name: KEENAN BEALE
Title: Attorney at Law

Exhibit A
Legal Description of Developer Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL A: APN 189-351-36 [PARCEL 1272 OF TRACT 5816]

PARCEL 1 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL B: APN 189-351-58 & 67 [CONSISTING OF 140 LOTS IN TRACT 5816, PHASE 11]

PARCEL 1 OF PARCEL MAP 11401 IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AS PER MAP RECORDED MAY 16, 2006 IN BOOK 54, PAGES 192 THROUGH 194, INCLUSIVE, OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

PARCEL C: APN 189-351-37 [PARCEL 1273 OF TRACT 5816]

PARCEL 2 AS SHOWN ON PARCEL MAP WAIVER NO. 1-00 AS EVIDENCED BY DOCUMENT RECORDED DECEMBER 21, 2000 AS INSTRUMENT NO. 00-162267 OF OFFICIAL RECORDS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 35, TOWNSHIP 31 SOUTH, RANGE 29 EAST, M.D.M., IN THE CITY OF ARVIN, COUNTY OF KERN, STATE OF CALIFORNIA AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER OF SECTION 35 A DISTANCE OF 660.35 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89° 49' 13" WEST ALONG SAID NORTH LINE A DISTANCE OF 305.08 FEET; THENCE SOUTH 00° 10' 47" WEST PERPENDICULAR TO SAID NORTH LINE A DISTANCE OF 965.00 FEET; THENCE SOUTH 89° 49' 13" EAST PARALLEL TO SAID NORTH LINE A DISTANCE OF 964.92 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 00° 12' 38" EAST ALONG SAID EAST LINE A DISTANCE OF 305.00 FEET TO A POINT WHICH LIES 660.00 FEET FROM THE NORTHEAST CORNER OF SAID NORTHWEST QUARTER OF SECTION 35; THENCE NORTH 89° 49' 13" WEST PARALLEL TO SAID NORTH LINE A DISTANCE OF 660.00 FEET; THENCE NORTH 00° 10' 47" EAST A DISTANCE OF 660.00 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM ALL OIL, GAS AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND AS EXCEPTED BY ANN DERBY TIPTON AND EVE DERBY STOCKTON IN DEED RECORDED MAY 24, 1960 IN BOOK 3269, PAGE 798 OF OFFICIAL RECORDS.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

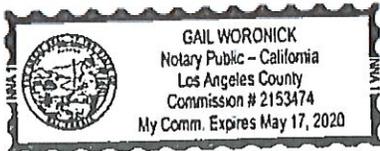
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Los Angeles)
On 5/13/18 before me, Gail Woronick, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Greggory Belzberg
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Public Hearing Notice
City of Arvin City Council

Date: May 01, 2018

Place: City of Arvin Council Chambers, 200 Campus Drive, Arvin, CA 93203

Time: 6:00 PM

Notice is hereby given that the City Council of the City Arvin will conduct the hearings at the date, place and time mentioned above for the following items:

1. An Uncodified Ordinance for the Third Amendment to Development Agreement (“Third Amendment”) between Westminster Capital, Inc., a Delaware Corporation, and the City of Arvin. This is an amendment to the original Development Agreement recorded July 3, 2003, and affects the property generally depicted in the diagram below.

Project Location/Diagram: The Third Amendment covers the property generally depicted here, located South of Sycamore Drive on the West Side of Meyer Street:



Applicant/Property

Owner: Applicant

Representative:

Keenan Behrle, 233

Wilshire Boulevard,

Suite 400 Santa

Monica, CA 90401.

Property Owner:

Westminster Capital,

Inc. (Greg Belzberg)

233 Wilshire

Boulevard, Suite 525

Santa Monica, CA

90401.

Any person wishing to address the City Council may provide oral and/or written testimony at the meeting, or submit written comments to the City Clerk Office at the above said address.

Notice Limiting Legal Challenge: Written comments must be received at the above address at, or prior to the meeting date and time. If you challenge the City’s action on these projects in court, you may be limited to raising those issues you or someone else raised at the Public Hearing described in this notice or in written correspondence delivered to the City at or prior to the Public Hearing (Government Code Section 65009).

Cecilia Vela

Clerk to the City Council

Published on April 13, 2018



Transit Recap FY 2016-2017

CITY ROUTE

PASSENGERS : 37,645 (34,671 prior year)

ON TIME PERCENTAGE: 99

PASSENGERS/HOUR: 25

BUSIEST MONTH: OCTOBER (3,944)



Transit Recap FY 2016-2017

DIAL-A-RIDE

PASSENGERS : 6,816 (5,298 prior year)

ON TIME PERCENTAGE: 99

PASSENGERS/HOUR: 15

BUSIEST MONTH: AUGUST (905)



Transit Recap FY 2016-2017

LAMONT

PASSENGERS : 15,341 (14,736 prior year)

ON TIME PERCENTAGE: 98

PASSENGERS/HOUR: 28

BUSIEST MONTH: OCTOBER (1,990)



Transit Recap FY 2016-2017

TEJON

PASSENGERS : 7,189 (8,358 prior year)

