



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

**TUESDAY JULY 03, 2018 6:00p.m.  
CITY HALL COUNCIL CHAMBERS  
200 CAMPUS DRIVE, ARVIN**

**CALL TO ORDER**

Mayor Jose Gurrola

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

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**ROLL CALL**

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

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**STAFF**

Richard G. Breckinridge	Interim 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.

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### **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. CONSENT AGENDA ITEM(S)

- A. Approval of Demand Register(s) of June 16, 2018 – June 29, 2018.
- B. Approval of Payroll Register(s) of June 29, 2018.
- C. Approval of the Minutes of the Special Meeting(s) of June 19, 2018 and Regular Meeting(s) of June 19, 2018.
- D. Approval of A Resolution of the City Council of the City of Arvin Requesting the Board of Supervisors of the County of Kern to Consolidate a General Municipal Election to be Held on Tuesday November 06, 2018 with the Statewide General Election to be Held on the Same Date.
- E. Approval of A Resolution of the City Council of the City of Arvin Accepting the Work Completed by Bowman Asphalt, and Filing the Notice of Completion for the Walnut Street Extension Project; Approving the Final Contract Amount of \$4,031,153.60; Authorizing the City Manager to Execute the Notice of Completion and the City Clerk to File the Notice of Completion Within 15 days of Acceptance; and Authorizing the Release of the Retention to Bowman Asphalt Immediately After the Filing of the Notice of Completion.
- F. Approval of A Resolution of the City Council of the City of Arvin Authorizing the Augmentation of the Fiscal Year 18/19 Budget, Finding a CEQA Class 1 Categorical Exemption, and the Execution of A Construction Contract with Griffith Company for the Construction of the DiGiorgio Sidewalk Project.
- G. Approval of A Resolution of the City Council of the City of Arvin Finding a CEQA Class 1 Categorical Exemption, and the Execution of a Construction Contract with Cen-Cal Construction of the Veolia Wastewater Treatment Plant Pavement Project.
- H. Approval of Lease Agreement with Scott Milliam and Arturo Hinojosa, doing business as “Golden Tiger Karate,” for space at Community Center, Room #2, 2 to provide martial art classes at a reduced rate for the citizens of Arvin.

I. Approval of New Job Description(s) and Related Salary Step Schedule Rates.

Staff recommends approval of the Consent Agenda.

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

Roll Call: CM Robles \_\_\_\_ CM Madrigal \_\_\_\_ CM Martinez \_\_\_\_ MPT Ortiz \_\_\_\_ Mayor Gurrola \_\_\_\_

**4. PUBLIC HEARING ITEM(S)**

A. Public Hearing to Consider Introduction, by Title Only, of an Ordinance of the City Council of the City of Arvin to Adopt Text Amendment No. 2017-04, An Oil and Gas Ordinance for Regulation of Petroleum Facilities and Operations, by Repealing Chapter 17.46, Title 17, and Adding Chapter 17.46 to Title 17, of the Arvin Municipal Code. (City Planner)

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

Motion \_\_\_\_\_ Second \_\_\_\_\_ Vote \_\_\_\_\_

Roll Call: CM Robles \_\_\_\_ CM Madrigal \_\_\_\_ CM Martinez \_\_\_\_ MPT Ortiz \_\_\_\_ Mayor Gurrola \_\_\_\_

**5. STAFF REPORTS**

**6. COUNCIL MEMBER COMMENTS**

**7. 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 June 29, 2018.



Cecilia Vela, City Clerk

# Edit List of Invoices - Summary

DEMAND LIST 06/20/2018

Date: 06/20/2018

Time: 1:17 pm

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City of Arvin

Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
47143	ALLSTATE		06/20/2018		06/20/2018	POST TAX MAY 2018	
		CASE#91936	POST TAX MARCH 2018				350.73
						Vendor Total:	350.73
47148	ARVIN CHAMBER OF COMMERCE		06/20/2018		06/20/2018	REFUND DEPOSIT VET'S HALL 6.1	
		REIMBURSEMENT RECEIPT#30880					350.00
						Vendor Total:	350.00
47149	ARVIN POLICE OFFICERS		06/20/2018		06/20/2018	COA UNION DUES 6.1.18-6.15.18	
		COA UNION DUES 6.1.18-6.15.18					600.00
						Vendor Total:	600.00
47144	AT&T		06/20/2018		06/20/2018	CALNET 3 A#9391060015 SVC 5/18	
		000011425847					180.29
47145	AT&T		06/20/2018		06/20/2018	CALNET 3 A#9391059040 SVC 5/18	
		000011425616					271.50
47146	AT&T		06/20/2018		06/20/2018	CALNET 3 A#9391033189	
		000011493255					360.34
47147	AT&T		06/20/2018		06/20/2018	CALNET 3 A#9391056024	
		000011495018					521.39
						Vendor Total:	1,333.52
47155	CALIFORNIA SOCIETY OF		06/20/2018		06/20/2018	INTERMEDIATE GOVERNMENTAL	
		INTERMEDIATE GOV. ACCT. 7.26					150.00
						Vendor Total:	150.00
47151	CENTRAL CALIF. ASSOC. PUBLIC		06/20/2018		06/20/2018	COA UNION DUES 6.15.18	
		COA UNION DUES 6.15.18					676.41
						Vendor Total:	676.41
47152	COPOWER		06/20/2018		06/20/2018	CHIRO SVC. JULY 2018	
		753001					158.66
						Vendor Total:	158.66
47162	ENERGY SERVICE PARTNERS INC.		06/20/2018		06/20/2018	SUBMITTED THE SAME ADDRESS	
		REIMBURSEMENT RECEIPT#31081					95.00
						Vendor Total:	95.00
47153	FEDEX		06/20/2018		06/20/2018	FED EX SVC. MAY-JUNE 2018	
		6-215-14611					297.52
						Vendor Total:	297.52
47154	FIKTER, PERLA		06/20/2018		06/20/2018	CSMFO INTERMEDIATE GOV.	
		7.26.18 CSMFO TRAINING					75.00
						Vendor Total:	75.00
47150	FRANCHISE TAX BOARD		06/20/2018		06/20/2018	WITHHOLDING ORDER 6.15.18	
		WITHHOLDING ORDER 6.15.18					150.00
						Vendor Total:	150.00
47157	JTS TRUCKING REPAIR		06/20/2018		06/20/2018	MAINTENANCE FLEET#207	
		219140					556.93
47158	JTS TRUCKING REPAIR		06/20/2018		06/20/2018	MAINTENANCE FLEET#207	
		219120					664.09
						Vendor Total:	1,221.02
47160	KERN COUNTY ANIMAL SERVICES		06/20/2018		06/20/2018	CONTRACT FEE JAN-MAR 2018	
		R18-043579					18,500.00
						Vendor Total:	18,500.00

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47161	KERN COUNTY SHERIFF'S OFFICE		06/20/2018		06/20/2018	LEVYING OFFICER FILE#2018064+	
		FILE#2018064450	6.15.18				213.24
						Vendor Total:	213.24
47142	LOCAL GOVERNMENT COMMISSION		06/20/2018		06/20/2018	CALTRANS SRTS PLANNING	
		100521					933.21
						Vendor Total:	933.21
47163	MOUNTAINSIDE DISPOSAL		06/20/2018		06/20/2018	PROPERTY TAXES 6.6.18	
		PROPERTY TAXES 6.6.18					5,697.14
						Vendor Total:	5,697.14
47164	MUNICIPAL CODE CORPORATION		06/20/2018		06/20/2018	ADMIN SUPPORT FEE	
		00310276					350.00
						Vendor Total:	350.00
47165	PACIFIC TIRE ARVIN		06/20/2018		06/20/2018	MAINTENANCE FLEET #205	
		20836					325.31
						Vendor Total:	325.31
47166	PG & E		06/20/2018		06/20/2018	SVC. 5.11.18-6.11.18	
		A#9132070691-3	6.12.18				31.46
47167	PG & E		06/20/2018		06/20/2018	SVC. 5.11.18-6.11.18	
		A#6632224172-1	6.12.18				4,273.60
47168	PG & E		06/20/2018		06/20/2018	SVC. 5.11.18-6.11.18	
		A#6358251136-4	6.12.18				145.42
47169	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#9083999874-8	6.12.18				312.89
47170	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#8517683481-1	6.12.18				91.59
47171	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#7132070819-2	6.12.18				23.73
47172	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#6747823013-8	6.12.18				98.89
47173	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#7235938816-1	6.12.18				429.49
47174	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#5242161718-5	6.12.18				81.47
47175	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#4601018108-2	6.12.18				802.75
47176	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#4923752229-4	6.12.18				10.51
47177	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#5673737579-2	6.12.18				10.51
47178	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#4157630593-6	6.12.18				54.25
47179	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#5106956658-9	6.12.18				56.12
47180	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#2124436632-0	6.12.18				446.11
47181	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#2703896446-9	6.12.18				10.51
47182	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#1486138462-0	6.12.18				204.84
47183	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#2402723819-5	6.12.18				10.51
47184	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#0048737939-8	6.12.18				190.16
47185	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#1673746179-4	6.12.18				825.39
47186	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#1090419141-7	6.12.18				10.51
47187	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#1215425391-3	6.12.18				10.53
47188	PG & E		06/20/2018		06/20/2018	SVC. 5.12.18-6.12.18	
		A#1840419093-8	6.12.18				10.62

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount	
47189	PG & E		06/20/2018		06/20/2018	SVC. 5.16.18-6.14.18		
		A#6226711721-6	6.14.18				75.61	
47190	PG & E		06/20/2018		06/20/2018	SVC. 5.16.18-6.14.18		
		A#7149339108-1	6.14.18				4,357.75	
47191	PG & E		06/20/2018		06/20/2018	SVC. 5.16.18-6.14.18		
		A#9853233499-6	6.14.18				20.51	
						Vendor Total:	12,595.73	
47192	PRO AIR		06/20/2018		06/20/2018	AC REPAIR-TRANSIT		
		16608					702.76	
						Vendor Total:	702.76	
47193	PURCHASE POWER		06/20/2018		06/20/2018	POSTAGE REFILL 6.11.18		
		A#8000-9000-0054-0157	6.11.18				500.00	
						Vendor Total:	500.00	
47194	VANTAGE POINT TRANSFER AGENTS		06/20/2018		06/20/2018	457K CONTRIBUTION/LOAN 6.15.18		
							257.95	
						Vendor Total:	257.95	
							Grand Total:	45,533.20
							Less Credit Memos:	0.00
							Net Total:	45,533.20
							Less Hand Check Total:	0.00
							Outstanding Invoice Total:	45,533.20
Total Invoices: 51								

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
47196	ADOBE PLAZA REFUND		06/28/2018		06/28/2018	EVENT REIMBURSEMENT 8/25/18	
						REIMBURSEMENT RECEIPT#30848	50.00
						Vendor Total:	50.00
47195	ADVANCED PLUMBING		06/28/2018		06/28/2018	PLUMBING SERVICE-PLANNING [	
		206923					1,524.00
						Vendor Total:	1,524.00
47197	AMERICAN BUSINESS MACHINES		06/28/2018		06/28/2018	TONER-TRANSIT	
		395315					8.00
						Vendor Total:	8.00
47254	ARVIN POLICE OFFICERS		06/28/2018		06/28/2018	COA UNION DUES 6.29.18	
						COA UNION DUES 6.29.18	300.00
						Vendor Total:	300.00
47198	BEAR MT. FENCE CO.		06/28/2018		06/28/2018	FENCE INSTALLED-SUMP	
		6024					960.00
						Vendor Total:	960.00
47199	BOB MURRAY & ASSOCIATES		06/28/2018		06/28/2018	CITY MANAGER POSITION	
		7763					8,843.66
						Vendor Total:	8,843.66
47200	BROADLUX, INC		06/28/2018		06/28/2018	O&M FUEL SERVICE JUNE 2018	
						BR911732-41	252.50
47201	BROADLUX, INC		06/28/2018		06/28/2018	O & M FUEL SERVICES JULY 2018	
						BR911732-42	252.50
47202	BROADLUX, INC		06/28/2018		06/28/2018	O & M FUEL SERVICES MAY 2018	
						BR911732-40	252.50
						Vendor Total:	757.50
47204	BSSR, INC.		06/28/2018		06/28/2018	DIESEL GAUGE REPAIR	
		31028					1,193.39
						Vendor Total:	1,193.39
47203	C & T AUTOMOTIVE, INC		06/28/2018		06/28/2018	MAINTENANCE FLEET#315	
		900024512					189.43
47205	C & T AUTOMOTIVE, INC		06/28/2018		06/28/2018	MAINTENANCE FLEET #301	
		900024587					34.50
						Vendor Total:	223.93
47206	CENTRAL CALIF. ASSOC. PUBLIC		06/28/2018		06/28/2018	COA UNION DUES 6.29.18	
						COA UNION DUES 6.29.18	643.83
						Vendor Total:	643.83
47207	CLARK PEST CONTROL		06/28/2018		06/28/2018	PEST CONTROL SVC. VET'S HALL	
						VETS HALL 6.20.18	80.00
47208	CLARK PEST CONTROL		06/28/2018		06/28/2018	PEST CONTROL SVC. COMM. CEI	
						COMM. CENTER 6.20.18	100.00
						Vendor Total:	180.00
47209	CLEAN CUT LANDSCAPE MANAGEMENT		06/28/2018		06/28/2018	LANDSCAPE SVC. LLMD 2	
						1401	240.00
47210	CLEAN CUT LANDSCAPE MANAGEMENT		06/28/2018		06/28/2018	LANDSCAPE SVC. LLMD 1	
						1400	480.00
						Vendor Total:	720.00
47211	COLLINS & SCHOETTLER		06/28/2018		06/28/2018	PLANNING CONSULTING SVC.	
						MILESTONE 1	7,000.00

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
Vendor Total:							7,000.00
47212	COMPLETE HARDWARE STORE & MORE		06/28/2018		06/28/2018	SUPPLIES-POLICE DEPT.	
		198123					5.82
47213	COMPLETE HARDWARE STORE & MORE		06/28/2018		06/28/2018	SUPPLIES-POLICE DEPT.	
		198098					14.69
Vendor Total:							20.51
47214	DEWALT CORPORTATION		06/28/2018		06/28/2018	Planning Services April 2018	
		1086103					8,532.00
47215	DEWALT CORPORTATION		06/28/2018		06/28/2018	Planning Services May 2018	
		1086139					8,876.25
Vendor Total:							17,408.25
47216	FRANCHISE TAX BOARD		06/28/2018		06/28/2018	Withholding Order 6.29.18	
		Withholding Order 6.29.18					123.77
Vendor Total:							123.77
47217	JTS TRUCKING REPAIR		06/28/2018		06/28/2018	Maintenance Fleet#110	
		219269					366.65
47218	JTS TRUCKING REPAIR		06/28/2018		06/28/2018	Maintenance Fleet#203	
		219268					556.93
Vendor Total:							923.58
47219	KERN COUNTY FIRE DEPARTMENT		06/28/2018		06/28/2018	FIRE PROTECTION FY 2017-2018	
		18-000374					150,000.00
Vendor Total:							150,000.00
47220	KERN COUNTY SHERIFF'S DEPT		06/28/2018		06/28/2018	WITHHOLDING ORDER 6.29.18	
		LEVYING OFFICER2018064450 6.29					213.24
Vendor Total:							213.24
47221	KERN RIVER POWER EQUIPMENT INC		06/28/2018		06/28/2018	STRING TRIMMER REPAIRS	
		82290					85.40
47222	KERN RIVER POWER EQUIPMENT INC		06/28/2018		06/28/2018	POLE PRUNER REPAIRS	
		82291					97.02
47223	KERN RIVER POWER EQUIPMENT INC		06/28/2018		06/28/2018	MOWER#2 REPAIRS	
		82962					205.62
Vendor Total:							388.04
47224	FERNANDO LOPEZ		06/28/2018		06/28/2018	INTERPRETER SVC. 6.19,8.7-8.21	
		INTERPRETER SVC.6.19, 8.7-8.21					480.00
Vendor Total:							480.00
47225	MARTIN & CHAPMAN CO		06/28/2018		06/28/2018	OFFICE SUPPIES-BALLOT	
		2018369					196.16
Vendor Total:							196.16
47226	MOUNTAINSIDE DISPOSAL		06/28/2018		06/28/2018	PROPERTY TAXES 8.17.17	
		PROPERTY TAXES 8.17.17					2,440.00
47227	MOUNTAINSIDE DISPOSAL		06/28/2018		06/28/2018	PROPERTY TAXES 6.22.18	
		PROPERTY TAXES 6.22.18					4,327.10
Vendor Total:							6,767.10
47228	PACIFIC TIRE ARVIN		06/28/2018		06/28/2018	MAINTENANCE FLEET#207	
		20862					325.31
Vendor Total:							325.31
47256	PAWAN GILL		06/28/2018		06/28/2018	TUITION REIMBURSEMENT 6.26.1	
		TUITION REIMBURSEMENT 6.26					3,500.00

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Ref. No.	Vendor Name	Invoice No.	Posting Date	PONumber	Invoice Date	Invoice Description	Invoice Amount
Vendor Total:							3,500.00
47229	PG & E		06/28/2018		06/28/2018	SVC 5.16-18-6.14.18	
		A#3232674778-2	6.14.18				2,110.13
47230	PG & E		06/28/2018		06/28/2018	SVC 5.16-18-6.14.18	
		A#3441010184-3	6.14.18				180.29
47231	PG & E		06/28/2018		06/28/2018	SVC 5.16-18-6.14.18	
		A#4121972200-0	6.14.18				247.15
47232	PG & E		06/28/2018		06/28/2018	SVC 5.16-18-6.14.18	
		A#5422632722-6	6.14.18				3.15
47233	PG & E		06/28/2018		06/28/2018	SVC 5.16-18-6.14.18	
		A#4891617948-3	6.14.18				161.07
47234	PG & E		06/28/2018		06/28/2018	SVC 5.22.18-6.20.18	
		A#7368140966-7	6.21.18				46.02
Vendor Total:							2,747.81
47235	PRO AIR		06/28/2018		06/28/2018	AC REPAIR-CITY HALL	
		16611					487.98
Vendor Total:							487.98
47236	PROVOST & PRITCHARD		06/28/2018		06/28/2018	SYCAMORE RD FLOOD REDUCTI	
		68590					3,593.50
Vendor Total:							3,593.50
47237	SITEONE LANDSCAPE SUPPLY LLC		06/28/2018		06/28/2018	DIGIORGIO PARK REPAIR	
		86553210					497.13
47238	SITEONE LANDSCAPE SUPPLY LLC		06/28/2018		06/28/2018	DIGIORGIO PARK REPAIR	
		86599852					17.89
Vendor Total:							515.02
47239	SOUTH VALLEY ELECTRICAL		06/28/2018		06/28/2018	ELECTRIC SVC. GITS PARK	
		3528					563.82
Vendor Total:							563.82
47240	SPARKLETTS		06/28/2018		06/28/2018	SVC. JUNE 2018	
		15470162	062218				148.43
Vendor Total:							148.43
47243	STAPLES & ASSOCIATES		06/28/2018		06/28/2018	INSTALLATION ENERGY-COA	
		5213-5219					17,708.87
Vendor Total:							17,708.87
47244	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-POLICE DEPT.	
		7199623788-0-1					739.72
47245	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-POLICE DEPT.	
		7199357574-0-1					81.64
47246	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-COMM.DEV.DE	
		7199353648-0-1					113.95
47247	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-COMM.DEV.DE	
		7199584654-0-1					84.13
47248	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-COMM.DEV.DE	
		7199306514-0-2					142.65
47249	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-CITY HALL	
		7199229525-0-1					249.98
47250	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-FINANCE	
		7199440741-01					79.34
47251	STAPLES BUSINESS ADVANTAGE		06/28/2018		06/28/2018	OFFICE SUPPLIES-FINANCE	
		7199440741-0-2					6.27
Vendor Total:							1,497.68
47241	SUPPLYWORKS		06/28/2018		06/28/2018	CLEANING SUPPLIES-COA	
		440236495					232.00
47242	SUPPLYWORKS		06/28/2018		06/28/2018	CLEANING SUPPLIES-COA	
		439848573					2,233.67

**Edit List of Invoices - Summary**

DEMAND LIST 06/28/2018

Date: 06/28/2018

Time: 4:48 pm

Page: 4

City of Arvin

Ref. No.	Vendor Name	Invoice No.	Posting Date	PO Number	Invoice Date	Invoice Description	Invoice Amount
47252	SUPPLYWORKS	443676002	06/28/2018		06/28/2018	CLEANING SUPPLIES-COA	29.49
						Vendor Total:	<u>2,495.16</u>
47253	TRINITY SAFETY COMPANY-TSC	91378	06/28/2018		06/28/2018	BOB CAT REPAIRS	390.31
						Vendor Total:	<u>390.31</u>
47255	VANTAGE POINT TRANSFER AGENTS		06/28/2018		06/28/2018	457K CONTRIBUTION/LOAN 6.29.1	257.95
		257K LOAN/CONTRIBUTION 6.29.18				Vendor Total:	<u>257.95</u>
47257	VEOLIA WATER NA - MAINT-NOTE	90153065	06/28/2018		06/28/2018	O&M WASTEWATER MAY 2018	133,968.72
						Vendor Total:	<u>133,968.72</u>
47258	VITERELLI, CHRISTINE		06/28/2018		06/28/2018	TRAVEL REIMBURSEMENT 6.19-6	440.34
		TRAVEL REIMBURSEMENT 6.19-6.21				Vendor Total:	<u>440.34</u>
47259	WELLS FARGO LEASE PMTS	5004903575	06/28/2018		06/28/2018	A#603-0138128-000 POLICE DEPT	183.86
						Vendor Total:	<u>183.86</u>

Grand Total: 367,749.72

Less Credit Memos: 0.00

Net Total: 367,749.72

Less Hand Check Total: 0.00

Outstanding Invoice Total: 367,749.72

Total Invoices: 65



**SPECIAL MEETING MINUTES**

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

**JUNE 19, 2018**

**This Special Meeting was called to order along with the Regular Meeting of June 19, 2018 at the same time at 6:01PM.**

**CALL TO ORDER @ 6:01PM**

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**ROLL CALL: CM Martinez absent; All others present. CM Robles arrived late during Public Hearing Item 4B of the Regular Meeting.**

**1. Approval of Agenda as To Form.**

**Motion to approve the agenda.**

Motion MPT Ortiz                      Second CM Madrigal                      Vote 3-0

**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. CLOSED SESSION ITEM(S)**

**A. Public Employee - Appointment (Pursuant to Government Code §54957)**  
Title: City Manager

**CLOSED SESSION REPORT BY CITY ATTORNEY:**

**No reportable action.**

**4. ADJOURNED @ 9:29PM**

**This Special Meeting was adjourned along with the Regular Meeting of June 19, 2018 at the same time at 9:29PM.**

Respectfully submitted,

---

Cecilia Vela, City Clerk

## RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA REQUESTING THE BOARD OF SUPERVISORS OF THE COUNTY OF KERN TO CONSOLIDATE A GENERAL MUNICIPAL ELECTION TO BE HELD ON TUESDAY NOVEMBER 06, 2018 WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON THE SAME DATE.**

**WHEREAS**, the City Council of the City of Arvin called a General Municipal Election to be held on November 06, 2018, for the purpose of the election of three (3) Members of the City Council of the City of Arvin; and

**WHEREAS**, it is desirable that the General Municipal Election be consolidated with the Statewide General election to be held on the same date and that within the City the precincts, polling places and election officers of the two elections be the same, and that the county election department of the County of Kern canvass the returns of the General Municipal Election and that the election be held in all respects as if there were only one election;

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

**SECTION 1.** That pursuant to the requirements of Section 10403 of the Elections Code, the Board of Supervisors of the County of Kern is hereby requested to consent and agree to the consolidation of a General Municipal Election with the Statewide General Election on Tuesday, November 06, 2018, for the purpose of the election of three (3) Members of the City Council of the City of Arvin.

**SECTION 2.** That the county election department of the County of Kern is authorized to canvass the returns of the General Municipal Election. The election shall be held in all respects as if there were only one election, and only one form of ballot shall be used.

**SECTION 3.** That the Board of Supervisors is requested to issue instructions to the county election department to take any and all necessary steps for the holding of the consolidated election.

**SECTION 4.** That the City of Arvin recognizes that additional costs will be incurred by the County of Kern by reason of this consolidation and agrees to reimburse the County of Kern for all costs.

**SECTION 5.** That the City Clerk of the City of Arvin is hereby directed to file a certified copy of this resolution with the Board of Supervisors and the Elections Department of the County of Kern.

**SECTION 6.** That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

**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 3rd day of July, 2018 by the following vote:

**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.



## CITY OF ARVIN Staff Report

Meeting Date: July 3, 2018

**TO:** City Council

**FROM:** Adam Ojeda, City Engineer  
Jerry Breckinridge, Interim City Manager

**SUBJECT:** A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, ACCEPTING THE WORK COMPLETED BY BOWMAN ASPHALT AND FILING THE NOTICE OF COMPLETION FOR THE WALNUT STREET EXTENSION PROJECT

### **BACKGROUND:**

The City of Arvin desired to construct an extension to Walnut Street in a northerly alignment beginning at CA-223 and connecting to Nectarine Court as a part of what is hoped to be a first phase in developing a new economic center within Arvin. For this, the City of Arvin procured a \$5,000,000.00 loan for the design and construction of the project. The project was designed by the previous contract engineering firm, QK Inc in 2015, and was advertised to bid in July of 2015 with a bid opening in August of 2015. At that time, the bids were in excess of the budget, and the project was redesigned and readvertised for bid in June of 2016 with bids received in July of 2016. Following the review of those bids, Bowman Asphalt was determined to be the successful bidder, and was awarded the project on July 19, 2016. Construction then began on October 3, 2016, and was completed on approximately September 19, 2017.

The awarded contract value was \$3,770,234.00 with an allocation for an additional 10% of contingency money to be used on an as needed basis. A total of four change orders were executed during the course of the project for a total additional \$260,919.60. The revised total contract amount was therefore \$4,031,153.60 which is within the total construction budget.

At this time, there is still additional electrical work that needs to be completed, and is the topic of ongoing negotiations between Bowman, QK Inc, and the City of Arvin. However, that work is outside of the original scope of the project as well as any approved change orders. As such, this work is thought to have no bearing on the proposed action to accept the project and file a notice of completion for the project with the release of retention to Bowman Asphalt.

Note that under normal circumstances, it is customary to wait 35 days following the recordation

of the Notice of Completion with the County Recorder in the event that any liens or claims are filed. In light of the extenuating circumstances involved with this project, and the fact that no work has taken place since September of 2017 with no claims, it is believed to be appropriate to waive the need to wait 35 days.

**RECOMMENDATION:**

Staff recommends the Council approve the attached Resolution:

1. Accepting the work performed by Bowman Asphalt for the Walnut Street Extension Project as complete;
2. Approving the final contract amount of \$4,031,153.60; and
3. Authorizing the City Manager to execute the Notice of Completion and the City Clerk to file the Notice of Completion within 15 days of acceptance.
4. Authorizing the release of the retention to Bowman Asphalt immediately after the filing of the Notice of Completion.

**FINANCIAL IMPACT:**

The allocation of funds was approved during the July 19, 2016 Council meeting in the amount of \$3,770,234.00 with an additional \$377,023.40 in contingency money for a total construction budget of \$4,147,257.40. The total amount of money spent on this project was \$4,031,153.60. The project was completed below the allocated budget, and \$116,103.80 remains.

**ATTACHMENTS:**

NOC-Walnut

Notice of Completion-letter

## RESOLUTION

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, ACCEPTING THE WORK COMPLETED BY BOWMAN ASPHALT AND FILING THE NOTICE OF COMPLETION FOR THE WALNUT STREET EXTENSION PROJECT**

**WHEREAS**, the City of Arvin desires construct a northerly extension of Walnut Street between CA-223 and Nectarine Court; and

**WHEREAS**, the project was previously bid and awarded to Bowman Asphalt on July 19, 2016 in the amount of \$3,770,234.00 with an allowance of up to 10% contingency; and

**WHEREAS**, four change orders were executed in the amount of \$260,919.60 for a revised contract amount of \$4,031,153.60; and

**WHEREAS**, the construction of the project was substantially completed by Bowman Asphalt on September 19, 2017; and

**WHEREAS**, certain electrical work was started and has not been completed that was not a part of the base bid or an executed change order; and

**WHEREAS**, the electrical work in question is the subject of ongoing discussions between Bowman Asphalt, the previous City Engineer - QK Inc, and the City of Arvin and is not subject to being complete to consider the project completed; and

**WHEREAS**, the City Engineer has verified that all other aspects of the project have been adequately constructed; and

**WHEREAS**, the City desires to accept the Walnut Street Extension Project as complete.

**NOW, THEREFORE**, the City Council of the City of Arvin, hereby does resolve as follows:

1. The recitals above are true and correct and incorporated by this reference.
2. The City Council accepts the work performed by Bowman Asphalt for the Walnut Street Extension Project as complete.
3. The City Council approves the final contract amount of \$4,031,153.60.
4. The City Council authorizes the City Manager to execute the Notice of Completion and the City Clerk to file the Notice of Completion within 15 days of acceptance.

5. The City Manager is authorized to release the retention to Bowman Asphalt immediately after the filing of the Notice of Completion.

**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 3rd day of July, 2018 by the following vote:

**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.

**Recording Requested By:**

For the benefit of the  
**CITY OF ARVIN**

(Document exempt from recording fees  
pursuant to Cal. Gov. Code §27383)

**When Recorded Mail to:**

City of Arvin  
City Clerk  
200 Campus Drive  
Arvin, CA 93203

**NOTICE OF COMPLETION**

**NOTICE IS HEREBY GIVEN THAT:**

- 1. The undersigned is **OWNER** or Agent of the **OWNER** of the interest or estate stated below in the property hereinafter described.
- 2. The **FULL NAME** of the **OWNER** is City of Arvin
- 3. The **FULL ADDRESS** of the **OWNER** is 200 Campus Drive, Arvin, CA 93203
- 4. The **NATURE OF THE INTEREST** or **ESTATE** of the undersigned is: In Fee.

(if other than fee, Strike "In Fee" and insert, for example, "Purchaser under contract of purchase," or "Lessee.")

- 5. The **FULL NAMES** and **FULL ADDRESSES** of **ALL PERSONS**, if any, **WHO HOLD SUCH INTEREST** or **ESTATE** with the undersigned as **JOINT TENANTS IN COMMON** are:

Names	Addresses
_____	_____

- 6. The full names and full addresses of the predecessors in interest of the undersigned if the property was transferred subsequent to the commencement of the work of improvement herein referred to:

Names	Addresses
_____	_____

- 7. A work of improvement on the property hereinafter described was **COMPLETED** September 19, 2017

- 8. The work of improvement completed is described as follows: Walnut Street Extension Project

- 9. The **NAME OF THE ORIGINAL CONTRACTOR**, if any, for such work of improvement is: Bowman Asphalt

- 10. The street address of said property is: Walnut Street between CA-223 and Nectarine Court

- 11. The property on which said work of improvement was completed is in the City of Arvin County of [County], State of California, and is described as follows:

The work consists of a road reconstruction, curb, gutter, sidewalk, median landscaping, street lighting, underground utilities, striping, and signage.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jerry Breckinridge, Interim City Manager

Verification for **INDIVIDUAL** owner

I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the owner of the aforesaid interest or estate in the property described in the above notice; that I have said notice, that I know and understand the contents thereof, and that the facts stated therein are true and correct.

\_\_\_\_\_  
Date and Place

\_\_\_\_\_  
Signature of Owner named in paragraph 2

Verification for **NON-INDIVIDUAL** owner: I, the undersigned, declare under penalty of perjury under the laws of the State of California that I am the **City Manager** of the aforesaid interest or estate in the property described in the above notice; that I have read the said notice, that I know and understand the contents thereof, and that the facts stated therein are true and correct.

\_\_\_\_\_  
Date and Place

\_\_\_\_\_  
Jerry Breckinridge, Interim City Manager

**SUBSCRIBED AND SWORN TO** before me on \_\_\_\_\_

\_\_\_\_\_  
[Notary Public], [Title]

Attachment: NOC-Walnut (Walnut Extension Project notice of completion and acceptance)



• ENGINEERING • PLANNING • SURVEYING • LAND DEVELOPMENT • CONSTRUCTION MANAGEMENT

July 3, 2018

Jerry Breckinridge  
City of Arvin  
200 Campus Drive  
Arvin, CA 93203

**Subject: WALNUT STREET EXTENSION PROJECT NOTICE OF  
COMPLETION AND RELEASE OF RETENTION**

Mr. Breckinridge,

Please find the attached Notice of Completion for the Walnut Street Extension Project. The project was awarded to Bowman Asphalt on July 19, 2016. Construction began on October 3, 2016 and substantial completion was achieved on approximately September 19<sup>th</sup>, 2017. Though work ceased at that time, various punchlist items remained to be done after that date as well as electrical work that had been initiated with the publication of Construction Change Directive #3. At the time that the Contractors demobilized in September of 2017, it was believed that all of the electrical work had been completed as directed. However, following the initial attempts to utilize the system as well as after the City changed Engineers, it was discovered that the system did not perform as originally expected and that certain items did not seem to have been installed as expected. This led to a prolonged discussion between the City, Bowman Asphalt, and the previous Engineering firm, QK Inc. It has recently been agreed to by all parties that the release of retention monies that are outstanding would not be directly tied to electrical work that needs to occur. Instead, an agreement was made between the City and QK Inc that QK Inc would oversee, facilitate, and pay for the completion of the installation of appropriate timers and associated rewiring such that portions of the electrical systems would only be operational in the evening hours. All additional deficiencies with the electrical systems will not be remedied.

Bowman Asphalt has provided a final retention release invoice in the amount of \$201,557.68 which is the entire amount of retention that is owed. Please note that under normal circumstances, it is customary for retention payment to not occur until 35 days following council action. However, in light of the extenuating circumstances involved with this project, it is believed that it is appropriate to waive the need for this waiting period to occur, and the recommendation is therefore to release payment immediately after approval by the City Council.

Attachment: Notice of Completion-letter (Walnut Extension Project notice of completion and acceptance)

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The project had four change orders that were fully executed and work was completed.  
The final costs for the project are then as follows:

Contract Amount:	\$ 3,770,234.00
Change Orders:	<u>+ \$ 260,919.60</u>
Final Contract Amount:	\$4,031,153.60

Please do not hesitate to let me know if you have any questions or comments on any of this information.

Sincerely,



Adam Ojeda PE  
City Engineer

Enclosures: Notice of Completion

Attachment: Notice of Completion-letter (Walnut Extension Project notice of completion and acceptance)



## CITY OF ARVIN Staff Report

Meeting Date: July 3, 2018

**TO:** City Council

**FROM:** Adam Ojeda, City Engineer  
Jerry Breckinridge, Interim City Manager

**SUBJECT:** A Resolution of the City Council of the City of Arvin Augmenting the FY 18/19 Budget, Finding A CEQA Class 1 Categorical Exemption, and the Execution of A Construction Contract with Griffith Company Incorporated for the Construction of the DiGiorgio Sidewalk Project.

### **BACKGROUND:**

The City of Arvin desired to construct sidewalks along the eastern and western sides of DiGiorgio Park to allow for more accessibility to pedestrians to promote a more walkable and safer park. For this effort, the City of Arvin previously allocated TDA funds for the design, construction management, and construction of the project. The project was designed by the previous City Engineering firm, QK Inc in 2017, and the current City Engineer advanced the project through the bid phase. It was advertised for bid in May of 2018, and two bids were received on June 6<sup>th</sup> of 2018.

The bid documents allowed the City to award a contract for any combination of base bid or three additive alternates. As such, after reviewing the bids and checking for accuracy and responsiveness, it was determined that the bid received from Griffith Company was the lowest responsive bid. It is desired for the base bid and additive alternate #1 to be constructed to meet the initial intent of the project. For this, a total budget of **\$121,249 is needed to cover the \$110,226.00 bid price as well as a 10% contingency budget of \$11,023.00.**

Previous budget forecasts for this project called for \$98,000.00 for construction and \$9,800.00 for contingency. While the base bid for this project, did come in within the budget from both contractors, the combination of the base bid and alternative #1 is in excess of the budget. Because it is advisable to construct both the base bid and alternate #1 together, it shall be necessary to allocate an additional \$13,449.00 in funding to this project. In talking to City Staff, it has been determined that it would be reasonable to fund the additional financial need from the TDA fund.

Staff has assessed this project and determined that a Class 1 Categorical Exemption set forth in CEQA Guidelines, Section 15301, applies as this project involves minor additions to existing DiGiorgio Park. The project involves no or negligible expansion to existing uses to the park. Furthermore, none of the exceptions to the Class 1 Categorical Exemption set forth in the CEQA Guidelines Section 15300.2 apply to this project.

**FINANCIAL IMPACT:**

The total anticipated cost for the project, which also includes previously allocated funds for construction management, professional services, etc is \$157,664.00 with the cost breakdown as follows:

**Estimated Costs**

<b>Item</b>	<b>Amount</b>
Total Construction Cost	\$110,226.00
Construction Contingency (10%)	\$11,023.00
Bidding and Construction Management	\$12,215.00
Design (QK Inc)	\$24,200.00
<b>Total</b>	<b>\$157,664.00</b>

All monies are understood to be coming from the TDA fund.

The construction contingency money shall be utilized, as needed during construction should field conditions present challenges that could not have been foreseen, and necessitate the execution of a change order. If necessary, the City Engineer will negotiate such changes, and the City Manager shall have the authority to execute such change orders as prescribed by the agreement.

**RECOMMENDATION:**

Consideration and approval of Resolution awarding the construction contract to Griffith Company for the construction of the work described by the base bid and additive alternate #1 for a total cost of \$110,226.00, and authorizing the Mayor or City Manager to execute an agreement with Griffith Company for the construction of the DiGiorgio Sidewalk Project.

**ATTACHMENTS:**

Award Recommendation DiGiorgio Sidewalks

Finance Form

DiGiorgio Sidewalks Contract

Bid Opening List-DiGiorgio Park Sidewalk Imp Project-June 6, 2018

## RESOLUTION

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN  
AUGMENTING THE FY 18/19 BUDGET, FINDING A CEQA CLASS 1  
CATEGORICAL EXEMPTION, AND THE EXECUTION OF A  
CONSTRUCTION CONTRACT WITH GRIFFITH COMPANY  
INCORPORATED FOR THE CONSTRUCTION OF THE DIGIORGIO  
SIDEWALK PROJECT.**

**WHEREAS**, the City of Arvin desires to construct sidewalks in DiGiorgio Park along the eastern and western edges; and

**WHEREAS**, the project proposes minor alterations to the existing park by constructing sidewalks in areas that pedestrians routinely walk through; and

**WHEREAS**, the project was advertised for bid on May 14<sup>th</sup> and 21<sup>st</sup> of 2018 in the Bakersfield Californian and bids were opened publicly at Arvin City Hall on June 6<sup>th</sup> of 2018; and

**WHEREAS**, the City received two bids with the total base bid amounts as follows:

Griffith Company	\$49,644.00
Cen-Cal	\$61,395.75; and

**WHEREAS**, three additive alternates were also a portion of the bid with alternate #1 being highly desired to construct with those bids as follows:

Griffith Company	\$60,582.00
Cen-Cal	\$59,899.75; and

**WHEREAS**, Griffith Company is the lowest bidder when the base bid and additive alternate #1 are considered at a total price of \$110,226.00; and

**WHEREAS**, previous cost projections to the City Council was for a total of \$107,800.00 inclusive of a contingency fund for the project; and

**WHEREAS**, it is highly desirable to construct the base bid and additive alternate #1 at the same time; and

**WHEREAS**, it shall be necessary to augment the budget for the current fiscal year by \$13,449.00 to allow for the total bid of amount of \$110,226.00 as well as a 10% contingency budget of \$11,026.00; and

**WHEREAS**, the original funding source and proposed funding source for the additional monies shall be TDA; and

**WHEREAS**, the City desires to enter into an agreement with Griffith Company for the construction of the DiGiorgio Sidewalk Project contingent upon the total construction cost not to exceed \$110,226.00;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVIN THAT:**

1. The recitals above are true and correct and incorporated by this reference.
2. The City Council approves the augmentation of the FY 18/19 budget by \$13,499.00 and authorizes an increase in the construction budget by this same amount.
3. The City Council finds and determines that a Class 1 Categorical Exemption set forth in CEQA Guidelines, Section 15301, applies to this project as the project involves minor additions to existing DiGiorgio Park. The project involves no or negligible expansion to existing uses to the park. Furthermore, none of the exceptions to the Class 1 Categorical Exemption set forth in the CEQA Guidelines Section 15300.2 apply to this project.
4. The City Council of the City of Arvin accepts the bids received, and awards the construction contract to Griffith Company subject to the maximum construction costs not to exceed \$110,226.00. The Mayor or City Manager is authorized to execute such an agreement with Griffith Company for the DiGiorgio Sidewalk Project subject to the City Attorney's review and approval as to form of the agreement documents. The City Council reserves the right to reject all bids if the contingencies are not met.
5. The City Council of the City of Arvin authorizes the City Manager to allocate additional monies by way of executed change orders on an as-needed basis up to an amount not to exceed \$11,023.00.

**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 3rd day of July, 2018 by the following vote:

**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.



**DEWALT**  
*Corporation*

• ENGINEERING • PLANNING • SURVEYING • LAND DEVELOPMENT • CONSTRUCTION MANAGEMENT

July 3, 2018

Jerry Breckinridge  
 City of Arvin  
 200 Campus Drive  
 Arvin, CA 93203

**Subject: RECOMMENDATION TO AWARD A CONSTRUCTION CONTRACT TO GRIFFITH COMPANY FOR THE DIGIORGIO SIDEWALK CONSTRUCTION PROJECT**

Mr. Breckinridge,

We conducted a bid opening for the DiGiorgio Sidewalk Construction Project on Wednesday June 6<sup>th</sup>. Two bids were received. The bids were opened in the City Hall conference room, and the results were publicly read out loud. The lowest received base bid was \$49,644.00 from Griffith Company. A representative from each bidding company was present during the bid opening. The bid results are as follows with yellow hilites indicating the low price in each column:

Company	Base Bid	Add. Alt. 1	Add. Alt. 2	Add. Alt. 3
Cen-Cal Construction	\$61,395.75	\$59,899.75	\$23,047.25	\$17,421.50
Griffith Company	\$49,644.00	\$60,582.00	\$21,102.00	\$14,818.00

The project has a base bid and three additive alternates. The bid documents were created in such a way that the City has the right to award a contract for any combination of base and or additive alternate bids. Both base bids were within the available construction budget for the project, and each alternate on their own are within the budget. The City Council previously approved engineering task order 1801 which set the total construction budget at \$107,800 which was comprised of \$98,000 in construction money with a \$9,800 (10%) contingency.

Regardless of the bid amounts, each bid received was reviewed in depth to check for any bidding irregularities as well to assure that all necessary forms and items were provided. Furthermore, each contractors and proposed subcontractor license number was investigated to assure that they are legitimate, active, registered with the California Department of Industrial Relations, and that there appear to be no pending or recent actions or sanctions against the companies. No concerns were raised through this process.

The original intent of the project was to construct, at the very least, sidewalks along the western and eastern perimeter of the park. The base bid consists of all of the sidewalk along the western edge, and alternate #1 is for the eastern alignment. Alternates #2 and #3 are for other portions of sidewalk within the park, and are not being recommended to be constructed at this time. It is highly advisable to construct base bid and alternate #1 at the same time. However, when these two parts of the bid are considered together, it can be seen that the bids from both bidders are in excess of the previously reported construction budget. Among the two bidders, Griffith Company is then the low bidder with a total bid of \$110,226.00 which is \$2,426.00 in excess of the previously set budget. The project is funded by TDA funds which is a discretionary fund that is generally used for the construction and maintenance of roads and pedestrian facilities such as sidewalks. We recently had a conversation along with Jeff Jones from the Finance Department regarding the need to do both portions of the project at the same time, and the fact that the bid from Griffith Company is only slightly over the total budget for the project. In light of this fact, we agreed that it made sense to allocate additional TDA monies for this project so that we could construct the work associated with the base bid as well as additive alternate #1. More specifically, it was explained that it is advisable to allocate funds such that there is enough to allow for the bid as well as a 10% contingency to be used on an as-needed basis throughout construction. With this in mind, the revised budget would then be the cost of the base bid and alternate #1 - \$110,226.00 along with an additional \$11,022.60 which we will round up to \$11,023.00 for simplicity. The total budget is therefore \$121,249.00. It can be seen that an additional \$13,449.00 in TDA monies should be allocated to this project which you and Mr. Jones agreed would be appropriate to allow this project to move forward.

In conclusion, the recommendation is to award the base bid and additive alternate #1 to Griffith Company for a total bid amount of \$110,226.00 along with a contingency of \$11,023.00 for a total construction budget of \$121,249.00; all of which is TDA funding.

Please do not hesitate to let me know if you have any questions or comments on any of this information.

Sincerely,



Adam Ojeda PE  
City Engineer

Attachments:

- Bid results summary



2017-2018 PROJECT SHEET

Proj. #: 17-213

Project: DiGiorgio Sidewalk Project

Project Lead: Adam Ojeda, P.E.

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 1701	\$24,200						\$24,200
Engineering Task Order 1801	\$12,215						\$12,215
Construction		\$110,226					\$110,226
10% Contingency		\$11,023					\$11,023
							\$0
							\$0
							\$0
<b>TOTAL COST</b>	<b>\$36,415</b>	<b>\$121,249</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$157,664</b>

Funding Source(s)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Future Yrs	TOTAL
TDA	\$36,415	\$121,249					\$157,664
							\$0
							\$0
							\$0
<b>TOTAL FUNDING SOURCES</b>	<b>\$36,415</b>	<b>\$121,249</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$157,664</b>

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

City wishes to install new sidewalks at DiGiorgio Park to improve accessibility in the park

2. Describe the project status and completed work.

Project was bid competitively in June of 2018 with 2 bids received

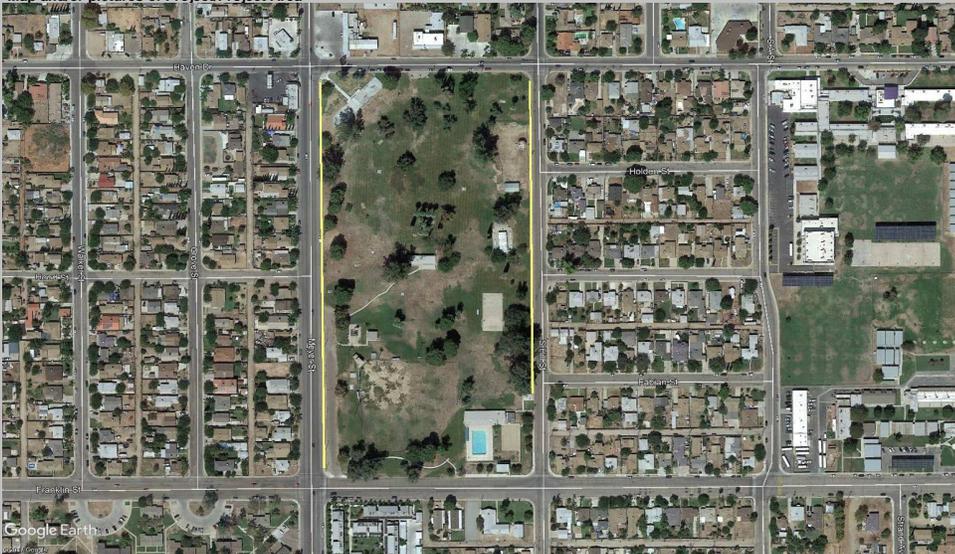
3. Describe any anticipated grants related to the project.

None

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

Projected Operating Expenses	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Future Yrs	TOTAL
	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Map and/or pictures of Project/Project Area



AGREEMENT NO. \_\_\_\_\_

**AGREEMENT FOR PUBLIC WORKS SERVICES  
BETWEEN THE CITY OF ARVIN AND  
GRIFFITH COMPANY INCORPORATED**

THIS AGREEMENT FOR PUBLIC WORKS SERVICES (herein “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”) by and between the City of Arvin, a California municipal corporation (“City”) and Griffith Company Incorporated (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Arvin Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of 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:

**ARTICLE 1. WORK OF CONTRACTOR**

**1.1 Scope of Work.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Work” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall

follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## 1.2 Bid Documents.

The Scope of Work shall include the Engineered Drawings, “Special Provisions”, and “Technical Provisions” in the bid documents for the project entitled DIGIORGIO PARK SIDEWALK IMPROVEMENTS including any documents or exhibits referenced therein. The Engineered Drawings, “Special Provisions”, and “Technical Provisions” shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such documents and this Agreement, the terms of this Agreement shall govern.

## 1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

## 1.4 Compliance with California Labor Law.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing

rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Contractor's Authorized Initials \_\_\_\_\_

(i) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay the subcontractor's workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

### **1.5 Licenses, Permits, Fees and Assessments.**

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officials, officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

### **1.6 Familiarity with Work.**

(a) By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions, materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

#### **1.7 Protection and Care of Work and Materials.**

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

#### **1.8 Warranty.**

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its

obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### **1.9 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree 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. Unless hereafter specified, neither party shall be responsible for the service of the other.

### **1.10 Additional Work and Change Orders.**

(a) 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 Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, 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 Contractor ("Change Order"). All Change Orders must be signed by the Contractor and Contract Officer prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Schedule of Compensation in Exhibit "C". If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

#### **1.11 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.

#### **1.12 Trenching and Excavation.**

In accordance with Public Contract Code Section 7104, whenever the digging of trenches or other excavations extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any: 1) Material that the Contractor believed may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; 2) Subsurface or latent physical conditions at the site differing from those indicated; or 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the Contract. In the unlikely event that a dispute arises between the City and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be

performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. Where applicable, Contractor shall comply with the trench or excavation permit requirement found in Labor Code Section 6500 and the excavation safety requirements found in Labor Code Section 6705.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Ten Thousand Two Hundred Twenty-Six Dollars and Zero Cents (\$110,226.00) (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.10.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services less the contract retention;, (iii) payment for time and materials based upon the Contractor’s rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Contractor 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-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall, as soon as practicable, independently review each invoice submitted by the Contractor 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 Contractor which are disputed by City, or as provided in Section 7.3, City will cause Contractor to be paid, subject to the Schedule of Compensation (Exhibit “C”), within thirty (30) days of receipt of Contractor’s correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Notwithstanding, if the work is being funded by grant or other funding administered by a third party outside the control of the City, such as the County of Kern, Contractor acknowledges and agrees this may increase processing time for payment, and no payment of interest shall accrue if the City has used reasonable efforts to cause the Contractor to be paid within thirty (30) days.

### **2.5 Waiver.**

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### **3.1 Time of Essence.**

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

### **3.2 Schedule of Performance.**

Contractor 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 “D” and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) 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 Contractor, 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 Contractor 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 Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor’s sole remedy being extension of the Agreement pursuant to this Section.

**3.4 Inspection and Final Acceptance.**

City may inspect and accept or reject any of Contractor’s work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor’s work within forty-five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City’s acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

**3.5 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) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”).

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Contractor.**

The following principals of Contractor (“Principals”) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

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

#### **4.2 Status of Contractor.**

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

#### **4.3 Contract Officer.**

The Contract Officer shall be the City Manager or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are

agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

#### 5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to 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 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 \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers 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 Contractor 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 Contractor 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 \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor'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 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor 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) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. For Commercial General Liability (CGL) coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

## 5.2 General Insurance Requirements.

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 City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officials, officers, employees and agents and their respective insurers. Moreover, 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 at least ten (10) days prior written notice to City, or at least ten (10) days prior written notice to City in the case of cancellation for nonpayment. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to 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 City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following “cancellation” notice:

“CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, AT LEAST TEN (10) DAYS ADVANCED WRITTEN NOTICE OF CANCELLATION SHALL BE DELIVERED TO CITY AT (EXCEPT CANCELLATION DUE TO NONPAYMENT SHALL REQUIRE TEN (10) DAYS ADVANCED WRITTEN NOTICE).”

Contractor’s Authorized Initials \_\_\_\_\_

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor’s activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor’s indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

In the event of a conflict, the terms of Section 5.1 and 5.2 shall have precedence and prevail over any form of Certificate of Insurance, or any Insurance Endorsement, included in the Contract Documents.

### 5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (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, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (“indemnitors”), or arising from Contractor’s or indemnitors’ reckless or willful misconduct, or arising from Contractor’s or indemnitors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the Indemnified Parties for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the Indemnified Parties harmless therefrom;

(c) In the event any Indemnified Party is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the Indemnified Party any and all costs and expenses incurred by the Indemnified Party in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

In addition, Contractor agrees to indemnify, defend and hold harmless the Indemnified Parties from any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Contractor under this Agreement, and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services and work hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the

design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

#### **5.4 Notification of Third-Party Claims.**

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

#### **5.5 Performance and Labor Bonds.**

Concurrently with execution of this Agreement Contractor shall deliver to the City, the following:

(a) A performance bond in the amount of the Contract Sum of this Agreement, in the form provided in the bid packet, which secures the faithful performance of this Agreement.

(b) A labor and materials bond in the amount of the Contract Sum of this Agreement, in the form provided in the bid packet, which secures the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement.

Both the performance and labors bonds required under this Section 5.5 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 Contractor promptly and faithfully performs all terms and conditions of this Agreement, pays all labor and materials for work and services under this Agreement, and meets the requirements of Section 5.8.

#### **5.6 Sufficiency of Insurer or Surety.**

Insurance and bonds 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's 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 Manager or Finance Director of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.5 may be changed accordingly upon receipt of written notice from the Risk Manager.

#### **5.7 Substitution of Securities.**

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Contractor unless otherwise required by Section

22300. Alternatively, the Contractor may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow agent at the sole expense of the Contractor unless otherwise required by Section 22300. The escrow agreement for security deposits in lieu of retention shall be substantially similar to the form provided in Public Contract Code Section 22300(f), which is incorporated herein by this reference.

#### **5.8 Release of Securities.**

City shall release the Performance and Labor Bonds when the following have occurred:

- (a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;
- (b) the work has been accepted; and
- (c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### **6.1 Records.**

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor’s business, custody of the books and records may be given to City, and access shall be provided by Contractor’s successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

#### **6.2 Reports.**

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about

the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City’s sole risk and without liability to Contractor, and Contractor’s guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

### **6.4 Confidentiality and Release of Information.**

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

(b) Contractor, its officers, employees, agents or subcontractors, 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 Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City

shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors 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. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## ARTICLE 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 the County of Bakersfield, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of California, in the County of Fresno, State of California.

### 7.2 Disputes and Claims.

(a) Default; Cure. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

(b) Public Contract Code Sec. 9204 Claims Procedure (AB 626). AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for the filing of claims by a contractor, or by a contractor on behalf of a subcontractor, on any public works project effective

January 1, 2017. The parties shall comply with the provisions of Public Resources Code Section 9204, which are fully set forth in Exhibit "E."

(c) Dispute Resolution. This Agreement is subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the Contractor, for the response to such claims by the City, for a mandatory meet and confer conference upon the request of the Contractor, for mandatory non-binding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

### **7.3 Retention of Funds.**

Contractor hereby authorizes City to deduct from any amount payable to Contractor (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 City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor'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 Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, 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 City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

### **7.5 Rights and Remedies are Cumulative.**

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.

## 7.6 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. Notwithstanding any contrary provision herein, Contractor shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

## 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of five hundred dollars (\$500.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

## 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor 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 Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. 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.

## 7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, 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 Contractor 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 City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### **7.10 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

#### **7.11 Unfair Business Practices Claims.**

In entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment of the Parties.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Contractor, 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 Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

#### **8.2 Conflict of Interest.**

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any

corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

### **8.3 Covenant Against Discrimination.**

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

### **8.4 Unauthorized Aliens.**

Contractor 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. Additionally, Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. Further, should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement in violation of the law, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor 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.

## **ARTICLE 9. MISCELLANEOUS PROVISIONS**

### **9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person 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 (with her/his name and City title), City of Arvin, 200 Campus Drive, Arvin, California 93203 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section. All correspondence relating to this Agreement shall be serialized consecutively.

## 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## 9.4 Integration; 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 Contractor 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.

## 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in 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 phrases, sentences, clauses, paragraphs, or sections 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.

## 9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any

City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials \_\_\_\_\_

**9.7 Authority to Act on Behalf of Entity.**

The person(s) executing this Agreement on behalf of any entity that is a Party 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. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**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

\_\_\_\_\_  
Jose Gurrola, Mayor

ATTEST:

\_\_\_\_\_  
Cecilia Vela , City Clerk

APPROVED AS TO FORM:  
**ALESHIRE & WYNDER, LLP**

\_\_\_\_\_  
Shannon Chaffin, City Attorney

**CONTRACTOR:**

\_\_\_\_\_

\*By: \_\_\_\_\_  
Name:  
Title:

\*By: \_\_\_\_\_  
Name:  
Title:

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

**\*CONTRACTOR’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE EVIDENCE OF AUTHORITY TO EXECUTE DOCUMENTS FOR ANY ENTITY CONTRACTOR MUST BE PROVIDED.**

Attachment: DiGiorgio Sidewalks Contract [Revision 1] (Resolution to Award a Construction Contract to Griffith Company for the DiGiorgio





**EXHIBIT "A"****SCOPE OF WORK**

**I.** Contractor shall perform all of the work and comply with all of the specifications and requirements in the "Special Provisions" and "Technical Provisions" included in the bid documents for the project entitled DiGIORGIO PARK SIDEWALK IMPROVEMENTS, including any documents or exhibits referenced therein.

**II.** Project Description:

The work to be performed under this Contract consists of furnishing all labor, materials, tools and equipment and constructing complete and in place improvements for the City of Arvin DiGiorgio Park Sidewalk Improvements as shown in the Contract drawings and as specified herein.

The work shall consist of site grading and selective demolition for construction of new concrete sidewalks and concrete curb replacement.

The work to be done consists of the furnishing by the Contractor of all labor, materials equipment and other facilities necessary in the performance of the work. The Contractor shall perform any work which is not detailed in the Plans and Specifications but which is obviously required to make the project complete and operable. Questions regarding the intent of the Plans and Specifications shall be referred to the City whose decisions thereon shall be final.

Some information pertaining to subsurface and other conditions, which may affect the cost of performing the work, may be shown in the Plans and Specifications. While it is believed that any such information is reasonably correct, the City does not warrant either the completeness or accuracy of such information. It is the responsibility of the Contractor to ascertain the existence of all subsurface and other conditions affecting his cost of doing the work as may be disclosed by a reasonable examination of the site.

**III.** Contractor's work shall also conform to all of the standards and specifications in the following documents, incorporated herein by this reference:

A. Special Provisions and Technical Provisions can be found in the Notice Inviting Seald Proposals (Bids), Special Provisions, Bid Proposal and Contract documents for the DIGIORGIO PARK SIDEWALK IMPROVEMENTS.

**IV.** The location(s) of the work, its general nature and extent, and the form and general dimensions of the Project and appurtenant work are shown on the Construction Drawings entitled DiGIORGIO PARK SIDEWALK IMPROVEMENTS and are hereby made a part of this Agreement as listed herein:

### List of Construction Drawings

1. COVER SHEET
  2. NOTES, LEGENDS AND DETAILS
  3. SITE PLAN
  4. MEYER STREET
  5. SOUTH HILL STREET (ADDITIVE ALTERNATE 1)
  6. ADDITIVE ALTERNATES 2 AND 3
- V.** Contractors shall have on file a minimum of one (1) set of Construction Drawings upon which Contractor shall record all variations between the work as built and as originally shown in the Construction Drawings or as otherwise required under this Agreement (“Record Drawings”). Record Drawings must be kept at the work site and be accessible at all times during the construction periods and shall be delivered to the City Engineer within thirty (30) days after completion of the work.
- VI.** In addition to the requirements of Section 6.2, during performance of the work, Contractor shall keep the City apprised of the status of performance by delivering the following status reports starting sixty (60) days after the Effective Date if the work has not already been completed:
- A. The Contractor shall submit a narrative report as a part of his monthly progress review and update, in a form agreed upon by the Contractor and the City. The narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.
  - B. Contractor shall update the schedule on a monthly basis, showing progress on each activity or task. After each monthly update, the Contractor shall submit to the City one (1) print of the last accepted Construction Schedule, marked up in red in accordance with the monthly review; and four (4) bond copies incorporating the updated schedule information.
- VII.** All work is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

**EXHIBIT "B"**

NOT USED.

**EXHIBIT "C"****SCHEDULE OF COMPENSATION**

- I.** Contractor shall perform all work at the rates on the Bid Sheet submitted as part of Contractor's Proposal, incorporated herein by this reference.
- II.** A retention of five percent (5%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.
- III.** Within the budgeted amounts for each item on the Bid Sheet, and with the approval of the Contract Officer, funds may be shifted from one item's sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Work is approved per Section 1.10.
- IV.** The City will compensate Contractor for the work performed upon submission of a valid invoice pursuant to Section 2.4.
- V.** Additional work shall be authorized only by a change order approved by the City Manager or City Council. Line item costs shall be used to determine quantity adjustment changes. Otherwise, markups on such work shall be limited as follows:
  - Labor: 30%
  - Materials: 10%
  - Equipment: 10%

**EXHIBIT "D"****SCHEDULE OF PERFORMANCE**

**I.** Contractor shall perform all work timely in accordance with the following schedule:

PROJECT DURATION: 30 Calendar Days

A. Work shall only be performed between the hours of 7:00 a.m. and 7:00 p.m., on weekdays.

B. Work shall not be performed on Saturdays, Sundays or legal holidays.

C. Exceptions to the above hours of work will be permitted only after obtaining written authorization from the City Engineer.

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

A. Complete project.

**III.** The Contract Officer may approve extensions for performance of the services in accordance with Special Provisions, Part I, Section 01 32 16 .

## EXHIBIT “E”

### PUBLIC CONTRACT CODE SEC. 9204 NEW PUBLIC WORKS CLAIMS PROCEDURE

AB 626, signed by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for claims submitted by a contractor on any public works project. These new requirements contain burdens for both private contractors and public entities. The text of this new legislation is set forth below:

#### Public Contract Code § 9204.

Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with [Section 10240](#)) of Chapter 1 of Part 2, Chapter 10 (commencing with [Section 19100](#)) of Part 2, and Article 1.5 (commencing with [Section 20104](#)) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with [Section 7000](#)) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State

University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with [Section 7000](#)) of [Title 7 of Part 3 of the Penal Code](#).

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with [Section 7000](#)) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return

receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under [Section 20104.4](#) to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time

periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

**Performance Bond**

WHEREAS, the CITY OF ARVIN, (“City”), has awarded to \_\_\_\_\_ as Contractor (“Principal”), a Contract for the work entitled and described as follows:

**DiGIORGIO PARK SIDEWALK IMPROVEMENTS**

WHEREAS, the Contractor is required under the terms of said Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the City in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total Contract price, lawful money of the United States of America, for payment of which sum well and truly be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. In case suit is brought upon this bond, the Surety will pay a reasonable attorney’s fee to the City in an amount to be fixed by the court.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bound Contractor, or its heirs, executors, administrators, successors, or assigns, shall in all things stand and abide by, well and truly keep and perform all undertakings, terms, covenants, conditions, and agreements in the said Contract and any alteration thereof, made as therein provided, all within the time and in the manner designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of such change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder.

Executed in four original counterparts on \_\_\_\_\_ 20\_\_.

PRINCIPAL

(Seal if Corporation)

By \_\_\_\_\_

Title \_\_\_\_\_

(Attach Acknowledgment of Authorized Representative of Principal)

Any claims under this bond may be addressed to:

\_\_\_\_\_ (name and address of Surety)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (name and address of Surety's agent for service  
of \_\_\_\_\_  
process in California, if different from above)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (telephone number of Surety's agent in  
California)

(Attach Acknowledgment)

\_\_\_\_\_  
SURETY

By \_\_\_\_\_  
(Attorney-in-Fact)

APPROVED:

\_\_\_\_\_  
(Attorney for CITY)

NOTICE:

No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in California. Certified copy of Power of Attorney must be attached.

**Payment Bond**  
**(Labor and Material Bond)**

WHEREAS, the CITY OF ARVIN, (“City”), has awarded to \_\_\_\_\_ as Contractor (“Principal”), a Contract for the work entitled and described as follows:

**DIGIORGIO PARK SIDEWALK IMPROVEMENTS**

WHEREAS, said Contractor is required to furnish a bond in conjunction with said Contract, to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

NOW, THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the City in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total Contract price, lawful money of the United States of America, for payment of which sum well and truly be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. In case suit is brought upon this bond, the Surety will pay a reasonable attorney’s fee to the City in an amount to be fixed by the court.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if said Contractor, its heirs, executors, administrators, successors, assigns, or subcontractor fails to pay: (1) for any work, materials, services, provisions, provender, or other supplies, or for the use of implements of machinery, used in, upon, for, or about the performance of the work to be done, or for any work or labor thereon of any kind; (2) for work performed by any of the persons named in Civil Code Section 9100; (3) for any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract; and/or (4) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and/or its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon the bond. Moreover, if the City or any entity or person entitled to file stop payment notices is required to engage the services of an attorney in connection with the enforcement of this bond, each shall be liable for the reasonable attorney's fees incurred, with or without suit, in addition to the above sum.

Said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby

waive notice of such change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder.

Executed in four original counterparts on \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL

(Seal if Corporation) By \_\_\_\_\_

Title \_\_\_\_\_

(Attach Acknowledgment of Authorized Representative of Principal)

Any claims under this bond may be addressed to:

\_\_\_\_\_ (name and address of Surety)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (name and address of Surety's agent for service of process in California, if different from above)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (telephone number of Surety's agent in California)

(Attach Acknowledgment)

\_\_\_\_\_  
SURETY

By \_\_\_\_\_  
(Attorney-in-Fact)

APPROVED:

\_\_\_\_\_  
(Attorney for CITY)

NOTICE:

No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in California. Certified copy of Power of Attorney must be attached.

**Contractor’s Certificate Regarding Worker’s Compensation**

Description of Contract:

**City of Arvin  
DiGIORGIO PARK SIDEWALK IMPROVEMENTS**

Labor Code Section 3700 Provides (in part):

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Dated: \_\_\_\_\_, 20\_\_

(Contractor)

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

(SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the City prior to performing any work under this contract.)



Insurance Company Agent for Service  
of Process in California:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the policy listed herein.

This is to certify that the policy has been issued to the named insured for the policy period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions of such policy.

NOTICE:

No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the exact above form shall be provided for each insurance company.

**Insurance Endorsement**

Description of Contract: **City of Arvin  
DiGIORGIO PARK SIDEWALK IMPROVEMENTS**

Type of Insurance: Workers' Compensation and  
Employers' Liability Insurance

This endorsement forms a part of Policy No. \_\_\_\_\_.

**ENDORSEMENT**

It is agreed that with respect to such insurance as is afforded by the policy, the Company waives any right of subrogation it may acquire against the City, the Engineer/Architect, the City's Representative, and their consultants, and each of their directors, officers, volunteers and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above-referenced contract.

The additional premium for this endorsement shall be \_\_\_\_\_%\* of the California Workers' Compensation premium otherwise due on such remuneration.

This endorsement does not increase the Company's total limits of liability.

\_\_\_\_\_  
Named Insured (Contractor) Insurance Company

\_\_\_\_\_  
Street Number Street Number

\_\_\_\_\_  
City and State City and State

By \_\_\_\_\_  
(Company Representative)

(SEE NOTICE ON PAGE 2)

\* - Contractor's insurance company to fill in this percentage.

**NOTICE:**

No substitution or revision to the above endorsement form will be accepted. If the insurance called for is provided by more than one policy, a separate endorsement in the exact above form shall be provided for each policy.

**Certificate of Insurance**

Description of Contract: **City of Arvin  
DiGIORGIO PARK SIDEWALK IMPROVEMENTS**

Type of Insurance: Liability Insurance

THIS IS TO CERTIFY that the following policies have been issued by the below-stated company in conformance with the requirements of Article 5 of the Contract and are in force at this time:

<b>POLICY NUMBER</b>	<b>EXPIRATION DATE</b>	<b>LIMITS OF LIABILITY In Thousands (000)</b>
--------------------------	----------------------------	---

	<b>A.</b>	<b>GENERAL LIABILITY</b>		
		General Aggregate Products-Comp Ops Aggregate	\$ _____	
		Personal and Advertising <u>Injury</u>	\$ _____	
		<u>Each Occurrence</u> Fire Damage (any one fire) Medical Expense (any one person)	\$ _____	
			\$ _____	
	<b>B.</b>	<b>EXCESS GENERAL LIABILITY</b>	Each <u>Occurrence</u> \$ _____	<b>Article I. Aggregate</b> \$ _____
	<b>C.</b>	<b>AUTOMOBILE LIABILITY</b>		
		Bodily Injury (Each Person)	\$ _____	
		Bodily Injury (Each Accident)	\$ _____	
		Property Damage	\$ _____	
		Or Bodily Injury and Property Damage Combined Single Limit	\$ _____	
	<b>D.</b>	<b>Article II. EXCESS AUTOMOBILE LIABILITY</b>	Each <u>Occurrence</u> \$ _____	<b>Article III. Aggregate</b> \$ _____

Attachment: DiGiorgio Sidewalks Contract [Revision 1] (Resolution to Award a Construction Contract to Griffith Company for the DiGiorgio

The following types of coverage are included in said policies (indicate by "X" in space):

A. GENERAL LIABILITY

- Commercial Form ..... YES\_\_ NO\_\_
- Premises-Operations ..... YES\_\_ NO\_\_
- Explosion and Collapse Hazard ..... YES\_\_ NO\_\_
- Underground ..... YES\_\_ NO\_\_
- Products/Completed Operations..... YES\_\_ NO\_\_
- Contractual Insurance..... YES\_\_ NO\_\_
- Broad Form Property Damage ..... YES\_\_ NO\_\_
- Independent Contractors ..... YES\_\_ NO\_\_
- Personal Injury and Advertising Injury ..... YES\_\_ NO\_\_

B. EXCESS GENERAL LIABILITY

- Following Form ..... YES\_\_ NO\_\_

C. AUTOMOBILE LIABILITY

- Business Auto Form Including Loading and Unloading..... YES\_\_ NO\_\_
- Owned ..... YES\_\_ NO\_\_
- Hired..... YES\_\_ NO\_\_
- Non-Owned ..... YES\_\_ NO\_\_

D. EXCESS AUTOMOBILE LIABILITY

- Following Form..... YES\_\_ NO\_\_

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the policies listed herein.

This is to certify that the policy has been issued to the named insured for the policy period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

The Company will give at least 30 days' written notice to the City and the Engineer/Architect prior to any cancellation of said policies.

\_\_\_\_\_  
Named Insured (Contractor) Insurance Company

\_\_\_\_\_  
Street Number Street Number

\_\_\_\_\_  
City and State City and State

By \_\_\_\_\_  
(Company Representative)

(SEE NOTICE ON NEXT PAGE)

Insurance Company Agent for Service  
of Process in California:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

NOTICE:

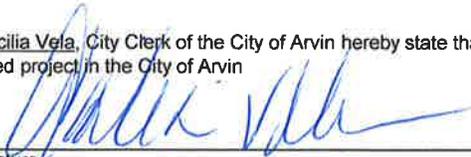
No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the exact above form shall be provided for each insurance company.

Insurers must be authorized to do business and have an agent for service of process in California and have a "B+" policyholder's rating and a financial rating of at least Class VIII in accordance with the most current Best's Rating.

**City of Arvin  
DiGiorgio Sidewalk Improvements  
Bid Opening June 6, 2018 @ 5:00 PM**

	Bidder			
Bidding Contractor	Griffith Company	Cen-Cal Construction		
Base bid	\$49,644.00	\$61,395.75		
Additive alternative #1	\$60,582.00	\$59,899.75		
Additive alternative #2	\$21,102.00	\$23,047.25		
Additive alternative #3	\$14,818.00	\$17,421.50		
Total Base Bid	\$146,146.00	\$161,764.25		
Proposal Certification	✓	✓		
Complete Bid Sheets	✓	✓		
License Law Certification	✓	✓		
Information Required of Bidder	✓	✓		
Designation of Subcontractors	✓	✓		
Bidder's Industrial Safety Record	✓	✓		
Bid Security	✓	✓		
Bid Bond	✓	✓		
Non-Collusion Declaration	✓	✓		
Bidders Reference	✓	✓		
Bidders Reference Financial	✓	✓		
Public Contract Code Section 10285.1 Statement	✓	✓		
Public Contract Code Section 10162 Questionnaire	✓	✓		
Public Contract Code Section 10232 Statement	✓	✓		
EEO Certification	✓	✓		
Compliance with IRCA	✓	✓		
Acknowledgement of Addenda	✓	✓		

I, Cecilia Vega, City Clerk of the City of Arvin hereby state that at 5:00 o'clock p.m. on June 6, 2018, there was an opening of bids received pertaining to the above named project in the City of Arvin

  
Signature

June 06, 2018  
Date

Attachment: Bid Opening List-DiGiorgio Park Sidewalk Imp Project-June 6, 2018 (Resolution to Award a Construction Contract to Griffith



## CITY OF ARVIN Staff Report

Meeting Date: July 3, 2018

**TO:** City Council

**FROM:** Adam Ojeda, City Engineer  
Jerry Breckinridge, Interim City Manager

**SUBJECT:** A Resolution of the City Council of the City of Arvin Finding A CEQA Class 1 Categorical Exemption, and the Execution of A Construction Contract with J.L. Plank Incorporated dba Cen-Cal Construction for the Construction of the Veolia Wastewater Treatment Plant Pavement Project.

### **BACKGROUND:**

In an effort to remedy a condition of deteriorating pavement and poor driving conditions at the City Wastewater Treatment Facility, the City of Arvin desires to construct approximately 8,500 square feet of concrete pavement and miscellaneous other improvements in an area that sees considerable heavy truck and equipment traffic at the facility. For this effort, the City of Arvin previously allocated City sewer funds for the design, construction management, and construction of the project. The project was designed by the previous City Engineering firm, QK Inc in 2017, and the current City Engineer advanced the project through the bid phase. It was advertised for bid in May of 2018, and three bids were received on June 6<sup>th</sup> of 2018.

The bid documents only solicited bids for a base bid. As such, after reviewing the bids and checking for accuracy and responsiveness, it was determined that the bid received from J.L. Plank Incorporated dba Cen-Cal Construction (Cen-Cal) was the lowest responsive bid in the amount of \$133,565.60. A total budget of \$146,922.00 is needed to cover the \$133,566.60 bid price as well as a 10% contingency budget of \$13,357.00. All monies shall be from the City Sewer Fund.

Staff has assessed this project and determined that a Class 1 Categorical Exemption set forth in CEQA Guidelines, Section 15301, applies as this project involves minor additions to existing the existing treatment facility. The project involves no or negligible expansion to existing uses to the facility. Furthermore, none of the exceptions to the Class 1 Categorical Exemption set forth in the CEQA Guidelines Section 15300.2 apply to this project.

**FINANCIAL IMPACT:**

The total anticipated cost for the project, which also includes previously allocated funds for construction management, professional services, etc is \$157,664.00 with the cost breakdown as follows:

<b>Item</b>	<b>Amount</b>
Total Construction Cost	\$133,565.60
Construction Contingency (10%)	\$13,357.00
Bidding and Construction Management	\$32,705.00
Design (QK Inc)	\$15,000.00
<b>Total</b>	<b>\$194,627.60</b>

All monies are understood to be coming from the City sewer fund.

The construction contingency money shall be utilized, as needed during construction should field conditions present challenges that could not have been foreseen, and necessitate the execution of a change order. If necessary, the City Engineer will negotiate such changes, and the City Manager shall have the authority to execute such change orders as prescribed by the agreement.

**ATTACHMENTS:**

Finance Form

Award Recommendation Veolia WWTP

Veolia WWTP Pavement Contract

Bid Opening list - WWTP Pavement Improvements Project\_June 6, 2018

## RESOLUTION

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN FINDING A CEQA CLASS 1 CATEGORICAL EXEMPTION, AND THE EXECUTION OF A CONSTRUCTION CONTRACT WITH J.L. PLANK INCORPORATED DBA CEN-CAL CONSTRUCTION FOR THE CONSTRUCTION OF THE VEOLIA WASTEWATER TREATMENT PLANT PAVEMENT PROJECT.

**WHEREAS**, the City of Arvin desires to construct approximately 8,500 square feet of concrete pavement and other miscellaneous improvements at the city wastewater treatment facility which is operated by Veolia; and

**WHEREAS**, the project proposes minor alterations to the existing facility by constructing concrete pavement to mitigate undesirable driving conditions at the facility in an area that routinely has heavy truck and equipment traffic; and

**WHEREAS**, the project was advertised for bid on May 14<sup>th</sup> and 21<sup>st</sup> of 2018 in the Bakersfield Californian and bids were opened publicly at Arvin City Hall on June 6<sup>th</sup> of 2018; and

**WHEREAS**, the City received three bids with the total base bid amounts as follows:

Cen-Cal	\$133,565.60
Griffith Company	\$147,289.00
SW Construction	\$188,392.00; and

**WHEREAS**, J.L. Plank Incorporated dba Cen-Cal Construction (Cen-Cal) is the lowest bidder with a total price of \$133,565.60; and

**WHEREAS**, when opening the bid packets, it was determined that Cen-Cal did not write in the dollar amounts of its bid, but did write it in words; and

**WHEREAS**, the City's Notice Inviting Bids, General Provisions, Instructions to Bidder, Paragraph 3, advises that "In case of discrepancy between words and figures, the words shall prevail."; and

**WHEREAS**, the City's Notice Inviting Bids, General Provisions, Awarding of the Contract, Paragraph 2 advises that "The City reserves the right to reject any or all bids or any parts thereof or to waive any irregularities or informalities in any bid or in the bidding to the extent permitted by law."; and

**WHEREAS**, Cen-Cal actually provided the bid amounts of its bid in words, which prevails over any figure, or the lack of a figure, and also provided supplemental figures consistent with the

written bid amounts on request; and

**WHEREAS**, as an additional consideration, a bid that “substantially conforms” to a call for bids may, even if it is not strictly responsive, be accepted if the variance or defect in the bid proposal is minor or inconsequential; and

**WHEREAS**, a bid may be responsive even if there is a discrepancy in the bid, as long as the discrepancy is inconsequential, that is, the discrepancy must not (1) affect the amount of the bid; (2) give a bidder an advantage over others (e.g., give a bidder an opportunity to avoid its obligation to perform by withdrawing its bid without forfeiting its bid security, i.e., for mistake); (3) be a potential vehicle for favoritism; (4) influence potential bidders to refrain from bidding; or (5) affect the ability to make bid comparisons. Hence, technical or minor defects in a bid can be waived. The question of whether in any given case a bid varies substantially or only inconsequentially from the call for bids is a question of fact. These considerations must be evaluated from a practical, rather than hypothetical, standpoint with reference to the factual circumstances of the case; and

**WHEREAS**, Cen-Cal actually provided the bid amounts of its bid in words, and also provided supplemental figures consistent with the written bid amounts on request; and

**WHEREAS**, the City has discretion to waive such minor and inconsequential discrepancies; and

**WHEREAS**, the City Council believes it may exercise its discretion to find this inadvertent clerical error to be a minor mistake which can be waived, and desires to award the bid to Cen-Cal as the lowest responsive and responsible bidder; and

**WHEREAS**, the funding source for the project is the city sewer fund; and

**WHEREAS**, the City desires to enter into an agreement with Cen-Cal Construction for the construction of the Veolia WWTP Pavement Project contingent upon the total construction cost not to exceed \$133,565.60;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ARVIN THAT:**

1. The recitals above are true and correct and incorporated by this reference.
2. The City Council finds that the discrepancies identified by the bid protests are minor mistakes that (1) do not affect the amount of the bid; (2) did not give Cen-Cal an advantage over others, and did not give Cen-Cal an opportunity to avoid its obligation to perform by withdrawing its bid without forfeiting its bid security; (3) are not a potential vehicle for favoritism; (4) did not influence potential bidders to refrain from bidding; or (5) did not affect the ability to make bid comparisons. The City Council exercises its

discretion determine the Cen-Cal bid was responsive. The City Council further finds that Cen-Cal, is the lowest qualified responsive and responsible bidder.

3. The City Council finds and determines that a Class 1 Categorical Exemption set forth in CEQA Guidelines, Section 15301, applies as this project involves minor additions to existing the existing treatment facility. The project involves no or negligible expansion to existing uses to the facility. Furthermore, none of the exceptions to the Class 1 Categorical Exemption set forth in the CEQA Guidelines Section 15300.2 apply to this project.
4. The City Council of the City of Arvin accepts the bids received, and awards the construction contract to Cen-Cal Construction subject to the maximum construction costs not to exceed \$133,565.60. The Mayor or City Manager is authorized to execute such an agreement with Cen-Cal Construction for the Veolia WWTP Pavement Project subject to the City Attorney's review and approval as to form of the agreement documents. The City Council reserves the right to reject all bids if the contingencies are not met.
5. The City Council of the City of Arvin authorizes the City Manager to allocate additional monies by way of executed change orders on an as-needed basis up to an amount not to exceed \$13,567.00.

**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 3rd day of July, 2018 by the following vote:

**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.



2017-2018 PROJECT SHEET

Proj. #: 18-031

Project: Veolia WWTP Pavement Project

Project Lead: Adam Ojeda, P.E.

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 1621 (design)	\$15,000.00						\$15,000.00
Engineering Task Order 1802	\$32,705.00						\$32,705.00
Construction		\$133,565.60					\$133,565.60
10% contingency		\$13,357.00					\$13,357.00
							\$0.00
							\$0.00
<b>TOTAL COST</b>	<b>\$47,705.00</b>	<b>\$146,922.60</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$194,627.60</b>

Funding Source(s)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Future Yrs	TOTAL
Sewer funds	\$47,705.00	\$146,922.60	\$0.00	\$0.00	\$0.00	\$0.00	\$194,627.60
							\$0.00
							\$0.00
<b>TOTAL FUNDING SOURCES</b>	<b>\$47,705.00</b>	<b>\$146,922.60</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$194,627.60</b>

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

City wishes to install new concrete pavement at the waste water treatment facility

2. Describe the project status and completed work.

Project was competitively bid in June of 2018. Construction is to follow.

3. Describe any anticipated grants related to the project.

Sewer

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

	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	Future Yrs	TOTAL
Projected Operating Expenses	\$0	\$0	\$0	\$0	\$0	\$0	\$0

Map and/or pictures of Project/Project Area





# DEWALT

*Corporation*

• ENGINEERING • PLANNING • SURVEYING • LAND DEVELOPMENT • CONSTRUCTION MANAGEMENT

July 3, 2018

Jerry Breckinridge  
City of Arvin  
200 Campus Drive  
Arvin, CA 93203

**Subject: RECOMMENDATION TO AWARD A CONSTRUCTION CONTRACT TO CEN-CAL CONSTRUCTION FOR THE VEOLIA WWTP PAVEMENT PROJECT**

Mr. Breckinridge,

We conducted a bid opening for the Veolia WWTP Pavement Project on Wednesday June 6<sup>th</sup>. Three bids were received. The bids were opened in the City Hall conference room, and the results were publicly read out loud. The lowest received base bid was \$133,565.60 from J.L. Plank Incorporated dba Cen-Cal Construction (Cen-Cal). A representative from each bidding company was present during the bid opening. The bid results are as follows with yellow hilites indicating the low price in each column:

Company	Base Bid
Cen-Cal Construction	\$133,565.60
Griffith Company	\$147,289.00
SW Construction	\$188,392.00

The project has a base bid with no additive alternates. The one bid from Cen-Cal Construction was within the available construction budget for the project. The City Council previously approved engineering task order 1802 which set the total construction budget at \$160,391.00 which was comprised of \$145,810.00 in construction money with a \$14,581.00 (10%) contingency.

Regardless of the bid amounts, each bid received was reviewed in depth to check for any bidding irregularities as well to assure that all necessary forms and items were provided. Furthermore, each contractors and proposed subcontractor license number was investigated to assure that they are legitimate, active, registered with the California Department of Industrial Relations, and that there appear to be no pending or recent actions or sanctions against the companies. One such concern was encountered whereby the bid form for Cen-Cal construction did not have a summation of the individual line items in the appropriate box. However, the bidder did hand write the correct amount

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immediately below this box, in the appropriate location. In response to this error, DeWalt contacted Cen-Cal and requested that they scan and send a revised version of the sheet within 24 hours of the bid opening which they did. DeWalt believes this to be a minor error that should not necessitate the rejection of their bid. Furthermore, this error was reported to the City Attorney along with the corrective actions described above, and he did not believe this should necessitate the rejection of the bid as the bid documents show that the written words of the bid shall prevail over the written numbers.

The remainder of the Cen-Cal Construction bid was acceptable, and the recommendation is to award the base bid to Cen-Cal Construction for a total bid amount of \$133,565.60 along with a 10% contingency of \$13,357.00 (rounded from 13,356.56) for a total construction budget of \$146,922.60; all of which is to be funded by the City sewer fund.

Please do not hesitate to let me know if you have any questions or comments on any of this information.