ON TIME PERCENTAGE: 100

PASSENGERS/HOUR: 20

BUSIEST MONTH: APRIL (953)



Transit Recap FY 2016-2017

BAKERSFIELD COLLEGE

PASSENGERS : 3,112 (2,522 prior year)

ON TIME PERCENTAGE: 99

PASSENGERS/HOUR: 28

BUSIEST MONTH: OCTOBER (342)



Transit Recap FY 2016-2017

REVENUE AND EXPENSES

FARE BOX : \$56,590 (\$76,588 in 15/16)

(revenue decreased due to sponsored free-pass program)

EXPENSES: \$749,813 (17/18 projected \$660,696)

(shortfall of revenue/expense is covered by TDA grant)

PASSENGER MILES: 127,581 (124,984 prior yr)



Transit Recap FY 2016-2017

FUTURE PLANS AND NOTES

Building is all solar (only transit agency in KernCo.)

New service route started on April 30:

Arvin to Walmart/Panama

Arvin is applying using SB-1 funds and other grants for two electric powered busses

City of Arvin

Transit Service Evaluation

May 2017

Service Overview

Since 1979, the City of Arvin has operated a community-based public transit program designed to provide mobility for residents and visitors to Arvin. The current transit program offers a two-tiered service approach comprised of fixed-route and demand-response services.

Arvin Transit provides four local and intercity routes which operate Monday through Friday except on 13 designated holidays.

- Arvin Local – The Arvin Local route operates on a loop within the city of Arvin between 7:00 a.m. and 4:30 p.m. The route begins and ends at the City’s Transit Department building. The service operates with a 30-minute frequency throughout the day, offering 19 circuits/day with a headway of 26 minutes. During the first and last hour of service, the route operates on a deviated fixed-route basis to fulfill the requirements of the Americans with Disabilities Act (ADA).
- Arvin-Lamont – The Arvin-Lamont route operates on a loop within the city of Arvin and then extends into the unincorporated community of Lamont; traveling between the two via Comanche Drive and Di Giorgio Road. The route begins and ends at the City’s Transit Department building, with stops at activity points in Lamont and Arvin. The route operates every two hours between 7:00 a.m. and 4:00 p.m., offering six round trips/day with a varying headway of 52-56 minutes. The first trip of the day is operated as an express trip to Lamont. Within Lamont, the service operates on a deviated fixed-route basis.
- Arvin-Tejon/IKEA Industrial – The Arvin-Tejon route links Arvin with the Tejon Ranch/IKEA Industrial complex located along Interstate 5, approximately 15 miles to the southwest of Arvin. Each round trip begins and ends at the City’s Transit Department building. Two round trips are provided each weekday, with the first departing Arvin at 4:10 a.m. and the last departing Arvin at 1:05 p.m. The route includes an on-call stop at the intersection of State Routes 223 and 184 west of Arvin. Average runtime is 35 minutes one-way.
- Arvin-Bakersfield – The Arvin-Bakersfield route connects Arvin with Bakersfield College; with additional stops at Bakersfield Adult School (on-call stop), Kern Medical Center, and downtown Bakersfield. It offers connections to GET, Kern Transit, Amtrak, and Greyhound. The route begins and ends at the City’s Transit Department building. Two round trips are provided each weekday, with the first departing Arvin at 8:00 a.m. and the last departing Arvin at 11:30 a.m.

The City’s Dial-A-Ride service is open to persons with ADA-certified disabilities as well as persons age 65 and older for trips within the city of Arvin. This demand-response service is offered from 8:00 a.m. until 3:30 p.m. on weekdays, excluding designated holidays. This is a shared-ride, reservation-based service.

Arvin Transit utilizes a fleet of six vehicles, all of which are ADA-accessible. Two vehicles feature seating for 40 passengers; three vehicles hold up to 28 passengers; and the single Dial-A-Ride vehicle has a capacity of 16 passengers (or 14 passengers plus two tie-down spots).

Limited weekday connections with Kern Transit’s regional/inter-community service (Route 140) are available in Arvin, while more frequent service is provided between Lamont and Bakersfield via Kern Transit’s Routes 140 and 145. Kern Transit also provides weekend service to Arvin and Lamont (Route 142), with service every 75 minutes throughout most of the day. Connections with Golden Empire Transit can be made in downtown Bakersfield, as well as connections with Greyhound bus, Amtrak rail, and Amtrak Thruway bus.

Current fares for Arvin Transit services are shown in Exhibit 1.

Exhibit 1 Fare schedule

Fare Category	Local	Lamont	Tejon	Bakersfield	Dial-A-Ride
General public	\$1.00	\$1.50	\$2.00	\$3.00	N/A
Seniors (65+)	\$0.75	\$1.00	N/A	\$2.00	\$1.00
ADA-certified	\$0.75	\$1.00	N/A	\$2.00	\$1.00
ADA attendant	Free	Free	N/A	Free	Free
Children 5 and under	Free	Free	N/A	Free	Free
Monthly pass – General public	\$45.00	\$45.00	\$45.00	\$90.00	N/A
Monthly pass – Senior/ADA	\$30.00	\$30.00	N/A	\$80.00	\$30.00

IKEA purchases a monthly pass for any employee wishing to use Arvin Transit as a commute alternative. This revenue supports achievement of the TDA-mandated farebox standard for the Arvin – Tejon route.

Purpose of Study

The goal of this “white paper” is to provide an objective evaluation of the City of Arvin’s transit program. The goal is to review service performance trends as well as productivity and efficiency as compared to like-peers. In addition, the City would like to determine the following:

- Are routes operating at maximum efficiency?
 - Which should be expanded?
 - Which should be reduced or eliminated?
- Are employees being utilized efficiently?
- Is there a need for the level of oversight that is provided?
- Is the use of the transit building efficient or even necessary?

System Performance Evaluation

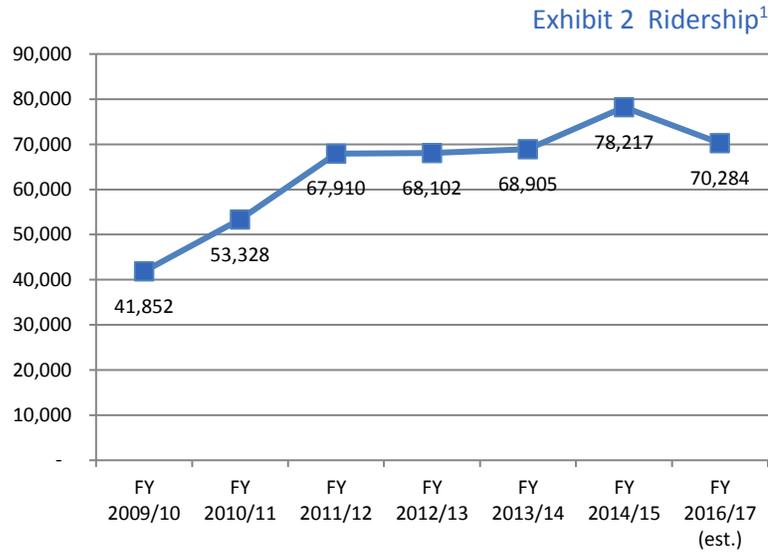
FY 2014/15 data is used for the performance evaluation so that performance can be objectively compared against like-peers. Additional data from FY 2015/16 and FY 2016/17 (YTD) is also included as appropriate. FY 2009/10 through FY 2014/15 data is taken from the City’s most recent Triennial Performance Audit (2016).

Annual ridership for Arvin Transit increased significantly between FY 2009/10 and FY 2011/12, then plateaued for several years. Ridership for FY 2016/17 is expected to reach almost 70,000 unlinked trips. Declining ridership is a challenge for transit programs nationwide, as well as throughout California. Key contributors to ridership decline include:

- Decline in fuel prices,
- Lower cost of vehicle acquisition,
- Changes in California driver license laws,

- Increased mobility options (Lyft, Über, private shuttles, etc.), and
- Changes in traditional employment patterns.

In other words, the decline in the City’s transit ridership is not unique. Rather, Arvin Transit’s decline rate is less than many other small non-urbanized transit programs.

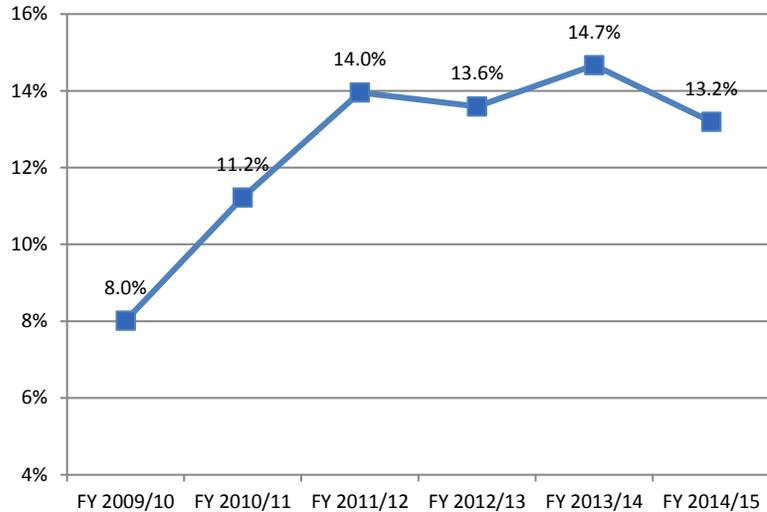


¹ FY 2016/17 ridership is an estimate for the year based on data from July 2016 through February 2017.

Arvin Transit’s farebox recovery ratio experienced a similar increase between FY 2009/10 and FY 2011/12, followed by modest variation/variance in subsequent years. It has remained above 10 percent since FY 2010/11, which is the threshold for compliance with the Transportation Development Act (TDA) for non-urbanized (aka rural) transit operators.

Overall, the City’s farebox recovery ratio stands at 30-40 percent above the TDA-mandated threshold and compares favorably with like-peers. The slight decline in FY 2014/15 may be attributed to an increase in the number of senior riders given the increased popularity of “aging in place.” “Senior” riders pay a lower fare

Exhibit 3 Farebox recovery ratio



Operating cost/vehicle service hour experienced a gradual increase, peaking in FY 2012/13 and declining subsequently. A decline in operating cost/VSH is reflective of improved program efficiency. Arvin’s operating cost/VSH compares favorably with like-peers. This is particularly noteworthy given the City’s aging transit fleet.