Sincerely,



Adam Ojeda PE  
City Engineer

Attachments:

- Bid results summary

**AGREEMENT FOR PUBLIC WORKS SERVICES  
BETWEEN THE CITY OF ARVIN AND  
J.L. Plank Incorporated dba Cen-Cal Construction**

THIS AGREEMENT FOR PUBLIC WORKS SERVICES (herein “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (“Effective Date”) by and between the City of Arvin, a California municipal corporation (“City”) and J.L. Plank Incorporated dba Cen-Cal Construction (“Contractor”). City and Contractor are sometimes hereinafter individually referred to as “Party” and hereinafter collectively referred to as the “Parties.”

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Arvin Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of 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:

**ARTICLE 1. WORK OF CONTRACTOR**

**1.1 Scope of Work.**

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the “Scope of Work” attached hereto as Exhibit “A” and incorporated herein by this reference, which may be referred to herein as the “services” or “work” hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For

purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

## 1.2 Bid Documents.

The Scope of Work shall include the Engineered Drawings, “Special Provisions”, and “Technical Provisions” in the bid documents for the project entitled WASTEWATER TREATMENT PLANT PAVEMENT IMPROVEMENTS PROJECT including any documents or exhibits referenced therein. The Engineered Drawings, “Special Provisions”, and “Technical Provisions” shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such documents and this Agreement, the terms of this Agreement shall govern.

## 1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

## 1.4 Compliance with California Labor Law.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

“I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.”

Contractor's Authorized Initials \_\_\_\_\_

(i) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay the subcontractor's workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

#### **1.5 Licenses, Permits, Fees and Assessments.**

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officials, officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

#### **1.6 Familiarity with Work.**

(a) By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions, materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

#### **1.7 Protection and Care of Work and Materials.**

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

#### **1.8 Warranty.**

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its

obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

### **1.9 Further Responsibilities of Parties.**

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree 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. Unless hereafter specified, neither party shall be responsible for the service of the other.

### **1.10 Additional Work and Change Orders.**

(a) 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 Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, 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 Contractor ("Change Order"). All Change Orders must be signed by the Contractor and Contract Officer prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the rates set forth in the Schedule of Compensation in Exhibit "C". If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

#### **1.11 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.

#### **1.12 Trenching and Excavation.**

In accordance with Public Contract Code Section 7104, whenever the digging of trenches or other excavations extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any: 1) Material that the Contractor believed may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; 2) Subsurface or latent physical conditions at the site differing from those indicated; or 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the Contract. In the unlikely event that a dispute arises between the City and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be

performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. Where applicable, Contractor shall comply with the trench or excavation permit requirement found in Labor Code Section 6500 and the excavation safety requirements found in Labor Code Section 6705.

## **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

### **2.1 Contract Sum.**

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed One Hundred Thirty-Three Thousand Five Hundred Sixty Five Dollars and Sixty Cents (\$133,565.60) (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.10.

### **2.2 Method of Compensation.**

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services less the contract retention;, (iii) payment for time and materials based upon the Contractor’s rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

### **2.3 Reimbursable Expenses.**

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

### **2.4 Invoices.**

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Contractor 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-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall, as soon as practicable, independently review each invoice submitted by the Contractor 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 Contractor which are disputed by City, or as provided in Section 7.3, City will cause Contractor to be paid, subject to the Schedule of Compensation (Exhibit “C”), within thirty (30) days of receipt of Contractor’s correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Notwithstanding, if the work is being funded by grant or other funding administered by a third party outside the control of the City, such as the County of Kern, Contractor acknowledges and agrees this may increase processing time for payment, and no payment of interest shall accrue if the City has used reasonable efforts to cause the Contractor to be paid within thirty (30) days.

### 2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

## ARTICLE 3. PERFORMANCE SCHEDULE

### 3.1 Time of Essence.

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

### 3.2 Schedule of Performance.

Contractor 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 “D” and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) 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 Contractor, 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 Contractor 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 Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor’s sole remedy being extension of the Agreement pursuant to this Section.

**3.4 Inspection and Final Acceptance.**

City may inspect and accept or reject any of Contractor’s work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor’s work within forty-five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City’s acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

**3.5 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) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit “D”).

**ARTICLE 4. COORDINATION OF WORK**

**4.1 Representatives and Personnel of Contractor.**

The following principals of Contractor (“Principals”) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

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

#### **4.2 Status of Contractor.**

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

#### **4.3 Contract Officer.**

The Contract Officer shall be the City Manager or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

#### **4.4 Independent Contractor.**

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are

agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

#### 4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

### ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

#### 5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to 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 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 \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers 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 Contractor 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 Contractor 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 \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor'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 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor 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) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. For Commercial General Liability (CGL) coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

## 5.2 General Insurance Requirements.

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 City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officials, officers, employees and agents and their respective insurers. Moreover, 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 at least ten (10) days prior written notice to City, or at least ten (10) days prior written notice to City in the case of cancellation for nonpayment. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to 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 City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following “cancellation” notice:

“CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, AT LEAST TEN (10) DAYS ADVANCED WRITTEN NOTICE OF CANCELLATION SHALL BE DELIVERED TO CITY AT (EXCEPT CANCELLATION DUE TO NONPAYMENT SHALL REQUIRE TEN (10) DAYS ADVANCED WRITTEN NOTICE).”

Contractor’s Authorized Initials \_\_\_\_\_

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor’s activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor’s indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

In the event of a conflict, the terms of Section 5.1 and 5.2 shall have precedence and prevail over any form of Certificate of Insurance, or any Insurance Endorsement, included in the Contract Documents.

### 5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents (“Indemnified Parties”) against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (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, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable (“indemnitors”), or arising from Contractor’s or indemnitors’ reckless or willful misconduct, or arising from Contractor’s or indemnitors’ negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys’ fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the Indemnified Parties for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the Indemnified Parties harmless therefrom;

(c) In the event any Indemnified Party is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the Indemnified Party any and all costs and expenses incurred by the Indemnified Party in such action or proceeding, including but not limited to, legal costs and attorneys’ fees.

In addition, Contractor agrees to indemnify, defend and hold harmless the Indemnified Parties from any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Contractor under this Agreement, and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services and work hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City’s sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City’s negligence, except that design professionals’ indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the

design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

#### **5.4 Notification of Third-Party Claims.**

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

#### **5.5 Performance and Labor Bonds.**

Concurrently with execution of this Agreement Contractor shall deliver to the City, the following:

(a) A performance bond in the amount of the Contract Sum of this Agreement, in the form provided in the bid packet, which secures the faithful performance of this Agreement.

(b) A labor and materials bond in the amount of the Contract Sum of this Agreement, in the form provided in the bid packet, which secures the payment of all persons furnishing labor and/or materials in connection with the work under this Agreement.

Both the performance and labors bonds required under this Section 5.5 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 Contractor promptly and faithfully performs all terms and conditions of this Agreement, pays all labor and materials for work and services under this Agreement, and meets the requirements of Section 5.8.

#### **5.6 Sufficiency of Insurer or Surety.**

Insurance and bonds 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's 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 Manager or Finance Director of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.5 may be changed accordingly upon receipt of written notice from the Risk Manager.

#### **5.7 Substitution of Securities.**

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Contractor unless otherwise required by Section

22300. Alternatively, the Contractor may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow agent at the sole expense of the Contractor unless otherwise required by Section 22300. The escrow agreement for security deposits in lieu of retention shall be substantially similar to the form provided in Public Contract Code Section 22300(f), which is incorporated herein by this reference.

#### **5.8 Release of Securities.**

City shall release the Performance and Labor Bonds when the following have occurred:

- (a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;
- (b) the work has been accepted; and
- (c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

### **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

#### **6.1 Records.**

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to 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. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor’s business, custody of the books and records may be given to City, and access shall be provided by Contractor’s successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

#### **6.2 Reports.**

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about

the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### **6.3 Ownership of Documents.**

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City’s sole risk and without liability to Contractor, and Contractor’s guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

### **6.4 Confidentiality and Release of Information.**

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

(b) Contractor, its officers, employees, agents or subcontractors, 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 Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City

shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors 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. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 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 the County of Bakersfield, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Eastern District of California, in the County of Fresno, State of California.

### **7.2 Disputes and Claims.**

(a) Default; Cure. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

(b) Public Contract Code Sec. 9204 Claims Procedure (AB 626). AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for the filing of claims by a contractor, or by a contractor on behalf of a subcontractor, on any public works project effective

January 1, 2017. The parties shall comply with the provisions of Public Resources Code Section 9204, which are fully set forth in Exhibit "E."

(c) Dispute Resolution. This Agreement is subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the Contractor, for the response to such claims by the City, for a mandatory meet and confer conference upon the request of the Contractor, for mandatory non-binding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

### **7.3 Retention of Funds.**

Contractor hereby authorizes City to deduct from any amount payable to Contractor (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 City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor'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 Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, 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 City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

### **7.4 Waiver.**

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. 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.

### **7.5 Rights and Remedies are Cumulative.**

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.

#### 7.6 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. Notwithstanding any contrary provision herein, Contractor shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of **one thousand dollars (\$1000.00)** as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor 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 Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. 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.

#### 7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, 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 Contractor 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 City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### **7.10 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. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

#### **7.11 Unfair Business Practices Claims.**

In entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment of the Parties.

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### **8.1 Non-liability of City Officers and Employees.**

No officer or employee of the City shall be personally liable to the Contractor, 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 Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

#### **8.2 Conflict of Interest.**

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

**8.3 Covenant Against Discrimination.**

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

**8.4 Unauthorized Aliens.**

Contractor 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. Additionally, Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (“IRCA”). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. Further, should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement in violation of the law, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor 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.

**ARTICLE 9. MISCELLANEOUS PROVISIONS**

**9.1 Notices.**

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person 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 (with her/his name and City title), City of Arvin, 200 Campus Drive, Arvin, California 93203 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the

time of mailing if mailed as provided in this Section. All correspondence relating to this Agreement shall be serialized consecutively.

## **9.2 Interpretation.**

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

## **9.3 Counterparts.**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

## **9.4 Integration; 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 Contractor 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.

## **9.5 Severability.**

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in 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 phrases, sentences, clauses, paragraphs, or sections 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.

## **9.6 Warranty & Representation of Non-Collusion.**

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "noninterests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being

awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials \_\_\_\_\_

**9.7 Authority to Act on Behalf of Entity.**

The person(s) executing this Agreement on behalf of any entity that is a Party 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. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

**[SIGNATURES ON FOLLOWING PAGE]**

**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

\_\_\_\_\_  
Jose Gurrola, Mayor

**ATTEST:**

\_\_\_\_\_  
Cecilia Vela , City Clerk

**APPROVED AS TO FORM:**

**ALESHIRE & WYNDER, LLP**

\_\_\_\_\_  
Shannon Chaffin, City Attorney

**CONTRACTOR:**

\_\_\_\_\_

\*By: \_\_\_\_\_  
Name:  
Title:

\*By: \_\_\_\_\_  
Name:  
Title:

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

**\*CONTRACTOR’S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE EVIDENCE OF AUTHORITY TO EXECUTE DOCUMENTS FOR ANY ENTITY CONTRACTOR MUST BE PROVIDED.**

Attachment: Veolia WWTP Pavement Contract (Resolution to Award a Contract to Cen-Cal Construction for the Veolia WWTP Pavement





**EXHIBIT "A"****SCOPE OF WORK**

- I.** Contractor shall perform all of the work and comply with all of the specifications and requirements in the "Special Provisions" and "Technical Provisions" included in the bid documents for the project entitled WASTEWATER TREATMENT PLANT PAVEMENT IMPROVEMENTS PROJECT, including any documents or exhibits referenced therein.
- II.** Project Description:
- The work to be performed under this Contract consists of furnishing all labor, materials, tools and equipment and constructing complete and in place improvements for the City of Arvin Wastewater Treatment Plant Pavement Improvements Project as shown on the Contract drawings as specified herein.
- The work shall consist of site grading and selective demolition for construction of a new concrete slab, concrete curbs and lowering of one water line.
- The work to be done consists of the furnishing by the Contractor of all labor, materials equipment and other facilities necessary in the performance of the work. The Contractor shall perform any work which is not detailed in the Plans and Specifications but which is obviously required to make the project complete and operable. Questions regarding the intent of the Plans and Specifications shall be referred to the City whose decisions thereon shall be final.
- Some information pertaining to subsurface and other conditions, which may affect the cost of performing the work, may be shown on the Plans and Specifications. While it is believed that any such information is reasonably correct, the City does not warrant either the completeness or accuracy of such information. It is the responsibility of the Contractor to ascertain the existence of all subsurface and other conditions affecting his cost of doing the work as may be disclosed by a reasonable examination of the site.
- III.** Contractor's work shall also conform to all of the standards and specifications adopted by reference only within the Special Provisions, Technical Provisions, and agreement with the City.
- IV.** The location(s) of the work, its general nature and extent, and the form and general dimensions of the Project and appurtenant work are shown on the Construction Drawings entitled WASTEWATER TREATMENT PLANT PAVEMENT IMPROVEMENTS PROJECT and are hereby made a part of this Agreement as listed herein:

### List of Construction Drawings

1. COVER SHEET
  2. GENERAL NOTES AND DETAILS
  3. DEMOLITON PLAN
  4. CONCRETE PAVING AND WATER LINE LOWERING
  5. CONCRETE PAD AND WALL
- V.** Contractors shall have on file a minimum of one (1) set of Construction Drawings upon which Contractor shall record all variations between the work as built and as originally shown on the Construction Drawings or as otherwise required under this Agreement (“Record Drawings”). Record Drawings must be kept at the work site and be accessible at all times during the construction periods and shall be delivered to the City Engineer within thirty (30) days after completion of the work.
- VI.** In addition to the requirements of Section 6.2, during performance of the work, Contractor will keep the City appraised of the status of performance by delivering the following status reports starting sixty (60) days after the Effective Date if the work has not already been completed:
- A. The Contractor shall submit a narrative report as a part of his monthly progress review and update, in a form agreed upon by the Contractor and the City. The narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.
  - B. Contractor shall update the schedule on a monthly basis, showing progress on each activity or task. After each monthly update, the Contractor shall submit to the City one (1) print of the last accepted Construction Schedule, marked up in red in accordance with the monthly review; and one (4) bond copies incorporating the updated schedule information.
- VII.** All work is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

**EXHIBIT “B”**

NOT APPLICABLE.

**EXHIBIT "C"****SCHEDULE OF COMPENSATION**

- I.** Contractor shall perform all work at the rates on the Bid Sheet submitted as part of Contractor's Proposal, incorporated herein by this reference.
- II.** A retention of five percent (5%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.
- III.** Within the budgeted amounts for each item on the Bid Sheet, and with the approval of the Contract Officer, funds may be shifted from one item's sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Work is approved per Section 1.10.
- IV.** The City will compensate Contractor for the work performed upon submission of a valid invoice pursuant to Section 2.4.
- V.** Additional work shall be authorized only by a change order approved by the City Manager or City Council. Line item costs shall be used to determine quantity adjustment changes. Otherwise, markups on such work shall be limited as follows:
  - Labor: 30%
  - Materials: 10%
  - Equipment: 10%

**EXHIBIT "D"****SCHEDULE OF PERFORMANCE**

**I.** Contractor shall perform all work timely in accordance with the following schedule:

PROJECT DURATION: 60 Calendar Days

A. Work shall only be performed between the hours of 7:00 a.m. and 7:00 p.m., on weekdays.

B. Work shall not be performed on Saturdays, Sundays or legal holidays.

C. Exceptions to the above hours of work will be permitted only after obtaining written authorization from the City Engineer.

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

A. Complete project.

**III.** The Contract Officer may approve extensions for performance of the services in accordance with Special Provisions Part I Section 01 31 19 of the Notice to Contractors, Special Provisions, Bid Proposal and Contract for Wastewater Treatment Plant Pavement Improvements Wastewater Treatment Plant Pavement Improvements Project

## EXHIBIT “E”

### PUBLIC CONTRACT CODE SEC. 9204 NEW PUBLIC WORKS CLAIMS PROCEDURE

AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for claims submitted by a contractor on any public works project. These new requirements contain burdens for both private contractors and public entities. The text of this new legislation is set forth below:

#### Public Contract Code § 9204.

Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with [Section 10240](#)) of Chapter 1 of Part 2, Chapter 10 (commencing with [Section 19100](#)) of Part 2, and Article 1.5 (commencing with [Section 20104](#)) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with [Section 7000](#)) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State

University, the University of California, a city, including a charter city, county, including a charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) “Public entity” shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with [Section 7000](#)) of [Title 7 of Part 3 of the Penal Code](#).

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) “Public works project” means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) “Subcontractor” means any type of contractor within the meaning of Chapter 9 (commencing with [Section 7000](#)) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return

receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under [Section 20104.4](#) to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time

periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

**Performance Bond**

WHEREAS, the CITY OF ARVIN, (“City”), has awarded to \_\_\_\_\_ as Contractor (“Principal”), a Contract for the work entitled and described as follows:

**WASTEWATER TREATMENT PLANT PAVEMENT IMPROVEMENTS PROJECT**

WHEREAS, the Contractor is required under the terms of said Contract to furnish a bond for the faithful performance of the Contract;

NOW, THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the City in the sum of \_\_\_\_\_ (\$ \_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total Contract price, lawful money of the United States of America, for payment of which sum well and truly be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. In case suit is brought upon this bond, the Surety will pay a reasonable attorney’s fee to the City in an amount to be fixed by the court.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if the hereby bound Contractor, or its heirs, executors, administrators, successors, or assigns, shall in all things stand and abide by, well and truly keep and perform all undertakings, terms, covenants, conditions, and agreements in the said Contract and any alteration thereof, made as therein provided, all within the time and in the manner designated and in all respects according to their true intent and meaning, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

FURTHER, the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby waive notice of such change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder.

Executed in four original counterparts on \_\_\_\_\_ 20\_\_.

PRINCIPAL

(Seal if Corporation) By \_\_\_\_\_

Title \_\_\_\_\_

(Attach Acknowledgment of Authorized Representative of Principal)

Any claims under this bond may be addressed to:

\_\_\_\_\_ (name and address of Surety)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (name and address of Surety's agent for service  
of \_\_\_\_\_ process in California, if different from above)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (telephone number of Surety's agent in  
California)

(Attach Acknowledgment)

\_\_\_\_\_  
SURETY

By \_\_\_\_\_  
(Attorney-in-Fact)

APPROVED:

\_\_\_\_\_  
(Attorney for CITY)

NOTICE:

No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in California. Certified copy of Power of Attorney must be attached.

**Payment Bond**  
**(Labor and Material Bond)**

WHEREAS, the CITY OF ARVIN, (“City”), has awarded to \_\_\_\_\_ as Contractor (“Principal”), a Contract for the work entitled and described as follows:

**WASTEWATER TREATMENT PLANT PAVEMENT IMPROVEMENTS PROJECT**

WHEREAS, said Contractor is required to furnish a bond in conjunction with said Contract, to secure the payment of claims of laborers, mechanics, material men, and other persons as provided by law;

NOW, THEREFORE, we the undersigned Contractor and Surety, are held and firmly bound unto the City in the sum of \_\_\_\_\_ (\$\_\_\_\_\_), this amount being not less than one hundred percent (100%) of the total Contract price, lawful money of the United States of America, for payment of which sum well and truly be made we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally, firmly by these presents. In case suit is brought upon this bond, the Surety will pay a reasonable attorney’s fee to the City in an amount to be fixed by the court.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT, if said Contractor, its heirs, executors, administrators, successors, assigns, or subcontractor fails to pay: (1) for any work, materials, services, provisions, provender, or other supplies, or for the use of implements of machinery, used in, upon, for, or about the performance of the work to be done, or for any work or labor thereon of any kind; (2) for work performed by any of the persons named in Civil Code Section 9100; (3) for any amounts due under the Unemployment Insurance Code with respect to work or labor performed under the contract; and/or (4) for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the Contractor and/or its subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, then the Surety herein will pay for the same in an amount not exceeding the sum specified in this bond, otherwise the above obligation shall be void.

This bond shall inure to the benefit of any of the persons named in Civil Code Section 9100 so as to give a right of action to such persons or their assigns in any suit brought upon the bond. Moreover, if the City or any entity or person entitled to file stop payment notices is required to engage the services of an attorney in connection with the enforcement of this bond, each shall be liable for the reasonable attorney's fees incurred, with or without suit, in addition to the above sum.

Said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder shall in any way affect its obligations on this bond, and it does hereby

waive notice of such change, extension of time, alteration, or modification of the Contract Documents or of the work to be performed thereunder.

Executed in four original counterparts on \_\_\_\_\_, 20\_\_\_\_.

PRINCIPAL

(Seal if Corporation) By \_\_\_\_\_

Title \_\_\_\_\_

(Attach Acknowledgment of Authorized Representative of Principal)

Any claims under this bond may be addressed to:

\_\_\_\_\_ (name and address of Surety)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (name and address of Surety's agent for service of process in California, if different from above)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ (telephone number of Surety's agent in California)

(Attach Acknowledgment)

\_\_\_\_\_  
SURETY

By \_\_\_\_\_  
(Attorney-in-Fact)

APPROVED:

\_\_\_\_\_  
(Attorney for CITY)

NOTICE:

No substitution or revision to this bond form will be accepted. Sureties must be authorized to do business in and have an agent for service of process in California. Certified copy of Power of Attorney must be attached.

**Contractor’s Certificate Regarding Worker’s Compensation**

Description of Contract:

**City of Arvin  
WASTEWATER TREATMENT PLANT PAVEMENT IMPROVEMENTS  
PROJECT**

Labor Code Section 3700 Provides (in part):

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

(a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

(b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Dated: \_\_\_\_\_, 20\_\_

(Contractor)

By \_\_\_\_\_

\_\_\_\_\_  
(Official Title)

(SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the City prior to performing any work under this contract.)



(SEE NOTICE ON NEXT PAGE)

Insurance Company Agent for Service  
of Process in California:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the policy listed herein.

This is to certify that the policy has been issued to the named insured for the policy period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policy described herein is subject to all the terms, exclusions, and conditions of such policy.

NOTICE:

No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the exact above form shall be provided for each insurance company.

**Insurance Endorsement**

Description of Contract: **City of Arvin  
WASTEWATER TREATMENT PLANT PAVEMENT  
IMPROVEMENTS PROJECT**

Type of Insurance: Workers' Compensation and  
Employers' Liability Insurance

This endorsement forms a part of Policy No. \_\_\_\_\_.

**ENDORSEMENT**

It is agreed that with respect to such insurance as is afforded by the policy, the Company waives any right of subrogation it may acquire against the City, the Engineer/Architect, the City's Representative, and their consultants, and each of their directors, officers, volunteers and employees by reason of any payment made on account of injury, including death resulting therefrom, sustained by any employee of the insured, arising out of the performance of the above-referenced contract.

The additional premium for this endorsement shall be \_\_\_\_\_%\* of the California Workers' Compensation premium otherwise due on such remuneration.

This endorsement does not increase the Company's total limits of liability.

\_\_\_\_\_  
Named Insured (Contractor) Insurance Company

\_\_\_\_\_  
Street Number Street Number

\_\_\_\_\_  
City and State City and State

By \_\_\_\_\_  
(Company Representative)

(SEE NOTICE ON PAGE 2)

\* - Contractor's insurance company to fill in this percentage.

**NOTICE:**

No substitution or revision to the above endorsement form will be accepted. If the insurance called for is provided by more than one policy, a separate endorsement in the exact above form shall be provided for each policy.

**Certificate of Insurance**

Description of Contract: **City of Arvin  
WASTEWATER TREATMENT PLANT PAVEMENT  
IMPROVEMENTS PROJECT**

Type of Insurance: Liability Insurance

THIS IS TO CERTIFY that the following policies have been issued by the below-stated company in conformance with the requirements of Article 5 of the Contract and are in force at this time:

<b>POLICY</b>	<b>EXPIRATION</b>	<b>LIMITS OF LIABILITY</b>
<b><u>NUMBER</u></b>	<b><u>DATE</u></b>	<b><u>In Thousands (000)</u></b>

	<b>A.</b>	<b>GENERAL LIABILITY</b>		
		General Aggregate Products-Comp Ops Aggregate	\$ _____	
		Personal and Advertising <u>Injury</u>	\$ _____	
		<u>Each Occurrence</u> Fire Damage (any one fire) Medical Expense (any one person)	\$ _____	
			Each <u>Occurrence</u>	<b>Article I. Aggregate</b>
	<b>B.</b>	<b>EXCESS GENERAL LIABILITY</b>	\$ _____	\$ _____
	<b>C.</b>	<b>AUTOMOBILE LIABILITY</b>		
		Bodily Injury (Each Person)	\$ _____	
		Bodily Injury (Each Accident)	\$ _____	
		Property Damage	\$ _____	
		Or Bodily Injury and Property Damage Combined Single Limit	\$ _____	
			Each <u>Occurrence</u>	<b>Article III. Aggregate</b>
	<b>D.</b>	<b>Article II. EXCESS AUTOMOBILE LIABILITY</b>	\$ _____	\$ _____

Attachment: Veolia WWTP Pavement Contract (Resolution to Award a Contract to Cen-Cal Construction for the Veolia WWTP Pavement

The following types of coverage are included in said policies (indicate by "X" in space):

A. GENERAL LIABILITY

- Commercial Form ..... YES\_\_ NO\_\_
- Premises-Operations ..... YES\_\_ NO\_\_
- Explosion and Collapse Hazard ..... YES\_\_ NO\_\_
- Underground ..... YES\_\_ NO\_\_
- Products/Completed Operations..... YES\_\_ NO\_\_
- Contractual Insurance..... YES\_\_ NO\_\_
- Broad Form Property Damage ..... YES\_\_ NO\_\_
- Independent Contractors ..... YES\_\_ NO\_\_
- Personal Injury and Advertising Injury ..... YES\_\_ NO\_\_

B. EXCESS GENERAL LIABILITY

- Following Form ..... YES\_\_ NO\_\_

C. AUTOMOBILE LIABILITY

- Business Auto Form Including Loading and Unloading..... YES\_\_ NO\_\_
- Owned ..... YES\_\_ NO\_\_
- Hired..... YES\_\_ NO\_\_
- Non-Owned ..... YES\_\_ NO\_\_

D. EXCESS AUTOMOBILE LIABILITY

- Following Form..... YES\_\_ NO\_\_

This certificate is issued as a matter of information only and confers no rights upon the certificate holder. This certificate does not amend, extend, or alter the coverage afforded by the policies listed herein.

This is to certify that the policy has been issued to the named insured for the policy period indicated, notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions, and conditions of such policies.

The Company will give at least 30 days' written notice to the City and the Engineer/Architect prior to any cancellation of said policies.

\_\_\_\_\_  
Named Insured (Contractor) Insurance Company

\_\_\_\_\_  
Street Number Street Number

\_\_\_\_\_  
City and State City and State

By \_\_\_\_\_  
(Company Representative)

(SEE NOTICE ON NEXT PAGE)

Insurance Company Agent for Service  
of Process in California:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Agency

\_\_\_\_\_  
Street Number

\_\_\_\_\_  
City and State

\_\_\_\_\_  
Telephone Number

NOTICE:

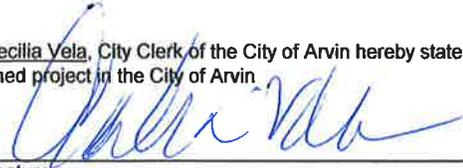
No substitution or revision to the above certificate form will be accepted. If the insurance called for is provided by more than one insurance company, a separate certificate in the exact above form shall be provided for each insurance company.

Insurers must be authorized to do business and have an agent for service of process in California and have a "B+" policyholder's rating and a financial rating of at least Class VIII in accordance with the most current Best's Rating.

**City of Arvin  
Veolia WWTP Pavement Improvements  
Bid Opening June 6, 2018 @ 4:30 PM**

	<b>Bidder</b>			
<b>Bidding Contractor</b>	SW Construction	Cen-cal Construction	Griffith Company	
<b>Total Base Bid</b>	\$188,392.00	\$133,565.60	\$147,289.00	
Proposal Certification	✓	✓	✓	
Complete Bid Sheets	✓	✓	✓	
License Law Certification	✓	✓	✓	
Information Required of Bidder	✓	✓	✓	
Designation of Subcontractors	✓	✓	✓	
Bidder's Industrial Safety Record	✓	✓	✓	
Bid Security	✓	✓	✓	
Bid Bond	✓	✓	✓	
Non-Collusion Declaration	✓	✓	✓	
Bidders Reference	✓	✓	✓	
Bidders Reference Financial	✓	✓	✓	
Public Contract Code Section 10285.1 Statement	✓	✓	✓	
Public Contract Code Section 10162 Questionnaire	✓	✓	✓	
Public Contract Code Section 10232 Statement	✓	✓	✓	
EEO Certification	✓	✓	✓	
Compliance with IRCA	✓	✓	✓	
Acknowledgement of Addenda	✓	✓	✓	
Addendum 1	✓	✓	✓	

I, Cecilia Vela, City Clerk of the City of Arvin hereby state that at 4:30 o'clock p.m. on June 6, 2018, there was an opening of bids received pertaining to the above named project in the City of Arvin.

  
\_\_\_\_\_  
Signature

June 6, 2018  
\_\_\_\_\_  
Date



## CITY OF ARVIN Staff Report

Meeting Date: July 3, 2018

**TO:** City Council

**FROM:** Jerry Breckinridge, Chief of Police  
Jerry Breckinridge, Interim City Manager

**SUBJECT:** Approval of Real Property Use Agreement with Scott Milliam and Arturo Hinojosa, doing business as “Golden Tiger Karate”, for space at Community Center, Room #2, to provide martial arts classes at a reduced rate for the citizens of Arvin.

### **BACKGROUND:**

The City Council, as part of its 5-Year Strategic Plan and Economic Development Strategy, desires to promote education of the public through recreational activities, local culture, and family activities. Staff has been considering developing education, recreational activities, local culture, and family activities by seeking partnerships with local organizations such as Golden Tiger Karate.

Golden Tiger Karate desires to provide Karate classes at a reduced rate to the youth of our community. The services Golden Tiger Karate will provide will benefit the community and provide recreation to our youth.

Staff is requesting approval from the City Council to execute the Real Property Use Agreement between the City and Golden Tiger Karate to promote a much-needed recreation program. The agreement includes:

- Operations would be conducted at the Community Center, Room 2, throughout the week. Classes will be scheduled around other groups using this room.
- Golden Tiger Karate is to pay a monthly access fee \$1.00 annually.
- City shall make all arrangements for and pay for any applicable utilities and services furnished to or used by the Boys & Girls Club

### **FINANCIAL IMPACT:**

City shall make all arrangements for and pay for any applicable utilities and services furnished to or used by the Golden Tiger Karate. Golden Tiger Karate is to pay a monthly access fee set at One Dollar (\$1.00) per year.

**RECOMMENDATION:**

Staff recommends the City Council approve the real property use agreement between the City and Golden Tiger Karate.

**ATTACHMENTS:**

Agreement between the City of Arvin and Golden Tiger Karate

**AGREEMENT NO. \_\_\_\_\_****REAL PROPERTY USE AGREEMENT**

This Real Property Use Agreement (“Agreement”) is made and entered into July 5, 2018 (“Agreement Date”) between the CITY OF ARVIN, a municipal corporation (“City”) and Scott Milliam and Arturo Hinojosa (“Authorized User”), doing business as “Golden Tiger Karate,” pursuant to the following recitals, which are a substantive part of this Agreement. City and Authorized User are sometimes individually referred to as a (“Party”) and jointly as the (“Parties”).

RECITALS

A. City owns real property located at 800 Walnut Dr., Arvin, 93203, on which is situated a building commonly known as the Community Center. Within the Community Center is Room #2, (the “Premises”), as more particularly described and depicted in **Exhibit A**.

B. The City, as part of its 5-Year Strategic Plan and Economic Development Strategy, desires to promote education of the public through recreational activities, local culture, and family activities.

C. The purpose of Golden Tiger Karata is is to create better citizens, as well as to help individuals learn self-defense, to gain confidence, focus, and self-discipline.

D. A relationship between the Parties allowing for the Authorized User to use the Premises would serve a public benefit by promoting education, cultural, economic, and general welfare of the public, as well as providing opportunities for family and community activities.

E. Therefore, the City and Authorized User desire to enter into this Agreement setting forth the rights and obligations of both Parties therein.

NOW, THEREFORE, City and Authorized User agree as follows:

AGREEMENT

1. Access. City hereby grants to Authorized User access to the Premises beginning on the Agreement Date.

2. Use of Premises AS IS. Authorized User acknowledges it has and shall accept the Premises from City in its “AS IS” condition without representation or warranty. Authorized User acknowledges it has inspected the Premises and is aware of its condition. Pursuant to California Civil Code Section 1938, Authorized User is advised that the Premises have not undergone an inspection by a Certified Access Specialist, and, therefore, City is not aware if the Premises comply with the applicable construction-related accessibility standards pursuant to Civil Code Section 55.53.

3. Access Fee. In light of the public benefit provided by the Authorized User, as consideration for the use and occupancy of the Premises, Authorized User shall pay an access fee to City as follows: Authorized User shall pay to City a monthly access fee in the amount of One Dollar (\$1.00) per year, unless increased by a majority vote of the City Council. The access fee shall be due and payable to City on June 5<sup>th</sup> of each year. The full access fee shall be paid by Authorized User and be personally delivered or mailed to the City at 200 Campus Drive, Arvin, CA 93203 or any other place or places that City may designate by written notice to Authorized User.

4. Use of Premises.

a. Purpose. Authorized User shall have access to use the Premises to set up, staff, and provide Material Arts Karate classes, and other martial arts classes or training (“Permitted Uses”). As part of the Permitted Uses, Authorized User may charge twenty dollars (\$20) monthly per-student to help offset the costs of equipment, supplies, and other costs or expenses. The Premises shall not be used for any other purpose other than the Permitted Uses without the prior written consent of the City, which may

be granted or withheld in the City's sole discretion. Usage of the Premises shall only occur on weekdays between the hours of:

Monday and Wednesday:

- 5:45PM to 6:30PM
- 8:00PM to 8:45PM

Tuesday and Thursday;

- 5:45PM to 6:30PM
- 8:00PM to 8:45PM

Authorized User acknowledges that its use outside of these dates and times is not exclusive, and that other persons or users may be approved by City to utilize the Premises the identified dates and times. Further, the use of the Premises shall be governed by the special conditions identified within **Exhibit B** to this Agreement. No other uses shall be permitted on the Premises without the prior written consent of City, which may be granted or withheld in its sole discretion. Authorized User shall have access to and use of the parking lot and access way to the Premises, but such access and use shall only concurrent with the City's and public's right of use of the same and not for Authorized User's exclusive use. All staffing, equipment and supplies for the Permitted Use conducted by Authorized User shall be the sole responsibility of Authorized User. The supervision of all participants in the activities conducted by Authorized User shall be the sole and exclusive responsibility of Authorized User and its personnel. Authorized User shall ensure that all its employees, staff, volunteers, agents or similar persons using the Premises submit to, and pass, a background check and fingerprinting conducted by the City using the California Department of Justice (DOJ) Live Scan System or an equivalent system approved by the City, prior to allowing contact with minors on the Premises.

b. City Use of Premises. Authorized User acknowledges and agrees that the City shall have the right to utilize the Premises at any time when not in use by Authorized User.

c. No Alterations or Improvements. No alterations or improvements shall be made to the Premises without the advance and express written consent of City, and upon such terms and conditions as City may require.

d. Removal. Upon termination of this Agreement, unless otherwise agreed, Authorized User shall remove Authorized User owned structures and/or improvements and restore the Premises to substantially the same condition at the time Authorized User took possession of the Premises. Upon Authorized User's failure to remove structures and/or improvements, the property shall, at the option of City, become the sole property of City; or, at the expense of Authorized User, City may remove said structures and/or improvements to restore the Premises to substantially the same condition in which it existed at the time Authorized User took possession of the Premises.

e. Compliance with Laws. Authorized User shall comply with all statutes, ordinances, regulations, and requirements of all governmental entities (including the City of Arvin), relating to Authorized User's use and occupancy of the Premises, whether those statutes, ordinances, regulations, and requirements are now in force or are subsequently enacted. Authorized User shall comply with all applicable requirements of the Americans with Disabilities Act of 1990, California Disabled Persons Act and the California Building Code. Further, Authorized User, its successors, heirs, executors, administrators and assigns, and all persons claiming under or through the Authorized User, shall not discriminate against or segregate any person or group of persons, on account of race, color, creed, religion, sex, marital status, national origin or ancestry, in the use, occupancy, tenure or enjoyment of the Premises.

f. License. Authorized User shall procure and maintain all required licenses and/or permits governing the operation of the Permitted Uses throughout the term of this Agreement.

g. Waste and Nuisance. Authorized User shall not use the Premises, or allow the Premises to be used, in any manner that will constitute a waste, nuisance, or unreasonable annoyance to the neighborhood adjacent to the Premises. The Premises shall not be used for displaying signs and notices other than those connected with the Program. Such notices and signs shall be neat and properly maintained, and shall be in compliance with the Arvin Municipal Code and all applicable laws and regulations.

h. Maintenance. Authorized User, at its sole cost and expense, shall keep and maintain the Premises in good order and condition, and free from rubbish, to the satisfaction of City. Upon notice from Authorized User, City shall be responsible for the operational maintenance of the Premises, including but not limited to, plumbing, electrical, exterior painting and repairs, roofing, HVAC, interior, and alarm systems (if any). Additionally, the City shall maintain the Premises landscaping and parking lot.

5. Utilities. City shall make all arrangements for and pay for any applicable utilities and services furnished to or used by Authorized User, including but not limited to water and electric services.

6. Indemnification. Authorized User shall indemnify, protect, defend and hold harmless the Premises, City and its managers, officers, directors, members, employees, agents, contractors, partners and lenders, from and against any and all claims, and/or damages, costs, liens, judgments, penalties, permits, reasonable attorneys' and consultant's fees, expenses and/or liabilities arising out of, involving, or in dealing with (1) the use or occupancy of the Premises by Authorized User and use of the parking lot and access way, the conduct of Authorized User's business or Program, any act, omission or neglect of Authorized User, its officers, directors, members, employees, agents or contractors; (2) out of any breach by Authorized User in the performance in a timely manner of any obligation on Authorized User's part to be performed under this Agreement; (3) any acts, omissions or negligence of Authorized User or any person or entity claiming through or under Authorized User, or Authorized User's agents, employees, contractors, invitees or visitors; (4) any claim arising under the Americans With Disabilities Act of 1990, California Disabled Persons Act and/or similar laws; or (5) any claims and/or liability arising or governed by Workers Compensation law. The foregoing shall include, but not be limited to, all costs of the defense or pursuit of any claim or any action or proceeding involved therein, and whether or not (in the case of claims made against City) litigated and/or reduced to judgment. In case any action or proceeding is brought against City by reason of any of the foregoing matters, Authorized User upon notice from City shall defend the same at Authorized User's expense by counsel reasonably satisfactory to City and City shall cooperate with Authorized User in such defense. City need not have first paid any such claim in order to be so indemnified. In addition, City may require Authorized User to pay City's attorneys' fees and costs in defending against or participating in such claim, action or proceeding if City shall decide, in its exercise of reasonable judgment, it is unsatisfied with the representation of its interest by Authorized User or its counsel.

City shall not be liable for security, injury or damage to the person or goods, wares, merchandise or other property of Authorized User, Authorized User's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, earthquake, flood, terrorism, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other any other cause, including the commission of a crime, whether the said injury or damage results from conditions arising upon the Premises or from other source or places except if such injury or damage is the result of the gross negligence or willful misconduct of City or City's employees, contractors or agents.

**Authorized User shall require all individuals participating in its programs to sign liability waivers releasing, indemnifying and holding harmless the City from any and all injuries arising from their participation in the Program or use of the Premises being offered by Authorized User.**

The provisions of this section shall survive the expiration or termination of this Agreement.

7. Insurance Requirements.

a. General Liability Insurance. Authorized User shall obtain, pay for and maintain in effect during the life of this Agreement, a policy of commercial general liability insurance issued by an insurance company rated not less than “A-VII” in Best Insurance Rating Guide and admitted to do business in California with combined single limits of liability of not less than \$1,000,000.00 per occurrence. The policy shall contain an endorsement naming the City as an additional insured insofar as this Agreement is concerned, and provide that written notice shall be given to the City at least 10 days prior to cancellation or material change in the form of the policy or reduction in coverage.

b. General Provisions. All of the policies of insurance required to be procured by Authorized User pursuant to this Section shall be primary insurance and shall name City, its employees and agents as additional insureds. Any insurance or self-insurance maintained by City, its officers, officials, employees, agents, or volunteers shall be in excess of Authorized User’s insurance and shall not contribute with it. All policies shall waive all rights of subrogation and provide that said insurance may not be amended or canceled without providing thirty (30) days prior written notice by registered mail to City. Within ten (10) business days of execution of this Agreement by the last Party to sign, and at least thirty (30) days prior to the expiration of any insurance policy, Authorized User shall provide City with certificates of insurance and full copies of the insurance policies evidencing the mandatory insurance coverages written by insurance companies acceptable to City, licensed to do business in California and rated A:VII or better by Best’s Insurance Guide.

8. Liens and Claims. Authorized User shall not suffer any mechanics’ or materialmen’s liens of any kind to be enforced against the Premises for any work done or materials furnished at Authorized User’s request. Should Authorized User fail, neglect, or refuse to remove said lien, City shall have the right to pay any amount required to release any such liens, or to defend any action brought thereon, and to pay any judgment entered therein; and Authorized User shall be liable to City for all costs, damages, reasonable attorneys’ fees, and any amounts expended in defending any proceedings or in the payment of any of said liens or any judgment obtained therefor.

9. Encumbrances. Authorized User shall not encumber by deed of trust, mortgage or other security instrument, all or a part of Authorized User’s interest under this Agreement without the advance and express written consent of City, and upon such terms and conditions as City may require.

10. Condemnation. In the event of the taking or condemnation of all or any part of the Premises, Authorized User may receive compensation only for any taking of or damage to Authorized User-owned improvements. Any compensation awarded and interest thereon, including the compensation for the land value and interest thereon, shall belong to City. Authorized User shall **not** receive any value related to the leasehold value of the property which shall be paid solely to the City. In the event a condemnation or transfer in lieu thereof results in a taking of any substantial and/or material portion of the Premises, the City or Authorized User may, upon written notice given to the other Party within thirty (30) days after such taking or transfer in lieu thereof, terminate this Agreement

11. Default.

a. Authorized User’s Default. The occurrence of any of the following shall constitute a default by Authorized User: (1) failure to pay in full the access fee, insurance premiums or taxes, or any other sums due hereunder as a result of Authorized User’s use of the Premises; (2) abandonment of the Premises; and (3) failure to perform any other provision of this Agreement.

b. Termination. City may terminate this Agreement immediately upon written notice to Authorized User if Authorized User defaults on any obligation under this Agreement. In the event of termination, City may regain possession of the Premises in the manner provided by the laws of the State of California. At City’s option, if Authorized User has breached this Agreement and/or abandoned the Premises, this Agreement shall continue in effect for so long as City does not terminate Authorized User’s access, and City may enforce all rights and remedies under this Agreement, including the right to recover the access fee as it becomes due. Further, City shall be entitled to recover from Authorized User damages and to exercise such other rights and remedies as provided to City under the laws of the State of California.

**The City or Authorized User may terminate this Agreement without cause upon thirty (30) days written notice.**

12. Waiver. No delay or omission in the exercise of any right or remedy of City on any default by Authorized User shall impair such right or remedy or be construed as a waiver. Any waiver by City 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.

13. Entry and Inspection of Premises. City and its authorized representatives shall have the right to enter and inspect the Premises at all reasonable times to determine whether the Premises is in good condition and whether Authorized User is complying with its obligations under this Agreement.

14. Relationship of Parties. City is not, nor shall it become or be deemed to be, a partner or a joint venturer with Authorized User by reason of the provisions of this Agreement nor shall this Agreement be construed to authorize either party to act as the agent for the other.

15. Notice. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid registered mail at the address of such party as provided below, or to any such address as such party shall notify the other in writing. Notice shall be deemed communicated when received if personally served or three (3) days after mailing if mailed.

City of Arvin  
Attn: City Manager  
200 Campus Drive  
P.O. Box 548  
Arvin, CA 93203

Golden Tiger Karate  
Scott Milliam

9501 Flushing Quail Rd., #11-12

Bakersfield, CA 93312  
(661)345-4371

16. Effect of Termination of Agreement. Termination of this Agreement shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration, or thereafter in case by the terms of this Agreement it is provided that anything shall or may be done after termination or expiration hereof.

17. Amendments. This Agreement shall not be modified or amended in any way except in writing signed by the parties hereto.

18. Interpretation. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it.

19. Entire Agreement. This Agreement contains all the agreements of the parties concerning the subject matter of it and cannot be amended or modified except by a subsequent written agreement.

20. Severability. The unenforceability, invalidity, or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

21. Attorney's Fees. If either party commences an action against the other party arising out of or in connection with this Agreement, the party prevailing in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of suit.

22. Voluntary Agreement; Authority to Execute. Authorized User and 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 counsel of their choosing if desired, in deciding whether to execute this Agreement. The signatories to this Agreement represent that they have the proper authority to execute this Agreement on behalf of the respective party.

23. Binding Effect; Choice of Law. This Agreement shall be binding upon the Parties, their successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Agreement shall be initiated in the Superior Court of the State of California for the County of Monterey.

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

**CITY:**

**AUTHORIZED USER:**

**CITY OF ARVIN,**  
a municipal corporation

**GOLDEN TIGER KARATE**

By: \_\_\_\_\_  
Jerry Breckinridge, Interim City Manager  
\_\_\_\_\_, 2018

By: \_\_\_\_\_  
Name: Scott Milliam

**ATTEST:**

Title:

\_\_\_\_\_  
Cecilia Vela, City Clerk

By: \_\_\_\_\_  
Name: Arturo Hinojosa

APPROVED AS TO FORM:

Title:

ALESHIRE & WYNDER, LLP

By: \_\_\_\_\_  
Shannon Chaffin, City Attorney

Attachment: Agreement between the City of Arvin and Golden Tiger Karate (Lease Agreement - Golden Tiger Karate)

**EXHIBIT A**

**DESCRIPTION AND DEPICTION OF THE "PREMISES"**

Room #1- Not Available	<b>Room #2- This will be the room utilized</b>	Room #3- Not Available	Room #4- Not Available	Main Recreation Hall Area Not Available
		Bathroom		

**EXHIBIT B**  
**SPECIAL CONDITIONS**

Based upon the public benefit provided by Authorized User and its Permitted Uses, the City hereby grants to Authorized User access to the Premises upon compliance with the following special conditions:

1. Staffing: The staffing for the Premises shall be the sole responsibility of the Authorized User. The Premises' staff, whether volunteers or employees of the Authorized User, or under other arrangement with the Authorized User, shall not be employees, volunteers, officials, agents, or representatives of the City by way of their arrangement with the Authorized User.
2. Expansion of Use or Programs: Given the public benefit provided by Authorized User, the City is open to considering a request to expand programs and the use by Authorized User to other dates, times and locations at the Community Center located at 800 Walnut Dr., Arvin, 93203. Said expansion must be memorialized in writing and approved by the City Council.
3. Special Events: At its sole discretion and based upon availability, the City may grant Authorized User additional space or access for special event(s) within the Community Center upon request. Authorized User is encouraged to provide City with its request at its earliest possible time, and acknowledges space may not be available if previously.

### Emergency Contact List

**Business Name:** \_\_\_\_\_

Personal

Owner(s) \_\_\_\_\_  
\_\_\_\_\_

**Contact in Case of Personal Emergency**

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

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

After Hours Phone: \_\_\_\_\_

**Contact in Case of Facilities Emergency**

Manager's Name: \_\_\_\_\_

Manager's Phone: \_\_\_\_\_

Alternate Contact: \_\_\_\_\_

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



**CITY OF ARVIN**  
**Staff Report**

Meeting Date: July 3, 2018

<b>TO:</b>	City Council
<b>FROM:</b>	Jake Raper, City Planner Jerry Breckinridge, Interim City Manager
<b>SUBJECT:</b>	An Ordinance by the City Council of the City of Arvin, California, to Adopt Text Amendment No. 2017-04, An Oil and Gas Ordinance for Regulation of Petroleum Facilities and Operations, by Repealing Chapter 17.46, Title 17, and Adding Chapter 17.46 to Title 17, of the Arvin Municipal Code

**RECOMMENDATION:**

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

**SUMMARY:**

As authorized by the City Council, the updated draft Ordinance was returned to the Planning Commission to make a recommendation to updates to the draft ordinance. These updates address intervening changes in laws (including those which took effect on January 1, 2018), local conditions related to the Mountain View field, procedural items including streamlining to reduce impacts on City and other resources, increasing setbacks from roadways from 50 to 100 feet, etc. Protections for immediate public health, safety and welfare issues were not changed. The Planning Commission again recommended approval of the Ordinance.

Approval of the Ordinance will provide an update to the City of Arvin's Municipal Code for the regulation of petroleum facilities and operations.

**BACKGROUND:**

The City's original petroleum facilities and operations code was adopted in 1965 and consisted of only a few pages of regulations. The current code allows oil drilling in residential

neighborhoods with a CUP. At the time of the original oil code, the City's population was approximately 5,000 residents. During the last 50+ years 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.

The proposed oil code amendments deal with not only the changing character of Arvin, but changes in the science and technology of oil production in the last half century. These include the advent of 3-D Seismic Imaging technology, which is unlocking new deposits of oil and gas in previously declining and abandoned oil fields. Major technology advancements have been made in directional or slant drilling, now combined with GPS coordination and 3-D imaging to precisely locate and access gas and oil deposits. Arvin's original oil code did not anticipate these technologies or uses.

As the technology and science improve in locating gas and oil deposits, as well as improvements in production technology, it is conceivable that these reserves will increase. This improvement in technology and science make a compelling case that Arvin requires a comprehensive petroleum code amendment that can deal with decades of future oil production.

There have also been changes in oil field production techniques which warrant the proposed amendments to the Arvin Oil Code. These include changes in pumping technology and efficiencies, including more energy efficient pumps. There have also been changes in sound attenuation technology, for both oil drilling equipment and well servicing equipment, since the existing code was adopted. Air quality standards have also evolved since 1965, including new regulations from the San Joaquin Air Quality Management District to control odors and emissions. Natural gas vapor recovery is now common place in the local oil fields, where in 1960's natural gas was routinely a waste product that was vented to atmosphere or flared. Drilling muds have evolved into water based muds rather than oil based muds, which are less impactful to the environment. There have been changes in pipeline technology, leak detection and pipeline repairs, where the majority of oil production can now be conveyed by pipeline, instead of tanker trucks.

Important regulations have been developed in other jurisdiction to address issues such as decommissioning of oil facilities once they have reached the end of their economic life and appropriate clean up and remediation to allow for appropriate future use of the land. In addition, regulations have evolved to address the potential change of ownership that could occur at oil fields and the importance of addressing such changes to protect the local jurisdictions on financial responsibility and insurance.

The original water flood systems relied on potable water in the 1970s, when water was relatively inexpensive. With the population growth in the region and State, potable water has been substituted by production or reclaimed water. This water must be carefully monitored for environmental and public health reasons. The original Oil Code did not anticipate the use of

production or reclaimed water and the need for careful water quality monitoring. Other environmental science and technology advancements have been made in the areas of ground water cleanup, soil clean-up and remediation actions. The original Oil Code did not anticipate any of these environmental advancements, which when employed improve the public health and safety.

The National Environmental Policy Act (NEPA) was adopted in 1969 and California followed suit by adopting the California Environmental Quality Act (CEQA) in 1970. These two landmark pieces of environmental legislation were not anticipated by Arvin's Oil Code in 1965. Part of the necessary amendments in the proposed oil code deal with the increasing the environmental indemnification and insurance coverage requirements. These environmental insurance needs could not have been foreseen by the original authors of the 1965 code.

Without financial assurances to ensure site remediation and compliance with heightened environmental standards, redevelopment of a former oil or gas site may be precluded or unnecessarily restricted. This can result in parcels of land with limited (if any) development potential throughout the City, which can not only displace other desirable uses, but also affects the City's ability to provide services to the public through decreased tax revenue. Additionally, this can increase the likelihood of blight, nuisances, vandalism and other undesirable conditions. These financial assurances to address environmental needs could not have been foreseen by the original authors of the 1965 code.

Another of the key changes that necessitates a comprehensive amendment to the Arvin Oil Code is the major change in the role of the State Division of Oil, Gas and Geothermal Resources since 2011. Oil production and site development in the area was carefully regulated by DOGGR until 2011, when DOGGR notified several cities that they would no longer be involved in the site development process. Several local cities were required to amend their oil codes to deal with this State policy change. Additionally, the availability of DOGGR oversight may fluctuate based on State budgetary allocations. In part, Arvin's proposed amendments to the oil code are in response to the this issue. The proposed code amendment will ensure environmentally sound, and community protective, operational standards. The proposed code ensures oil well and facilities abandonment requirements that will result in the protection of the public health and safety, overall environmental protection and the safe redevelopment of property.

### **PROCEDURAL BACKGROUND:**

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. The Planning Commission then held a public hearing on October 10, 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.

Although there were multiple public hearings and notices in the newspaper, and no objections made at prior hearings, various petroleum operators and industry representatives 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 fully 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.

More than 100 days was then provided to oil and gas operators, and other parties, to review the proposed ordinance in detail. No additional comments were received during that time from the petroleum operators. Staff then set up a meeting with the petroleum operators on May 1, 2018, and conducted a workshop on May 16, 2018. Additionally, Staff obtained 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. Notices for this meeting have been provided as required by law, and a press release provided to press.

Written comments from public, including those from the City Council meeting on November 21, 2017, and the Planning Commission meeting of June 12, 2018, are attached to this staff report.

## **OVERVIEW OF PROPOSED ORDINANCE**

The proposed Ordinance is one of the comprehensive ordinances in the State, and is divided into three Parts as follows:

### **Part 1 (Administrative Procedures):**

This Part identifies where operations may occur, and what approvals are necessary for the types of operations. This could include:

- o Prohibiting new operations in residential and other sensitive areas (such as schools and medical facilities).
- o All other areas require conditional use permits or development agreements (complete with a public review process).

- o Regulation of facility closure and abandonment.
- o Impose insurance and bonding requirements. This could include general liability (including environmental impairment (or seepage and pollution) coverage), automotive liability, worker's compensation, control of well insurance and umbrella insurance.
- o Require the applicant shall be fully responsible for all reasonable costs and expenses incurred by the City to review, approve, implement, inspect, monitor, or enforce the ordinance or any CUP, DA, or permit related to oil and gas production.
- o Establish monitoring and enforcement procedures (including substantial fines and penalties, etc.).

### **Part 2 (Development Standards for Petroleum Operations):**

This Part establishes how the sites may be operated. This includes:

- o Banning expansion of existing uses in residential and other sensitive use areas.
- o Prohibiting new operations within a certain radius (600 feet) of sensitive uses unless they can comply with a variety of requirements, including an odor minimization plan, air monitoring plan, community alert system, quiet mode operations plan, photometric analysis (lighting and glare), etc.
- o Prohibiting the development of new uses closer than 300 feet (a football field) from sensitive uses under any conditions.
- o Regulations to address lighting, aesthetics, water quality (including groundwater), air quality, greenhouse gas, inspection and monitoring, safety standards, and other items.

### **Part 3 (Development Standards for Site Abandonment and Redevelopment):**

This Part addresses conditions under which a site must be assessed and remediated prior to redevelopment of a current or oil or gas site (e.g., prior to building structures over an abandoned site). This includes leak testing, inspections, ensuring all wells are properly abandoned and recording of documents on the property to give notice to future owners and occupants of the land's prior use as an oil or gas site, results of testing, etc.

### **CEQA:**

The proposed Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines),

and the environmental regulations of the City. Staff has determined that the Ordinance is exempt from CEQA pursuant Class 8, Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. This Categorical Exemption is applicable as this Ordinance is intended to further regulate oil and gas production in the City in such a way as to better protect the environment. Such a finding and determination is warranted as the proposed Ordinance addresses the maintenance, restoration, enhancement and protection of the environment and the public health, safety, welfare of the citizens of Arvin as related to potential impacts from petroleum operations and facilities within the City. The variety of environmental issues addressed include air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors. Under the current ordinance, multiple wells, directional drilling and associated equipment and operations (including resultant potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed. Adoption of Text Amendment No. 2017-04 does not change this. In other words, arguments that the Ordinance may cause more intense uses to be shifted to other locations are without basis, as any such level of hypothetical intensity at other locations would already allowed under the current regulatory environment, and such projects would also be subject to individual CEQA review. This Ordinance instead reduces the potential impacts at certain locations by establishing standards for environmental protection; it does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

### **Financial Impact:**

The proposed Ordinance is designed such that the applicants would pay for all impacts and costs associated with monitoring, permitting, testing, etc.; there may be some costs to set up processes.

### **EXHIBITS AND ATTACHMENTS**

1. An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code.
2. Planning Commission packet of June 13, 2018, including:
  - a. Resolution Recommending Adoption Of An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code, And Recommendation of Adoption of Categorical Exemption under CEQA Section 15308 (Actions By Regulatory Agencies For Protection Of Natural Resources)

- i. Exhibit A – Proposed Ordinance Amendment – Title 17-Zoning, Chapter 17.46 Oil and Gas Production
  - b. Notice of Public Hearing for the Planning Commission meeting of June 13, 2018.
  - c. Press release regarding Planning Commission meeting of June 12, 2018.
  - d. Comments and other documents received from the public to date.
3. Notice of Public Hearing for City Council meeting of July 3, 2018.
4. Press release regarding City Council meeting of July 3, 2018
5. Comments and other documents received from the public to date, including those submitted at the Planning Commission meeting of June 12, 2018.
6. Draft Notice of Exemption

**ATTACHMENTS:**

Ordinance\_Oil and Gas Code

Arvin Planning Commission Packet of June 12, 2018

Notice of Public Hearing for City Council Meeting of July 3, 2018\_Oil and Gas Code Amendment

Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018

Draft Notice of Exemption\_Oil and Gas Ordinance

Oil and Gas Press Release June 25, 2018

## ORDINANCE NO. 18- XX

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, TO ADOPT TEXT AMENDMENT NO. 2017-04, AN OIL AND GAS ORDINANCE FOR REGULATION OF PETROLEUM FACILITIES AND OPERATIONS, BY REPEALING CHAPTER 17.46, TITLE 17, AND ADDING CHAPTER 17.46 TO TITLE 17, OF THE ARVIN MUNICIPAL CODE

WHEREAS, all oil and gas operations have the potential for significant and immediate impacts on the health, safety, and welfare of the citizens of Arvin through increased noise, odor, dust, traffic, and other disturbances, as well as the potential to significantly impact the City's air, water, soil, biological quality, geology, storm water and wastewater infrastructure, transportation, noise exposures, emergency response plans, aesthetic values, environmental and community resources; and

WHEREAS, the City of Arvin zoning and land use standards and regulations on oil and gas drilling have not been updated in several years, and have not been updated prior to various changes in oil and gas production practices and changes to state statutes and regulations; and

WHEREAS, the City Council held a variety of public meetings regarding these and related issues associated with petroleum operations on October 18, 2016, and January 10, 2017; and

WHEREAS, on September 19, 2017, the City Council adopted Resolution No. 2017-92, initiating various code amendments, deletions, and additions to Title 17 –Zoning, including updates to the oil and gas ordinance; and

WHEREAS, the City Council directed City Staff to commence a complete and comprehensive review to update the Municipal Code, which included Section 17.46 Oil and Gas Ordinance regarding oil and gas operations and to study and address all modern-day drilling issues and applications; and

WHEREAS, the City of Arvin has reviewed and studied revisions as necessary to the City's laws, rules, procedures and fees related to petroleum operations and facilities, to enable the City to adequately and appropriately balance the rights of existing operators and future applicants who wish to develop oil and gas drilling and extraction facilities in the City, with the preservation of the health, safety and welfare of the communities surrounding the oil and gas drilling and extraction facilities in the city including exposure to nuisances; and

WHEREAS, as part of this review process, the City of Arvin has engaged in community outreach regarding this matter, including hearings, publishing notices in the newspaper, etc.; and

WHEREAS, City of Arvin Staff prepared a proposed Oil and Gas Ordinance, including modifications to the Arvin Zoning Ordinance, which was available on the internet on October 6, 2017; and

WHEREAS, the Planning Commission received and reviewed Text Amendment No. 2017-04 proposing an Oil and Gas Ordinance at a duly noticed meeting on October 10, 2017; and

WHEREAS, the public was provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, after considering all public testimony and receiving information provided to date, the Planning Commission recommended approval of Text Amendment No. 2017-04, as amended in its meeting of October 10, 2017, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations, to the City Council; and

WHEREAS, as part of this recommendation, the Planning Commission of the City of Arvin reviewed Text Amendment No. 2017-04, including all associated amendments and repeals of the relevant portions of the Arvin Municipal Code in order to enact the Oil and Gas Ordinance, for consistency with the General Plan and any applicable Specific Plans; and

WHEREAS, the Planning Commission of the City of Arvin also reviewed and recommended approval of a finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308, Actions By Regulator Agencies For Protection of Natural Resources as the Ordinance is an action taken by a regulatory agency for the protection of the environment; and

WHEREAS, a stated purpose of said recommendation of adoption was to protect the health, safety, public welfare, physical environment and natural resources of the City of Arvin, and to prevent nuisances, by the reasonable regulation of certain petroleum operations; and

WHEREAS, the City Council received the Planning Commission's recommendation and reviewed Text Amendment No. 2017-04 proposing an Oil and Gas Ordinance at a duly noticed meeting on November 07, 2017 (first reading/introduction); and

WHEREAS, the public was provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, after considering all public testimony and receiving information provided to date, the City Council voted to introduce Text Amendment No. 2017-04, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations; and

WHEREAS, on the City Council then considered the proposed ordinance for final adoption at another public hearing (second reading/adoption) on November 21, 2017, including an attendant finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308 for the project; and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance and the proposed CEQA finding, and public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, despite multiple public hearings and notices in the newspaper, and without having made any objection at prior hearings, various individuals associated with the oil and gas industry 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; and

WHEREAS, there were also questions raised as to whether the amendments recommended by the Planning Commission had been incorporated into the proposed ordinance; and

WHEREAS, the City Council then continued the item to a future meeting to allow for time for City Staff to meet interested parties from the oil and gas industries and to return with the amendments that was formerly approved by the Planning Commission to be included as part of the proposed ordinance; and

WHEREAS, after the passage of approximately (an additional) 150 days, there had been more than sufficient time has since been provided to oil and gas operators, and other parties, to review the proposed ordinance in detail; and

WHEREAS, no written comments had been received from interested parties from the oil and gas industries during the prior 150 day period; and

WHEREAS, City Staff had scheduled both a working meeting and a workshop for interested parties associated with the oil and gas industries; and

WHEREAS, on May 1, 2018, the City Council authorized and directed City 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; and

WHEREAS, the City Council also directed City Staff that if no additional Planning Commission review is warranted given the nature of the updates, then Staff was authorized to set the proposed ordinance for public hearing and consideration for introduction (first reading) at the next reasonably available Council meeting given Staff resources; and

WHEREAS, at its meeting on May 1, 2018, the City Council also authorized the Mayor to provide periodic press releases to update the community regarding developments with the proposed oil and gas ordinance update, which would provide information in addition to notices required by law; and

WHEREAS, on May 2, 2018, City Staff held a working meeting with interested parties from the oil and gas industries, received comments and answered questions; and

WHEREAS, on May 16, 2018, City Staff held a workshop for interested parties associated with the oil and gas industries, received comments and answered questions; and

WHEREAS, City Staff also reached out to community and environmental groups to receive comments and to answer questions; and

WHEREAS, interested parties submitted multiple comments regarding the adoption of Text Amendment No. 2017-04; and

WHEREAS, the proposed ordinance was updated to address intervening changes in laws (including those which took effect on January 1, 2018), local conditions related to the Mountain View field, procedural items including streamlining to reduce impacts on City and other resources, increasing setbacks from roadways from 50 to 100 feet, etc.; no changes were made with regard to immediate public health, safety and welfare issues; and

WHEREAS, City Staff returned the updated draft ordinance to the Planning Commission for consideration; and

WHEREAS, public notice of the Planning Commission hearing was provided at least 10 days in advance of the Planning Commission meeting; and

WHEREAS, in addition to public notice as required by law, the City also issued a press release further notifying the public regarding the Planning Commission hearing; and

WHEREAS, the Planning Commission received and reviewed the updated Text Amendment No. 2017-04 proposing and Oil and Gas Ordinance at a duly noticed special meeting on May 30, 2018; and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, after considering all public testimony and receiving information provided to date, the Planning Commission again recommended approval of Text Amendment No. 2017-04, as updated, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations, to the City Council; and

WHEREAS, as part of this recommendation, the Planning Commission of the City of Arvin reviewed updated Text Amendment No. 2017-04, including all associated amendments and repeals of the relevant portions of the Arvin Municipal Code in order to enact the Oil and Gas Ordinance, for consistency with the General Plan and any applicable Specific Plans; and

WHEREAS, the Planning Commission of the City of Arvin also reviewed and again recommended approval of a finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308, Actions By Regulator Agencies For Protection of Natural Resources as the Ordinance is an action taken by a regulatory agency for the protection of the environment; and

WHEREAS, public notice of the City Council hearing regarding updated Text Amendment No. 2017-04 was provided at least 10 days in advance of the City Council meeting; and

WHEREAS, in addition to public notice as required by law, the City also issued another press release further notifying the public regarding the City Council hearing; and

WHEREAS, the City Council received the Planning Commission’s recommendation and reviewed Text Amendment No. 2017-04 proposing and Oil and Gas Ordinance at a duly noticed meeting on July 1, 2018 (first reading/introduction); and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, after considering all public testimony and receiving information provided to date, the City Council voted to introduce updated Text Amendment No. 2017-04, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations; and

WHEREAS, on the City Council then considered the proposed ordinance for final adoption at another public hearing (second reading/adoption) on [\*\*\*DATE\*\*\*], including an attendant finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308 for the project; and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance as updated and the proposed CEQA finding, and public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, the City Council desires to proceed with the adoption of Text Amendment No. 2017-04; and

WHEREAS, it is the intent of the City Council that petroleum operations shall be permitted within the City of Arvin, except where expressly prohibited, subject to the application the Arvin Municipal Code and all other applicable laws, regulations and requirements; and

WHEREAS, it is a purpose of the adoption of the Ordinance is to protect the health, safety, public welfare, physical environment and natural resources of the City of Arvin, and to prevent nuisances, by the reasonable regulation of certain petroleum operations; and

WHEREAS, the City Council has duly considered all information presented to it, including the Planning Commission findings, Planning Commission Resolution, written staff reports, studies, research, testimony and other evidence provided at the public hearings and received by the City, as well as its prior legislative approvals and enactments.

NOW, THEREFORE, the City Council of the City of Arvin, California, does ordain as follows:

**Section 1. Findings.**

A. Recitals: The City Council of the City of Arvin finds that the above recitals are true and correct.

Attachment: Ordinance\_Oil and Gas Code (First Reading - Oil and Gas Code Ordinance)

B. Notices: The City Council of the City of Arvin finds that all legal pre-requisites for consideration of this item have occurred, including notice as required by law.

C. Plan Consistency: The City Council of the City of Arvin has reviewed Text Amendment No. 2017-04, an oil and gas ordinance for regulation of petroleum facilities and operations, and hereby finds it is consistent with the General Plan and all applicable Specific Plans.

D. Findings of Fact: The City Council of the City of Arvin, based on its own independent judgment, finds that Text Amendment No. 2017-04 promotes and protects the health, safety, welfare, and quality of life of City residents, including protection against nuisances, and adopts the Findings of Fact, attached as Exhibit “A” and incorporated in full by reference, any one of which findings would be sufficient to support adoption of this Text Amendment.

**Section 2. CEQA.** Text Amendment No. 2017-04 was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds and determines that the adoption of Text Amendment No. 2017-04 is exempt from CEQA pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. This Categorical Exemption is applicable as this Ordinance is intended to further regulate oil and gas production in the City in such a way as to better protect the environment. Such a finding and determination is warranted as the proposed Ordinance addresses the maintenance, restoration, enhancement and protection of the environment and the public health, safety, welfare of the citizens of Arvin as related to potential impacts from petroleum operations and facilities within the City. The variety of environmental issues addressed include air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors.

The Council further finds that this Ordinance does not have some sort of unique feature that distinguishes it from other types of ordinances or procedures contemplated by Section 15308 of the Guidelines. Section 15308 contemplates the restriction, not relaxation, of standards. Adoption of Text Amendment No. 2017-04 does not relax standards within the City of Arvin. Speculation that imposing heightened standards will result in more intense uses and potential for resulting environmental impacts at other sites is without basis. Under existing regulations multiple wells, directional drilling and associated equipment, and oil and gas operations in general (including associated potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed as potential uses at such sites; the Ordinance does not relax standards to allow additional intensity at those (or any site). Additionally, underground pools oil and gas resources cannot be moved; oil and gas facilities need to be located close to the underground pools in order to access the resource. This means that the Ordinance in itself will not cause more intense uses to be shifted to other remote locations. Further, putting aside the fact that use of such sites are already allowed under the current regulatory environment, whether the Ordinance could lead to an increased level of hypothetical and speculative future intensity at other locations is just that - speculation. Any such projects would also be subject to individual, project-level environmental review as required by CEQA. As a result, this Ordinance does not have some sort

of unique feature that distinguishes it from other sorts of regulations designed to protect the environment. Instead, this Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection. It does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

Additionally, the Council further finds there is no substantial evidence in the record that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts that threaten the environment. Specifically, the exceptions to the categorical exemptions articulated in Section 15300.2 of the State CEQA Guidelines are not applicable as:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. These classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

Here, the Categorical Exemption applied is a Class 8; therefore, this exception does not apply to the proposed Ordinances.

- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

Here, the Categorical Exemption applied is Class 8; therefore, this exception does not apply to the proposed Ordinance. Additionally, the Ordinance does not relax standards for environmental protection, but instead enhance procedures and prohibitions that provide for further maintenance, restoration, enhancement, and protection of the environment from petroleum operations and facility uses which are currently allowed, or are not fully regulated by, the Arvin Municipal Code. As such, such a reduction to the impact of petroleum operations and facilities would not have substantial adverse impact on the environment, cumulative or otherwise. Likewise arguments that the Ordinance may cause more intense use at other locations are without basis, as that level of hypothetical and speculative intensity is already allowed under the current regulatory environment and would be required to be assessed under CEQA at that time for impacts if such intensity ever occurred at some future date; this Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection. Finally, given the relative small size of the area restricting the surface use of oil and gas facilities within the City as compared to the rest of the Mountain View field and other oil and gas fields, any such hypothetical increase resulting from the ordinance would be insubstantial.

- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Here, the Oil and Gas Ordinance update clarifies and expands regulation of the permit process and procedure for any petroleum extraction or production projects and require that such projects obtain approval authority from the City Planning Commission or the City Council. Prior to such approval, these bodies must consider the potential environmental impacts related to petroleum operations or facilities and make appropriate determinations regarding potential impacts as required by CEQA.

The proposed Ordinance also further enhances the ability of the City of Arvin to protect the environment and avoid significant effects by ensuring that petroleum extraction and production operations are subject to a more comprehensive permitting process with CEQA review and regulatory oversight to ensure appropriate compliance. Additionally, the Ordinance further limits – not relaxes – the environmental impacts petroleum operations may potentially have on the environment including air quality, greenhouse gas emissions, water resources, geology, noise, traffic and public health and safety.

As such, there are no “unusual circumstances” that would create a reasonable possibility that adoption of the Ordinance would have a significant adverse effect on the environment.

- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements, which are required as mitigation by an adopted negative declaration or certified EIR.

Here, the Ordinance does not involve the approval of surface petroleum extraction and production operations in a manner that damages scenic resources. There are no state-designated scenic highways located within or immediately adjacent to the City of Arvin and, as such, the Ordinance does not have the potential to impact any of these state designated scenic resources. As an additional matter, expansion of the regulatory oversight and permitting requirements will require additional discretionary approvals for petroleum operations and facilities by the City, which in turn will also require expanded CEQA review and protections for any potential scenic resources as compared to the current process. Finally, prohibition of certain activities would limit, not expand, environmental protections for scenic resources.

- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site, which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Here, the Ordinance is proposed to apply city-wide, and does not propose construction on “a site.” Likewise, the Ordinance does not negatively impact approval of any petroleum operations or facilities in a location listed as a hazardous waste site as compared to the

current regulatory process. Instead, the Ordinance provides additional regulatory grounds to ensure the maintenance, restoration, enhancements and protection of the environment, as well as a regulatory process for the protection of the environment.

- (f) Historical Resources. A categorical exemption shall not be used for a project, which may cause a substantial adverse change in the significance of a historical resource.

Here, the proposed Ordinance does not negatively impact any approval of petroleum operations and facilities in a manner that causes substantial adverse change in the significant of a historical resource. As noted above, the Ordinance provides for enhanced - not relaxed - regulations for protection of the environment as compared to the current regulatory process. The proposed Ordinance does not modify the current restrictions and protections put into place by the City of Arvin regarding historical resources, nor is there substantial information in the record that the ordinance may cause a substantial adverse change in the significance of a historical resource.

**Section 3. Enactment.** The Arvin Municipal Code is hereby amended to read, in its entirety, as is set forth in the attached Exhibit "B" and incorporated in full by reference, which repeals Chapter 17.46 of Title 17, and adds Chapter 17.46 of Title 17, consisting of sections 17.46.01 through 17.46.038, of the Arvin Municipal Code.

**Section 4. Severability.** If any provision(s) of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

**Section 5. Posting.** The City Clerk shall certify to the passage and adoption of this Ordinance by the City Council of the City of Arvin and shall cause this ordinance to be published or posted in accordance with Government Code Section 36933 as required by law.

**Section 6. Effective Date.** This ordinance shall be effective thirty (30) days following its adoption except as to applications for any pending entitlement submitted prior to January 1, 2018.

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 XXRD day of Month , 2018, and adopted the Ordinance after the second reading at a regular meeting held on the \_\_\_\_ day of Month, 2018, by the following roll call vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

**ATTEST**

\_\_\_\_\_  
**CECILIA VELA**, City Clerk

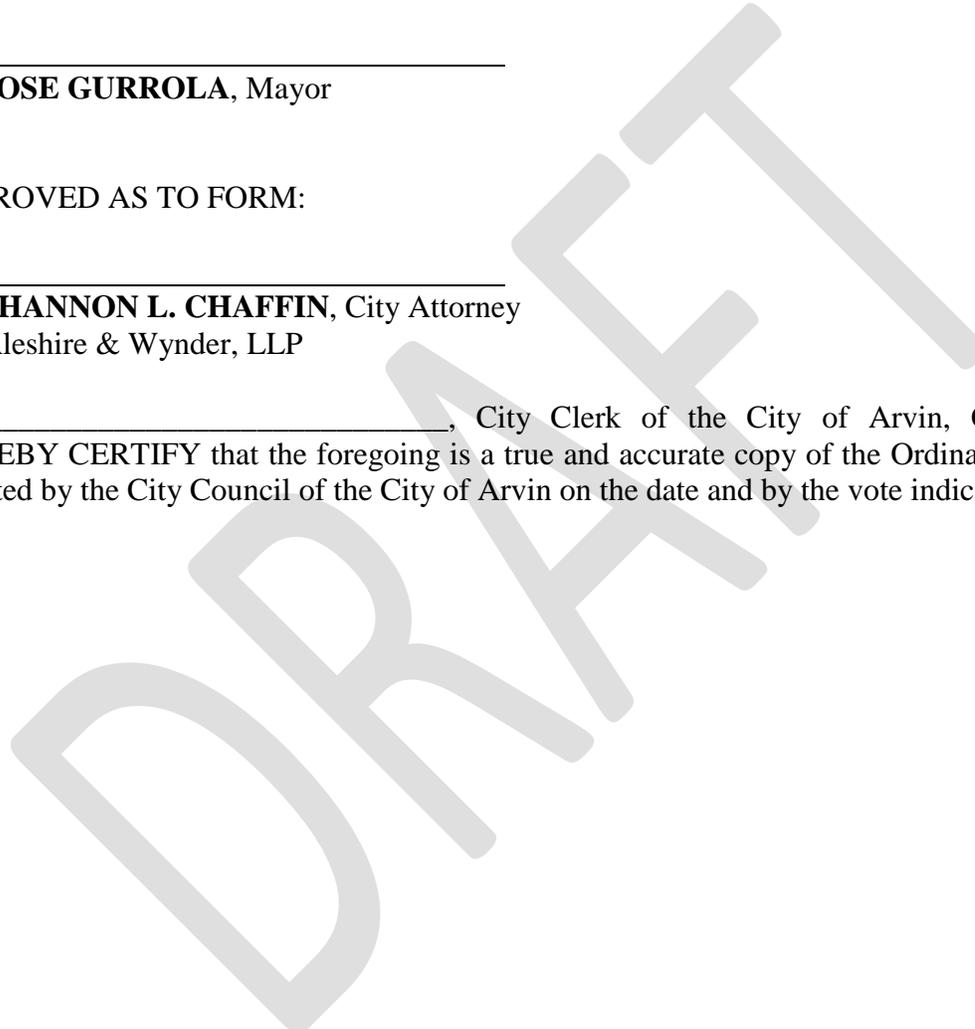
**CITY OF ARVIN**

By: \_\_\_\_\_  
**JOSE GURROLA**, Mayor

APPROVED AS TO FORM:

By: \_\_\_\_\_  
**SHANNON L. CHAFFIN**, City Attorney  
Aleshire & Wynder, LLP

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.



Attachment: Ordinance\_Oil and Gas Code (First Reading - Oil and Gas Code Ordinance)

**EXHIBIT “A”**

**FINDINGS OF FACT**

The City Council of the City of Arvin, based on its own independent judgment, finds that Text Amendment No. 2017-04 promotes and protects the health, safety, welfare, and quality of life of City residents and reduces nuisances as set forth in these Findings of Fact, any one of which findings would be sufficient to adopt this Text Amendment, and any one of which may rely upon evidence presented in the other, including as follows:

**I. Limited Water Supplies Should Be Preserved**

**A. Extreme Drought Conditions Throughout State Result In Water Shortages**

The City, region and State of California are experiencing extreme drought conditions, and have been struggling to preserve potable water resources for most of the decade. On June 12, 2008, the Governor issued Executive Order S-06-08 calling for a State of Emergency regarding water shortages and availability. The State of Emergency was again called on February 27, 2009. Additionally, the Water Conservation Bill of 2009 SBX7-7 was passed, which requires every urban water supplier that either provides over 3,000 acre-feet of water annually, or serves more than 3,000 urban connections, to assess the reliability of its water sources over a 20-year planning horizon, and report its progress on 20% reduction in per-capita urban water consumption by the year 2020. Executive Order S-06-08 was not rescinded until March 30, 2011. Even then the Governor urged Californians to continue to conserve water.

Shortly thereafter extreme drought conditions once again resulted in water shortages. On January 17, 2014, the Governor again proclaimed a State of Emergency regarding water shortages and availability. On April 25, 2014, the Governor issued an executive order to speed up actions necessary to reduce harmful effects of the drought, and called on all Californians to redouble their efforts to conserve water. On December 22, 2014, Governor Brown issued Executive Order B-28-14, citing to the January 17, 2014 Proclamation and the April 25, 2014 Proclamation, and extending the operation of those proclamations until May 31, 2016.

During this period of time the State Water Resources Control Board (SWRCB) has been adopting new water conservation regulations. On July 15, 2014, SWRCB adopted emergency regulations prohibiting all individuals from engaging in certain water use practices and require mandatory conservation-related actions of public water suppliers during the current drought emergency. On March 17, 2015, the SWRCB amended and re-adopted the emergency drought conservation regulations, and they became effective on March 27, 2015.

Following the lowest snowpack ever recorded and with no end to the drought in sight, on April 1, 2015, the Governor directed the SWRCB to implement mandatory water reductions in cities and towns across California to reduce water usage by 25 percent. This is the first time in state history such drastic steps have ever been ordered due severe drought conditions. The SWRCB continues to adopt new water and emergency conservation regulations for all of California to address systemic water shortages.

Attachment: Ordinance\_Oil and Gas Code (First Reading - Oil and Gas Code Ordinance)

The drought exacerbated the depletion of groundwater resources, which led to subsidence and other issues throughout the area. To address this issue on a state-wide level, the legislature adopted the Sustainable Groundwater Management Act (SGMA). SGMA established a new structure for managing California's groundwater resources at a local level by local agencies. SGMA requires the formation of locally-controlled groundwater sustainability agencies (GSAs) in the State's high- and medium-priority groundwater basins and subbasins (basins). A GSA is responsible for developing and implementing a groundwater sustainability plan (GSP) to meet the sustainability goal of the basin to ensure that it is operated within its sustainable yield, without causing undesirable results. The community of Arvin relies upon groundwater for its water resources, and is located in a high-priority groundwater basin.

Subsequently, the Governor issued Executive Order B-37-16, on May 9, 2016. The executive order established a new water use efficiency framework for California. The order established longer-term water conservation measures that include permanent monthly water use reporting, new urban water use targets, reducing system leaks and eliminating clearly wasteful practices, strengthening urban drought contingency plans and improving agricultural water management and drought plans.

After many years of drought, rain and snow finally came to many regions of the State. As a result, the Governor of the State of California issued declared the state of the drought at an end effective April 7, 2017. However, the executive order did not lift the drought state of emergency in Fresno, Kings, Tulare, and Tuolumne counties, where emergency drinking water projects will continue to help address diminished groundwater supplies. As a result, Kern County is still operating under a drought state of emergency.

#### B. Oil and Gas Operations Can Impact Water Quality and Resources

Oil and gas operations have the potential to impact water quality, surface water and groundwater supplies.

Without the appropriate regulations, or a mechanism to confirm compliance with existing regulations, oil and gas operations can result in an increased level of freshwater pollution or groundwater contamination in the immediate area, or cause regulatory water standards at an existing water production well to be violated. Impacts can occur through a variety of sources, whether through construction, operations, abandonment or redevelopment to another use. Until the appropriate facilities have been built, construction activities can result in storm water pollution. Produced water and wastewater, if not properly contained, transported and disposed, can contaminate both surface water and groundwater supplies. Water quality can also be impacted by operations, and the appropriate steps cannot be taken to address the issue unless water quality is sufficiently monitored for both surface and groundwater monitoring locations. Oil and gas are located at varying depths, often below underground sources of drinking water. The well bore, however, must be drilled through these drinking water sources in order to gain access to the oil and gas. Depending on field conditions, chemicals and natural gas can escape the well bore if it is not properly sealed and cased. While there are state requirements for well casing and integrity, accidents and failures can still occur. Wellbore leakage can lead to the

deterioration of the quality of groundwater.<sup>1</sup> Inadequately abandoned wells risk surface and subsurface contamination, which can impact water quality, surface water and groundwater supplies.

Without the adequate financial assurances, there may be insufficient funding available to ensure regulatory compliance, enforcement, and safety measures are implemented to protect the environment including water supplies.

Contamination of surface water and groundwater supplies is nuisance, requiring substantial infrastructure and expense to render such water potable – if at all. Given the community of Arvin’s heavy reliance on groundwater, groundwater contamination could have devastating impacts on the local economy and water supplies. Vulnerable water supplies should be preserved for municipal and other critical uses.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential pollution and water quality impacts and nuisances activities from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life.

II. Transportation of Water Required for Operations Creates Land Use and Nuisance Activities

As evidence by the City of Arvin Pavement Management Plan dated July 2017 was approved by the City Council on July 18, 2017, the condition of a significant number of roadways in the City are marginal or poor. Significant traffic, especially truck traffic, could effectively destroy marginal or poor roadways.

Oil and gas operations generate a significant amount of truck traffic. All of the materials and equipment needed for activities associated with bringing a well into production are typically transported to the site by trucks. Additionally, wastewater and waste materials from certain operations is usually removed by tanker truck to the disposal site or to another well for reuse. Much of the truck traffic is concentrated over the first 50 days following well development. Wastewater disposal may require additional trips.

Transport associated with oil and gas operations through the City to well locations will result in potential adverse land use and nuisance activities including traffic loads, increased risk of truck accidents including releases chemical or wastewater spills, air emissions, noise, traffic congestion, degraded road quality, vibration, and aesthetics - each of which is detrimental to the public health, safety and welfare.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential land

<sup>1</sup> "Towards a Road Map for Mitigating the Rates and Occurrences of Long-Term Wellbore Leakage," University of Waterloo, Geofirma Engineering Ltd., May 22, 2014.

use, impacts and nuisances activities from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life.

### III. Surface Spills and Leaks

All extraction activities come with some risk of surface or groundwater contamination from the accidental or intentional release of wasted. Fluids released into the ground from spills or leaks can run off into surface water and/or seep into the groundwater.

Spills can occur at any stage during the drilling lifecycle. Accidents and equipment failure during on-site mixing of the fluids can release chemicals into the environment. Above-ground storage pits, tanks, or embankments can fail. Vandalism and other illegal activities can also result in spills and improper wastewater disposal. Given the large volume of truck traffic associated with petroleum operations, truck accidents can also lead to chemical or wastewater spills.