Exhibit 4 Operating cost/vehicle service hour



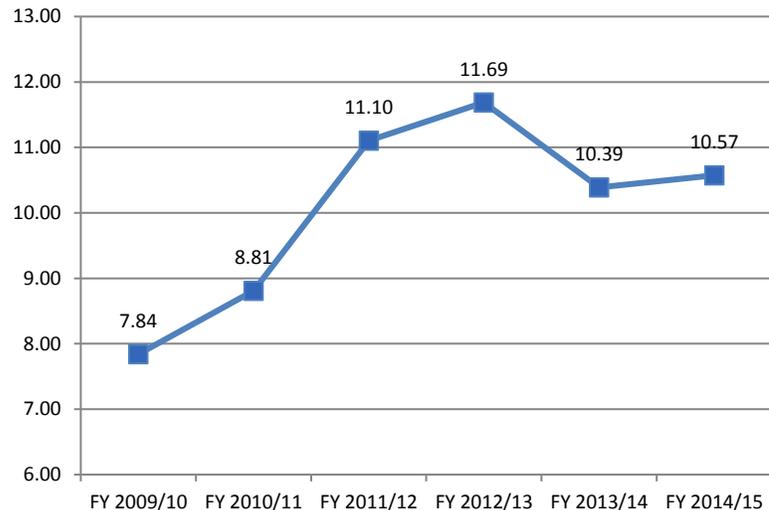
Operating cost/vehicle service mile has experienced greater volatility, peaking in FY 2012/13. For four of the evaluated six years, this metric remained between four and five dollars per VSM. A decline in operating cost/VSM indicates improved program efficiency. This is notable given the City’s aging transit fleet.

Exhibit 5 Operating cost/vehicle service mile



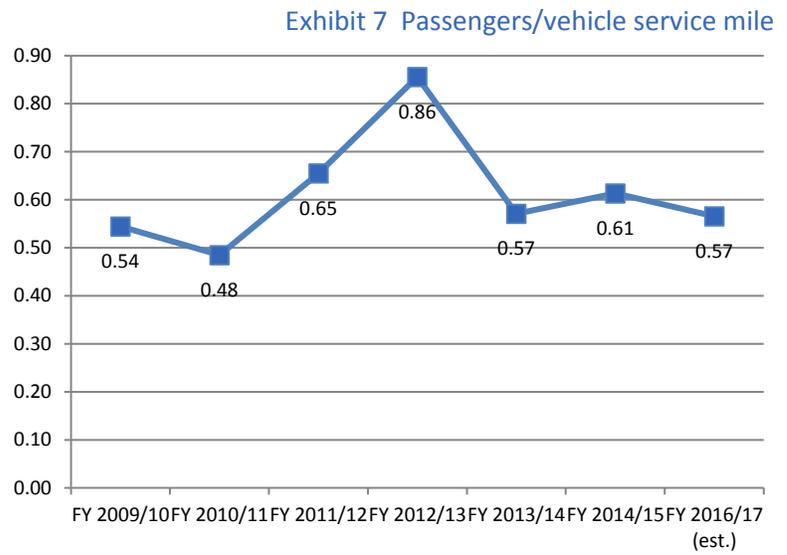
Passengers/vehicle service hour posted a significant increase between FY 2009/10 and FY 2012/13, which is reflective of the overall ridership growth. While it declined somewhat in FY 2013/14, this performance metric rebounded the following year. An increase in passengers/VSH indicates improved productivity in transit operations.

Exhibit 6 Passengers/vehicle service hour



Passengers/vehicle service mile experienced a significant increase in FY 2012/13. Except for this one year, this performance metric remained between 0.48 and 0.65. An increase in passengers/VSM indicates improved productivity in transit operations.

We consider the significant spike in FY 2012/13 an anomaly as it is not borne out by similar performance reported by other small transit operators in Kern County.



Peer Comparison

FY 2014/15 data has been used for the peer comparison as it was the latest year available for each of the selected peers. Peers were selected chiefly on the geographic area served, with the overall size and scope of the transit program a secondary consideration. All peers are located in rural communities within California and feature low population density and limited road networks. Peers offer similar program offerings (fixed-route and dial-a-ride), similar service area population, and similar vehicle service hours.

Exhibits 8 through 16 illustrate a comparison between Arvin Transit and like-peers for a series of performance metrics and indicators. The horizontal red line in each graph is the average of all peers for that metric/indicator.

Overall, Arvin Transit is performing as well as or better than the like-peers. In each case, Arvin Transit’s performance is better than the peer average.

Exhibit 8 Operating Cost

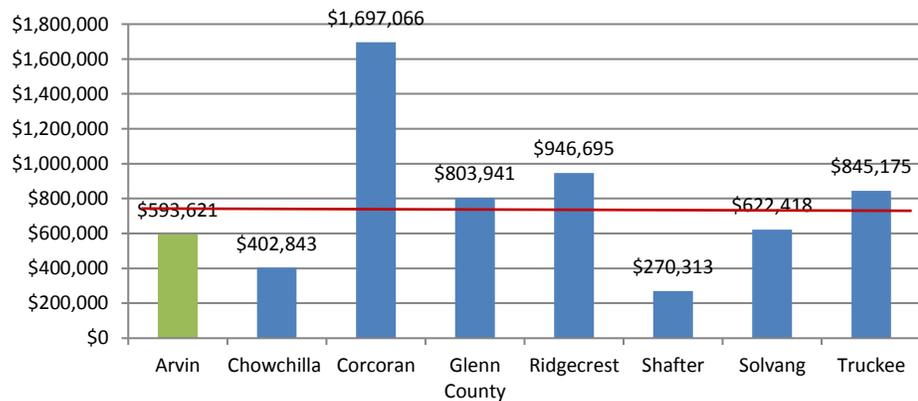
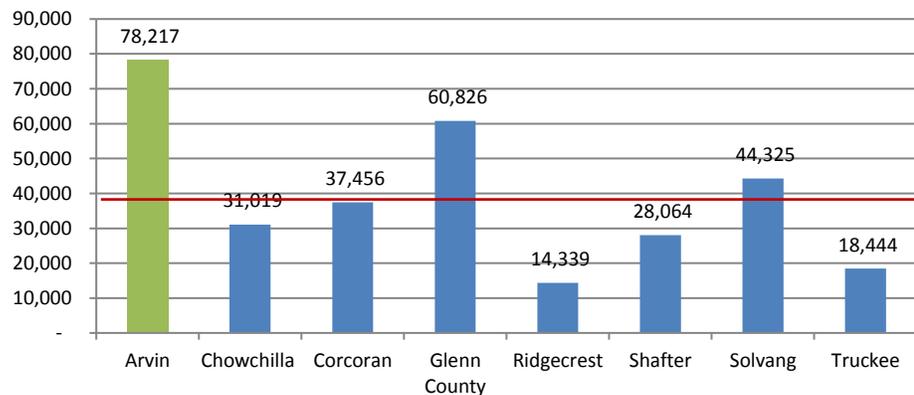
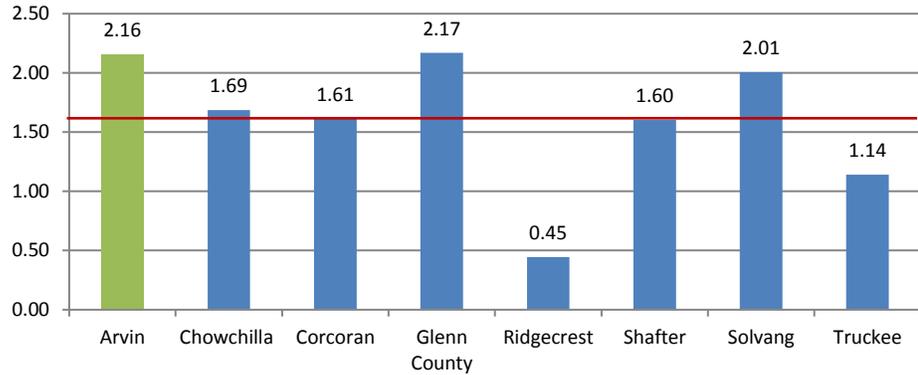


Exhibit 9 Ridership



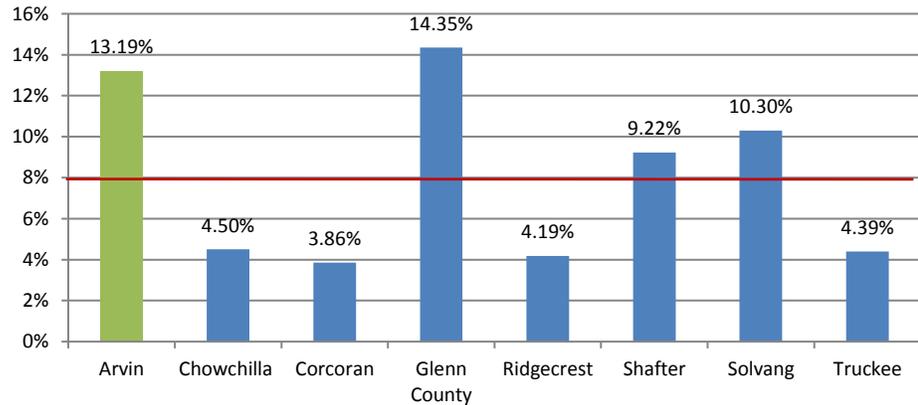
When the populations of Arvin and Lamont are combined, Arvin Transit ranks second in terms of unlinked trips per capita. A metric of 2.16 indicates an annual ridership twice that of the combined population. Excluding Lamont’s population, Arvin’s metric increases to 3.85 unlinked trips per capita, or nearly four times the City’s population.

Exhibit 9 Unlinked trips/capita



Arvin’s farebox recovery ratio stands nearly 65 percent above the peer average.