A recent study noted that reported wellbore leakage in active onshore drilling ranged from approximately 7% to 64% across a wide variety of locations.<sup>2</sup> The likelihood of leakage is significant given the potentially high level of risk that can associate with petroleum operations. Leakage can impact groundwater, air quality, cause odors, contaminate soil, and result in a variety of other nuisance, health, safety and welfare issues.

Given the uncertainty of the frequency, severity, cause and impact of spills associated with petroleum operations, regulations designed to mitigate potential impacts, and provide assurance adequate financial resources are available to address the impacts, are warranted given the severity of the risks associated with such operations.

### IV. Air Pollution, Particulate Matter and Odors

Odors, air pollution and particulate matter can be produced as a result of oil and gas operations, whether from mobile or stationary sources. These impacts are not localized, but can be spread by natural air flow cause by weather or physically generated outside a site by truck and other traffic. Odors have been known impact locations around an oil and gas site at distances of approximately 1,500 feet.

Odor impacts depend on the process. For small leaks associated with normal operations, odors typically would not reach beyond a few hundred feet. For accidental releases, distances could be higher than 1,500 feet. For projects that would have high levels of hydrogen sulfide, impact distances are larger. The EIR for SB4 indicated that impact distances could be as high as 1,500 feet.

Air quality in the City and region already falls below state standards for pollutants related to production activities. Enactment of the Oil and Gas Ordinance provides a regulatory framework to reduce these risks. Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and

<sup>2</sup> See "Towards a Road Map for Mitigating the Rates and Occurrences of Long-Term Wellbore Leakage," University of Waterloo, Geofirma Engineering Ltd., May 22, 2014.

protects against potential air pollution, particulate matter and odor impacts and nuisance activities from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City.

#### V. Deleterious Public Health Effects

Development and production of oil and gas operations involve multiple sources of physical stressors such as noise, light, vibrations, toxicants, and impacts on air emissions. Many chemicals used during drilling and other stages of gas operations may have long-term health effects not immediately expressed.<sup>3</sup> Enactment of the Oil and Gas Ordinance provides a regulatory framework to reduce these risks, including setbacks from residential and other sensitive uses. Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential deleterious public health effects from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### VI. Oil and Gas Operations Impact Aesthetics

Oil and gas operations utilize unsightly derricks and rigs for drilling, re-drilling, workovers and other operations. This impact can be compounded by the large trucks and traffic traveling on the City's roadways through the community, dust, and light pollution from stadium-type lighting from around-the-clock drilling rigs. These aesthetic impacts are contrary to the urban nature of the City, are a nuisance and create a risk to the public, health and safety.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential deleterious aesthetic impacts from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### VII. Oil and Gas Operations Are Incompatible With Residential Uses

The City is urbanized area with a denser residential population as compare to the surrounding County. Oil and gas development projects are industrial operations that are incompatible with residential uses and quality of life. Petroleum operations often generate noise, odor, visual effects, significant heavy truck traffic, and other impacts noted in these Findings that are incompatible with residential areas. For these reasons, all petroleum operations should be directed away from areas with residential land use designations, and other sensitive uses, and the operations regulated to reduce adverse impacts on residents and the community. Requiring additional measures as operations are located closer to residential and sensitive uses reduces the impacts caused by those incompatible operations upon residential uses. These can include landscaping, walls, sanitation, noise barriers and noise reduction devices, odor monitoring, air monitoring and other control issues.

<sup>3</sup> Colborn, Theo, C. Kwiatkowski, K. Schultz and M. Bachran, "Natural Gas Operations from a Public Health Perspective," Human Ecological Risk Assessment, September 2011, pp. 1309-1056.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential incompatible impacts with residential uses, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### VIII. Oil and Gas Operations, Closure, Abandonment and Other Uses

Land uses change. Over the past several decades the City of Arvin has been changing from agricultural uses to more residential and commercial uses. Former oil and gas operations sites are being utilized for other uses, including commercial and residential uses. These types of sites pose unique challenges to redevelopment, including potential contamination, locations of and impacts of abandoned facilities, potential for well leaks and the need for remedial access to address the same.

Prior to redevelopment or re-use of the site for another use, closed or abandoned sites that have not been properly cleaned and remediated can contribute to adverse impacts and nuisances including aesthetics, air quality, odor, graffiti, vandalism, weeds, contaminants, trash, and other items noted in the administrative record. Wells and sites can be left in an unsafe condition without being properly abandoned. Financial assurances posted with other agencies are often insufficient to address remediation and compliance efforts.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by site abandonment and re-development, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### IX. Need for Financial Assurances and Identification of Responsible Parties

Accidents happen, and the nature of oil and gas operations can cause unique and potentially significant impacts upon the community not associated with other uses as has been noted in the administrative record. Financial assurances, to the extent they may be required by other agencies, are often insufficient to assure the impacts have been fully addressed. This leaves the public to pay either through unaddressed impacts on the community (aesthetics, odors, noise, risk of contamination, etc.) or to provide money to address the issue. Additionally, without the appropriate mechanisms in place, it can be difficult or impossible to effectively identify responsible parties. Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by insufficient financial assurance and identification issues for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### X. Need for Enforcement, Compliance Monitoring, and Oversight Mechanisms

Regulations are only as stringent as their enforcement, compliance monitoring, and oversight mechanisms. Without adequate enforcement and oversight, there is an uneven playing field, bad operators are effectively rewarded to the detriment of good operators, and the

community as a whole suffers. Given the complexity of oil and gas operations, the potential for significant environmental and other impacts upon the community identified in these Findings including nuisances, as well as the finite public resources available to address those impacts, strong enforcement and oversight mechanisms are warranted. The City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by inadequate enforcement compliance monitoring and oversight mechanisms for the benefit of the public health, safety, welfare, and quality of life of City residents.

XI Changing Technologies, Regulatory Oversight Roles, Environmental Standards and Operations Within a Highly Urbanized Setting Warrant Adoption of the Ordinance

The City's original oil code was adopted in 1965 and consisted of only a few pages of regulations. The current code allows oil drilling in residential neighborhoods with a CUP. In 1970, the City's population was 5,199 residents. At that time the State Division of Oil and Gas was also actively regulating oil production, as well as the site redevelopment process, such that there was no role for a City inspection process. During the last 50+ years 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.

The proposed oil code amendments deal with not only the changing character of Arvin, but changes in the science and technology of oil production in the last half century. These include the advent of 3-D Seismic Imaging technology, which is unlocking new deposits of oil and gas in previously declining and abandoned oil fields. Major technology advancements have been made in directional or slant drilling, now combined with GPS coordination and 3-D imaging to precisely locate and access gas and oil deposits. Arvin's original oil code did not anticipate these technologies or uses.

As the technology and science improve in locating gas and oil deposits, as well as improvements in production technology, it is conceivable that these reserves will increase. This improvement in technology and science make a compelling case that Arvin requires a comprehensive oil code amendment that can deal with decades of future oil production.

There have also been changes in oil field production techniques which warrant the proposed amendments to the Arvin Oil Code. These include changes in pumping technology and efficiencies, including more energy efficient pumps. There have also been changes in sound attenuation technology, for both oil drilling equipment and well servicing equipment, since the existing code was adopted. Air quality standards have also evolved since 1965, including new regulations from the San Joaquin Valley Air Pollution Control District to control odors and emissions. Natural gas vapor recovery is now common place in the local oil fields, where in 1960's natural gas was routinely a waste product that was vented to atmosphere or flared. Drilling muds have evolved into water based muds rather than oil based muds, which are less impactful to the environment. There have been changes in pipeline technology, leak detection and pipeline repairs, where the majority of oil production can now be conveyed by pipeline, instead of tanker trucks.

Important regulations have been developed in other jurisdiction to address issues such as decommissioning of oil facilities once they have reached the end of their economic life and appropriate clean up and remediation to allow for appropriate future use of the land. In addition, regulations have evolved to address the potential change of ownership that could occur at oil fields and the importance of addressing such changes to protect the local jurisdictions on financial responsibility and insurance.

The original water flood systems relied on potable water in the 1970s, when water was relatively inexpensive. With the population growth in the region and State, potable water has been substituted by production or reclaimed water. This water must be carefully monitored for environmental and public health reasons. The original oil code did not anticipate the use of production or reclaimed water and the need for careful water quality monitoring. Other environmental science and technology advancements have been made in the areas of ground water cleanup, soil clean-up and remediation actions. The original oil code did not anticipate any of these environmental advancements, which when employed improve the public health and safety.

The National Environmental Policy Act (NEPA) was adopted in 1969 and California followed suit by adopting the California Environmental Quality Act (CEQA) in 1970. These two landmark pieces of environmental legislation were not anticipated by Arvin's Oil Code in 1965. Part of the necessary amendments in the proposed oil code deal with the increasing the environmental indemnification and insurance coverage requirements. These environmental insurance needs could not have been foreseen by the original authors of the 1965 code.

Without financial assurances to ensure site remediation and compliance with heightened environmental standards, redevelopment of a former oil or gas site may be precluded or unnecessarily restricted. This can result in parcels of land with limited (if any) development potential throughout the City, which can not only displace other desirable uses, but also affects the City's ability to provide services to the public through decreased tax revenue. Additionally, this can increase the likelihood of blight, nuisances, vandalism and other undesirable conditions. These financial assurances to address environmental needs could not have been foreseen by the original authors of the 1965 code.

Another of the key changes that necessitates a comprehensive amendment to the Arvin Oil Code is the major change in the role of the State Division of Oil, Gas and Geothermal Resources since 2011. Oil production and site development in the area was carefully regulated by DOGGR until 2011, when DOGGR notified several cities that they would no longer be involved in the site development process. Several local cities, were required to amend their oil codes to deal with this State policy change. In part, Arvin's proposed amendments to the oil code are in response to the willingness of DOGGR to withdraw from the site development process. The proposed code amendment will ensure environmentally sound, and community protective, operational standards. The proposed code ensures oil well and facilities abandonment requirements that will result in the protection of the public health and safety, overall environmental protection and the safe redevelopment of property.

The City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by changing technologies, regulatory oversight (including the withdrawal of DOGGR from the site development process), and development within a highly urbanized setting for the benefit of the public health, safety, welfare, and quality of life of City residents.

XII Text Amendment Does Not Prevent Access to Subsurface Resources

Under Text Amendment No. 2017-04, oil and gas sites may be located in a variety of zoned districts including, C-2 (General commercial zone), M-1(Limited manufacturing zone), M-2 (Light manufacturing zone), M-3 (General manufacturing zone), A-1 (Light agricultural zone), A-2 (General agricultural zone), and B (Buffer zone). Zone districts where oil and gas sites may be located constitute approximately 25% of the entire City of Arvin by land volume – even excluding applicable setbacks and existing operations that would otherwise be located in a prohibited area. The zone district availability for this use is second only to the R-1 (single family dwelling) zoned district, and far in excess of the 10% zoned for E-3 (estate zone), the less than 4% zoned for SCH-CUP (school zone), and the less than a combined 3% zoned for A-1 (light agriculture) and A-2 (general agriculture) zoned districts.

Additionally, wells are unique in they are one of the few uses that through directional drilling can access resources not located at, or directly below, the actual oil or gas site. Directional drilling allows for the drilling of wells at multiple angles, not just vertically, to better reach and produce oil and gas reserves. While directional drilling has been an integral part of the oil and gas industry since the 1920s, technology has improved over the years. Improvements in drilling sensors and global positioning technology have helped to make vast improvements in directional drilling technology. Today, the angle of a drill bit can be controlled with intense accuracy through real-time technologies, providing the industry with multiple solutions to drilling challenges, increasing efficiency and decreasing costs.

Directionally drilled wells can have several benefits including allowing access in a reservoir where vertical access is difficult or not possible (such as an oilfield under a town, under a lake, or underneath a difficult-to-drill formation). Directional drilling also allows more wellheads to be grouped together on one surface location or pad, which can allow fewer rig moves, less surface area disturbance, limit nuisances and reduce environmental impacts, and (in many cases) make it easier and cheaper to complete and produce the wells. There are no restrictions on directional drilling in either the City’s current or proposed ordinance.

Additionally, the City’s ordinance does not legally apply outside of the City within the County of Kern’s jurisdictions. As a practical matter, this means that wells located within the County can use directional drilling to access resources located under the City of Arvin – even in areas where surface operations would be prohibited. As a result, the total area of land that can be accessed by subsurface directional drilling is greatly in excess of the 25% reflected by the surface location of the oil and gas sites.

Next, directionally drilled wells can commonly be used to access subsurface resources located more than a mile away horizontally, which given the size of Arvin would theoretically

allow all subsurface areas from within the jurisdiction to be accessed from the County. However, the Mountain View oil field underlying the City of Arvin has geologic and other conditions that limit the ability to directionally drill. As a practical matter, directional drilling has been shown to work in this particular field in this general location at two wells, which achieved 1,100 feet and 1,700 feet horizontal displacement from the well site respectively. There is no evidence in the record that this represents the technical extent and theoretical feasibility of runs, and the City finds that runs of 1/2 mile horizontal displacement is a reasonable distance, feasible, and greater distances are likely to be achieved given the march of technical advancement in the industry..

That finding being made, the City notes that the average of the two runs discussed above is about 1/4 of a mile, which industry representatives and owners have likewise confirmed with City staff is reasonably feasible given existing technology. Regardless of the feasibility of a 1/2 mile run, applying even this conservative 1/4 mile factor to determine the ability to access resources from approved zoned districts and locations outside of the City’s jurisdiction reveal that almost the entire subsurface under the City of Arvin can be reached. Notwithstanding, based on this extremely conservative approach there is a narrow corridor where a combination of directional drilling limitations, prohibited site locations, and surface setbacks could theoretically result in a narrow strip of subsurface area where resource access would potentially be limited. This narrow strip of land generally runs north and south through the middle of the City along Meyer Street (“Meyer Street corridor”).

However, the City finds that there are currently existing surface site locations within areas where new development of oil and gas wells would be prohibited under the conservative analysis. These include several sites that can access potential resources within the Meyer Street corridor through directional drilling. Additionally, as with any other land use, property can be rezoned to change allowed uses. Although setback requirements will still apply to rezoned land, this provides a process for accessing resources consistent with the restrictions of Text Amendment No. 2017-04. Next, there are jurisdictional restrictions on the application of the updated ordinance to certain federal and state properties, including property located outside of city limits, which could provide additional potential well site locations. Finally, if despite all of these safeguards future development resulted in development that rendered petroleum resources inaccessible, there is a mechanism in place for requesting the City Council to amend or adopt an ordinance to address unique circumstances – as is also available for other types of land uses.

Based on the foregoing, the City Council finds that there are mechanisms in place such that Text Amendment No. 2017-04 does not prohibit access to any oil and gas resources located under the City of Arvin given the technologies that are currently available.

## EXHIBIT “B”

**Section 1.** Chapter 17.46 (Oil and Gas Production), of Title 17 of the Arvin Municipal Code is hereby repealed in its entirety.

**Section 2.** Chapter 17.46 (Oil and Gas ordinance of the City of Arvin) is hereby added to Title 17 of the Arvin Municipal Code, in its entirety, as follows:

### CHAPTER 17.46

#### **Part 1. Administrative Procedures**

- 17.46.01 Purpose
- 17.46.02 Ordinance Applicability
- 17.46.03 Allowable Uses
- 17.46.04 Definitions
- 17.46.05 Consistency with Other Laws, Rules and Regulations
- 17.46.06 Appeals
- 17.46.07 Well Drilling Permit
- 17.46.08 Required Procedures for Conditional Use Permits
  - 17.46.08.1 Conditional Use Permit (CUP) Filing Requirements
  - 17.46.08.2 Processing and Review
  - 17.46.08.3 Findings and Permitting Conditions
  - 17.46.08.4 Modifications and Extensions
  - 17.46.08.5 Change of Ownership/Operators Criteria
- 17.46.09 Procedures for Development Agreements
  - 17.46.09.1 Filing Requirements
  - 17.46.09.2 Processing and Review
  - 17.46.09.3 Findings and Development Agreement Conditions
  - 17.46.09.4 Modifications and Extensions
- 17.46.010 Periodic Review
- 17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures
  - 17.46.011.1 Purpose and Intent
  - 17.46.011.2 Applicability
  - 17.46.011.3 Application Process
    - 17.46.011.3.1 Requirement to File an Application
    - 17.46.011.3.2 Content of Application
    - 17.46.011.3.3 Permitting Specifications

- 17.46.011.3.4 Findings Required for Approval
- 17.46.012 Operational Noticing
- 17.46.013 Complaints
- 17.46.014 Injunctive Relief
- 17.46.015 Notice of Violation and Administrative Fines
- 17.46.016 Nuisance Procedures
  - 17.46.016.1 High-Risk Operations
- 17.46.017 Compliance Monitoring
- 17.46.018 Financial Assurances Applicability
- 17.46.019 Operator’s Financial Responsibilities
- 17.46.020 Securities and Bond Requirements
- 17.46.021 Operator Liability Insurance
- Part 2. Development Standards for Petroleum Operations**
- 17.46.022 Setback Requirements
- 17.46.023 Site Access and Operation
  - 17.46.023.1 Deliveries
  - 17.46.023.2 Construction Time Limits
  - 17.46.023.3 Oil and Gas Site Parking
- 17.46.024 Lighting
- 17.46.025 Aesthetics
  - 17.46.025.1 Landscaping/Visual Resources
  - 17.46.025.2 Walls
  - 17.46.025.3 Sanitation
  - 17.46.025.4 Architecture
- 17.46.026 Roads
  - 17.46.026.1 Construction of Site Access Roads
- 17.46.027 Signage
- 17.46.028 Steaming
- 17.46.029 Utilities
- 17.46.030 On-Site Storage and Placement of Equipment
- 17.46.031 Safety Assurances and Emergency/Hazard Management
  - 17.46.031.1 Fire Prevention Safeguards
  - 17.46.031.2 Blowout Standards and Testing
  - 17.46.031.3 Earthquake Shutdown

- 17.46.031.4 Storage Tank Monitoring
- 17.46.031.5 Safety Measures and Emergency Response Plan
- 17.46.031.6 Transportation of Chemicals and Waste On and Off-site
  - 17.46.031.6.1 Natural Gas Liquids (NGLs)
  - 17.46.031.6.2 Transportation Risk Management and Prevention Program (TRMPP)
  - 17.46.031.6.3 Pipeline Leak Detection
- 17.46.032 Environmental Resource Management
  - 17.46.032.1 General Environmental Program
  - 17.46.032.2 Air Quality
  - 17.46.032.3 Greenhouse Gas Emissions and Energy Efficiency Measures
  - 17.46.032.4 Air Quality Monitoring and Testing Plan
  - 17.46.032.5 Water Quality
    - 17.46.032.5.1 Water Management Plan
    - 17.46.032.5.2 Stormwater Runoff
    - 17.46.032.5.3 Groundwater Quality
  - 17.46.032.6 Noise Impacts
- 17.46.033 Standards for Wells
- 17.46.034 Standards for Pipelines
  - 17.46.034.1 Pipeline Installations and Use
  - 17.46.034.2 Pipeline Inspection, Monitoring, Testing and Maintenance
- 17.46.035 Temporary Buildings
- 17.46.036 [Reserved]
- 17.46.037 [Reserved]

**Part 3. Development Standards for Site Abandonment and Redevelopment**

- 17.46.038 Development Standards

## CHAPTER 5

### OIL AND GAS CODE

#### Part 1. Administrative Procedures

##### 17.46.01 Purpose

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- A. This Chapter shall be known as the Oil and Gas ordinance of the City of Arvin.
- B. It is the purpose of this ordinance, amongst other things, to protect the health, safety, public welfare, physical environment and natural resources of the city by the reasonable regulation of oil and gas facilities, equipment, and operations, including but not limited to: exploration; production; storage; processing; transportation; disposal; plugging abandonment and re-abandonment of wells; of operations and equipment accessory and incidental thereto and development and redevelopment of oil and gas sites. It is further the intent of the City that oil and gas operations shall be permitted within this city (except where expressly prohibited herein), subject to the application of this ordinance and all other applicable laws, regulations and requirements.
- C. It is not the intent of this ordinance to regulate public utility operations for the storage or distribution of natural gas under the jurisdiction of the California Public Utilities Commission (CPUC). Any well or site related operations, however, shall be subject to this ordinance.

##### 17.46.02 Ordinance Applicability

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- A. The regulations in this ordinance shall apply, insofar as specifically provided herein, to oil and gas production and related sites and facilities, equipment, structures, or appurtenances including, but not limited to:
1. Drilling, and abandonment operations of any new or existing well or re-entry of a previously abandoned well for the production of oil and gas.
  2. Sites, infrastructure, structures, equipment, and/or facilities necessary and incidental to processing of oil, produced water, gas, and condensate obtained from an oil and gas field, zone, subsurface lease or area.
  3. Injection wells and incidental equipment necessary for enhanced oil recovery or disposal of produced water.
  4. Equipment and facilities necessary for enhanced oil recovery including water flooding, steam flooding, air injection, carbon dioxide injection, or introduction of polymers, or other techniques.
  5. Pipelines located within an oil and gas lease area that are necessary for oil and gas production operations.

- 6. Pipelines that transport oil or gas to another location for sale or transfer to a third party.
- 7. Storage tanks and equipment necessary or incidental to gathering, separation or treatment of oil, water, and gas, and/or temporary storage of separated fluids and gases, and transfer of the produced hydrocarbons to pipelines or tanker trucks.
- 8. Oil spill containment and recovery equipment, and facilities including offices, storage spaces, and vehicles for the storage of floating oil and water separators, pumps, generators, hosing, assorted absorbent materials, steam cleaners, storage tanks, and other land and wildlife cleanup and recovery equipment.

B. All portions of this ordinance are applicable to new or existing oil and gas sites and operators if they have or are required to obtain a CUP. For oil and gas sites lawfully existing at the time of adoption of this ordinance, or at the time this ordinance becomes applicable, which do not have or are not required to obtain a new CUP, only the following sections are applicable:

- 17.46.07 Well Drilling Permit
- 17.46.08.4(B) Modifications and Extensions
- 17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures
- 17.46.022 (C) Setbacks
- 17.46.023 Site Access and Operations
- 17.46.024 Lighting
- 17.46.027 Signage
- 17.46.028 Steaming
- 17.46.031 Safety Assurances and Emergency/Hazard Management (except 17.46.31.4)
- 17.46.032 Environmental Resource Management (except 17.46.32.3 and 17.46.32.5.1)
- 17.46.033 Standards for Wells (except subsection G)

Violations of these sections shall also be subject to enforcement mechanisms contained in this ordinance and Code.

To the extent the ordinance applies to existing oil and gas sites, it is not intended to apply in such manner as to interfere with any vested rights that have accrued to property owners.

C. The provisions of this ordinance which impose any limitation, prohibition, or requirement, or confer a right on the basis of the distance between a well or any other use or improvement and another zone classification, use or improvement, shall be applied solely with reference to zone classification uses and improvements within the City.

**17.46.03 Allowable Uses**

Table 1-1 below specifies what City zoning designations allow for oil and gas sites and, if allowable, what type of authorization is required for the use.

**TABLE 1-1**

\* In addition to the zones listed in the table below, oil and gas sites shall be permitted in any specific plan area where such uses are specifically allowed in accordance with the requirements of this ordinance, and permitted on federal, state, county or municipal land, subject to the entitlement process (CUP, DA, or otherwise) of the governmental entity having jurisdiction over such entitlement.

\*\*CUP indicates a requirement for a Conditional Use Permit, while DA indicates a development agreement. Where not prohibited, all oil and gas facilities or sites within the city’s jurisdiction are required to have either a CUP or a DA.

	<b>Zoning Designation</b>	<b>Oil and Gas Facility/Site Permit Required by Zone</b>
R-1	One-family dwelling zone	Prohibited
R-2	Two-family dwelling zone	Prohibited
R-3	Limited multiple-family dwelling zone	Prohibited
R-4	Multiple-family dwelling zone	Prohibited
R-S	Suburban residential zone	Prohibited
E	Estate zone	Prohibited
E-1	Estate zone	Prohibited
E-2	Estate zone	Prohibited
E-3	Estate zone	Prohibited

E-4	Estate zone	Prohibited
E-5	Estate zone	Prohibited
C-O	Professional office zone	Prohibited
N-C	Neighborhood commercial zone	Prohibited
C-1	Restricted commercial zone	Prohibited
C-2	General commercial zone	CUP or DA <sup>1</sup>
M-1	Limited manufacturing zone	CUP or DA <sup>1</sup>
M-2	Light manufacturing zone	CUP or DA <sup>1</sup>
M-3	General manufacturing zone	CUP or DA <sup>1</sup>
A-1	Light agricultural zone	CUP or DA <sup>1</sup>
A-2	General agricultural zone	CUP or DA <sup>1</sup>
OS	Open space	Prohibited
P	Automobile parking zone	Prohibited
D	Architectural design zone	Prohibited
B	Buffer zone	CUP or DA <sup>1</sup>
P-D	Precise development zone	Prohibited
MUO	Pedestrian-oriented mixed-use overlay zone	Prohibited

<sup>1</sup> Development agreement provisions apply as specified in Section 17.46.09.

**17.46.04 Definitions**

Unless the context otherwise requires, the definitions hereinafter set forth shall govern the construction of this ordinance.

“**Abandoned Well**” means a non-producing well DOGGR so designates after it has been demonstrated that all steps have been taken to protect underground or surface water suitable for irrigation or other domestic uses from the infiltration or addition of any detrimental substance, and to prevent the escape of all fluids to the surface.

“**API**” refers to the American Petroleum Institute.

“**ASTM**” ASTM shall mean the American Society of Testing and Materials.

"**City Manager**" is the City’s administrative official, and the City Manager's designated assistants, inspectors and deputies having the responsibility for the enforcement of this ordinance. The City Manager is authorized to consult experts qualified in fields related to the subject matter of this ordinance and codes adopted by reference herein as necessary to assist in carrying out duties. The City Manager may also appoint such number of officers, inspectors, assistants and other employees and/or to appoint a Petroleum Administrator to assist in carrying out duties. If the City Manager determines it is necessary based on public health, safety or welfare, he or she may require any information as deemed reasonably necessary for a CUP or an abandonment application.

"**DOGGR**" is the Division of Oil, Gas and Geothermal Resources which is part of the Department of Conservation of the State of California. DOGGR oversees the drilling, operation, maintenance, and plugging and abandonment of oil, natural gas, and geothermal wells.

"**DOGGR Statutes and Regulations**" are the California statutes and regulations related to or governing DOGGR, at California Public Resources Code, Division 3, and Oil and Gas and the California Code of Regulations, Title 14, Division 2.

"**Drill**" or "**Drilling**" is to bore a hole in the earth, usually to find and remove subsurface formation fluids such as oil and gas. Drilling, under this ordinance, includes re-drilling and re-working of wells.

"**Enforcement action**" is any administrative, injunctive, or legal action (either civil or criminal), to enforce, cite or prosecute a violation or efforts to abate or correct a violation (or dangerous or hazardous situation caused by a violation), including investigation, research, legal action, physical abatement, law enforcement and other necessary acts.

“**EPA**” refers to the U.S. Environmental Protection Agency.

“**Existing**” as applied to oil and gas sites, wells or other facilities and operations, refers to and includes all that were lawfully in existence at the effective date of this ordinance

“**Exploratory Well**” is defined in the DOGGR Statutes and Regulations and means any well drilled to extend a field or explore a new, potentially productive reservoir.

"**Facilities**" include tanks, compressors, pumps, vessels, and other equipment or structures pertinent to oil field operations located at an oil and gas site.

“**Gas**” means any natural hydrocarbon gas coming from the earth.

"**Gas Plant**" means processing equipment for produced gas to separate, recover, and make useful natural gas liquids (condensate, natural gasoline [e.g., pentenes], and liquefied petroleum gas, etc.), to separate, remove, and dispose of other non-hydrocarbon substances, such as water,

sulfur, carbon dioxide, ammonia, etc., and to produce utility-grade gas suitable for delivery and sale.

**"High risk operation"** means an oil or gas production, processing or storage facility which: (a) has been in violation of any applicable section of this ordinance for more than 30 consecutive days and resulted in the issuance of a notice of determination of fines pursuant to Section 17.46.012 of this ordinance during the preceding twelve months; or (b) has had three separate unauthorized releases of oil, produced water and/or other hazardous materials of a quantity not less than fifteen barrels (six hundred thirty gallons) other than within secondary containment for each incident during the preceding twelve months

**"Idle well"** is defined in the DOGGR Statutes and Regulations and is any well that for a period of 24 consecutive months has either not produced oil or natural gas, produced water to be used in production stimulation, or been used for enhanced oil recovery, reservoir pressure management, or injection. An idle well does not include an active observation well.

**"Natural gas liquids" (NGLs)** include propane, butane, pentane, hexane and heptane, but not methane and ethane, since these hydrocarbons need refrigeration to be liquefied.

**"NFPA"** refers to the National Fire Protection Agency.

**"New Development"** means any of the following: 1) development of new buildings, structures or wells for oil and gas operations on a site that has either not previously been used for such activities, or where the previous use was abandoned, or a CUP expired or was revoked; 2) the expansion by 3 or more wells at an existing site used for oil and gas operations and which conforms to setback requirements; 3) the placement or erection of tanks for holding produced substances or substances intended for subsurface injection in connection with oil and gas operations exceeding by 25% or more the capacity of existing tanks as of the effective date of this ordinance. New development does not include the like-kind replacement of facilities required for legally operating oil and gas operations that are damaged, failed, are at risk of failure, or are at the end of their useful life at an existing site. New development does not include workovers or other maintenance for legally operating oil and gas operations, including replacement-in-kind, or re-drills of existing active or idle wells. Re-drills of abandoned wells are considered new wells under this ordinance; re-drills of abandoned wells for re-abandonment are not considered new wells under this ordinance.

**"New Well"** is defined by the DOGGR Statutes and Regulations as the drilling of a well that requires the submission of the DOGGR form OG105 - Notice of Intention to Drill New Well – Oil and Gas, as may be updated or amended. For the purposes of this ordinance, the re-drilling of an abandoned well is considered a new well.

**"Oil"** is a simple or complex liquid mixture of hydrocarbons that can be refined to yield gasoline, kerosene, diesel fuel, and various other products.

**"Oil and Gas Site"** or **"Site"** is a oil drilling site and all associated operations and equipment attendant to oil and gas production or injection operations including but not limited to, pipelines, tanks, exploratory facilities (including exploratory wells), flowlines, headers, gathering lines,

wellheads, heater treaters, pumps, valves, compressors, injection equipment, drilling facilities, and production facilities.

**"Oil and Gas Operations"** are all activities in connection with the exploration, drilling for and the production of oil and gas and other hydrocarbons, together with all incidental equipment and appurtenances thereto.

**"Operator"** means the person, who by virtue of ownership or under the authority of a lease or any other agreement, has the right to drill, operate, maintain, or control a well or production facility.

**"OSHA"** refers to the California Occupational Safety and Health Administration.

**"Person"** encompasses any individual, firm, association, corporation, joint venture or any other group or combination acting as an entity.

**"Petroleum"** is a substance occurring naturally in the earth in a solid, liquid, or gaseous state and composed mainly of mixtures of chemical compounds of carbon and hydrogen, with or without other nonmetallic elements such as sulfur, oxygen, and nitrogen.

**"Pipelines"** for the purposes of this ordinance, shall mean all flow lines associated with wells located within the City of Arvin used for the transportation of petroleum or petroleum by-products or of materials used in the production of petroleum.

**"Produced water"** is a term used to describe the water that is produced along with crude oil and gas.

**"PSM"** refers to process safety management.

**"Redevelopment"** for the purposes of this ordinance is the development of all of a portion of a current or former oil or gas site to another authorized use other than petroleum operations.

**"Re-drilling"** is defined in the DOGGR Statutes and Regulations and is the deepening of an existing well or the creation of a partial new well bore including plugging of the original bore and casings and requires the submission of DOGGR form OG107 - Notice of Intention to Rework/Redrill Well, as may be updated or amended.

**"Re-entry"** is the process of cleaning a plugged and abandoned well by drilling, jetting, or other method.

**"Re-work"** is defined in the DOGGR Statutes and Regulations and means any operation subsequent to initial drilling that involves re-drilling, plugging, or permanently altering in any manner the casing of a well or its function and requires the filing of a notice of intent to rework/redrill a well with DOGGR. Altering a casing includes such actions as a change in well type, new or existing perforations in casing, running or removing of cement liners, placing or drilling out any plug (cement, sand, mechanical), running a wireline tool that has the ability to drill through a cased borehole, or any other operation which permanently alters the casing of a well. For the purposes of this ordinance, re-work includes a well abandonment.

"**Refining**" shall mean any industrial process facility where crude oil is processed and refined into more useful products and sold to others without further treatment or processing.

"**Regional Water Quality Control Board**" shall mean the Central Valley Regional Water Quality Control Board.

"**Secondary containment**" means an engineered impoundment, such as a catch basin, which can include natural topographic features, that is designed to capture fluid released from a production facility."

"**Shut down**" or "**Shut Down Order**" is an order by the City Manager, Kern County Fire Department Chief, California State Fire Marshall, or DOGGR official, to restrict or prohibit certain (or all) functions or operations at a facility or by an operator pursuant to authority of this ordinance.

"**SJVAPCD**" refers to the San Joaquin Valley Air Pollution Control District.

"**SPCC**" refers to Spill Prevention, Control, and Countermeasures.

"**Structure**" means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, except outdoor areas such as walks, paved areas, tennis courts, and similar open recreation areas. This definition includes buildings, but does not include wells.

"**Supervisor**" means the DOGGR Supervisor.

"**Toxic Air Contaminants**" means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health as defined in California Health and Safety Code Section 39655, as may be amended from time to time. Title 17, Section 93000, of the California Code of Regulations, lists substances defined as Toxic Air Contaminants.

"**USEPA**" refers to the United States Environmental Protection Agency.

"**Regional Water Quality Control Board**" shall mean the Central Valley Regional Water Quality Control Board.

"**Well**" is defined in the DOGGR Statutes and Regulations and means any oil or gas well or well for the discovery of oil or gas; any well on lands producing or reasonably presumed to contain oil or gas; any well drilled for the purpose of injecting fluids or gas for stimulating oil or gas recovery, repressuring or pressure maintenance of oil or gas reservoirs, or disposing of waste fluids from an oil or gas field; any well used to inject or withdraw gas from an underground storage facility; or any well drilled within or adjacent to an oil or gas pool for the purpose of obtaining water to be used in production stimulation or repressuring operations.

"**Workover** is the process of major maintenance or remedial treatments on an oil or gas well without changing the physical design of the well. Workovers include all operations that do not

involve the initial drilling or re-working of wells and is regulated by DOGGR but without requirements for notices of intent or permits.

#### **17.46.05 Consistency with Other Laws, Rules and Regulations**

This ordinance, insofar as it regulates oil and gas operations also regulated by the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR), is intended to supplement such state regulations and to be in furtherance and support thereof. Some definitions in Section 17.46.04 are based on DOGGR Statutes and Regulations and the intent of this ordinance is to utilize those definitions, as they may be amended from time to time by the California Legislature or by DOGGR, as applicable. In all cases where there is conflict with state laws or regulations, such state laws or regulations shall prevail over any contradictory provisions, or contradictory prohibitions or requirements, made pursuant to this ordinance. Additionally, the approving body, whether the City Manager, Planning Commission or City Council, may grant an exception or modification to the requirements of this ordinance to the minimal extent necessary to prevent a compensable taking. Such exception or modification shall be as consistent with the intent and purpose of this ordinance as possible given the specific factual circumstances of the particular project.

#### **17.46.06 Appeals**

Unless otherwise specified in this ordinance, any discretionary decision of the City Manager shall be final unless within fifteen (15) days after the decision by the City Manager, or ten (10) days after the mailing of the required notice(s), whichever date is later, any aggrieved person appeals therefrom in writing to the planning commission by timely presenting such appeal to the city clerk. At its next regular meeting after the filing of such appeal with the city clerk, the planning commission shall set a date for a hearing thereon. The decision appealed from shall be affirmed unless reversed by a vote of not less than a majority of all the members of the planning commission. An appeal of the planning commission to the city council shall follow the same process. Mandatory requirements of this ordinance are not subject to appeal.

A. Any court action or proceeding to attack, review, set aside, void or annul any decision or any matter mentioned in this ordinance or concerning any of the proceedings, acts or determinations taken, done or made prior to such decision, (except for any decision approving or denying an application for a permit or revoking a previously granted permit, which is governed by subsection B) shall not be maintained by any person unless such action or proceeding is commenced within sixty (60) days after the date on which such decision becomes final. Thereafter all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations.

B. Any court action brought pursuant to Code of Civil Procedure Section 1094.5 to attack, review, set aside, void or annul any decision approving or denying an application for a permit or revoking a previously granted permit, shall not be maintained by any person unless such action is commenced within ninety (90) days after the date on which such decision becomes final. This subsection has been adopted pursuant to Code of Civil Procedure Section 1094.6.

C. Nothing in this section shall expand or otherwise extend any shorter statute of limitation set by State or federal law, including any statute of limitation under the California Environmental Quality Act.

#### **17.46.07 Well Drilling Permit**

Prior to commencing drilling or re-working of any oil and gas well, the operator must receive a well drilling or re-work permit from DOGGR. Well permits from DOGGR shall be provided to the City Manager prior to commencement of drilling or re-working activities.

#### **17.46.08 Required Procedures for Conditional Use Permits**

- A. New development to which this ordinance applies (see Section 17.46.02) shall be required to receive a Conditional Use Permit (CUP), from the city planning commission in order to receive authorization for, and proceed with, the construction and operation of new development. No permits shall be considered or approved without such permits being consistent with provisions of the CUP.
- B. All procedures for CUPs to which this ordinance applies shall be the same as provided in the Arvin Municipal Code except appeals as noted above. Additionally all procedures for CUPs to which this ordinance applies shall comply with the following additional requirements:

##### **17.46.08.1 Conditional Use Permit (CUP) Filing Requirements**

In addition to the filing requirements required by use permits of this Code, for projects within the City to which this ordinance is applicable, the following materials are also required as part of a CUP application for the consideration of the Planning Commission, or the City Council on appeal:

- A. A complete statement of the proposed project including, but not limited to, activities, facilities, and sites.
- B. A new or updated emergency response plan to deal with potential consequences and actions to be taken in the event of floods, earthquakes, hydrocarbon leaks or fires for the site. The emergency response plan shall be approved by the City's Engineer and the Kern County Fire Department.
- C. A phasing plan for the staging of development that includes the estimated timetable for project construction, operation, completion, restoration, and, where applicable, the location and amount of land reserved for future expansion.
- D. A site plan showing:
  1. Surface property, easement, rights-of-way and pipeline right-of-way boundaries within the site.
  2. Proposed access road constructions or modifications and connections with City streets and roads and any existing private roads.

3. Areas to be used for construction.
  4. Areas to be used for access and maintenance during pipeline operation within and adjacent to the site.
  5. Existing roads, and pipelines and pipeline rights-of-way, if any.
  6. Location and type of existing and proposed structures within 50 feet of pipeline right-of-way.
  7. Location of existing and proposed wells and oil or gas containing equipment and their measured distance from nearby uses, including the closest residential or school property line.
  8. Proposed alteration of surface drainages within the site.
  9. A contour map showing existing and proposed contours.
  10. A plan for parking on or off site.
  11. A map of all known, historic, or suspected active, idle and abandoned oil and gas wells or wellheads within the site and within 750 feet of the surface location of any existing or proposed new well within the site.
- E. Site operations plan containing process flow diagrams, piping and instrumentation diagrams, expected process flows (rates, pressures, composition, and shut-down/start-up procedures, quarterly/annual production, disposition, injection, and disposal).
- F. Plans with measures to be used to prevent or reduce nuisance effects (e.g., dust, fumes, glare, noise, odor, air pollutants, and vibration) and to prevent danger to life, environmental quality, and property, consistent with the Development Standards in this ordinance.
- G. Estimates of the amount of cut and fill required by the proposed project.
- H. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, a plan for a community alert system (including new or utilizing existing systems, including but not limited to, those operated by the Police, Sheriff or Fire Department) to automatically notify area residences and businesses in the event of an emergency at an oil or gas site that would require residents to take shelter or take other protective actions.
- I. If any grading is proposed that results in the loss of vegetated, sandy, permeable ground areas, which could alter surface runoff at the site, a site-specific hydrologic analysis to evaluate anticipated changes in drainage patterns and associated increased runoff at the site.
- J. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, a quiet mode operation plan which includes, but is not limited to, the following noise reduction measures throughout the weekends and on weekdays between the hours of 6 p.m. and 8 a.m.:

1. Using signalers for all backup operations instead of backup alarms and turning off backup alarms;
2. Using radios instead of voice communication;
3. Minimizing crane use and pipe handling operations, pipe offloading from trucks and board loading to the maximum extent feasible and nighttime loading only for safety reasons;
4. Prohibiting material and supply deliveries to the Project Site, other than along designated truck routes, between the hours of 6 p.m. and 8 a.m. on weekdays and prohibiting deliveries on weekends and holidays, with exceptions only for safety; and
5. Limiting process alarms and communications over the broadcast system to the maximum extent feasible during all operations and use only for safety reasons.

K. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, a photometric analysis, which compares the baseline of the existing light measurements with the proposed light spill that will result from the oil and gas site.

L. An Environmental Quality Assurance Program ("EQAP"). (Ref. Section 17.46.32.1).

#### **17.46.08.2 Processing and Review**

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Processing of CUPs shall comply with California's Permit Streamlining Act requirements as consistent with this Code.

- A. The applicant may apply for:
1. The drilling operations only;
  2. The production facilities only; or
  3. Both the drilling and production facilities.
- B. The City Manager will review the submitted application(s) for completeness in compliance with the filing requirements of Section 17.46.08.1 and any other applicable sections of the Code, and shall refer the filed CUP to appropriate City departments or local and state agencies, as appropriate, for review and comment.

#### **17.46.08.3 Findings and Permitting Conditions**

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- A. In addition to the requirements of a use permit by this Code, the planning commission shall approve a Conditional Use Permit only if it is able to make affirmative findings of the following criteria:
1. The proposed project shall be in conformance with requirements of other local, regional, or State entities;

2. The project shall not be detrimental to the comfort, convenience, health, safety, and general welfare of the community, and will be compatible with the uses in the surrounding area;
  3. The project shall be in compliance with the Development Standards contained in Part 2 of this ordinance, commencing with Section 17.46.22; and
  4. The project shall not result in an increased level of freshwater pollution or groundwater contamination in the immediate area or cause regulatory water standards at an existing water production well to be violated as defined in the California Code of Regulations, Title 22, Division 4, Chapter 15 and in the Safe Water Drinking Act, as they may be amended.
- B. As a condition of approval of a CUP, the planning commission shall consider and impose appropriate conditions as deemed reasonable and necessary to find consistency with the findings 1 through 4 above.

#### **17.46.08.4 Modifications and Extensions**

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- A. The provisions of this Section shall apply for all modifications or extensions requested for oil and gas operations.
- B. Any existing oil and gas operation that does not have a CUP or development agreement for the operation shall be required to comply with this ordinance if any new development occurs at the existing oil and gas site.

#### **17.46.08.5 Change of Ownership/Operators Criteria**

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- A. Listing on Permit. Any person who operates an oil or gas site that is subject to this ordinance shall be listed as a permittee on the permit(s) issued for that facility.
- B. Acceptance of Permit. Prior to being listed on a permit, any operator of an oil or gas site that is subject to this ordinance shall provide the City with a letter from an authorized agent or officer of the operator formally accepting all conditions and requirements of the permit.
- C. Permits Transferable. Any CUP issued to any oil and gas site authorized pursuant to this Code shall be transferable to a new operator provided that the new operator accepts and meets all of the conditions and requirements of the CUP and this ordinance.
- D. Ongoing Notification. All operators, and guarantors shall, as an ongoing requirement, notify the City Manager in writing of any change in the information required by this Section within thirty days of such change.
- E. Change of Operator. A change of operator shall require an application filed with the City within thirty days prior to a change of operator. Upon approval by the City Manager, such change of operator will become effective upon joint notice from the prior and new operators that the change of operator has become effective. An application is not required when the

change of operator does not entail a substantive change to operations or personnel of the oil or gas site as determined by the City Manager.

F. **Liability for Compliance with Permit Conditions.** Any operator listed on a permit pursuant to this ordinance shall comply with all conditions of such permit. Failure to comply with such permit conditions shall subject the operator to the applicable penalty and enforcement provisions of this Code or other applicable ordinance for such permits.

G. **Liability for Abandonment.** The operator, as determined by the records of the City Manager, of a facility or site subject to this ordinance shall be responsible for the proper abandonment of the facility or site.

#### **17.46.09 Procedures for Development Agreements**

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Projects appropriate for development agreements are subject to the requirements of this Section, which establishes procedures for adoption. The procedures for development agreements will comply with Government Code Division 1, Chapter 4, Article 2.5 and the following additional requirements:

##### **17.46.09.1 Filing Requirements**

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- A. Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person(s) who has a legal or equitable interest in the real property of the oil or gas site. The qualified applicant shall provide proof of ownership interest, proof of interest in the real property, and proof of the authority of the agent or representative, to act for the applicant. Said proof of interest and proof of authority shall be subject to review and approval by the City Attorney.
- B. The City Manager shall prescribe the form for each application, notice and documents provided for or required under these regulations for the preparation and implementation of development agreements. The applicant shall complete and submit such an application form to the City Manager, along with a deposit for the estimated direct and indirect costs of processing the development agreement. The applicant shall deposit any additional amounts for all costs and fees to process the development agreement, including all legal fees, within 15 days of request by the City Manager. Upon either completion of the application process or withdrawal of the application, the City shall refund any remaining deposited amounts in excess of the costs of processing.
- C. The City Manager shall require an applicant to submit such information and supporting data as the City Manager considers necessary to process the application.
- D. A community benefit assessment to evaluate the benefits the DA will provide to the community.

### 17.46.09.2 Processing and Review

- A. The City Manager shall endorse on the application the date it is received. An application or related document shall not be complete until an estimated deposit for the cost of processing has been paid to the City. If within 30 days of receiving the application the City Manager finds that all required information has not been submitted or the application is otherwise incomplete or inaccurate, the processing of the application and the running of any limits shall be suspended upon written notice to the applicant and a new 30 day period shall commence once the required material is received by the City Manager. If the City Manager finds that the application is complete it shall be accepted for filing and the Applicant so notified. The City Manager shall review the application and determine the additional requirements necessary to complete processing of the agreement. After receiving the required information and the application is determined to be complete, the City Manager shall prepare a staff report and recommendation to the Planning Commission and City Council stating whether or not the agreement as proposed or in an amended form would be consistent with policies of the City, this ordinance and any applicable general or specific plan. The City Attorney shall review the proposed development agreement as to legal form.
- B. Notice of a hearing regarding the development agreement shall be given by the City Manager and shall comply with the requirements of Government Code Section 65867, as may be amended, except that the City Manager, not the Director, shall be responsible for providing notice.
- C. The planning commission shall review the proposed development agreement and provide a recommendation to the City Council to approve, approve with modifications or deny the proposed development agreement. If the planning commission fails to take action within 60 days of opening the hearing on the matter, such failure shall be deemed to have made a recommendation of denial to the City Council unless the applicant has requested an extension of time, either in writing or on the record, which has been approved by the Planning Commission prior to the running of the 60<sup>th</sup> day.
- D. The proposed development agreement shall be set for hearing and consideration before the Council within 60 days of the recommendation of the Planning Commission, unless the applicant agrees in writing to an extension of time with the City Manager prior to the matter being heard by the Council.
- E. Within 10 calendar days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder. If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the City terminates or modifies the agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder.

### 17.46.09.3 Findings and Development Agreement Conditions

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- A. After the City Council completes the public hearing, the Council may not approve the development agreement unless it finds that the provisions of the agreement:
1. Are consistent with the goals, objectives, and policies of the general plan and any applicable specific plan;
  2. Are compatible with the uses authorized in, and the regulations prescribed for the zoned district in which the real property is located;
  3. Will not be detrimental to the health, safety, environmental quality, and general welfare of the community;
  4. Will not adversely affect the orderly development of property or the preservation of property values; and
  5. Provides for a penalty for any violation of the development agreement consistent with the provisions of Section 17.46.015.

### 17.46.09.4 Modifications and Extensions

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- A. The provisions of Government Code Section 65868 shall apply for all modifications, extensions or other amendments of the terms of a development agreement subject to this ordinance.
- B. Either party may propose an amendment or termination of an approved development agreement subject to the following:
1. The procedure for amending or terminating, the development agreement is the same as the procedure for entering into an agreement in the first instance.
  2. The development agreement may be amended or cancelled only by the mutual consent of the parties, as provided in California Government Code section 65868.
- C. Nothing herein shall limit the City's ability to terminate or modify the agreement consistent with Government Code section 65865.1 or 65865.3 as may be amended.

### 17.46.010 Periodic Review

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The City may choose to conduct a comprehensive performance review of any oil or gas drilling permit, CUP or DA every ten years from the date of approval to determine if the project and the associated CUP or DA are adequately mitigating significant environmental impacts caused by the drilling and operations. Nothing in this section shall limit the City's authority to conduct a review at more frequent intervals, engage in mitigation monitoring as required by CEQA, or otherwise act as directed or authorized by law.

- A. If a periodic review reveals violation of the conditions of any City-issued permit, CUP or DA related to the oil and gas site operations, and if the City takes any subsequent and successful enforcement action based up that violation or related violations, the operator shall reimburse the City with funds necessary for the City to prepare the periodic review, whether performed through a third party or not. If the periodic review identifies significant deficiencies in an oil and gas drilling permit, a CUP or DA that are resulting in unmitigated adverse impacts, but which do not constitute violations of any permit, CUP or DA, then the City Manager may identify these deficiencies and bring forward recommendations of corrective actions to the Planning Commission for consideration, including to the Planning Commission for recommendation to the City Council for consideration and prospective amendments of DAs, as deemed necessary.
- B. A permit, CUP, or DA may also be reviewed by the City Manager at any time, if more than three violations occur within a twelve month period and the City Manager determines that resolution of the violations may be addressed by a new permit and/or an amendment to the CUP or DA. If such a review reveals violation of the conditions of any City-issued permit, CUP or DA related to the oil and gas site operations, and if the City takes any subsequent and successful enforcement action based up that violation or related violations, the operator shall reimburse the City with funds necessary for the City to prepare the periodic review, whether performed through a third party or not. The City Manager shall make a recommendation of corrective actions to the Planning Commission for CUPs and permits, and the Planning Commission and City Council for DAs, as deemed necessary. Nothing in this Section shall preclude the City from taking any other enforcement action authorized by this Code, including more frequent reviews.
- C. Nothing in this Section shall limit the requirements of an operator with a DA to demonstrate to the City Manager good faith compliance with the terms of the agreement at least every 12 months as required by Government Code section 65865.1. If as a result of that review the City Manager believes there is substantial evidence that the operator has not complied in good faith with the terms or conditions of the agreement, the City Manager shall present the matter to the Commission for a recommendation to the City Council. The Commission shall set the matter for public hearing within 40 days of receipt of the matter from the City Manager. If the Commission fails to act upon such request within a reasonable time, the Council may, by written notice, require the Commission to render its recommendation within 40 days. Failure to so report to the Council within the above time period shall be deemed to be a recommendation against modification or termination. After the Commission has rendered its recommendation, the matter shall be set for hearing before the City Council, who may terminate or modify the agreement if it finds and determines, on the basis of substantial evidence, that the operator or successor in interest has not complied in good faith with the terms and conditions of the DA.

#### **17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures**

The following provisions and procedures shall be implemented at the end of life of an oil and gas site, subject to a CUP, and govern the site (including well) facility closure and site restoration procedures:

### **17.46.011.1 Purpose and Intent**

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- A. Section 17.46.11 et seq. establishes procedures and provisions to achieve the timely abandonment of oil and gas related activities and land uses, and following the abandonment, the timely and proper removal of applicable oil and gas facilities (including wells, equipment and gas-related structures), reclamation and remediation of host sites, and final disposition of pipelines, in compliance with applicable laws and permits.
- B. The procedures ensure appropriate due process in differentiating idled from abandoned facilities and protecting the vested rights of permittees while also ensuring that sites with no reasonable expectation of restarting are removed, in compliance with the intent of abandonment permits. These procedures also ensure a process for abandoning or re-abandonment of portions of sites where oil and gas operations will continue on the site, as well as procedures for restoration and redevelopment of a site to other uses at the end of the economic life of oil and gas production.

### **17.46.011.2 Applicability**

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Oil and gas sites and operations subject to Section 17.46.11 and its subsections, shall include all permitted uses identified in Section 17.46.02.A of this Code, regardless of whether these uses were permitted in compliance with this ordinance or any preceding ordinance. This includes, all pipeline systems, except for public utility natural gas transmission and distribution systems, that either transport or at one time transported natural gas, oil, produced water, or waste water that originated from a reservoir, regardless of whether these uses were permitted in compliance with this Code or any preceding ordinance.

### **17.46.011.3 Application Process**

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The City Manager has the discretion to process and approve the application. Any person may submit an appeal to the City Manager or the Planning Commission within 15 days of the City Manager's notice of decision consistent with Section 17.46.06. Mandatory requirements of the Code are not subject to appeal. All procedures shall be consistent with the following requirements:

#### **17.46.011.3.1 Requirement to File an Application**

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- A. Complete Abandonment of oil and gas operations: The operator shall submit an application to the City Manager upon intentional abandonment of the entire oil and gas operation or site. The application for abandonment and site restoration proceedings shall be submitted 60 calendar days prior to the planned shutdown of all the facilities.
- B. Partial Abandonment of oil and gas operations: If any portion of the oil or gas site is being abandoned, or if a well is being re-abandoned, the operator shall submit an application to the City Manager for partial abandonment of oil or gas operations. Said application shall be submitted not later than 30 calendar days prior to abandonment or re-abandonment of wells involving no more than 10% of the total number of wells on site or 10 wells, whichever is

more; all other applications shall be submitted not later than 60 calendar days prior to abandonment, re-abandonment or restoration.

C. Other Events Requiring an Application. The operator shall submit an application for abandonment, re-abandonment, and site restoration proceedings to the City Manager upon any of the following:

1. Any event or condition designated in an existing City permit or entitlement that would require consideration of abandonment. The Application shall be submitted 60 days in advance of the event or condition. If the event or condition cannot be known until after it occurs, the application must be submitted within 15 days of the event or condition.
2. Upon order of DOGGR. The application shall be submitted within 30 days of a DOGGR order to abandon, re-abandon, and restore the site, provided, however, that if the operator timely appeals such an order of the DOGGR, it shall have no obligation hereunder until 30 days after a final decision affirming such order.

D. Nothing in this ordinance shall limit the City's police powers. The City may require those measures reasonably necessary to address specific site or operational conditions that threaten public health, morals, safety or general welfare, which measures could include partial or complete abandonment.

### **17.46.011.3.2 Content of Application**

The application shall be in a form and content specified by the City Manager and this Section. The application shall contain the following:

- A. Name, address, and contact information for the permittee.
- B. Name, address, and general description of the permitted land use.
- C. Gross and net acreage and boundaries of the subject property.
- D. Location of all structures, above and underground, proposed to be removed.
- E. Location of all structures, above and underground, proposed to remain in-place.
- F. Location of all wells, including active, idled, abandoned or re-abandoned wells, including distances from site boundaries, and existing structures. Each well shall include the DOGGR well name and number, as well as the American Petroleum Institute (API) well number. If available, the location of the wells shall be identified with the name of the operator and well designation.

- G. Location of all City or public utility easements on or adjacent to the subject property that may be affected by demolition or reclamation.
- H. To the extent known, the type and extent of any contamination and proposed remedial actions to the level of detail that can be assessed through environmental review. This information does not require a new or modified Phase 2 site assessment in advance of any requirement by the Fire Department or State agencies with regulatory oversight of site assessments.
- I. A proposed abandonment and restoration plan that details the activities for the proposed action, including the following details: hours of operation, disposition of equipment and structures proposed for decommissioning, and an estimated schedule for decommissioning the facilities or completion of the work.
- J. A proposed grading and drainage plan if drainage from the site will be altered.
- K. A proposed plan to convert the site to natural condition or convert to other proposed land use. In the latter case, include other applicable permit applications required, if any, for the proposed land use.
- L. A statement of intent regarding the disposition of utilities that served the oil and gas operations, including fire protection, power, sewage disposal, transportation, and water.
- M. Measures proposed to be used to prevent or reduce nuisance effects (e.g., dust, fumes, glare, noise, odor, smoke, traffic congestion, vibration) and to prevent danger to life and property.
- N. A copy of DOGGR approval to abandon, re-abandon or remediate well(s), such as an approval of a notice of intent of request to abandon.
- O. A leak test report for each abandoned well on the site that meets the requirements of Section 17.46.38.
- P. For abandonment or restoration in any circumstances where the permit is approved by the City Manager without Planning Commission action, proof of mailed notice of intent to seek a permit to abandon or restore to the owner of record on the latest assessment roll for neighboring parcels within 300 feet of the oil and gas site property boundaries. The notice shall generally describe the scope of the activity being proposed.
- Q. Any other information deemed reasonably necessary by the City Manager to address site-specific factors.

### **17.46.011.3.3 Permitting Specifications**

- A. **Application Filing.** The City Manager shall process complete applications for permits after determining the applications to be complete in compliance with Section 17.46.011.3.2 of this ordinance, and submit applications subject to initial Planning Commission review to the Planning Commission with a recommendation regarding approval if the findings in Section

17.46.011.3.4 are met. An application shall not be complete unless the applicant has made a deposit for the estimated direct and indirect costs of processing the application. The applicant shall deposit any additional amounts for the costs to process the application, including legal review, within 15 days of request by the City Manager. Upon either completion of the permitting process or withdrawal of the application, the City shall refund any remaining deposited amounts in excess of the direct and indirect costs of processing.

- B. Independent or concurrent processing of applications. For applications subject to initial Planning Commission review, the Planning Commission shall process complete applications for abandonment and site restoration permits independently of any other permit applications to develop the site in question, unless the City Manager makes the determination that the concurrent processing of abandonment and site restoration permits and development permits for the same site do not unduly hinder timely restoration of abandoned sites or result in long delays in securing approval of development permits.
- C. Demolition and restoration permit shall supersede. Upon approval of a demolition and restoration permit subject to initial approval by the Planning Commission, or upon abandonment of operations, whichever occurs later, the demolition and reclamation permit shall supersede any inconsistencies in the discretionary permit approved for construction and operation of the facilities.
- D. Conditions of Permit. In addition to any other requirements of this Code, any permit for abandonment, re-abandonment or restoration shall be subject to the following requirements regardless whether initially approved by the City Manager or the Planning Commission:
1. Oil well abandonment shall be performed by oil service company contractors with a business license issued by the city.
  2. All equipment and surface installations used in connection with the well that are not necessary, as determined by the City Manager or Planning Commission, for the operation or maintenance of other wells on the drill or operation site shall be removed from the site.
  3. The abandoned site or portions of the oil and gas site shall be restored to its original condition or as nearly as is practical given the nature of the location and continuing uses for an oil and gas site, so long as the restoration will not adversely impact ongoing oil and gas production operations.
  4. All sumps, cellars, and ditches which are not necessary for the operation or maintenance of other wells on the oil or gas site shall be cleaned out and all oil, oil residue, drilling fluid, and rubbish shall be removed to reduce hydrocarbons to standards acceptable to federal, state, or local agencies. All sumps, cellars, and ditches shall be leveled or filled. Where such sumps, cellars, and ditches are lined with concrete, the operator shall cause the walls and bottoms to be broken up and all concrete shall be removed.

5. The portions of the site not necessary for continuing oil or gas site operations shall be cleaned and graded and left in a clean and neat condition free of oil, rotary mud, oil-soaked earth, asphalt, tar, concrete, litter, and debris.
6. All public streets, alleys, sidewalks, curbs and gutters, and other places constituting public property which may have been disturbed or damaged in connection with any operation, including operations for the abandonment or re-abandonment of the well shall be cleaned, and, except for ordinary wear and tear, shall be repaired and restored to substantially the same condition thereof as the same existed at the time of issuance of the permit, or at the time operations were first commenced in connection with the drilling, operation, or maintenance of the well.
7. A copy of written approval of DOGGR confirming compliance with all state abandonment proceedings for all abandoned facilities must be furnished to the City Manager.
8. Proposed restoration will leave the subject site in a condition that is compatible with any existing easements or dedications for public access through, or public use of a portion of the property.

#### **17.46.011.3.4 Findings Required for Approval**

In addition to the findings specified in the Code for a use permit, for permits the City Manager or Planning Commission shall also make affirmative findings based on the following criteria:

- A. The subject site will be restored and remediated to its pre-project conditions unless areas within the site are subject to approved development, in which case restoration and landscaping of these areas will conform to the permitted development. In cases where development is proposed but not yet permitted, restoration of affected areas to natural conditions may be waived by the Planning Commission; provided, the development is permitted within five years and the permittee has posted financial assurances acceptable to the City Manager to ensure restoration to natural conditions if the proposed development is not permitted.
- B. The proposed restoration will leave the subject site in a condition that is compatible with any existing easements or dedications for public access through, or public use of a portion of the property
- C. The permit conditions comply with Section 17.46.011.3.3 and contain specific enforceable requirements to ensure the timely completion of any abandonment or re-abandonment of wells, restoration activities or cessation of other oil and gas site operations subject to the permit.

#### **17.46.012 Operational Noticing**

- A. Each operator shall submit copies of notices provided to or received from DOGGR, to the City Manager, within ten business days of transmission or receipt of such notices, as applicable. These shall include: designation of agents, notice of intent to drill a new well,

division approvals (permit to conduct well operations, notice and permit to drill, permit to rework/redrill well (p-report), enhanced recovery project approval, water-disposal project approval, commercial water-disposal approval), notice of intention to rework/redrill well, notice of intention to abandon/re-abandon well, supplementary notices, report of property transfer forms and any inspection reports or notices of violation, as these notices may be updated or amended. All other DOGGR notices or other DOGGR communications shall be submitted at the discretion of the City Manager.

B. The operator of (or any person who acquires) any well, property, or equipment appurtenant thereto, whether by purchase, transfer, assignment, conveyance, exchange or otherwise, shall each notify the City Manager within ten business days of the transaction closing date. The notice shall contain the following:

1. The names and addresses of the person from whom and to whom the well(s) and property changed.
2. The name and location of the well(s) and property.
3. The date of acquisition.
4. The date possession changed.
5. A description of the properties and equipment transferred.
6. The new operator's agent or person designated for service of notice and his address.

C. The operator of any well shall notify the City Manager, in writing, of the idling of any well. The operator shall notify the City Manager in writing upon the resumption of operations of an idle well giving the date thereof.

D. The operator shall report any violations of state or federal laws that occur on an oil and gas site to the City Manager within 30 days of their date of documentation by a state or federal agency.

#### **17.46.013 Complaints**

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All complaints related to activities regulated by this ordinance received by the operator shall be reported within two business days to the City Manager. In addition, the operator shall maintain a written log of all complaints and provide that log to the City Manager on a quarterly basis.

#### **17.46.014 Injunctive Relief**

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In addition to any administrative remedies or enforcement provided in this Code, the City may seek and obtain temporary, preliminary, and permanent injunctive relief to prohibit violation or mandate compliance with this Code. All remedies and enforcement procedures set forth herein shall be in addition to any other legal or equitable remedies provided by law.

### 17.46.015 Notice of Violation and Administrative Fines

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- A. The operator shall also be subject to a fine for violation of any requirement of a CUP or this ordinance as determined by the City Manager, subject to the following:
1. Depending on the specific type and degree of the violation, the operator in violation may be penalized at a rate of up to \$10,000 per day, per violation, until it is cured, but in no event, in an amount beyond that authorized by state law. The City Manager will develop a violation fine schedule for Council approval to specifically identify the fines associated with oil or gas site violations. This violation fine schedule may also include nuisance violations. Nothing in this Section shall preclude the use of use of fines as may be applicable from this code, including those related to nuisances, as long as said fines are not imposed in addition to fine schedule developed under this ordinance for a similar violation.
  2. In the event of a violation of any of the City's permitting actions, a written notice of violation, and notice of the associated fine amount if the violation is not cured, will be sent to the operator by the City Manager. If the noted violation is not corrected within 15 calendar days (as may be extended by the City Manager up to an additional thirty days) to the satisfaction of the City Manager, the City Manager will provide the operator notice of the imposition of administrative fines. The operator shall be required to pay the fines to the City, and any fines which continue to accrue until the violation has been cured. Notwithstanding, if the violation creates an immediate danger to health or safety, the City (including a contractor hired by the City) may immediately abate the dangerous condition, and said costs of abatement shall also be paid by the operator.
  3. The operator has a right of appeal to the City Manager or Planning Commission within 15 days of the written notice or contested determination of compliance. Decisions of the City Manager not appealed within 15 days become final.
- B. Nothing in this Section or ordinance shall limit the City's ability to pursue other enforcement procedures, including CUP revocation proceedings, actions to enforce a DA, or other legal or equitable remedies provided by this Code or available under the law including code enforcement provisions as amended, as long as those provisions are identified. Revocations or suspensions of a permit or CUP may be done pursuant to Title 17-Zoning, as may be amended,

### 17.46.016 Nuisance Procedures

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Any violation of this ordinance is hereby declared to be a public nuisance for the purposes of Section 8.12.020, and may be abated pursuant to the procedures set forth in Section 8.12.030 of this Code. The procedures for abatement shall not be exclusive, and shall not in any manner limit or restrict the City from otherwise enforcing this ordinance or abating public nuisances in any other manner as provided by law, including the institution of legal action by the City Attorney to abate the public nuisance at the request of the City Manager.

### 17.46.016.1 High-Risk Operations

A. Upon determination that any oil and gas production, processing or storage operation meets the definition of high risk operation from Section 17.46.004, the City Manager shall give the operator written notice of the City Manager's intent to determine the operation a high risk operation under this Section. The intent of this Section shall be to remediate the high-risk operation and bring the oil or gas site and the operator within normal, safe operating standards and protect the public safety, health and environment. The written notice of the intent to determine the operation a high-risk operation shall include:

1. Facts substantiating the determination; and
2. A notice regarding the right to appeal the determination to the Commission within 15 days. During the pendency of any such appeal, the City Manager's determination shall remain in full force and effect until affirmatively set aside by the Planning Commission. The Planning Commission's decision shall be supported by substantial evidence, and refusal by the operator to provide access to the operation to allow inspection or investigation to determine compliance as authorized by this Code or other law shall be deemed evidence the definition of a high risk operation has been met.

B. Along with the determination of the site being a high risk operation, the City Manager may take either or both of the following actions:

1. An investigation of the causes leading up to the high risk determination;
2. Require a mandatory restoration plan to be submitted by the operator. Such plan shall include, but is not limited to:
  - i. A mandatory restoration schedule for bringing the site and operator within normal, safe operating standards. Such schedule does not supersede any timeline for abatement otherwise established for individual outstanding violations.
  - ii. An audit of overall site operation(s):
    - a. The audit shall be conducted by an independent third party approved by the City Manager. Costs associated with the audit shall be borne by the operator;
    - b. The audit shall identify and analyze the root causes leading to the high risk designation;
    - c. The audit shall further identify and analyze other potential areas in overall site operation that could impact the site's ability to operate within safe and normal standards (e.g. personnel training, operational policies, internal procedures, etc.);

- d. Provide a plan for remediating all issues identified in the audit, including a mandatory schedule for remediating those issues. Such restoration plans shall be subject to approval by the City Manager.
  - e. The audit may be ordered in lieu of, or in addition to the investigation undertaken by the City Manager.
- iii. Any other requirements the City Manager deems necessary to bring the site and operation within normal, safe operating standards for the purposes of protecting the public safety, health and environment.
- C. The operator of the high risk operation shall carry out the approved restoration plan and shall be responsible for paying all reasonable costs associated with the implementation of the plan, including:
- 1. City staff time in enforcing these provisions at an hourly rate that provides for full cost recovery of the direct and indirect costs. Staff time shall include, but is not limited to, the ongoing monitoring and verification of compliance with the approved restoration plan;
  - 2. Investigative, research (including legal research) and consulting costs associated with preparation of the restoration plan;
  - 3. Third party costs for investigation, consultation, engineering, clean-up, operator staff training, operations and all other related costs necessary to carry out the restoration plan;
  - 4. Any other costs necessary to remediate the high risk operation as ordered by the City Manager.
- D. At the sole discretion of the City Manager, at any time during which a site or operator is subject to this Section, the City Manager may require a bond be posted to cover the cost of remediating the causative problems of the high risk operation.
- E. The determination of high risk operations shall continue to apply until the goals and guidelines of the restoration plan established hereunder is achieved. The high risk operator shall notify the City Manager when a milestone in the restoration plan has been satisfied. The City Manager may conduct independent verification of the compliance upon such notification. The restoration plan may be amended from time to time as necessary to achieve the purposes of this Section. Upon a determination by the City that the goals and guidelines of the restoration plan have been achieved, the City shall notify the operator in writing that the site is no longer a high risk operation.
- F. Failure of the operator of a high risk operation to post a bond required under this Section, prepare the restoration plan within a reasonable timeframe as ordered by the City Manager, or to reasonably achieve the goals and guidelines of an approved restoration plan under this Section, may be cause for a shutdown of the high risk operation(s) or any other petroleum

operations located in the City that are co-owned or co-operated by the high risk operator, at the discretion of the City Manager.

- G. The operator of a high risk operation shall compensate the City for any costs associated with the enforcement of this Section within 30 days of written demand by the City Manager. Any City costs associated with enforcement of this Section, which are not promptly paid by the operator shall be subject to enforcement by tax bill lien or other collection methods at the discretion of the City.
- H. The City may institute legal proceedings to require compliance provisions with this Section.

#### **17.46.017 Compliance Monitoring**

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- A. Environmental Compliance Coordinator(s). The City may hire Environmental Compliance Coordinators as needed to oversee the monitoring and condition compliance requirements of the City's permitting actions subject to regulation under this ordinance, the costs of which shall be reimbursed by operator. The number of Environmental Compliance Coordinators shall be determined by the City and shall take into account the level of oil and gas operations associated with the project site. The Environmental Compliance Coordinator(s) shall be approved by, and shall report to, the City Manager consistent with the City Manager's authority under Section 2.06.070 of this Code. The responsibilities of the Environmental Compliance Coordinator(s) shall be determined by the City for the project site and shall generally include:
1. Monitoring of oil and gas sites for compliance with this ordinance as it relates to construction, drilling, operational or abandonment and site restoration activities as determined by the City Manager.
  2. Taking steps to ensure that the operator, and all employees, contractors and other persons working in the project site, have knowledge of, and are in compliance with all applicable provisions of the conditional use permit or development agreement.
  3. Reporting responsibilities to the various City departments with oversight responsibility at the project site, as well as other agencies such as DOGGR, and SCAQMD.
- B. Compliance Deposit Account. An applicant must establish a compliance deposit account with the City within 30 days of receiving authorization for a CUP or DA from the City. The compliance security deposit amounts shall be determined by the City Manager, and shall be based on the nature and extent of the compliance actions required.

#### **17.46.018 Financial Assurances Applicability**

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- A. Sections 17.46.019 through 17.46.021 shall apply to any person who operates any oil or gas site involved in exploration, production, processing, storage or transportation of oil or gas extracted from reserves in the City of Arvin:

- B. This ordinance shall not apply to the change of operator of the following:
1. Sales gas pipelines operated by a public utility and regulated by the California Public Utilities Commission;
  2. A change of ownership consisting solely of a change in percentage ownership of a site and which does not entail addition or removal of an owner or affect any financial guarantee or bonds for a permit, CUP, and/or DA.

#### **17.46.019 Operator's Financial Responsibilities**

The applicant shall be fully responsible for all reasonable costs and expenses incurred by the City or any City contractors, consultants, or employees, in reviewing, approving, implementing, inspecting, monitoring, or enforcing this ordinance or any CUP, DA, or permit, including but not limited to, costs for permitting, permit conditions implementation, mitigation monitoring (including well abandonment and re-abandonment), reviewing and verifying information contained in reports, inspections, administrative support, and including the fully burdened cost of time spent by City employees, City Attorney, or third-party consultants and contractors on such matters.

#### **17.46.020 Securities and Bond Requirements**

The operator or any contractor of any oil and gas operation subject to this ordinance shall provide, or cause to be provided, the securities and bond requirements described below

- A. The operator shall file a faithful performance bond with the City Manager consistent with the following bonding requirements:
1. The City Manager shall determine the amount of the bond based on the total number of wells, proposed operations, size and nature of the property, appropriate environmental studies on the property, including a Phase I, II or Human Health Risk Assessment Reports and other relevant conditions related to the proposed wells or operations at a specific oil or gas site, and recognized commercial standards.
  2. The amount of the bond shall be sufficient to assure the completion of the abandonment, necessary re-abandonment, site restoration, to the extent not fully covered by DOGGR bonds, and remediation of contamination of the oil or gas site if the work had to be performed by the City in the event of forfeiture. The performance bond shall be inflation indexed to ensure the amount of the bond shall be sufficient to assure completion of the abandonment, restoration and remediation of contamination of the oil or gas site. The bond shall be available within a time frame to allow the City to undertake related activities in a timely manner, including at least half for immediate access and use in the event of an emergency as determined by the City Manager.
  3. Prior to expansion of an oil or gas site, the operator shall apply to the City Manager for a determination of the amount of the bond necessary to ensure completion for both

- the existing and expanded operations. In addition, every bond shall be re-assessed by the City Manager every 5 years to ensure the amount is sufficient to ensure the completion of the abandonment, site restoration, and remediation of contamination of the oil or gas site.
4. Upon application by the operator, the City Manager may reduce bonding amounts based upon change of physical circumstances, completion or partial completion of work, or significant reduction in cost to perform the work. In no event shall the amount of the bond be reduced to an amount insufficient to complete any remaining work, nor shall the bond be reduced due to economic hardship or similar considerations.
  5. After completion of all abandonment and site restoration requirements, the bond shall be maintained in a sufficient amount to ensure remediation of contamination at the oil or gas site for a period not less than 15 years. Upon application by the former operator, the City Manager may provide for partial or complete release of the bond at an earlier date if a former site is being developed or redeveloped consistent with Section 17.46.038(G) and construction of said development or redevelopment is completed,
  6. In no event shall the bonding amount required by the City be less than \$10,000 per well.
  7. The bond may be drawn only from a qualified entity without any economic interests or relationship with the operator and any related economic entities related thereto, and bonds must and must be rated “A” or better by a nationally recognized bond rating organization. The City Manager shall receive all pertinent information related to the bond and bonding entity prior to issuance of a final approved permit, CUP, or DA.
- B. In lieu of these bonding requirements, an operator may also submit any type of legally adequate and binding financial mechanism, subject to City Attorney approval, to satisfy the monetary assurance requirements set by the City Manager to assure completion of the abandonment, restoration and remediation of contamination of the oil or gas site to the extent not fully covered by DOGGR bonds.
- C. For any evaluation of bonding amounts by the City Manager in this Section, or evaluation of a financial mechanism proposed in lieu of a bond by the City Attorney, the operator shall deposit the estimated costs, or deposit equivalent, with the City Manager with the application, and shall also make any additional deposit(s) within 30 days of written request by the City Manager. The City Manager may retain consultants or other experts in the industry to assist in deriving a commercially reasonable bond amount.

#### **17.46.021 Operator Liability Insurance**

The operator of any oil and gas operation subject to this ordinance shall provide, or cause to be provided, the insurance described below for each oil and gas site during the pendency of oil and gas operations. The operator or contractor must provide to the City sufficient documentation that

the insurance complies with the minimum requirements and coverage amounts of this Section before a permit may be issued.

A. General provisions regarding insurance:

1. The operator or any contractor shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide.
2. In the event any policy is due to expire, the operator or any contractor shall provide a new certificate evidencing renewal of such policy not less than 10 calendar days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, operator or any contractor shall file with the City Manager a new certificate and all applicable endorsements for such policy.
3. Liability policies shall name as "additional insured" the City, including its officers, officials, agents, employees and authorized volunteers.
4. All policies shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for: 1) non-payment, which shall provide a 10-day written notice of such cancellation of coverage, and 2) the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage.
5. The operator shall present to the City Manager copies of the pertinent portion of the insurance policies evidencing all coverage and endorsements required by this Section before the issuance of any permit subject to this ordinance, and the acceptance by the City of a policy without the required limits or coverage shall not be deemed a waiver of these requirements. The City may, in its sole discretion, accept a certificate of insurance in lieu of a copy of the pertinent portion of the policy pending receipt of such document by the City. After the issuance of the permit, the City may require the operator to provide a copy of the most current insurance coverage and endorsements for review at any time. The operator will be responsible for paying an administration fee to cover the costs of such review as may be established by the City's fee schedule.
6. Claims-made policies shall not be accepted except for excess policies and environmental impairment (or seepage and pollution) policies.
7. Insurance coverage shall be reviewed by the City Manager as required by Section 17.46.010 to ensure adequate insurance is maintained.

B. Required insurance coverage:

1. Commercial or comprehensive general liability insurance:
  - i. Bodily injury and property damage coverage shall be a minimum combined single limit of \$2,000,000 per occurrence \$2,500,000 in the aggregate. This coverage

must include premises, operations, blowout or explosion, products, completed operations, blanket contractual liability, underground property damage, underground reservoir (or resources) damage, broad form property damage, independent contractor's protective liability and personal injury.

- ii. Environmental impairment (or seepage and pollution) coverage shall be either included in the comprehensive general liability coverage or as separate coverage. Such coverage shall not exclude damage to the lease site. If environmental impairment (or seepage and pollution) coverage is written on a "claims made" basis, the policy must provide that any retroactive date applicable precedes the effective date of the issuance of the permit. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, oil and gas, waste material, or other irritants, contaminants or pollutants. Such policy shall provide for minimum combined single limit coverage of \$2,000,000 per occurrence and \$2,500,000 in the aggregate. A discovery period for such peril shall not be less than ten years after the occurrence.
2. Commercial automobile liability insurance: Minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Section 1, subsection A.1 entitled "Any Auto")
  3. Worker's compensation insurance: Maintain the minimum statutory requirements, coverage which shall not be less than \$1,000,000 for each occurrence.
  4. Excess (or umbrella) liability insurance: Minimum limit of \$5,000,000 providing excess coverage for each of the perils insured by the preceding liability insurance policies, except for underground reservoir (or resources) damage.
  5. Control of well insurance (only during drilling or re-working):
    - i. Minimum limit of \$2,000,000 per occurrence, with a maximum deductible of \$100,000 per occurrence.
    - ii. Policy shall cover the cost of controlling a well that is out of control, drilling or restoration expenses, and seepage and pollution damage. Damage to property in the operator's care, custody and control with a sub-limit of \$500,000 may be added.
  6. Self-Insurance: The operator shall have the option to self-insure if insurance is not commercially feasible to obtain and maintain in the commercial insurance market, as certified by a written report prepared by an independent insurance advisor of recognized national standing, for the following types of insurance required by this Subsection: Excess (or umbrella) liability insurance, control of well insurance, and

- environmental impairment (or seepage and pollution) coverage. The operator shall provide a certificate for self insurance subject to approval by the City Manager and Risk Management, and to the City Attorney for approval as to legal sufficiency. To the extent said insurance is limited to amounts less than that required by this ordinance, the operator must first obtain available insurance coverage to the extent it is commercially feasible, and then shall self insure for the remaining amount.
7. **Commercially Available:** If the City Manager determines that certain types of insurance identified herein are not reasonably commercially available or necessary given specific field conditions, the City Manager has the discretion to authorize substitute or equivalent types of insurance, to the extent there is a reasonable and relevant risk, or modifications to an amount that is commercially available, all subject to approval as to legal form by the City Attorney.
- C. **Failure to maintain coverage:** Upon failure of the operator, or contractors to provide that proof of insurance as required by this Section when requested, the City Manager may order the suspension of any outstanding permits and petroleum operations of the operator until the operator provides proof of the required insurance coverage.

## **Part 2. Development Standards for Petroleum Operations**

The following Sections of Part 2 apply only to those operations subject to a CUP or DA, except for those existing operations as noted in Section 17.46.02.B.

### **17.46.022 Setback Requirements**

- A. The surface locations of wells and tanks within an oil and gas site shall not be located within:
1. Three hundred feet (300 feet) of the property boundaries of any public school, public park, clinic, hospital, long-term health care facility.
  2. Three hundred feet (300 feet) of the property boundaries of any residence or residential zone, as established in this Code, except the residence of the owner of the surface land on which a well might be located and except a residence located on the land which, at the time of the drilling of the well, is under lease to the person drilling the well.
  3. Three hundred feet (300 feet) of the property boundaries of the commercially designated zone C-O, N-C, C-1, C-2, MUO, PUD (see Table 1-1), as established by this Code and as may be amended.
  4. One hundred feet (100 feet) of any dedicated public street, highway, public walkway, or nearest rail of a railway being used as such, unless otherwise specifically allowed per Public Resources Code section 3600, but in no event less than fifty (50) feet of any dedicated public street, highway, public walkway, or nearest rail of a railway being used as such.

- B. For all injection wells, the Applicant shall provide a copy of the area of review (AOR) study, consistent with the requirements of Title 14 California Code of Regulations Section 1724.7, as per DOGGR.
- C. Legally existing oil and gas operations that do not meet the setback requirements and were conforming immediately before the effective date of this ordinance are not considered non-conforming uses and are not made subject to Chapter 17.52 (Nonconforming Buildings and Uses) of this Code by this ordinance. Such operations may continue to lawfully operate to the extent the operations can demonstrate to the City vested rights as of the effective date of this ordinance, but are prohibited for expanding operations beyond those demonstrated vested rights. Vested rights for a particular well may be demonstrated by the existence of an installed conductor in a cellar for that well or any other method established by law. The operator can replace structures and equipment required for oil and gas operations that are damaged, have failed, are at risk of failure, or are at the end of their useful life. Said replacements shall be made with like-kind structures and equipment that does not expand capacity or structural footprint. If the operator can demonstrate that such structure or equipment is not reasonably available or appropriate for current operational practices, the City Manager may approve minor expansion of equipment or structure upon findings the proposed changes are minor and do not constitute or tend to produce an expansion or intensification of capacity for the site. For existing oil and gas facilities and operations that do not meet the setback requirements as of the effective date of this ordinance, drilling of new wells is prohibited unless the operator can demonstrate vested rights for each new well.
- D. Consolidation and Relocation Incentives.
1. Existing Uses in Setback: For existing wells legally operating within the prohibited setback identified in Section 17.46.022.A or within the prohibited zones included in Table 1-1, an operator can exchange wells, either existing or vested, at a 1:2 ratio to another (existing) receiving site(s) without counting toward new development that would require a CUP or DA. The receiving site must be within a zone that is not prohibited in Table 1-1 and must comply with all setbacks and other requirements of this Ordinance. The contributing well(s) must be completely abandoned, including confirmation of compliance with all state abandonment requirements, before wells can be constructed at any receiving site.
  2. Existing Uses Outside Setback: For existing wells legally operating outside the prohibited setback and zones, an operator can exchange only wells actually existing at the time of the ordinance (not vested or hypothetical wells) at a 1:1 ratio to another existing receiving site(s) without counting toward "new development" that would require a CUP or DA. The receiving site must be within a zone that is not prohibited in Table 1-1 and must comply with all setbacks and other requirements of this Ordinance. The contributing site must be completely abandoned before wells can be constructed at any receiving site, including confirmation of compliance with all state abandonment requirements. The operator must completely abandon all surface rights to the contributing site (i.e., no future oil and gas operations to occur at the site) and provide acceptable

proof to the City of the same. All receiving sites must exist and have active operations as of the date of approval of this ordinance.

3. For All Consolidation or Relocation: The operator must provide the City with notice of intent to transfer prior to abandonment of any well(s) or contributing site intended to be consolidated or relocated. Transfers may occur at any time after abandonment is complete and the rights may be "banked" and assigned to another operator upon notice to the City. No well can be transferred more than one time. The receiving well location or site must be located outside the boundaries identified in Section 17.46.022.A.1-3, and comply with Section 17.46.022.A.4 outside of the prohibited setback. The receiving site cannot expand by more than 10 wells from any source or exchange, in addition to those existing or vested, without being considered new development. All receiving sites must comply with Section 17.46.02.B for sites not required to obtain a new CUP.

### **17.46.23 Site Access and Operation**

The following measures shall be implemented throughout the operation of any oil and gas site or project subject to this ordinance:

#### **17.46.23.1 Deliveries**

For oil and gas sites located in non-industrial areas or for delivery routes, other than designated truck routes, that pass through or adjacent to prohibited zones as listed in Table 1-1, (a) deliveries to the oil or gas sites shall not be permitted after 9:00 p.m. and before 6:00 a.m. (Chapter 9.08 Noise Disturbances), except in cases of emergency and (b) no deliveries shall be permitted on Saturdays, Sundays or legal holidays, except in cases of emergency. The City Manager may authorize a single oil shipping truck used on an occasional basis upon a showing of no reasonably feasible alternative, Said authorization shall take into consideration the location of the site and the types of adjacent uses, and may require compliance with Section 17.46.032.6 (Noise Impacts), light and glare restrictions, etc.