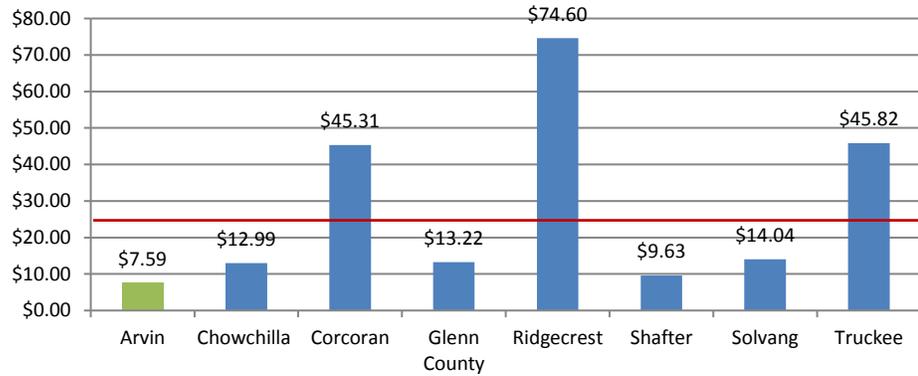
Exhibit 10 Farebox recovery ratio²



² In FY 2014/15, Ridgecrest and Truckee both reported significant amounts of Special Transit Fares (not reflected on this graph), which allowed each operator to meet TDA-mandated farebox recovery ratio.

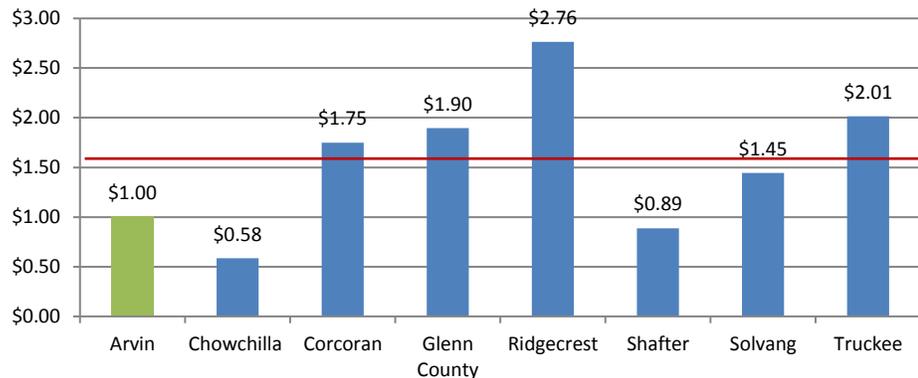
Arvin Transit had the lowest operating cost/passenger of all like-peers. While close to that of Shafter, Arvin Transit’s cost/passenger is approximately one-tenth that of Ridgecrest.

Exhibit 11 Operating cost/passenger



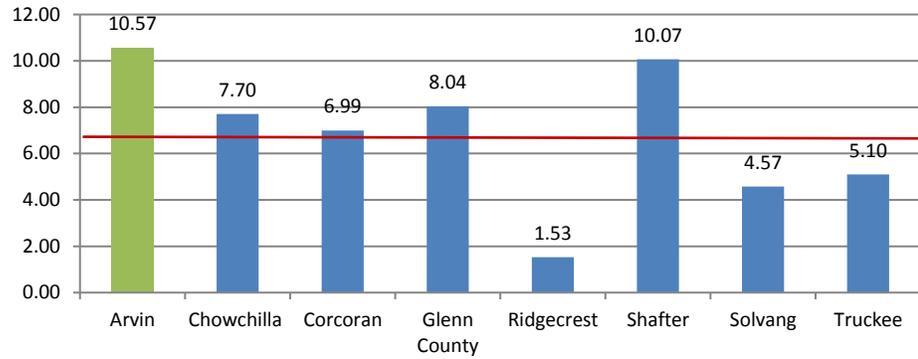
Arvin Transit’s revenue of one dollar/passenger is less than that of five of the like-peers. While there may be an opportunity for a modest fare increase, many times an increase in pricing will result in a decline in ridership. Further, given the perceived socio-demographics of Arvin Transit’s riders, any significant fare increase could be considered regressive in nature and could trigger environmental justice issues.

Exhibit 12 Fare revenue/passenger



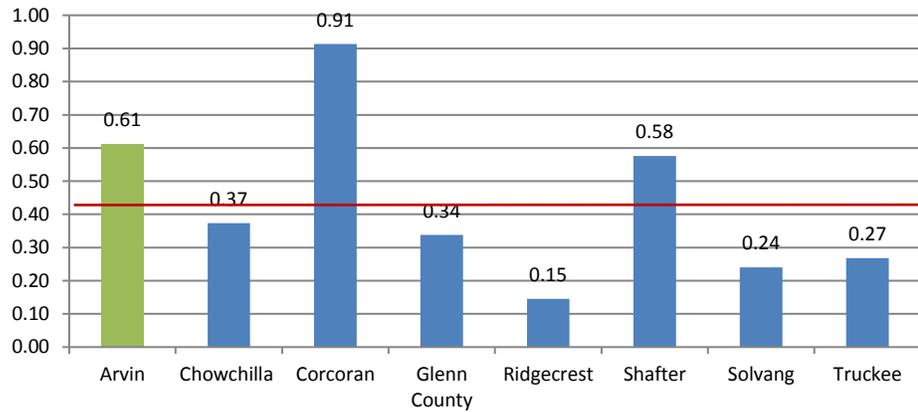
Arvin Transit had the highest passengers/vehicle service hour of all the peer operators, which suggests well-balanced service offerings and pricing. Passengers/VSH is a key measure of productivity.

Exhibit 13 Passengers/vehicle service hour



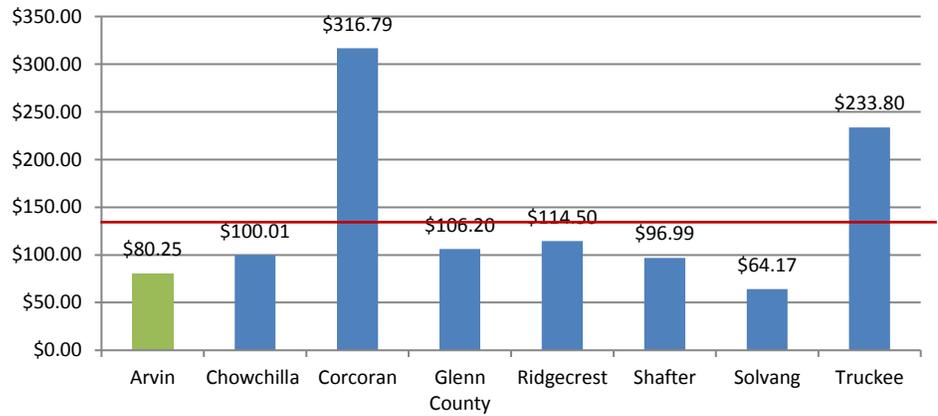
Arvin Transit's high passengers/vehicle service mile suggests appropriate service levels (i.e., number of daily runs/trips and service span).

Exhibit 14 Passengers/vehicle service mile



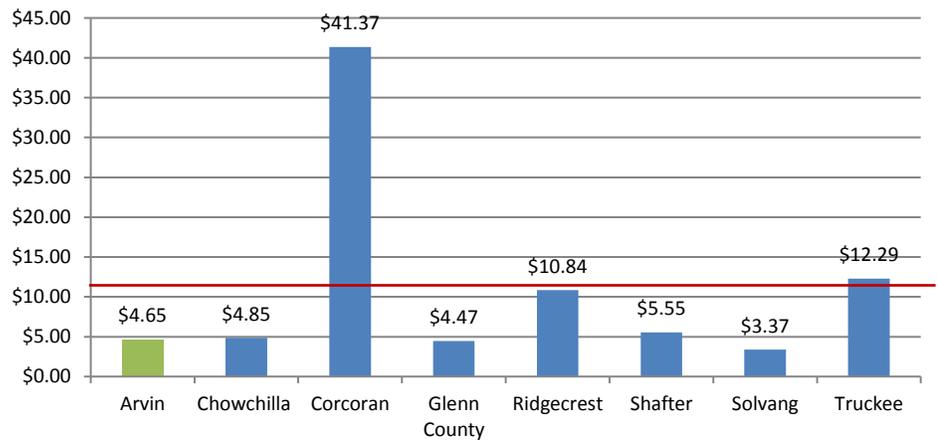
Even if the two highest peers are excluded, Arvin Transit compares favorably with respect to operating cost/VSH.

Exhibit 15 Operating cost/vehicle service hour



Arvin Transit’s operating cost/vehicle service mile ranks third-lowest among the peers, and is lower than other Kern County operators.

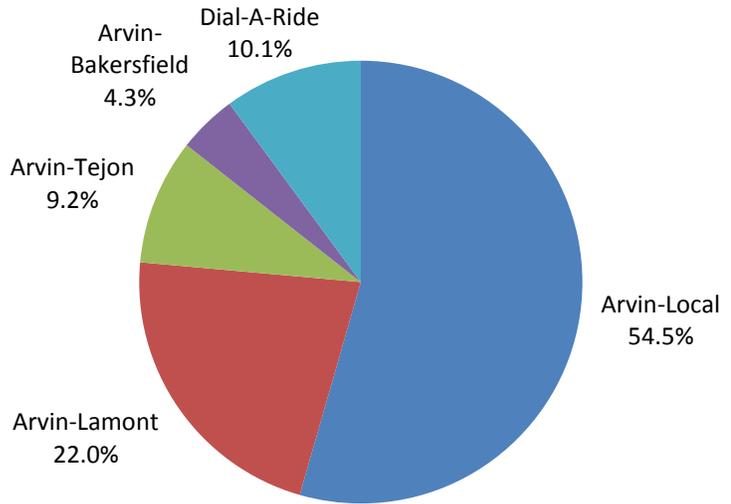
Exhibit 16 Operating cost/vehicle service mile