#### **17.46.23.2 Construction Time Limits**

Construction of permanent structures, workovers and other maintenance, including replacement in kind, shall not be permitted after 9:00 p.m. and before 6:00 a.m. (Chapter 9.08 Noise Disturbances), or during Saturdays, Sundays, or legal holidays, except in the event of an emergency as approved by the City Manager. The drilling or re-drilling of wells is not subject to construction time limits.

#### **17.46.23.3 Oil and Gas Site Parking**

A. At all times during the construction and operation of any oil and gas site, parking facilities shall be provided for all vehicles associated with the oil or gas site at a rate of 1 parking space per shift-employee. If approved as part of a CUP or a DA, parking for vehicles of employees or workers engaged in any oil or gas site activities can also be provided by the operator at off-site parking lots or in parking facilities, other than public streets, at locations

other than the oil or gas site. The operator shall prohibit personal parking on City streets by operator, permittees, contractors, or consultant staff. If the parking lot or parking facilities are not located within a reasonable walking distance of the controlled drill site, the operator shall provide transportation to and from the parking site for employees and workers.

- B. At all times vehicular access to an oil and gas drill site shall be provided in accordance with the plans for vehicular access reviewed and approved by the City Engineer, except for operations existing prior to the effective date of this ordinance.
- C. All entrances to an oil and gas site shall be equipped with sliding or swinging gates which shall be kept closed at all times except when authorized vehicles are entering or leaving the oil and gas site.
- D. When traffic lanes on any public street are closed or impaired by the operator's operations, flagmen, and safety officers as required by the City Engineer or Police Department shall be provided by the operator at all such times to control traffic and maintain traffic flow.

#### **17.46.024 Lighting**

Except for oil and gas sites located within industrial zones, and located farther than 600 feet from any prohibited zone as listed in Table 1-1, all lighting sources that may be introduced on a site in support of nighttime operations, at the onset and throughout all operations at an oil and gas site shall be screened and directed to prevent light or glare from passing beyond site boundaries. Outdoor lighting shall be restricted to only those lights that may otherwise be required by this Code for lighting building exteriors and safety and security needs.

#### **17.46.025 Aesthetics**

The following measures shall be implemented for all projects that are subject to this ordinance:

#### **17.46.026 Landscaping/Visual Resources**

- A. Prior to any new development, the operator shall implement a landscaping plan that has been approved as part of a CUP or a DA, which provides adequate screening and blending of the facilities so that the site shall not appear unsightly or aesthetically deficient compared with the surrounding character of the area. Except for oil and gas sites located within industrial zones, all tanks shall not extend more than twenty feet above the surface of any site, unless otherwise approved in a CUP or DA.
- B. Within six months after the completion of activities related to the drilling or re-drilling of a well and the removal of the drilling well mast/rig, any oil and gas site shall be landscaped with suitable shrubbery and trees in accordance with a plan approved by the Planning Commission, unless the site is to be otherwise developed in such a manner that would preempt re-vegetation requirements.
- C. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, if any drilling masts are in place on an oil and gas site for a time period of more than one year and are visible

from public viewing points, then the operator shall wrap all such masts to reduce their visibility prior to the onset of operations at an oil and gas site.

#### **17.46.025.2 Walls**

Prior to commencement of operations at an oil or gas site the following development standards shall be satisfied:

- A. All oil and gas sites shall be enclosed with a wall not less than six feet (6 feet) high, which shall be of a material and texture that blends in with the surrounding environment and is not visually obtrusive. There shall be no aperture below the wall larger than one foot (1 foot) in height.
- B. The wall enclosure around the oil and gas site shall have a setback of twenty-five feet from all property lines. The gate or entrance through the wall shall remain locked at all times and constructed in a manner to prevent the public from coming closer than twenty-five feet to the pumping facilities. Pursuant to the approval of the CUP, the location of the wall may be modified subject to compliance with the California Fire Code as approved in a CUP or DA with modifications as applicable.
- C. The entire outside facing length of the wall must be coated with anti-graffiti paint or solutions.

#### **17.46.025.3 Sanitation**

The oil and gas site shall be maintained in a clean, sanitary condition, free from accumulations of garbage, refuse, and other wastes.

#### **17.46.025.4 Architecture**

The architectural design of any oil or gas site buildings, equipment, or other associated structures shall be consistent with the character of the surrounding community and shall utilize finishing materials and colors which blend in with the surrounding environment and are not visually obtrusive.

#### **17.46.026 Roads**

The following policies specific to streets or other roads shall apply to all projects for which this ordinance is applicable:

##### **17.46.026.1 Construction of Site Access Roads**

Private roads and other excavations required for the construction of access roads shall be designed, constructed, and maintained to provide stability of fill, minimize disfigurement of the landscape, prevent deterioration of vegetation, maintain natural drainage, and minimize erosion. Prior to construction of any new road, the operator shall prepare and submit to the Department of Public Works for review and approval a private road construction plan. The operator shall

thereafter comply with all provisions of the approved private road construction plan. All new private access roads leading off any surfaced public street or highway shall be paved with asphalt or concrete not less than three inches thick for the length of said access road from the public street or highway.

#### **17.46.027 Signage**

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The following policies apply only to signs visible from the public right of way.

- A. Signage as required by DOGGR or law shall be kept in good legible condition at all times.
- B. No sign other than that described in this ordinance or required by law shall be allowed, other than informational signs, no smoking signs, and other signs as reasonably required for safe operation of the project.
- C. Identification signs shall be posted and maintained in good condition along the outer boundary line and along the walls adjoining the public roads that pass through the oil or gas site. Each identification sign shall prominently display current and reliable emergency contact information that will enable a person to promptly reach, at all times, a representative of the operator who will have the expertise to assess any potential problem and recommend a corrective course of action. Each sign shall also have the telephone number of the City department of planning or zoning enforcement section and the number of SJVAPCD that can be called if odors are detected. For existing oil and gas sites, the signs shall be updated when they are replaced or repaired.

#### **17.46.028 Steaming**

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The installation of any surface equipment designed to produce steam shall be prohibited without the approval of the City Manager. The operator shall submit a steaming plan addressing equipment sizing and design to the City Manager for review and approval. The operator shall also submit well casing and cementing design specifications as required by DOGGR. Unless a specific health, safety or welfare issue is created, which will include any non-compliance with any DOGGR regulation or other applicable law including this ordinance related to the use of the surface equipment, the City Manager will approve a completed steaming plan. The City Manager may adopt implementing guidelines for this Section to further the purposes of this Ordinance.

#### **17.46.029 Utilities**

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- A. Each oil or gas site shall be served by and utilize only reclaimed water, aside from potable water used for human consumption, unless the use of reclaimed water is deemed infeasible (such as regulatory requirements, initial unavailability during operations or technological considerations) or unwarranted (including secondary environmental impacts such as increased use of chemicals, surface activities, and other items that may be adverse to public health, safety or welfare) by the City Manager, in which case the following criteria apply:

1. The operator must prepare and submit a supply assessment study of all water resources available for use and submit the study for review to the City Manager.
2. If the study indicates that potable water is the only feasible or warranted alternative then the operator may utilize such a water source under appropriate conditions as determined by the City Manager.

B. New electrical power may be routed underground from the nearest source adequate to meet the needs of the well site if undergrounding is required for other uses in the vicinity as determined by the City Manager.

#### **17.46.030 On-Site Storage and Placement of Equipment**

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No equipment shall be stored or placed on the site, which is not either essential to the everyday operation of the oil or gas well located thereon or required for emergency purposes.

#### **17.46.031 Safety Assurances and Emergency/Hazard Management**

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The following measures shall be implemented throughout the operation of any oil or gas site or project subject to this ordinance:

##### **17.46.031.01 Fire Prevention Safeguards**

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- A. All oil and gas site operations shall conform to all applicable fire and safety regulations, codes, and laws.
- B. The oil and gas site shall be kept free of debris, pools of oil, water or other liquids, weeds, and trash.
- C. Land within twenty-five (25) feet of the facilities shall be kept free of dry weeds, grass, rubbish or other combustible material at all times.
- D. All equipment, facilities, and design shall be approved by the Kern County Fire Department, as applicable and as it may require, prior to approval of a CUP or DA.

##### **17.46.031.02 Blowout Standards and Testing**

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The operator shall comply with DOGGR regulations for blowout prevention and will provide all equipment as stipulated in the DOGGR regulations during the drilling operations of any well.

##### **17.46.031.03 Earthquake Shutdown**

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- A. The operator shall immediately inspect all oil and gas-related facilities, equipment, and pipelines following any seismic event with a magnitude of 4.0 or greater with an epicenter within 10 kilometers (km) of the oil and gas site, magnitude 4.5 or greater within 30 km, or magnitude 6.0 within 100 km.

B. The operator shall either, (1) Operate and maintain an accelerometer at the project site or (2) Obtain real time data from the USGS to determine the earthquake magnitude of any seismic event in the area. The operator shall immediately inspect all project site pipelines, facilities, equipment, storage tanks, and other infrastructure following any seismic event above the thresholds defined in 17.46.31.03.A and promptly notify the City Engineer and the City Manager of the results of the inspection within 24 hours of the seismic event. Shall there be any structural damage or equipment failure as a result of any seismic event, the operator shall isolate and address any damage or equipment failure as appropriate to minimize environmental or safety impacts. The operator shall prepare and submit a written report of all inspections and findings to the City for review with one week of the seismic event.

C. The operator shall not reinstitute operations at those portions of the project site and associated pipelines damaged by a seismic event until the damage has been repaired and confirmed by the operator to be structurally sound and safe for operation, and has passed any otherwise required inspection. Before returning any damaged structure, fixture or equipment to operation, the operator shall prepare and submit to the City Manager a written report of inspections and repairs of that structure, fixture or equipment, and the results of any required inspection.

#### **17.46.031.04 Storage Tank Monitoring**

The operator shall install tank leak detection monitoring system that will indicate the physical presence of a leaked product underneath storage tanks on site that have the potential to result in soil contamination. The results of the monitoring shall be submitted to the City Manager upon request. The monitoring system required by 14 California Code of Regulations Section 1773.2 is sufficient. This section does not apply to existing facilities.

#### **17.46.031.05 Safety Measures and Emergency Response Plan**

The operator is responsible for compliance with safety and emergency response requirements.

A. Copies of all Emergency Response Plans, Emergency Action Plans, Oil Spill Plans, inspections, reports and any emergency response drill training as required by DOGGR, CalEPA, OSHA, Kern County Fire Department, SJVAPCD or any other agency shall be submitted to the City.

B. Safety Audit. The operator shall cause to be prepared an independent third-party audit, under the direction and supervision of the City, of all facilities, once constructed or within 1 year of the adoption of this ordinance, including the well pads, to ensure compliance with the California Fire Code (as may be adopted by the City with modifications as applicable), applicable API and NFPA codes, EPA RMP, OSHA PSM, DOGGR and SPCC and emergency response plans requirements. All audit items shall be implemented in a timely fashion, and the audit shall be updated annually, as may be directed by the City and the Kern County Fire Department. The operator shall also cause to be prepared a seismic assessment, including walkthroughs, of equipment to withstand earthquakes prepared by a registered structural engineer in compliance with Local Emergency Planning Committee Region 1 CalARP

guidance and the seismic assessment shall be updated, with walkthrough inspections, annually to ensure compliance with the codes and standards at the time of installation.

- C. Community Alert System. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, the operator shall implement a community alert notification system, or utilize an existing system operated by the Police, Sheriff or Fire Department, to automatically notify area residences and businesses in the event of an emergency at an oil or gas site that would require residents to take shelter or take other protective actions.

#### **17.46.031.06 Transportation of Chemicals and Waste On and Off-site**

The operator shall implement the following measures throughout the operations of any oil and gas site subject to this ordinance:

- A. Solid Waste Disposal. Solid waste generated on the site shall be transported to a permitted landfill or hazardous waste disposal site as may be appropriate for the life of the operation. The operator shall provide written notice to the City Manager of the landfill or hazardous waste disposal facility being utilized.
- B. Site Waste Removal. The operator shall comply with the following provisions:
1. All drilling and workover waste shall be collected in enclosed bins. Any drilling and workover wastes that are not intended to be injected into a Class II Well, as permitted by DOGGR, shall be removed from the project site no later than thirty days following completion of the drilling and workover.
  2. No site waste shall be discharged into any sewer unless permitted by the Sanitation District, or into any storm drain, irrigation system, stream, or creek, street, highway, or drainage canal. Nor shall any such wastes be discharged on the ground.
- C. Storage of Hazardous Materials. The operator shall submit to the City Manager a copy of the Hazardous Material Business Plan, as reviewed by the Kern County Fire Department, annually. This plan shall include a complete listing and quantities of all chemicals used onsite, and provide the location of where hazardous materials are stored at the site. Hazardous materials shall be stored in an organized and orderly manner, and identified as may be necessary to aid in preventing accidents, and shall be reasonably protected from sources of external corrosion or damage to the satisfaction of the Fire Chief of the Kern County Fire Department or designee.

#### **17.46.031.06.01 Natural Gas Liquids (NGLs)**

Throughout the operation of any oil and gas site subject to this ordinance, NGLs, as defined by this code, shall be blended with crude oil for shipment by pipeline to the maximum extent allowable within the technical specifications of the pipeline. Oil transportation pipelines and gas processing facilities shall be designed to maximize the blending of NGLs into the crude oil stream.

### **17.46.031.06.02 Transportation Risk Management and Prevention Program (TRMPP)**

If the transportation routes of any product from oil and gas development in the City passes through or adjacent to any prohibited zoning as listed in Table 1-1, excluding designated truck routes, the operator shall prepare and maintain a Transportation Risk Management and Prevention Program which shall be provided to the City Manager upon request. The TRMPP may contain the following components including, but not limited to:

- A. Provisions for conducting comprehensive audits of carriers biennially to assure satisfactory safety records, driver hiring practices, driver training programs, programs to control drug and alcohol abuse, safety incentive programs, satisfactory vehicle inspection and maintenance procedures, and emergency notification capabilities. The operator shall submit to the City any audits that were conducted each calendar year.
- B. Provisions for allowing only carriers which receive a satisfactory rating under the above audit process to transport oil and gas.
- C. Truck loading procedures for ensuring that the truck driver conducts and documents in writing a visual inspection of the truck before loading and procedures to specify actions to be taken when problems are found during the visual inspection.

### **17.46.031.06.03 Pipeline Leak Detection**

All new offsite DOT oil pipelines shall use a supervisory control and data acquisition (SCADA-type) monitoring system for leak detection; unless the City Manager determines that there is better available technology that shall be utilized instead. Flow meters used on the SCADA system shall be accurate to within one percent. If a leak is detected the operator shall be responsible for immediately reporting it to the City Manager.

### **17.46.032 Environmental Resource Management**

Throughout operation of an oil and gas site, the operator shall comply with the following environmental resource management policies:

#### **17.46.032.1 General Environmental Program**

- A. Environmental Quality Assurance Program ("EQAP"). The operator shall comply with all provisions of an environmental quality assurance program that has been accepted by the City Manager and approved as part of a CUP or DA. For oil and gas sites that are existing at the time of the adoption of this ordinance and are not required to have a CUP, completion of the requirements of section 17.46.31.5.B satisfies the requirements of section 17.46.032.1. The following provisions relate to the EQAP:
  1. EQAP Requirements. The EQAP shall provide a detailed description of the process, individual steps, and submissions, the operator shall take to assure compliance with all provisions of this Section, including but not limited to, all of the monitoring programs called for by this Section.

2. Annual EQAP Reports. Within sixty days following the end of each calendar year, the operator shall submit to the City Manager an annual EQAP report that reviews the operator's compliance with the provisions of the EQAP over the previous year and addresses such other matters as may be requested by the City Manager. The annual EQAP report shall include the following:
  - i. A complete list and description of any and all instances where the provisions of the EQAP, or any of the monitoring programs referred to therein or in this Section, were not fully and timely complied with, and an analysis how compliance with such provisions shall be improved over the coming year.
  - ii. Results and analyses of all data collection efforts conducted by the operator over the previous year pursuant to the provisions of this Section.
3. EQAP Updates. Proposed updates to the EQAP shall be submitted to the City Manager for approval along with the annual EQAP report. The City Manager shall complete the review of EQAP updates as soon as practicable, and shall either approve the updated EQAP or provide the operator with a list of specific items that must be included in the EQAP prior to approval. The operator shall respond to any request for additional information within thirty days of receiving such request from the City Manager and shall modify the proposed EQAP update consistent with the City Manager's request.

B. Publicly Available Monitoring Data. The operator shall be responsible for making current monitoring results and data available to the public unless otherwise required by law. The up-to-date monitoring data and results shall be maintained by the operator. The monitoring results and data shall include the following information:

1. Air quality data (if required to be collected);
2. Wind direction speed (if required to be collected);
3. Seismic events;
4. Water quality monitoring results for both surface and groundwater monitoring locations at an oil or gas site, or from nearby groundwater monitoring location(s), as authorized by the City Manager;
5. Pipeline testing and monitoring results;
6. Vibration (if required to be collected); and
7. Ambient noise levels (if required to be collected).

### 17.46.032.2 Air Quality

The operator shall at all times conduct oil or gas site operations to prevent the unauthorized release, escape, or emission of dangerous, hazardous, harmful and/or noxious gases, vapors, odors, or substances, and shall comply with the following provisions:

- A. **Odor Minimization.** If the site is within 1,000 feet of any prohibited zoning as listed in Table 1-1, or if three (3) odor complaints from three (3) different citizens of the City have been confirmed by the SJVAPCD or the City within any 12-month period, at all times the operator shall comply with the provisions of an odor minimization plan that has been approved by the City Manager. The plan shall provide detailed information about the site and shall address all issues relating to odors from oil or gas operations. Matters addressed within the plan shall include setbacks, signs with contact information, logs of odor complaints, method of controlling odors such as flaring and odor suppressants, and the protocol for handling odor complaints. The odor minimization plan shall be reviewed and updated by the operator on an annual basis to determine if modifications to the plan are required. Any modifications to the odor minimization plan shall be submitted to the City Manager for review and approval. Any operator's submissions to the SJVAPCD shall be provided to the City Manager and shall be consistent with Section 17.46.031.2.
- B. **Portable Flare for Drilling.** If the well is within 1,000 feet of any prohibited zoning as listed in Table 1-1, and either the historical operations of the producing zone have exhibited a gas-oil ratio (scf/bbl) of more than 400 or no data is available on the producing zone targeted, the operator shall have a gas buster and a portable flare, approved by the SJVAPCD, at the oil and gas site and available for immediate use to remove any gas encountered during drilling and abandonment operations from well muds prior to the muds being sent to the shaker table, and to direct such gas to the portable flare for combustion. The portable flare shall record the volume of gas that is burned in the flare. The volume of gas burned in the flare shall be documented in the operations logs. The operator shall notify the Fire Chief of the Kern County Fire Department and the SJVAPCD within forty-eight hours in the event a measurable amount of gas is burned by the flare, and shall specify the volume of gas that was burned in the flare. All other drilling and abandonment operations shall be conducted so that any measurable gas that is encountered can, and will, be retained in the wellbore until the gas buster and portable flare are installed on the rig, after which the gas will be run through the system to flare. The operator shall immediately notify the Fire Chief of the Kern County Fire Department and the SJVAPCD in the event any gas from operation is released into the atmosphere without being directed to and burned in the flare.
- C. **Odor Control for Drilling Operations.** If the well is within 1,000 feet of any prohibited zoning as listed in Table 1-1 and either the historical operations of the producing zone have exhibited a gas-oil ratio of more than 400 (scf/bbl) or no data is available on the producing zone targeted, the operator shall use an enclosed mud system that directs all mud vapors through an odor capturing system, such as a carbon bed, to prevent odorous pollutants from passing the site boundaries and impacting the area. An odor suppressant spray system may be used on the mud shaker tables for all drilling operations to ensure that no odors from said operations can be detected at the outer boundary line of the oil and gas site.

- D. Closed Systems. The operator shall ensure that all produced water, gas and oil associated with production, processing, and storage, except those used for sampling only, are contained within closed systems at all times and that all pressure relief systems, including tanks, vent to a closed header and flare-type system to prevent emissions of pollutants. This subsection does not apply to existing facilities.
- E. No open pits are allowed.
- F. Off-Road Diesel Construction Equipment Engines. All off road diesel construction equipment shall comply with the following provisions:
1. Utilize California Air Resources Board ("CARB") EPA Certification Tier III or other methods approved by the CARB as meeting or exceeding the Tier III standard.
  2. Utilize a CARB Level 3 diesel catalyst. The catalyst shall be capable of achieving an eighty-five percent reduction for diesel particulate matter. Copies of the CARB verification shall be provided to the City Manager. Said catalysts shall be properly maintained and operational at all times when the off-road diesel construction equipment is in use. Use of an EPA Certification Tier 4i engine will also satisfy this requirement.
- G. Drill Rig Engines. All drilling rig diesel engines shall comply with the following provisions:
1. Utilize CARB/EPA Certification Tier III or better certified engines
  2. Utilize a CARB Level 3 diesel catalyst. The catalyst shall be capable of achieving an 85 percent reduction for diesel particulate matter. Copies of the CARB verification shall be provided to the City Manager. Said catalysts shall be properly maintained and operational at all times when the off-road diesel construction equipment is in use. Use of an EPA Certification Tier 4i engine will also satisfy this requirement.

#### **17.46.032.3 Greenhouse Gas Emissions and Energy Efficiency Measures**

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- A. The operator of an oil and gas site shall completely offset all emissions from the oil and gas site through participation in the statewide cap and trade program, if applicable, or obtaining credits from another program as approved by the City Manager. On an annual basis, the operator shall provide the City Manager with documentation of the operator's participation in the program. This section does not apply to existing facilities.
- B. Throughout the oil and gas site life, as equipment is added or replaced, cost-effective energy conservation techniques shall be incorporated into project design.

#### **17.46.032.4 Air Quality Monitoring and Testing Plan**

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If the site is within 1,000 feet of any prohibited zoning as listed in Table 1-1, at all times the operator shall comply with the provisions of an air monitoring plan that has been approved by

the City Manager. During all well operations, including but not limited to drilling, re-drilling and workover operations, the operator shall continuously monitor for hydrogen sulfide, in a manner that allows for detection of pollutants from all wind directions, as approved by the City Manager. Total hydrocarbon vapors shall be monitored at drilling, workover and processing plant areas as specified in the approved plan. Such monitors shall provide automatic alarms that are triggered by the detection of hydrogen sulfide or total hydrocarbon vapors. The alarms shall be audible and/or visible to the person operating the equipment. Actions to be taken shall be as follows when specified alarm levels are reached:

- A. At a hydrogen sulfide concentration of equal to or greater than five parts per million but less than 10 parts per million, the operator shall immediately investigate the source of the hydrogen sulfide emissions and take prompt corrective action to eliminate the source. The corrective action taken shall be documented in the drilling or workover log. If the concentration is not reduced to less than five parts per million within four hours of the first occurrence of such concentration, the operator shall shut down the drilling or workover operations and equipment in a safe and controlled manner, until the source of the hydrogen sulfide emissions has been eliminated, unless shutdown creates a health and safety hazard.
- B. At a hydrogen sulfide concentration equal to or greater than 10 parts per million, the operator shall promptly shut down the drilling or workover operations and equipment in a safe and controlled manner until the source of the hydrogen sulfide emissions has been eliminated, unless shutdown creates a health and safety hazard. The corrective action taken shall be documented in the drilling or workover log. When an alarm is received, the operator shall promptly notify the Kern County Fire Department, the City Manager, and the SJVAPCD.
- C. At a total hydrocarbon concentration equal to or greater than 500 parts per million but less than 1,000 parts per million, the operator shall immediately investigate the source of the hydrocarbon emissions and take prompt corrective action to eliminate the source. The corrective action taken shall be documented in the drilling log for drilling or workover and in the log for the oil and gas site. If the concentration is not reduced to less than 500 parts per million within four hours of the first occurrence of such concentration, the operator shall shut down the drilling or workover, or site operations in a safe and controlled manner, until the source of the hydrocarbon emissions has been eliminated, unless shutdown creates a health and safety hazard.
- D. At a total hydrocarbon concentration equal to or greater than 1,000 parts per million, the operator shall promptly shut down the drilling or workover or operations in a safe and controlled manner, until the source of the hydrocarbon emissions has been eliminated, unless shutdown creates a health and safety hazard. The corrective action taken shall be documented in the drilling log for drilling or workover and in the log. When an alarm is received, the operator shall promptly notify the Kern County Fire Department - Health Hazardous Materials Division, and the SJVAPCD.
- E. The City Manager may also require additional monitoring at the closest residential receptor periodically for hydrogen sulfide, hydrocarbons or Toxic Air Contaminants. All the monitoring equipment shall keep a record of the levels of total hydrocarbons and hydrogen sulfide detected at each of the monitors, which shall be retained for at least five years. The

operator shall, on a quarterly basis, provide a summary of all monitoring events where the hydrogen sulfide concentration was at five parts per million or higher and the total hydrocarbon concentration was at 500 parts per million or higher to the Fire Chief of the Kern County Fire Department. At the request of the Fire Chief, the operator shall make available the retained records from the monitoring equipment.

### **17.46.032.5 Water Quality**

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The operator shall at all times conduct operations to avoid any adverse impacts to surface and groundwater quality, and shall comply with the following provisions:

#### **17.46.032.5.1 Water Management Plan**

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The operator shall comply with all provisions of a potable water management plan that has been approved by the City Manager. The plan shall include best management practices, water conservation measures, and the use of a drip irrigation system. The water management plan shall be reviewed by the operator every three years to determine if modifications to the plan are required. Any modifications to the water management plan shall be submitted to the City Manager for review and approval. This Section does not apply to existing facilities.

#### **17.46.032.5.2 Stormwater Runoff**

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Construction Storm Water Pollution Prevention Plan ("SWPPP"). The operator shall maintain and implement all provisions of a storm water pollution prevention plan ("SWPPP") that has been submitted to the Regional Water Quality Control Board, if required. The operator shall provide the City Manager with a copy of the SWPPP, and any future modifications, revisions, or alterations thereof, or replacements thereof upon written or verbal request of the City Manager. The SWPPP shall be updated prior to new construction activities as required by the Regional Water Quality Control Board.

#### **17.46.032.5.3 Groundwater Quality**

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- A. Prior to any new development, the operator shall prepare and submit a baseline study of all groundwater resources located within and beneath the project site or directly adjacent to the site, to specifically include an analysis of the location and reservoir characteristics of all existing groundwater resources, a chemical analysis of the groundwater, and an overall assessment of the groundwater quality. Nothing in this Section shall authorize the operator to trespass on private property including private wells; operator shall use reasonable efforts to obtain permission from private wells. Upon determining that the testing data for said well(s) is otherwise not publically available, the operator may make a showing of reasonable efforts to obtain permission to access private wells to the City Manager. Upon such a showing, and a deposit by the operator to cover the costs noticing, the City Manager may send out notices requesting access to the private wells for sampling purposes. If data from nearby private wells is not available, the operator may rely on data from the two closest public wells.
- B. The operator shall not inject any water spoils/wastewater derived from the any oil or gas operations into any non-exempt freshwater aquifers.

- C. Upon indication that groundwater contamination has occurred and where there is a reasonable probability it could be related to oil and gas activities at the site, within 30 days of request by the City the operator shall deposit funds with the City necessary to retain a third party to prepare a hydrological analysis Groundwater Testing Program, or alternately, provide comparable analyses performed through the Groundwater Ambient Monitoring and Assessment Program or other reliable source as determined by the City Manager. Based on the results of the geo-hydrological analyses, the City Manager has the discretion to require the operator to install one or more groundwater monitoring wells to allow for confirmation that groundwater is not being affected by oil and gas activities. As part of the Groundwater Testing Program the operator is required to provide the City Manager with annual monitoring and testing results.
- D. The operator shall be responsible for obtaining a field/site study from DOGGR. If DOGGR does not provide this to the operator then the operator shall submit evidence detailing DOGGR's response to their field/site study request to the City Manager for review.
- E. The operator shall provide to the City Manager a copy of the DOGGR Annual Injection Project Review (if the operator is operating a water injection or water disposal well) upon written or verbal request by the City Manager. The operator shall provide to the City Manager the results of any DOGGR required cement casing integrity testing, including radial cement evaluation logs or equivalent upon written or verbal request by the City Manager, before any wells are put into production.

#### **17.46.032.6 Noise Impacts**

All facilities at an oil or gas site located within 600 feet of any prohibited zones, as indicated in Table 1-1, or if noise levels exceed City thresholds as confirmed by the City Manager, operations shall comply with the following provisions:

- A. All noise produced from the site shall conform to the noise thresholds specified in Table 4 – Noise Standards For Land Use Compatibility
- B. Backup alarms on all vehicles operating within 600 feet of the prohibited zone in Table 1-1, shall be disabled between the hours of 6:00 p.m. and 8:00 a.m. During periods when the backup alarms are disabled, the operator shall employ alternative low-noise methods for ensuring worker safety during vehicle backup, such as the use of spotters.
- C. Any and all operations, construction, or activities on the site between the hours of 6:00 p.m. and 8:00 a.m. shall be conducted in conformity with a quiet mode operation plan that has been approved by the City Manager. The quiet mode operation plan shall be reviewed by the operator every year to determine if modifications to the plan are required. Any modifications to the quiet mode drilling plan shall be submitted to the City Manager for review and approval. Operations that are existing at the time this ordinance is adopted are exempt from the quiet mode plan submittal requirements but are required to comply with the quiet mode provisions listed in section 17.46.08.1.J.

- D. All noise producing oil and gas site equipment shall be regularly serviced and repaired to minimize increases in pure tones and other noise output over time. The operator shall maintain an equipment service log for all noise-producing equipment.
- E. All construction equipment shall be selected for low-noise output. All construction equipment powered by internal combustion engines shall be properly muffled and maintained.
- F. Unnecessary idling of construction equipment internal combustion engines is prohibited.
- G. The operator shall instruct employees and subcontractors about the noise provisions of this ordinance. The operator shall prominently post quiet mode policies at every oil and gas site if applicable.
- H. All oil operations on the oil and gas site shall be conducted in a manner that minimizes vibration. Additionally, vibration levels from oil or gas operations at the site, as measured from the perimeter of the oil or gas site, shall not exceed a velocity of 0.25 mm/s over the frequency range 1 to 100 Hz.
- I. For all oil and gas operations if noise levels exceed the levels prescribed in Table 4 – Noise Standards For Land Use Compatibility or the vibration thresholds specified in Subsection (H) of this Section, including those outside of 600 feet as indicated above, within 30 days of request by the City Manager, the operator shall deposit funds for the City Manager to retain an independent qualified acoustical engineer to monitor (1) ambient noise levels and (2) vibration levels in the areas surrounding the oil or gas site as determined necessary by the City Manager. The monitoring shall be conducted unannounced and within a time frame specified by City Manager. Should noise or vibrations from the oil or gas site exceed the noise thresholds specified in Table 4 – Noise Standards for Land Use Compatibility of the Noise Element of the General Plan or the vibration thresholds specified in Subsection (H) of this Section, operation can also be subject to enforcement under this ordinance including notices of violation per Section 17.46.015. No new drilling permits, CUPs, or DAs shall be issued by the City until the operator in consultation with the City Manager identifies the source of the noise or vibration and the operator takes the steps necessary to assure compliance with thresholds specified in this ordinance. The results of all such monitoring shall be promptly posted on the website for the oil or gas site and provided to the City Manager.

### **17.46.33 Standards for Wells**

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The operator shall comply with all of the following provisions:

- A. All DOGGR regulations related to drilling, workovers, operations and abandonment operations.
- B. No more than two rigs shall be present within the oil or gas site at any one time.
- C. All derricks and portable rigs and masts used for drilling and workovers shall meet the standards and specifications of the American Petroleum Institute as they presently exist or as may be amended.

- D. All drilling and workover equipment shall be removed from the site within ninety days following the completion of drilling or workover activities unless the equipment is to be used at the site within thirty days for drilling or workover operations.
- E. All drilling sites shall be maintained in a neat and orderly fashion.
- F. Belt guards shall be required over all drive belts on drilling and workover equipment. Guarding shall be as required by Title 8 of the California Code of Regulations, Section 6622, or as may be subsequently amended.
- G. Aboveground pumpjack assemblies are prohibited for new wells located in non-industrial and non-agricultural areas, and new wells in non-industrial areas sites are restricted to the exclusive use of submersible downhole pumping mechanisms for extraction. However, any well already lawfully existing at the time of implementation of this ordinance using a pumpjack assembly may continue to do so. The requirements of this subsection are applicable to all oil and gas sites in all non-industrial zones and non-agricultural zones except where the City Manager determines that the use of submersible downhole pumping mechanisms is infeasible due to technical reasons or other circumstances which would specifically preclude the use of such technology (including field and well specific flowrates and fluid types) or render its use less desirable (such as increased environmental impacts, surface impacts, or other issues related to public health, welfare or safety).

#### **17.46.034 Standards for Pipelines**

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The operator shall comply with the following provisions related to pipelines throughout operation of an oil or gas site:

##### **17.46.034.1 Pipeline Installations and Use**

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- A. Pipelines shall be used to transport oil and gas off-site to promote traffic safety and air quality, unless it can be demonstrated to the satisfaction of the City Manager that a pipeline is not reasonably feasible (which may include proximity of pipelines to prohibited uses, production volumes resulting in less than one truck delivery trip per week, etc.) and that transportation of products do not pass through or adjacent to prohibited areas as defined in Table 1-1, except on designated truck routes. Trucking on a temporary basis is allowed with approval of the City Manager.
- B. The use of a pipeline for transporting crude oil or gas may be a condition of approval for expansion of existing facilities or construction of new facilities unless it can be demonstrated to the satisfaction of the City Manager that a pipeline is infeasible and that transportation of products do not pass through or adjacent to prohibited areas as defined in Table 1-1, except on designated truck routes.
- C. New pipeline corridors shall be consolidated with existing pipeline or electrical transmission corridors where feasible, unless there are overriding technical constraints or significant social, aesthetic, environmental or economic reasons not to do so, as approved by the City Manager.

- D. New pipelines shall be routed to avoid residential, recreational areas, and schools if possible. Pipeline routing through recreational, commercial or special use zones shall be done in a manner that minimizes the impacts of potential spills by considering spill volumes, durations, and projected spill paths. New pipeline segments shall be equipped with automatic shutoff valves, or suitable alternatives approved by the City Manager, so that each segment will be isolated in the event of a break.
- E. Upon completion of any new pipeline construction, the site shall be restored to the approximate previous grade and condition. All sites previously covered with vegetation shall be reseeded with the same or recovered with the previously removed vegetative materials, and shall include other measures as deemed necessary to prevent erosion until the vegetation can become established, and to promote visual and environmental quality, unless there are approved development plans for the site, in which case re-vegetation would not be necessary.
- F. Gas from wells shall be piped to centralized collection and processing facilities, rather than being flared, to preserve energy resources and air quality, and to reduce fire hazards and light sources, unless the SJVAPCD approves the flaring of gas during the temporary operation of an well. Oil shall also be piped to centralized collection and processing facilities, in order to minimize land use conflicts and environmental degradation, and to promote visual quality.

#### **17.46.034.2 Pipeline Inspection, Monitoring, Testing and Maintenance**

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- A. Operators shall visually inspect all aboveground pipelines for leaks and corrosion on a monthly basis.
- B. The operator shall install a leak detection system for all offsite DOT regulated oil and gas pipelines. The leak detection system for oil shall include pressure and flow meters, flow balancing, supervisor control and data acquisition system, and a computer alarm and communication system in the event of a suspected leak. The leak detection system for gas pipelines shall include pressure sensors. The accuracy shall be defined once the system is established and tested and approved by the City Manager. The City Manager may deviate from these requirements to address system specific operating requirements.
- C. Pipe clamps, wooden plugs or screw-in plugs shall not be used for any permanent repair approved by the City Manager.
- D. Pipeline abandonment procedures shall be submitted to the City Manager for review and approval prior to any pipeline abandonment.
- E. Copies of pipeline integrity test results required by any statute or regulation shall be maintained in a local office of the operator and posted online on the same website that provides the monitoring results required in Section 17.46.032.1 for five years and shall also made available to the City, upon request. The City shall be promptly notified in writing by the operator of any pipeline taken out of service due to a test failure.

### 17.46.035 Temporary Buildings

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During full production of an oil or gas site no temporary buildings are allowed to be constructed or maintained anywhere at the site.

### 17.46.036 [Reserved]

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### 17.46.037 [Reserved]

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## Part 3. Development Standards for Site Abandonment and Redevelopment

### 17.46.038 Development Standards

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The following development standards shall be applied to all redevelopment projects within the footprint of an oil or gas site, including any building permit involving a current or former oil or gas site:

- A. Any demolition, abandonment, re-abandonment, or restoration shall be adequately monitored by a qualified individual, funded by the permittee or operator and retained by the City, to ensure compliance with those conditions designed to mitigate anticipated significant adverse effects on the environment and to provide recommendations in instances where effects were not anticipated or mitigated by the conditions imposed on the permit or entitlement. Pre-restoration and post-restoration surveys of sensitive biological resources shall be employed as appropriate to measure compliance.
- B. The site shall be assessed for previously unidentified contamination.
  - 1. The permittee shall ensure that any discovery of contamination shall be reported to the City Manager and the Kern County Fire Department.
- C. The permittee shall diligently seek all necessary permit approvals, including revisions to an entitlement or the demolition. Abandonment, re-abandonment and restoration permit, if any are required, in order to remediate the contamination.
- D. The permittee shall be responsible for any cost to remediate the contamination on the site. This ordinance is not intended to limit the permittee or operator's rights under the law to seek compensation from parties who have contributed to contamination of the site.
- E. The permittee shall ensure that appropriate notification has been recorded with the County Recorder to describe the presence and location of any contamination left in place under the authority of the Kern County Fire Department.
- F. All abandoned or re-abandoned wells shall be leak tested subject to the following requirements:
  - 1. All abandoned wells located within on the oil and gas site must be tested for gas leakage and visually inspected for oil leakage. The operator shall apply to the City

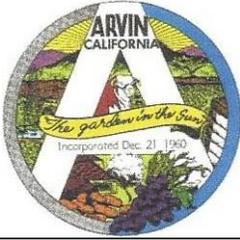
- Manager for an inspection permit to witness the well testing. The leak test shall be completed utilizing a gas detection meter approved in advance by the City Manager, and shall be conducted by a state licensed geotechnical or civil engineer or a state registered environmental assessor, Class II, or the City Manager, or a designee, as determined necessary by the City Manager.
2. The permittee shall prepare and submit a methane assessment report for each tested well prepared per the City of LA Department of Building and Safety “Site Testing Standards for Methane” (P/BC 2014-101), as may be amended, or equivalent standards as may be approved by the City Manager. The operator may use the City’s consultant to observe the leak test or be responsible for City consultant test fees.
  3. The submitted methane assessment report shall be prepared by a state licensed geotechnical or civil engineer. A well shall be considered leaking if the leak test report indicates the meter read is greater than Level II as defined by the City of LA Department of Building and Safety “Site Testing Standards for Methane”, which is set at 1,000 parts per million.
  4. An approved methane assessment report is valid for 24 months from approval by the City Manager. If an abandonment permit has not been issued by this time, retesting shall be required. Following all testing and inspection, the test area shall be returned to its previous state to the satisfaction of the City building official.
  5. If there has not been a change to the well and no indicia of a leak, no leak test is required if a valid methane assessment report, accepted by the City Manager and showing no leaks in excess of the leak limit, has been completed for an abandoned or re-abandoned well.
  6. If evidence is provided that a well has been abandoned or re-abandoned per DOGGR standards, and if evidence is provided to the City Manager that the likelihood of methane release is low given local field conditions, etc., the City Manager may waive a methane assessment report if detection at the site is less than 1,000 parts per million,
- G. Prior to any development or redevelopment of a current or former oil or gas site, or prior to abandoning or re-abandoning any well, the operator shall:
1. Obtain permit(s) and abandon all idled wells consistent with Section 17.46.011.3 and provide a certificate of compliance to show that the wells and/or sites are abandoned consistent with standards recommended or required by DOGGR to the satisfaction of the City Manager. Permits shall not be required if the idled well is scheduled to produce oil or natural gas, or to be used for injection, as part of the development or redevelopment of a former oil or gas site and if said production or injection occurs within 5 years of issuance of a CUP or DA under this ordinance.
  2. Obtain permit(s) consistent with Section 17.46.011.3 to re-abandon all previously abandoned wells that do not meet standards recommended or required by DOGGR for

- abandonment in effect at the time of re-abandonment, and provide a certificate of compliance that the wells and/or sites are re-abandoned consistent with current conditions and standards recommended or required by DOGGR to the satisfaction of the City Manager. Permits shall not be required if re-entry of an abandoned well is scheduled to occur within 5 years of issuance of a CUP or DA under this ordinance, and if re-entry actually occurs within that period of time.
3. In lieu of Subsections (1) and (2), above, obtain a deferral covenant from the City requiring abandonment or re-abandonment to standards recommended or required by DOGGR, or equivalent standards as determined by the City Manager, at a specific time or upon the occurrence of a future event. The deferral covenant shall be approved as to form by the City Attorney, contain a provision to indemnify and hold harmless the City for damages related to wells not abandoned or re-abandoned consistent with standards recommended or required by DOGGR, and shall be recorded by the operator with the County Clerk prior to approval. In addition to a deferral covenant, the City Manager may require a bond or deposit to cover the estimated cost of future abandonment.
- H. Other Development Standards:
1. Permanent structures, or other construction that would be difficult or expensive to demolish, shall not be located on top of any abandoned oil or gas well such that access for a well abandonment rig or other well maintenance equipment is constrained or inhibited from access to the well in the event of a future oil or gas leak, unless it can be demonstrated to the satisfaction of the City Manager that it is not feasible or, within an industrial zone, the developer proposing such construction provides written assurances to the satisfaction of the City Manager, to be included in the recorded declaration of covenant prescribed in Subsection 3, below, that they are aware of and accept the risks associated with such construction. Previous improvements, such as landscaping and porous parking areas with adequate landscape buffers, may be located on top of an abandoned or re-abandoned well which has passed the leak test consistent with this Section.
  2. Redevelopment of a Former Oil and Gas Site: If redevelopment of an oil and gas site for use other than an oil and gas operation is proposed at a completely or partially abandoned oil or gas site, the applicant shall submit an application to be processed as a Conditional Use Permit consistent for that use under this Code. Said application shall include the content required by Section 17.46.11.3.2, and the Conditional Use Permit shall comply with the development standards of Section 17.46.038.
  3. Prior to issuance of a permit or entitlement for redevelopment of a former oil and gas site, the owner shall record a declaration of a covenant, in a form subject to the review and approval of the City Attorney, putting future owners and occupants on notice of the following: the existence of abandoned oil wells on the site; that the wells within the site have been leak tested and found not to leak; description of any methane mitigation measures employed; a statement as to whether or not access to these wells has been provided to address the fact that they may leak in the future

causing potential harm; acknowledgment that the state may order the re-abandonment of any well should it leak in the future; acknowledgment that the state does not recommend building over wells; and releasing and indemnifying the City for issuing any project permit or entitlement for the project, along with notice of the assurances, if any, required by Subsection 1, above. The covenant shall run with the land, apply to future owners, and may only be released by the City.

DRAFT

Attachment: Ordinance\_Oil and Gas Code (First Reading - Oil and Gas Code Ordinance)



PLANNING COMMISSION  
June 12, 2018

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**TO:** Planning Commission

**FROM:** Jake Raper, Community Development Director

**SUBJECT:** Public Hearing – Consideration For Approval Of A Resolution Recommending Adoption Of An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code, And Recommendation of Adoption of Categorical Exemption under CEQA Section 15308 (Actions By Regulatory Agencies For Protection Of Natural Resources)

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**RECOMMENDATION:**

Staff recommends the Planning Commission open the hearing; allow for public testimony; close the hearing; and approve the Resolution recommending the City Council adopt Text Amendment 2017-04 to adopt an updated oil and gas code and associated CEQA.

**SUMMARY:**

The Planning Commission previously recommended the City Council approve the draft ordinance. As authorized by the City Council, this item is being brought back before the Planning Commission to make a recommendation to updates to the draft ordinance to address intervening changes in laws (including those which took effect on January 1, 2018), local conditions related to the Mountain View field, procedural items including streamlining to reduce impacts on City and other resources, increasing setbacks from roadways from 50 to 100 feet, etc. Protections for immediate public health, safety and welfare issues were not changed.

Approval of the Ordinance will provide an update to the City of Arvin's Municipal Code for the regulation of petroleum facilities and operations.

**BACKGROUND:**

The City's original petroleum facilities and operations code was adopted in 1965 and consisted of only a few pages of regulations. The current code allows oil drilling in residential neighborhoods with a CUP. At the time of the original oil code, the City's population was approximately 5,000 residents. At that time the State Division of Oil and Gas was also actively regulating oil

production, as well as the site redevelopment process, such that there was no role for a City inspection process. During the last 50+ years 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.

The proposed oil code amendments deal with not only the changing character of Arvin, but changes in the science and technology of oil production in the last half century. These include the advent of 3-D Seismic Imaging technology, which is unlocking new deposits of oil and gas in previously declining and abandoned oil fields. Major technology advancements have been made in directional or slant drilling, now combined with GPS coordination and 3-D imaging to precisely locate and access gas and oil deposits. Arvin's original oil code did not anticipate these technologies or uses.

As the technology and science improve in locating gas and oil deposits, as well as improvements in production technology, it is conceivable that these reserves will increase. This improvement in technology and science make a compelling case that Arvin requires a comprehensive petroleum code amendment that can deal with decades of future oil production.

There have also been changes in oil field production techniques which warrant the proposed amendments to the Arvin Oil Code. These include changes in pumping technology and efficiencies, including more energy efficient pumps. There have also been changes in sound attenuation technology, for both oil drilling equipment and well servicing equipment, since the existing code was adopted. Air quality standards have also evolved since 1965, including new regulations from the San Joaquin Air Quality Management District to control odors and emissions. Natural gas vapor recovery is now common place in the local oil fields, where in 1960's natural gas was routinely a waste product that was vented to atmosphere or flared. Drilling muds have evolved into water based muds rather than oil based muds, which are less impactful to the environment. There have been changes in pipeline technology, leak detection and pipeline repairs, where the majority of oil production can now be conveyed by pipeline, instead of tanker trucks.

Important regulations have been developed in other jurisdiction to address issues such as decommissioning of oil facilities once they have reached the end of their economic life and appropriate clean up and remediation to allow for appropriate future use of the land. In addition, regulations have evolved to address the potential change of ownership that could occur at oil fields and the importance of addressing such changes to protect the local jurisdictions on financial responsibility and insurance.

The original water flood systems relied on potable water in the 1970s, when water was relatively inexpensive. With the population growth in the region and State, potable water has been substituted by production or reclaimed water. This water must be carefully monitored for environmental and public health reasons. The original Oil Code did not anticipate the use of production or reclaimed water and the need for careful water quality monitoring. Other environmental science and technology advancements have been made in the areas of ground water cleanup, soil clean-up and remediation actions. The original Oil Code did not anticipate any of these environmental advancements, which when employed improve the public health and

safety.

The National Environmental Policy Act (NEPA) was adopted in 1969 and California followed suit by adopting the California Environmental Quality Act (CEQA) in 1970. These two landmark pieces of environmental legislation were not anticipated by Arvin's Oil Code in 1965. Part of the necessary amendments in the proposed oil code deal with the increasing the environmental indemnification and insurance coverage requirements. These environmental insurance needs could not have been foreseen by the original authors of the 1965 code.

Without financial assurances to ensure site remediation and compliance with heightened environmental standards, redevelopment of a former oil or gas site may be precluded or unnecessarily restricted. This can result in parcels of land with limited (if any) development potential throughout the City, which can not only displace other desirable uses, but also affects the City's ability to provide services to the public through decreased tax revenue. Additionally, this can increase the likelihood of blight, nuisances, vandalism and other undesirable conditions. These financial assurances to address environmental needs could not have been foreseen by the original authors of the 1965 code.

Another of the key changes that necessitates a comprehensive amendment to the Arvin Oil Code is the major change in the role of the State Division of Oil, Gas and Geothermal Resources since 2011. Oil production and site development in the area was carefully regulated by DOGGR until 2011, when DOGGR notified several cities that they would no longer be involved in the site development process. Several local cities were required to amend their oil codes to deal with this State policy change. Additionally, the availability of DOGGR oversight may fluctuate based on State budgetary allocations. In part, Arvin's proposed amendments to the oil code are in response to the this issue. The proposed code amendment will ensure environmentally sound, and community protective, operational standards. The proposed code ensures oil well and facilities abandonment requirements that will result in the protection of the public health and safety, overall environmental protection and the safe redevelopment of property.

### **PROCEDURAL BACKGROUND:**

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. The Planning Commission then held a public hearing on October 10, 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.

Although there were multiple public hearings and notices in the newspaper, and no objections

made 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 fully 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.

More than 100 days was then provided to oil and gas operators, and other parties, to review the proposed ordinance in detail. No additional comments were received during that time from the petroleum operators. Staff then set up a meeting with the petroleum operators on May 1, 2018, and conducted a workshop on May 16, 2018. Additionally, Staff obtained 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. Notices for this meeting have been provided as required by law, and a press release provided to press.

Written comments from public, including those from the City Council meeting on November 21, 2017, are attached to this staff report.

## **OVERVIEW OF PROPOSED ORDINANCE**

The proposed Ordinance is one of the comprehensive ordinances in the State, and is divided into three Parts as follows:

### **Part 1 (Administrative Procedures):**

This Part identifies where operations may occur, and what approvals are necessary for the types of operations. This could include:

- o Prohibiting new operations in residential and other sensitive areas (such as schools and medical facilities).
- o All other areas require conditional use permits or development agreements (complete with a public review process).
- o Regulation of facility closure and abandonment.
- o Impose insurance and bonding requirements. This could include general liability (including environmental impairment (or seepage and pollution) coverage), automotive liability, worker's compensation, control of well insurance and umbrella insurance.
- o Require the applicant shall be fully responsible for all reasonable costs and expenses incurred by the City to review, approve, implement, inspect, monitor, or enforce the ordinance or any CUP, DA, or permit related to oil and gas production.
- o Establish monitoring and enforcement procedures (including substantial fines and

penalties, etc.).

**Part 2 (Development Standards for Petroleum Operations):**

This Part establishes how the sites may be operated. This includes:

- o Banning expansion of existing uses in residential and other sensitive use areas.
- o Prohibiting new operations within a certain radius (600 feet) of sensitive uses unless they can comply with a variety of requirements, including an odor minimization plan, air monitoring plan, community alert system, quiet mode operations plan, photometric analysis (lighting and glare), etc.
- o Prohibiting the development of new uses closer than 300 feet (a football field) from sensitive uses under any conditions.
- o Regulations to address lighting, aesthetics, water quality (including groundwater), air quality, greenhouse gas, inspection and monitoring, safety standards, and other items.

**Part 3 (Development Standards for Site Abandonment and Redevelopment):**

This Part addresses conditions under which a site must be assessed and remediated prior to redevelopment of a current or oil or gas site (e.g., prior to building structures over an abandoned site). This includes leak testing, inspections, ensuring all wells are properly abandoned and recording of documents on the property to give notice to future owners and occupants of the land's prior use as an oil or gas site, results of testing, etc.

**CEQA:**

The proposed Ordinance was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. Staff has determined that the Ordinance is exempt from CEQA pursuant Class 8, Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. This Categorical Exemption is applicable as this Ordinance is intended to further regulate oil and gas production in the City in such a way as to better protect the environment. Such a finding and determination is warranted as the proposed Ordinance addresses the maintenance, restoration, enhancement and protection of the environment and the public health, safety, welfare of the citizens of Arvin as related to potential impacts from petroleum operations and facilities within the City. The variety of environmental issues addressed include air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors. Under the current ordinance, multiple wells, directional drilling and associated equipment and operations (including resultant potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed. Adoption of Text Amendment No. 2017-04 does not change this. In other words, arguments that the Ordinance may cause more intense uses to be

shifted to other locations are without basis, as any such level of hypothetical intensity at other locations would already be allowed under the current regulatory environment. This Ordinance instead reduces the potential impacts at certain locations by establishing standards for environmental protection; it does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

**Financial Impact:**

The proposed Ordinance is designed such that the applicants would pay for all impacts and costs associated with monitoring, permitting, testing, etc.; there may be some costs to set up processes.

**EXHIBITS AND ATTACHMENTS**

1. Resolution Recommending Adoption Of An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code, And Recommendation of Adoption of Categorical Exemption under CEQA Section 15308 (Actions By Regulatory Agencies For Protection Of Natural Resources)
  - a. Exhibit A – Proposed Ordinance Amendment – Title 17-Zoning, Chapter 17.46 Oil and Gas Production
2. Notice of Public Hearing.
3. Press release regarding Planning Commission meeting.
4. Comments and other documents received from the public to date.

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ARVIN RECOMMENDING ADOPTION OF AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, TO ADOPT TEXT AMENDMENT NO. 2017-04, AN OIL AND GAS ORDINANCE FOR REGULATION OF PETROLEUM FACILITIES AND OPERATIONS, BY REPEALING CHAPTER 17.46, TITLE 17, AND ADDING CHAPTER 17.46 TO TITLE 17, OF THE ARVIN MUNICIPAL CODE, AND RECOMMENDATION OF ADOPTION OF CATEGORICAL EXEMPTION UNDER CEQA SECTION 15308 (ACTIONS BY REGULATORY AGENCIES FOR PROTECTION OF NATURAL RESOURCES)**

**WHEREAS**, the City Council adopted Resolution No. 2017-92 on September 19, 2017 authorizing various code amendments to Title 17 Zoning; and

**WHEREAS**, the City Council authorized the Community Development Director to prepare necessary reports and prepare appropriate environmental documents for needed code amendments to Title 17-Zoning and present same to the Planning Commission wherein their recommendation would be forwarded to the City Council for consideration; and

**WHEREAS**, the Planning Commission on October 10, 2017, considered this matter after a public hearing, and adopted a resolution recommending the City Council adopt Text Amendment No. 2017-04; and

**WHEREAS**, After another public hearing on November 07, 2017, the City Council held the first reading and voted to introduce the proposed ordinance to adopt Text Amendment No. 2017-04; and

**WHEREAS**, the City Council then considered the proposed ordinance for second reading (final adoption) at another public hearing on November 21, 2017.

**WHEREAS**, the City Council then continued the item to a future meeting to allow for time for City Staff to meet interested parties from the oil and gas industries and to return with the amendments that was formerly approved by the Planning Commission to be included as part of the proposed ordinance; and

**WHEREAS**, more than 100 day were provided for interested parties from the oil and gas industries to review and comment on Text Amendment No. 2017-04; and

**WHEREAS**, on May 1, 2018, the City Council authorized and directed City 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; and

**WHEREAS**, on May 2, 2018, City Staff held a working meeting with interested parties

from the oil and gas industries, received comments and answered questions; and

**WHEREAS**, on May 16, 2018, City Staff held a workshop for interested parties associated with the oil and gas industries, received comments and answered questions; and

**WHEREAS**, City Staff also reached out to community and environmental groups to receive comments and to answer questions; and

**WHEREAS**, interested parties submitted multiple comments regarding the adoption of Text Amendment No. 2017-04; and

**WHEREAS**, the proposed ordinance was updated to address intervening changes in laws (including those which took effect on January 1, 2018), local conditions related to the Mountain View field, procedural items including streamlining to reduce impacts on City and other resources, increasing setbacks from roadways from 50 to 100 feet, etc.; no changes were made with regard to immediate public health, safety and welfare issues; and

**WHEREAS**, City Staff returned the updated draft ordinance to the Planning Commission for consideration; and

**WHEREAS**, public notice of the Planning Commission hearing was provided at least 10 days in advance of the Planning Commission meeting; and

**WHEREAS**, in addition to public notice as required by law, the City also issued a press release further notifying the public regarding the Planning Commission hearing; and

**WHEREAS**, the Planning Commission received and reviewed the updated Text Amendment No. 2017-04 proposing and Oil and Gas Ordinance at a duly noticed special meeting on May 30, 2018; and

**WHEREAS**, the public was again provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the Planning Commission; and

**WHEREAS**, the Planning Commission desires to recommend that the City Council adopt said Text Amendment No. 2017-04 and further recommends the adoption of the Notice of Exemption as the appropriate environmental document for Text Amendment No. 2017-04.

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

### **Section 1. Findings.**

A. Recitals: The Planning Commission of the City of Arvin finds that the above recitals are true and correct.

B. Notices: The Planning Commission of the City of Arvin finds that all legal prerequisites for consideration of this item have occurred, including notice of the public hearing.

C. Plan Consistency: The Planning Commission of the City of Arvin has reviewed Text Amendment No. 2017-04, an oil and gas ordinance for regulation of petroleum facilities and operations, and hereby finds it is consistent with the General Plan and all applicable Specific Plans, and recommends said finding of consistency to the City Council of the City of Arvin.

D. Findings of Fact: The Planning Commission of the City of Arvin, based on its own independent judgment, finds that Text Amendment No. 2017-04 promotes and protects the health, safety, welfare, and quality of life of City residents, including protection against nuisances, and recommends the adoption the Findings of Fact, as set forth in Exhibit “A,” and incorporated in full by reference, any one of which findings would be sufficient to support adoption of this Text Amendment, and recommends said findings to the City Council of the City of Arvin.

**Section 2. CEQA.** Text Amendment No. 2017-04 was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The Planning Commission recommends the City Council find and determine that the adoption of Text Amendment No. 2017-04 is exempt from CEQA pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. This Categorical Exemption is applicable as this Ordinance is intended to further regulate oil and gas production in the City in such a way as to better protect the environment. Such a finding and determination is warranted as the proposed Ordinance addresses the maintenance, restoration, enhancement and protection of the environment and the public health, safety, welfare of the citizens of Arvin as related to potential impacts from petroleum operations and facilities within the City. The variety of environmental issues addressed include air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors. Under the current ordinance, multiple wells, directional drilling and associated equipment and operations (including resultant potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed. Adoption of Text Amendment No. 2017-04 does not change this. In other words, arguments that the Ordinance may cause more intense uses to be shifted to other locations are without basis, as any such level of hypothetical intensity at other locations would already allowed under the current regulatory environment. This Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection; it does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

Additionally, the Planning Commission recommends the City Council find there is no substantial evidence in the record that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts that threaten the

environment. Specifically, the exceptions to the categorical exemptions articulated in Section 15300.2 of the State CEQA Guidelines are not applicable as:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. These classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

Here, the Categorical Exemption applied is a Class 8; therefore, this exception does not apply to the proposed Ordinances.

- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

Here, the Categorical Exemption applied is Class 8; therefore, this exception does not apply to the proposed Ordinance. Additionally, the Ordinance does not relax standards for environmental protection, but instead enhance procedures and prohibitions that provide for further maintenance, restoration, enhancement, and protection of the environment from petroleum operations and facility uses which are currently allowed, or are not fully regulated by, the Arvin Municipal Code. As such, such a reduction to the impact of petroleum operations and facilities would not have substantial adverse impact on the environment, cumulative or otherwise. Likewise arguments that the Ordinance may cause more intense use at other locations are without basis, as that level of hypothetical intensity is already allowed under the current regulatory environment; this Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection.

- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Here, the Oil and Gas Ordinance update clarifies and expands regulation of the permit process and procedure for any petroleum extraction or production projects and require that such projects obtain approval authority from the City Planning Commission or the City Council. Prior to such approval, these bodies must consider the potential environmental impacts related to petroleum operations or facilities and make appropriate determinations regarding potential impacts as required by CEQA.

The proposed Ordinance also further enhances the ability of the City of Arvin to protect the environment and avoid significant effects by ensuring that petroleum extraction and production operations are subject to a more comprehensive permitting process with CEQA review and regulatory oversight to ensure appropriate compliance. Additionally, the Ordinance further limits – not relaxes – the environmental impacts petroleum

operations may potentially have on the environment including air quality, greenhouse gas emissions, water resources, geology, noise, traffic and public health and safety.

As such, there are no “unusual circumstances” that would create a reasonable possibility that adoption of the Ordinance would have a significant adverse effect on the environment.

- (d) **Scenic Highways.** A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements, which are required as mitigation by an adopted negative declaration or certified EIR.

Here, the Ordinance does not involve the approval of surface petroleum extraction and production operations in a manner that damages scenic resources. There are no state-designated scenic highways located within or immediately adjacent to the City of Arvin and, as such, the Ordinance does not have the potential to impact any of these state designated scenic resources. As an additional matter, expansion of the regulatory oversight and permitting requirements will require additional discretionary approvals for petroleum operations and facilities by the City, which in turn will also require expanded CEQA review and protections for any potential scenic resources as compared to the current process. Finally, prohibition of certain activities would limit, not expand, environmental protections for scenic resources.

- (e) **Hazardous Waste Sites.** A categorical exemption shall not be used for a project located on a site, which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Here, the Ordinance is proposed to apply city-wide, and does not propose construction on “a site.” Likewise, the Ordinance does not negatively impact approval of any petroleum operations or facilities in a location listed as a hazardous waste site as compared to the current regulatory process. Instead, the Ordinance provides additional regulatory grounds to ensure the maintenance, restoration, enhancements and protection of the environment, as well as a regulatory process for the protection of the environment.

- (f) **Historical Resources.** A categorical exemption shall not be used for a project, which may cause a substantial adverse change in the significance of a historical resource.

Here, the proposed Ordinance does not negatively impact any approval of petroleum operations and facilities in a manner that causes substantial adverse change in the significant of a historical resource. As noted above, the Ordinance provides for enhanced - not relaxed - regulations for protection of the environment as compared to the current regulatory process. The proposed Ordinance does not modify the current restrictions and protections put into place by the City of Arvin regarding historical resources, nor is there substantial information in the record that the ordinance may cause a substantial adverse change in the significance of a historical resource.

**Section 3 Recommendation of Adoption.** The Planning Commission of the City of Arvin recommends that the City Council adopt Text Amendment No. 2017-04, attached as Exhibit "A" to this Resolution, which repeals Chapter 17.46 of Title 17, and adds Chapter 17.46 of Title 17, consisting of sections 17.46.01 through 17.46.038, of the Arvin Municipal Code.

**I HEREBY CERTIFY** that the foregoing Resolution was passed and adopted by the Arvin Planning Commission at a special meeting thereof held on the 12<sup>th</sup> day of June 2018 by the following vote:

AYES: \_\_\_\_\_

NOES: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
**CECILIA VELA**, Secretary

**ARVIN PLANNING COMMISSION**

By: \_\_\_\_\_  
**OLIVIA TRUJILLO**, Chairperson

APPROVED AS TO FORM:

By: \_\_\_\_\_  
**SHANNON L. CHAFFIN**, General Counsel  
Aleshire & Wynder, LLP

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.

**EXHIBIT A**

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE BY THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, TO ADOPT TEXT AMENDMENT NO. 2017-04, AN OIL AND GAS ORDINANCE FOR REGULATION OF PETROLEUM FACILITIES AND OPERATIONS, BY REPEALING CHAPTER 17.46, TITLE 17, AND ADDING CHAPTER 17.46 TO TITLE 17, OF THE ARVIN MUNICIPAL CODE

WHEREAS, all oil and gas operations have the potential for significant and immediate impacts on the health, safety, and welfare of the citizens of Arvin through increased noise, odor, dust, traffic, and other disturbances, as well as the potential to significantly impact the City's air, water, soil, biological quality, geology, storm water and wastewater infrastructure, transportation, noise exposures, emergency response plans, aesthetic values, environmental and community resources; and

WHEREAS, the City of Arvin zoning and land use standards and regulations on oil and gas drilling have not been updated in several years, and have not been updated prior to various changes in oil and gas production practices and changes to state statutes and regulations; and

WHEREAS, the City Council held a variety of public meetings regarding these and related issues associated with petroleum operations on October 18, 2016, and January 10, 2017; and

WHEREAS, on September 19, 2017, the City Council adopted Resolution No. 2017-92, initiating various code amendments, deletions, and additions to Title 17 –Zoning, including updates to the oil and gas ordinance; and

WHEREAS, the City Council directed City Staff to commence a complete and comprehensive review to update the Municipal Code, which included Section 17.46 Oil and Gas Ordinance regarding oil and gas operations and to study and address all modern-day drilling issues and applications; and

WHEREAS, the City of Arvin has reviewed and studied revisions as necessary to the City's laws, rules, procedures and fees related to petroleum operations and facilities, to enable the City to adequately and appropriately balance the rights of existing operators and future applicants who wish to develop oil and gas drilling and extraction facilities in the City, with the preservation of the health, safety and welfare of the communities surrounding the oil and gas drilling and extraction facilities in the city including exposure to nuisances; and

WHEREAS, as part of this review process, the City of Arvin has engaged in community outreach regarding this matter, including hearings, publishing notices in the newspaper, etc.; and

WHEREAS, City of Arvin Staff prepared a proposed Oil and Gas Ordinance, including modifications to the Arvin Zoning Ordinance, which was available on the internet on October 6, 2017; and

WHEREAS, the Planning Commission received and reviewed Text Amendment No. 2017-04 proposing an Oil and Gas Ordinance at a duly noticed meeting on October 10, 2017; and

WHEREAS, the public was provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, after considering all public testimony and receiving information provided to date, the Planning Commission recommended approval of Text Amendment No. 2017-04, as amended in its meeting of October 10, 2017, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations, to the City Council; and

WHEREAS, as part of this recommendation, the Planning Commission of the City of Arvin reviewed Text Amendment No. 2017-04, including all associated amendments and repeals of the relevant portions of the Arvin Municipal Code in order to enact the Oil and Gas Ordinance, for consistency with the General Plan and any applicable Specific Plans; and

WHEREAS, the Planning Commission of the City of Arvin also reviewed and recommended approval of a finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308, Actions By Regulator Agencies For Protection of Natural Resources as the Ordinance is an action taken by a regulatory agency for the protection of the environment; and

WHEREAS, a stated purpose of said recommendation of adoption was to protect the health, safety, public welfare, physical environment and natural resources of the City of Arvin, and to prevent nuisances, by the reasonable regulation of certain petroleum operations; and

WHEREAS, the City Council received the Planning Commission's recommendation and reviewed Text Amendment No. 2017-04 proposing an Oil and Gas Ordinance at a duly noticed meeting on November 07, 2017 (first reading/introduction); and

WHEREAS, the public was provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, after considering all public testimony and receiving information provided to date, the City Council voted to introduce Text Amendment No. 2017-04, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations; and

WHEREAS, on the City Council then considered the proposed ordinance for final adoption at another public hearing (second reading/adoption) on November 21, 2017, including an attendant finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308 for the project; and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance and the proposed CEQA finding, and public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, despite multiple public hearings and notices in the newspaper, and without having made any objection at prior hearings, various individuals associated with the oil and gas industry 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; and

WHEREAS, there were also questions raised as to whether the amendments recommended by the Planning Commission had been incorporated into the proposed ordinance; and

WHEREAS, the City Council then continued the item to a future meeting to allow for time for City Staff to meet interested parties from the oil and gas industries and to return with the amendments that was formerly approved by the Planning Commission to be included as part of the proposed ordinance; and

WHEREAS, after the passage of approximately (an additional) 150 days, there had been more than sufficient time has since been provided to oil and gas operators, and other parties, to review the proposed ordinance in detail; and

WHEREAS, no written comments had been received from interested parties from the oil and gas industries during the prior 150 day period; and

WHEREAS, City Staff had scheduled both a working meeting and a workshop for interested parties associated with the oil and gas industries; and

WHEREAS, on May 1, 2018, the City Council authorized and directed City 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; and

WHEREAS, the City Council also directed City Staff that if no additional Planning Commission review is warranted given the nature of the updates, then Staff was authorized to set the proposed ordinance for public hearing and consideration for introduction (first reading) at the next reasonably available Council meeting given Staff resources; and

WHEREAS, at its meeting on May 1, 2018, the City Council also authorized the Mayor to provide periodic press releases to update the community regarding developments with the proposed oil and gas ordinance update, which would provide information in addition to notices required by law; and

WHEREAS, on May 2, 2018, City Staff held a working meeting with interested parties from the oil and gas industries, received comments and answered questions; and

WHEREAS, on May 16, 2018, City Staff held a workshop for interested parties associated with the oil and gas industries, received comments and answered questions; and

WHEREAS, City Staff also reached out to community and environmental groups to receive comments and to answer questions; and

WHEREAS, interested parties submitted multiple comments regarding the adoption of Text Amendment No. 2017-04; and

WHEREAS, the proposed ordinance was updated to address intervening changes in laws (including those which took effect on January 1, 2018), local conditions related to the Mountain View field, procedural items including streamlining to reduce impacts on City and other resources, increasing setbacks from roadways from 50 to 100 feet, etc.; no changes were made with regard to immediate public health, safety and welfare issues; and

WHEREAS, City Staff returned the updated draft ordinance to the Planning Commission for consideration; and

WHEREAS, public notice of the Planning Commission hearing was provided at least 10 days in advance of the Planning Commission meeting; and

WHEREAS, in addition to public notice as required by law, the City also issued a press release further notifying the public regarding the Planning Commission hearing; and

WHEREAS, the Planning Commission received and reviewed the updated Text Amendment No. 2017-04 proposing and Oil and Gas Ordinance at a duly noticed special meeting on May 30, 2018; and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the Planning Commission; and

WHEREAS, after considering all public testimony and receiving information provided to date, the Planning Commission [\*\*\**again recommended OR did not recommend*\*\*\*] approval of Text Amendment No. 2017-04, as updated, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations, to the City Council; and

WHEREAS, as part of this recommendation, the Planning Commission of the City of Arvin reviewed updated Text Amendment No. 2017-04, including all associated amendments and repeals of the relevant portions of the Arvin Municipal Code in order to enact the Oil and Gas Ordinance, for consistency with the General Plan and any applicable Specific Plans; and

WHEREAS, the Planning Commission of the City of Arvin also reviewed and [\*\*\**again recommended OR did not recommend*\*\*\*] approval of a finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308, Actions By Regulator Agencies For Protection of Natural Resources as the Ordinance is an action taken by a regulatory agency for the protection of the environment; and

WHEREAS, public notice of the City Council hearing regarding updated Text Amendment No. 2017-04 was provided at least 10 days in advance of the City Council meeting; and

WHEREAS, in addition to public notice as required by law, the City also issued another press release further notifying the public regarding the City Council hearing; and

WHEREAS, the City Council received the Planning Commission's recommendation and reviewed Text Amendment No. 2017-04 proposing and Oil and Gas Ordinance at a duly noticed meeting on [\*\*\*DATE\*\*\*] (first reading/introduction); and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance, and any public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, after considering all public testimony and receiving information provided to date, the City Council voted to introduce updated Text Amendment No. 2017-04, which proposes an updated Oil and Gas Ordinance for regulation of petroleum facilities and operations; and

WHEREAS, on the City Council then considered the proposed ordinance for final adoption at another public hearing (second reading/adoption) on [\*\*\*DATE\*\*\*], including an attendant finding of a Class 8 Categorical Exemption under CEQA Guidelines §15308 for the project; and

WHEREAS, the public was again provided an opportunity to comment on the Oil and Gas Ordinance as updated and the proposed CEQA finding, and public testimony and evidence, both written and oral, was considered by the City Council; and

WHEREAS, the City Council desires to proceed with the adoption of Text Amendment No. 2017-04; and

WHEREAS, it is the intent of the City Council that petroleum operations shall be permitted within the City of Arvin, except where expressly prohibited, subject to the application the Arvin Municipal Code and all other applicable laws, regulations and requirements; and

WHEREAS, it is a purpose of the adoption of the Ordinance is to protect the health, safety, public welfare, physical environment and natural resources of the City of Arvin, and to prevent nuisances, by the reasonable regulation of certain petroleum operations; and

WHEREAS, the City Council has duly considered all information presented to it, including the Planning Commission findings, Planning Commission Resolution, written staff reports, studies, research, testimony and other evidence provided at the public hearings and received by the City, as well as its prior legislative approvals and enactments.

NOW, THEREFORE, the City Council of the City of Arvin, California, does ordain as follows:

### **Section 1. Findings.**

A. Recitals: The City Council of the City of Arvin finds that the above recitals are true and correct.

B. Notices: The City Council of the City of Arvin finds that all legal pre-requisites for consideration of this item have occurred, including notice as required by law.

C. Plan Consistency: The City Council of the City of Arvin has reviewed Text Amendment No. 2017-04, an oil and gas ordinance for regulation of petroleum facilities and operations, and hereby finds it is consistent with the General Plan and all applicable Specific Plans.

D. Findings of Fact: The City Council of the City of Arvin, based on its own independent judgment, finds that Text Amendment No. 2017-04 promotes and protects the health, safety, welfare, and quality of life of City residents, including protection against nuisances, and adopts the Findings of Fact, attached as Exhibit "A" and incorporated in full by reference, any one of which findings would be sufficient to support adoption of this Text Amendment.

**Section 2. CEQA.** Text Amendment No. 2017-04 was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The City Council hereby finds and determines that the adoption of Text Amendment No. 2017-04 is exempt from CEQA pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment. This Categorical Exemption is applicable as this Ordinance is intended to further regulate oil and gas production in the City in such a way as to better protect the environment. Such a finding and determination is warranted as the proposed Ordinance addresses the maintenance, restoration, enhancement and protection of the environment and the public health, safety, welfare of the citizens of Arvin as related to potential impacts from petroleum operations and facilities within the City. The variety of environmental issues addressed include air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors. Under the current ordinance, multiple wells, directional drilling and associated equipment and operations (including resultant potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed. Adoption of Text Amendment No. 2017-04 does not change this. In other words, arguments that the Ordinance may cause more intense uses to be shifted to other locations are without basis, as any such level of hypothetical intensity at other locations would already be allowed under the current regulatory environment. This Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection; it does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

Additionally, the Council finds there is no substantial evidence in the record that there are unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts that threaten the environment. Specifically, the exceptions to the

categorical exemptions articulated in Section 15300.2 of the State CEQA Guidelines are not applicable as:

- (a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant. These classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

Here, the Categorical Exemption applied is a Class 8; therefore, this exception does not apply to the proposed Ordinances.

- (b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

Here, the Categorical Exemption applied is Class 8; therefore, this exception does not apply to the proposed Ordinance. Additionally, the Ordinance does not relax standards for environmental protection, but instead enhance procedures and prohibitions that provide for further maintenance, restoration, enhancement, and protection of the environment from petroleum operations and facility uses which are currently allowed, or are not fully regulated by, the Arvin Municipal Code. As such, such a reduction to the impact of petroleum operations and facilities would not have substantial adverse impact on the environment, cumulative or otherwise. Likewise arguments that the Ordinance may cause more intense use at other locations are without basis, as that level of hypothetical intensity is already allowed under the current regulatory environment; this Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection.

- (c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Here, the Oil and Gas Ordinance update clarifies and expands regulation of the permit process and procedure for any petroleum extraction or production projects and require that such projects obtain approval authority from the City Planning Commission or the City Council. Prior to such approval, these bodies must consider the potential environmental impacts related to petroleum operations or facilities and make appropriate determinations regarding potential impacts as required by CEQA.

The proposed Ordinance also further enhances the ability of the City of Arvin to protect the environment and avoid significant effects by ensuring that petroleum extraction and production operations are subject to a more comprehensive permitting process with CEQA review and regulatory oversight to ensure appropriate compliance. Additionally, the Ordinance further limits – not relaxes – the environmental impacts petroleum

operations may potentially have on the environment including air quality, greenhouse gas emissions, water resources, geology, noise, traffic and public health and safety.

As such, there are no “unusual circumstances” that would create a reasonable possibility that adoption of the Ordinance would have a significant adverse effect on the environment.

- (d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements, which are required as mitigation by an adopted negative declaration or certified EIR.

Here, the Ordinance does not involve the approval of surface petroleum extraction and production operations in a manner that damages scenic resources. There are no state-designated scenic highways located within or immediately adjacent to the City of Arvin and, as such, the Ordinance does not have the potential to impact any of these state designated scenic resources. As an additional matter, expansion of the regulatory oversight and permitting requirements will require additional discretionary approvals for petroleum operations and facilities by the City, which in turn will also require expanded CEQA review and protections for any potential scenic resources as compared to the current process. Finally, prohibition of certain activities would limit, not expand, environmental protections for scenic resources.

- (e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site, which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Here, the Ordinance is proposed to apply city-wide, and does not propose construction on “a site.” Likewise, the Ordinance does not negatively impact approval of any petroleum operations or facilities in a location listed as a hazardous waste site as compared to the current regulatory process. Instead, the Ordinance provides additional regulatory grounds to ensure the maintenance, restoration, enhancements and protection of the environment, as well as a regulatory process for the protection of the environment.

- (f) Historical Resources. A categorical exemption shall not be used for a project, which may cause a substantial adverse change in the significance of a historical resource.

Here, the proposed Ordinance does not negatively impact any approval of petroleum operations and facilities in a manner that causes substantial adverse change in the significant of a historical resource. As noted above, the Ordinance provides for enhanced - not relaxed - regulations for protection of the environment as compared to the current regulatory process. The proposed Ordinance does not modify the current restrictions and protections put into place by the City of Arvin regarding historical resources, nor is there substantial information in the record that the ordinance may cause a substantial adverse change in the significance of a historical resource.

**Section 3. Enactment.** The Arvin Municipal Code is hereby amended to read, in its entirety, as is set forth in the attached Exhibit “B” and incorporated in full by reference, which repeals Chapter 17.46 of Title 17, and adds Chapter 17.46 of Title 17, consisting of sections 17.46.01 through 17.46.038, of the Arvin Municipal Code.

**Section 4. Severability.** If any provision(s) of this Ordinance or the application thereof to any person or circumstances is held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that they would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

**Section 5. Posting.** The City Clerk shall certify to the passage and adoption of this Ordinance by the City Council of the City of Arvin and shall cause this ordinance to be published or posted in accordance with Government Code Section 36933 as required by law.

**Section 6. Effective Date.** This ordinance shall be effective thirty (30) days following its adoption except as to applications for any pending entitlement submitted prior to January 1, 2018.

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 XXRD day of Month , 2018, and adopted the Ordinance after the second reading at a regular meeting held on the \_\_\_\_ day of Month, 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

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.

DRAFT

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

## EXHIBIT “A”

### FINDINGS OF FACT

The City Council of the City of Arvin, based on its own independent judgment, finds that Text Amendment No. 2017-04 promotes and protects the health, safety, welfare, and quality of life of City residents and reduces nuisances as set forth in these Findings of Fact, any one of which findings would be sufficient to adopt this Text Amendment, and any one of which may rely upon evidence presented in the other, including as follows:

#### I. Limited Water Supplies Should Be Preserved

##### A. Extreme Drought Conditions Throughout State Result In Water Shortages

The City, region and State of California are experiencing extreme drought conditions, and have been struggling to preserve potable water resources for most of the decade. On June 12, 2008, the Governor issued Executive Order S-06-08 calling for a State of Emergency regarding water shortages and availability. The State of Emergency was again called on February 27, 2009. Additionally, the Water Conservation Bill of 2009 SBX7-7 was passed, which requires every urban water supplier that either provides over 3,000 acre-feet of water annually, or serves more than 3,000 urban connections, to assess the reliability of its water sources over a 20-year planning horizon, and report its progress on 20% reduction in per-capita urban water consumption by the year 2020. Executive Order S-06-08 was not rescinded until March 30, 2011. Even then the Governor urged Californians to continue to conserve water.

Shortly thereafter extreme drought conditions once again resulted in water shortages. On January 17, 2014, the Governor again proclaimed a State of Emergency regarding water shortages and availability. On April 25, 2014, the Governor issued an executive order to speed up actions necessary to reduce harmful effects of the drought, and called on all Californians to redouble their efforts to conserve water. On December 22, 2014, Governor Brown issued Executive Order B-28-14, citing to the January 17, 2014 Proclamation and the April 25, 2014 Proclamation, and extending the operation of those proclamations until May 31, 2016.

During this period of time the State Water Resources Control Board (SWRCB) has been adopting new water conservation regulations. On July 15, 2014, SWRCB adopted emergency regulations prohibiting all individuals from engaging in certain water use practices and require mandatory conservation-related actions of public water suppliers during the current drought emergency. On March 17, 2015, the SWRCB amended and re-adopted the emergency drought conservation regulations, and they became effective on March 27, 2015.

Following the lowest snowpack ever recorded and with no end to the drought in sight, on April 1, 2015, the Governor directed the SWRCB to implement mandatory water reductions in cities and towns across California to reduce water usage by 25 percent. This is the first time in state history such drastic steps have ever been ordered due severe drought conditions. The SWRCB continues to adopt new water and emergency conservation regulations for all of California to address systemic water shortages.

The drought exacerbated the depletion of groundwater resources, which led to subsidence and other issues throughout the area. To address this issue on a state-wide level, the legislature adopted the Sustainable Groundwater Management Act (SGMA). SGMA established a new structure for managing California's groundwater resources at a local level by local agencies. SGMA requires the formation of locally-controlled groundwater sustainability agencies (GSAs) in the State's high- and medium-priority groundwater basins and subbasins (basins). A GSA is responsible for developing and implementing a groundwater sustainability plan (GSP) to meet the sustainability goal of the basin to ensure that it is operated within its sustainable yield, without causing undesirable results. The community of Arvin relies upon groundwater for its water resources, and is located in a high-priority groundwater basin.

Subsequently, the Governor issued Executive Order B-37-16, on May 9, 2016. The executive order established a new water use efficiency framework for California. The order established longer-term water conservation measures that include permanent monthly water use reporting, new urban water use targets, reducing system leaks and eliminating clearly wasteful practices, strengthening urban drought contingency plans and improving agricultural water management and drought plans.

After many years of drought, rain and snow finally came to many regions of the State. As a result, the Governor of the State of California issued declared the state of the drought at an end effective April 7, 2017. However, the executive order did not lift the drought state of emergency in Fresno, Kings, Tulare, and Tuolumne counties, where emergency drinking water projects will continue to help address diminished groundwater supplies. As a result, Kern County is still operating under a drought state of emergency.

#### B. Oil and Gas Operations Can Impact Water Quality and Resources

Oil and gas operations have the potential to impact water quality, surface water and groundwater supplies.

Without the appropriate regulations, or a mechanism to confirm compliance with existing regulations, oil and gas operations can result in an increased level of freshwater pollution or groundwater contamination in the immediate area, or cause regulatory water standards at an existing water production well to be violated. Impacts can occur through a variety of sources, whether through construction, operations, abandonment or redevelopment to another use. Until the appropriate facilities have been built, construction activities can result in storm water pollution. Produced water and wastewater, if not properly contained, transported and disposed, can contaminate both surface water and groundwater supplies. Water quality can also be impacted by operations, and the appropriate steps cannot be taken to address the issue unless water quality is sufficiently monitored for both surface and groundwater monitoring locations. Oil and gas are located at varying depths, often below underground sources of drinking water. The well bore, however, must be drilled through these drinking water sources in order to gain access to the oil and gas. Depending on field conditions, chemicals and natural gas can escape the well bore if it is not properly sealed and cased. While there are state requirements for well casing and integrity, accidents and failures can still occur. Wellbore leakage can lead to the

deterioration of the quality of groundwater.<sup>1</sup> Inadequately abandoned wells risk surface and subsurface contamination, which can impact water quality, surface water and groundwater supplies.

Without the adequate financial assurances, there may be insufficient funding available to ensure regulatory compliance, enforcement, and safety measures are implemented to protect the environment including water supplies.

Contamination of surface water and groundwater supplies is nuisance, requiring substantial infrastructure and expense to render such water potable – if at all. Given the community of Arvin’s heavy reliance on groundwater, groundwater contamination could have devastating impacts on the local economy and water supplies. Vulnerable water supplies should be preserved for municipal and other critical uses.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential pollution and water quality impacts and nuisances activities from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life.

## II. Transportation of Water Required for Operations Creates Land Use and Nuisance Activities

As evidence by the City of Arvin Pavement Management Plan dated July 2017 was approved by the City Council on July 18, 2017, the condition of a significant number of roadways in the City are marginal or poor. Significant traffic, especially truck traffic, could effectively destroy marginal or poor roadways.

Oil and gas operations generate a significant amount of truck traffic. All of the materials and equipment needed for activities associated with bringing a well into production are typically transported to the site by trucks. Additionally, wastewater and waste materials from certain operations is usually removed by tanker truck to the disposal site or to another well for reuse. Much of the truck traffic is concentrated over the first 50 days following well development. Wastewater disposal may require additional trips.

Transport associated with oil and gas operations through the City to well locations will result in potential adverse land use and nuisance activities including traffic loads, increased risk of truck accidents including releases chemical or wastewater spills, air emissions, noise, traffic congestion, degraded road quality, vibration, and aesthetics - each of which is detrimental to the public health, safety and welfare.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential land

<sup>1</sup> "Towards a Road Map for Mitigating the Rates and Occurrences of Long-Term Wellbore Leakage," University of Waterloo, Geofirma Engineering Ltd., May 22, 2014.

use, impacts and nuisances activities from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life.

### III. Surface Spills and Leaks

All extraction activities come with some risk of surface or groundwater contamination from the accidental or intentional release of wasted. Fluids released into the ground from spills or leaks can run off into surface water and/or seep into the groundwater.