Route Performance

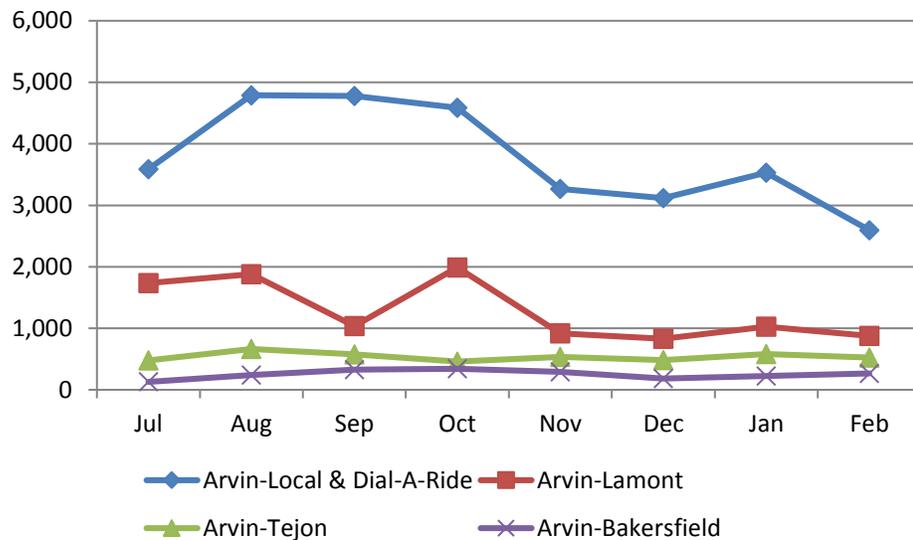
Ridership on the Arvin-Local route accounts for more than 50 percent of Arvin Transit’s total annual ridership. If Dial-A-Ride ridership is factored in, local customers (traveling within Arvin) comprise 64.6 percent of total ridership, which is not surprising. The Arvin-Lamont route accounts for another 22 percent, while the remaining 13.5 percent of ridership occurs outside of the area: Tejon Ranch/IKEA and Bakersfield.

Exhibit 17 FY 2016/17 (YTD) rider distribution



Ridership can vary considerably due to seasonal variances. This is especially noticeable on the Arvin-Lamont route, which saw a significant decrease in September 2016, followed by another decrease in November 2016. While there was a rebound in October, ridership did not fully recover after the second drop. A similar pattern was noted for the local service, which saw a drop in November 2016. Decreased ridership during the holidays is not uncommon, but ridership erosion is often reversed by the start of a new semester or school year. Ridership could also be affected by agricultural employment levels within the service area.

Exhibit 18 FY 2016/17 (YTD) ridership by route



Arvin Local and Dial-A-Ride services are the workhorses of the system, carrying the lion’s share of customers. Arvin-Lamont offers an important connection and supports travel between Lamont and Arvin for shopping, healthcare, education, etc. The Arvin-Tejon route, while a modest share of total system ridership, should continue to operate as long as IKEA continues to subsidize operating cost through the purchase of monthly transit passes. The Arvin-Bakersfield route has the lowest ridership. However, this route provides Arvin resident access to post-secondary education and vocational training as well as connections to regional and national transportation networks. Although Arvin Transit is limited to weekday-only service, we believe this remains the appropriate service level.

Program Administration

The City’s transit program is currently staffed by a full-time Transit Manager, one full-time Transit Clerk, four full-time drivers, and one part-time driver. The current Transit Manager, who has been in the position for five years, also serves as the Safety Manager and Fleet Manager. This cross-functionality allows the program to function effectively with reduced staffing, offering a considerable cost savings to the City. Drivers are trained to operate each different transit vehicle as well as cross-trained to cover dispatching and other administrative tasks. This level of staffing is very appropriate for a transit program this size, and has resulted in efficient and productive service delivery.

Arvin Transit is fully funded by state and federal grants and allocations, farebox revenues, and route guarantees. As a result, the City’s transit program does not use any General Fund monies. The current fleet was 100 percent funded by federal transportation dollars, thereby having no fiscal impact on the City. Likewise, the transit building/office was 100 percent paid for with federal transportation dollars.

Across the past five years, the City has received consistent “Satisfactory” terminal inspection ratings by the California Highway Patrol, has had no Unmet Transit Needs findings, and has not required any use of General Fund money for transit operations.

Transit operations are coordinated out of the Transit Department building located on Plumtree Drive at Bear Mountain Blvd. All routes begin and end at this location, which also houses the Transit Manager, customer service information, restrooms, and driver area. A small waiting area provides a sheltered location to wait for the bus, which is important given the climatic conditions found in Arvin.

Conclusions

Based on our review of Arvin Transit’s recent performance, both on its own and as compared to like-peers, we conclude the transit program is performing well, is providing an appropriate level of service for the size and nature of the community, is appropriately staffed, and is sustainable. Each individual route provides an appropriate level of service given its nature. The Transit Department building provides both a facility for transit operations as well as a comfortable and convenient connection point for customers. Partnerships with employers such as IKEA offer additional revenue streams, which enhance sustainability and help ensure compliance with the TDA. In addition, the presence of a Transit Manager who can also effectively function as Safety Manager **and** Fleet Manager is extremely valuable, as it allows the transit program to operate effectively using fewer personnel.

We commend the City for its success in operating a sustainable rural transit program, and do not recommend any changes to service delivery, fares, or staffing levels at this time.