Spills can occur at any stage during the drilling lifecycle. Accidents and equipment failure during on-site mixing of the fluids can release chemicals into the environment. Above-ground storage pits, tanks, or embankments can fail. Vandalism and other illegal activities can also result in spills and improper wastewater disposal. Given the large volume of truck traffic associated with petroleum operations, truck accidents can also lead to chemical or wastewater spills.

A recent study noted that reported wellbore leakage in active onshore drilling ranged from approximately 7% to 64% across a wide variety of locations.<sup>2</sup> The likelihood of leakage is significant given the potentially high level of risk that can associate with petroleum operations. Leakage can impact groundwater, air quality, cause odors, contaminate soil, and result in a variety of other nuisance, health, safety and welfare issues.

Given the uncertainty of the frequency, severity, cause and impact of spills associated with petroleum operations, regulations designed to mitigate potential impacts, and provide assurance adequate financial resources are available to address the impacts, are warranted given the severity of the risks associated with such operations.

### IV. Air Pollution, Particulate Matter and Odors

Odors, air pollution and particulate matter can be produced as a result of oil and gas operations, whether from mobile or stationary sources. These impacts are not localized, but can be spread by natural air flow cause by weather or physically generated outside a site by truck and other traffic. Odors have been known impact locations around an oil and gas site at distances of approximately 1,500 feet.

Odor impacts depend on the process. For small leaks associated with normal operations, odors typically would not reach beyond a few hundred feet. For accidental releases, distances could be higher than 1,500 feet. For projects that would have high levels of hydrogen sulfide, impact distances are larger. The EIR for SB4 indicated that impact distances could be as high as 1,500 feet.

Air quality in the City and region already falls below state standards for pollutants related to production activities. Enactment of the Oil and Gas Ordinance provides a regulatory framework to reduce these risks. Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and

<sup>2</sup> See "Towards a Road Map for Mitigating the Rates and Occurrences of Long-Term Wellbore Leakage," University of Waterloo, Geofirma Engineering Ltd., May 22, 2014.

protects against potential air pollution, particulate matter and odor impacts and nuisance activities from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City.

#### V. Deleterious Public Health Effects

Development and production of oil and gas operations involve multiple sources of physical stressors such as noise, light, vibrations, toxicants, and impacts on air emissions. Many chemicals used during drilling and other stages of gas operations may have long-term health effects not immediately expressed.<sup>3</sup> Enactment of the Oil and Gas Ordinance provides a regulatory framework to reduce these risks, including setbacks from residential and other sensitive uses. Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential deleterious public health effects from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### VI. Oil and Gas Operations Impact Aesthetics

Oil and gas operations utilize unsightly derricks and rigs for drilling, re-drilling, workovers and other operations. This impact can be compounded by the large trucks and traffic traveling on the City's roadways through the community, dust, and light pollution from stadium-type lighting from around-the-clock drilling rigs. These aesthetic impacts are contrary to the urban nature of the City, are a nuisance and create a risk to the public, health and safety.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential deleterious aesthetic impacts from oil and gas operations, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### VII. Oil and Gas Operations Are Incompatible With Residential Uses

The City is urbanized area with a denser residential population as compare to the surrounding County. Oil and gas development projects are industrial operations that are incompatible with residential uses and quality of life. Petroleum operations often generate noise, odor, visual effects, significant heavy truck traffic, and other impacts noted in these Findings that are incompatible with residential areas. For these reasons, all petroleum operations should be directed away from areas with residential land use designations, and other sensitive uses, and the operations regulated to reduce adverse impacts on residents and the community. Requiring additional measures as operations are located closer to residential and sensitive uses reduces the impacts caused by those incompatible operations upon residential uses. These can include landscaping, walls, sanitation, noise barriers and noise reduction devices, odor monitoring, air monitoring and other control issues.

<sup>3</sup> Colborn, Theo, C. Kwiatkowski, K. Schultz and M. Bachran, "Natural Gas Operations from a Public Health Perspective," Human Ecological Risk Assessment, September 2011, pp. 1309-1056.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential incompatible impacts with residential uses, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### VIII. Oil and Gas Operations, Closure, Abandonment and Other Uses

Land uses change. Over the past several decades the City of Arvin has been changing from agricultural uses to more residential and commercial uses. Former oil and gas operations sites are being utilized for other uses, including commercial and residential uses. These types of sites pose unique challenges to redevelopment, including potential contamination, locations of and impacts of abandoned facilities, potential for well leaks and the need for remedial access to address the same.

Prior to redevelopment or re-use of the site for another use, closed or abandoned sites that have not been properly cleaned and remediated can contribute to adverse impacts and nuisances including aesthetics, air quality, odor, graffiti, vandalism, weeds, contaminants, trash, and other items noted in the administrative record. Wells and sites can be left in an unsafe condition without being properly abandoned. Financial assurances posted with other agencies are often insufficient to address remediation and compliance efforts.

Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by site abandonment and re-development, including those articulated herein, for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### IX. Need for Financial Assurances and Identification of Responsible Parties

Accidents happen, and the nature of oil and gas operations can cause unique and potentially significant impacts upon the community not associated with other uses as has been noted in the administrative record. Financial assurances, to the extent they may be required by other agencies, are often insufficient to assure the impacts have been fully addressed. This leaves the public to pay either through unaddressed impacts on the community (aesthetics, odors, noise, risk of contamination, etc.) or to provide money to address the issue. Additionally, without the appropriate mechanisms in place, it can be difficult or impossible to effectively identify responsible parties. Based on these considerations and other impacts found in the administrative record, the City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by insufficient financial assurance and identification issues for the benefit of the public health, safety, welfare, and quality of life of City residents.

#### X. Need for Enforcement, Compliance Monitoring, and Oversight Mechanisms

Regulations are only as stringent as their enforcement, compliance monitoring, and oversight mechanisms. Without adequate enforcement and oversight, there is an uneven playing field, bad operators are effectively rewarded to the detriment of good operators, and the

community as a whole suffers. Given the complexity of oil and gas operations, the potential for significant environmental and other impacts upon the community identified in these Findings including nuisances, as well as the finite public resources available to address those impacts, strong enforcement and oversight mechanisms are warranted. The City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by inadequate enforcement compliance monitoring and oversight mechanisms for the benefit of the public health, safety, welfare, and quality of life of City residents.

XI Changing Technologies, Regulatory Oversight Roles, Environmental Standards and Operations Within a Highly Urbanized Setting Warrant Adoption of the Ordinance

The City's original oil code was adopted in 1965 and consisted of only a few pages of regulations. The current code allows oil drilling in residential neighborhoods with a CUP. In 1970, the City's population was 5,199 residents. At that time the State Division of Oil and Gas was also actively regulating oil production, as well as the site redevelopment process, such that there was no role for a City inspection process. During the last 50+ years 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.

The proposed oil code amendments deal with not only the changing character of Arvin, but changes in the science and technology of oil production in the last half century. These include the advent of 3-D Seismic Imaging technology, which is unlocking new deposits of oil and gas in previously declining and abandoned oil fields. Major technology advancements have been made in directional or slant drilling, now combined with GPS coordination and 3-D imaging to precisely locate and access gas and oil deposits. Arvin's original oil code did not anticipate these technologies or uses.

As the technology and science improve in locating gas and oil deposits, as well as improvements in production technology, it is conceivable that these reserves will increase. This improvement in technology and science make a compelling case that Arvin requires a comprehensive oil code amendment that can deal with decades of future oil production.

There have also been changes in oil field production techniques which warrant the proposed amendments to the Arvin Oil Code. These include changes in pumping technology and efficiencies, including more energy efficient pumps. There have also been changes in sound attenuation technology, for both oil drilling equipment and well servicing equipment, since the existing code was adopted. Air quality standards have also evolved since 1965, including new regulations from the San Joaquin Valley Air Pollution Control District to control odors and emissions. Natural gas vapor recovery is now common place in the local oil fields, where in 1960's natural gas was routinely a waste product that was vented to atmosphere or flared. Drilling muds have evolved into water based muds rather than oil based muds, which are less impactful to the environment. There have been changes in pipeline technology, leak detection and pipeline repairs, where the majority of oil production can now be conveyed by pipeline, instead of tanker trucks.

Important regulations have been developed in other jurisdiction to address issues such as decommissioning of oil facilities once they have reached the end of their economic life and appropriate clean up and remediation to allow for appropriate future use of the land. In addition, regulations have evolved to address the potential change of ownership that could occur at oil fields and the importance of addressing such changes to protect the local jurisdictions on financial responsibility and insurance.

The original water flood systems relied on potable water in the 1970s, when water was relatively inexpensive. With the population growth in the region and State, potable water has been substituted by production or reclaimed water. This water must be carefully monitored for environmental and public health reasons. The original oil code did not anticipate the use of production or reclaimed water and the need for careful water quality monitoring. Other environmental science and technology advancements have been made in the areas of ground water cleanup, soil clean-up and remediation actions. The original oil code did not anticipate any of these environmental advancements, which when employed improve the public health and safety.

The National Environmental Policy Act (NEPA) was adopted in 1969 and California followed suit by adopting the California Environmental Quality Act (CEQA) in 1970. These two landmark pieces of environmental legislation were not anticipated by Arvin's Oil Code in 1965. Part of the necessary amendments in the proposed oil code deal with the increasing the environmental indemnification and insurance coverage requirements. These environmental insurance needs could not have been foreseen by the original authors of the 1965 code.

Without financial assurances to ensure site remediation and compliance with heightened environmental standards, redevelopment of a former oil or gas site may be precluded or unnecessarily restricted. This can result in parcels of land with limited (if any) development potential throughout the City, which can not only displace other desirable uses, but also affects the City's ability to provide services to the public through decreased tax revenue. Additionally, this can increase the likelihood of blight, nuisances, vandalism and other undesirable conditions. These financial assurances to address environmental needs could not have been foreseen by the original authors of the 1965 code.

Another of the key changes that necessitates a comprehensive amendment to the Arvin Oil Code is the major change in the role of the State Division of Oil, Gas and Geothermal Resources since 2011. Oil production and site development in the area was carefully regulated by DOGGR until 2011, when DOGGR notified several cities that they would no longer be involved in the site development process. Several local cities, were required to amend their oil codes to deal with this State policy change. In part, Arvin's proposed amendments to the oil code are in response to the willingness of DOGGR to withdraw from the site development process. The proposed code amendment will ensure environmentally sound, and community protective, operational standards. The proposed code ensures oil well and facilities abandonment requirements that will result in the protection of the public health and safety, overall environmental protection and the safe redevelopment of property.

The City Council finds Text Amendment No. 2017-04 promotes and protects against potential impacts and nuisances caused by changing technologies, regulatory oversight (including the withdrawal of DOGGR from the site development process), and development within a highly urbanized setting for the benefit of the public health, safety, welfare, and quality of life of City residents.

## XII Text Amendment Does Not Prevent Access to Subsurface Resources

Under Text Amendment No. 2017-04, oil and gas sites may be located in a variety of zoned districts including, C-2 (General commercial zone), M-1 (Limited manufacturing zone), M-2 (Light manufacturing zone), M-3 (General manufacturing zone), A-1 (Light agricultural zone), A-2 (General agricultural zone), and B (Buffer zone). Zone districts where oil and gas sites may be located constitute approximately 25% of the entire City of Arvin by land volume – even excluding applicable setbacks and existing operations that would otherwise be located in a prohibited area. The zone district availability for this use is second only to the R-1 (single family dwelling) zoned district, and far in excess of the 10% zoned for E-3 (estate zone), the less than 4% zoned for SCH-CUP (school zone), and the less than a combined 3% zoned for A-1 (light agriculture) and A-2 (general agriculture) zoned districts.

Additionally, wells are unique in they are one of the few uses that through directional drilling can access resources not located at, or directly below, the actual oil or gas site. Directional drilling allows for the drilling of wells at multiple angles, not just vertically, to better reach and produce oil and gas reserves. While directional drilling has been an integral part of the oil and gas industry since the 1920s, technology has improved over the years. Improvements in drilling sensors and global positioning technology have helped to make vast improvements in directional drilling technology. Today, the angle of a drill bit can be controlled with intense accuracy through real-time technologies, providing the industry with multiple solutions to drilling challenges, increasing efficiency and decreasing costs.

Directionally drilled wells can have several benefits including allowing access in a reservoir where vertical access is difficult or not possible (such as an oilfield under a town, under a lake, or underneath a difficult-to-drill formation). Directional drilling also allows more wellheads to be grouped together on one surface location or pad, which can allow fewer rig moves, less surface area disturbance, limit nuisances and reduce environmental impacts, and (in many cases) make it easier and cheaper to complete and produce the wells. There are no restrictions on directional drilling in either the City's current or proposed ordinance.

Additionally, the City's ordinance does not legally apply outside of the City within the County of Kern's jurisdictions. As a practical matter, this means that wells located within the County can use directional drilling to access resources located under the City of Arvin – even in areas where surface operations would be prohibited. As a result, the total area of land that can be accessed by subsurface directional drilling is greatly in excess of the 25% reflected by the surface location of the oil and gas sites.

Next, directionally drilled wells can commonly be used to access subsurface resources located more than a mile away horizontally, which given the size of Arvin would theoretically

allow all subsurface areas from within the jurisdiction to be accessed from the County. However, the Mountain View oil field underlying the City of Arvin has geologic and other conditions that limit the ability to directionally drill. As a practical matter, directional drilling has been shown to work in this particular field in this general location at two wells, which achieved 1,100 feet and 1,700 feet horizontal displacement from the well site respectively. There is no evidence in the record that this represents the technical extent and theoretical feasibility of runs, and the City finds that runs of ½ mile horizontal displacement is a reasonable distance, feasible, and greater distances are likely to be achieved given the march of technical advancement in the industry..

That finding being made, the City notes that the average of the two runs discussed above is about ¼ of a mile, which industry representatives and owners have likewise confirmed with City staff is reasonably feasible given existing technology. Regardless of the feasibility of a ½ mile run, applying even this conservative ¼ mile factor to determine the ability to access resources from approved zoned districts and locations outside of the City’s jurisdiction reveal that almost the entire subsurface under the City of Arvin can be reached. Notwithstanding, based on this extremely conservative approach there is a narrow corridor where a combination of directional drilling limitations, prohibited site locations, and surface setbacks could theoretically result in a narrow strip of subsurface area where resource access would potentially be limited. This narrow strip of land generally runs north and south through the middle of the City along Meyer Street (“Meyer Street corridor”).

However, the City finds that there are currently existing surface site locations within areas where new development of oil and gas wells would be prohibited under the conservative analysis. These include several sites that can access potential resources within the Meyer Street corridor through directional drilling. Additionally, as with any other land use, property can be rezoned to change allowed uses. Although setback requirements will still apply to rezoned land, this provides a process for accessing resources consistent with the restrictions of Text Amendment No. 2017-04. Next, there are jurisdictional restrictions on the application of the updated ordinance to certain federal and state properties, including property located outside of city limits, which could provide additional potential well site locations. Finally, if despite all of these safeguards future development resulted in development that rendered petroleum resources inaccessible, there is a mechanism in place for requesting the City Council to amend or adopt an ordinance to address unique circumstances – as is also available for other types of land uses.

Based on the foregoing, the City Council finds that there are mechanisms in place such that Text Amendment No. 2017-04 does not prohibit access to any oil and gas resources located under the City of Arvin given the technologies that are currently available.

## EXHIBIT “B”

**Section 1.** Chapter 17.46 (Oil and Gas Production), of Title 17 of the Arvin Municipal Code is hereby repealed in its entirety.

**Section 2.** Chapter 17.46 (Oil and Gas ordinance of the City of Arvin) is hereby added to Title 17 of the Arvin Municipal Code, in its entirety, as follows:

### CHAPTER 17.46

#### **Part 1. Administrative Procedures**

- 17.46.01 Purpose
- 17.46.02 Ordinance Applicability
- 17.46.03 Allowable Uses
- 17.46.04 Definitions
- 17.46.05 Consistency with Other Laws, Rules and Regulations
- 17.46.06 Appeals
- 17.46.07 Well Drilling Permit
- 17.46.08 Required Procedures for Conditional Use Permits
  - 17.46.08.1 Conditional Use Permit (CUP) Filing Requirements
  - 17.46.08.2 Processing and Review
  - 17.46.08.3 Findings and Permitting Conditions
  - 17.46.08.4 Modifications and Extensions
  - 17.46.08.5 Change of Ownership/Operators Criteria
- 17.46.09 Procedures for Development Agreements
  - 17.46.09.1 Filing Requirements
  - 17.46.09.2 Processing and Review
  - 17.46.09.3 Findings and Development Agreement Conditions
  - 17.46.09.4 Modifications and Extensions
- 17.46.010 Periodic Review
- 17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures
  - 17.46.011.1 Purpose and Intent
  - 17.46.011.2 Applicability
  - 17.46.011.3 Application Process
    - 17.46.011.3.1 Requirement to File an Application
    - 17.46.011.3.2 Content of Application
    - 17.46.011.3.3 Permitting Specifications

- 17.46.011.3.4 Findings Required for Approval
- 17.46.012 Operational Noticing
- 17.46.013 Complaints
- 17.46.014 Injunctive Relief
- 17.46.015 Notice of Violation and Administrative Fines
- 17.46.016 Nuisance Procedures
  - 17.46.016.1 High-Risk Operations
- 17.46.017 Compliance Monitoring
- 17.46.018 Financial Assurances Applicability
- 17.46.019 Operator's Financial Responsibilities
- 17.46.020 Securities and Bond Requirements
- 17.46.021 Operator Liability Insurance

**Part 2. Development Standards for Petroleum Operations**

- 17.46.022 Setback Requirements
- 17.46.023 Site Access and Operation
  - 17.46.023.1 Deliveries
  - 17.46.023.2 Construction Time Limits
  - 17.46.023.3 Oil and Gas Site Parking
- 17.46.024 Lighting
- 17.46.025 Aesthetics
  - 17.46.025.1 Landscaping/Visual Resources
  - 17.46.025.2 Walls
  - 17.46.025.3 Sanitation
  - 17.46.025.4 Architecture
- 17.46.026 Roads
  - 17.46.026.1 Construction of Site Access Roads
- 17.46.027 Signage
- 17.46.028 Steaming
- 17.46.029 Utilities
- 17.46.030 On-Site Storage and Placement of Equipment
- 17.46.031 Safety Assurances and Emergency/Hazard Management
  - 17.46.031.1 Fire Prevention Safeguards
  - 17.46.031.2 Blowout Standards and Testing
  - 17.46.031.3 Earthquake Shutdown

- 17.46.031.4 Storage Tank Monitoring
- 17.46.031.5 Safety Measures and Emergency Response Plan
- 17.46.031.6 Transportation of Chemicals and Waste On and Off-site
  - 17.46.031.6.1 Natural Gas Liquids (NGLs)
  - 17.46.031.6.2 Transportation Risk Management and Prevention Program (TRMPP)
  - 17.46.031.6.3 Pipeline Leak Detection
- 17.46.032 Environmental Resource Management
  - 17.46.032.1 General Environmental Program
  - 17.46.032.2 Air Quality
  - 17.46.032.3 Greenhouse Gas Emissions and Energy Efficiency Measures
  - 17.46.032.4 Air Quality Monitoring and Testing Plan
  - 17.46.032.5 Water Quality
    - 17.46.032.5.1 Water Management Plan
    - 17.46.032.5.2 Stormwater Runoff
    - 17.46.032.5.3 Groundwater Quality
  - 17.46.032.6 Noise Impacts
- 17.46.033 Standards for Wells
- 17.46.034 Standards for Pipelines
  - 17.46.034.1 Pipeline Installations and Use
  - 17.46.034.2 Pipeline Inspection, Monitoring, Testing and Maintenance
- 17.46.035 Temporary Buildings
- 17.46.036 [Reserved]
- 17.46.037 [Reserved]

**Part 3. Development Standards for Site Abandonment and Redevelopment**

- 17.46.038 Development Standards

## CHAPTER 5

### OIL AND GAS CODE

#### Part 1. Administrative Procedures

##### 17.46.01 Purpose

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- A. This Chapter shall be known as the Oil and Gas ordinance of the City of Arvin.
- B. It is the purpose of this ordinance, amongst other things, to protect the health, safety, public welfare, physical environment and natural resources of the city by the reasonable regulation of oil and gas facilities, equipment, and operations, including but not limited to: exploration; production; storage; processing; transportation; disposal; plugging abandonment and re-abandonment of wells; of operations and equipment accessory and incidental thereto and development and redevelopment of oil and gas sites. It is further the intent of the City that oil and gas operations shall be permitted within this city (except where expressly prohibited herein), subject to the application of this ordinance and all other applicable laws, regulations and requirements.
- C. It is not the intent of this ordinance to regulate public utility operations for the storage or distribution of natural gas under the jurisdiction of the California Public Utilities Commission (CPUC). Any well or site related operations, however, shall be subject to this ordinance.

##### 17.46.02 Ordinance Applicability

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- A. The regulations in this ordinance shall apply, insofar as specifically provided herein, to oil and gas production and related sites and facilities, equipment, structures, or appurtenances including, but not limited to:
1. Drilling, and abandonment operations of any new or existing well or re-entry of a previously abandoned well for the production of oil and gas.
  2. Sites, infrastructure, structures, equipment, and/or facilities necessary and incidental to processing of oil, produced water, gas, and condensate obtained from an oil and gas field, zone, subsurface lease or area.
  3. Injection wells and incidental equipment necessary for enhanced oil recovery or disposal of produced water.
  4. Equipment and facilities necessary for enhanced oil recovery including water flooding, steam flooding, air injection, carbon dioxide injection, or introduction of polymers, or other techniques.
  5. Pipelines located within an oil and gas lease area that are necessary for oil and gas production operations.

- 6. Pipelines that transport oil or gas to another location for sale or transfer to a third party.
- 7. Storage tanks and equipment necessary or incidental to gathering, separation or treatment of oil, water, and gas, and/or temporary storage of separated fluids and gases, and transfer of the produced hydrocarbons to pipelines or tanker trucks.
- 8. Oil spill containment and recovery equipment, and facilities including offices, storage spaces, and vehicles for the storage of floating oil and water separators, pumps, generators, hosing, assorted absorbent materials, steam cleaners, storage tanks, and other land and wildlife cleanup and recovery equipment.

B. All portions of this ordinance are applicable to new or existing oil and gas sites and operators if they have or are required to obtain a CUP. For oil and gas sites lawfully existing at the time of adoption of this ordinance, or at the time this ordinance becomes applicable, which do not have or are not required to obtain a new CUP, only the following sections are applicable:

- 17.46.07 Well Drilling Permit
- 17.46.08.4(B) Modifications and Extensions
- 17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures
- 17.46.022 (C) Setbacks
- 17.46.023 Site Access and Operations
- 17.46.024 Lighting
- 17.46.027 Signage
- 17.46.028 Steaming
- 17.46.031 Safety Assurances and Emergency/Hazard Management (except 17.46.31.4)
- 17.46.032 Environmental Resource Management (except 17.46.32.3 and 17.46.32.5.1)
- 17.46.033 Standards for Wells (except subsection G)

Violations of these sections shall also be subject to enforcement mechanisms contained in this ordinance and Code.

To the extent the ordinance applies to existing oil and gas sites, it is not intended to apply in such manner as to interfere with any vested rights that have accrued to property owners.

C. The provisions of this ordinance which impose any limitation, prohibition, or requirement, or confer a right on the basis of the distance between a well or any other use or improvement and another zone classification, use or improvement, shall be applied solely with reference to zone classification uses and improvements within the City.

**17.46.03 Allowable Uses**

Table 1-1 below specifies what City zoning designations allow for oil and gas sites and, if allowable, what type of authorization is required for the use.

**TABLE 1-1**

\* In addition to the zones listed in the table below, oil and gas sites shall be permitted in any specific plan area where such uses are specifically allowed in accordance with the requirements of this ordinance, and permitted on federal, state, county or municipal land, subject to the entitlement process (CUP, DA, or otherwise) of the governmental entity having jurisdiction over such entitlement.

\*\*CUP indicates a requirement for a Conditional Use Permit, while DA indicates a development agreement. Where not prohibited, all oil and gas facilities or sites within the city’s jurisdiction are required to have either a CUP or a DA.

	<b>Zoning Designation</b>	<b>Oil and Gas Facility/Site Permit Required by Zone</b>
R-1	One-family dwelling zone	Prohibited
R-2	Two-family dwelling zone	Prohibited
R-3	Limited multiple-family dwelling zone	Prohibited
R-4	Multiple-family dwelling zone	Prohibited
R-S	Suburban residential zone	Prohibited
E	Estate zone	Prohibited
E-1	Estate zone	Prohibited
E-2	Estate zone	Prohibited
E-3	Estate zone	Prohibited

E-4	Estate zone	Prohibited
E-5	Estate zone	Prohibited
C-O	Professional office zone	Prohibited
N-C	Neighborhood commercial zone	Prohibited
C-1	Restricted commercial zone	Prohibited
C-2	General commercial zone	CUP or DA <sup>1</sup>
M-1	Limited manufacturing zone	CUP or DA <sup>1</sup>
M-2	Light manufacturing zone	CUP or DA <sup>1</sup>
M-3	General manufacturing zone	CUP or DA <sup>1</sup>
A-1	Light agricultural zone	CUP or DA <sup>1</sup>
A-2	General agricultural zone	CUP or DA <sup>1</sup>
OS	Open space	Prohibited
P	Automobile parking zone	Prohibited
D	Architectural design zone	Prohibited
B	Buffer zone	CUP or DA <sup>1</sup>
P-D	Precise development zone	Prohibited
MUO	Pedestrian-oriented mixed-use overlay zone	Prohibited

<sup>1</sup> Development agreement provisions apply as specified in Section 17.46.09.

#### 17.46.04 Definitions

Unless the context otherwise requires, the definitions hereinafter set forth shall govern the construction of this ordinance.

“**Abandoned Well**” means a non-producing well DOGGR so designates after it has been demonstrated that all steps have been taken to protect underground or surface water suitable for irrigation or other domestic uses from the infiltration or addition of any detrimental substance, and to prevent the escape of all fluids to the surface.

“**API**” refers to the American Petroleum Institute.

“**ASTM**” ASTM shall mean the American Society of Testing and Materials.

"**City Manager**" is the City’s administrative official, and the City Manager's designated assistants, inspectors and deputies having the responsibility for the enforcement of this ordinance. The City Manager is authorized to consult experts qualified in fields related to the subject matter of this ordinance and codes adopted by reference herein as necessary to assist in carrying out duties. The City Manager may also appoint such number of officers, inspectors, assistants and other employees and/or to appoint a Petroleum Administrator to assist in carrying out duties. If the City Manager determines it is necessary based on public health, safety or welfare, he or she may require any information as deemed reasonably necessary for a CUP or an abandonment application.

"**DOGGR**" is the Division of Oil, Gas and Geothermal Resources which is part of the Department of Conservation of the State of California. DOGGR oversees the drilling, operation, maintenance, and plugging and abandonment of oil, natural gas, and geothermal wells.

"**DOGGR Statutes and Regulations**" are the California statutes and regulations related to or governing DOGGR, at California Public Resources Code, Division 3, and Oil and Gas and the California Code of Regulations, Title 14, Division 2.

"**Drill**" or "**Drilling**" is to bore a hole in the earth, usually to find and remove subsurface formation fluids such as oil and gas. Drilling, under this ordinance, includes re-drilling and re-working of wells.

"**Enforcement action**" is any administrative, injunctive, or legal action (either civil or criminal), to enforce, cite or prosecute a violation or efforts to abate or correct a violation (or dangerous or hazardous situation caused by a violation), including investigation, research, legal action, physical abatement, law enforcement and other necessary acts.

“**EPA**” refers to the U.S. Environmental Protection Agency.

“**Existing**” as applied to oil and gas sites, wells or other facilities and operations, refers to and includes all that were lawfully in existence at the effective date of this ordinance

“**Exploratory Well**” is defined in the DOGGR Statutes and Regulations and means any well drilled to extend a field or explore a new, potentially productive reservoir.

"**Facilities**" include tanks, compressors, pumps, vessels, and other equipment or structures pertinent to oil field operations located at an oil and gas site.

“**Gas**” means any natural hydrocarbon gas coming from the earth.

"**Gas Plant**" means processing equipment for produced gas to separate, recover, and make useful natural gas liquids (condensate, natural gasoline [e.g., pentenes], and liquefied petroleum gas, etc.), to separate, remove, and dispose of other non-hydrocarbon substances, such as water,

sulfur, carbon dioxide, ammonia, etc., and to produce utility-grade gas suitable for delivery and sale.

**"High risk operation"** means an oil or gas production, processing or storage facility which: (a) has been in violation of any applicable section of this ordinance for more than 30 consecutive days and resulted in the issuance of a notice of determination of fines pursuant to Section 17.46.012 of this ordinance during the preceding twelve months; or (b) has had three separate unauthorized releases of oil, produced water and/or other hazardous materials of a quantity not less than fifteen barrels (six hundred thirty gallons) other than within secondary containment for each incident during the preceding twelve months

**"Idle well"** is defined in the DOGGR Statutes and Regulations and is any well that for a period of 24 consecutive months has either not produced oil or natural gas, produced water to be used in production stimulation, or been used for enhanced oil recovery, reservoir pressure management, or injection. An idle well does not include an active observation well.

**"Natural gas liquids" (NGLs)** include propane, butane, pentane, hexane and heptane, but not methane and ethane, since these hydrocarbons need refrigeration to be liquefied.

**"NFPA"** refers to the National Fire Protection Agency.

**"New Development"** means any of the following: 1) development of new buildings, structures or wells for oil and gas operations on a site that has either not previously been used for such activities, or where the previous use was abandoned, or a CUP expired or was revoked; 2) the expansion by 3 or more wells at an existing site used for oil and gas operations and which conforms to setback requirements; 3) the placement or erection of tanks for holding produced substances or substances intended for subsurface injection in connection with oil and gas operations exceeding by 25% or more the capacity of existing tanks as of the effective date of this ordinance. New development does not include the like-kind replacement of facilities required for legally operating oil and gas operations that are damaged, failed, are at risk of failure, or are at the end of their useful life at an existing site. New development does not include workovers or other maintenance for legally operating oil and gas operations, including replacement-in-kind, or re-drills of existing active or idle wells. Re-drills of abandoned wells are considered new wells under this ordinance; re-drills of abandoned wells for re-abandonment are not considered new wells under this ordinance.

**"New Well"** is defined by the DOGGR Statutes and Regulations as the drilling of a well that requires the submission of the DOGGR form OG105 - Notice of Intention to Drill New Well – Oil and Gas, as may be updated or amended. For the purposes of this ordinance, the re-drilling of an abandoned well is considered a new well.

**"Oil"** is a simple or complex liquid mixture of hydrocarbons that can be refined to yield gasoline, kerosene, diesel fuel, and various other products.

**"Oil and Gas Site"** or **"Site"** is a oil drilling site and all associated operations and equipment attendant to oil and gas production or injection operations including but not limited to, pipelines, tanks, exploratory facilities (including exploratory wells), flowlines, headers, gathering lines,

wellheads, heater treaters, pumps, valves, compressors, injection equipment, drilling facilities, and production facilities.

**"Oil and Gas Operations"** are all activities in connection with the exploration, drilling for and the production of oil and gas and other hydrocarbons, together with all incidental equipment and appurtenances thereto.

**"Operator"** means the person, who by virtue of ownership or under the authority of a lease or any other agreement, has the right to drill, operate, maintain, or control a well or production facility.

**"OSHA"** refers to the California Occupational Safety and Health Administration.

**"Person"** encompasses any individual, firm, association, corporation, joint venture or any other group or combination acting as an entity.

**"Petroleum"** is a substance occurring naturally in the earth in a solid, liquid, or gaseous state and composed mainly of mixtures of chemical compounds of carbon and hydrogen, with or without other nonmetallic elements such as sulfur, oxygen, and nitrogen.

**"Pipelines"** for the purposes of this ordinance, shall mean all flow lines associated with wells located within the City of Arvin used for the transportation of petroleum or petroleum by-products or of materials used in the production of petroleum.

**"Produced water"** is a term used to describe the water that is produced along with crude oil and gas.

**"PSM"** refers to process safety management.

**"Redevelopment"** for the purposes of this ordinance is the development of all of a portion of a current or former oil or gas site to another authorized use other than petroleum operations.

**"Re-drilling"** is defined in the DOGGR Statutes and Regulations and is the deepening of an existing well or the creation of a partial new well bore including plugging of the original bore and casings and requires the submission of DOGGR form OG107 - Notice of Intention to Rework/Redrill Well, as may be updated or amended.

**"Re-entry"** is the process of cleaning a plugged and abandoned well by drilling, jetting, or other method.

**"Re-work"** is defined in the DOGGR Statutes and Regulations and means any operation subsequent to initial drilling that involves re-drilling, plugging, or permanently altering in any manner the casing of a well or its function and requires the filing of a notice of intent to rework/redrill a well with DOGGR. Altering a casing includes such actions as a change in well type, new or existing perforations in casing, running or removing of cement liners, placing or drilling out any plug (cement, sand, mechanical), running a wireline tool that has the ability to drill through a cased borehole, or any other operation which permanently alters the casing of a well. For the purposes of this ordinance, re-work includes a well abandonment.

**"Refining"** shall mean any industrial process facility where crude oil is processed and refined into more useful products and sold to others without further treatment or processing.

**"Regional Water Quality Control Board"** shall mean the Central Valley Regional Water Quality Control Board.

**"Secondary containment"** means an engineered impoundment, such as a catch basin, which can include natural topographic features, that is designed to capture fluid released from a production facility."

**"Shut down" or "Shut Down Order"** is an order by the City Manager, Kern County Fire Department Chief, California State Fire Marshall, or DOGGR official, to restrict or prohibit certain (or all) functions or operations at a facility or by an operator pursuant to authority of this ordinance.

**"SJVAPCD"** refers to the San Joaquin Valley Air Pollution Control District.

**"SPCC"** refers to Spill Prevention, Control, and Countermeasures.

**"Structure"** means anything constructed or erected which requires location on the ground or is attached to something having a location on the ground, except outdoor areas such as walks, paved areas, tennis courts, and similar open recreation areas. This definition includes buildings, but does not include wells.

**"Supervisor"** means the DOGGR Supervisor.

**"Toxic Air Contaminants"** means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health as defined in California Health and Safety Code Section 39655, as may be amended from time to time. Title 17, Section 93000, of the California Code of Regulations, lists substances defined as Toxic Air Contaminants.

**"USEPA"** refers to the United States Environmental Protection Agency.

**"Regional Water Quality Control Board"** shall mean the Central Valley Regional Water Quality Control Board.

**"Well"** is defined in the DOGGR Statutes and Regulations and means any oil or gas well or well for the discovery of oil or gas; any well on lands producing or reasonably presumed to contain oil or gas; any well drilled for the purpose of injecting fluids or gas for stimulating oil or gas recovery, repressuring or pressure maintenance of oil or gas reservoirs, or disposing of waste fluids from an oil or gas field; any well used to inject or withdraw gas from an underground storage facility; or any well drilled within or adjacent to an oil or gas pool for the purpose of obtaining water to be used in production stimulation or repressuring operations.

**"Workover"** is the process of major maintenance or remedial treatments on an oil or gas well without changing the physical design of the well. Workovers include all operations that do not

involve the initial drilling or re-working of wells and is regulated by DOGGR but without requirements for notices of intent or permits.

#### **17.46.05 Consistency with Other Laws, Rules and Regulations**

This ordinance, insofar as it regulates oil and gas operations also regulated by the California Department of Conservation, Division of Oil, Gas, and Geothermal Resources (DOGGR), is intended to supplement such state regulations and to be in furtherance and support thereof. Some definitions in Section 17.46.04 are based on DOGGR Statutes and Regulations and the intent of this ordinance is to utilize those definitions, as they may be amended from time to time by the California Legislature or by DOGGR, as applicable. In all cases where there is conflict with state laws or regulations, such state laws or regulations shall prevail over any contradictory provisions, or contradictory prohibitions or requirements, made pursuant to this ordinance. Additionally, the approving body, whether the City Manager, Planning Commission or City Council, may grant an exception or modification to the requirements of this ordinance to the minimal extent necessary to prevent a compensable taking. Such exception or modification shall be as consistent with the intent and purpose of this ordinance as possible given the specific factual circumstances of the particular project.

#### **17.46.06 Appeals**

Unless otherwise specified in this ordinance, any discretionary decision of the City Manager shall be final unless within fifteen (15) days after the decision by the City Manager, or ten (10) days after the mailing of the required notice(s), whichever date is later, any aggrieved person appeals therefrom in writing to the planning commission by timely presenting such appeal to the city clerk. At its next regular meeting after the filing of such appeal with the city clerk, the planning commission shall set a date for a hearing thereon. The decision appealed from shall be affirmed unless reversed by a vote of not less than a majority of all the members of the planning commission. An appeal of the planning commission to the city council shall follow the same process. Mandatory requirements of this ordinance are not subject to appeal.

- A. Any court action or proceeding to attack, review, set aside, void or annul any decision or any matter mentioned in this ordinance or concerning any of the proceedings, acts or determinations taken, done or made prior to such decision, (except for any decision approving or denying an application for a permit or revoking a previously granted permit, which is governed by subsection B) shall not be maintained by any person unless such action or proceeding is commenced within sixty (60) days after the date on which such decision becomes final. Thereafter all persons are barred from any such action or proceeding or any defense of invalidity or unreasonableness of such decision or of such proceedings, acts or determinations.
- B. Any court action brought pursuant to Code of Civil Procedure Section 1094.5 to attack, review, set aside, void or annul any decision approving or denying an application for a permit or revoking a previously granted permit, shall not be maintained by any person unless such action is commenced within ninety (90) days after the date on which such decision becomes final. This subsection has been adopted pursuant to Code of Civil Procedure Section 1094.6.

C. Nothing in this section shall expand or otherwise extend any shorter statute of limitation set by State or federal law, including any statute of limitation under the California Environmental Quality Act.

#### **17.46.07 Well Drilling Permit**

Prior to commencing drilling or re-working of any oil and gas well, the operator must receive a well drilling or re-work permit from DOGGR. Well permits from DOGGR shall be provided to the City Manager prior to commencement of drilling or re-working activities.

#### **17.46.08 Required Procedures for Conditional Use Permits**

- A. New development to which this ordinance applies (see Section 17.46.02) shall be required to receive a Conditional Use Permit (CUP), from the city planning commission in order to receive authorization for, and proceed with, the construction and operation of new development. No permits shall be considered or approved without such permits being consistent with provisions of the CUP.
- B. All procedures for CUPs to which this ordinance applies shall be the same as provided in the Arvin Municipal Code except appeals as noted above. Additionally all procedures for CUPs to which this ordinance applies shall comply with the following additional requirements:

##### **17.46.08.1 Conditional Use Permit (CUP) Filing Requirements**

In addition to the filing requirements required by use permits of this Code, for projects within the City to which this ordinance is applicable, the following materials are also required as part of a CUP application for the consideration of the Planning Commission, or the City Council on appeal:

- A. A complete statement of the proposed project including, but not limited to, activities, facilities, and sites.
- B. A new or updated emergency response plan to deal with potential consequences and actions to be taken in the event of floods, earthquakes, hydrocarbon leaks or fires for the site. The emergency response plan shall be approved by the City's Engineer and the Kern County Fire Department.
- C. A phasing plan for the staging of development that includes the estimated timetable for project construction, operation, completion, restoration, and, where applicable, the location and amount of land reserved for future expansion.
- D. A site plan showing:
1. Surface property, easement, rights-of-way and pipeline right-of-way boundaries within the site.
  2. Proposed access road constructions or modifications and connections with City streets and roads and any existing private roads.

3. Areas to be used for construction.
  4. Areas to be used for access and maintenance during pipeline operation within and adjacent to the site.
  5. Existing roads, and pipelines and pipeline rights-of-way, if any.
  6. Location and type of existing and proposed structures within 50 feet of pipeline right-of-way.
  7. Location of existing and proposed wells and oil or gas containing equipment and their measured distance from nearby uses, including the closest residential or school property line.
  8. Proposed alteration of surface drainages within the site.
  9. A contour map showing existing and proposed contours.
  10. A plan for parking on or off site.
  11. A map of all known, historic, or suspected active, idle and abandoned oil and gas wells or wellheads within the site and within 750 feet of the surface location of any existing or proposed new well within the site.
- E. Site operations plan containing process flow diagrams, piping and instrumentation diagrams, expected process flows (rates, pressures, composition, and shut-down/start-up procedures, quarterly/annual production, disposition, injection, and disposal).
- F. Plans with measures to be used to prevent or reduce nuisance effects (e.g., dust, fumes, glare, noise, odor, air pollutants, and vibration) and to prevent danger to life, environmental quality, and property, consistent with the Development Standards in this ordinance.
- G. Estimates of the amount of cut and fill required by the proposed project.
- H. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, a plan for a community alert system (including new or utilizing existing systems, including but not limited to, those operated by the Police, Sheriff or Fire Department) to automatically notify area residences and businesses in the event of an emergency at an oil or gas site that would require residents to take shelter or take other protective actions.
- I. If any grading is proposed that results in the loss of vegetated, sandy, permeable ground areas, which could alter surface runoff at the site, a site-specific hydrologic analysis to evaluate anticipated changes in drainage patterns and associated increased runoff at the site.
- J. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, a quiet mode operation plan which includes, but is not limited to, the following noise reduction measures throughout the weekends and on weekdays between the hours of 6 p.m. and 8 a.m.:

1. Using signalers for all backup operations instead of backup alarms and turning off backup alarms;
2. Using radios instead of voice communication;
3. Minimizing crane use and pipe handling operations, pipe offloading from trucks and board loading to the maximum extent feasible and nighttime loading only for safety reasons;
4. Prohibiting material and supply deliveries to the Project Site, other than along designated truck routes, between the hours of 6 p.m. and 8 a.m. on weekdays and prohibiting deliveries on weekends and holidays, with exceptions only for safety; and
5. Limiting process alarms and communications over the broadcast system to the maximum extent feasible during all operations and use only for safety reasons.

K. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, a photometric analysis, which compares the baseline of the existing light measurements with the proposed light spill that will result from the oil and gas site.

L. An Environmental Quality Assurance Program ("EQAP"). (Ref. Section 17.46.32.1).

#### **17.46.08.2 Processing and Review**

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Processing of CUPs shall comply with California's Permit Streamlining Act requirements as consistent with this Code.

- A. The applicant may apply for:
1. The drilling operations only;
  2. The production facilities only; or
  3. Both the drilling and production facilities.
- B. The City Manager will review the submitted application(s) for completeness in compliance with the filing requirements of Section 17.46.08.1 and any other applicable sections of the Code, and shall refer the filed CUP to appropriate City departments or local and state agencies, as appropriate, for review and comment.

#### **17.46.08.3 Findings and Permitting Conditions**

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- A. In addition to the requirements of a use permit by this Code, the planning commission shall approve a Conditional Use Permit only if it is able to make affirmative findings of the following criteria:
1. The proposed project shall be in conformance with requirements of other local, regional, or State entities;

2. The project shall not be detrimental to the comfort, convenience, health, safety, and general welfare of the community, and will be compatible with the uses in the surrounding area;
  3. The project shall be in compliance with the Development Standards contained in Part 2 of this ordinance, commencing with Section 17.46.22; and
  4. The project shall not result in an increased level of freshwater pollution or groundwater contamination in the immediate area or cause regulatory water standards at an existing water production well to be violated as defined in the California Code of Regulations, Title 22, Division 4, Chapter 15 and in the Safe Water Drinking Act, as they may be amended.
- B. As a condition of approval of a CUP, the planning commission shall consider and impose appropriate conditions as deemed reasonable and necessary to find consistency with the findings 1 through 4 above.

#### **17.46.08.4 Modifications and Extensions**

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- A. The provisions of this Section shall apply for all modifications or extensions requested for oil and gas operations.
- B. Any existing oil and gas operation that does not have a CUP or development agreement for the operation shall be required to comply with this ordinance if any new development occurs at the existing oil and gas site.

#### **17.46.08.5 Change of Ownership/Operators Criteria**

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- A. Listing on Permit. Any person who operates an oil or gas site that is subject to this ordinance shall be listed as a permittee on the permit(s) issued for that facility.
- B. Acceptance of Permit. Prior to being listed on a permit, any operator of an oil or gas site that is subject to this ordinance shall provide the City with a letter from an authorized agent or officer of the operator formally accepting all conditions and requirements of the permit.
- C. Permits Transferable. Any CUP issued to any oil and gas site authorized pursuant to this Code shall be transferable to a new operator provided that the new operator accepts and meets all of the conditions and requirements of the CUP and this ordinance.
- D. Ongoing Notification. All operators, and guarantors shall, as an ongoing requirement, notify the City Manager in writing of any change in the information required by this Section within thirty days of such change.
- E. Change of Operator. A change of operator shall require an application filed with the City within thirty days prior to a change of operator. Upon approval by the City Manager, such change of operator will become effective upon joint notice from the prior and new operators that the change of operator has become effective. An application is not required when the

change of operator does not entail a substantive change to operations or personnel of the oil or gas site as determined by the City Manager.

- F. **Liability for Compliance with Permit Conditions.** Any operator listed on a permit pursuant to this ordinance shall comply with all conditions of such permit. Failure to comply with such permit conditions shall subject the operator to the applicable penalty and enforcement provisions of this Code or other applicable ordinance for such permits.
- G. **Liability for Abandonment.** The operator, as determined by the records of the City Manager, of a facility or site subject to this ordinance shall be responsible for the proper abandonment of the facility or site.

#### **17.46.09 Procedures for Development Agreements**

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Projects appropriate for development agreements are subject to the requirements of this Section, which establishes procedures for adoption. The procedures for development agreements will comply with Government Code Division 1, Chapter 4, Article 2.5 and the following additional requirements:

##### **17.46.09.1 Filing Requirements**

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- A. Only a qualified applicant may file an application to enter into a development agreement. A qualified applicant is a person(s) who has a legal or equitable interest in the real property of the oil or gas site. The qualified applicant shall provide proof of ownership interest, proof of interest in the real property, and proof of the authority of the agent or representative, to act for the applicant. Said proof of interest and proof of authority shall be subject to review and approval by the City Attorney.
- B. The City Manager shall prescribe the form for each application, notice and documents provided for or required under these regulations for the preparation and implementation of development agreements. The applicant shall complete and submit such an application form to the City Manager, along with a deposit for the estimated direct and indirect costs of processing the development agreement. The applicant shall deposit any additional amounts for all costs and fees to process the development agreement, including all legal fees, within 15 days of request by the City Manager. Upon either completion of the application process or withdrawal of the application, the City shall refund any remaining deposited amounts in excess of the costs of processing.
- C. The City Manager shall require an applicant to submit such information and supporting data as the City Manager considers necessary to process the application.
- D. A community benefit assessment to evaluate the benefits the DA will provide to the community.

### 17.46.09.2 Processing and Review

- A. The City Manager shall endorse on the application the date it is received. An application or related document shall not be complete until an estimated deposit for the cost of processing has been paid to the City. If within 30 days of receiving the application the City Manager finds that all required information has not been submitted or the application is otherwise incomplete or inaccurate, the processing of the application and the running of any limits shall be suspended upon written notice to the applicant and a new 30 day period shall commence once the required material is received by the City Manager. If the City Manager finds that the application is complete it shall be accepted for filing and the Applicant so notified. The City Manager shall review the application and determine the additional requirements necessary to complete processing of the agreement. After receiving the required information and the application is determined to be complete, the City Manager shall prepare a staff report and recommendation to the Planning Commission and City Council stating whether or not the agreement as proposed or in an amended form would be consistent with policies of the City, this ordinance and any applicable general or specific plan. The City Attorney shall review the proposed development agreement as to legal form.
- B. Notice of a hearing regarding the development agreement shall be given by the City Manager and shall comply with the requirements of Government Code Section 65867, as may be amended, except that the City Manager, not the Director, shall be responsible for providing notice.
- C. The planning commission shall review the proposed development agreement and provide a recommendation to the City Council to approve, approve with modifications or deny the proposed development agreement. If the planning commission fails to take action within 60 days of opening the hearing on the matter, such failure shall be deemed to have made a recommendation of denial to the City Council unless the applicant has requested an extension of time, either in writing or on the record, which has been approved by the Planning Commission prior to the running of the 60<sup>th</sup> day.
- D. The proposed development agreement shall be set for hearing and consideration before the Council within 60 days of the recommendation of the Planning Commission, unless the applicant agrees in writing to an extension of time with the City Manager prior to the matter being heard by the Council.
- E. Within 10 calendar days after the City enters into the development agreement, the City Clerk shall have the agreement recorded with the County Recorder. If the parties to the agreement or their successors in interest amend or cancel the agreement as provided in Government Code Section 65868, or if the City terminates or modifies the agreement as provided in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of the agreement, the City Clerk shall have notice of such action recorded with the County Recorder.

### 17.46.09.3 Findings and Development Agreement Conditions

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- A. After the City Council completes the public hearing, the Council may not approve the development agreement unless it finds that the provisions of the agreement:
1. Are consistent with the goals, objectives, and policies of the general plan and any applicable specific plan;
  2. Are compatible with the uses authorized in, and the regulations prescribed for the zoned district in which the real property is located;
  3. Will not be detrimental to the health, safety, environmental quality, and general welfare of the community;
  4. Will not adversely affect the orderly development of property or the preservation of property values; and
  5. Provides for a penalty for any violation of the development agreement consistent with the provisions of Section 17.46.015.

### 17.46.09.4 Modifications and Extensions

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- A. The provisions of Government Code Section 65868 shall apply for all modifications, extensions or other amendments of the terms of a development agreement subject to this ordinance.
- B. Either party may propose an amendment or termination of an approved development agreement subject to the following:
1. The procedure for amending or terminating, the development agreement is the same as the procedure for entering into an agreement in the first instance.
  2. The development agreement may be amended or cancelled only by the mutual consent of the parties, as provided in California Government Code section 65868.
- C. Nothing herein shall limit the City's ability to terminate or modify the agreement consistent with Government Code section 65865.1 or 65865.3 as may be amended.

### 17.46.010 Periodic Review

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The City may choose to conduct a comprehensive performance review of any oil or gas drilling permit, CUP or DA every ten years from the date of approval to determine if the project and the associated CUP or DA are adequately mitigating significant environmental impacts caused by the drilling and operations. Nothing in this section shall limit the City's authority to conduct a review at more frequent intervals, engage in mitigation monitoring as required by CEQA, or otherwise act as directed or authorized by law.

- A. If a periodic review reveals violation of the conditions of any City-issued permit, CUP or DA related to the oil and gas site operations, and if the City takes any subsequent and successful enforcement action based up that violation or related violations, the operator shall reimburse the City with funds necessary for the City to prepare the periodic review, whether performed through a third party or not. If the periodic review identifies significant deficiencies in an oil and gas drilling permit, a CUP or DA that are resulting in unmitigated adverse impacts, but which do not constitute violations of any permit, CUP or DA, then the City Manager may identify these deficiencies and bring forward recommendations of corrective actions to the Planning Commission for consideration, including to the Planning Commission for recommendation to the City Council for consideration and prospective amendments of DAs, as deemed necessary.
- B. A permit, CUP, or DA may also be reviewed by the City Manager at any time, if more than three violations occur within a twelve month period and the City Manager determines that resolution of the violations may be addressed by a new permit and/or an amendment to the CUP or DA. If such a review reveals violation of the conditions of any City-issued permit, CUP or DA related to the oil and gas site operations, and if the City takes any subsequent and successful enforcement action based up that violation or related violations, the operator shall reimburse the City with funds necessary for the City to prepare the periodic review, whether performed through a third party or not. The City Manager shall make a recommendation of corrective actions to the Planning Commission for CUPs and permits, and the Planning Commission and City Council for DAs, as deemed necessary. Nothing in this Section shall preclude the City from taking any other enforcement action authorized by this Code, including more frequent reviews.
- C. Nothing in this Section shall limit the requirements of an operator with a DA to demonstrate to the City Manager good faith compliance with the terms of the agreement at least every 12 months as required by Government Code section 65865.1. If as a result of that review the City Manager believes there is substantial evidence that the operator has not complied in good faith with the terms or conditions of the agreement, the City Manager shall present the matter to the Commission for a recommendation to the City Council. The Commission shall set the matter for public hearing within 40 days of receipt of the matter from the City Manager. If the Commission fails to act upon such request within a reasonable time, the Council may, by written notice, require the Commission to render its recommendation within 40 days. Failure to so report to the Council within the above time period shall be deemed to be a recommendation against modification or termination. After the Commission has rendered its recommendation, the matter shall be set for hearing before the City Council, who may terminate or modify the agreement if it finds and determines, on the basis of substantial evidence, that the operator or successor in interest has not complied in good faith with the terms and conditions of the DA.

#### **17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures**

The following provisions and procedures shall be implemented at the end of life of an oil and gas site, subject to a CUP, and govern the site (including well) facility closure and site restoration procedures:

### 17.46.011.1 Purpose and Intent

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- A. Section 17.46.11 et seq. establishes procedures and provisions to achieve the timely abandonment of oil and gas related activities and land uses, and following the abandonment, the timely and proper removal of applicable oil and gas facilities (including wells, equipment and gas-related structures), reclamation and remediation of host sites, and final disposition of pipelines, in compliance with applicable laws and permits.
- B. The procedures ensure appropriate due process in differentiating idled from abandoned facilities and protecting the vested rights of permittees while also ensuring that sites with no reasonable expectation of restarting are removed, in compliance with the intent of abandonment permits. These procedures also ensure a process for abandoning or re-abandonment of portions of sites where oil and gas operations will continue on the site, as well as procedures for restoration and redevelopment of a site to other uses at the end of the economic life of oil and gas production.

### 17.46.011.2 Applicability

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Oil and gas sites and operations subject to Section 17.46.11 and its subsections, shall include all permitted uses identified in Section 17.46.02.A of this Code, regardless of whether these uses were permitted in compliance with this ordinance or any preceding ordinance. This includes, all pipeline systems, except for public utility natural gas transmission and distribution systems, that either transport or at one time transported natural gas, oil, produced water, or waste water that originated from a reservoir, regardless of whether these uses were permitted in compliance with this Code or any preceding ordinance.

### 17.46.011.3 Application Process

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The City Manager has the discretion to process and approve the application. Any person may submit an appeal to the City Manager or the Planning Commission within 15 days of the City Manager's notice of decision consistent with Section 17.46.06. Mandatory requirements of the Code are not subject to appeal. All procedures shall be consistent with the following requirements:

#### 17.46.011.3.1 Requirement to File an Application

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- A. Complete Abandonment of oil and gas operations: The operator shall submit an application to the City Manager upon intentional abandonment of the entire oil and gas operation or site. The application for abandonment and site restoration proceedings shall be submitted 60 calendar days prior to the planned shutdown of all the facilities.
- B. Partial Abandonment of oil and gas operations: If any portion of the oil or gas site is being abandoned, or if a well is being re-abandoned, the operator shall submit an application to the City Manager for partial abandonment of oil or gas operations. Said application shall be submitted not later than 30 calendar days prior to abandonment or re-abandonment of wells involving no more than 10% of the total number of wells on site or 10 wells, whichever is

more; all other applications shall be submitted not later than 60 calendar days prior to abandonment, re-abandonment or restoration.

C. Other Events Requiring an Application. The operator shall submit an application for abandonment, re-abandonment, and site restoration proceedings to the City Manager upon any of the following:

1. Any event or condition designated in an existing City permit or entitlement that would require consideration of abandonment. The Application shall be submitted 60 days in advance of the event or condition. If the event or condition cannot be known until after it occurs, the application must be submitted within 15 days of the event or condition.
2. Upon order of DOGGR. The application shall be submitted within 30 days of a DOGGR order to abandon, re-abandon, and restore the site, provided, however, that if the operator timely appeals such an order of the DOGGR, it shall have no obligation hereunder until 30 days after a final decision affirming such order.

D. Nothing in this ordinance shall limit the City's police powers. The City may require those measures reasonably necessary to address specific site or operational conditions that threaten public health, morals, safety or general welfare, which measures could include partial or complete abandonment.

#### **17.46.011.3.2 Content of Application**

The application shall be in a form and content specified by the City Manager and this Section. The application shall contain the following:

- A. Name, address, and contact information for the permittee.
- B. Name, address, and general description of the permitted land use.
- C. Gross and net acreage and boundaries of the subject property.
- D. Location of all structures, above and underground, proposed to be removed.
- E. Location of all structures, above and underground, proposed to remain in-place.
- F. Location of all wells, including active, idled, abandoned or re-abandoned wells, including distances from site boundaries, and existing structures. Each well shall include the DOGGR well name and number, as well as the American Petroleum Institute (API) well number. If available, the location of the wells shall be identified with the name of the operator and well designation.

- G. Location of all City or public utility easements on or adjacent to the subject property that may be affected by demolition or reclamation.
- H. To the extent known, the type and extent of any contamination and proposed remedial actions to the level of detail that can be assessed through environmental review. This information does not require a new or modified Phase 2 site assessment in advance of any requirement by the Fire Department or State agencies with regulatory oversight of site assessments.
- I. A proposed abandonment and restoration plan that details the activities for the proposed action, including the following details: hours of operation, disposition of equipment and structures proposed for decommissioning, and an estimated schedule for decommissioning the facilities or completion of the work.
- J.
- K. A proposed grading and drainage plan if drainage from the site will be altered.
- L. A proposed plan to convert the site to natural condition or convert to other proposed land use. In the latter case, include other applicable permit applications required, if any, for the proposed land use.
- M. A statement of intent regarding the disposition of utilities that served the oil and gas operations, including fire protection, power, sewage disposal, transportation, and water.
- N. Measures proposed to be used to prevent or reduce nuisance effects (e.g., dust, fumes, glare, noise, odor, smoke, traffic congestion, vibration) and to prevent danger to life and property.
- O. A copy of DOGGR approval to abandon, re-abandon or remediate well(s), such as an approval of a notice of intent of request to abandon.
- P. A leak test report for each abandoned well on the site that meets the requirements of Section 17.46.38.
- Q. For abandonment or restoration in any circumstances where the permit is approved by the City Manager without Planning Commission action, proof of mailed notice of intent to seek a permit to abandon or restore to the owner of record on the latest assessment roll for neighboring parcels within 300 feet of the oil and gas site property boundaries. The notice shall generally describe the scope of the activity being proposed.

R. Any other information deemed reasonably necessary by the City Manager to address site-specific factors.

### **17.46.011.3.3 Permitting Specifications**

- A. **Application Filing.** The City Manager shall process complete applications for permits after determining the applications to be complete in compliance with Section 17.46.011.3.2 of this ordinance, and submit applications subject to initial Planning Commission review to the Planning Commission with a recommendation regarding approval if the findings in Section 17.46.011.3.4 are met. An application shall not be complete unless the applicant has made a deposit for the estimated direct and indirect costs of processing the application. The applicant shall deposit any additional amounts for the costs to process the application, including legal review, within 15 days of request by the City Manager. Upon either completion of the permitting process or withdrawal of the application, the City shall refund any remaining deposited amounts in excess of the direct and indirect costs of processing.
- B. **Independent or concurrent processing of applications.** For applications subject to initial Planning Commission review, the Planning Commission shall process complete applications for abandonment and site restoration permits independently of any other permit applications to develop the site in question, unless the City Manager makes the determination that the concurrent processing of abandonment and site restoration permits and development permits for the same site do not unduly hinder timely restoration of abandoned sites or result in long delays in securing approval of development permits.
- C. **Demolition and restoration permit shall supersede.** Upon approval of a demolition and restoration permit subject to initial approval by the Planning Commission, or upon abandonment of operations, whichever occurs later, the demolition and reclamation permit shall supersede any inconsistencies in the discretionary permit approved for construction and operation of the facilities.
- D. **Conditions of Permit.** In addition to any other requirements of this Code, any permit for abandonment, re-abandonment or restoration shall be subject to the following requirements regardless whether initially approved by the City Manager or the Planning Commission:
1. Oil well abandonment shall be performed by oil service company contractors with a business license issued by the city.
  2. All equipment and surface installations used in connection with the well that are not necessary, as determined by the City Manager or Planning Commission, for the operation or maintenance of other wells on the drill or operation site shall be removed from the site.
  3. The abandoned site or portions of the oil and gas site shall be restored to its original condition or as nearly as is practical given the nature of the location and continuing uses for an oil and gas site, so long as the restoration will not adversely impact ongoing oil and gas production operations.

4. All sumps, cellars, and ditches which are not necessary for the operation or maintenance of other wells on the oil or gas site shall be cleaned out and all oil, oil residue, drilling fluid, and rubbish shall be removed to reduce hydrocarbons to standards acceptable to federal, state, or local agencies. All sumps, cellars, and ditches shall be leveled or filled. Where such sumps, cellars, and ditches are lined with concrete, the operator shall cause the walls and bottoms to be broken up and all concrete shall be removed.
5. The portions of the site not necessary for continuing oil or gas site operations shall be cleaned and graded and left in a clean and neat condition free of oil, rotary mud, oil-soaked earth, asphalt, tar, concrete, litter, and debris.
6. All public streets, alleys, sidewalks, curbs and gutters, and other places constituting public property which may have been disturbed or damaged in connection with any operation, including operations for the abandonment or re-abandonment of the well shall be cleaned, and, except for ordinary wear and tear, shall be repaired and restored to substantially the same condition thereof as the same existed at the time of issuance of the permit, or at the time operations were first commenced in connection with the drilling, operation, or maintenance of the well.
7. A copy of written approval of DOGGR confirming compliance with all state abandonment proceedings for all abandoned facilities must be furnished to the City Manager.
8. Proposed restoration will leave the subject site in a condition that is compatible with any existing easements or dedications for public access through, or public use of a portion of the property.

#### **17.46.011.3.4 Findings Required for Approval**

In addition to the findings specified in the Code for a use permit, for permits the City Manager or Planning Commission shall also make affirmative findings based on the following criteria:

- A. The subject site will be restored and remediated to its pre-project conditions unless areas within the site are subject to approved development, in which case restoration and landscaping of these areas will conform to the permitted development. In cases where development is proposed but not yet permitted, restoration of affected areas to natural conditions may be waived by the Planning Commission; provided, the development is permitted within five years and the permittee has posted financial assurances acceptable to the City Manager to ensure restoration to natural conditions if the proposed development is not permitted.
- B. The proposed restoration will leave the subject site in a condition that is compatible with any existing easements or dedications for public access through, or public use of a portion of the property
- C. The permit conditions comply with Section 17.46.011.3.3 and contain specific enforceable requirements to ensure the timely completion of any abandonment or re-

abandonment of wells, restoration activities or cessation of other oil and gas site operations subject to the permit.

#### **17.46.012 Operational Noticing**

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- A. Each operator shall submit copies of notices provided to or received from DOGGR, to the City Manager, within ten business days of transmission or receipt of such notices, as applicable. These shall include: designation of agents, notice of intent to drill a new well, division approvals (permit to conduct well operations, notice and permit to drill, permit to rework/redrill well (p-report), enhanced recovery project approval, water-disposal project approval, commercial water-disposal approval), notice of intention to rework/redrill well, notice of intention to abandon/re-abandon well, supplementary notices, report of property transfer forms and any inspection reports or notices of violation, as these notices may be updated or amended. All other DOGGR notices or other DOGGR communications shall be submitted at the discretion of the City Manager.
- B. The operator of (or any person who acquires) any well, property, or equipment appurtenant thereto, whether by purchase, transfer, assignment, conveyance, exchange or otherwise, shall each notify the City Manager within ten business days of the transaction closing date. The notice shall contain the following:
1. The names and addresses of the person from whom and to whom the well(s) and property changed.
  2. The name and location of the well(s) and property.
  3. The date of acquisition.
  4. The date possession changed.
  5. A description of the properties and equipment transferred.
  6. The new operator's agent or person designated for service of notice and his address.
- C. The operator of any well shall notify the City Manager, in writing, of the idling of any well. The operator shall notify the City Manager in writing upon the resumption of operations of an idle well giving the date thereof.
- D. The operator shall report any violations of state or federal laws that occur on an oil and gas site to the City Manager within 30 days of their date of documentation by a state or federal agency.

#### **17.46.013 Complaints**

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All complaints related to activities regulated by this ordinance received by the operator shall be reported within two business days to the City Manager. In addition, the operator shall maintain a written log of all complaints and provide that log to the City Manager on a quarterly basis.

### 17.46.014 Injunctive Relief

In addition to any administrative remedies or enforcement provided in this Code, the City may seek and obtain temporary, preliminary, and permanent injunctive relief to prohibit violation or mandate compliance with this Code. All remedies and enforcement procedures set forth herein shall be in addition to any other legal or equitable remedies provided by law.

### 17.46.015 Notice of Violation and Administrative Fines

- A. The operator shall also be subject to a fine for violation of any requirement of a CUP or this ordinance as determined by the City Manager, subject to the following:
1. Depending on the specific type and degree of the violation, the operator in violation may be penalized at a rate of up to \$10,000 per day, per violation, until it is cured, but in no event, in an amount beyond that authorized by state law. The City Manager will develop a violation fine schedule for Council approval to specifically identify the fines associated with oil or gas site violations. This violation fine schedule may also include nuisance violations. Nothing in this Section shall preclude the use of use of fines as may be applicable from this code, including those related to nuisances, as long as said fines are not imposed in addition to fine schedule developed under this ordinance for a similar violation.
  2. In the event of a violation of any of the City's permitting actions, a written notice of violation, and notice of the associated fine amount if the violation is not cured, will be sent to the operator by the City Manager. If the noted violation is not corrected within 15 calendar days (as may be extended by the City Manager up to an additional thirty days) to the satisfaction of the City Manager, the City Manager will provide the operator notice of the imposition of administrative fines. The operator shall be required to pay the fines to the City, and any fines which continue to accrue until the violation has been cured. Notwithstanding, if the violation creates an immediate danger to health or safety, the City (including a contractor hired by the City) may immediately abate the dangerous condition, and said costs of abatement shall also be paid by the operator.
  3. The operator has a right of appeal to the City Manager or Planning Commission within 15 days of the written notice or contested determination of compliance. Decisions of the City Manager not appealed within 15 days become final.
- B. Nothing in this Section or ordinance shall limit the City's ability to pursue other enforcement procedures, including CUP revocation proceedings, actions to enforce a DA, or other legal or equitable remedies provided by this Code or available under the law including code enforcement provisions as amended, as long as those provisions are identified. Revocations or suspensions of a permit or CUP may be done pursuant to Title 17-Zoning, as may be amended,

## 17.46.016 Nuisance Procedures

Any violation of this ordinance is hereby declared to be a public nuisance for the purposes of Section 8.12.020, and may be abated pursuant to the procedures set forth in Section 8.12.030 of this Code. The procedures for abatement shall not be exclusive, and shall not in any manner limit or restrict the City from otherwise enforcing this ordinance or abating public nuisances in any other manner as provided by law, including the institution of legal action by the City Attorney to abate the public nuisance at the request of the City Manager.

### 17.46.016.1 High-Risk Operations

- A. Upon determination that any oil and gas production, processing or storage operation meets the definition of high risk operation from Section 17.46.004, the City Manager shall give the operator written notice of the City Manager's intent to determine the operation a high risk operation under this Section. The intent of this Section shall be to remediate the high-risk operation and bring the oil or gas site and the operator within normal, safe operating standards and protect the public safety, health and environment. The written notice of the intent to determine the operation a high-risk operation shall include:
1. Facts substantiating the determination; and
  2. A notice regarding the right to appeal the determination to the Commission within 15 days. During the pendency of any such appeal, the City Manager's determination shall remain in full force and effect until affirmatively set aside by the Planning Commission. The Planning Commission's decision shall be supported by substantial evidence, and refusal by the operator to provide access to the operation to allow inspection or investigation to determine compliance as authorized by this Code or other law shall be deemed evidence the definition of a high risk operation has been met.
- B. Along with the determination of the site being a high risk operation, the City Manager may take either or both of the following actions:
1. An investigation of the causes leading up to the high risk determination;
  2. Require a mandatory restoration plan to be submitted by the operator. Such plan shall include, but is not limited to:
    - i. A mandatory restoration schedule for bringing the site and operator within normal, safe operating standards. Such schedule does not supersede any timeline for abatement otherwise established for individual outstanding violations.
    - ii. An audit of overall site operation(s):
      - a. The audit shall be conducted by an independent third party approved by the City Manager. Costs associated with the audit shall be borne by the operator;

- b. The audit shall identify and analyze the root causes leading to the high risk designation;
  - c. The audit shall further identify and analyze other potential areas in overall site operation that could impact the site's ability to operate within safe and normal standards (e.g. personnel training, operational policies, internal procedures, etc.);
  - d. Provide a plan for remediating all issues identified in the audit, including a mandatory schedule for remediating those issues. Such restoration plans shall be subject to approval by the City Manager.
  - e. The audit may be ordered in lieu of, or in addition to the investigation undertaken by the City Manager.
- iii. Any other requirements the City Manager deems necessary to bring the site and operation within normal, safe operating standards for the purposes of protecting the public safety, health and environment.
- C. The operator of the high risk operation shall carry out the approved restoration plan and shall be responsible for paying all reasonable costs associated with the implementation of the plan, including:
- 1. City staff time in enforcing these provisions at an hourly rate that provides for full cost recovery of the direct and indirect costs. Staff time shall include, but is not limited to, the ongoing monitoring and verification of compliance with the approved restoration plan;
  - 2. Investigative, research (including legal research) and consulting costs associated with preparation of the restoration plan;
  - 3. Third party costs for investigation, consultation, engineering, clean-up, operator staff training, operations and all other related costs necessary to carry out the restoration plan;
  - 4. Any other costs necessary to remediate the high risk operation as ordered by the City Manager.
- D. At the sole discretion of the City Manager, at any time during which a site or operator is subject to this Section, the City Manager may require a bond be posted to cover the cost of remediating the causative problems of the high risk operation.
- E. The determination of high risk operations shall continue to apply until the goals and guidelines of the restoration plan established hereunder is achieved. The high risk operator shall notify the City Manager when a milestone in the restoration plan has been satisfied. The City Manager may conduct independent verification of the compliance upon such notification. The restoration plan may be amended from time to time as necessary to achieve the purposes of this Section. Upon a determination by the City that the goals and guidelines of the restoration

plan have been achieved, the City shall notify the operator in writing that the site is no longer a high risk operation.

F. Failure of the operator of a high risk operation to post a bond required under this Section, prepare the restoration plan within a reasonable timeframe as ordered by the City Manager, or to reasonably achieve the goals and guidelines of an approved restoration plan under this Section, may be cause for a shutdown of the high risk operation(s) or any other petroleum operations located in the City that are co-owned or co-operated by the high risk operator, at the discretion of the City Manager.

G. The operator of a high risk operation shall compensate the City for any costs associated with the enforcement of this Section within 30 days of written demand by the City Manager. Any City costs associated with enforcement of this Section, which are not promptly paid by the operator shall be subject to enforcement by tax bill lien or other collection methods at the discretion of the City.

H. The City may institute legal proceedings to require compliance provisions with this Section.

#### **17.46.017 Compliance Monitoring**

A. Environmental Compliance Coordinator(s). The City may hire Environmental Compliance Coordinators as needed to oversee the monitoring and condition compliance requirements of the City's permitting actions subject to regulation under this ordinance, the costs of which shall be reimbursed by operator. The number of Environmental Compliance Coordinators shall be determined by the City and shall take into account the level of oil and gas operations associated with the project site. The Environmental Compliance Coordinator(s) shall be approved by, and shall report to, the City Manager consistent with the City Manager's authority under Section 2.06.070 of this Code. The responsibilities of the Environmental Compliance Coordinator(s) shall be determined by the City for the project site and shall generally include:

1. Monitoring of oil and gas sites for compliance with this ordinance as it relates to construction, drilling, operational or abandonment and site restoration activities as determined by the City Manager.
2. Taking steps to ensure that the operator, and all employees, contractors and other persons working in the project site, have knowledge of, and are in compliance with all applicable provisions of the conditional use permit or development agreement.
3. Reporting responsibilities to the various City departments with oversight responsibility at the project site, as well as other agencies such as DOGGR, and SCAQMD.

B. Compliance Deposit Account. An applicant must establish a compliance deposit account with the City within 30 days of receiving authorization for a CUP or DA from the City. The

compliance security deposit amounts shall be determined by the City Manager, and shall be based on the nature and extent of the compliance actions required.

#### **17.46.018 Financial Assurances Applicability**

- A. Sections 17.46.019 through 17.46.021 shall apply to any person who operates any oil or gas site involved in exploration, production, processing, storage or transportation of oil or gas extracted from reserves in the City of Arvin:
- B. This ordinance shall not apply to the change of operator of the following:
1. Sales gas pipelines operated by a public utility and regulated by the California Public Utilities Commission;
  2. A change of ownership consisting solely of a change in percentage ownership of a site and which does not entail addition or removal of an owner or affect any financial guarantee or bonds for a permit, CUP, and/or DA.

#### **17.46.019 Operator's Financial Responsibilities**

The applicant shall be fully responsible for all reasonable costs and expenses incurred by the City or any City contractors, consultants, or employees, in reviewing, approving, implementing, inspecting, monitoring, or enforcing this ordinance or any CUP, DA, or permit, including but not limited to, costs for permitting, permit conditions implementation, mitigation monitoring (including well abandonment and re-abandonment), reviewing and verifying information contained in reports, inspections, administrative support, and including the fully burdened cost of time spent by City employees, City Attorney, or third-party consultants and contractors on such matters.

#### **17.46.020 Securities and Bond Requirements**

The operator or any contractor of any oil and gas operation subject to this ordinance shall provide, or cause to be provided, the securities and bond requirements described below

- A. The operator shall file a faithful performance bond with the City Manager consistent with the following bonding requirements:
1. The City Manager shall determine the amount of the bond based on the total number of wells, proposed operations, size and nature of the property, appropriate environmental studies on the property, including a Phase I, II or Human Health Risk Assessment Reports and other relevant conditions related to the proposed wells or operations at a specific oil or gas site, and recognized commercial standards.
  2. The amount of the bond shall be sufficient to assure the completion of the abandonment, necessary re-abandonment, site restoration, to the extent not fully covered by DOGGR bonds, and remediation of contamination of the oil or gas site if the work had to be performed by the City in the event of forfeiture. The performance

- bond shall be inflation indexed to ensure the amount of the bond shall be sufficient to assure completion of the abandonment, restoration and remediation of contamination of the oil or gas site. The bond shall be available within a time frame to allow the City to undertake related activities in a timely manner, including at least half for immediate access and use in the event of an emergency as determined by the City Manager.
3. Prior to expansion of an oil or gas site, the operator shall apply to the City Manager for a determination of the amount of the bond necessary to ensure completion for both the existing and expanded operations. In addition, every bond shall be re-assessed by the City Manager every 5 years to ensure the amount is sufficient to ensure the completion of the abandonment, site restoration, and remediation of contamination of the oil or gas site.
  4. Upon application by the operator, the City Manager may reduce bonding amounts based upon change of physical circumstances, completion or partial completion of work, or significant reduction in cost to perform the work. In no event shall the amount of the bond be reduced to an amount insufficient to complete any remaining work, nor shall the bond be reduced due to economic hardship or similar considerations.
  5. After completion of all abandonment and site restoration requirements, the bond shall be maintained in a sufficient amount to ensure remediation of contamination at the oil or gas site for a period not less than 15 years. Upon application by the former operator, the City Manager may provide for partial or complete release of the bond at an earlier date if a former site is being developed or redeveloped consistent with Section 17.46.038(G) and construction of said development or redevelopment is completed,
  6. In no event shall the bonding amount required by the City be less than \$10,000 per well.
  7. The bond may be drawn only from a qualified entity without any economic interests or relationship with the operator and any related economic entities related thereto, and bonds must and must be rated "A" or better by a nationally recognized bond rating organization. The City Manager shall receive all pertinent information related to the bond and bonding entity prior to issuance of a final approved permit, CUP, or DA.
- B. In lieu of these bonding requirements, an operator may also submit any type of legally adequate and binding financial mechanism, subject to City Attorney approval, to satisfy the monetary assurance requirements set by the City Manager to assure completion of the abandonment, restoration and remediation of contamination of the oil or gas site to the extent not fully covered by DOGGR bonds.
- C. For any evaluation of bonding amounts by the City Manager in this Section, or evaluation of a financial mechanism proposed in lieu of a bond by the City Attorney, the operator shall deposit the estimated costs, or deposit equivalent, with the City Manager with the application,

and shall also make any additional deposit(s) within 30 days of written request by the City Manager. The City Manager may retain consultants or other experts in the industry to assist in deriving a commercially reasonable bond amount.

#### **17.46.021 Operator Liability Insurance**

The operator of any oil and gas operation subject to this ordinance shall provide, or cause to be provided, the insurance described below for each oil and gas site during the pendency of oil and gas operations. The operator or contractor must provide to the City sufficient documentation that the insurance complies with the minimum requirements and coverage amounts of this Section before a permit may be issued.

##### **A. General provisions regarding insurance:**

1. The operator or any contractor shall pay for and maintain in full force and effect all policies of insurance described in this Section with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide.
2. In the event any policy is due to expire, the operator or any contractor shall provide a new certificate evidencing renewal of such policy not less than 10 calendar days prior to the expiration date of the expiring policy. Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, operator or any contractor shall file with the City Manager a new certificate and all applicable endorsements for such policy.
3. Liability policies shall name as "additional insured" the City, including its officers, officials, agents, employees and authorized volunteers.
4. All policies shall be endorsed to provide an unrestricted 30 calendar day written notice in favor of City of policy cancellation of coverage, except for: 1) non-payment, which shall provide a 10-day written notice of such cancellation of coverage, and 2) the Workers' Compensation policy which shall provide a 10 calendar day written notice of such cancellation of coverage.
5. The operator shall present to the City Manager copies of the pertinent portion of the insurance policies evidencing all coverage and endorsements required by this Section before the issuance of any permit subject to this ordinance, and the acceptance by the City of a policy without the required limits or coverage shall not be deemed a waiver of these requirements. The City may, in its sole discretion, accept a certificate of insurance in lieu of a copy of the pertinent portion of the policy pending receipt of such document by the City. After the issuance of the permit, the City may require the operator to provide a copy of the most current insurance coverage and endorsements for review at any time. The operator will be responsible for paying an administration fee to cover the costs of such review as may be established by the City's fee schedule.
6. Claims-made policies shall not be accepted except for excess policies and environmental impairment (or seepage and pollution) policies.

7. Insurance coverage shall be reviewed by the City Manager as required by Section 17.46.010 to ensure adequate insurance is maintained.

B. Required insurance coverage:

1. Commercial or comprehensive general liability insurance:
  - i. Bodily injury and property damage coverage shall be a minimum combined single limit of \$2,000,000 per occurrence \$2,500,000 in the aggregate. This coverage must include premises, operations, blowout or explosion, products, completed operations, blanket contractual liability, underground property damage, underground reservoir (or resources) damage, broad form property damage, independent contractor's protective liability and personal injury.
  - ii. Environmental impairment (or seepage and pollution) coverage shall be either included in the comprehensive general liability coverage or as separate coverage. Such coverage shall not exclude damage to the lease site. If environmental impairment (or seepage and pollution) coverage is written on a "claims made" basis, the policy must provide that any retroactive date applicable precedes the effective date of the issuance of the permit. Coverage shall apply to sudden and accidental pollution conditions resulting from the escape or release of smoke, vapors, fumes, acids, alkalis, toxic chemicals, liquids, oil and gas, waste material, or other irritants, contaminants or pollutants. Such policy shall provide for minimum combined single limit coverage of \$2,000,000 per occurrence and \$2,500,000 in the aggregate. A discovery period for such peril shall not be less than ten years after the occurrence.
2. Commercial automobile liability insurance: Minimum combined single limit of \$1,000,000 per occurrence for bodily injury and property damage. The policy shall be at least as broad as the most current version of Insurance Services Office (ISO) Business Auto Coverage Form CA 00 01 and shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Section 1, subsection A.1 entitled "Any Auto")
3. Worker's compensation insurance: Maintain the minimum statutory requirements, coverage which shall not be less than \$1,000,000 for each occurrence.
4. Excess (or umbrella) liability insurance: Minimum limit of \$5,000,000 providing excess coverage for each of the perils insured by the preceding liability insurance policies, except for underground reservoir (or resources) damage.
5. Control of well insurance (only during drilling or re-working):
  - i. Minimum limit of \$2,000,000 per occurrence, with a maximum deductible of \$100,000 per occurrence.

- ii. Policy shall cover the cost of controlling a well that is out of control, drilling or restoration expenses, and seepage and pollution damage. Damage to property in the operator's care, custody and control with a sub-limit of \$500,000 may be added.
6. Self-Insurance: The operator shall have the option to self-insure if insurance is not commercially feasible to obtain and maintain in the commercial insurance market, as certified by a written report prepared by an independent insurance advisor of recognized national standing, for the following types of insurance required by this Subsection: Excess (or umbrella) liability insurance, control of well insurance, and environmental impairment (or seepage and pollution) coverage. The operator shall provide a certificate for self insurance subject to approval by the City Manager and Risk Management, and to the City Attorney for approval as to legal sufficiency. To the extent said insurance is limited to amounts less than that required by this ordinance, the operator must first obtain available insurance coverage to the extent it is commercially feasible, and then shall self insure for the remaining amount.
  7. Commercially Available: If the City Manager determines that certain types of insurance identified herein are not reasonably commercially available or necessary given specific field conditions, the City Manager has the discretion to authorize substitute or equivalent types of insurance, to the extent there is a reasonable and relevant risk, or modifications to an amount that is commercially available, all subject to approval as to legal form by the City Attorney.
- C. Failure to maintain coverage: Upon failure of the operator, or contractors to provide that proof of insurance as required by this Section when requested, the City Manager may order the suspension of any outstanding permits and petroleum operations of the operator until the operator provides proof of the required insurance coverage.

## **Part 2. Development Standards for Petroleum Operations**

The following Sections of Part 2 apply only to those operations subject to a CUP or DA, except for those existing operations as noted in Section 17.46.02.B.

### **17.46.022 Setback Requirements**

- A. The surface locations of wells and tanks within an oil and gas site shall not be located within:
1. Three hundred feet (300 feet) of the property boundaries of any public school, public park, clinic, hospital, long-term health care facility.
  2. Three hundred feet (300 feet) of the property boundaries of any residence or residential zone, as established in this Code, except the residence of the owner of the surface land on which a well might be located and except a residence located on the land which, at the time of the drilling of the well, is under lease to the person drilling the well.

3. Three hundred feet (300 feet) of the property boundaries of the commercially designated zone C-O, N-C, C-1, C-2, MUO, PUD (see Table 1-1), as established by this Code and as may be amended.
4. One hundred feet (100 feet) of any dedicated public street, highway, public walkway, or nearest rail of a railway being used as such, unless otherwise specifically allowed per Public Resources Code section 3600, but in no event less than fifty (50) feet of any dedicated public street, highway, public walkway, or nearest rail of a railway being used as such.

B. For all injection wells, the Applicant shall provide a copy of the area of review (AOR) study, consistent with the requirements of Title 14 California Code of Regulations Section 1724.7, as per DOGGR.

C. Legally existing oil and gas operations that do not meet the setback requirements and were conforming immediately before the effective date of this ordinance are not considered non-conforming uses and are not made subject to Chapter 17.52 (Nonconforming Buildings and Uses) of this Code by this ordinance. Such operations may continue to lawfully operate to the extent the operations can demonstrate to the City vested rights as of the effective date of this ordinance, but are prohibited for expanding operations beyond those demonstrated vested rights. Vested rights for a particular well may be demonstrated by the existence of an installed conductor in a cellar for that well or any other method established by law. The operator can replace structures and equipment required for oil and gas operations that are damaged, have failed, are at risk of failure, or are at the end of their useful life. Said replacements shall be made with like-kind structures and equipment that does not expand capacity or structural footprint. If the operator can demonstrate that such structure or equipment is not reasonably available or appropriate for current operational practices, the City Manager may approve minor expansion of equipment or structure upon findings the proposed changes are minor and do not constitute or tend to produce an expansion or intensification of capacity for the site. For existing oil and gas facilities and operations that do not meet the setback requirements as of the effective date of this ordinance, drilling of new wells is prohibited unless the operator can demonstrate vested rights for each new well.

D. Consolidation and Relocation Incentives.

1. Existing Uses in Setback: For existing wells legally operating within the prohibited setback identified in Section 17.46.022.A or within the prohibited zones included in Table 1-1, an operator can exchange wells, either existing or vested, at a 1:2 ratio to another (existing) receiving site(s) without counting toward new development that would require a CUP or DA. The receiving site must be within a zone that is not prohibited in Table 1-1 and must comply with all setbacks and other requirements of this Ordinance. The contributing well(s) must be completely abandoned, including confirmation of compliance with all state abandonment requirements, before wells can be constructed at any receiving site.

2. Existing Uses Outside Setback: For existing wells legally operating outside the prohibited setback and zones, an operator can exchange only wells actually existing at the time of the ordinance (not vested or hypothetical wells) at a 1:1 ratio to another existing receiving site(s) without counting toward "new development" that would require a CUP or DA. The receiving site must be within a zone that is not prohibited in Table 1-1 and must comply with all setbacks and other requirements of this Ordinance. The contributing site must be completely abandoned before wells can be constructed at any receiving site, including confirmation of compliance with all state abandonment requirements. The operator must completely abandon all surface rights to the contributing site (i.e., no future oil and gas operations to occur at the site) and provide acceptable proof to the City of the same. All receiving sites must exist and have active operations as of the date of approval of this ordinance.
3. For All Consolidation or Relocation: The operator must provide the City with notice of intent to transfer prior to abandonment of any well(s) or contributing site intended to be consolidated or relocated. Transfers may occur at any time after abandonment is complete and the rights may be "banked" and assigned to another operator upon notice to the City. No well can be transferred more than one time. The receiving well location or site must be located outside the boundaries identified in Section 17.46.022.A.1-3, and comply with Section 17.46.022.A.4 outside of the prohibited setback. The receiving site cannot expand by more than 10 wells from any source or exchange, in addition to those existing or vested, without being considered new development. All receiving sites must comply with Section 17.46.02.B for sites not required to obtain a new CUP.

### **17.46.23 Site Access and Operation**

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The following measures shall be implemented throughout the operation of any oil and gas site or project subject to this ordinance:

#### **17.46.23.1 Deliveries**

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For oil and gas sites located in non-industrial areas or for delivery routes, other than designated truck routes, that pass through or adjacent to prohibited zones as listed in Table 1-1, (a) deliveries to the oil or gas sites shall not be permitted after 9:00 p.m. and before 6:00 a.m. (Chapter 9.08 Noise Disturbances), except in cases of emergency and (b) no deliveries shall be permitted on Saturdays, Sundays or legal holidays, except in cases of emergency. The City Manager may authorize a single oil shipping truck used on an occasional basis upon a showing of no reasonably feasible alternative, Said authorization shall take into consideration the location of the site and the types of adjacent uses, and may require compliance with Section 17.46.032.6 (Noise Impacts), light and glare restrictions, etc.

#### **17.46.23.2 Construction Time Limits**

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Construction of permanent structures, workovers and other maintenance, including replacement in kind, shall not be permitted after 9:00 p.m. and before 6:00 a.m. (Chapter 9.08 Noise

Disturbances), or during Saturdays, Sundays, or legal holidays, except in the event of an emergency as approved by the City Manager. The drilling or re-drilling of wells is not subject to construction time limits.

### **17.46.23.3 Oil and Gas Site Parking**

- A. At all times during the construction and operation of any oil and gas site, parking facilities shall be provided for all vehicles associated with the oil or gas site at a rate of 1 parking space per shift-employee. If approved as part of a CUP or a DA, parking for vehicles of employees or workers engaged in any oil or gas site activities can also be provided by the operator at off-site parking lots or in parking facilities, other than public streets, at locations other than the oil or gas site. The operator shall prohibit personal parking on City streets by operator, permittees, contractors, or consultant staff. If the parking lot or parking facilities are not located within a reasonable walking distance of the controlled drill site, the operator shall provide transportation to and from the parking site for employees and workers.
- B. At all times vehicular access to an oil and gas drill site shall be provided in accordance with the plans for vehicular access reviewed and approved by the City Engineer, except for operations existing prior to the effective date of this ordinance.
- C. All entrances to an oil and gas site shall be equipped with sliding or swinging gates which shall be kept closed at all times except when authorized vehicles are entering or leaving the oil and gas site.
- D. When traffic lanes on any public street are closed or impaired by the operator's operations, flagmen, and safety officers as required by the City Engineer or Police Department shall be provided by the operator at all such times to control traffic and maintain traffic flow.

### **17.46.024 Lighting**

Except for oil and gas sites located within industrial zones, and located farther than 600 feet from any prohibited zone as listed in Table 1-1, all lighting sources that may be introduced on a site in support of nighttime operations, at the onset and throughout all operations at an oil and gas site shall be screened and directed to prevent light or glare from passing beyond site boundaries. Outdoor lighting shall be restricted to only those lights that may otherwise be required by this Code for lighting building exteriors and safety and security needs.

### **17.46.025 Aesthetics**

The following measures shall be implemented for all projects that are subject to this ordinance:

### **17.46.026 Landscaping/Visual Resources**

- A. Prior to any new development, the operator shall implement a landscaping plan that has been approved as part of a CUP or a DA, which provides adequate screening and blending of the facilities so that the site shall not appear unsightly or aesthetically deficient compared with the surrounding character of the area. Except for oil and gas sites located within industrial

zones, all tanks shall not extend more than twenty feet above the surface of any site, unless otherwise approved in a CUP or DA.

- B. Within six months after the completion of activities related to the drilling or re-drilling of a well and the removal of the drilling well mast/rig, any oil and gas site shall be landscaped with suitable shrubbery and trees in accordance with a plan approved by the Planning Commission, unless the site is to be otherwise developed in such a manner that would preempt re-vegetation requirements.
- C. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, if any drilling masts are in place on an oil and gas site for a time period of more than one year and are visible from public viewing points, then the operator shall wrap all such masts to reduce their visibility prior to the onset of operations at an oil and gas site.

#### **17.46.025.2 Walls**

Prior to commencement of operations at an oil or gas site the following development standards shall be satisfied:

- A. All oil and gas sites shall be enclosed with a wall not less than six feet (6 feet) high, which shall be of a material and texture that blends in with the surrounding environment and is not visually obtrusive. There shall be no aperture below the wall larger than one foot (1 foot) in height.
- B. The wall enclosure around the oil and gas site shall have a setback of twenty-five feet from all property lines. The gate or entrance through the wall shall remain locked at all times and constructed in a manner to prevent the public from coming closer than twenty-five feet to the pumping facilities. Pursuant to the approval of the CUP, the location of the wall may be modified subject to compliance with the California Fire Code as approved in a CUP or DA with modifications as applicable.
- C. The entire outside facing length of the wall must be coated with anti-graffiti paint or solutions.

#### **17.46.025.3 Sanitation**

The oil and gas site shall be maintained in a clean, sanitary condition, free from accumulations of garbage, refuse, and other wastes.

#### **17.46.025.4 Architecture**

The architectural design of any oil or gas site buildings, equipment, or other associated structures shall be consistent with the character of the surrounding community and shall utilize finishing materials and colors which blend in with the surrounding environment and are not visually obtrusive.

## 17.46.026 Roads

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The following policies specific to streets or other roads shall apply to all projects for which this ordinance is applicable:

### 17.46.026.1 Construction of Site Access Roads

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Private roads and other excavations required for the construction of access roads shall be designed, constructed, and maintained to provide stability of fill, minimize disfigurement of the landscape, prevent deterioration of vegetation, maintain natural drainage, and minimize erosion. Prior to construction of any new road, the operator shall prepare and submit to the Department of Public Works for review and approval a private road construction plan. The operator shall thereafter comply with all provisions of the approved private road construction plan. All new private access roads leading off any surfaced public street or highway shall be paved with asphalt or concrete not less than three inches thick for the length of said access road from the public street or highway.

### 17.46.027 Signage

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The following policies apply only to signs visible from the public right of way.

- A. Signage as required by DOGGR or law shall be kept in good legible condition at all times.
- B. No sign other than that described in this ordinance or required by law shall be allowed, other than informational signs, no smoking signs, and other signs as reasonably required for safe operation of the project.
- C. Identification signs shall be posted and maintained in good condition along the outer boundary line and along the walls adjoining the public roads that pass through the oil or gas site. Each identification sign shall prominently display current and reliable emergency contact information that will enable a person to promptly reach, at all times, a representative of the operator who will have the expertise to assess any potential problem and recommend a corrective course of action. Each sign shall also have the telephone number of the City department of planning or zoning enforcement section and the number of SJVAPCD that can be called if odors are detected. For existing oil and gas sites, the signs shall be updated when they are replaced or repaired.

### 17.46.028 Steaming

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The installation of any surface equipment designed to produce steam shall be prohibited without the approval of the City Manager. The operator shall submit a steaming plan addressing equipment sizing and design to the City Manager for review and approval. The operator shall also submit well casing and cementing design specifications as required by DOGGR. Unless a specific health, safety or welfare issue is created, which will include any non-compliance with any DOGGR regulation or other applicable law including this ordinance related to the use of the surface equipment, the City Manager will approve a completed steaming plan, The City

Manager may adopt implementing guidelines for this Section to further the purposes of this Ordinance.

#### **17.46.029 Utilities**

- A. Each oil or gas site shall be served by and utilize only reclaimed water, aside from potable water used for human consumption, unless the use of reclaimed water is deemed infeasible (such as regulatory requirements, initial unavailability during operations or technological considerations) or unwarranted (including secondary environmental impacts such as increased use of chemicals, surface activities, and other items that may be adverse to public health, safety or welfare) by the City Manager, in which case the following criteria apply:
1. The operator must prepare and submit a supply assessment study of all water resources available for use and submit the study for review to the City Manager.
  2. If the study indicates that potable water is the only feasible or warranted alternative then the operator may utilize such a water source under appropriate conditions as determined by the City Manager.
- B. New electrical power may be routed underground from the nearest source adequate to meet the needs of the well site if undergrounding is required for other uses in the vicinity as determined by the City Manager.

#### **17.46.030 On-Site Storage and Placement of Equipment**

No equipment shall be stored or placed on the site, which is not either essential to the everyday operation of the oil or gas well located thereon or required for emergency purposes.

#### **17.46.031 Safety Assurances and Emergency/Hazard Management**

The following measures shall be implemented throughout the operation of any oil or gas site or project subject to this ordinance:

##### **17.46.031.01 Fire Prevention Safeguards**

- A. All oil and gas site operations shall conform to all applicable fire and safety regulations, codes, and laws.
- B. The oil and gas site shall be kept free of debris, pools of oil, water or other liquids, weeds, and trash.
- C. Land within twenty-five (25) feet of the facilities shall be kept free of dry weeds, grass, rubbish or other combustible material at all times.
- D. All equipment, facilities, and design shall be approved by the Kern County Fire Department, as applicable and as it may require, prior to approval of a CUP or DA.

### **17.46.031.02 Blowout Standards and Testing**

The operator shall comply with DOGGR regulations for blowout prevention and will provide all equipment as stipulated in the DOGGR regulations during the drilling operations of any well.

### **17.46.031.03 Earthquake Shutdown**

- A. The operator shall immediately inspect all oil and gas-related facilities, equipment, and pipelines following any seismic event with a magnitude of 4.0 or greater with an epicenter within 10 kilometers (km) of the oil and gas site, magnitude 4.5 or greater within 30 km, or magnitude 6.0 within 100 km.
- B. The operator shall either, (1) Operate and maintain an accelerometer at the project site or (2) Obtain real time data from the USGS to determine the earthquake magnitude of any seismic event in the area. The operator shall immediately inspect all project site pipelines, facilities, equipment, storage tanks, and other infrastructure following any seismic event above the thresholds defined in 17.46.31.03.A and promptly notify the City Engineer and the City Manager of the results of the inspection within 24 hours of the seismic event. Shall there be any structural damage or equipment failure as a result of any seismic event, the operator shall isolate and address any damage or equipment failure as appropriate to minimize environmental or safety impacts. The operator shall prepare and submit a written report of all inspections and findings to the City for review with one week of the seismic event.
- C. The operator shall not reinstitute operations at those portions of the project site and associated pipelines damaged by a seismic event until the damage has been repaired and confirmed by the operator to be structurally sound and safe for operation, and has passed any otherwise required inspection. Before returning any damaged structure, fixture or equipment to operation, the operator shall prepare and submit to the City Manager a written report of inspections and repairs of that structure, fixture or equipment, and the results of any required inspection.

### **17.46.031.04 Storage Tank Monitoring**

The operator shall install tank leak detection monitoring system that will indicate the physical presence of a leaked product underneath storage tanks on site that have the potential to result in soil contamination. The results of the monitoring shall be submitted to the City Manager upon request. The monitoring system required by 14 California Code of Regulations Section 1773.2 is sufficient. This section does not apply to existing facilities.

### **17.46.031.05 Safety Measures and Emergency Response Plan**

The operator is responsible for compliance with safety and emergency response requirements.

- A. Copies of all Emergency Response Plans, Emergency Action Plans, Oil Spill Plans, inspections, reports and any emergency response drill training as required by DOGGR, CalEPA, OSHA, Kern County Fire Department, SJVAPCD or any other agency shall be submitted to the City.

- B. Safety Audit. The operator shall cause to be prepared an independent third-party audit, under the direction and supervision of the City, of all facilities, once constructed or within 1 year of the adoption of this ordinance, including the well pads, to ensure compliance with the California Fire Code (as may be adopted by the City with modifications as applicable), applicable API and NFPA codes, EPA RMP, OSHA PSM, DOGGR and SPCC and emergency response plans requirements. All audit items shall be implemented in a timely fashion, and the audit shall be updated annually, as may be directed by the City and the Kern County Fire Department. The operator shall also cause to be prepared a seismic assessment, including walkthroughs, of equipment to withstand earthquakes prepared by a registered structural engineer in compliance with Local Emergency Planning Committee Region 1 CalARP guidance and the seismic assessment shall be updated, with walkthrough inspections, annually to ensure compliance with the codes and standards at the time of installation.
- C. Community Alert System. If the site is within 600 feet of any prohibited zoning as listed in Table 1-1, the operator shall implement a community alert notification system, or utilize an existing system operated by the Police, Sheriff or Fire Department, to automatically notify area residences and businesses in the event of an emergency at an oil or gas site that would require residents to take shelter or take other protective actions.

#### **17.46.031.06 Transportation of Chemicals and Waste On and Off-site**

The operator shall implement the following measures throughout the operations of any oil and gas site subject to this ordinance:

- A. Solid Waste Disposal. Solid waste generated on the site shall be transported to a permitted landfill or hazardous waste disposal site as may be appropriate for the life of the operation. The operator shall provide written notice to the City Manager of the landfill or hazardous waste disposal facility being utilized.
- B. Site Waste Removal. The operator shall comply with the following provisions:
1. All drilling and workover waste shall be collected in enclosed bins. Any drilling and workover wastes that are not intended to be injected into a Class II Well, as permitted by DOGGR, shall be removed from the project site no later than thirty days following completion of the drilling and workover.
  2. No site waste shall be discharged into any sewer unless permitted by the Sanitation District, or into any storm drain, irrigation system, stream, or creek, street, highway, or drainage canal. Nor shall any such wastes be discharged on the ground.
- C. Storage of Hazardous Materials. The operator shall submit to the City Manager a copy of the Hazardous Material Business Plan, as reviewed by the Kern County Fire Department, annually. This plan shall include a complete listing and quantities of all chemicals used onsite, and provide the location of where hazardous materials are stored at the site. Hazardous materials shall be stored in an organized and orderly manner, and identified as may be necessary to aid in preventing accidents, and shall be reasonably protected from sources of

external corrosion or damage to the satisfaction of the Fire Chief of the Kern County Fire Department or designee.

#### **17.46.031.06.01 Natural Gas Liquids (NGLs)**

Throughout the operation of any oil and gas site subject to this ordinance, NGLs, as defined by this code, shall be blended with crude oil for shipment by pipeline to the maximum extent allowable within the technical specifications of the pipeline. Oil transportation pipelines and gas processing facilities shall be designed to maximize the blending of NGLs into the crude oil stream.

#### **17.46.031.06.02 Transportation Risk Management and Prevention Program (TRMPP)**

If the transportation routes of any product from oil and gas development in the City passes through or adjacent to any prohibited zoning as listed in Table 1-1, excluding designated truck routes, the operator shall prepare and maintain a Transportation Risk Management and Prevention Program which shall be provided to the City Manager upon request. The TRMPP may contain the following components including, but not limited to:

- A. Provisions for conducting comprehensive audits of carriers biennially to assure satisfactory safety records, driver hiring practices, driver training programs, programs to control drug and alcohol abuse, safety incentive programs, satisfactory vehicle inspection and maintenance procedures, and emergency notification capabilities. The operator shall submit to the City any audits that were conducted each calendar year.
- B. Provisions for allowing only carriers which receive a satisfactory rating under the above audit process to transport oil and gas.
- C. Truck loading procedures for ensuring that the truck driver conducts and documents in writing a visual inspection of the truck before loading and procedures to specify actions to be taken when problems are found during the visual inspection.

#### **17.46.031.06.03 Pipeline Leak Detection**

All new offsite DOT oil pipelines shall use a supervisory control and data acquisition (SCADA-type) monitoring system for leak detection; unless the City Manager determines that there is better available technology that shall be utilized instead. Flow meters used on the SCADA system shall be accurate to within one percent. If a leak is detected the operator shall be responsible for immediately reporting it to the City Manager.

#### **17.46.032 Environmental Resource Management**

Throughout operation of an oil and gas site, the operator shall comply with the following environmental resource management policies:

### 17.46.032.1 General Environmental Program

A. Environmental Quality Assurance Program ("EQAP"). The operator shall comply with all provisions of an environmental quality assurance program that has been accepted by the City Manager and approved as part of a CUP or DA. For oil and gas sites that are existing at the time of the adoption of this ordinance and are not required to have a CUP, completion of the requirements of section 17.46.31.5.B satisfies the requirements of section 17.46.032.1. The following provisions relate to the EQAP:

1. EQAP Requirements. The EQAP shall provide a detailed description of the process, individual steps, and submissions, the operator shall take to assure compliance with all provisions of this Section, including but not limited to, all of the monitoring programs called for by this Section.
2. Annual EQAP Reports. Within sixty days following the end of each calendar year, the operator shall submit to the City Manager an annual EQAP report that reviews the operator's compliance with the provisions of the EQAP over the previous year and addresses such other matters as may be requested by the City Manager. The annual EQAP report shall include the following:
  - i. A complete list and description of any and all instances where the provisions of the EQAP, or any of the monitoring programs referred to therein or in this Section, were not fully and timely complied with, and an analysis how compliance with such provisions shall be improved over the coming year.
  - ii. Results and analyses of all data collection efforts conducted by the operator over the previous year pursuant to the provisions of this Section.
3. EQAP Updates. Proposed updates to the EQAP shall be submitted to the City Manager for approval along with the annual EQAP report. The City Manager shall complete the review of EQAP updates as soon as practicable, and shall either approve the updated EQAP or provide the operator with a list of specific items that must be included in the EQAP prior to approval. The operator shall respond to any request for additional information within thirty days of receiving such request from the City Manager and shall modify the proposed EQAP update consistent with the City Manager's request.

B. Publicly Available Monitoring Data. The operator shall be responsible for making current monitoring results and data available to the public unless otherwise required by law. The up-to-date monitoring data and results shall be maintained by the operator. The monitoring results and data shall include the following information:

1. Air quality data (if required to be collected);
2. Wind direction speed (if required to be collected);
3. Seismic events;

4. Water quality monitoring results for both surface and groundwater monitoring locations at an oil or gas site, or from nearby groundwater monitoring location(s), as authorized by the City Manager;
5. Pipeline testing and monitoring results;
6. Vibration (if required to be collected); and
7. Ambient noise levels (if required to be collected).

#### **17.46.032.2 Air Quality**

The operator shall at all times conduct oil or gas site operations to prevent the unauthorized release, escape, or emission of dangerous, hazardous, harmful and/or noxious gases, vapors, odors, or substances, and shall comply with the following provisions:

- A. **Odor Minimization.** If the site is within 1,000 feet of any prohibited zoning as listed in Table 1-1, or if three (3) odor complaints from three (3) different citizens of the City have been confirmed by the SJVAPCD or the City within any 12-month period, at all times the operator shall comply with the provisions of an odor minimization plan that has been approved by the City Manager. The plan shall provide detailed information about the site and shall address all issues relating to odors from oil or gas operations. Matters addressed within the plan shall include setbacks, signs with contact information, logs of odor complaints, method of controlling odors such as flaring and odor suppressants, and the protocol for handling odor complaints. The odor minimization plan shall be reviewed and updated by the operator on an annual basis to determine if modifications to the plan are required. Any modifications to the odor minimization plan shall be submitted to the City Manager for review and approval. Any operator's submissions to the SJVAPCD shall be provided to the City Manager and shall be consistent with Section 17.46.031.2.
- B. **Portable Flare for Drilling.** If the well is within 1,000 feet of any prohibited zoning as listed in Table 1-1, and either the historical operations of the producing zone have exhibited a gas-oil ratio (scf/bbl) of more than 400 or no data is available on the producing zone targeted, the operator shall have a gas buster and a portable flare, approved by the SJVAPCD, at the oil and gas site and available for immediate use to remove any gas encountered during drilling and abandonment operations from well muds prior to the muds being sent to the shaker table, and to direct such gas to the portable flare for combustion. The portable flare shall record the volume of gas that is burned in the flare. The volume of gas burned in the flare shall be documented in the operations logs. The operator shall notify the Fire Chief of the Kern County Fire Department and the SJVAPCD within forty-eight hours in the event a measurable amount of gas is burned by the flare, and shall specify the volume of gas that was burned in the flare. All other drilling and abandonment operations shall be conducted so that any measurable gas that is encountered can, and will, be retained in the wellbore until the gas buster and portable flare are installed on the rig, after which the gas will be run through the system to flare. The operator shall immediately notify the Fire Chief of the Kern County Fire Department and the SJVAPCD in the event any gas from operation is released into the atmosphere without being directed to and burned in the flare.

- C. Odor Control for Drilling Operations. If the well is within 1,000 feet of any prohibited zoning as listed in Table 1-1 and either the historical operations of the producing zone have exhibited a gas-oil ratio of more than 400 (scf/bbl) or no data is available on the producing zone targeted, the operator shall use an enclosed mud system that directs all mud vapors through an odor capturing system, such as a carbon bed, to prevent odorous pollutants from passing the site boundaries and impacting the area. An odor suppressant spray system may be used on the mud shaker tables for all drilling operations to ensure that no odors from said operations can be detected at the outer boundary line of the oil and gas site.
- D. Closed Systems. The operator shall ensure that all produced water, gas and oil associated with production, processing, and storage, except those used for sampling only, are contained within closed systems at all times and that all pressure relief systems, including tanks, vent to a closed header and flare-type system to prevent emissions of pollutants. This subsection does not apply to existing facilities.
- E. No open pits are allowed.
- F. Off-Road Diesel Construction Equipment Engines. All off road diesel construction equipment shall comply with the following provisions:
1. Utilize California Air Resources Board ("CARB") EPA Certification Tier III or other methods approved by the CARB as meeting or exceeding the Tier III standard.
  2. Utilize a CARB Level 3 diesel catalyst. The catalyst shall be capable of achieving an eighty-five percent reduction for diesel particulate matter. Copies of the CARB verification shall be provided to the City Manager. Said catalysts shall be properly maintained and operational at all times when the off-road diesel construction equipment is in use. Use of an EPA Certification Tier 4i engine will also satisfy this requirement.
- G. Drill Rig Engines. All drilling rig diesel engines shall comply with the following provisions:
1. Utilize CARB/EPA Certification Tier III or better certified engines
  2. Utilize a CARB Level 3 diesel catalyst. The catalyst shall be capable of achieving an 85 percent reduction for diesel particulate matter. Copies of the CARB verification shall be provided to the City Manager. Said catalysts shall be properly maintained and operational at all times when the off-road diesel construction equipment is in use. Use of an EPA Certification Tier 4i engine will also satisfy this requirement.

### **17.46.032.3 Greenhouse Gas Emissions and Energy Efficiency Measures**

- A. The operator of an oil and gas site shall completely offset all emissions from the oil and gas site through participation in the statewide cap and trade program, if applicable, or obtaining credits from another program as approved by the City Manager. On an annual basis, the

operator shall provide the City Manager with documentation of the operator's participation in the program. This section does not apply to existing facilities.

- B. Throughout the oil and gas site life, as equipment is added or replaced, cost-effective energy conservation techniques shall be incorporated into project design.

#### **17.46.032.4 Air Quality Monitoring and Testing Plan**

If the site is within 1,000 feet of any prohibited zoning as listed in Table 1-1, at all times the operator shall comply with the provisions of an air monitoring plan that has been approved by the City Manager. During all well operations, including but not limited to drilling, re-drilling and workover operations, the operator shall continuously monitor for hydrogen sulfide, in a manner that allows for detection of pollutants from all wind directions, as approved by the City Manager. Total hydrocarbon vapors shall be monitored at drilling, workover and processing plant areas as specified in the approved plan. Such monitors shall provide automatic alarms that are triggered by the detection of hydrogen sulfide or total hydrocarbon vapors. The alarms shall be audible and/or visible to the person operating the equipment. Actions to be taken shall be as follows when specified alarm levels are reached:

- A. At a hydrogen sulfide concentration of equal to or greater than five parts per million but less than 10 parts per million, the operator shall immediately investigate the source of the hydrogen sulfide emissions and take prompt corrective action to eliminate the source. The corrective action taken shall be documented in the drilling or workover log. If the concentration is not reduced to less than five parts per million within four hours of the first occurrence of such concentration, the operator shall shut down the drilling or workover operations and equipment in a safe and controlled manner, until the source of the hydrogen sulfide emissions has been eliminated, unless shutdown creates a health and safety hazard.
- B. At a hydrogen sulfide concentration equal to or greater than 10 parts per million, the operator shall promptly shut down the drilling or workover operations and equipment in a safe and controlled manner until the source of the hydrogen sulfide emissions has been eliminated, unless shutdown creates a health and safety hazard. The corrective action taken shall be documented in the drilling or workover log. When an alarm is received, the operator shall promptly notify the Kern County Fire Department, the City Manager, and the SJVAPCD.
- C. At a total hydrocarbon concentration equal to or greater than 500 parts per million but less than 1,000 parts per million, the operator shall immediately investigate the source of the hydrocarbon emissions and take prompt corrective action to eliminate the source. The corrective action taken shall be documented in the drilling log for drilling or workover and in the log for the oil and gas site. If the concentration is not reduced to less than 500 parts per million within four hours of the first occurrence of such concentration, the operator shall shut down the drilling or workover, or site operations in a safe and controlled manner, until the source of the hydrocarbon emissions has been eliminated, unless shutdown creates a health and safety hazard.
- D. At a total hydrocarbon concentration equal to or greater than 1,000 parts per million, the operator shall promptly shut down the drilling or workover or operations in a safe and

controlled manner, until the source of the hydrocarbon emissions has been eliminated, unless shutdown creates a health and safety hazard. The corrective action taken shall be documented in the drilling log for drilling or workover and in the log. When an alarm is received, the operator shall promptly notify the Kern County Fire Department - Health Hazardous Materials Division, and the SJVAPCD.

E. The City Manager may also require additional monitoring at the closest residential receptor periodically for hydrogen sulfide, hydrocarbons or Toxic Air Contaminants. All the monitoring equipment shall keep a record of the levels of total hydrocarbons and hydrogen sulfide detected at each of the monitors, which shall be retained for at least five years. The operator shall, on a quarterly basis, provide a summary of all monitoring events where the hydrogen sulfide concentration was at five parts per million or higher and the total hydrocarbon concentration was at 500 parts per million or higher to the Fire Chief of the Kern County Fire Department. At the request of the Fire Chief, the operator shall make available the retained records from the monitoring equipment.

#### **17.46.032.5 Water Quality**

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The operator shall at all times conduct operations to avoid any adverse impacts to surface and groundwater quality, and shall comply with the following provisions:

##### **17.46.032.5.1 Water Management Plan**

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The operator shall comply with all provisions of a potable water management plan that has been approved by the City Manager. The plan shall include best management practices, water conservation measures, and the use of a drip irrigation system. The water management plan shall be reviewed by the operator every three years to determine if modifications to the plan are required. Any modifications to the water management plan shall be submitted to the City Manager for review and approval. This Section does not apply to existing facilities.

##### **17.46.032.5.2 Stormwater Runoff**

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Construction Storm Water Pollution Prevention Plan ("SWPPP"). The operator shall maintain and implement all provisions of a storm water pollution prevention plan ("SWPPP") that has been submitted to the Regional Water Quality Control Board, if required. The operator shall provide the City Manager with a copy of the SWPPP, and any future modifications, revisions, or alterations thereof, or replacements therefore upon written or verbal request of the City Manager. The SWPPP shall be updated prior to new construction activities as required by the Regional Water Quality Control Board.

##### **17.46.032.5.3 Groundwater Quality**

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A. Prior to any new development, the operator shall prepare and submit a baseline study of all groundwater resources located within and beneath the project site or directly adjacent to the site, to specifically include an analysis of the location and reservoir characteristics of all existing groundwater resources, a chemical analysis of the groundwater, and an overall assessment of the groundwater quality. Nothing in this Section shall authorize the operator to

trespass on private property including private wells; operator shall use reasonable efforts to obtain permission from private wells. Upon determining that the testing data for said well(s) is otherwise not publically available, the operator may make a showing of reasonable efforts to obtain permission to access private wells to the City Manager. Upon such a showing, and a deposit by the operator to cover the costs noticing, the City Manager may send out notices requesting access to the private wells for sampling purposes. If data from nearby private wells is not available, the operator may rely on data from the two closest public wells.

B. The operator shall not inject any water spoils/wastewater derived from the any oil or gas operations into any non-exempt freshwater aquifers.

C. Upon indication that groundwater contamination has occurred and where there is a reasonable probability it could be related to oil and gas activities at the site, within 30 days of request by the City the operator shall deposit funds with the City necessary to retain a third party to prepare a hydrological analysis Groundwater Testing Program, or alternately, provide comparable analyses performed through the Groundwater Ambient Monitoring and Assessment Program or other reliable source as determined by the City Manager. Based on the results of the geo-hydrological analyses, the City Manager has the discretion to require the operator to install one or more groundwater monitoring wells to allow for confirmation that groundwater is not being affected by oil and gas activities. As part of the Groundwater Testing Program the operator is required to provide the City Manager with annual monitoring and testing results.

D. The operator shall be responsible for obtaining a field/site study from DOGGR. If DOGGR does not provide this to the operator then the operator shall submit evidence detailing DOGGR's response to their field/site study request to the City Manager for review.

E. The operator shall provide to the City Manager a copy of the DOGGR Annual Injection Project Review (if the operator is operating a water injection or water disposal well) upon written or verbal request by the City Manager. The operator shall provide to the City Manager the results of any DOGGR required cement casing integrity testing, including radial cement evaluation logs or equivalent upon written or verbal request by the City Manager, before any wells are put into production.

#### **17.46.032.6 Noise Impacts**

All facilities at an oil or gas site located within 600 feet of any prohibited zones, as indicated in Table 1-1, or if noise levels exceed City thresholds as confirmed by the City Manager, operations shall comply with the following provisions:

A. All noise produced from the site shall conform to the noise thresholds specified in Table 4 – Noise Standards For Land Use Compatibility

B. Backup alarms on all vehicles operating within 600 feet of the prohibited zone in Table 1-1, shall be disabled between the hours of 6:00 p.m. and 8:00 a.m. During periods when the backup alarms are disabled, the operator shall employ alternative low-noise methods for ensuring worker safety during vehicle backup, such as the use of spotters.

C. Any and all operations, construction, or activities on the site between the hours of 6:00 p.m. and 8:00 a.m. shall be conducted in conformity with a quiet mode operation plan that has been approved by the City Manager. The quiet mode operation plan shall be reviewed by the operator every year to determine if modifications to the plan are required. Any modifications to the quiet mode drilling plan shall be submitted to the City Manager for review and approval. Operations that are existing at the time this ordinance is adopted are exempt from the quiet mode plan submittal requirements but are required to comply with the quiet mode provisions listed in section 17.46.08.1.J.

D. All noise producing oil and gas site equipment shall be regularly serviced and repaired to minimize increases in pure tones and other noise output over time. The operator shall maintain an equipment service log for all noise-producing equipment.

E. All construction equipment shall be selected for low-noise output. All construction equipment powered by internal combustion engines shall be properly muffled and maintained.

F. Unnecessary idling of construction equipment internal combustion engines is prohibited.

G. The operator shall instruct employees and subcontractors about the noise provisions of this ordinance. The operator shall prominently post quiet mode policies at every oil and gas site if applicable.

H. All oil operations on the oil and gas site shall be conducted in a manner that minimizes vibration. Additionally, vibration levels from oil or gas operations at the site, as measured from the perimeter of the oil or gas site, shall not exceed a velocity of 0.25 mm/s over the frequency range 1 to 100 Hz.

I. For all oil and gas operations if noise levels exceed the levels prescribed in Table 4 – Noise Standards For Land Use Compatibility or the vibration thresholds specified in Subsection (H) of this Section, including those outside of 600 feet as indicated above, within 30 days of request by the City Manager, the operator shall deposit funds for the City Manager to retain an independent qualified acoustical engineer to monitor (1) ambient noise levels and (2) vibration levels in the areas surrounding the oil or gas site as determined necessary by the City Manager. The monitoring shall be conducted unannounced and within a time frame specified by City Manager. Should noise or vibrations from the oil or gas site exceed the noise thresholds specified in Table 4 – Noise Standards for Land Use Compatibility of the Noise Element of the General Plan or the vibration thresholds specified in Subsection (H) of this Section, operation can also be subject to enforcement under this ordinance including notices of violation per Section 17.46.015. No new drilling permits, CUPs, or DAs shall be issued by the City until the operator in consultation with the City Manager identifies the source of the noise or vibration and the operator takes the steps necessary to assure compliance with thresholds specified in this ordinance. The results of all such monitoring shall be promptly posted on the website for the oil or gas site and provided to the City Manager.

### **17.46.33 Standards for Wells**

The operator shall comply with all of the following provisions:

- A. All DOGGR regulations related to drilling, workovers, operations and abandonment operations.
- B. No more than two rigs shall be present within the oil or gas site at any one time.
- C. All derricks and portable rigs and masts used for drilling and workovers shall meet the standards and specifications of the American Petroleum Institute as they presently exist or as may be amended.
- D. All drilling and workover equipment shall be removed from the site within ninety days following the completion of drilling or workover activities unless the equipment is to be used at the site within thirty days for drilling or workover operations.
- E. All drilling sites shall be maintained in a neat and orderly fashion.
- F. Belt guards shall be required over all drive belts on drilling and workover equipment. Guarding shall be as required by Title 8 of the California Code of Regulations, Section 6622, or as may be subsequently amended.
- G. Aboveground pumpjack assemblies are prohibited for new wells located in non-industrial and non-agricultural areas, and new wells in non-industrial areas sites are restricted to the exclusive use of submersible downhole pumping mechanisms for extraction. However, any well already lawfully existing at the time of implementation of this ordinance using a pumpjack assembly may continue to do so. The requirements of this subsection are applicable to all oil and gas sites in all non-industrial zones and non-agricultural zones except where the City Manager determines that the use of submersible downhole pumping mechanisms is infeasible due to technical reasons or other circumstances which would specifically preclude the use of such technology (including field and well specific flowrates and fluid types) or render its use less desirable (such as increased environmental impacts, surface impacts, or other issues related to public health, welfare or safety).

#### **17.46.034 Standards for Pipelines**

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The operator shall comply with the following provisions related to pipelines throughout operation of an oil or gas site:

##### **17.46.034.1 Pipeline Installations and Use**

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- A. Pipelines shall be used to transport oil and gas off-site to promote traffic safety and air quality, unless it can be demonstrated to the satisfaction of the City Manager that a pipeline is not reasonably feasible (which may include proximity of pipelines to prohibited uses, production volumes resulting in less than one truck delivery trip per week, etc.) and that transportation of products do not pass through or adjacent to prohibited areas as defined in Table 1-1, except on designated truck routes. Trucking on a temporary basis is allowed with approval of the City Manager.

- B. The use of a pipeline for transporting crude oil or gas may be a condition of approval for expansion of existing facilities or construction of new facilities unless it can be demonstrated to the satisfaction of the City Manger that a pipeline is infeasible and that transportation of products do not pass through or adjacent to prohibited areas as defined in Table 1-1, except on designated truck routes.
- C. New pipeline corridors shall be consolidated with existing pipeline or electrical transmission corridors where feasible, unless there are overriding technical constraints or significant social, aesthetic, environmental or economic reasons not to do so, as approved by the City Manager.
- D. New pipelines shall be routed to avoid residential, recreational areas, and schools if possible. Pipeline routing through recreational, commercial or special use zones shall be done in a manner that minimizes the impacts of potential spills by considering spill volumes, durations, and projected spill paths. New pipeline segments shall be equipped with automatic shutoff valves, or suitable alternatives approved by the City Manager, so that each segment will be isolated in the event of a break.
- E. Upon completion of any new pipeline construction, the site shall be restored to the approximate previous grade and condition. All sites previously covered with vegetation shall be reseeded with the same or recovered with the previously removed vegetative materials, and shall include other measures as deemed necessary to prevent erosion until the vegetation can become established, and to promote visual and environmental quality, unless there are approved development plans for the site, in which case re-vegetation would not be necessary.
- F. Gas from wells shall be piped to centralized collection and processing facilities, rather than being flared, to preserve energy resources and air quality, and to reduce fire hazards and light sources, unless the SJVAPCD approves the flaring of gas during the temporary operation of an well. Oil shall also be piped to centralized collection and processing facilities, in order to minimize land use conflicts and environmental degradation, and to promote visual quality.

#### **17.46.034.2 Pipeline Inspection, Monitoring, Testing and Maintenance**

- A. Operators shall visually inspect all aboveground pipelines for leaks and corrosion on a monthly basis.
- B. The operator shall install a leak detection system for all offsite DOT regulated oil and gas pipelines. The leak detection system for oil shall include pressure and flow meters, flow balancing, supervisor control and data acquisition system, and a computer alarm and communication system in the event of a suspected leak. The leak detection system for gas pipelines shall include pressure sensors. The accuracy shall be defined once the system is established and tested and approved by the City Manager. The City Manager may deviate from these requirements to address system specific operating requirements.
- C. Pipe clamps, wooden plugs or screw-in plugs shall not be used for any permanent repair approved by the City Manager.

D. Pipeline abandonment procedures shall be submitted to the City Manager for review and approval prior to any pipeline abandonment.

E. Copies of pipeline integrity test results required by any statute or regulation shall be maintained in a local office of the operator and posted online on the same website that provides the monitoring results required in Section 17.46.032.1 for five years and shall also be made available to the City, upon request. The City shall be promptly notified in writing by the operator of any pipeline taken out of service due to a test failure.

#### **17.46.035 Temporary Buildings**

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During full production of an oil or gas site no temporary buildings are allowed to be constructed or maintained anywhere at the site.

#### **17.46.036 [Reserved]**

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#### **17.46.037 [Reserved]**

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### **Part 3. Development Standards for Site Abandonment and Redevelopment**

#### **17.46.038 Development Standards**

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The following development standards shall be applied to all redevelopment projects within the footprint of an oil or gas site, including any building permit involving a current or former oil or gas site:

- A. Any demolition, abandonment, re-abandonment, or restoration shall be adequately monitored by a qualified individual, funded by the permittee or operator and retained by the City, to ensure compliance with those conditions designed to mitigate anticipated significant adverse effects on the environment and to provide recommendations in instances where effects were not anticipated or mitigated by the conditions imposed on the permit or entitlement. Pre-restoration and post-restoration surveys of sensitive biological resources shall be employed as appropriate to measure compliance.
- B. The site shall be assessed for previously unidentified contamination.
  - 1. The permittee shall ensure that any discovery of contamination shall be reported to the City Manager and the Kern County Fire Department.
- C. The permittee shall diligently seek all necessary permit approvals, including revisions to an entitlement or the demolition. Abandonment, re-abandonment and restoration permit, if any are required, in order to remediate the contamination.
- D. The permittee shall be responsible for any cost to remediate the contamination on the site. This ordinance is not intended to limit the permittee or operator's rights under the law to seek compensation from parties who have contributed to contamination of the site.

- E. The permittee shall ensure that appropriate notification has been recorded with the County Recorder to describe the presence and location of any contamination left in place under the authority of the Kern County Fire Department.
- F. All abandoned or re-abandoned wells shall be leak tested subject to the following requirements:
1. All abandoned wells located within on the oil and gas site must be tested for gas leakage and visually inspected for oil leakage. The operator shall apply to the City Manager for an inspection permit to witness the well testing. The leak test shall be completed utilizing a gas detection meter approved in advance by the City Manager, and shall be conducted by a state licensed geotechnical or civil engineer or a state registered environmental assessor, Class II, or the City Manager, or a designee, as determined necessary by the City Manager.
  2. The permittee shall prepare and submit a methane assessment report for each tested well prepared per the City of LA Department of Building and Safety "Site Testing Standards for Methane" (P/BC 2014-101), as may be amended, or equivalent standards as may be approved by the City Manager. The operator may use the City's consultant to observe the leak test or be responsible for City consultant test fees.
  3. The submitted methane assessment report shall be prepared by a state licensed geotechnical or civil engineer. A well shall be considered leaking if the leak test report indicates the meter read is greater than Level II as defined by the City of LA Department of Building and Safety "Site Testing Standards for Methane", which is set at 1,000 parts per million.
  4. An approved methane assessment report is valid for 24 months from approval by the City Manager. If an abandonment permit has not been issued by this time, retesting shall be required. Following all testing and inspection, the test area shall be returned to its previous state to the satisfaction of the City building official.
  5. If there has not been a change to the well and no indicia of a leak, no leak test is required if a valid methane assessment report, accepted by the City Manager and showing no leaks in excess of the leak limit, has been completed for an abandoned or re-abandoned well.
  6. If evidence is provided that a well has been abandoned or re-abandoned per DOGGR standards, and if evidence is provided to the City Manager that the likelihood of methane release is low given local field conditions, etc., the City Manager may waive a methane assessment report if detection at the site is less than 1,000 parts per million,
- G. Prior to any development or redevelopment of a current or former oil or gas site, or prior to abandoning or re-abandoning any well, the operator shall:

1. Obtain permit(s) and abandon all idled wells consistent with Section 17.46.011.3 and provide a certificate of compliance to show that the wells and/or sites are abandoned consistent with standards recommended or required by DOGGR to the satisfaction of the City Manager. Permits shall not be required if the idled well is scheduled to produce oil or natural gas, or to be used for injection, as part of the development or redevelopment of a former oil or gas site and if said production or injection occurs within 5 years of issuance of a CUP or DA under this ordinance.
2. Obtain permit(s) consistent with Section 17.46.011.3 to re-abandon all previously abandoned wells that do not meet standards recommended or required by DOGGR for abandonment in effect at the time of re-abandonment, and provide a certificate of compliance that the wells and/or sites are re-abandoned consistent with current conditions and standards recommended or required by DOGGR to the satisfaction of the City Manager. Permits shall not be required if re-entry of an abandoned well is scheduled to occur within 5 years of issuance of a CUP or DA under this ordinance, and if re-entry actually occurs within that period of time.
3. In lieu of Subsections (1) and (2), above, obtain a deferral covenant from the City requiring abandonment or re-abandonment to standards recommended or required by DOGGR, or equivalent standards as determined by the City Manager, at a specific time or upon the occurrence of a future event. The deferral covenant shall be approved as to form by the City Attorney, contain a provision to indemnify and hold harmless the City for damages related to wells not abandoned or re-abandoned consistent with standards recommended or required by DOGGR, and shall be recorded by the operator with the County Clerk prior to approval. In addition to a deferral covenant, the City Manager may require a bond or deposit to cover the estimated cost of future abandonment.

H. Other Development Standards:

1. Permanent structures, or other construction that would be difficult or expensive to demolish, shall not be located on top of any abandoned oil or gas well such that access for a well abandonment rig or other well maintenance equipment is constrained or inhibited from access to the well in the event of a future oil or gas leak, unless it can be demonstrated to the satisfaction of the City Manager that it is not feasible or, within an industrial zone, the developer proposing such construction provides written assurances to the satisfaction of the City Manager, to be included in the recorded declaration of covenant prescribed in Subsection 3, below, that they are aware of and accept the risks associated with such construction. Previous improvements, such as landscaping and porous parking areas with adequate landscape buffers, may be located on top of an abandoned or re-abandoned well which has passed the leak test consistent with this Section.
2. Redevelopment of a Former Oil and Gas Site: If redevelopment of an oil and gas site for use other than an oil and gas operation is proposed at a completely or partially abandoned oil or gas site, the applicant shall submit an application to be processed as a Conditional Use Permit consistent for that use under this Code. Said application

shall include the content required by Section 17.46.11.3.2, and the Conditional Use Permit shall comply with the development standards of Section 17.46.038.

3. Prior to issuance of a permit or entitlement for redevelopment of a former oil and gas site, the owner shall record a declaration of a covenant, in a form subject to the review and approval of the City Attorney, putting future owners and occupants on notice of the following: the existence of abandoned oil wells on the site; that the wells within the site have been leak tested and found not to leak; description of any methane mitigation measures employed; a statement as to whether or not access to these wells has been provided to address the fact that they may leak in the future causing potential harm; acknowledgment that the state may order the re-abandonment of any well should it leak in the future; acknowledgment that the state does not recommend building over wells; and releasing and indemnifying the City for issuing any project permit or entitlement for the project, along with notice of the assurances, if any, required by Subsection 1, above. The covenant shall run with the land, apply to future owners, and may only be released by the City.

DRAFT

**NOTICE OF PUBLIC HEARING**  
**Arvin Municipal Code Amendment – Chapter 17.46 Oil and Gas Production**  
**Zoning Ordinance Text Amendment 2017-04**

Notice is hereby given that the Planning Commission of the City of Arvin, California, will conduct a public hearing, at which time you may be present and be heard to consider the following:

- Recommendation to the City Council regarding Code Text Amendment to Title 17-Zoning, Chapter 17.46 Oil and Gas Production - Repealing existing chapter 17.46 Oil and Gas Production and adoption of a new Chapter 17.46 – Oil and Gas Production (Zoning Ordinance Text Amendment 2017-04); and
- Recommendation of Adoption of Categorical Exemption under CEQA Section 15308 – Actions by regulatory agencies for protection of natural resources, for the proposed text amendments.

**Arvin Planning Commission Hearing Information**

Date: June 12, 2018

Time: 6:00 PM or as the Agenda permits

Place: City of Arvin Council Chambers

200 Campus Drive, Arvin, CA 93203

The City is proposing a comprehensive update of Title 17.48 Oil and Gas Production due to the age of the existing ordinance, 1965, and at that time the State Division of Oil and Gas was also actively regulating oil production, as well as the site redevelopment process, such that there was no role for a City inspection process. The city's population has grown from 5,000 plus to over 20,000 plus and lands have been developed with residential units and commercial structures where once open fields existed. The proposed oil code amendments deal with not only the changing character of Arvin, but changes in the science and technology of oil production in the last half century. Important regulations have been developed in other jurisdictions to address issues such as decommissioning of oil facilities once they have reached the end of their economic life and appropriate clean up and remediation to allow for appropriate future use of the land. In addition, regulations have evolved to address the potential change of ownership that could occur at oil fields and the importance of addressing such changes to protect the local jurisdictions in matters of financial responsibility and insurance.

Additional information on the proposed project, including a copy of the proposed environmental findings as a hard copy or in electronic format, may be obtained from the City of Arvin, City Hall, 200 Campus Drive, Arvin, California, 93203, or the City's web site at [www.arvin.org](http://www.arvin.org).

All persons interested in this topic who have questions, would like to provide feedback, or ask questions are invited to attend. If you challenge the approval or denial of these matters in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council, at or prior to, the public hearing. Address any communications or comments regarding the project to Jake Raper, Community Development Director, City of Arvin, Community Development Department, 141 Plumtree Drive, Arvin, CA 93203, (661) 854-2822, [jraper@arvin.org](mailto:jraper@arvin.org).

Cecilia Vela, City Clerk

Published: June 01, 2018, Bakersfield Californian



# CITY OF ARVIN

## OFFICE OF MAYOR JOSE GURROLA

**MAYOR**

Jose Gurrola

**MAYOR PRO TEM**

Jazmin Robles

**COUNCIL MEMBERS**Erika Madrigal  
Gabriela Martinez  
Jess Ortiz**CITY MANAGER**

Alfonso Noyola, ICMA-CM

**FOR IMMEDIATE RELEASE:**

June 5, 2018

**Contact:**

Mayor Jose Gurrola , City of Arvin

[jgurrola@arvin.org](mailto:jgurrola@arvin.org)

(661) 487 - 4010

## Arvin Planning Commission to Hear Update of Oil and Gas Code

**ARVIN, CALIFORNIA,** —At its regularly scheduled June 12, 2018 meeting, the Arvin Planning Commission will hear an ordinance updating the Oil and Gas code.

A copy of the draft ordinance can be found on the City of Arvin website at the following link: <http://www.arvin.org/wp-content/uploads/2018/06/Oil-and-Gas-Code-Ordinance-CC-Update.pdf>

A copy of the agenda can be found on the City of Arvin website at the following link: <https://www.arvin.org/government/clerk/meeting-agendas-minutes/planning-commission/>

If approved by the Arvin Planning Commission, the ordinance, along with the Planning Commission's recommendation, will be heard by the Arvin City Council in July 2018.

The Arvin Planning Commission meets on the second Tuesday of each month. The meetings are held in the Council Chambers at Arvin City Hall, 200 Campus Dr. Arvin, Ca 93203.

###

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

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



RDA	Meeting Date: <u>Nov 17, 2017</u>	2.A.b
<u>Reg. mg.</u> Council	Agenda Item: <u>4B</u>	
Planning	Provided By: <u>Kern EDC</u>	

November 17, 2017

Arvin City Council  
City Hall  
200 Campus Drive  
Arvin, CA 93203

Re: Consideration of an Oil & Gas Ordinance for Regulation of Petroleum Facilities and Operations

Dear Mayor and Councilmembers:

On behalf of the Kern Economic Development Corporation (Kern EDC), we respectfully request that the Council work collaboratively with industry representatives in advance of the planned adoption of a new Oil & Gas Ordinance for the City of Arvin.

While we understand that decades have passed since the current ordinance was approved, creating a need for an updated policy, we ask that you consider the significant economic impact of the oil and gas industry in Kern County region (please refer to the attached *Economic Impacts of the Kern County Oil & Gas Industry* factsheet). In 2015, the oil and gas sector accounted for almost 22 percent of our county's GDP (approximately \$14 billion in value), and the industry was responsible for over 40,000 jobs (representing \$3.8 billion per year in wage income). In addition, over \$940 million in state and local tax revenues were generated by O&G operations that helped pay for our roads, health care, public safety and schools (representing one-third of all the public services in Kern County).

Currently, California operators must adhere to the most stringent regulations and oversight in the country. The recently-approved Kern County Zoning Ordinance, which was the result of a two-year concerted process between County planning staff, consultants and oil and gas companies, contains "best practice" provisions for local permitting of oil and gas activities that has created a positive and lasting impact on our economy while continuing to protect our environment.

Thank you for your time and consideration.

Sincerely,

Richard D. Chapman  
President & CEO



# ECONOMIC IMPACTS

## Kern County Oil & Gas Industry



**\$79,655**  
Average Annual Wage in O&G  
vs.  
**\$45,508**  
Kern County Annual Average

O&G Jobs Contribute:  
**\$14 billion** to Kern's economy  
**21.6%** of Kern's total GDP



**7** of the Top 10  
Kern taxpayers are  
energy companies

**Oil**  
Kern County **No. 2**  
oil-producing county in  
the nation

**21,000**  
# of Kern residents directly  
employed by O&G industry  
**40,000**  
# of Kern residents employed  
thanks to indirect & induced  
impacts of O&G industry

**78%**  
of California's active wells  
are located in Kern County

Kern County produces over  
367,000 barrels of oil per day,  
and over 134 million barrels  
of oil annually

**\$1 million**  
Oil & Gas  
output creates:  
**+1.80 Direct Jobs**  
**+2.18 Indirect Jobs**  
**+1.83 Induced Jobs**  
**Total 5.8 Jobs**

**Kern County produces:**



### Petroleum in Everyday Life!



Sources: WSPA, LAEDC, 2017 Kern EDC Market Overview, HartDollar.com

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

**Cecilia Vela**

---

**From:** Cheryl Scott <cheryl@kedc.com>  
**Sent:** Monday, November 20, 2017 11:23 AM  
**To:** Cecilia Vela  
**Cc:** Richard Chapman  
**Subject:** Official KEDC Letter RE: Oil & Gas Ordinance  
**Attachments:** KEDC\_Oil and Gas Ordinance Hearing\_Nov 21 2017-2.docx; O&G Flyer Updated 8-28.jpg

Good morning, Cecilia,

In advance of the Arvin City Council's consideration of the proposed Oil & Gas Ordinance, I am attaching a letter plus a one-page Oil & Gas Economic Impact Fact Sheet on behalf of Kern Economic Development Corporation.

We would appreciate it if you would make these attachments available to the Mayor and the City Council Members, as well as entering them into the formal record for meeting comments since we will be unable to attend tomorrow evening's meeting.

Thank you so much!

Cheryl

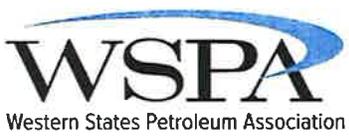
***Cheryl M. Scott***

Executive Director, Kern Economic Development Foundation  
 VP, Kern Economic Development Corporation  
 2700 "M" Street, Suite 200  
 Bakersfield, CA 93301  
 (661) 862-5162



RDA Meeting Date: Nov 21 2017  
 Reg. mtg Council Agenda Item: 40 (PPP)  
 Planning Provided By: Kern Citizens for Energy and Varibi other Agencies.

2.A.b



November 21, 2017

To: City of Arvin  
 ATTN: Honorable Mayor Jose Gurrola  
 200 Campus Drive  
 Arvin, CA 93203

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

Re: Proposed Arvin Municipal Code Amendment 2017-04, Oil & Gas Production Regulation of Petroleum Facilities

Mayor Gurrola,

The undersigned persons and organizations, representing thousands of employees, taxpayers and voters across Kern County, appreciate the opportunity to comment on the issue of a proposed oil & gas ordinance in Arvin, CA.

Arvin and its citizens have a long and proud historical connection to the oil and gas industry and these ties mean billions of dollars in tax revenues for Kern County communities and tens of thousands of local jobs. These jobs ensure the livelihoods of many families in our community, and the impacts of unneeded regulations and virtual bans will affect these families first.

Dozens of regulatory agencies at the local, state and federal level already ensure the health & safety of this industry and local companies spend millions of dollars annually to comply and make certain that their employees, the public and the environment are properly protected. In fact, the petroleum industry sets the standard for best practices in environmental health and safety.

The economic challenges that Arvin currently faces make it more important than ever to encourage business and industry in the city, so that many more people might have jobs and future opportunities. We strongly urge the City of Arvin to develop a sustainable economic plan, one that does not involve banning an industry that is so vital to not only Arvin, but the entire county of Kern. It is unsettling to see any industry have such tight and onerous restrictions without sufficient evidence as to the environmental benefits that would result due to those restrictions. It is also very discouraging for any industry to want to do business in a community that would put a virtual ban on any sort of economic development. Especially without notifying the very industry it is impacting.

For these reasons, we urge you and your fellow councilmembers to reject this ordinance and work collaboratively to encourage more business and job creation in the city of Arvin.

Sincerely,

Kern Citizens for Energy  
Associated Builders and Contractors  
Kern County Hispanic Chamber of Commerce  
Greater Bakersfield Chamber of Commerce  
Kern Economic Development Corporation  
Kern Taxpayers Association  
Kern Law Enforcement Association  
Kern County Farm Bureau

Kern Citizens for Sustainable Government  
Bakersfield Association of Realtors  
Homebuilders Association of Kern County  
League of United Latin American Citizens Council 3272  
Western States Petroleum Association  
Kern Energy Foundation  
California Independent Petroleum Association  
Independent Oil Producers Agency  
National Association of Royalty Owners

CC: Councilmember Erika Madrigal  
Councilmember Gabriela Martinez  
Councilmember Jess Ortiz  
Councilmember Jazmin Robles  
City Manager Alfonso Noyola  
KGET TV 17  
KBAK/KBFX  
KERO - TV  
KUZZ AM/FM  
Bakersfield Californian  
KNZR 1560 AM 97.7 FM  
KERN Radio



**California Independent Petroleum Association**  
1001 K Street, 6<sup>th</sup> Floor  
Sacramento, CA 95814  
Phone: (916) 447-1177  
Fax: (916) 447-1144

November 20, 2017

The Honorable Jose Gurrola Jr.  
Mayor, City of Arvin  
200 Campus Drive  
Arvin, CA 93203

**RE: Proposed Arvin Municipal Code Amendment 2017-04, Oil and Gas Production Regulation of Petroleum Facilities**

Dear Mayor Gurrola:

The California Independent Petroleum Association (CIPA) wishes to express serious policy and legal concerns regarding the City of Arvin's proposed Municipal Code Amendment 2017-04, Oil and Gas Production Regulation of Petroleum Facilities. CIPA is a non-profit, non-partisan trade association representing approximately 500 independent oil and natural gas producers, royalty owners, and service and supply companies throughout the state of California, including the City of Arvin.

The proposed amendment under consideration by the City is flawed and stands to negatively impact oil and gas operators that have existed in the City of Arvin for many years. The proposed amendment effectively bans future oil and gas production in the City of Arvin, duplicates oversight already provided by local, regional and state agencies and does absolutely nothing to assist the City in addressing budget shortfalls. Absent provable benefits, there is no reason to advance the poorly crafted municipal code amendment before the City Council.

Unfortunately, it is also our understanding the City of Arvin never contacted oil and gas operators within the City and never contacted industry representatives in preparing the proposed amendment now under consideration by the City Council. This is extremely problematic and, in the opinion of CIPA, an abuse of the public process as the industry should have been included in its development from the beginning in an open and fair manner. As drafted, the proposed amendment includes significant provisions and requirements that would create unnecessary, duplicative and expensive burdens on oil and gas operators, while resulting in no real benefits to the residents of Arvin. These changes and the impacts on operators should have been addressed

during a development process that included industry stakeholders, thorough environmental review and an analysis of the economic impacts.

CIPA strongly urges there be no action taken on this item and looks forward to continuing a dialogue on how to best support our local oil and gas industry and the prosperity of the City of Arvin. Should you have any questions or wish to discuss this letter further, please do not hesitate to contact me.

Sincerely,



Rock Zierman  
Chief Executive Officer  
California Independent Petroleum Association

CC: Councilmember Erika Madrigal  
Councilmember Gabriela Martinez  
Councilmember Jess Ortiz  
Councilmember Jazmin Robles  
City Manager Alfonso Noyola

**Cecilia Vela**

---

**From:** Willie Rivera <willie@cipa.org>  
**Sent:** Tuesday, November 21, 2017 3:49 PM  
**To:** Cecilia Vela  
**Subject:** Comment Letter re: Proposed Arvin Municipal Code Amendment 2017-04  
**Attachments:** City of Arvin Ordinance Letter.pdf

Attached please find a comment letter on behalf of the California Independent Petroleum Association (CIPA).

Thanks,  
Willie

Willie Rivera  
Director of Regulatory Affairs  
California Independent Petroleum Association  
(661) 477-0401

STATE CAPITOL  
P.O. BOX 942849  
SACRAMENTO, CA 94249-0032  
(916) 319-2032  
FAX (916) 319-2132

# Assembly California Legislature



**RUDY SALAS, JR.**  
ASSEMBLYMEMBER, THIRTY-SECOND DISTRICT

**COMMITTEES**  
AGRICULTURE  
GOVERNMENTAL ORGANIZATION  
RULES  
VETERANS AFFAIRS  
WATER, PARKS AND WILDLIFE  
**SELECT COMMITTEES**  
CALIFORNIA-MEXICO BI-NATIONAL  
AFFAIRS  
LOCAL PUBLIC SAFETY AND  
EMERGENCY PREPAREDNESS  
PORTS AND GOODS MOVEMENT  
JOINT COMMITTEE ON RULES

November 21, 2017

The Honorable Jose Gurrola  
Mayor, City of Arvin  
200 Campus Drive  
Arvin, CA 93203

RDA Meeting Date: Nov. 21, 2017  
*Reg. Mtg.*  
Council Agenda Item: 4B  
Planning Provided By: Assemblymember Rudy Salas office

**RE: Proposed Arvin Municipal Code Amendment 2017-04, Oil and Gas Production Regulation of Petroleum Facilities**

Dear Mayor Gurrola:

I respectfully request that the Arvin City Council consider deferring action on the proposed ordinance included in the City Council Meeting Agenda for Tuesday, November 21, 2017 to impose new regulations and restrictions on oil and gas operators until a time in which the impacts can be fully evaluated and the financial impacts to the city and county can be determined from the adoption of the proposed ordinance.

Deferring action on the proposed ordinance would allow for a more robust stakeholder process, specifically input from oil and gas operators that were not included during the process for the drafting of this ordinance nor were they made aware of this draft ordinance until recently. The thousands of jobs created by the oil and gas industry ensure the livelihoods of many families in our community. I believe a compromise can be reached that protects these jobs and ensures the continued safety of all residents.

The economic challenges that Arvin currently faces make it critical more than ever to encourage economic growth within the city that provides for job opportunities and an increased tax base that will allow the city to continue serving the residents of Arvin.

I urge you to defer action on the proposed oil and gas ordinance to allow for additional review and evaluation of the new regulations and their impact it will have on our community.

Sincerely,

RUDY SALAS  
Member of the Assembly  
32<sup>nd</sup> District

CC: Councilmember Jazmin Robles  
Councilmember Erika Madrigal  
Councilmember Gabriela Martinez  
Councilmember Jess Ortiz  
City Manager Alfonso Noyal

DISTRICT OFFICE: KERN COUNTY DISTRICT 1430 TRUXTUN AVENUE, SUITE 803 • BAKERSFIELD, CA 93301 • (661) 335-0302 • FAX (661) 335-0361  
KINGS COUNTY DISTRICT 113 COURT STREET, SUITE 201 • HANFORD, CA 93230 • (559) 585-7170 • FAX (559) 585-7175

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

**Cecilia Vela**

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**From:** Mata, Celia <Celia.Mata@asm.ca.gov>  
**Sent:** Tuesday, November 21, 2017 10:47 AM  
**To:** Cecilia Vela  
**Cc:** Lopez, Joseph (AD32)  
**Subject:** Arvin Oil & Gas Regs ltr  
**Attachments:** Arvin Oil and Gas Regs 11.21.17b.pdf

Hi Cecilia-

Please find the attached letter for today's council meeting regarding the proposed ordinance on oil and gas regulations.

Joseph Lopez from the Assemblymember's district office will be attending the meeting.

Let me know if you have any questions.

Thank you,

*Celia Mata*

*Legislative Director  
Assemblymember Rudy Salas  
State Capitol, Room 4016  
Phone: 916-319-2032  
Direct: 916-319-2585  
Fax: 916-319-2132  
[Celia.mata@asm.ca.gov](mailto:Celia.mata@asm.ca.gov)*

**DROVE HER  
CAR 400 MILES**

- Nov. 21, 2017  
- Regular Aminty  
Council meetings

- Provided By:  
Cesar Aguirre  
Central California  
Environmental  
Justice Network

- Agenda Item: 1  
- 13 pages

**TO JOIN A PROTEST AGAINST  
THE OIL INDUSTRY.**

imgflip.com



Kern Energy @KernEnergy

5d

Here's an #OldiebutGoodie...don't be a  
HIPPYcite. Get the facts. #KernEnergy  
#IAmtheOilIndustry #FactsnotFiction #TBT





Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code

PCR

on Lease, Kern County, CA (May 2017)



**FLIR**

N 35°12.497' W 118°50.415'

Dist = 3.3 Trefl = 68.0 z = 0.95 17-05-10 2:34 PM

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code

Sun Mountain  
Oil



Home News Sport Weather Shop Earth Travel

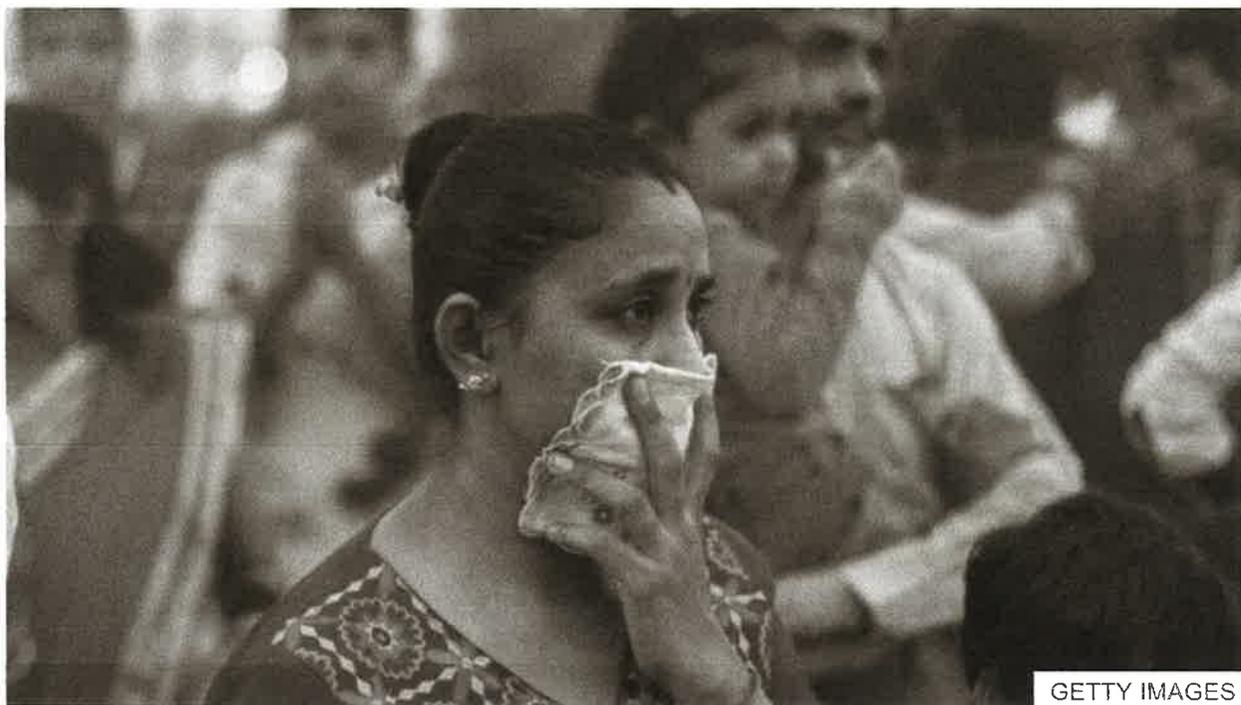
AC

Health

Pollution linked to one in six deaths

By Katie Silver
Health reporter, BBC News

20 October 2017 Health



Pollution has been linked to nine million deaths worldwide in 2015, a report in The Lancet has found.

Almost all of these deaths occurred in low- and middle-income countries, where pollution could account for up to a quarter of deaths. Bangladesh and Somalia were the worst affected.

Air pollution had the biggest impact, accounting for two-thirds of deaths from pollution.

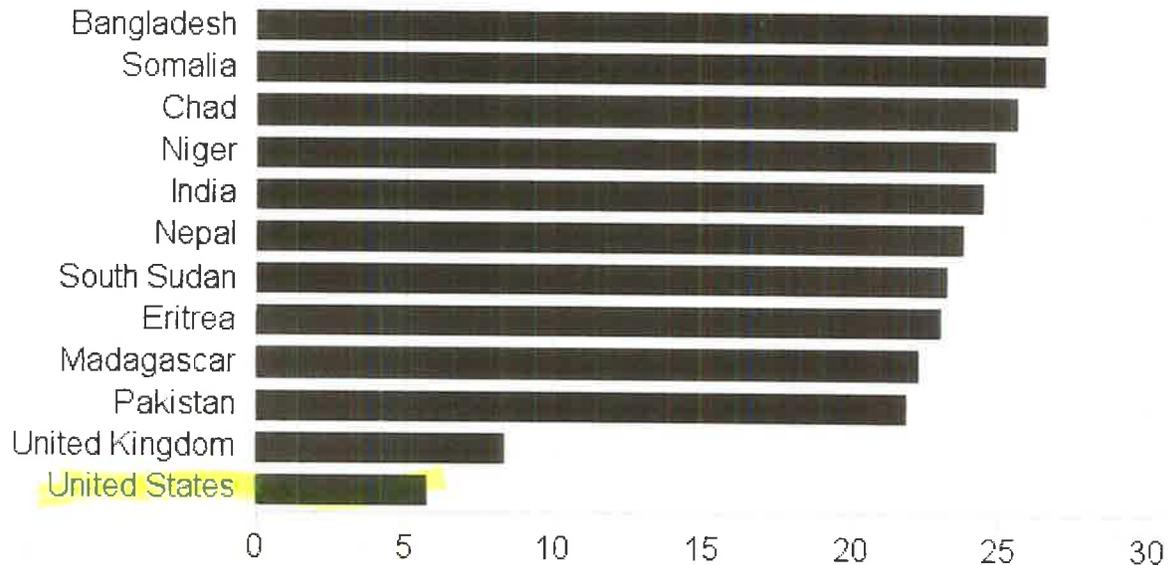
Brunei and Sweden had the lowest numbers of pollution-related deaths.

Most of these deaths were caused by non-infectious diseases linked to pollution, such as heart disease, stroke and lung cancer.

## Where has the highest level of pollution deaths?

### Top 10 countries plus UK & USA for reference, 2015

■ Proportion of deaths (%)



Source: The Lancet Commission on Pollution and Health

BBC

"Pollution is much more than an environmental challenge - it is a profound and pervasive threat that affects many aspects of human health and wellbeing," said the study's author, Prof Philip Landrigan, of the Icahn School of Medicine, at Mount Sinai in New York.

The biggest risk factor, air pollution, contributed to 6.5 million premature deaths. This included pollution from outdoor sources, such as gases and particulate matter in the air, and in households, from burning wood or charcoal indoors.

The next largest risk factor, water pollution, accounted for 1.8 million deaths, while pollution in the workplace was linked to 800,000 deaths globally.

About 92% of these deaths occurred in poorer countries, with the greatest impact felt in places undergoing rapid economic development such as India, which had the fifth highest level of pollution deaths, and China, which had the 16th.

## UK faring worse

In the UK, about 8% or 50,000 deaths are estimated to be linked to pollution. This puts the UK in 55th place out of the 188 countries measured, placing them behind the US and many European countries, including Germany, France, Spain, Italy, Denmark.

Dr Penny Woods, of the British Lung Foundation, said: "Air pollution is reaching crisis point worldwide, and the UK is faring worse than many countries in Western Europe and the US.

"A contributing factor could be our dependence on diesel vehicles, notorious for pumping out a higher amount of poisonous particles and gases.

"These hit people with a lung condition, children and the elderly hardest."

■ **How bad is air pollution in the UK?**

The Department for Environment, Food and Rural Affairs (Defra) said a £3 billion plan had been put in place to improve air quality and reduce harmful emissions.

A spokesman said: "We will also end the sale of new diesel and petrol cars by 2040, and next year we will publish a comprehensive Clean Air Strategy which will set out further steps to tackle air pollution."

Mike Hawes from the Society of Motor Manufacturers and Traders said the latest diesel cars were the cleanest in history. He said the biggest change to air quality would be achieved "by encouraging the uptake of the latest, lowest emission technologies and ensuring road transport can move smoothly".

In the United States, more than 5.8% - or 155,000 - deaths could be linked to pollution.

The authors said air pollution affected the poor disproportionately, including those in poor countries as well as poor people in wealthy countries.

Study author Karti Sandilya, from Pure Earth, a non-governmental organisation, said: "Pollution, poverty, poor health, and social injustice are deeply intertwined.

"Pollution threatens fundamental human rights, such as the right to life, health, wellbeing, safe work, as well as protections of children and the most vulnerable."

The results were the product of a two-year project. The authors have published an **interactive map** illustrating their data.

20 November 2017

Gustavo Aguirre Jr, Project Coordinator  
 Central California Environmental Justice Network (CCEJN)  
 930 Truxtun Ave Ste. #113  
 Bakersfield, CA 93301

***RE: Public Health and Environmental Significance of VOC levels in Ambient Air at the Intersection of Towner Drive & Nelson Court in Arvin, California***

Dear Mr. Aguirre,

The Central California Environmental Justice Network (CCEJN) asked that I provide an expert opinion about the public health and environmental significance of levels of volatile organic compounds (VOCs) in a sample of ambient air that was collected at the intersection of Towner Drive & Nelson Court in Arvin, California, at around 7:00 p.m. of October 30<sup>th</sup>, 2017. In my opinion, if the levels of VOCs in the sample reflect generally prevailing conditions, then they represent exposure of residents to levels of benzene that pose an unacceptable risk of cancer and decreased peripheral blood cell counts. The source of such unsafe levels of benzene is most likely a leakage of methane and natural gas liquids from an oil & gas storage facility approximately 150 feet southeast of the residential area.

Methane and natural gas liquids (ethane, propane, butane, isobutane and pentane) are a family of small-chain volatile hydrocarbons found in prevalent commercial fuels. The sample of ambient air that was collected at the intersection of Towner Drive & Nelson Court in Arvin, California, at around 7:00 p.m. of October 30<sup>th</sup>, 2017, contained the following levels of methane and natural gas liquids:<sup>1</sup>

<u>Compound</u>	<u>Concentration <math>\mu\text{g}/\text{m}^3</math></u>
Methane	21900
Propane	1,500
Isobutane	1100
n-Butane	1400
2-Methylbutane	750
n-Pentane	480

These levels of methane and natural gas liquids vastly exceed naturally-occurring levels. For example, present-day levels of methane, a well-studied greenhouse gas, are only 1270  $\mu\text{g}/\text{m}^3$  (1.8 parts per million) in ambient air unaffected by a source of VOC pollution.

<sup>1</sup> Ethane levels were not quantified but are assumed to be present at a concentration intermediate that of methane and propane.

Benzene is a volatile aromatic hydrocarbon associated with methane and natural gas liquids that are commercial fuels. Benzene is a known human carcinogen. Exposure to benzene is also known to cause non-cancer health effects, including adverse impacts to the human immune systems and the formation of blood cells. The California Office of Environmental Health Hazard Assessment (OEHHA) has determined that the lifetime tumor risk associated with continuous inhalation of benzene is 29 per one million for each incremental increase of  $1 \mu\text{g}/\text{m}^3$ .<sup>2</sup> The California Office of Environmental Health Hazard Assessment has also established a safe annual average concentration of benzene in ambient air of  $3 \mu\text{g}/\text{m}^3$  to prevent decreased peripheral blood counts in exposed individuals.<sup>3</sup>

The level of benzene collected at the intersection of Towner Drive & Nelson Court in Arvin, California, at around 7:00 p.m. of October 30<sup>th</sup>, 2017, was  $15 \mu\text{g}/\text{m}^3$ . If this is the generally prevailing level of benzene at this location, then it represents an unacceptable lifetime cancer risk of 435 per million exposed individuals. It also represents a level that is 5 times the level established by OEHHA to prevent decreased peripheral blood counts in chronically exposed individuals.

The comments on the Chain of Custody Record state "Visible Pipeline Leakage (Photo Avail)." It is my understanding that the photo below is of the pipeline leakage that was observed at the oil & gas storage facility approximately 150 feet southeast of the residential intersection.



The contemporaneous observation of pipeline leakage from the oil & gas storage facility is substantial evidence that it is the source of methane, natural gas liquids and benzene that was found in the sample of ambient air that was collected at the

<sup>2</sup> California Office of Environmental Health Hazard Assessment "Hot Spots Unit Risk and Cancer Potency Values." <https://oehha.ca.gov/media/CPFs042909.pdf>

<sup>3</sup> California Office of Environmental Health Hazard Assessment (July 2014) "Technical Support Document for Noncancer RELs " <https://oehha.ca.gov/media/downloads/crn/appendixd1final.pdf>

intersection of Towner Drive & Nelson Court in Arvin, California, at around 7:00 p.m. of October 30<sup>th</sup>, 2017.

The high levels of methane and natural gas liquids in the sample of ambient air collected at the intersection of Towner Drive & Nelson Court also represents a possible risk to public safety. The lower explosive limit (flammability point) of methane and natural gas liquids is between 2-5% by volume of air. Combined levels of methane and natural gas liquids in the sample of air at the intersection of Towner Drive & Nelson Court were approximately 30,000  $\mu\text{g}/\text{m}^3$ , equivalent to a concentration by volume of air of approximately 0.005%. If the oil & gas storage facility is indeed the source of these VOCs, then levels of methane and natural gas liquids would be exponentially higher in air that is nearer to the leakage, raising the concern of whether VOCs exist at levels at which a source of ignition (e.g. a spark) could cause a damaging explosion.

Please let me know if you have any comments or questions.

Sincerely,



Mark Chernaik

SJVAPCD  
Complaints

## Complaint Investigation

06/08/2017  
10:04AM

**Complaint Number:** S-1705-022

**Assigned To:** Stephanie Aranda

**Received By:** Andrea Vazquez

**Date:** May 10, 2017

**Time:** 12:27 PM

**Complainant's Name:** \*\*\*\*\*

**Address:** \*\*\*\*\*

**City:** \*\*\*\*\*

**Complainant's Primary Phone:** \*\*\*\*\*

**Secondary Phone:** \*\*\*\*\*

**Complaint Location:** North of Shane Court

**Permit:**

**City:** Arvin

**County:** Kern

**Zip:**

**Property Owner:**

**Telephone:**

**Address:**

**City:**

**Zip:**

### Nature of Complaint:

Site is emitting VOC's. There are emissions coming from a storage tank.

### Conclusions:

May 10, 2017; 2:15 PM: Conclusion by Stephanie Aranda: The RP was informed that there is no violation because the tank in question is not subject to leak requirements or on vapor recovery. The RI explained that the annual inspection was performed the day prior to the complaint. The site was not re-visited, and the complaint was not confirmed.

### Findings:

May 10, 2017; 1:55 PM Contact by Telephone: Finding by Stephanie Aranda: The RI contacted the RP by telephone. The RP stated a FLIR camera was used to observe emissions from a tank permitted under facility ID S-3036. Emissions appeared to be emanating from the top of the tank at 12:30pm.

The RI explained that the tank was visited on 05/09/17 during the facility's annual inspection. The RI explained that the tank is exempt from leak requirements and has a PV vent valve but is not on vapor recovery.

The RP inquired about the type of inspection that was performed (RI stated an annual/ routine compliance inspection), operations of the company, throughput of the company, and violations/ concerns noted. The RI explained that certain information about the company, inspections, and violations could not be given; however, the RI suggested doing a public records request to obtain some of the information. The RP asked what authority the District has over the tank, specifically, in regards to nuisance. The RI stated that if complaints were received regarding nuisance, the District would have to confirm the complaints to consider issuing a nuisance violation, but it would not necessarily force the producer to cease operations.

Senior Air Quality Inspector, Steve Miller, called the RP to further explain the requirements of R4623 and explain the public records request process. He also suggested using the Division of Oil, Gas, & Geothermal Resources' website to check throughput and production information.

**Resolution:** No Violation

**Date Reporting Person Notified:** May 10, 2017

**Time:** 1:55 PM

**Method:** Telephone

**Date Investigation Completed:** 05/10/2017

**Inspector:** Stephanie Aranda

**Supervisor:** OLDERSHM

**Date:** 05/16/2017

## SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT COMPLIANCE INSPECTION SUMMARY

INSPECTION TYPE:  COMPLIANCE     START-UP     VARIANCE     BREAKDOWN     OTHER: \_\_\_\_\_

SOURCE NAME: SUN MOUNTAIN OIL & GAS FID#: S-2742

LOCATION: LIGHT OIL CENTRAL CITY: ARVIN

CONTACT & TITLE: Dennis Haralson PHONE: (61) 444-8843 EMAIL: \_\_\_\_\_

INSPECTION DATE: 05/09/17 INSPECTOR(s): STEPHANIE ARANDA

ACCOMPANIED BY: \_\_\_\_\_ JOINT INSPECTION REQUIRED WITH: \_\_\_\_\_

HEALTHY AIR LIVING CONTACT: \_\_\_\_\_ TITLE: \_\_\_\_\_ PHONE: \_\_\_\_\_

PERMIT UNIT	ATC	C/O	INSPECTED EQUIPMENT EQUIPMENT DESCRIPTION	OPERATING		COMPLIANCE		
				YES	NO	YES	NO	ALT. FREQ.
S-2742-0-0	<input type="checkbox"/>	<input type="checkbox"/>	Facility-Wide Requirements			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-6-1	<input type="checkbox"/>	<input type="checkbox"/>	ONE 500 BBL FIXED ROOF PETROLEUM STORAGE TANK, ALEXIS LEASE		OOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-7-1	<input type="checkbox"/>	<input type="checkbox"/>	ONE 500 BBL FIXED ROOF PETROLEUM STORAGE TANK, ALEXIS LEASE	OP		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-8-2	<input type="checkbox"/>	<input type="checkbox"/>	500 BBL FIXED ROOF PETROLEUM STORAGE TANK (ALEXIS/DAY LEASE)		OOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-9-2	<input type="checkbox"/>	<input type="checkbox"/>	500 BBL FIXED ROOF PETROLEUM STORAGE TANK (ALEXIS/DAY LEASE)		OOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-12-0	<input type="checkbox"/>	<input type="checkbox"/>	1,000 BBL FIXED ROOF CRUDE OIL WASH TANK #5012931 (ALEXIS-DAY LEASE)	OP		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-13-0	<input type="checkbox"/>	<input type="checkbox"/>	1,000 BBL FIXED ROOF CRUDE OIL STORAGE TANK #5012932 (ALEXIS-DAY LEASE)	OP		<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-14-0	<input type="checkbox"/>	<input type="checkbox"/>	1,000 BBL FIXED ROOF CRUDE OIL STORAGE TANK (BIGGAR LEASE)		OOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
S-2742-15-0	<input type="checkbox"/>	<input type="checkbox"/>	1,000 BBL FIXED ROOF CRUDE OIL WASH TANK #3 (BIGGAR LEASE)		OOS	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

(COMPLETE THE FOLLOWING AS IT APPLIES TO THIS SOURCE)		COMPLIANCE		
		YES	NO	N/A
VARIANCE STATUS	On schedule: <input type="checkbox"/> In compliance with all conditions: <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
SOURCE TEST STATUS	Required: <input type="checkbox"/> Performed: <input type="checkbox"/> Excess Emissions: <input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ATC(s) / PTO(s)	Accurate/Current: YES On site: YES Unpermitted Equip: NO Unimplemented: NO	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
OPERATING SCHEDULE	Equipment hours comply with ATC/PTO?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
COMPLAINTS	Are there outstanding complaints against facility? No	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
V.E. EVALUATION(s)	Conducted: NO In compliance with visible emission standard:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
RECORDS	Maintained: YES Records show compliance: YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Meets permit limit for process rates: YES	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PORTABLE ANALYZER	Analyzer check shows emissions in compliance with limits:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Analyzer demonstrated to be in compliance with leak requirements:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CEMS/ OTHER	Proper Maintenance / Calibration Procedures:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
MONITORING EQUIP	Have all reports been submitted on time and as required:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
BREAKDOWNS	Are there outstanding breakdowns:	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HEALTHY AIR LIVING	HAL information discussed with appropriate representative:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
ENFORCEMENT ACTION TAKEN: <input type="checkbox"/> NTC(s) <input type="checkbox"/> NOV(s) <input type="checkbox"/> RCAT(s) Number(s)				
INSPECTION FREQUENCY	Modified as result of emission violation or nuisance: NO Frequency changed to: Months.			
COMMENTS:				

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)


INSPECTOR SIGNATURE: Stephanie Arvola DATE: 05/16/17 REVIEWER: [Signature] DATE: 5/19/17

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

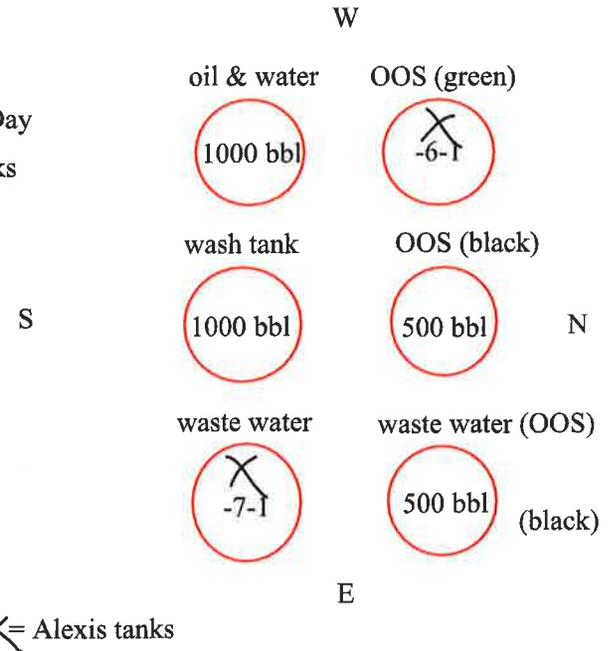
**MULTIPLE FIXED ROOF TANK INSPECTION FORM**

Company - SUN MOUNTAIN OIL & GAS  
 Inspector - Stephanie Aranda  
 Inspection Date - 05/09/17  
 Company Contact - Dennis Haralson 661-444-8843

Facility # - S 2742  
 Facility Location/Lease - Lamont & Arvin  
 Analyzer Make/Number - \_\_\_\_\_  
 Compressor Make/hp - \_\_\_\_\_

PTO	Tank ID	Tank Capacity	PVRV Model	Hatch Model	Leak (ppm)	Leak Location	TVR or TVR Comp	Throughput BOPD/BWPD	V I/M Participant	Tank Removed or Sump	Date
6	1 Alexis	21,000 Gal. Petrole	Yes		not subject	N/A	N/A	0.83 /50	No	No	05/09/17
7	1 Alexis	21,000 Gal Petroleu	↓		↓			0.83 /50	↓	↓	↓
8	2 Alexis-Day	21,000 gal oilfield st	↓		↓			1.5 /50	↓	↓	↓
9	2 Alexis-Day	21,000 gal oilfield st	↓		↓			1.5 /50	↓	↓	↓
12	0 5012931 Alexis-Day	42,000 Gal. Storage	↓		↓			1.5 /50	↓	↓	↓
13	0 5012932 Alexis-Day	42,000 Gal. Storage	↓		↓			1.5 /50	↓	↓	↓
14	0 Biggar	42,000 GALLONS	↓		↓	↓	↓	1.38 /50	↓	↓	↓
15	0 3 Biggar	42,000 GALLONS	↓		↓	↓	↓	1.38 /50	↓	↓	↓

Diagram of Alexis-Day and Alexis lease tanks



**Comments** Wastewater tank located at Alexis- Day Lease does not require a permit because they are exempt from permitting. Tanks that are OOS were not cleaned out/ opened up, just have not been in use. Biaggar Lease tanks have been OOS for years.

ADDITIONAL INSPECTION COMMENTS

Empty box for additional inspection comments.

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

Nombre/Name

Address/Dirección

1 Maria Alvarez

1008 El Camino Real

2 Martin Alvarez

1008 El Camino Real

3 Jonathan Alvarez

1008 El Camino Real

4 Jose Alvarez

Franklin Ave.

5 Angela Lopez

Franklin Ave.

6 Roselyn Garcia

1112 El Camino Real

7 Juana Guillen

1112 El Camino Real

8 Fabiola Cendejas

1112 El Camino Real

9 Lupe Cendejas

1112 El Camino Real

10 Denise Hernandez

1112 Serenidad

11 Marcos Hernandez

1112 Serenidad

12 Yasmin Garcia

1112 Serenidad

13 Briana Garcia

1112 Serenidad

14 Francisco Garcia

1140 El Camino Real

I am a resident of Arvin and support the City of Arvin’s Proposed Amendments to its Oil and Gas Ordinance. We need these amendments to protect our health. The current ordinance is so outdated, it provides no protection for us. The current ordinance is even weaker than State law.

We need the ordinance updates to protect our air and water, and our community from risks and dangers. These updates only ask the Oil Industry to move its operations further away from where we live, work and play. We are not banning the Oil Industry from Arvin, and only want them to be good neighbors and consider our health and well-being.

We urge the City Council to not bow down to the Oil Industry’s pressure. The amended ordinance would create even more jobs to move those oil operations to a safer distance from our homes, parks, and schools. Arvin’s existing ordinance for oil and gas has not been updated since before the 1970’s, and simply cannot protect our health, air and water. **Please vote to adopt the amendments to the Oil and Gas Ordinance.**



Soy residente de Arvin y apoyo las Enmiendas propuestas de la Ciudad de Arvin a su Ordenanza sobre petróleo y gas. Necesitamos estas enmiendas para proteger nuestra salud. La ordenanza actual está desactualizada, no nos brinda ninguna protección. La ordenanza actual es incluso más débil que la ley estatal.

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Erica C Ramirez

1004 El Camino Real

2 Adolfo Aranda

1004 El Camino Real

3 Bertha Rodriguez

1004 El Camino Real

4 Gustavo Lopez

1004 El Camino Real

5 Aurora Ornelas

1004 El Camino Real.

6 Yaretzi Aranda

1004 El Camino Real

7 Saydi Aranda

1004 El Camino Real

8 Camila Aranda

1004 El Camino Real

9 Fidencio Rodriguez

1004 El Camino Real

10 Teresa Garcia

1112 El Camino Real

11 Melanie Garcia

1112 El Camino Real

12 Ana Garcia

1112 El Camino Real

13 Sergio Garcia

1112 El Camino Real

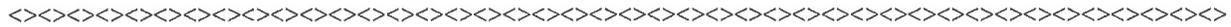
14 Toño Trujillo

1112 El Camino Real

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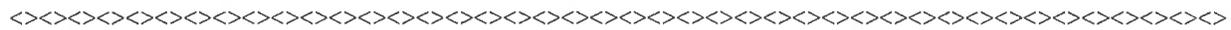
Address/Direccion

1 Hector Garcia1409 VERDE CT Arvin2 Jose Muñoz299 Walker ST. Arvin3 Carolina Muñoz299 Walker ST. Arvin4 Juan P. Muñoz299 Walker ST. Arvin5 Francisco Muñoz299 Walker ST. Arvin6 Karina Aguilera299 Walker ST. Arvin7 LILIA Abariz1409 VERDE CT8 Manolo Reyes1400 Hood St APT 67 Arvin9 Nancy Moreno1424 LA ROSA AVE Arvin10 Amandato Luna1412 VERDE CO Arvin11 Eduardo Luna\_\_\_\_\_12 Maria Luna\_\_\_\_\_13 Maria Paz1408 Verde Ct Arvin14 Benjamin Ploot1408 Verde Ct Arvin

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1

~~Faustino Duran~~

2304 Gregg Ln

2

Guadalupe Duran

"

3

alex duran

"

4

Faustino Garcia

"

5

Maricela Morales

908 Park Ct Arvin CA 93203

6

Antonio Morales

"

7

Angel Morales

"

8

Ivan Morales

"

9

Jose Tinoco

2105 James St

10

Juana Tinoco

"

11

~~Jose Tinoco~~

"

12

Luis G Morales

908 Park Ct Arvin CA 93203

13

Yaciela Duran

2105 James Ct Arvin CA 93203

14

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Nombre/Name

Address/Direccion

1 Rosa Tinoco

2500 Gregg LN

2 Santiago Tinoco

3 Cruz Escutia

1169 Royal st

4 Santiago Escutia

1169 Royal st.

5 Ricardo Parra

1712 Payne Dr

6 Carlos Pantoja

2404 Gregg LN  
15

7 Mary Gonzalez

4

8 Nelly Hoyalez

9 Eda Garcia

1609 - La Meza

10 alonso Lopez

11 Maria Jimenez

1400 Verde

12 Jaime Jimenez

1400 Verde

13 Gerardo Tinoco

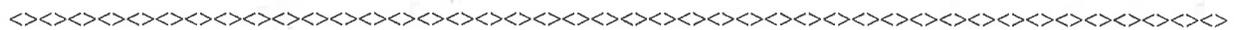
2500 Gregg Ln

14

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Sincerely/Sinceramente  
(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1. Janette schumaker

1404 Verde Ct Arvin

2. Don schumaker

1408 Verde ct Arvin

3. \_\_\_\_\_

\_\_\_\_\_

4. \_\_\_\_\_

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Marcelo Buitra

1117 Los Caminos

2 Alfonso Buitra

1117 Los Caminos

3 Rene Buitra

1117 Los Caminos ave

4 \_\_\_\_\_

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Nombre/Name

Address/Direccion

- |    |                          |                                  |
|----|--------------------------|----------------------------------|
| 1  | <u>Miguel Garcia</u>     | <u>1716 PAYNE DR ARVIN CA</u>    |
| 2  | <u>Arturo Gonzalez</u>   | <u>NORA ST ARVIN CA 9320</u>     |
| 3  | <u>IRMA Gonzalez</u>     | <u>NORA ST ARVIN CA 9320</u>     |
| 4  | <u>MONICA Gonzalez</u>   | <u>NORA ST ARVIN CA 9320</u>     |
| 5  | <u>Adriana Gonzalez</u>  | <u>NORA ST ARVIN CA 9320</u>     |
| 6  | <u>Jose Santoyo</u>      | <u>740 SICAMOR ARVIN CA 9320</u> |
| 7  | <u>Enequina Santoyo</u>  | <u>740 SICAMOR ARVIN CA 9320</u> |
| 8  | <u>Jose santoyo Jr</u>   | <u>740 SICAMOR ARVIN CA 9320</u> |
| 9  | <u>Guadalupe santoyo</u> | <u>740 SICAMOR ARVIN CA 9320</u> |
| 10 | <u>Marilu Parra</u>      | <u>1712 Payne Dr</u>             |
| 11 | <u>Manuel Parra</u>      | <u>1712 Payne Dr</u>             |
| 12 | <u>Ricardo parra</u>     | <u>1712 Payne Dr</u>             |
| 13 | <u>Antony Parra</u>      | <u>1712 Payne Dr</u>             |
| 14 | <u>LUZELY Parra</u>      | <u>1712 Payne Dr</u>             |

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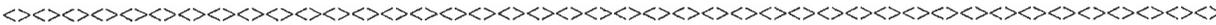
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1 Gaspar Garcia1425 LA ROSA AVE ARVIN CA2 Pedro Martinez1429 - La Rosa Ave Arvin CA3 Mario Martinez\_\_\_\_\_4 Gabriel Martinez\_\_\_\_\_5 Evelyn Garcia1425 LA ROSA AV6 Carolina Muñoz Garcia1424 La Rosa Ave. Arvin Ca. 93207 Juan Carlos Garcia1424 La Rosa Ave. Arvin, Ca. 93208 Isora Garcia1424 La Rosa av9 Ricardo Lopez1420 LA ROSA AVE10 \_\_\_\_\_1417 LA ROSA AVE11 Christina Lopez1417 La Lila Ave12 Christian Valencia1410 Hood St Arvin CA 9321713 \_\_\_\_\_1420 La Lila Ave.14 \_\_\_\_\_1420 La lila Ave

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1 [Signature]1420 La Lila Av2 Mayra Reynoso3 Miguel A Reynoso4 Beatriz Rocio1021 Los Cantos5 Juana Zacarias1021 Los Cantos6 Juana B Zacarias1021 Los Cantos7 Juanap Zacarias1021 Los Cantos8 Carla ZacariasArvin ca9 Ramon Ruiz332 Longford Ave10 Harmond G Ruiz332 Longford Ave11 Amador G Ruiz332 Longford Ave12 Ruben Magdaleno1424 La Lila Ave.13 Lourdes Magdaleno1424 La Lila Ave.14 Daniel Magdaleno1424 La Lila Ave.

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

- |    |                   |                |
|----|-------------------|----------------|
| 1  | Jorge Gutierrez   | Arvin CA.      |
| 2  | Danny Garcia      | Arvin CA       |
| 3  | Noah Kinley       | Arvin CA.      |
| 4  | Enrique Gomez     | Arvin CA       |
| 5  | Abdon Bonzel      | Arvin CA.      |
| 6  | Isaac Garcia      | Arvin CA.      |
| 7  | Ivan Rojas        | Arvin CA       |
| 8  | Anthony Perez     | Arvin CA       |
| 9  | Salvador Gomez    | Arvin CA.      |
| 10 | Felipe Alvarez    | Arvin CA       |
| 11 | Jasmine Santiago  | 501 Walker St. |
| 12 | Guadalupe Ramirez | Arvin CA.      |
| 13 | Maria Alvarez     | 505 Walker St. |
| 14 | Olga Alvarez      | Arvin CA.      |

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1 Elias Saldana317 Brower Arvin2 Atano Leon313 balasco Arvin3 Rosario Garcia313 balasco st Arvin4 Franusca Gario))5 Alicia auguavo702 la mayor st Arvin6 Cristian Vellaga))7 Ramon Garcia465 Flouklia st Arvin8 Eloisa ))))9 Vizente Garcia))10 Gerardo QuintanoArvin11 Rosa ))Arvin12 Pascual Goz1204 Caminal Real Arvin13 Mateo Gousl))14 Elias Catteron))

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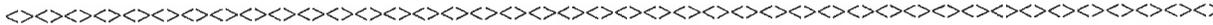
Address/Direccion

1 Daniella C Santos501 Walker St Arvin CA 932032 Claudia C Santos501 Walker St Arvin CA 932033 Roberto Cruz501 Walker St Arvin CA 932034 Esther Cerda501 Walker St Arvin CA 932035 Jessica Santoyo501 Walker St Arvin CA 932036 PABLO REYES505 Walker St Arvin CA 932037 MCCAIN GONZALEZ505 Walker St Arvin CA 932038 Miguel Torres[Signature]9 Sergio BlancoSergio Blanco10 Braulio OrtizBraulio Ortiz11 [Signature]SEBASTIAN LAGUNA12 Jose Moreno601 Walker St Arvin13 Anais Castro633 Walker St Arvin CA 9320314 Yesenia Morales601 Walker St

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1 Ruben Santoyo

501 Walker-St.

2 Fernando Calzada

661 Walker St.

3 Paulina Parra

663 Walker St

4 Alfredo Ledesma

117 Meyer St

5 Micia Ledesma

117 Meyer St

6 Rafael Moreno

112 Meyer St

7 Blanca Mendoza

112 Meyer St.

8 Arnoldo Lara

701 Meyer St # 107

9 Manuel Jimenez

701 Meyer St

10 ELVIDORUA

701 Meyer St Apt 102

11 Ramon JR.

701 Meyer St Apt 102

12 Enrique Medina

701 Meyer St Apt 102

13 Evelyn Medina

701 Meyer St Apt 102

14 Sandra Lopez

801 Olson Way

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Nombre/Name

Address/Direccion

1 Jaime Santoro

632 Langford rd

2 Roberto Santoro

Arvin CA.

3 ~~Ernesto~~

301 Laurel Av.

4 Alejandro Ruelas

Arvin, Ca.

5 Manuel Morales

# 300 TanFD.

6 ~~Ernesto~~

Arvin CA.

7 ~~Ernesto~~ Morales

Arvin CA

8 Jose Duran

Arvin CA

9 Javier Partoña

616 Laurel ave

10 Adrian Gomez

Arvin Ca

11 Miguel Morales M.

Arvin CA

12 ~~Ernesto~~ Flores

Arvin CA

13 Faustino Garcia

Arvin Ca

14 ~~Ernesto~~ Rosales

Arvin CA

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1 Pablo HernandezTucker St. Arvin2 Maria CastilloTucker St. Arvin3 PAUL GonzalezARVIN4 JOSE ESTRADAARVIN5 Santiago VinamontesArvin6 Margarita VinamontesArvin7 Santiago Vinamontes Jr.Arvin8 Manuela SierraArvin9 Cristian GarciaArvin10 Sonia MadrigalArvin11 Carlos MadrigalArvin12 Jose MadrigalArvin13 Dobres CruzArvin Tucker St.14 Ramon CruzArvin

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1 Perla AguirreTucker St. Arvin2 Angela AguirreTucker St. Arvin3 Moises LealArvin CA Tucker St4 Francisco RuizArvin CA5 Adela MartinezArvin CA Tucker St6 Maria MartinezArvin CA Tucker St7 Andrea SimentalArvin8 JUAN SimentalArvin9 Jocelyn SimentalArvin10 Juan Jr. SimentalArvin11 Arile ClementeArvin12 JOSE ClementeArvin13 Alma OrtizArvin14 Gabriel OrtizArvin

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1 JAVIER Alcaraz

Arvin

2 Angelina Alcaraz

Arvin

3 ROSA Alcaraz

Arvin

4 Alejandra Alcaraz

Arvin

5 Javier Alcaraz

Arvin

6 Joaquin Morales

Arvin

7 Rosalba Morales

Arvin

8 Raquel Ortiz

Arvin

9 Rosali Ortiz

Arvin

10 Ana Ortiz

Arvin

11 Leticia Chavez

Arvin

12 Gabriel Chavez

Arvin

13 FERNANDA CHAVEZ

Arvin

14 Joanna Chavez

Arvin

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- |    |                           |                                   |
|----|---------------------------|-----------------------------------|
| 1  | <u>Oziel Benavidez</u>    | <u>1300 Nelson, et Arvin, CA</u>  |
| 2  | <u>Pauline Benavidez</u>  | <u>1300 Nelson, et, Arvin, CA</u> |
| 3  | <u>ANDREW Benavidez</u>   | <u>1300 Nelson et, Arvin CA</u>   |
| 4  | <u>Oziel Benavidez</u>    | <u>1300 Nelson et, Arvin, CA</u>  |
| 5  | <u>Jennicka Benavidez</u> | <u>1300 Nelson, et Arvin, CA</u>  |
| 6  | <u>Byanka Santoyo</u>     | <u>1204 Packard Drive</u>         |
| 7  | <u>Richard Santoyo</u>    | <u>1204 Packard Drive</u>         |
| 8  | <u>Trinidad Santoyo</u>   | <u>1204 Packard Drive</u>         |
| 9  | <u>Bertha Santoyo</u>     | <u>1204 Packard Drive</u>         |
| 10 | <u>ERICK Rocha</u>        | <u>1214 packard Dr</u>            |
| 11 | <u>Rubi Camona</u>        | <u>1300 Packard DR.</u>           |
| 12 | <u>Marisol Camona</u>     | <u>1300 Packard DR.</u>           |
| 13 | <u>Maria Luisa Camona</u> | <u>1300 Packard DR.</u>           |
| 14 | <u>Enrique M. Camona</u>  | <u>1300 Packard DR.</u>           |

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Nombre/Name

Address/Direccion

1 Antonio Calderon V

912 WALNUT DR Arvin CA 93203

2 Antonio P. Calderon

912 Walnut Dr. Arvin CA 93203

3 Evelia Torres

11 11 11

4 Ricardo Moreno

11 1 1 11

5 Rosa Malagan

11 1 1

6 Dalia Moreno

11 1 1 1

7 Ricardo Moreno M

926 Walnut Dr Arvin CA

8 Maria Martinez

930 Walnut Dr Arvin CA

9 Bertha A pantoja

1064 Borden ct Arvin CA

10 Maria Arellano

933 Walnut DR. Arvin CA

11 Maria Perez12 Francisco Lopez

931 Walnut DR.

13 Miguel Tinoco

923- Walnut- Dr Arvin CA 32

14 Lilia Garcia

921 Walnut Dr Arvin CA

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Sincerely/Sincieramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Peli Velleraf

921 - Walnut

2 Jaime Arregun

919 Walnut

3 Fernando Gomez

911 Walnut

4 Consuelo Gomez

843 Walnut Dr

5 Froylan Silva

843 Walnut Dr

6 Sergio Lopez

841 Walnut Dr.

7 Carolina Baños

8 Maria Fidelia Baños

9 Lorenzo Arellano JR

825 Walnut DR

10 Cynthia Buevostro  
Fidel Rangel

809 Walnut DR

11 Patricia Beltran

801 Walnut Dr

12 Ricardo Beltran Jr

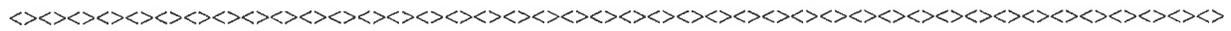
13 Angel Beltran

14 Ricardo Beltran

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Yael Pizarro2 Miguel B. Exiga3 Eugenio Cabezon4 Maria Pizarro5 Eva Preciado

323 Walnut Dr.

6 Jesus Rios

333 Walnut Dr

7 Obdulia Rios

333 Walnut Dr

8 Maria Parra

maria mendoza

9 Manuel Parra

341 Walnut

10 Angelica Parra

Rosa moreno

11 Juan Jimenez

533 Walnut Dr.

12 Samuel Carrera

588 Walnut Dr.

13 Cassandra Carrera

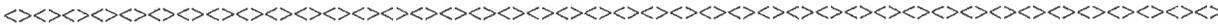
569 Walnut

14 Beatriz Moreno Najera

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(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Alma Hamed

1305 Nelson ct

Carmel Hamed

1305 Nelson ct

3 Leticia Garcia

1304 Nelson ct

4 Rene Garcia

1304 Nelson

5 Eduardo Garcia

1304 Nelson ct

6 Jose Zavala

1302 Nelson ct

7 Mariana Zavala

1302 Nelson ct

8 Jose Zavala Jr

1302 Nelson ct

9 Alvaro Lopez

1304 Nance st

10 Lucila Lopez

1304 Nance st

11 Mariana Lopez

1304 Nance st

12 Luis Adrian Lopez

1304 Nance st

13 Teresa Rocha

1214 Packard Dr

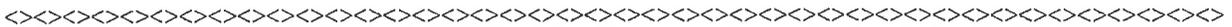
14 Gus daLima Rocha

1214 Packard Dr

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(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Socorro Giles

Arvin Ca

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Nombre/Name

Address/Direccion

1 [Signature]

430 W 11th Ave

2 Raul Mejano

\_\_\_\_\_

3 [Signature]

410 Walnut Drive

4 Antonio Maldonado

301 South Hill

5 Ysaura Ramirez

810 Walnut Dr.

6 Mania Concepcion

301 South Hill St.

7 Jimena Dellarco

410 Walnut Drive

8 Justina Salgado

\_\_\_\_\_

9 Credra Dellarco

\_\_\_\_\_

10 Julio Dellarco

\_\_\_\_\_

11 Ancha Zayas 308 Walnut Dr.

12 \_\_\_\_\_

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13 \_\_\_\_\_

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14 \_\_\_\_\_

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Irma Chavez

1302 Packard Dr

2 Pedro Chavez

11

3 Angie Chavez

11

4 Pedro jr Chavez

11

5 Raul Pacheco

1206 Packard Drive

6 Martha Pacheco

11

7 Natalia Pacheco

11

8 Victoria Pacheco

11

9 Liseth Pacheco

11

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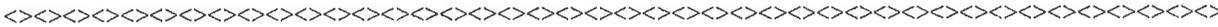
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Nombre/Name

Address/Direccion

1 Francisco Gonzalez1307 Nelson Ct Arvin CA 932012 Cecilia Flores=3 Jaime Chavez=4 Anita Olivares=5 Muhammad Hamed1305 Nelson Ct6 Erasmo Delgado1306 Nancy St.7 Raul Gonzalez1306 Nancy St.8 Marisol Gonzalez1306 Nancy St9 Jose A Cortez1309 Nance St10 Maria Cortez1309 Nance St11 Emma A. Gonzalez1208 Packard Dr

12 \_\_\_\_\_

\_\_\_\_\_

13 \_\_\_\_\_

\_\_\_\_\_

14 \_\_\_\_\_

\_\_\_\_\_



Nombre/Name

Address/Direccion

1 Marisol Perez319 So. Arala ARVIN, CA 932012 Luiz Perez319 So. Arala ARVIN, CA 932013 Angel Perez319 So. Arala4 Emily Perez319 So. Arala5 Teresa Gonzalez1341 Haven Dr ARVIN CA 932016 Bardomiano Gonzalez1341 Haven Dr ARVIN CA 932017 Oscar Gonzalez1341 Haven Dr ARVIN CA 932018 Ivett Gonzalez1341 Haven Dr ARVIN9 Maurilio JimenezTucker ARVIN10 Senaida BelloTucker ARVIN CA11 Veronica Perez409 Haven Dr. ARVIN CA12 Jose Rosario Perez409 Haven Dr ARVIN CA13 Aditene Perez409 Haven Dr14 Maritza JimenezTucker St ARVIN CA 93201

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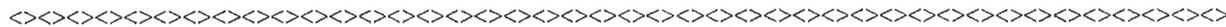
Address/Direccion

- |    |                        |                            |
|----|------------------------|----------------------------|
| 1  | Gabriela Ojeda         | 1000 E / Camino Real Arvin |
| 2  | <del>Azela</del> Ojeda | 1000 E / Camino Real Arvin |
| 3  | Itzcacuitzin Ojeda     | 1000 E / Camino Real Arvin |
| 4  | Aquileo Moran          | 1000 EL CAMINO REAL        |
| 5  | JOSE P. Ojeda          | 1000 EL CAMINO REAL. Arvin |
| 6  | Unette Ojeda           | 1000 el camino real Arvin  |
| 7  | Amado Zacarias         | <del>Arvin</del> Arvin     |
| 8  | MARCE Zacarias         | 1308 Serinidad             |
| 9  | Marcos Zacarias        | Arvin.                     |
| 10 | Feuciano Alonso        | 1308 Serinidad             |
| 11 | Christian Herrera      | 1909 Meyer St              |
| 12 | Alex Alonso            | 1909 Meyer St              |
| 13 | Pascual Gonzales       | 1021 Santos                |
| 14 | Marcos Zacarias        | 1308 Serinidad.            |

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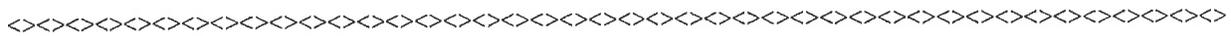
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1 Judón VelazquezLaurel Ave. Arvin2 Petra VelazquezLaurel Ave. Arvin3 Rosa VelazquezLaurel Ave. Arvin4 Demetrio GarciaLaurel Ave. Arvin5 Veronica GarciaLaurel ave arvin6 Rosa EstradaArvin CA7 FRANCISCA ESTRADAARVIN CA8 Lina Ortizarvin9 ARMANDO O.ARVIN CA10 Juan OrtizArvin Ca11 Orlando PerezArvin Ca.12 Gilberto PerezArvin CA.13 Clara PerezArvin Ca14 Antonio GilesArvin Ca

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Nombre/Name

Address/Direccion

1 Lucrecia zacarias1021 Los cantos.2 Alex. Feliziano1308 Serenidad.3 Tsidro Gonzalez1716 PAYNE DR ARVIN4 Daisy Gonzalez1716 Payne Dr5 LILIA GONZALEZARVIN6 Isidro GonzalezARVIN7 Diego GonzalezARVIN8 Maricarmen GonzalezARVIN9 Raul perez609  
~~709~~ CHARLES ST ARVIN10 Raul Perez II~~709~~ CHARLES ST ARVIN11 Diego Perez609  
~~709~~ CHARLES ST ARVIN12 Jesus MartinezCharles St ARVIN CA13 Carmen MartinezCharles St ARVIN CA14 alex MartinezCharles St ARVIN CA

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Necesitamos las actualizaciones de las ordenanzas para proteger nuestro aire y agua, y nuestra comunidad de los riesgos y peligros. Estas actualizaciones solo solicitan a la industria petrolera que mueva sus operaciones más lejos de donde vivimos, trabajamos y jugamos. No estamos prohibiendo la industria petrolera de Arvin, y solo queremos que sean buenos vecinos y consideren nuestra salud y bienestar.

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

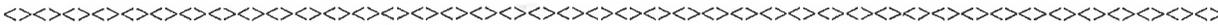
Address/Direccion

1 Alfredo Gonzalez1580 - SHANE CT Arvin CA2 Maria Escobar1513 Shane Ct. Arvin CA3 Maria C Garcia1557 Shane<sup>ct</sup> Arvin ca 932034 Juan M Garcia1557 Shane<sup>ct</sup> Arvin ca 932035 Fau Bustamante1549 Shane<sup>ct</sup> Arvin CA 932036 Guadalupe Galea\_\_\_\_\_7 SALVADOR MORENO P1515 SHANE CT.8 Rosalva Juarez1517 Shane Ct.9 Maria Mendoza1509 Shane Ct10 Jose De laera1509 Shane Ct11 Serafin Posada1540 Shane Ct12 RosalbaShane Ct13 Fabian Davis1500 Shane Ct.14 Camelia Ramirez1508 Shane Ct

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Address/Direccion

1 Manuel Martinez1516 Shane Ct.2 Diego Martinez3 Maria Martinez4 Liliana Martinez5 Manuel Martinez JR6 Chris Gutierrez1524 Shane Court7 Seal8 Christy Acosta1016 Charles St.9 Maria Moreno1532 Shane Ct.10 Alicia Perez1548 Shanie Ct11 Patricia Perez12 Yolanda Prater1556 Shane Ct13 Elsa Hong1564 Shane Ct14 Raymond Hong

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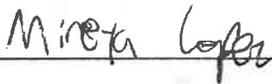
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Sincerely,

Alfredo Lopez

Arvin resident

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Marjela Lopez

Arvin resident

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Sincerely,

Jennifer L. Lopez

Arvin resident

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Sincerely,

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "Sueety J".

Arvin resident

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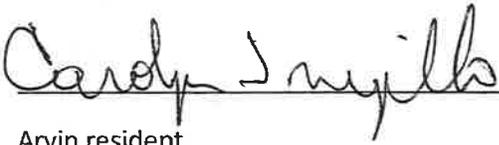
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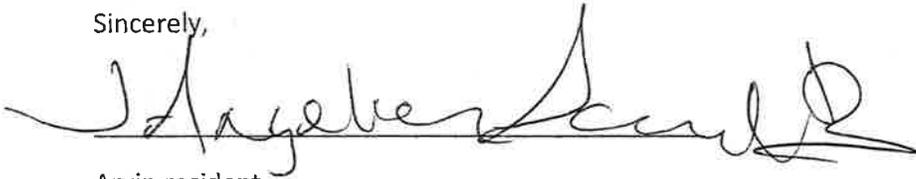
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Felipe Ramirez

Arvin resident

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Sincerely,

Francisco Garcia

Arvin resident

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Sincerely,

Ramiro Juarez

Arvin resident

**Shannon L. Chaffin**

---

**From:** Roger Lin <rlin@crpe-ej.org>  
**Sent:** Tuesday, January 16, 2018 4:03 PM  
**To:** cvela@arvin.org  
**Cc:** Shannon L. Chaffin; Juan Flores; jgurrola@arvin.org  
**Subject:** Comment on Oil and Gas Ordinance Amendment  
**Attachments:** CRPE\_ArvinOandGAmendments\_Support.pdf

To the City Clerk:

Please see the attached comment (six page letter with a nine page attachment including references) in support of the amendments to Arvin's Oil and Gas Ordinance for Regulation of Petroleum Facilities and Operations.

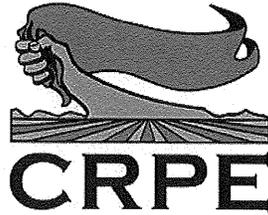
I believe this matter has been postponed from tonight, but regardless, please include this comment, its attachment, and all cited references as part of the official administrative record in consideration of these amendments.

Please also let me know as soon as possible if you have any problems with the attached comment, or any of the hyperlinked sources included therein.

Thank you for your time,

Roger Lin  
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January 16, 2018

**Re: In Support of Amendments to The City of Arvin’s Oil and Gas Ordinance for the Regulation of Petroleum Facilities and Operations**

To the Arvin City Council,

The Center on Race, Poverty and the Environment (“CRPE”) submits the following evidence supporting the adoption of the amendments, unanimously approved by the City Planning Commission, to the Arvin Municipal Code regulating petroleum facilities and operations. The current ordinance was adopted in 1965 and is far outdated to adequately regulate current petroleum operations in Arvin. As detailed below and in the attached review of existing scientific literature, the oil and gas ordinance amendments complement existing regulations and are critical to the protection of public health in Arvin.

In addition, the ordinance revisions include a variety of environmental and health protections for air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors. Therefore, the ordinance revisions are also exempt from the California Environmental Quality Act (“CEQA”) pursuant to Section 15308 of the Guidelines for actions taken by regulatory agencies to assure the maintenance, restoration, enhancement, or protection of the environment.

**I. The Ordinance Amendments Complement State Law**

In September 2013, the State Legislature passed Senate Bill 4 (“SB4”). Pursuant to SB4, the California Natural Resources Agency commissioned the California Council on Science and Technology (“CCST”) to conduct an independent scientific assessment of well stimulation treatments, including hydraulic fracturing (“fracking”), in California. In July 2015, the CCST completed the second volume of this independent study, which evaluated the potential public health risks and environmental impacts from fracking and acid stimulations in the state.<sup>1</sup>

<sup>1</sup> An Independent Scientific Assessment of Well Stimulation in California, 2015 [Accessed January 16, 2018]: Summary available at <http://ccst.us/publications/2015/2015SB4summary.pdf>; Executive Summary available at <http://ccst.us/publications/2015/2015SB4-v2ES.pdf>; Volume I available at <http://ccst.us/publications/2015/160708-sb4-vol-I.pdf>; Volume II available at <http://ccst.us/publications/2015/160708-sb4-vol-II.pdf>; Volume III available at

In particular, the CCST's independent assessment determined that oil and gas extraction operations present:

1. *Dangers to Public Health*: as there are no current restrictions on where a well may be drilled, in many parts of the state, such as Arvin, active wells are located only a few feet from homes, schools, and other areas where residents work, play and breathe. The CCST assessment is clear: the closer residents live to active oil and gas developments, the more elevated risks of health concerns to those residents.<sup>2</sup>

Specifically, the CCST assessment noted that dangerous and toxic chemicals, such as benzene, a carcinogen, are common to both fracked and conventional wells.<sup>3</sup> Consequently, the report emphasizes the need for setbacks between oil and gas wells and sensitive receptors – exactly what the Arvin ordinance amendments would create.<sup>4</sup>

Worse yet, “[T]he scientific literature is clear that certain sensitive and vulnerable populations (e.g., children, asthmatics, those with pre-existing cardiovascular or respiratory conditions, and populations already exposed to elevated air pollution) are more susceptible to health effects from exposures to environmental pollutants known to be associated with oil and gas development.”<sup>5</sup> This is particularly problematic for Arvin, which ranks in the top percentile of the State’s most polluted areas, and also, in the top percentile for asthma.<sup>6</sup>

A current study concludes that infants and children who live near unconventional oil and gas sites have an increased risk of neurological and neurodevelopmental disorders and defects.<sup>7</sup> In addition, close proximity to oil and gas production increases the risks of adverse impacts from explosions, blow-outs, chemical spills, and other harms. Consequently, scientists are increasingly urging the immediate adoption of health and safety buffer zones.<sup>8</sup>

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<http://ccst.us/publications/2015/160708-sb4-vol-III.pdf>, from which in particular, Chapter 5, a Case Study of the Potential Risks Associated with Hydraulic Fracturing in Existing Oil Fields in the San Joaquin Basin, available at <http://ccst.us/publications/2015/160708-sb4-vol-III-5.pdf>.

<sup>2</sup> CCST Independent Scientific Assessment of Well Stimulation in California, Volume II at 407-425, available at <http://ccst.us/publications/2015/160708-sb4-vol-II.pdf>.

<sup>3</sup> *Id.* at 377.

<sup>4</sup> The CCST Assessment recommends that public health and safety buffers should be considered around all oil and gas wells: CCST Study, Executive Summary at 13; CCST Study, Vol. II at 433; CCST Study, Vol. III at 13-14.

<sup>5</sup> CCST Independent Scientific Assessment of Well Stimulation in California, Volume II at 433, available at <http://ccst.us/publications/2015/160708-sb4-vol-II.pdf>.

<sup>6</sup> See Search Results for Arvin, CA: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

<sup>7</sup> Neurodevelopmental and neurological effects of chemicals associated with unconventional oil and natural gas operations and their potential effects on infants and children, October 2017, [Accessed January 16, 2018] available at <https://www.degruyter.com/view/j/reveh.ahead-of-print/reveh-2017-0008/reveh-2017-0008.xml>

<sup>8</sup> For instance, in a University of Maryland study, it was recommended that a minimum buffer zone of 2,000 ft should be enacted to ensure public safety. Milton, Donald et al., Potential public health impacts of natural gas development and production in the Marcellus Shale in Western Maryland, Maryland Institute for Applied Environmental Health, School of Public Health, University of Maryland, College Park (2014).

2. *Significant Air Pollution:* The CCST assessment found that there are no studies in California monitoring toxic emissions from fracking and other types of well stimulation.<sup>9</sup> Concurrently, the report finds that this lack of data does not remove the very real threat of these emissions on nearby residents, as noted above. The data that we do currently possess does not paint a more promising picture: in the San Joaquin Valley, emissions from the oil and gas sector account for more than 30 percent of sulfur dioxide emissions, and 70 percent of hydrogen sulfide emissions that only add to Arvin's significant air pollution problems.<sup>10</sup> Enactment of the amendments to Arvin's oil and gas ordinance, for instance through implementation of odor minimization plans, would reduce these risks to public and worker health and safety.
3. *Significant Water Pollution:* The CCST assessment identifies a number of ways in which fracking can cause water contamination, including the potential for older wells to act as conduits to allow chemicals to migrate to sources of groundwater.<sup>11</sup>

As noted in the General Plan, Arvin relies upon groundwater for its water resources and is located in a high-priority groundwater basin.<sup>12</sup> In fact, absent these ordinance amendments, the City would not be able to comply with the provisions of the Sustainable Groundwater Management Act or its local Groundwater Sustainability Plan that require improvements to, and not degradation of, groundwater supplies by 2040.

4. *Significant Impacts to Wildlife and Vegetation:* The CCST assessment found that habitat damage from well stimulation activities is permanent, where restoration work and natural revegetation do not restore sites to their pre-disturbance value for native species. Besides habitat destruction, the report lists several other ways in which fracking harms wildlife, including exposure to toxic wastewater, spills into surface waters, increased traffic, invasive species, diverting water sources, noise and light pollution.<sup>13</sup>

The ordinance amendments reduce water, traffic and light pollution, and provide financial assurances and other provisions for the cleanup of spills and other hazards. The amendments are therefore critical to mitigate, to the extent feasible, some of these impacts to wildlife and vegetation.

These are just some of the significant impacts from oil and gas operations in Arvin. The CCST report also emphasizes several other impacts of oil and gas extraction operations that occur in Arvin. These include the increased incidents of seismic hazards and significant health

<sup>9</sup> CCST Independent Scientific Assessment of Well Stimulation in California, Volume II at 183, 409, available at <http://ccst.us/publications/2015/160708-sb4-vol-II.pdf>.

<sup>10</sup> *Id.* and see Case Study of the Potential Risks Associated with Hydraulic Fracturing in Existing Oil Fields in the San Joaquin Basin, available at <http://ccst.us/publications/2015/160708-sb4-vol-III-5.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> See Arvin General Plan [Accessed January 16, 2018], available at [http://www.arvin.org/wp-content/uploads/2015/08/ADOPTED\\_ARVIN\\_GP\\_UPDATE\\_Aug-21-121.pdf](http://www.arvin.org/wp-content/uploads/2015/08/ADOPTED_ARVIN_GP_UPDATE_Aug-21-121.pdf).

<sup>13</sup> CCST Independent Scientific Assessment of Well Stimulation in California, Volume II at 311, 364, available at <http://ccst.us/publications/2015/160708-sb4-vol-II.pdf>.

impacts to workers at these oil and gas operations that further warrant local on-the-ground protections for public and worker health and safety.<sup>14</sup>

Moreover, neither the State nor the County's efforts to mitigate the impacts of oil and gas extraction on local residents preempt the City from enacting additional measures to protect the health of its own residents. California courts and the U.S. Supreme Court have long recognized the authority of a local government to use its police and zoning powers to enact local prohibitions and restrictions on oil and gas operations and development.<sup>15</sup> A city has an "unquestioned right to regulate the business of operating oil wells within its city limits, and to prohibit their operation within delineated areas and districts if reason appears for so doing."<sup>16</sup> One court has even upheld a total ban on oil drilling within the city, stating, "[e]nactment of a city ordinance prohibiting exploration for and production of oil ... is a valid exercise of the municipal police power."<sup>17</sup>

These ordinance amendments, specifically those prohibiting new oil and gas operations near sensitive receptors, are evidently a valid use of Arvin's police power: "city zoning ordinances prohibiting the production of oil in designated areas have been held valid."<sup>18</sup> In fact, it is "well settled that the enactment of an ordinance which limits the owner's property interest in oil bearing lands located within the city is not of itself an unreasonable means of accomplishing a legitimate objective within the police power of the city."<sup>19</sup> Further, the amendments are consistent with provisions of Arvin's General Plan, including supporting the need to "carefully manag[e] and [provide] adequate buffer space" for oil and gas production "to continue contributing to the community's economic prosperity," considering native plant and animal life and impacts to clean air and water and the health and safety of Arvin residents.<sup>20</sup>

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<sup>14</sup> *Id.* at 401-437.

<sup>15</sup> Cal. Const. Article XI, sec. 5; Pub. Res. Code § 3690.

<sup>16</sup> *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552 at p. 558. *See also* California Attorney General's Opinion (1976) 59 Ops. Cal. Atty. Gen. 461, 465 ("[I]t is our opinion that cities and counties have the power to prohibit [oil and gas] operations.").

<sup>17</sup> *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach*, 86 Cal. App. 4th 534, 555 (2001)

<sup>18</sup> *Beverly Oil Co.*, 40 Cal.2d at 558.

<sup>19</sup> *Ibid.* and *see e.g., Palisades Association v. City of Huntington Beach* (1925) 196 Cal.2d 111, 217 (City of Huntington Beach banned oil drilling. Court acknowledged that "Huntington Beach has the unquestioned right to regulate the business of operating oil wells within its city limits and to prohibit their operation within delineated areas and districts, if reason appears for so doing."); *Marblehead Land Co. v. City of Los Angeles*, 47 F.2d 528, 531-32 (9th Cir. 1931) (City of Los Angeles repealed ordinance excluding a strip of plaintiff's land from residential district in which oil production was prohibited. Court held that the city's police powers permitted the city to protect inhabitants from fire and noxious gas hazards, and stated "there can be no question of the inherent right of the city to control or prohibit such production, provided it is done reasonably and not arbitrarily. In that event the loss must fall upon the owner whether it prevents him from erecting structures or establishing industries which he desires to erect or establish, or whether it prevents him from developing the inherent potentialities of his land."); *Friel v. County of Los Angeles* (1959) 172 Cal. App. 2d 142, 157 (Los Angeles County zoned certain areas for residential uses and denied plaintiffs' applications for exceptions or variances for the purpose of drilling for oil. Plaintiffs complained that their neighbors in different zones, who were permitted to drill, were drilling the oil underlying plaintiffs' land, but the court upheld the ordinance, stating: "There is no question that the county has the right to regulate the drilling and operation of oil wells within its lands and to prohibit their drilling and operation within particular districts if reasonably necessary for the protection of the public health, safety and general welfare.").

<sup>20</sup> *See supra*, Arvin General Plan, at CO-6.

## II. The Findings are Otherwise Also Consistent with Substantial Evidence in the Record

In addition to the three volume CCST assessment, we also submit the following documents into the record supporting adoption of the ordinance amendments:

- Concerned Health Professionals of New York and Physicians for Social Responsibility, *Compendium of Scientific, Medical and Media Findings Demonstrating Risks and Harms of Fracking (Unconventional Gas and Oil Extraction)*, Fourth Edition, November 2016, available at [http://concernedhealthny.org/wp-content/uploads/2016/12/COMPENDIUM-4.0\\_FINAL\\_11\\_16\\_16Corrected.pdf](http://concernedhealthny.org/wp-content/uploads/2016/12/COMPENDIUM-4.0_FINAL_11_16_16Corrected.pdf). (“Air sampling surveys find high concentrations of volatile organic compounds, especially carcinogenic benzene and formaldehyde, both at the wellhead and at distances that exceed legal setback distances from wellhead to residence. In some cases, VOC concentrations exceeded federal safety standards by several orders of magnitude.”)
- The Denver Post, *CU Denver study links fracking to higher concentration of air pollutants*, March 2012, available at <https://www.denverpost.com/2012/03/19/cu-denver-study-links-fracking-to-higher-concentration-of-air-pollutants/> (“People living within a half-mile of oil- and gas-well fracking operations were exposed to air pollutants five times above a federal hazard standard, according to a new Colorado study.”)
- The Atlantic, *New, Major Evidence that Fracking Harms Human Health – A child born very close to a well is likely to be smaller and less healthy than a child born farther away*, December 2017, available at [https://www.theatlantic.com/science/archive/2017/12/data-from-11-million-infants-suggests-fracking-harms-human-health/548315/?utm\\_source=twb](https://www.theatlantic.com/science/archive/2017/12/data-from-11-million-infants-suggests-fracking-harms-human-health/548315/?utm_source=twb), citing Currie, Greenstone, Meckel, *Hydraulic Fracturing and Infant Health: New Evidence from Pennsylvania*, December 2017, full article available at Full available at: <http://advances.sciencemag.org/content/3/12/e1603021.full>.
- Nicole J. Wong, MPH, *Existing Scientific Literature on Setback Distances from Oil and Gas Development Sites*, November 2017, attached. Although the report focuses on the need for a setback from unconventional extraction operations in the Los Angeles area, it includes several peer reviewed scientific studies detailing the significant impacts of these operations and the need for greater public health protections, such as those that the amendments would provide.

Those significant impacts include: increased reported respiratory and skin condition symptoms the closer to well operations, and health symptoms included throat irritation, sinus problems, nasal irritation, eye burning, severe headaches, loss of sense of smell, persistent cough, frequent nose bleeds and swollen painful joints. The literature review also identifies other elevated risks in proximity to such oil and gas operations, such as degraded air and water quality, increased exposure to toxic chemicals and increased incidences of hazards, including explosions from abandoned operations.

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### III. The Ordinance Amendments are Exempt from The California Environmental Quality Act (“CEQA”)

CEQA Guidelines § 15308 categorically exempts certain actions of regulatory agencies that “assure the maintenance, restoration, enhancement, or protection of the environment” from the CEQA process. As noted above, the ordinance amendments are critical to preserving environmental resources and protecting public health. Arvin’s current ordinance regulating oil and gas operations was passed in 1965, and therefore only contemplates pre-1965 developments in oil and gas extraction technologies. Conversely, the amendments bring the outdated ordinance up to date with current operations that pose significant impacts to the environment and residents of Arvin. As the ordinance strengthens an outdated version, with a focus on public health and preservation, it directly speaks to the restoration, enhancement and protection of the environment, including the mitigation of socio-economic impacts. Consequently, the ordinance amendments fall squarely within the ambit of CEQA Guidelines § 15308.<sup>21</sup> The City need not conduct any further review of the amendments under CEQA.

Finally, it is imperative for Arvin to consider the health and safety of its residents, and adopt these urgently needed amendments. Local government in oil-producing cities in Texas have begun to establish stricter and more protective setbacks than that proposed here. Dallas, Texas has enacted a 1,500-foot setback between oil and gas production facilities and “protected uses.”<sup>22</sup> Flower Mound, Texas and Denton, Texas have adopted 1,500-foot and 1,000-foot setbacks, respectively.<sup>23</sup> Maryland regulations provide a 1,000-foot buffer from occupied dwellings, schools, churches and well head protection area.<sup>24</sup> The City is not even seeking such greater protections in fear of a litigation from the oil industry; instead, the amendments provide the bare minimum protections for the health and safety of the residents of Arvin. We respectfully request the City to adopt these amendments, and in line with the recommendation from the City Planning Commission, to consider further strengthening the ordinance in the future as more data becomes available.

Sincerely,

/s/

Roger Lin  
Senior Attorney

<sup>21</sup> Further, as the amendments improve the environment and do not involve highways, waste sites, or historical resources, none of the exceptions in CEQA Guidelines § 15300.2 apply.

<sup>22</sup> City of Dallas, Development Code, Chapter 51A, Art. IV § 51A-4.203(b)(3.2)(F)(ii)(aa); see also <https://www.dallasnews.com/news/news/2013/12/11/dallas-oks-gas-drilling-rules-that-are-among-nations-tightest>.

<sup>23</sup> Code of Ordinances of the Town of Flower Mound, Texas, Art. VII, Sec. 34-422(d); <http://www.dentonrc.com/news/news/2015/08/04/council-turns-to-zoning-powers-after-reducing-well-setbacks-to-1000-feet>. (At least two dozen Texas jurisdictions have 1,000-foot setbacks.)

<sup>24</sup> Md. Code Ann., Envir. § 14-112 (West 2017) (“[A] well for the production or underground storage of gas or oil may not be drilled on any property nearer than 1,000 feet to the boundary of the property except by agreement with the owners of the gas and oil on adjacent lands.”); Maryland Code of Reg’s, tit. 26, § 26.19.01.09 (Unless due to site constraints a well must be sited closer, the regulating agency “may not issue a permit to drill a well closer than 1,000 feet to the boundary of any property adjoining the tract on which the well is situated except by written agreement with the landowners and royalty owners of that property”).

# Existing scientific literature on setback distances from oil and gas development sites

Nicole J. Wong, MPH

November 2017 (revised)

## *Background: Need for an LA Relevant Setback*

The current body of peer-reviewed scientific literature has a small but growing set of studies investigating the relationship between the proximity of modern oil and gas extraction nearby communities and health impacts. The published studies that have examined this relationship have considered health outcomes, exposure to toxic health risks, and discussed whether current setback requirements in various states are adequate to ensure the health and safety of people who live, work, play, and learn near these facilities. These studies were conducted primarily in lower population density communities and states. Yet, the majority of these studies find a positive correlation between distance of a home from an active oil or gas well and adverse health outcomes. The closer people live to oil and gas wells, the more likely they will be exposed to toxic air contaminants and the more elevated their risk of associated health effects.<sup>1</sup> Most of these distances are measured at a half-mile to a mile (See Table 2). Distances in Los Angeles are much closer. No peer-reviewed studies to date have investigated the relationship between the proximity of oil and gas development and health outcomes in California, nor have any studied this issue in the U.S. urban context. In Los Angeles alone, about 1.7 million people live within 1 mile of an active oil or gas well, and of that group, more than 32,000 people live within 100 m (about 328 feet) of an oil or gas well.<sup>2</sup>

## *Overview of Report Contents*

A total of 14 studies and publications were considered for this report that investigated the health and quality of life impacts and exposures of unconventional natural gas development proximate to residences. Of the 14 studies and publications, 6 considered the distance of an active well to place of residence (Table 1), while the remaining 4 considered the concentration of wells proximate to residences (Table 2). Four of the publications are studies and non-peer reviewed reports that have setback recommendations or relevant considerations for a safe setback margin (included in Table 1). The distances considered in this report range in setback recommendations and findings from 1,500 to 6,600 feet. Among the peer-reviewed studies that specified where samples and data were collected, the average population density was about 150 people per square mile. To compare, the population density for the City of Los Angeles is about 50 times greater at 8,092.3 people per square mile. In neighborhoods like South Los Angeles that is home to several active oil drilling sites, the population densities are up to more than 20,000 people per square mile.<sup>3</sup> The population density in South Los Angeles is about **133 times greater** than those of the populations investigated in the existing literature. Table 1 lays out the peer-reviewed studies included in this report, ordered by the safe setback distance each study considered. Advocacy groups in Los Angeles have called for a 2,500-setback law to protect the health and safety of nearby residents. **Based on the current available research, a 2,500-foot setback recommendation is on the lower end**

The population density in South Los Angeles is about **133 times greater** than the populations investigated in the existing literature.

**of the range of distances where research has determined harmful health and quality of life impacts of toxic emissions and exposures.**

*Oil and Gas Extraction Methods*

During much of the early and mid 1900's, conventional methods of extracting oil depleted most of the oil fields throughout the country. In Los Angeles, only 10% of oil field reservoirs can be recovered by conventional means.<sup>2</sup> Now, in order to access resources that are deeper or more difficult to recover than those that have been recovered historically, oil industry has pursued new technologies in "unconventional" or "enhanced oil recovery" methods.<sup>2,5</sup> These methods include steam, water, and/or chemical injection, hydraulic fracturing, acidization, and gravel packing.

Although the existing research has primarily focused on health impacts and toxic emissions from unconventional natural gas development, many of the same chemicals of concern used in so-called unconventional activities are used in routine activities such as well maintenance, well-completion, or rework on both conventional oil and natural gas wells.<sup>6</sup> There are many applications of hazardous chemicals in oil and gas development, and in fact the routine operational chemical use data is less available than that for unconventional chemical use activities.<sup>6</sup>

In Los Angeles, many of the extraction facilities utilize unconventional techniques, such as acidizing with hydrochloric and hydrofluoric acid, directional drilling, and gravel packing which involves use of tons of carcinogenic silica sand. Many of the oil fields in Los Angeles produce both oil and gas at a relatively equal ratio. Among the top ten producing oil fields in the City of Los Angeles, which include Beverly Hills, Wilmington, and Las Cienegas oil fields, the ratio of gas to oil production is about 0.91.<sup>7</sup> Therefore, the existing research in other parts of the country holds relevance for the nature of oil and gas extraction in Los Angeles.

*Health and Quality of Life Impacts*

The consequences to health from oil and gas activity investigated in the reviewed studies include birth outcomes, asthma, other respiratory and dermal impacts, pediatric sub-chronic non-cancer and chronic hazard indices, unhealthy noise levels, and various associated health symptoms. Among the existing research, the greatest distance to oil and gas activity investigated was 2 km (6,561 feet) where exposure to hydrogen sulfide combined with VOCs were detected.<sup>8</sup> The shortest distance measurement studied was 1,500 feet and this study found significantly more reports of health symptoms in households within 1,500 feet of an active well. The health symptoms included throat irritation, sinus problems, nasal irritation, eye burning, severe headaches, loss of sense of smell, persistent cough, frequent nose bleeds, swollen painful joints.<sup>9</sup> Rabinowitz, et al. (2015) found an increased number of reported upper respiratory symptoms and skin conditions among residents who lived less than 1 km (3,280 feet) from an active well when compared with residents who lived more than 2 km (6,561 feet) from an active well.<sup>10</sup> McKenzie, et al. (2012) found elevated risk of health effects from natural gas development for residents living less than half a mile from wells. They primarily considered the subchronic non-cancer hazard index, which was primarily driven up by exposure to trimethylbenzenes, xylenes, and aliphatic hydrocarbons, and chronic hazard index measurements, which were driven up by benzene exposure.<sup>11</sup>

Another dimension of health impacts related to oil and gas development is noise levels. Boyle, et al. (2017) conducted a pilot study investigating the 24-hour noise levels of a compressor station relative to

residential homes both indoors and outdoors.<sup>12</sup> His study determined that homes up to 600m away (about 1,968 feet) experienced outdoor noise levels that exceeded the U.S. Environmental Protection Agency's recommended limit of 55 dBA 100% of the time.<sup>12</sup> In addition to these punctuated periods of noise, the regular day-to-day operations at the site cause what has been described as "buzzing" throughout the night makes it difficult to sleep. Recent studies have increasingly focused on "non-auditory" effects of noise on health including annoyance, sleep disturbance, daytime sleepiness, hypertension, cardiovascular disease, and diminished cognitive performance in school children.<sup>13</sup> Many residents living in close proximity to oil and gas development sites in Los Angeles routinely complain of noise from routine operations.

### *Air Quality and Toxic Exposure*

Three of the studies investigated levels of volatile organic compounds (VOCs) and endocrine disrupting chemicals that exceeded regulatory agency minimum standards. Haley, et al. (2016) discussed how exposures of hydrogen sulfide combined with VOCs could produce potentially new harmful exposures that could be detected at distances up to 2 km (about 6,561 feet).<sup>8</sup> Macey, et al. (2014) investigated several jurisdictions with setback regulations for oil and gas operations and conducted air monitoring sampling to examine if the setbacks were adequate.<sup>14</sup> The findings revealed high concentrations of carcinogenic VOCs at distances greater than the setback regulations, including formaldehyde at 2,591 feet and benzene up to 885 feet away from wells. The study also discussed how health-based risk levels that most regulatory agencies rely on for setting limits on air emissions are very limited in providing a sense of the human health impacts.<sup>14</sup> The risk level standards do not account for more vulnerable subpopulations like children and the elderly. Additionally, the number of compounds that are required for monitoring and toxicity reporting is relatively small when considering the vast number of chemicals required for oil and gas operations.<sup>14</sup> Kassotis, et al. (2014) found elevated levels of endocrine disrupting chemicals in water sources 1 mile away from oil and gas operations with known spills or incidences.<sup>15</sup> The study noted that near one of the investigated facilities contaminated by endocrine disrupting chemicals (EDCs), some of the animals in the area were no longer producing live offspring.

The findings revealed high concentrations of VOCs at greater distances than the setback regulations, including formaldehyde at 2,591 feet and benzene up to 885 feet away from wells.

### *Explosion Risk and Hazards*

Haley, et al. (2016) considered the minimum distance that might be required in case of a blow-out or explosion event by investigating historical evacuation data.<sup>8</sup> For example, an explosion in the Barnett Shale in northern Texas produced a 750-foot burn crater.<sup>16</sup> Their findings determined that the average evacuation zone for such incidences is 0.8 miles, or 4,224 feet. A blowout in Wyoming County, PA required a 1,500 foot evacuation zone, which required the evacuation of only 3 families.<sup>17</sup> Considering that in Wyoming County the population density was only 71.2 people per square mile<sup>1816</sup> compared to a densely populated neighborhood in South Los Angeles with a population density of over 20,000, if a similar event were to happen, the same distance of 1,500 feet would require evacuation of 100,743 people. A very recent example of natural gas pipeline explosion accident comes from rural Colorado. On April 17, 2017, a one-inch abandoned pipeline exploded under a home in Colorado, leveled the house,

killed two people and badly burned a third person. The gas well head was located just 178 feet from the home.<sup>19</sup>

***Dense Population of the City of Los Angeles and Close Proximity to Oil and Gas Facilities Magnifies Health and Safety Risks***

Four studies investigated the relationship between health outcomes and the number of wells within a certain radius of residential homes (Table 3). The studies were concerned with birth outcomes and childhood leukemia and were conducted in Pennsylvania and Colorado. The density measures ranged from 3.36 – 125 wells per square mile. To compare to Los Angeles, the four extraction facilities in South Los Angeles that extract from the Las Cienegas oil field, the 2<sup>nd</sup> largest gas producing field in Los Angeles, each have 22 to 36 oil and gas wells operating less than 100 feet from residential homes. The Inglewood oil field has over 1000 wells operating well within 1 mile of residential homes, recreation parks, and other sensitive land uses.

The studies that investigated poor birth outcomes found that mothers in the sampling population who lived near the highest density of active wells were 1.3 more likely to give birth to a child who had congenital heart defects (CHD) and 2 times more likely to give birth to a child with neural tube defects (NTD),<sup>22</sup> higher incidences of LBW and SGA,<sup>23</sup> and increased rate of preterm birth.<sup>24</sup> McKenzie, et al. (2017) found that increased well density was associated with increased risk for acute lymphocytic leukemia in people ages 5-24.<sup>25</sup>

***Delphi Technique***

In addition to peer review studies, a consortium of experts in environmental studies and public health have also assessed and considered policy recommendations to address the health and safety consequences of close proximity to oil and gas development. The Environmental Health Project (EHP) is a public health organization that utilized the Delphi Technique to arrive at an expert consensus on an appropriate setback distance for unconventional oil and gas development from human activity.<sup>21</sup> “The

...89% participant agreement that **1 to 1.25-mile distance** from unconventional oil and gas development is an acceptable minimum.

Delphi is an accepted method for reaching convergence of expert opinion about a specific topic,” and in this study, consensus was defined as 70% agreement of panelists. The process resulted in an 89% participant agreement that 1 to 1.25-mile distance (6,600 feet) from unconventional oil and gas development is an acceptable minimum to protect human health. Additionally, the study recommends greater setback distances for settings where vulnerable subpopulations might gather, such as schools, day care centers, and

hospitals.

***Existing setback laws***

It is clear that throughout the scientific literature that researchers agree the existing setback laws in various jurisdictions throughout the U.S. are inadequate to protect the health and safety of residents who live, work, and play near oil and gas operations. Existing setback laws range from 150 to 1,500 feet. States like Arkansas,

...existing setback laws in various jurisdictions throughout the U.S. are **inadequate** to protect the health and safety of residents who live, work, and play nearby oil and gas operations.

Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

Colorado, and Ohio have varying setback distances from different sensitive land uses.<sup>8,14</sup> Pennsylvania and Texas have state level setback laws for any oil and gas operations near residential land use. Several municipalities in Denton County, Texas, have enforced stronger setback laws. In response to override these municipalities, the Texas state legislature subsequently passed HB40 which preempts regulation of oil and gas operations by municipalities. Haley, et al. (2016) determined that based on historical catastrophic events, thermal modeling, vapor cloud modeling, and air pollution data, these existing setbacks laws are not sufficient to protect potential risks and threats to human health from hydraulic fracturing operations.<sup>8</sup> Macey, et al. (2014) considered the concentration of VOCs in five different states and determined that the setbacks in those states were inadequate to prevent exposure to formaldehyde and benzene.<sup>14</sup> Majority of the established setback laws were typically decided by negotiations between stakeholders, like residents and policymakers, and not supported by scientific, empirical data.<sup>23</sup> The state of Maryland is one example of a jurisdiction that scientifically investigated the health and safety impact of oil and gas operations. In July of 2014, the University of Maryland School of Public Health conducted another study that focused on public health impacts.<sup>26</sup> Among the 52 recommendations that resulted from the investigation, the researchers recommended a minimum 2,000-foot setback between dwellings and well pads and non-electric motor compressor stations. In 2017, Maryland became the second state in the country to ban hydraulic fracturing.<sup>27</sup>

### *Conclusions*

While few studies have investigated the relationship between the proximity of oil and gas operations and human health impacts, this body of literature does highlight a clear public health concern and that existing setback laws are not adequately protecting public health and safety. **The growing body of scientific literature recognizes that a setback distance between oil and gas operations and locations where people live, work, play, and learn are necessary to protect human health and safety. Setbacks are especially crucial to protect vulnerable populations, such as children, elderly, and the chronically ill or disabled.** The 2,500-foot setback recommendation incorporates recognition of Los Angeles' population density and the vulnerability of residents, schoolchildren, and the elderly from health hazards and possible disasters related to oil development. The current literature has identified that existing laws are not adequate for low density, rural communities. This finding underscores the need for a stronger setback in Los Angeles' densely populated urban environment. Many of the impacted communities are in close proximity to a large number of wells and other oil and gas development facilities and are already overburdened by exposure to cumulative environmental health impacts from other industrial and transportation sources. These marginalized communities have long endured environmental injustice. **The scientific literature and published reports make a strong case for a far more protective health and safety setback for the City of Los Angeles than currently exists in other jurisdictions, and creates a substantial basis for the 2,500-foot setback proposed by community advocates.**

**Table 1. Comparison of studies and reports by distance to active oil and gas wells with consideration to population density.**

Blue shaded rows are non-peer reviewed reports. Orange shaded rows are peer reviewed publications that have relevant setback considerations or recommendations.

\*Population density values based on 2010 U.S. Census Fact Finder Population density data.

Citation	Health Impact / Exposure Finding	Distance with health / exposure finding impact / recommendation	Converted to feet	Pop Density 2010 of investigated counties/states (residents per sq.mi.)) *
SW Pennsylvania EHP Technical Reports <sup>21</sup>	Delphi Technique	1 to 1.25 mile	6,600 feet	--
Haley, et al., 2016 <sup>8</sup>	Exposure to hydrogen sulfide combined with VOCs could produce potentially new set of exposures - detected at distances of 2 km	2 km	6,561 feet	--
Haley, et al., 2016 <sup>8</sup> & Heinkel-Wolfe, 2013 <sup>14</sup>	Considered blow-out and evacuation data, average evacuation zone was 0.8 miles. Explosion in Barnett Shale produced a 750-ft burn crater. <sup>14</sup>	0.8 miles	4,224 feet	--
Kassotis, et al., 2014 <sup>16</sup>	Elevated levels of endocrine disrupting chemicals in water sources 1 mile from sites that had known spills/incidents - animals no longer produced live offspring... Location: Garfield County, Colorado	1 mile	5,280 feet	19.1
Webb, Ellen, et al. 2017	Literature review on neurodevelopmental and neurological effects of chemicals associated with UOG operations and their potential effects on infants and children. Made a recommended minimum setback of 1.6 km.	1.6 km	5,249 feet	--
Rabinowitz, et al., 2015 <sup>10</sup>	Significant respiratory and dermal impacts Location: Washington County, PA	Less than 1 km	3,280 feet	242.5
McKenzie, Witter, Newman, & Adgate, 2012 <sup>11</sup>	Significantly increased risk of pediatric sub-chronic non-cancer hazard & Chronic hazard indices	Less than ½ mile	2,640 feet	Rural areas and towns, population <50,000 in 57 counties
Macey, et al., 2014 <sup>14</sup>	Monitored high concentrations of VOCs - up to 2,591 ft Location: Counties in 4 states – AR, PA, CO, OH	2,591 ft	2,591 feet	137.45 (average)
<b>2,500 FEET RECOMMENDATION FOR CITY OF LOS ANGELES</b>				8,092.30
University of Maryland School of Public Health 2014 <sup>26</sup>	Recommended min setback distance of 2,000 ft from well pads Location: state of MD	1,000 ft	2,000 feet	594.8
Boyle, et al., 2017 <sup>12</sup>	Unhealthy noise levels Location: Doddridge County, WV	< 600m	1,969 feet	25.7
Steinzor, Subra, & Sumi, 2013 <sup>9</sup>	Significantly higher rates of health symptoms in households within 1,500 ft of an active well Location: 14 counties in PA	1,500 ft	1,500 feet	165.1

**Table 2. Studies investigating the relationship of health outcomes and proximity to concentration of wells**

Study	Outcome	Measurement	Wells density (per sq mile)	Pop Density 2010 of investigated counties/states (residents per sq.mi.) <sup>32</sup>
McKenzie, et al., 2017 <sup>25</sup>	In rural Colorado, People ages 5-24 had a 3-4 times higher risk for developing acute lymphocytic leukemia Location: state of Colorado	>33.6 wells in 16.1 km or 10 miles	3.36 wells	48.5
Stacy, et al., 2015 <sup>23</sup>	Birth outcomes by concentration of wells. Those with 6+ wells within mile had higher incidence of SGA and LBW in SW Pennsylvania Location: 3 counties in PA (Butler, Washington, Westmoreland)	6+ wells per 1 mile	6 wells	277.0 (average)
Casey, et al., 2016 <sup>24</sup>	Mothers who lived in the highest exposure quartile were 1.4 times more likely to give birth to children who were considered low birth weight (LBW) and smaller than gestational age (SGA). Location: 40 counties in PA – Using state population density	Highest exposure quartile had 124 wells within 20 km; lowest had 8 wells within 20 km	About 10 wells	283.9
South Los Angeles – Jefferson Drill Site (example for comparison)		36 wells within 1 mile	36 wells	21,848
McKenzie, et al., 2014 <sup>22</sup>	In rural Colorado, mothers who lived in higher exposure tertile had 1.3 higher chance of giving birth to a child with congenital heart defect (CHD) 2.4 higher chance of having Neural Tube Defect. Even in the 2 <sup>nd</sup> tertile of highest exposure, mothers were 1.2 more likely to give birth to a child with CHD. Location:	Highest exposure tertile had 125-1400 wells within a mile, the next highest tertile had 3.63-125 wells within a mile.	125 wells	Rural areas and towns, population <50,000 in 57 counties

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**Shannon L. Chaffin**

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**From:** Suzanne Noble <[snoble@wspa.org](mailto:snoble@wspa.org)>  
**Sent:** Monday, May 14, 2018 9:22 PM  
**To:** Shannon L. Chaffin  
**Subject:** WSPA Comment Letter City of Arvin Proposed Oil and Gas Ordinance Update - May 14, 2018  
**Attachments:** WSPA Comment Letter City of Arvin Proposed Oil and Gas Ordinance Update - May 14 2018.docx; Kern EIR Global Response Water-04, Feasibility of Potable Water Ban.pdf

Shannon,

On behalf of the Western States Petroleum Association please see our comment letter attached on the City of Arvin's proposed Oil and Gas Ordinance update, with attachment.

We look forward to seeing you at the Arvin workshop on Wednesday, May 16.

Please contact me at 661-319-6340 if you have any questions.

**Suzanne Noble**

Director Production Operations  
Western States Petroleum Association  
(661) 319-6340  
[snoble@wspa.org](mailto:snoble@wspa.org)

**Shannon L. Chaffin**

---

**From:** Shannon L. Chaffin  
**Sent:** Monday, May 14, 2018 9:33 AM  
**To:** 'Dale Hankins'  
**Subject:** RE: Zoning south of development in Section 2

Dale:  
 Thank you for your interest in the workshop. The workshop set for May 16, 2018 at 9:00 a.m., in the Arvin City Council Chambers, in Arvin, CA. We look forward to seeing you there.  
 Best,  
 -Shannon

**Shannon L. Chaffin, Esq.** | Partner  
 City Attorney, Arvin  
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**From:** Dale Hankins [<mailto:dlh2@sbcglobal.net>]  
**Sent:** Saturday, May 12, 2018 12:28 PM  
**To:** Shannon L. Chaffin  
**Subject:** Zoning south of development in Section 2

Mr. Chaffin:

I wish to attend the May 16 meeting/workshop. My interest is the serious limitation of access south of development in Section 2. Because of prohibitive costs to reach minerals from any direction the inaction you proposed in your e-mail to me would allow the City to take my investment and confiscate my Lessor's mineral rights. This is clearly unsatisfactory.

Dale Hankins



Western States Petroleum Association  
Credible Solutions • Responsive Service • Since 1907

**Suzanne Noble**  
Director, Production Operations

May 14, 2018

Mr. Shannon L. Chaffin  
City Attorney, Arvin  
2125 Kern Street, Suite 307  
Fresno, CA 93721

Sent via email: [schaffin@awattorneys.com](mailto:schaffin@awattorneys.com)

**RE: COMMENTS ON PROPOSED ORDINANCE TO ADOPT TEXT AMENDMENT  
NO. 2017-04, AN OIL AND GAS ORDINANCE FOR REGULATION OF  
PETROLEUM FACILITIES AND OPERATIONS**

Dear Mr. Chaffin,

The Western States Petroleum Association (“WSPA”) submits these comments regarding the City of Arvin’s proposed ordinance update to adopt Text Amendment No. 2017-04 to the Arvin Municipal Code (the “Ordinance”).

WSPA is a non-profit trade association representing companies that explore for, produce, refine, transport and market petroleum, petroleum products, natural gas, and other energy supplies in California and four other western states. We appreciate that the City’s goal is to ensure that oil and gas operations within its limits are conducted safely. Nevertheless, WSPA is concerned that many aspects of the Ordinance are duplicative of state law and regulations, unduly burdensome, technically unworkable or otherwise inappropriate for operations within the City. As such, the Ordinance will create a disincentive for existing operators to continue and for new and expanded activities within the City. Accordingly, we urge the City either to substantially revise the Ordinance or to reject it.

When the Ordinance was brought before the City Council in November 2017, WSPA and others raised concerns about inadequate notice and opportunity for public participation. The Ordinance was not adopted at that time. Then at the end of April 2018, after months with no outreach from City staff, we learned that staff planned to bring the Ordinance back to the City Council for adoption after a single informal workshop on May 16, without a formal public review and comment process. We ask the City Council to direct staff to provide a full opportunity for public participation, take the time to carefully consider that input, and revise the Ordinance.

901 Tower Way, Suite 300, Bakersfield, California 93309  
(661) 321-0884 x1 • Cell (661) 319-6340 • FAX (661) 321-9629 • [suzanne@wspa.org](mailto:suzanne@wspa.org) • [www.wspa.org](http://www.wspa.org)

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WSPA respectfully submits the following comments for consideration and inclusion in the administrative record for the Ordinance, while reserving the right to submit additional comments.

Comment 1: The proposed Ordinance relies on a categorical exemption from the California Environmental Quality Act (“CEQA”) for regulatory actions to protect the environment, but that exemption does not apply where there is a reasonable possibility of significant environmental impacts due to unusual circumstances. For example, by prohibiting drilling within zones comprising most of the City, the Ordinance requires operators to drill horizontally from other, permissible zones to reach their underlying mineral rights. Increasing drilling distance and duration raises a reasonable possibility of increased emissions, noise and other impacts, which must be considered. By mandating the use of reclaimed water in lieu of fresh water, the Ordinance may increase the use of chemicals. By mandating pipeline transportation of crude oil in lieu of the current reliance on truck transportation, the Ordinance will require substantial excavation and construction, with attendant impacts related to emissions from fuel combustion, noise, fugitive dust, disruption of vehicular traffic along City streets (as pipelines are often installed under roadways), etc. Similar excavation and construction impacts would result from the Ordinance’s mandate to underground electrical lines. WSPA reserves its right to submit further comments regarding the inapplicability of the exemption and need for CEQA review of the Ordinance’s unintended environmental consequences.

Comment 2: In addition to environmental implications, the need for extensive horizontal drilling will impose costs on owners of mineral rights underlying the majority of the City, where drilling will be prohibited. Moreover, the surface parcels closest to the newly inaccessible minerals may not be available as sites from which to drill horizontally, or the surface owners may impose excessive costs to allow drilling. WSPA urges the City to reconsider allowing drilling to directly access minerals underlying non-residential zones where impacts would be limited, yet drilling is prohibited under the current proposed Ordinance.

Comment 3: In areas where drilling remains permissible, the Ordinance would require the issuance of an individual Conditional Use Permit (“CUP”) for each oil and gas project, including expanded activities entirely within the footprint of existing oil and gas operations. This requirement is procedurally burdensome and unnecessary, as well as exposing both the City and operators to litigation risk. The protracted process for obtaining a CUP, including individualized CEQA review and public comment, introduces delay and costs which may render some projects impractical. Moreover, each of these CUPs must be approved by the Planning Commission, is appealable to the City Council, and may be challenged in court. This lengthy and uncertain timeline, with no guarantee of approval in the end, will be a strong disincentive for new and expanded projects.

Comment 4: Under Section 17.46.010.A of the Ordinance, each CUP would be subject to review at five-year intervals, with potential reopening to add more requirements, again subject to challenge in court. There is no justification for requiring repeated, redundant reviews of every individual CUP. In addition to the burden for operators, requiring repeated reviews every five years, for every CUP, will be a considerable burden on City staff. Moreover, a CUP is supposed to provide certainty, enabling operators who get through the lengthy CUP process to assess the

Mr. Shannon L. Chaffin  
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economic viability of a project based on definitive knowledge of all requirements. These reviewable CUPs provide no such certainty beyond the five-year term, potentially resulting in new requirements and new costs which were unknown at the planning and permitting stage. The periodic review requirement originated in an ordinance applying to large oil field operations in the City of Carson, and was excessive even there, but is even more excessive when applied to the typical project in the City of Arvin, consisting of one or a few wells.<sup>1</sup> However, it is entirely inappropriate for projects of one or a few wells, which is typical in the City of Arvin. This provision should be eliminated or limited to facilities above a specified size, which are unlikely to exist in the City. If the City feels it necessary to impose additional environmental protections, it can do so by adopting requirements and development standards in the Ordinance itself, without requiring an individual CUP for every project and five year reviews of every CUP. In fact, the proposed Ordinance already contains many highly specific requirements and standards that will apply to all activities, independent of the individual CUPs (though some of those requirements and standards are duplicative or otherwise problematic, as noted in further comments below). The future CUPs would then impose additional redundant requirements, administrative process and litigation risk. There is nothing to justify this burden.

Comment 5: The substantive new requirements of the Ordinance, which apply to existing as well as new operations, largely overlap with those of the state Division of Oil, Gas and Geothermal Resources (“DOGGR”), the State Water Resources Control Board, the Regional Water Quality Control Boards, and other agencies. Those are the agencies with special regulatory jurisdiction and expertise, both of which the City lacks. In particular, the City lacks jurisdiction over downhole well activities which are exclusively regulated by the state. Rather than impose the unnecessary burden of duplicative requirements, it should be sufficient for operators simply to provide the City with copies of submittals to the relevant agencies with jurisdiction and expertise. The City’s review approval process should be limited to land use compatibility and surface activities which are properly within its jurisdiction.

Comment 6: Many provisions of the Ordinance impose limitations on currently allowed equipment types and operations as well as extensive new monitoring and testing, all of which will be costly and burdensome to operators. Other provisions require new plans for air quality, water management, access road and transportation, noise and vibration, steaming operations and other activities, but the specific requirements remain to be determined subject to the discretion and approval of the City Manager. These discretionary requirements add further uncertainty for operators, and presumably will also be subject to revisiting in the comprehensive five-year reviews. The additional layer of uncertainty also affects the economic viability of projects and will be further disincentive for initiating new and expanded development proposals. For example, Section 17.46.034.1 requires oil and gas to be transported by pipeline, unless the City Manager finds that pipeline transport is infeasible, in which case the City Manager may – but is not required to – approve transport by truck. But this ignores the reality that truck transport is in

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<sup>1</sup> In fact, the entire Ordinance is virtually identical to the City of Carson ordinance and retains references to the City of Los Angeles Department of Building and Safety in Section 17.46.038.F.

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fact widespread and routine, while construction of new pipelines is not economically justifiable for smaller projects.

Comment 7: In addition to the pipeline requirement, various other Ordinance provisions contain exceptions if the requirements are determined to be infeasible (specific examples are noted below). However, the Ordinance does not define “feasibility”, leaving the determination up to the unguided discretion of the City Manager. Moreover, some of the language may be read to suggest that only technological infeasibility can provide grounds for waiving or accepting an alternative to a requirement. For many operations, especially small ones, economic considerations may be more important, and the cost of some requirements may be sufficient to render the project uneconomical. The Ordinance must be revised to provide a definition of “feasibility” to be applied consistently, avoiding inconsistent and unfair outcomes. WSPA recommends utilizing the definition from CEQA Guidelines Section 15364: “‘Feasible’ means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”

Comment 8: Other cities have successfully implemented the approach of relying on and enforcing well development standards and land use requirements. See, for example, the well site development standards in Bakersfield Municipal Code Section 15.66. WSPA suggests that Arvin consider following the City of Bakersfield’s model. Bakersfield’s ordinance authorizes the establishment of Drilling Island districts or Petroleum Extraction overlays, utilizing the same public notice and comment process as a CUP. Once established, however, operators have certainty and do not need to obtain a CUP for every subsequent new or expanded development within these areas.

Comment 9: Section 17.46.015 provides that any violation may be penalized up to the maximum amount, with no direction for determining an appropriate amount. This section should be revised to provide an incremental fine structure, reducing or waiving fines for a first violation and increasing fines for repeat violations. In addition, the provision should be clarified to state that, if a notice of violation is corrected or satisfactory steps to cure have been initiated within 30 days, the deposited fine amount will be returned to the operator.

Comment 10: The bonding and insurance requirements are also excessive and duplicative. The Ordinance requires operators to provide bonds in indeterminate amounts (but no less than \$10,000 per well), to be determined at the City Manager’s discretion and revisited every five years, and also provides an extensive list of required insurance coverages. Bonding and insurance are already required by DOGGR, the state Office of Spill Prevention and Response, and other agencies. Imposing costly additional requirements will disincentives new development and may eliminate marginal operations. The bonding and insurance provisions should be revised to accept financial assurances approved by DOGGR and other agencies as sufficient for the City’s purposes.

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Comment 11: The Findings section purporting to support adoption of the Ordinance is seriously incomplete and misleading.

- The Findings fail to include basic facts of the existing regulatory structure and protections in place, and so do not justify the need for the Ordinance. In particular, the Findings fail to acknowledge DOGGR’s jurisdiction and responsibility for well permitting and testing; safety inspections; oversight of production and injection projects; environmental lease inspections; idle well testing; inspecting oilfield tanks, pipelines, and sumps; hazardous and orphan well plugging and abandonment contracts; and subsidence monitoring. Yet the City is well aware of DOGGR’s actual role and responsibilities, as reflected in Ordinance Section 17.46.01, Operational Noticing, requiring the operator to provide the City with copies of its submittals to DOGGR.
- In discussing the need for the Ordinance to protect against impacts to water quality and resources, the Findings do not mention the federal Clean Water Act and State Drinking Water Act, the state Porter-Cologne Act and Sustainable Groundwater Management Act and their respective regulatory implementation that already protect those resources. The Findings assert that water resources are at risk “[w]ithout the appropriate regulations, or a mechanism to confirm compliance with existing regulations” (see Findings, p. 9), but such regulations are already in place and enforced by DOGGR and the State and Regional Water Boards.
- The supposed need to adopt the Ordinance in order to provide for enforcement, compliance monitoring and oversight (Findings, p. 14) does not acknowledge that federal and state regulatory agencies with special jurisdiction and expertise exist, much less demonstrate that additional enforcement, monitoring and oversight by the City of Arvin is needed. The concerns raised in this section are covered by federal and state law, including compliance, bonding and financial assurance, and enforcement.
- The Findings also rely on information with no demonstrated relevance to operations in the City or, for that matter, in California (such as a Canadian study of wellbore leakage rates; see Findings p. 11, footnote 2).
- Finally, the Findings omit any mention of the economic significance of oil and gas operations for the City and for Kern County.

Comment 12, Section 17.46.04: Several of the definitions in the Ordinance are incorrect or inconsistent with state law or regulation:

- The definition of “idle well” states that the term is defined in “DOGGR Statutes and Regulations” but further defines an idle well as one not used for production or injection for six consecutive months in five or more years. That is not consistent with the definition in Public Resources Code § 3008(d): “Any well that has not been used for the production of oil and gas, the production of water for the purposes of enhanced oil recovery or reservoir pressure management, or injection for a period of 24 consecutive months”, not six months. The Public Resources Code definition should be used.

- The definition of “secondary containment” is inconsistent with the definition in DOGGR regulations which does not require impervious barriers. The DOGGR definition should be used: “‘Secondary containment’ means an engineered impoundment, such as a catch basin, which can include natural topographic features, that is designed to capture fluid released from a production facility.” 14 Cal. Code Regs. § 1760(n).
- The local air district is the “San Joaquin Valley Air Pollution Control District” or “SJVAPCD”, not the “SJVAQMP” or “San Joaquin Air Quality Management District.”

Comment 13: The definition of “new development” states: “Re-drills of abandoned wells are considered new wells under this ordinance.” Re-abandoning should not subject an abandoned well to all of the requirements for new wells.

Comment 14, Section 17.46.07: DOGGR well permits are available on DOGGR’s WellSTAR system. It is redundant and a potential source of delay to require operators to provide copies to the City Manager prior to the start of drilling or re-working. In some instances, time may be of the essence to complete certain workover activities while minimizing environmental impacts.

Comment 15, Section 17.46.011.3.1: The requirement to file a separate application for abandonment or partial abandonment is duplicative of DOGGR requirements, with no justification for the separate City application. The abandonment process is closely regulated by DOGGR. It should suffice for the operator to provide the City with copies of the DOGGR documentation, verifying that DOGGR is overseeing compliance. In addition, copies of DOGGR documentation would enable the City to track the locations of abandoned wells for future development purposes.

Comment 16, Section 17.46.08.1.J: The “quiet mode” requirements of this section are excessively stringent. Jurisdictions with quiet mode requirements generally require such controls only between 6 pm and 8 am, but in this section the requirements apply at all times except for the restriction on truck deliveries. All of the quiet mode requirements in Section 17.46.08.1.J should apply between 6 pm and 8 am.

Comment 17, Sections 17.46.08.1.L and 17.46.32.1: Environmental Quality Assurance Programs (“EQAPs”) are generally reserved for oil fields or larger production facilities, not individual wells. The EQAP provisions are excessive and should be eliminated for small projects such as individual wells.

Comment 18: Section 17.46.08.3.A.4 prohibits CUP approval unless the Planning Commission makes a specific affirmative finding regarding water quality. This requirement could be read to compel rejection of projects which satisfy all regulatory standards for freshwater and groundwater protection to the satisfaction of DOGGR and the State and Regional Water Boards, if the Planning Commission fails to make a finding on downhole wellbore integrity which is outside its jurisdiction and expertise. Item A.4 should be stricken and the required findings for CUP issuance should be limited to A.1-A.3.

Mr. Shannon L. Chaffin  
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Comment 19, Section 17.46.08.5.C suggests that the new operator must already be in compliance with all ordinance conditions before the CUP may be transferred and the new operator assumes control, which is logically impossible. The provision should be clarified to give new operators a reasonable time period to meet the requirements after assuming control, e.g., six months from the date that the acquiring operator executes the DOGGR notification of well and/or facility disposition form.

Comment 20, Section 17.46.012.C: Read literally, the requirement for the operator to notify the City of the “idling” of any well would require filing a notice every time a well on a timer ceases operating. This provision should be revised to require notification when the well has been idle for 24 months, consistent with the statutory definition of an idle well.

Comment 21: Section 17.46.013 requires reporting of “all complaints” which is overly vague and could apply to trivial or unsubstantiated occurrences. By contrast, Section 17.46.032.2 regarding odor complaints refers to complaints verified by the air district or the City. Similar verification should be required for reporting under Section 17.46.013.

Comment 22: Section 17.46.016 provides that “any violation” of the Ordinance is a public nuisance. Read literally, failure to file required paperwork would be declared a public nuisance, which is an unreasonable standard. This section should be revised to limit “public nuisance” to violations that cause actual adverse impacts to the public.

Comment 23, Section 17.46.017: Compliance monitoring by specialist Environmental Compliance Coordinators is generally reserved for oil fields or larger production facilities, not individual wells. In other local jurisdictions, it is standard for Building Inspectors to inspect the types of facilities that exist in the City of Arvin. This provision is unnecessary, likely to be expensive, and inappropriate in the City, where the typical project consists of one or a few wells. The provision should be eliminated or limited to large facilities above a specified size.

Comment 24, Section 17.46.021: The insurance requirements must be consistent with the types of policies that are available in the marketplace. While policies covering accidental releases are available, generic “environmental impairment” insurance coverage as required by this section may not be available to oil and gas operators or may be cost prohibitive.

Comment 25: Section 17.46.028 prohibits steaming, unless approved by the City Manager. The City Manager may also adopt guidelines which would regulate steaming, apparently without going through the process of amending the Ordinance. As far as WSPA is aware, steaming is not currently utilized in oil and gas operations within the City. Nevertheless, it appears inappropriate to impose a default steaming ban that would preclude access to mineral rights by a method that is effectively used elsewhere and permissible under state law. Moreover, as noted above, the state has exclusive jurisdiction over downhole activities. The language should be revised to remove the prohibition so that steaming would not be a default precluded activity.

Comment 26: Section 17.46.029.A requires use of reclaimed water for oil and gas activities, unless the City Manager finds that reclaimed water use is “infeasible” and the operator provides an “equal and measurable” (but undefined) community benefit. This provision raises two issues:

- First, while the oil and gas industry is taking steps to increase water recycling, use of reclaimed water for all activities is not technically feasible. This issue was discussed in the Environmental Impact Report for the Kern County Oil and Gas Ordinance, which found it infeasible to ban potable water use and require use of recycled produced water for oil and gas activities:

“Using produced water would, in many cases, significantly increase costs, and could result in increased chemical use, longer and more intensive surface activities, and the need for additional permitting processes to avoid adverse secondary environmental impacts.” Master Response Water-04: Feasibility of Potable Water Use Ban, in “Final Environmental Impact Report – Revisions to the Kern County Zoning Ordinance 2015-C” (September 2015)(excerpt attached with additional details).

Since the City cannot, in fact, reasonably expect each oil and gas site to utilize only reclaimed water, this provision should be revised to remove that default requirement.

- Second, “infeasible” is not defined. Presumably “infeasible” at least includes technological infeasibility. But as discussed in the Kern County EIR, significantly increased costs also contribute to the infeasibility of requiring recycled water for all uses. While economic infeasibility is a component of infeasibility as defined by CEQA, that definition does not apply to the Ordinance. The Ordinance should be revised to add the definition of “feasibility” from CEQA Guidelines 15364, which provides that economic and other factors, as well as technological considerations, may be grounds for determining infeasibility.

Comment 27: Section 17.46.029 (B) requires electrical lines to be undergrounded, without even providing the exception if doing so is deemed infeasible. In fact, undergrounding electrical lines is cost prohibitive for individual wells. As with the reclaimed water provision, this requirement should provide an infeasibility exception, defining infeasibility as in CEQA Guidelines 15364 to include economic considerations and other factors.

Comment 28: As noted above, Section 17.46.034.1 requires oil and gas to be transported by pipeline, unless the City Manager finds that pipeline transport is “infeasible”, in which case the City Manager may – but is not required to – approve transport by truck. However, the reality is that truck transport is widespread and routine. This raises two issues:

- First, since the City cannot, in fact, reasonably expect routine truck transport to cease, this provision should be revised to remove the default requirement for pipelines.
- Second, “infeasible” is not defined. Presumably “infeasible” at least includes technological infeasibility. But pipeline construction rarely would be a technical impossibility; rather, the need to construct a new pipeline would affect the economic viability of projects, especially smaller projects. Again, the Ordinance should be revised to add the definition of “feasibility” from CEQA Guidelines 15364, providing

Mr. Shannon L. Chaffin  
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that economic and other factors, as well as technological considerations, may be grounds for determining infeasibility.

Comment 29, 17.46.032.1: As noted above for Section 17.46.08.1.L, EQAPs are generally reserved for oil fields or larger production facilities, not individual wells. The EQAP provisions are excessive and should be eliminated for small projects such as individual wells.

Comment 30, Section 17.46.032.2: While we appreciate that odor complaints must be “confirmed” by the air district or the City, WSPA is concerned that additional requirements should not be triggered by complaints that are not accurate. To be considered “confirmed”, odor complaints must be verified as originating from an odor source within the facility.

Comment 31: Section 17.46.032.5.3 may require groundwater investigation and installation of groundwater monitoring wells that are duplicative of requirements of DOGGR and the State and Regional Water Boards. Compliance with regulatory agency requirements should be deemed sufficient.

Comment 32: Section 17.46.032.5.3.B states:

“The operator shall not inject any water spoils/wastewater derived from the any oil or gas operations into any non-exempt *or DOGGR exempt* freshwater aquifers” (emphasis added).

As drafted, the words in italics appear to prohibit wastewater injection into aquifers designated as “exempt” and approved for such injections through an extensive series of reviews and approval by DOGGR, the State and Regional Water Boards and the U.S. Environmental Protection Agency. The City does not have jurisdiction over downhole activities or authority to ban injection into exempt aquifers approved by federal and state agencies. This section should be revised to read: “The operator shall not inject any water spoils/wastewater derived from the any oil or gas operations into any non-exempt freshwater aquifers.”

Comment 33, Section 17.46.032.6: As noted above in the comment on Section 17.46.08.1.J, noise restrictions should be limited to 6 pm – 8 am which is standard practice.

Comment 34: Section 17.46.33.G prohibits aboveground pump-jack assemblies in new wells in non-industrial sites, apparently for aesthetic reasons. Submersible downhole pumping mechanisms are required for extraction, unless determined to be infeasible by the City Manager. The requirement for more expensive submersible pumps is another cost burden that may render marginal operations inviable. Submersible pumps also tend to have operational issues which require more frequent maintenance, thus increasing truck traffic to and from the site. In this instance, there is a criterion for finding infeasibility “due to technical reasons or other circumstances which would specifically preclude the use of such technology.” However, as with the other uses of “infeasible”, the Ordinance should be revised to add the definition of “feasibility” from CEQA Guidelines 15364, providing that economic considerations and other factors may be grounds for determining infeasibility.

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Comment 35: Section 17.46.038.F may require leak testing of abandoned wells or re-abandoned wells that is duplicative of requirements of DOGGR and the air district. Compliance with regulatory agency requirements should be deemed sufficient.

Thank you for your consideration of WSPA's comments. If you have any questions, please contact me at 661-319-6340.

Sincerely,



Attachment: Kern EIR Global Response Water-04 Feasibility of Potable Water Ban

MM 4.17-1, which requires approved septic systems in appropriate locations for oil and gas operations and maintenance buildings to reduce potential water quality impacts, including to surface waters and beneficial uses.

MM 4.17-5, which requires that Oil and Gas Conformity Review applicants not store construction waste onsite for longer than the duration of a construction activity, not transport any waste to any unpermitted facilities, and reduce construction waste transported to landfills by recycling solid waste construction materials.

In summary, the proposed Zoning Ordinance amendments will significantly enhance groundwater level, storage and quality, surface water beneficial use, and land subsidence protection requirements in the Project Area. In addition Oil and Gas Conformity Review applicants will be required to cooperate with the County in the development of a project Area GSP that incorporates best practices for oil and gas exploration and production, including increased produced water reuse with appropriate treatment, and increased oil and gas use of recycled water in lieu of higher-quality ground or surface waters. Implementation of the proposed Zoning Code amendments would support the achievement of and be consistent with all applicable SGMA sustainable groundwater management objectives for the Project Area.

## Water-04: Feasibility of Potable Water Use Ban

Some commenters requested that oil and gas producers be banned from use of any potable water for production activity. The County recognizes the importance of addressing impacts on water supply under current drought conditions in California. The EIR incorporates feasible mitigation measures to increase use of produced water. See Mitigation Measures 4.17-2, 4.17-3 and 4.17-4. However, CEQA requires an EIR to identify only mitigation measures that are feasible.<sup>106</sup> Mitigation is feasible if it is capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.<sup>107</sup> Similarly, the County may reject any alternative that is not actually feasible.<sup>108</sup>

An alternative or mitigation measure requiring use of produced water for all oil and gas operations, or banning the use of potable municipal and industrial (M&I) water or groundwater for oil and gas operations, would not be feasible. Using produced water would, in many cases, significantly increase costs, and could result in increased chemical use, longer and more intensive surface activities, and the need for additional permitting processes to avoid adverse secondary environmental impacts.

<sup>106</sup> *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200, 244-245 [“An EIR need not identify and discuss mitigation measures that are infeasible...Nothing in CEQA requires an EIR to explain why certain mitigation measures are infeasible.”]

<sup>107</sup> CEQA Guidelines § 15364.

<sup>108</sup> *California Native Plant Soc.*, 177 Cal.App.4th at 981; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 489; CEQA Guidelines § 15091.

Produced water is currently used for some oilfield activities, such as discharge for dust suppression, but increasing that use beyond existing levels would require additional permitting and approvals to avoid impacts to biological, water and other resources. While the oil and gas industry in Kern County has been working with the Regional Water Quality Control Boards to increase use of produced water for dust suppression and other oilfield activities, there are regulatory hurdles to increasing use of produced water and it is uncertain whether and to what extent additional use of produced water will be permitted by the Boards. As such, a requirement to substitute produced water for all uses would not be legally feasible.

While oil and gas operators may be able to utilize additional produced water for some oilfield activities – as contemplated by Mitigation Measures 4.17-2, 4.17-3 and 4.17 – not all oilfield activities are able to use produced water. For some oilfield activities, such as drilling and abandonment work, the use of fresh water is required to properly formulate the cement mixtures that are needed to safely drill and abandon wells. Using produced water for these activities would jeopardize operators’ ability to comply with well specifications provided for in DOGGR regulations.

Certain enhanced oil recovery (EOR) operations, such as steam generation, can require higher-quality water supplies than are typically obtained from treated produced water in order to avoid equipment corrosion or damage and potential chemical interactions. Use of produced water in these operations can also lead to increased need for equipment maintenance due to, for example, silica buildup or tube failures in boilers. Even when produced water can be used in EOR operations, water losses in the oil production cycle—due to losses on the surface, in the geological zones, or otherwise—typically necessitate the use of some fresh or brackish “make up” water from a surface or subsurface source. Depending on the nature of the operation, “make up” water often represents between 10 and 25 percent of the water used.

Additionally, the lack of infrastructure linking sources of produced water to the locations where water may be used, particularly in cases of new exploration, can result in increased truck trips and other more significant impacts associated with transporting produced water to operation sites. For example, pilot EOR projects typically cannot use recycled water due to the early stage of project development, which results in a lack of available recycled water. Furthermore, the treatment of water for reuse requires specialized equipment, consumes energy, and generates waste. In many cases, operators have also contracted with local water purveyors to utilize some supply of purchased water over a long-term contract; cancellation of such contracts would also create negative financial impacts for the region.

Some commenters urge a mitigation measure or alternative requiring the use of produced water specifically for well stimulation treatments. However, such requirements would significantly increase chemical use as well as costs. Chemicals used in fracture treatments impart viscosity for proppant transport and fracture geometry creation and improve post-treatment production results by minimizing polymer plugging and other phenomena detrimental to production. Using produced water instead of fresh water as a base fluid for fracture treatments would increase the chemical volumes needed to fulfill these functions. Produced water use for fracture treatments could require as much as a five-fold increase in buffering agents, and additional chelating agents, clay and scale inhibitors, and surfactants to prevent emulsions and reduce surface tension may also be needed to

minimize production complications that would be caused by the use of produced water. While produced water could be pre-treated to require fewer chemicals during the fracture treatment itself, such pre-treatment conditioning would also involve more chemicals, equipment, or both, to obtain water sufficient for use in the fracture treatment. Because of these complications, a typical fracturing operation would become significantly more expensive, and often uneconomic.

In addition, for some types of well stimulation, such as matrix acid stimulation, it is technologically infeasible to utilize produced water. Typically, matrix acid stimulation employs hydrofluoric acid (HF acid), which can only be mixed with fresh water. If HF acid comes into contact with formation brine, insoluble precipitants form, limiting the effectiveness of the acid stimulation system by plugging pore throats in the reservoir pore network. Such plugging can completely counteract the effects of the stimulation treatment. The reduction in the effectiveness of the treatment would require more frequent treatments, larger treatments, or both, which would lead to a significant increase in use of chemicals, emissions and heavy vehicle traffic hauling hazardous chemicals.

In sum, while operators are working to increase their use of produced water for oil and gas operations in Kern County, issues ranging from harms caused by chemical interactions to the lack of availability of produced water at certain sites renders complete elimination of freshwater use economically, socially, environmentally, and technologically infeasible.

## **Water-05: Water Supply and Demand Data Update**

Commenters have indicated that the 2012 water supply and demand estimates for oil and gas exploration and production activities in DEIR Section 4.9, DEIR Section 4.17, Impact 4.17-4, and in the Water Supply Assessment (WSA) for the project region underestimate the amount of surface pond disposal in the Western Subarea and the volume of produced water used for agriculture in the Eastern Subarea, and overestimate the amount surface pond disposal in the Eastern Subarea. Commenters have also requested clarification that the regional groundwater use and supply and demand average, and dry and multiple dry year estimates in the DEIR and WSA, do not identify or are intended to represent an assumed groundwater safe or sustainable yield for the analysis region.

In response to these comments, the County requested that Kennedy-Jenks, the engineering firm that prepared the WSA, review the estimates for the Western and Eastern subareas, clarify that the analysis does not assume a safe or sustainable yield for the analysis region, and revise the WSA as applicable. The revised, final WSA was prepared by Kennedy-Jenks and delivered to the County on September 18, 2015. The final WSA is attached as Appendix T-1. In addition, conforming changes to the table of Project Area produced water generation use or disposal were made to Table 5.1 of the Water Quality Assessment (WQA) prepared by Kennedy Jenks. The revised, final version of the WQA is attached as Appendix S-1.

The revisions in the Final WSA and WQA reflect minor corrections or additional information, including a larger amount of produced water land disposal in the Western Subarea, a larger amount of agricultural reuse of produced water in the Eastern Subarea, and a correspondingly smaller amount of land disposal in the eastern subarea. In addition, because the increased use of treated produced water for irrigation reduces agricultural demand for other water supplies by the same

**Shannon L. Chaffin**

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**From:** Wyatt Shipley <wshipley@vaqueroenergy.com>  
**Sent:** Wednesday, May 16, 2018 7:47 AM  
**To:** Shannon L. Chaffin  
**Cc:** Cecilia Vela  
**Subject:** Vaquero Energy Comments on O&G Ordinance  
**Attachments:** Vaquero Energy Comments on Proposed Arving Oil Ordinance.pdf

Shannon and Arvin City Council,

Thank you for taking the time to meet with us regarding the proposed ordinance language. We have reviewed the document and have prepared the comments in the attached letter. We look forward to continuing production in the area.

Sincerely,

Wyatt Shipley



**YAQUERO  
ENERGY**

*Operations Manager*

*15545 Hermosa Road*

*Bakersfield, CA 93309*

*Office: 661-363-7240*

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[wshipley@Vaqueroenergy.com](mailto:wshipley@Vaqueroenergy.com)



VAQUERO  
ENERGY

May 15, 2018

Arvin City Council

Re: Proposed update of the City of Arvin's Oil and Gas Ordinance

Dear Mayor Jose Gurrola and City Council:

Vaquero Energy, Inc., PetroRock LLC, and Hunter Edison Oil Development LP are writing to provide comments on the proposed Revisions to City of Arvin's Oil and Gas Ordinance.

Prior to setting forth our comments, we would like to thank the council, the Planning Department, and staff for their dedication and effort in putting together a comprehensive plan for future oil and gas operations in the City of Arvin. We have operated in Arvin for over 50 years and we are proud of our contribution to the local economy through jobs and tax revenue. We look forward to continuing these contributions with ongoing operations in the future, but there are several aspects of the Ordinance that could severely impact our future business in the city. We are small, independent operators, and we are severely impacted by, for example, the numerous fees, limitations, restrictions, and uncertainties proposed with the ordinance. We are hopeful that when you consider the, you also consider the revisions and comments suggested below to avoid the unfair and unlawful impact that they have on smaller independents and their ability to continue to operate in the City of Arvin.

**Exhibit "A": Findings of Fact**

Page 9: The second paragraph starts out "Without the appropriate regulations". This statement, as well as the following three paragraphs try to paint our industry as reckless cavaliers with no oversight. There is no mention that we are one of the most highly regulated industries in California. Numerous control measures are put in place by the Department of Oil, Gas, and Geothermal Resources, California Air Resource Board, San Joaquin Valley Air Pollution Control District, State and Regional Water Quality Control Boards and Water Resource Boards, Department of Water Resources EPA, CalEPA, Department of Fish and Wildlife, Kern Environmental Health Department, Kern County Fire Department, Office of Emergency Services, and other regulating agencies. In addition, operations are covered by California Public Resource Code Divisions 3, 7.8, and 34 as well as other divisions to a lesser extent.

**Page 16, Paragraph 3**

This paragraph is making general statements about water floods and the lack of control in the original ordinance. Water flood operations are under strict control of the DOGGR and water boards as well as the EPA when related to Aquifer Exemptions. The Underground

Injection Control, or UIC, process is scrutinized as much as anything we do. Disregarding that a typical water flood is simply reinjecting the produced water back into the oil bearing formation after removing the oil, the entire process requires geological and reservoir descriptions, water analysis, nearby water well investigation and on-going monitoring. Nothing proposed in this ordinance adds anything to the existing process to help prevent or mitigate any hazards with the process.

#### **17.46.03 Allowable Uses**

Table 1-1 lists the zoning designations in the City of Arvin. Of the zones listed, 14 have changed from requiring a CUP to prohibiting oil and gas operations. In addition, 5 other designations that are not in the existing ordinance prohibit oil and gas operations. Anyone that owns minerals, royalties, has leases or other operations in these zones will effectively have their property taken or, at a minimum, the property value significantly reduced. While it was established the technology exists to access those minerals from other designated zones, the additional costs of drilling and permitting, permissions from impacted property owners, the need to procure offsetting surfaces and contracts with other mineral owners, and other additional hurdles, make the economics unfavorable and therefore effectively strip the value from the minerals.

#### **17.46.06 Appeals**

The first paragraph ends with the statement "Mandatory requirements of this ordinance are not subject to appeal." Throughout the ordinance, there is not a clear direction as to which sections are mandatory.

#### **17.46.08.01 CUP Filing Requirements**

This section requires plans be submitted to the Planning commission or City Council and the emergency response plans be approved by the City's Engineer and the Kern County Fire Department. There are no time frames for the review parties to respond. This section, and all following sections should include a statement that the reviewing parties have 10 days to respond or the plans are deemed to be approved.

#### **17.46.08.02 Processing and Review**

**Paragraph B** states the City Manager is to review submitted applications. Again, time frames for a mandatory response need to be included.

#### **17.46.09.01 Filing Requirement (Development Agreements)**

**Paragraph A** states the City Attorney needs to review ownership but does not state time frames to respond.

**Paragraph B** states the applicant needs to deposit funds to cover estimated direct and indirect costs for processing applications. Nothing in the ordinance or supporting documentation outline costs, or even estimated costs. Please include a fee schedule and estimated costs to review and process permit.

#### **17.46.09.02 Processing and Review**

Again, this section requires reviews and fees with no limits stated. Specifically troublesome is **Paragraph C**, which states that if the planning commission fails to take

action on a permit within 60 days of opening a hearing it is deemed to make a recommendation of denial to the City Council. If no answer within 60 days it should be deemed an approval. Otherwise, is the planning commission doesn't want to deal with an application they can just sit on it and make it go away.

#### **17.46.010 Periodic Review**

The City may choose to review any permit every 5 years at the undetermined cost to the operator. Five years is not a significant amount of time for most of these projects. No reviews should be required unless there is documented violations that make an operator a high risk. The required personnel and expertise to review a project can get very costly to an operator and does nothing productive to help prevent environmental impacts from responsible operators. If it is determined this section needs remain, what are the estimated costs to the operator for a review?

#### **17.46.011 Facility Closure, Site Abandonment, and Site Restoration Procedures**

DOGGR already oversees site abandonments with a very thorough process. Adding additional barriers and costs to this process will likely lead to an increase in orphaned sites/wells/ facilities. Abandonment of a site is only occurring because it was deemed uneconomic. Considering that most of the companies operating in the City are small any economic hardship and added costs and barriers could lead to orphaning a site instead of responsibly abandoning the property. Replace this section by referring to the DOGGR abandonment process and requesting a DOGGR status report of an approved abandonment.

#### **17.46.012 Operational Noticing**

Paragraph C: Operator must notify City Manager prior to idling of any well. Does this ordinance follow the DOGGR definition of an idle well which is 24 months of no production? If so, at what point does the City Manager need notification?

#### **17.46.015 Notice of Violation and Administrative Fines**

**Paragraph 1.** Who determines the degree of a violation and the associated fee?

**Paragraph 2.** Operator shall fund a deposit account upon issuance of an NOV. Accepted practice for violations is that an operator is given a time period to correct the violation. If no action is taken or the operator is a repeat offender, no fine is assessed. The time period can be 30 days to appeal or correct the violation. If after 30 days, the violation still exists, then a fine can be assessed.

#### **17.46.017 Compliance Monitoring**

**Paragraph A:** Environmental Compliance Coordinators may be hired at the expense of the operators. How much will this cost? What triggers the hiring of a compliance manger and how are the costs to the operators determined?

#### **17.46.019 Operator's Financial Responsibilities**

The operator shall be fully responsible for all costs and expenses incurred... What is the magnitude of these costs? Many parties are listed in this section, most of which add no real value or impact prevention, to the existing process. This statement reads that the City

is trying to prevent operators from doing business in the city by making it financially burdensome to do so.

#### **17.46.020 Securities and Bond Requirements**

**Paragraph A and following sub-sections** Bonding is to be determined by the City Manager at no less than \$10,000 per well. There is no limit stated. Again, there is too much uncertainty in this section. If bonding is required, then a schedule needs to be published. In addition, it was stated that the bonding requirements are a result of DOGGR bonding being insufficient; however, DOGGR bonding requirements were updated in January 2018 and should be revisited by the City. Tying up bonding for 15 years after abandonment sounds like the City is trying to discourage oil production.

#### **17.46.023.1 Deliveries**

Deliveries are not permitted in various times. Please include a statement the oil shipping trucks are allowed.

#### **17.46.026 Landscaping/ Visual Resources**

The operator shall hire a licensed landscape architect that has been approved as part of the CUP/DA. This requirement is burdensome of both costs and time and should be stricken from the ordinance as we are required to surround the project site with a wall in section 17.46.025.2. Also, Section 17.46.025.2 should include a 6' wall of privacy fence.

#### **17.46.025.4 Architecture**

Section 17.46.025.4 is highly subjective and leaves too much uncertainty to a project. Drilling mechanisms are temporary and should not be included in this section. Equipment is industrial by nature and will not blend in with surroundings.

#### **17.46.028 Steaming**

Steaming is already under the oversight of DOGGR and the water board through the UIC process and CARB/APCD for emissions. What more can the City Manager add to the process besides another bill and cost to the operator?

#### **17.46.031.01 Fire Prevention Safeguards**

The facility equipment and design is required to be signed off by the Kern County Fire Department. This is not a common practice and there is no process in place to get their approval. There needs to be a maximum time for them to respond or it is considered approved.

#### **17.46.031.05 Safety Measures and Emergency Response Plan**

**Paragraph B:** Annual third-party safety audit to be conducted. A seismic assessment by registered structural engineer completed annually. This is more burdensome requirements for the operator. Annual seismic assessments should not be required. An initial inspection and possibly every 10 years thereafter.

**Paragraph C:** If within 600' of any prohibited area, the operator must implement a community alert notification system, or utilize an existing system. Does such a system

exist? Citizens don't readily give out their contact information to companies, even if it is for their safety.

#### **17.46.031.06.02 Transportation Risk Management**

**Paragraph C:** Truck loading procedures ensure that loading rack operator and truck driver conduct and document in writing a visual inspection. There is no loading rack operator for many locations. The transportation companies send a driver whenever it fits in their schedule, often in the middle of the night. This is an industry accepted practice.

#### **17.46.032.01 General Environmental Program**

EQAP must be submitted and followed. Paragraph B includes a requirement to make monitoring data publicly available. Is there a process as to make this publicly available? Is it sufficient to have it hosted at our office and available on request?

#### **17.46.032.5.3 Groundwater Quality**

**Paragraph A:** Prior to new development, operator shall submit baseline study of groundwater on site. How is the operator to do this? Water well owners nearly always refuse to allow testing to be completed and documented on their wells. Drilling a water well for the purpose of establishing a baseline is expensive and highly burdensome.

**Paragraph C:** Operator must deposit funds for a third party hydrological analysis. Must supply C.M. with annual testing results. The miniscule risk of groundwater contamination does not justify the added costs to conduct such studies. There have been no documented cases of ground water contamination anywhere in this area.

#### **17.46.032.6 Noise impacts**

**Paragraph I:** for noise levels expected to be above specified levels, upon request of city manager, operator shall deposit funds to use for an unannounced third-party inspection. Violations can result in fines and further enforcement. This should be replaced with the nuisance violations otherwise this is just another unjustified cost to the operators.

#### **17.46.033 Standards for wells**

**Paragraph G:** No above ground pumping units in non-industrial areas. What is the City Managers technical knowledge with pumping units to make this determination? ESPs require higher flowrates and specific types of fluids, and are more expensive than rod pump alternatives. They only fit a small percentage of all potential applications.

#### **17.46.034.1 Pipeline Installations and Use**

**Paragraph A:** Must transport fluids by pipeline unless operator can prove to city manager that pipeline is infeasible. Pipeline installation is very expensive. ROW and easements must be obtained to install pipelines to available tie in points. This requirement is cost prohibitive and even the need to justify to the city manager is time consuming and expensive.

**Paragraph C,D,E:** Outlines requirements for pipeline installations. The rest of this sections simply makes the pipeline installation more expensive. There should be no requirement to replace all vegetation unless it was specifically landscaped or take excessively long routes around areas.

#### 17.46.034.2 Pipeline Inspection

**Paragraph B:** Advanced pipeline leak detection is to be implemented. Again, more burdensome costs. The type of leak detection mentioned here is cost prohibitive. New testing requirements are now in place with DOGGR and should be sufficient (AB 1420).

#### 17.46.038 Development Standards

**Paragraph A:** A qualified individual must monitor abandonments of sites. Site abandonments can take a significant amount of time. To what level must it be monitored. What is the estimated hourly, daily, weekly cost? Again, abandonments should be left to DOGGR as they already have a sufficient process in place.

**Paragraph F:** All abandoned wells must be leak tested by a licensed professional. All abandoned wells or all wells abandoned as part of the project. Are operators required to dig up previously abandoned wells to leak test?

**Paragraph F:** multiple sections refer to City of LA.

In conclusion, we would like to reiterate our appreciation for all the collective efforts on the proposed Ordinance. We recognize the existing ordinance needs to be updated but we do not feel the proposed draft is the answer. We understand the City did not want to model their Ordinance after the Kern County EIR and Zoning Ordinance. Modeling it after the City of Carson is not appropriate, either. Kern County wanted to find a way to produce Oil and Gas responsibly. In contrast the City of Arvin appears to be trying to find ways to prohibit all oil and gas production. I ask of you to step back from the social media input and outlandish accusations of the environmental activists. Oil and gas are still a vital part of our society and energy portfolio. It is more effective than any other solution at delivering consistent and reliable energy wherever it is needed. There is nowhere in the world that produces oil and gas as clean and responsibly as we do in California. Stopping the production of oil in California does not prohibit the use of hydrocarbons. It just means we need to ship it in from further away from less responsible producers, all of which add to the environmental footprint and make the USA and California dependent on other countries. Please realize the regulatory agencies in California do an outstanding job of making our state clean and safe. Their policies and procedures should be leaned on wherever possible.

Sincerely,

  
 Wyatt Shipley  
 Operations Manager  
 Vaquero Energy, Inc.

cc: Jose Gurrola, Mayor  
 Shannon L. Chaffin, City Attorney

**City of Arvin Oil and Gas Code Update**

**Workshop**

*May 16, 2018*

City of Arvin Oil and Gas Code Update

**Background – Public Meetings and Hearings**

- January 10, 2017, as part of its efforts to address public health and safety concerns, the City Council formally provided direction to City Staff to commence a complete and comprehensive review to update the Municipal Code regarding oil and gas operations.
- September 19, 2017, after considering staff recommendations, the City Council adopted initiated Code Amendments to Title 17 - Zoning which included amendment to Chapter 17.46 Oil and Gas Production.
- October 30, 2017, Planning Commission considered and recommended approval of the proposed ordinance.

City of Arvin Oil and Gas Code Update

**Topics and Issues**

- Background
- Overview
- Questions and comments

City of Arvin Oil and Gas Code Update

**Background – Public Meetings and Hearings**

- November 07, 2017, the City Council held the first reading and voted to introduce the proposed ordinance.
- November 21, 2017, the City Council then considered the proposed ordinance for final adoption. In response to public comments, the City Council then continued the item to a future meetings, additional time to review the draft ordinance, etc.
- May 1, 2018, the City Council directed staff to Staff set the proposed ordinance for public hearing and consideration for introduction (first reading), or return to Planning Commission as appropriate.

City of Arvin Oil and Gas Code Update

**Background**

- The City's original petroleum facilities and operations code was adopted in 1965 and consisted of only a few pages of regulations.
- 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 wells.
- Oil and gas production technologies have also changed significantly.
- March 2014 – 8 homes required to be evacuated at Nelson Court because a pipeline leak filled the area with flammable gas, etc.
- The City Council promptly moved forward with a multi-prong approach to address public health and safety concerns.

City of Arvin Oil and Gas Code Update

**Background – Operator Meetings, etc.**

- Additional review period of 150 days to review draft ordinance from November Council meeting.
- May 1, 2017: "Small group" meeting.
- May 16, 2018: Workshop.
- Multiple comments received and are being evaluated.

City of Arvin Oil and Gas Code Update

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**Overview – Proposed Ordinance**

- Generally
- Administrative Procedures
- Development Standards
- Development Standards For Site Abandonment, Site Restoration and Redevelopment
- Existing Operations under Proposed Code Update

City of Arvin Oil and Gas Code Update

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**Overview – Administrative Procedures**

➤ This section of the proposed Oil and Gas Code includes:

- Procedural and permitting requirements for any new oil and gas facilities within the City
- Financial obligations for oil and gas facility operators to ensure that such sites are operated safely and restored or remediated in a timely manner after operations have ceased
- Fines and fees for violators of the proposed new oil and gas Code to ensure long-term compliance
- Requirements to ensure that if any new development is proposed at existing oil and gas facilities within the City that those facilities will be required to conform to the proposed oil and gas Code

City of Arvin Oil and Gas Code Update

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**Overview – Generally**

➤ The proposed ordinance is a draft and has not been adopted.

- Comments are still being received from interested parties.
- While comments can be generally be submitted as late as the final City Council meeting, comments are encouraged to be provided to the City ASAP.
- City staff anticipate assessing comments and potentially circulating an updated draft recommendation as appropriate.
- Planning Commission review of changes may be sought as appropriate.
- Before the ordinance can be approved, the City Council will hold two public meetings on the matter.

City of Arvin Oil and Gas Code Update

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**Overview - Administrative Procedures**

➤ Highlights from this section of the proposed Code:

- Oil and Gas Facility Operation Restrictions and Permit requirements for City Zones
- Drilling Permits
- Conditional Use Permits
- Development Agreements
- Change of Ownership
- Site or Well Abandonment, Well re-abandonment, Restoration and Redevelopment of the Site Procedures
- High-risk Operations
- Operational Noticing
- Compliance with City Codes and Ordinances
- Monetary compensation/relief for Code violations
- Nuisance Procedures
- Code Compliance Monitoring
- Periodic Review
- Financial Assurances and Operator Responsibilities

City of Arvin Oil and Gas Code Update

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**Overview – Generally**

➤ The proposed ordinance is not a ban on all oil and gas operations

- An outright ban on all operations cannot be approved as part of the current update process. City staff have complied with the process, noticing, and environmental analysis for the update of the oil and gas Code, as direct by Council in January of 2017. At a minimum, an outright ban on all petroleum operations would be required to go through a separate initiation process, environmental review, notice, and other procedures before it could be considered by the Planning Commission and City Council. Adoption, or denial, of the oil and gas Code will not have any impact on the City's ability to explore other options in the future.

City of Arvin Oil and Gas Code Update

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**Overview - Administrative Procedures**

➤ Ordinance applies to:

- Drilling and abandonment operations of any new or existing well.
- Sites and facilities necessary to processing oil and gas.
- Pipelines within oil fields and outside oil fields.
- Storage tanks.
- Oil spill containment and recovery equipment.

City of Arvin Oil and Gas Code Update

**Overview - Administrative Procedures -Zones**

- Oil and Gas facilities prohibited in residentially zoned districts, and all commercial zones (except general commercial zone), open space, automobile parking zone, architectural design zone, precise development zone, and pedestrian-oriented mixed-use overlay.
- Permitted with CUP or Development Agreement in general commercial zone, all manufacturing zones, and all agricultural zones.

City of Arvin Oil and Gas Code Update

**Overview – Development Standards - Highlights**

- Setback requirements at 300 feet (schools, clinics, residential zones, etc.)
- Legally existing operations that do not meet the setbacks can continue to operate.
- Vested rights are protected.
- Consolidation and relocation incentives
  - Exchange wells at 1:2 ratio from within the setback to outside the setback
  - Exchanges outside the setback at 1:1 ratio

City of Arvin Oil and Gas Code Update

**Overview – Development Standards - Highlights**

➤ Highlights from this section of the proposed Code:

•Setback Requirements from Residential, Commercial and Sensitive Use areas within the Community	•Utilities (including requirements for the use of reclaimed vs. potable water on site)
•Noise Impact Restrictions and Construction Time Limits	•General Environmental Program
•Aesthetics (landscaping, signage, walls, lighting, sanitation, architecture)	•Water Quality, Groundwater Quality
	•Greenhouse Gas Emissions and Energy Efficiency Measures
	•Air Quality Monitoring and Testing
	•Standards for Wells and Pipelines

City of Arvin Oil and Gas Code Update

**Overview – Development Standards For Well(s) or Site Abandonment, Re-abandonment, Site Restoration and Redevelopment**

➤ **This section of the proposed Oil and Gas Code includes:**

- Regulations to ensure that oil and gas facilities (including all wells) are abandoned, re-abandoned, restored, and redeveloped or remediated pursuant to development standards which ensure public health and safety and environmental compliance
- Appropriate and effective chemical monitoring and leak testing requirements to ensure that any contaminants on site are identified
- Assurances that the permittee, operator/owner shall be responsible for any cost to remediate any contamination on an oil or gas facility site

City of Arvin Oil and Gas Code Update

**Overview – Development Standards - Highlights**

➤ Highlights from this section of the proposed Code:

- Safety Assurances, Measures and Emergency/Hazard Management
- Blowout Standards and Testing
- Transportation of Chemicals and Waste On and Off-site and Transportation Risk Management and Prevention Program (TRMPP)
- Leak Detection and Testing Requirements

City of Arvin Oil and Gas Code Update

**Overview – Existing Operations**

- Existing facilities located outside of setbacks can continue to operate indefinitely without a CUP and would not be legal-nonconforming
- "New Development" (more than 2 new wells) would trigger the requirements for a CUP
- Existing facilities WITHIN the setbacks:
  - No "new" wells allowed beyond those already vested for the property
  - Re-drills and workovers allowed
  - Equipment replacement and maintenance allowed
- Must abide by "Good Neighbor" Provisions

City of Arvin Oil and Gas Code Update

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**Overview – Existing Operations**

➤ “Good Neighbor” Provisions:

- Well Drilling Permit: Provide a copy of the DOGGR permit to the City Manager.
- Modifications and Extensions: If there is “new development,” must get a CUP or a DA.
- Facility Closure, Site Abandonment, and Site Restoration: Need to abandon wells, make safe and go through a process.
- Setbacks: Grandfathered in, not a non-conforming use, vested rights for existing or entitled wells.

City of Arvin Oil and Gas Code Update

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**Overview – Existing Operations**

➤ “Good Neighbor” Provisions (Cont.)

- Standards for wells:
  - Comply with DOGGR standards
  - Meet American Petroleum specifications
  - Remove drilling/workover equipment within 90 days when finished
  - Belt guards per CCR 6622

City of Arvin Oil and Gas Code Update

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**Overview – Existing Operations**

➤ “Good Neighbor” Provisions (Cont.)

- Site Access and Operations:
  - Except for emergencies, between 9 pm – 6 am no deliveries or construction (exception for drill/redrill)
  - Provide parking for employees
  - Site secured and gate closed
- Lighting: Screened within 600 feet of sensitive uses
- Signage: DOGGR signage, identification signage, and call information
- Steaming: Surface equipment approval; steaming plan approval

City of Arvin Oil and Gas Code Update

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**Overview – Existing Operations**

➤ “Good Neighbor” Provisions (Cont.)

- Standards for wells:
  - Comply with DOGGR standards
  - Meet American Petroleum specifications
  - Remove drilling/workover equipment within 90 days when finished
  - Belt guards per CCR 6622

City of Arvin Oil and Gas Code Update

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**Overview – Existing Operations**

➤ “Good Neighbor” Provisions (Cont.)

- Safety Assurances and Emergency/Hazard Management:
  - Comply with applicable fire codes.
  - Keep site clean.
  - Remove debris within 25 feet of facility
  - Comply with DOGGR blowout standards.
  - Earthquake shutdown, inspection and repairs before operating facilities
  - Emergency response plans
  - Community alert system
  - Transportation and storage of hazardous chemicals

City of Arvin Oil and Gas Code Update

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**Transfer Program**

➤ Existing Uses in Setback

- an operator can exchange wells, either existing or vested, at a 1:2 ratio to another (existing) receiving site(s) without counting toward “new development”.

➤ Existing Uses Outside Setback

- an operator can exchange only wells actually existing at the time of the ordinance (not vested or hypothetical wells) at a 1:1 ratio to another existing receiving site(s) without counting toward “new development”.
- Must abandon contributing site.

➤ Receiving site must be outside setbacks.

➤ 10 well limit without “new development”.

City of Arvin Oil and Gas Code Update

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Questions

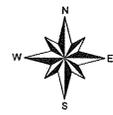
# Arvin Zoning Map

### Zoning Description

-  (E-3) Estate zone
-  (R-S) Suburban Residential zone
-  (R-1) Single Family Dwelling zone
-  (R-2) Two Family Dwelling zone
-  (R-3) Limited Multiple Family Dwelling zone
-  (R-4) Multiple Family Dwelling zone
-  (C-O) Professional Office zone
-  (C-1) Limited Commercial zone
-  (C-2) Commercial zone
-  (NC) Neighborhood Commercial
-  (M-1) Limited Manufacturing zone
-  (M-2) Light Manufacturing zone
-  (M-3) General Manufacturing zone
-  (A-1) Light Agricultural zone
-  (A-2) General Agricultural zone
-  (O-S) Open Space
-  (SCH-CUP) School Conditional Use Permit zone
-  (MUO) Mixed Use Overlay
-  (PUD) Planned Urban Development
-  (P) Automobile Parking zone
-  (D) Architectural Design Zone
-  (B) Buffer Zone



The Zoning Map is subject to amendments; persons reviewing the map should check with the City of Arvin as to whether any modifications have been made.



Attachment: Arvin Planning Commission Packet of June 12, 2018 (First Reading - Oil and Gas Code Ordinance)

**XAVIER BECERRA**  
Attorney General

State of California  
**DEPARTMENT OF JUSTICE**



2.A.b

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June 8, 2018

*Via E-mail and Overnight Mail*

Mayor, City Councilmembers and  
Planning Commission Members  
City of Arvin  
City Hall Council Chambers  
200 Campus Drive  
Arvin, CA 93203

**RE: Proposed Ordinance No. 18-XX to Adopt Text Amendment No. 2017-04 and Ordinance for Regulation of Petroleum Facilities and Operations by Repealing Chapter 17.46, Title 17, and Adding Chapter 17.46 to Title 17 of the Arvin Municipal Code**

Dear Mayor, City Councilmembers, and Planning Commission Members:

The Attorney General's Office is writing in support of the City of Arvin's ("City" or "Arvin") proposal to adopt the above-referenced Ordinance No. 18-XX to regulate petroleum facilities and operations within its boundaries ("Ordinance"). The Ordinance will repeal and replace the City's outdated regulations of oil and gas sites with new requirements, including zoning restrictions prohibiting oil and gas sites within specified zones and setbacks from residential and other sensitive areas. The Ordinance was developed for the purpose to protect public health, safety and the environment "by the reasonable regulation" of placement of oil and gas sites within the City of Arvin. (Ordinance, Exhibit B, Arvin Municipal Code, Title 17, Chapter 17.46 (hereinafter "Chapter 17.46"), § 17.46.01 (B).) As discussed in detail below, the proposed prohibited zones and setbacks are reasonable measures to regulate the placement of oil and gas sites in the City, the City has authority to adopt them, and they are not preempted.

### **I. City of Arvin**

Arvin is home to a predominantly Hispanic, low-income community with a high percentage of young children as compared to other California communities.<sup>1</sup> The City's residents experience serious air quality and related public health problems. Arvin ranks as one of the most overburdened communities in California on CalEnviroScreen, a statewide mapping tool

<sup>1</sup> See CalEnviroScreen 3.0 Results for Arvin, CA <<https://oehha.maps.arcgis.com/apps/webappviewer/index.html?id=4560cfbce7c745c299b2d0cbb07044f5>> (as of June 5, 2018).

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developed by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency to identify communities disproportionately impacted by pollution.<sup>2</sup> CalEnviroScreen uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher burden than a census tract with a low score.<sup>3</sup> Specifically, CalEnviroScreen results show that the City's ozone and particulate matter concentrations are higher than 94 - 98% of the rest of the state. In addition to air quality and related public health issues, Arvin's residents are also exposed to high levels of pesticides (93<sup>rd</sup> - 98<sup>th</sup> percentile in the state) and drinking water contaminants (87<sup>th</sup> - 88<sup>th</sup> percentile in the state). The City's residents are especially vulnerable to pollution exposure given their high rates of poverty (99<sup>th</sup> percentile) and unemployment (95<sup>th</sup> percentile) and low levels of educational attainment (100<sup>th</sup> percentile).

The City is located in the southern end of the San Joaquin Valley in Kern County. The majority of oil and gas production in the state occurs in the San Joaquin Valley, and this region "suffers from chronic air pollution."<sup>4</sup> Oil and gas production is a source of pollutants such as hydrogen sulfide, benzene, formaldehyde, hexane, and xylene.<sup>5</sup> There are a number of active oil and gas sites located within the City. These sites contribute to the City's air pollution problems. In March 2014, eight Arvin families were evacuated after a toxic gas leak was detected from an underground oilfield production pipeline located near their homes. Following this incident, the Department of Oil, Gas and Geothermal Resources ("DOGGR") imposed a \$75,000 fine on the owner and operator of the pipeline.

## II. The Ordinance

The Ordinance was developed at the direction of City Council in order to replace the City's existing regulations of oil and gas production that were adopted in 1965, more than 50 years ago. The Ordinance will institute various requirements related to the siting of oil and gas sites within Arvin's boundaries for the stated purpose of protecting public health, safety and the environment.

In particular, the Ordinance designates the specific zones in the City where oil and gas sites are allowed and prohibited. The prohibited zones include the City's residential zones, the pedestrian-oriented mixed-use overlay zone, the professional office zone, the neighborhood commercial and restricted commercial zones, the automobile parking zone, the architectural design zone, the precise development zone, and the open space zone. (Chapter 17.46, § 17.46.03.) Oil and gas sites are allowed in the City's general commercial zone, the

<sup>2</sup> See CalEnviroScreen 3.0 Results for Arvin, CA <<https://oehha.maps.arcgis.com/apps/webappviewer/index.html?id=4560cfbce7c745c299b2d0cbb07044f5>> (as of June 5, 2018).

<sup>3</sup> See Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0 Report (January 2017) <<https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>> (as of June 6, 2018).

<sup>4</sup> California Council on Science and Technology, An Independent Scientific Assessment of Well Stimulation in California (July 2015) ("CCST Study"), Volume III, p. 6.

<sup>5</sup> *Id.*, p. 268.

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manufacturing zones, the light and general agricultural zones, and the buffer zone. (*Id.*) In addition, the Ordinance specifies setbacks for oil and gas sites. Under the Ordinance, new oil wells must be located more than 300 feet from the property boundaries of any public school, public park, clinic, hospital, long-term health care facilities, residences or residential zones (with some exceptions), and commercially designated zones (*Id.*, § 17.46.022.A.1-3.) Importantly, the Ordinance specifically states that it supplements DOGGR’s regulations of oil and gas activities and in cases of conflict with state laws and regulations, state laws and regulations will prevail. (*Id.*, § 17.46.05.)

### **III. The Adoption of Setbacks and Prohibited Zones to Protect Public Health Is Reasonable**

The benefits of siting oil and gas sites away from residences and other sensitive receptors to reduce public health impacts have been recognized. A 2015 study conducted by the California Council on Science and Technology concluded that “[m]any of the constituents used in and emitted by oil and gas development can damage health and place disproportionate risks on sensitive populations.” (CCST Study, Volume III, p. 13.) This study also found that “[t]he closer citizens are to these industrial facilities, the higher their potential exposure to toxic air emissions and higher risk of associated health effects.” For this reason, “the scientific literature supports the recommendation for setbacks” and the “need for setbacks applies to all oil and gas wells.” (CCST Study, Volume II, p. 431.) A recent Maryland public health study recommended a 2,000-foot setback from well pads in Maryland. (University of Maryland, Maryland Institute for Applied Environmental Health, Potential Public Health Impacts of Natural Gas Development and Production in the Marcellus Shale in Western Maryland (July 2014), p. 91.)

To help reduce the potential health impacts from oil and gas production activities, a number of local jurisdictions in oil-producing states, such as Texas, have established setbacks even stricter than the setbacks and prohibited zones proposed in the Ordinance. (See City of Dallas Development Code, Chapter 51A, Art. IV § 51A-4.203(b)(3.2)(F)(ii)(aa) [establishing 1,500-foot setback between oil and gas production sites and protected uses]; City of Flower Mound Code of Ordinances, Subpart A, Chapter 34, Art. VII, § 34-422(d) [establishing setbacks between oil and gas wells and residential areas, schools, parks, and public highways ranging from 750 feet to 1,500 feet]; City of Denton Development Ordinance, Subchapter 5, § 35.5.10.2 (B) [establishing setbacks between new gas drilling and production sites and residential, commercial and mixed use areas ranging from 500 to 1,000 feet].) Setbacks and prohibited zones have also been implemented by local jurisdictions in California. (See City of Carson Municipal Code, Article IX Planning and Zoning, Chapter 5 Oil and Gas Code, §§ 9502, 9521 [prohibiting the location of oil and gas sites in residential, commercial neighborhood and commercial automotive, mixed use, open space, and special uses zones and establishing 750-foot setback between wells and the property boundary of any public school, public park, clinic, hospital, long-term health care facility, residences and residential zones (with certain exceptions), and various commercial designated zones].)

In light of Arvin’s severe air pollution problems, the overall disproportionate pollution burdens experienced by Arvin’s residents, and the community’s vulnerability to that pollution,

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the proposed setbacks and prohibited zones in the Ordinance are reasonable to reduce air pollution and public health impacts from oil and gas operations within the City. Indeed, as the proposed Findings of Fact supporting the Ordinance recognize, the deleterious impacts of oil and gas operations, including odors, air pollution and particulate matter, “are not localized, but can be spread” at distances of more than 1,500 feet. (Ordinance, Exhibit A, Finding of Fact No. IV.) Because of these negative impacts in Arvin, its oil and gas sites “should be directed away from areas with residential land use designations, and other sensitive uses, and the operations regulated to reduce adverse impacts on residents and the community.” (*Id.*, Finding of Fact No. VII.)

Importantly, the proposed restrictions will not prohibit all oil and gas operations in the City but rather the Ordinance will allow such operations to continue in a manner that prevents the future placement of wells near designated sensitive areas. The Ordinance will not prevent the operation of existing oil and gas wells located within the prohibited zones or setbacks if these sites can demonstrate vested rights. (See Chapter 17.46, §§ 17.46.02.B, 17.46.022.C.) Moreover, the proposed prohibited zones and setbacks will not eliminate future access to subsurface oil and gas resources. The City has determined that oil and gas resources located within Arvin’s prohibited zones and setbacks can be accessed through horizontal directional drilling and other methods, including rezoning areas to change allowed uses. (Ordinance, Exhibit A, Finding of Fact No. XII.)

#### **IV. The City Has Authority to Adopt Zoning and Setback Provisions for Oil and Gas Sites**

The Ordinance’s proposed prohibited zones and setbacks are within the City’s power to regulate land uses within its jurisdiction. As the California Supreme Court has explained, “[l]and use regulation in California historically has been a function of local government under the grant of police power contained in article XI, section 7 of the California Constitution.” (*Big Creek Lumber Co. v. Cty. of Santa Cruz* (2006) 38 Cal.4th 1139, 1151.) Thus, a “city ha[s] ‘the unquestioned right to regulate the business of operating oil wells within its city limits, and to prohibit their operation within delineated areas and districts, if reason appears for so doing.’” (*Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 558.) Indeed, a city’s authority to regulate zoning within its boundaries is “one of the most essential powers of the government, one that is the least limitable.” (*Id.* [citing *Chicago & Alton R. Co. v. Tranbarger* (1915) 238 U.S. 67, 68].) Consistent with these principles, California’s appellate courts have found that the “[e]nactment of a city ordinance prohibiting exploration for and production of oil, unless arbitrary, is a valid exercise of the municipal police power.” (*Hermosa Beach Stop Oil Coalition v. City of Hermosa* (2001) 86 Cal.App.4th 534, 555. The City of Hermosa Beach found that the ban “is necessary to preserve the environment, as well as to protect the public health, safety and welfare of people and property” within the city. (*Ibid.*) The court upheld the ban, concluding it is “presumptively a justifiable exercise of the City’s police power.” (*Ibid.*)

Similarly, here the proposed Ordinance seeks to institute setbacks and prohibited zones for the purpose of protecting public health, safety and the environment. Moreover, the Ordinance is supported by extensive findings demonstrating that these limitations on oil and gas activities

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within Arvin are necessary to protect the local environment and public health of the City's residents. (See Ordinance, Exhibit A, Findings of Fact.) The Attorney General's Office believes that the proposed setbacks and prohibited zones in the Ordinance are properly within the City's police power.

#### V. The Setbacks and Prohibited Zones Provisions Are Not Preempted by State Law

The Attorney General's Office understands that some commenters have asserted that the Ordinance is preempted by state regulation of oil and gas operations. "[W]hen local government regulates in an area over which it traditionally has exercised control, such as the location of particular land uses, California courts will presume, absent a clear indication of preemptive intent from the Legislature, that such regulation is *not* preempted by state statute." (*Big Creek Lumber Co.*, 38 Cal.4th at p. 1150 [emphasis in original].) As the California Supreme Court has explained, local zoning ordinances prohibiting oil and gas drilling within the local jurisdiction's territory are legal. (See *Pacific P. Assn. v. Huntington Beach* (1925) 196 Cal. 211, 217; *Beverly Oil Co. v. City of Los Angeles* (1953) 40 Cal.2d 552, 558.)

Here, the California legislature has not expressed a "clear indication of preemptive intent" with respect to local zoning and land use regulations regarding the location of oil and gas activities within a city or county. (See Pub. Resources Code, § 3690 ["This chapter shall not be deemed a preemption by the state of any existing right of cities and counties to enact and enforce laws and regulations regulating the conduct and location of oil production activities, including... zoning... public safety, [and] nuisance."].) Indeed, as the Attorney General has recognized, while state oil and gas regulations likely preempt any local regulations of subsurface oil and gas activities, local regulations of surface activities for purposes such as environmental protection and public safety, among others, are not necessarily preempted by state laws. (59 Ops. Cal. Atty. Gen. 461, 479-480 (1976).) The prohibited zones and setback provisions of the Ordinance are not regulations of subsurface activities. Rather, as discussed above, the provisions are zoning and land use regulations adopted for the purpose of protecting public health and safety from the impacts of oil and gas activities. Consequently, in light of the above analysis, the prohibited zones and setback requirements in the Ordinance are not expressly preempted by state law.

Local regulations may also be preempted by implication. Implied preemption is found only where the claimant demonstrates that the: 1) the state law completely occupies the field of regulations leaving no space for local regulation, 2) the local law duplicates the state law, or 3) the local law contradicts state law. (See *City of Riverside v. Inland Empire Patients Health and Wellness Center, Inc.* (2013) 56 Cal.4th 729, 754-755.) A local law contradicts state law when it is "inimical" to it. (*Big Creek Lumber Co.*, 38 Cal.4th at p. 1150.) "The 'contradictory and inimical' form of preemption does not apply unless the ordinance directly requires what the state statute forbids or prohibits what the state enactment demands." (*City of Riverside*, 56 Cal.4th at p. 743.) However, "[p]reemption by implication of legislative intent may not be found when the Legislature has expressed its intent to permit local regulations. Similarly, it should not be found

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when the statutory scheme recognizes local regulations.” (*People ex rel. Deukmejian v. Cty. of Mendocino* (1984) 36 Cal.3d 476, 485.)

Under the standards for implied preemption, the proposed setbacks and prohibited zones in the Ordinance are not preempted by implication. First, and as discussed above, state law has not completely occupied the field of regulation related to the location of oil and gas activities for purposes of protection of public health, safety and the environment. (See Pub. Resources Code, § 3690; 59 Ops. Cal. Atty. Gen. at p. 481 [“[t]he state does not appear to have occupied [the field of well location] to the exclusion of local entities”].)

Second, the proposed setbacks and prohibited zones do not duplicate state law. State law does not include provisions prohibiting the location of oil and gas sites in specified zoning areas. Additionally, while the state law regulating oil and gas operations contains well spacing requirements, they are not identical to the proposed setbacks. The state’s well spacing requirements dictate that a well located within 100 feet of the parcel boundary or a public street or 150 feet of another well is a public nuisance. (Pub. Resources Code, § 3600.) By comparison, the proposed setbacks in the Ordinance do not state that a well located within the proscribed limits is a public nuisance. Instead, the Ordinance requires wells to be sited more than 300 feet from residential and other sensitive areas in order to protect the health of the community.

Third, the setbacks and prohibited zones do not contradict state regulation of oil and gas activities. The proposed local restrictions were developed to protect public health and the environment and do not interfere with the state’s goal to develop and utilize oil and gas resources. Specifically, the Ordinance will not prevent the operation of oil and gas wells currently existing within the prohibited zones and/or setbacks if these sites can demonstrate vested rights and will not eliminate future access to subsurface oil and gas resources located in the restricted areas. (See Ordinance, Exhibit A, Finding of Fact No. XII; Chapter 17.46, §§ 17.46.02.B, 17.46.02.C.) For these reasons, the proposed setbacks and prohibited zones do not contradict but rather align with the state’s goal to encourage the wise development of oil and gas resources while preventing damage to life, health, property, and natural resources. (Pub. Resources Code, § 3106.) Moreover, even if the imposition of setbacks and prohibited zones could conflict with state regulations, the Ordinance specifically states that in the event of any such conflict the state law is controlling. (Chapter 17.46, § 17.46.05.) Thus, the proposed setbacks and prohibited zones in the Ordinance cannot contradict the state’s oil and gas law, and therefore, in our opinion, these requirements are not preempted by implication.

This conclusion is consistent with the 1976 Attorney General opinion on the issue of local regulation of oil and gas activities. The opinion concluded that local governments can prohibit oil and gas operations within all or part of their territory and such prohibitions are not preempted. (59 Ops. Cal. Atty. Gen. at pp. 468, 480, 483, 489, 491, 492.) The opinion also stated that local governments can adopt setbacks if: 1) the setbacks do not contradict a specific well spacing variance or plan approved by the state, 2) are more stringent than the state requirements, and 3) do not frustrate the purpose of the state regulations. (*Id.* at p. 484.) Here the setbacks do not contradict a well spacing plan, are more stringent than the state well spacing regulations, and

June 8, 2018  
Page 7

appear not to frustrate the purpose of the state regulations. Therefore, the Attorney General's Office believes that proposed setbacks and prohibited zones in the Ordinance are not preempted by state law.

For the reasons provided above, the City of Arvin should adopt the prohibited zones and setbacks proposed in the Ordinance.

Thank you for the opportunity to submit these comments.

Sincerely,



TATIANA K. GAUR  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

LA2018300692  
62853667.docx

**NOTICE OF PUBLIC HEARING**  
**Arvin Municipal Code Amendment – Chapter 17.46 Oil and Gas Production**  
**Zoning Ordinance Text Amendment 2017-04**

Notice is hereby given that the Planning Commission of the City of Arvin, California, will conduct a public hearing, at which time you may be present and be heard to consider the following:

- An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code (Zoning Ordinance Text Amendment 2017-04); and
- Adoption of Categorical Exemption under California Environmental Quality Act (CEQA) Guidelines Section 15308 (Actions By Regulatory Agencies For Protection Of Natural Resources).

**Arvin City Council Hearing Information**

Date: July 3rd, 2018

Time: 6:00 PM or as the Agenda permits

Place: City of Arvin Council Chambers

200 Campus Drive, Arvin, CA 93203

The City is proposing a comprehensive update of Title 17.48 Oil and Gas Production of its Municipal Code due to the age of the existing ordinance changes in circumstances and technology, and to address public health, safety and welfare issues. Since the existing ordinance was adopted in 1965, the city's population has grown from 5,000 plus to over 20,000. Lands have been developed with residential units and commercial structures where once open fields existed. The proposed oil code amendments deal with not only the changing character of Arvin, but changes in the science and technology of oil production in the last half century. The proposed ordinance will apply city-wide and addresses administrative procedures, development standards for petroleum operations, and development standards for site abandonment and redevelopment. These would address issues such drilling, operations, and decommissioning of oil facilities once they have reached the end of their economic life, including appropriate clean up and remediation to allow for future use of the land. In addition, the proposed ordinance addresses regulations address matters of financial responsibility and insurance.

Additional information on the proposed project, including a copy of the proposed environmental findings as a hard copy or in electronic format and prior Planning Commission or City Council agendas and staff reports, may be obtained from the City of Arvin, City Hall, 200 Campus Drive, Arvin, California, 93203, or the City's web site at [www.arvin.org](http://www.arvin.org). City Council agendas and materials for the upcoming meeting will be posted, and can be found at [www.arvin.org/aboutnews/council-agendas](http://www.arvin.org/aboutnews/council-agendas).

All persons interested in this topic who have questions, would like to provide feedback, or ask questions are invited to attend. If you challenge the approval or denial of these matters in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City Council, at or prior to, the public hearing. Address any communications or comments regarding the project to Jake Raper, Community Development Director, City of Arvin, Community Development Department, 141 Plumtree Drive, Arvin, CA 93203, (661) 854-2822, [jraper@arvin.org](mailto:jraper@arvin.org).

Cecilia Vela, City Clerk

Published: June 16, 2018, Bakersfield Californian

RDA Meeting Date: 6/11/18  
Special Meeting  
Council Agenda Item: 6A  
(one page)  
Planning Provided By: Young Professionals  
in Energy - Kern County Chapter

2.A.d



**Young Professionals in Energy  
Kern County Chapter**

June 12, 2018

Arvin Planning Commission  
200 Campus Drive  
Arvin, CA 93203

**RE: Arvin Oil and Gas Ordinance Update**

Dear Commissioners:

On behalf of the members of the Young Professionals in Energy, Kern County Chapter, we are writing to oppose the Oil and Gas Update before your commission. The proposal before you ignores other local ordinances that are proven and that have withstood legal challenges.

The Kern County Oil and Gas Ordinance should be used as a model to help Arvin update its existing Oil and Gas Ordinance. Not only is the Kern County model proving to be effective, but it has also prevailed legally. As your commission knows, an ordinance that will withstand legal challenge is one that should be imitated to help the City reduce potential legal expenses in the future.

We strongly urge the commission to ask staff to go back to the drawing board, review the Kern County Oil and Gas Ordinance, and bring back an update to the Arvin Zoning Ordinance that resembles the success of the Kern County Oil and Gas Ordinance.

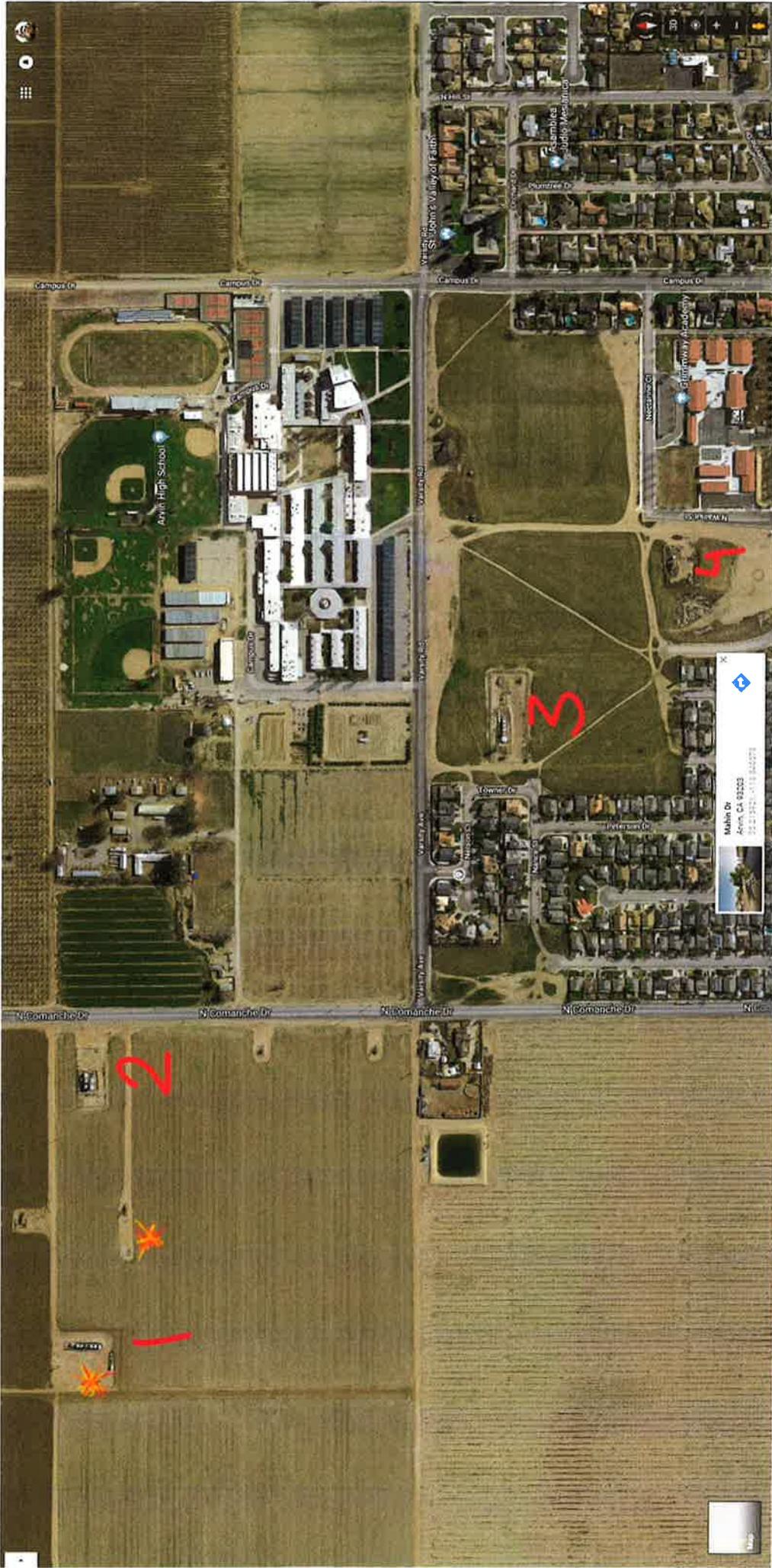
Thank you in advance, and we look forward to working with the City of Arvin to find an Ordinance solution that balances the concerns of residents while promoting energy development in Arvin.

Best regards,

Nick Langer  
President  
YPE Kern County Chapter

Young Professionals in Energy Kern County Chapter  
P.O. Box 2664 Bakersfield, CA 93303

Attachment: Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018 (First Reading - Oil and Gas Code



RDA

Council

Planning

Meeting Date: 6/12/18

Special Meeting

Agenda Item: 6A

# of Pages: 11

Provided By: Central California Environmental Justice Network

2.A.d

Attachment: Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018 (First Reading - Oil and Gas Code


**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT**
 Northern Region Office  
 4800 Enterprise Way  
 Modesto, CA 95356-8718  
 (209) 557-6400

 Central Region Office  
 1990 E Gettysburg Ave  
 Fresno, CA 93726-0244  
 (559) 230-5950

 Southern Region Office  
 34946 Flyover Court  
 Bakersfield, CA 93308  
 (661) 392-5500

**NOTICE OF VIOLATION**
**NO. 5016786**
**ISSUED TO:**
**NAME:** ABA Energy Corporation  
**ADDRESS:** 7612 Meany Avenue  
**CITY:** Bakersfield  
**PHONE:** (661) 324-7500

**STATE:** CA

**PERMIT/FACILITY:** S-8236  
**PERMITS:** 1-0. -6-0  
**ZIP:** 93308

**OCCURRENCE LOCATION:**
**NAME:** ABA Energy Corporation  
**ADDRESS:** Ne/4 Section 22, T31s, R29e  
**CITY:** Bakersfield  
**DATE:** November 03, 2016

**STATE:** CA **ZIP:**
**TIME:** 12:00 am

 Same as Above

**THIS NOTICE HAS BEEN ISSUED AS A RESULT OF A VIOLATION OF:**

- 
- San Joaquin Valley Unified Air Pollution Control District Rules and Regulation
- 
- 
- California Health and Safety Code / California Code of Regulations

**Rule(s)/Section(s):** 2070 - Standards for Granting Applications, 2201 - New and Modified Stationary Source Review Rule

**Equipment Type (If Applicable):** Vapor Recovery System, 240 BBL Water Tank

**Description:** During a complaint investigation multiple leaks > 50,000 ppm were found. This is a violation of S-8236-1 Condition 7.

**RECIPIENT NAME:** Nick Diercks

**TITLE:** Consultant

**SIGNING THIS NOTICE IS**
**NOT AN ADMISSION OF GUILT**

**SIGNATURE**

RETURN A COPY OF THIS NOTICE WITH A WRITTEN DESCRIPTION OF THE IMMEDIATE CORRECTIVE ACTION YOU HAVE TAKEN TO PREVENT A CONTINUED OR RECURRENT VIOLATION.

**THIS VIOLATION IS SUBJECT TO SUBSTANTIAL PENALTY,  
 YOUR RESPONSE DOES NOT PRECLUDE FURTHER LEGAL ACTION.**

ISSUED BY: Alex Oregon

DATE: Thu November 03, 2016

TIME: 5:20 pm

 MAILED/EMAILED

Continued

# INSTRUCTIONS

**THIS VIOLATION IS SUBJECT TO SUBSTANTIAL PENALTY, AND YOUR RESPONSE DOES NOT PRECLUDE FURTHER LEGAL ACTION.**

**A VARIANCE SHOULD BE SOUGHT IF IT IS NECESSARY TO CONTINUE TO OPERATE IN VIOLATION OF DISTRICT REGULATIONS. A VARIANCE CANNOT BE GRANTED FOR OPERATING WITHOUT A PERMIT OR FOR ACTIVITIES WHICH CREATE A NUISANCE.**

**FOR FURTHER INFORMATION ON ELIGIBILITY FOR, OR THE FILING OF A VARIANCE PETITION, CALL THE COMPLIANCE DIVISION AT THE INDICATED REGIONAL OFFICE.**

## OPERATION WITHOUT A PERMIT

A permit application must be submitted immediately to the District's Permit Services Division. The permit application must reference the Notice of Violation number: 5016786.

If there are any questions regarding the submission of a permit application, contact the Permit Services Division at the indicated Regional office.

## ALL OTHER VIOLATIONS

Within 10 days, return a copy of this notice with a written description of the corrective action you have taken to prevent continued or recurrent violation. Immediate corrective action must be taken to stop the violation.

If you have any questions or require additional information, contact the Compliance Division at the indicated Regional Office for assistance.

*Para asistencia en Español, por favor llama a la oficina del Distrito del Aire a (559) 230-6000.*

SJVAPCD  
Complaints

### Complaint Investigation

10/20/2016  
10:04AM

**Complaint Number:** S-1609-117 **Assigned To:** Alex Oregon

**Received By:** Christal Martinez **Date:** September 29, 2016 **Time:** 3:25 PM

**Complainant's Name:** \*\*\*\*\*

**Address:** \*\*\*\*\* **City:** \*\*\*\*\*

**Complainant's Primary Phone:** \*\*\*\*\* **Secondary Phone:** \*\*\*\*\*

**Complaint Location:** W Comanche Road **Permit:** \_\_\_\_\_

**City:** Arvin **County:** Kern **Zip:** \_\_\_\_\_

**Property Owner:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City:** \_\_\_\_\_ **Zip:** \_\_\_\_\_

**Nature of Complaint:**

Richards Facility, Sec 22 T31SR29E RP using a flare camera, noticed 3 tanks leaking.

**Conclusions:**

October 12, 2016; 3:30 PM: Conclusion by Alex Oregon: R/I met with the Manager of the facility and explained to him the nature of the complaint. R/I also used a hydrocarbon analyzer to check the tanks for any leaks. There were no detectable leaks on any of the tanks. The facility is a small oil producer (produces less than 50 Barrels of Oil Per Day) and is exempt from leak requirements in Rule 4623.

**Findings:**

September 29, 2016; 3:30 PM Contact by Field Visit: Finding by Alex Oregon: R/I spoke with R/P, who stated that there were three tanks at the Richards Facility on Comanche Rd north of Varsity Rd leaking/venting. R/P claimed to be using an infrared camera to capture the emissions coming out of the tanks. The facility is a small oil producer and is an unmanned facility.

**Resolution:** No Violation: Facility is exempt from leak requirements accordin

**Date Reporting Person Notified:** October 18, 2016 **Time:** 4:05 PM **Method:** Telephone

**Date Investigation Completed:** 10/18/2016

**Inspector:** Alex Oregon **Supervisor:** CHAVEZR **Date:** 10/18/2016

Attachment: Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018 (First Reading - Oil and Gas Code

3



**SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT**

Northern Region Office  
4800 Enterprise Way  
Modesto, CA 95356-8718  
(209) 557-6400

Central Region Office  
1990 E Gettysburg Ave  
Fresno, CA 93726-0244  
(559) 230-5950

Southern Region Office  
34946 Flyover Court  
Bakersfield, CA 93308  
(661) 392-5500

**NOTICE OF VIOLATION**

**NO. 5013624**

**ISSUED TO:**

**NAME:** Petro Capital Resources, LLC  
**ADDRESS:** 3600 Pegasus Drive / Unit 6  
**CITY:** Bakersfield  
**PHONE:** (661) 589-2081

**STATE:** CA

**PERMIT/FACILITY:** S-7076  
**PERMITS:** 4-0, -5-0, -6-0  
**ZIP:** 93308

**OCCURRENCE LOCATION:**

**NAME:** Petro Capital Resources, LLC  
**ADDRESS:** Jewett Tank Setting (Light Oil Central)  
**CITY:** Arvin  
**DATE:** March 01, 2014

**STATE:** CA  
**TIME:** 8:00 am

**ZIP:** 93203

Same as Above

**THIS NOTICE HAS BEEN ISSUED AS A RESULT OF A VIOLATION OF:**

- San Joaquin Valley Unified Air Pollution Control District Rules and Regulation
- California Health and Safety Code / California Code of Regulations

**Rule(s)/Section(s):** 2010 - Permits Required

**Equipment Type (If Applicable):** Petroleum storage tanks

**Description:** Modified operations to allow venting of produced gas into uncontrolled tanks. Other PTOs affected by this violation include S-7076-7-0 and -8-0.

**RECIPIENT NAME:** Jeff Williams **TITLE:** Manager

**SIGNING THIS NOTICE IS NOT AN ADMISSION OF GUILT**  \_\_\_\_\_

**SIGNATURE**

RETURN A COPY OF THIS NOTICE WITH A WRITTEN DESCRIPTION OF THE IMMEDIATE CORRECTIVE ACTION YOU HAVE TAKEN TO PREVENT A CONTINUED OR RECURRENT VIOLATION.

***THIS VIOLATION IS SUBJECT TO SUBSTANTIAL PENALTY,  
YOUR RESPONSE DOES NOT PRECLUDE FURTHER LEGAL ACTION.***

ISSUED BY: Alex Haulman  
DATE: Tue December 30, 2014  
TIME: 1:13 pm  
 MAILED

Continued

Attachment: Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018 (First Reading - Oil and Gas Code

# INSTRUCTIONS

THIS VIOLATION IS SUBJECT TO SUBSTANTIAL PENALTY, AND YOUR RESPONSE DOES NOT PRECLUDE FURTHER LEGAL ACTION.

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FOR FURTHER INFORMATION ON ELIGIBILITY FOR, OR THE FILING OF A VARIANCE PETITION, CALL THE COMPLIANCE DIVISION AT THE INDICATED REGIONAL OFFICE.

## OPERATION WITHOUT A PERMIT

A permit application must be submitted immediately to the District's Permit Services Division. The permit application must reference the Notice of Violation number: 5013624.

If there are any questions regarding the submission of a permit application, contact the Permit Services Division at the indicated Regional office.

## ALL OTHER VIOLATIONS

Within 10 days, return a copy of this notice with a written description of the corrective action you have taken to prevent continued or recurrent violation. Immediate corrective action must be taken to stop the violation.

If you have any questions or require additional information, contact the Compliance Division at the indicated Regional Office for assistance.

*Para asistencia en Español, por favor llama a la oficina del Distrito del Aire a (559) 230-6000.*

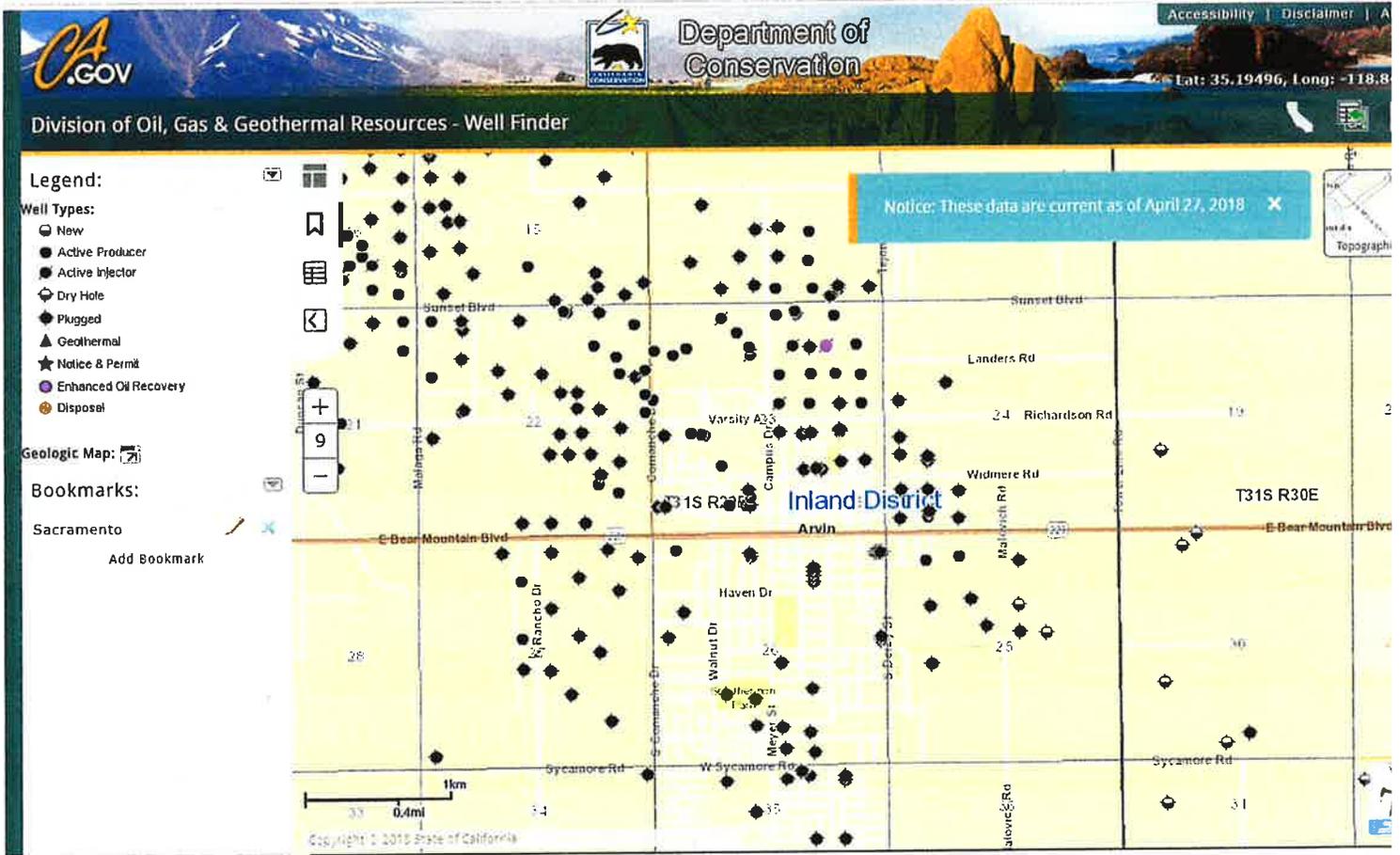


Arvin  
Shane Ct. Arvin, CA



Imagery ©2018 Google, Map data ©2018 Google 200 ft

Attachment: Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018 (First Reading - Oil and Gas Code



SJVAPCD  
Complaints

## Complaint Investigation

06/08/2017  
10:04AM

**Complaint Number:** S-1705-022 **Assigned To:** Stephanie Aranda

**Received By:** Andrea Vazquez **Date:** May 10, 2017 **Time:** 12:27 PM

**Complainant's Name:** \*\*\*\*\*

**Address:** \*\*\*\*\* **City:** \*\*\*\*\*

**Complainant's Primary Phone:** \*\*\*\*\* **Secondary Phone:** \*\*\*\*\*

**Complaint Location:** North of Shane Court **Permit:**

**City:** Arvin **County:** Kern **Zip:**

**Property Owner:**  **Telephone:**

**Address:**  **City:**  **Zip:**

### Nature of Complaint:

Site is emitting VOC's. There are emissions coming from a storage tank.

### Conclusions:

May 10, 2017; 2:15 PM: Conclusion by Stephanie Aranda: The RP was informed that there is no violation because the tank in question is not subject to leak requirements or on vapor recovery. The RI explained that the annual inspection was performed the day prior to the complaint. The site was not re-visited, and the complaint was not confirmed.

### Findings:

May 10, 2017; 1:55 PM Contact by Telephone: Finding by Stephanie Aranda: The RI contacted the RP by telephone. The RP stated a FLIR camera was used to observe emissions from a tank permitted under facility ID S-3036. Emissions appeared to be emanating from the top of the tank at 12:30pm.

The RI explained that the tank was visited on 05/09/17 during the facility's annual inspection. The RI explained that the tank is exempt from leak requirements and has a PV vent valve but is not on vapor recovery.

The RP inquired about the type of inspection that was performed (RI stated an annual/ routine compliance inspection), operations of the company, throughput of the company, and violations/ concerns noted. The RI explained that certain information about the company, inspections, and violations could not be given; however, the RI suggested doing a public records request to obtain some of the information. The RP asked what authority the District has over the tank, specifically, in regards to nuisance. The RI stated that if complaints were received regarding nuisance, the District would have to confirm the complaints to consider issuing a nuisance violation, but it would not necessarily force the producer to cease operations.

Senior Air Quality Inspector, Steve Miller, called the RP to further explain the requirements of R4623 and explain the public records request process. He also suggested using the Division of Oil, Gas, & Geothermal Resources' website to check throughput and production information.

**Resolution:** No Violation

**Date Reporting Person Notified:** May 10, 2017 **Time:** 1:55 PM **Method:** Telephone

**Date Investigation Completed:** 05/10/2017

**Inspector:** Stephanie Aranda **Supervisor:** OLDERSHM **Date:** 05/16/2017

SJVAPCD  
Complaints

## Complaint Investigation

5/9/2018  
10:04AM

**Complaint Number:** S-1805-001 **Assigned To:** Stephanie Aranda  
**Received By:** Nannette Diaz **Date:** May 01, 2018 **Time:** 11:47 AM  
**Complainant's Name:** \*\*\*\*\*  
**Address:** \*\*\*\*\* **City:** \*\*\*\*\*  
**Complainant's Primary Phone:** \*\*\*\*\* **Secondary Phone:** \*\*\*\*\*  
**Complaint Location:** LIGHT OIL CENTRAL **Permit:** S-3036  
**City:** Arvin **County:** Kern **Zip:** \_\_\_\_\_  
**Property Owner:** SUN MOUNTAIN OIL & GAS **Telephone:** \*\*\*\*\*  
**Address:** 438 Encina Ave **City:** Davis **Zip:** 95616-0204

**Nature of Complaint:**

A Certified FLIR Camera operator is picking up very heavy emissions from the a faulty thief hatch. It is also venting. There is also an odor of crude.

**Conclusions:**

May 4, 2018; 2:00 PM: Conclusion by Stephanie Aranda: S-3036-14-0 is not subject to the requirements of Rule 4623 (tank rule) due to exemption in Section 4.3 (produce less than 50 BOPD); therefore, the District cannot enforce that the tank be kept in leak tight condition. The owner of the lease was informed of the complaint and potential leaking part. Enforcement action will not be taken.

**Findings:**

May 3, 2018; 1:30 PM Contact by Field Visit: Finding by Stephanie Aranda: The RI visited the site of the complaint. An odor was not observed during the site visit. The RI used a FLIR camera to check for VOCs from the site. An unquantifiable amount of VOCs appeared to be coming from the Northern-most PV vent on the Simpson tank (S-3036-14-0). The well had no apparent leaks.

The tank is equipped with two PV vents (one on the North side near the stairs, one in the center of the tank's roof). PV vents will release vapors as pressure builds in the tank to prevent the tank from over-pressurizing. There is only one tank at this lease, and the oil produced is gaseous. The vapors may have been escaping due to normal venting processes; however, the RI contacted the owner of the lease via email to inform them of the complaint and recommend they check the PV vent.

May 7, 2018; 1:52 PM Contact by Telephone: Finding by Mike Oldershaw: RI Oldershaw attempted to contact RP and left message asking for a callback to provide update. RI spoke with RP on 5/7 and relayed findings and contact with source to request repair of hatch and minimization of leaks.

**Resolution:** No Violation

**Date Reporting Person Notified:** May 03, 2018 **Time:** 1:52 PM **Method:** Telephone  
**Date Investigation Completed:** 5/7/2018  
**Inspector:** Mike Oldershaw **Supervisor:** \_\_\_\_\_ **Date:** \_\_\_\_\_



Attachment: Comments and Other Docs Recvd at Special Planning Commission Mtg of June 12, 2018 (First Reading - Oil and Gas Code

RDA Meeting Date: 6/12/18  
 Council Agenda Item: 6A  
 # of pages: 90  
 (Planning) Provided By: Center on Race  
 Poverty & the Environment.

RDA Meeting Date: Nov. 21, 2017  
 Reg. Mtg.  
 Council Agenda Item: 4B (90pgs)  
 Planning Provided By: the Environment

2.A.d

Nombre/Name

Address/Dirección

- 1 Maria Alvarez 1008 El Camino Real
- 2 Martin Alvarez 1008 El Camino Real
- 3 Jonathan Alvarez 1008 El Camino Real
- 4 Jose Alvarez Franklin Ave.
- 5 Angela Lopez Franklin Ave
- 6 Roselyn Garcia 1112 El Camino Real
- 7 Juana Guillen 1112 El Camino Real
- 8 Fabiola Cendejas 1112 El Camino Real
- 9 Lupe Cendejas 1112 El Camino Real
- 10 Denise Hernandez 1112 Serenidad
- 11 Marcos Hernandez 1112 Serenidad
- 12 Yasmin Garcia 1112 Serenidad
- 13 Briana Garcia 1112 Serenidad
- 14 Francisco Garcia 1140 El Camino Real

I am a resident of Arvin and support the City of Arvin’s Proposed Amendments to its Oil and Gas Ordinance. We need these amendments to protect our health. The current ordinance is so outdated, it provides no protection for us. The current ordinance is even weaker than State law.

We need the ordinance updates to protect our air and water, and our community from risks and dangers. These updates only ask the Oil Industry to move its operations further away from where we live, work and play. We are not banning the Oil Industry from Arvin, and only want them to be good neighbors and consider our health and well-being.

We urge the City Council to not bow down to the Oil Industry’s pressure. The amended ordinance would create even more jobs to move those oil operations to a safer distance from our homes, parks, and schools. Arvin’s existing ordinance for oil and gas has not been updated since before the 1970’s, and simply cannot protect our health, air and water. **Please vote to adopt the amendments to the Oil and Gas Ordinance.**



Soy residente de Arvin y apoyo las Enmiendas propuestas de la Ciudad de Arvin a su Ordenanza sobre petróleo y gas. Necesitamos estas enmiendas para proteger nuestra salud. La ordenanza actual está desactualizada, no nos brinda ninguna protección. La ordenanza actual es incluso más débil que la ley estatal.

Necesitamos las actualizaciones de las ordenanzas para proteger nuestro aire y agua, y nuestra comunidad de los riesgos y peligros. Estas actualizaciones solo solicitan a la industria petrolera que mueva sus operaciones más lejos de donde vivimos, trabajamos y jugamos. No estamos prohibiendo la industria petrolera de Arvin, y solo queremos que sean buenos vecinos y consideren nuestra salud y bienestar.

Instamos al Concejo Municipal a no inclinarse ante la presión de la industria petrolera. La ordenanza enmendada crearía aún más empleos para mover esas operaciones petroleras a una distancia más segura de nuestros hogares, parques y escuelas. La ordenanza existente de Arvin para el petróleo y el gas no se ha actualizado desde antes de la década de 1970, y simplemente no puede proteger nuestra salud, aire y agua. **Por Favor vote a favor de aprobar las enmiendas a la Ordenanza sobre Petróleo y Gas.**

Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Eric C Ramirez

1004 El Camino Real

2 Adolfo Aranda

1004 El Camino Real

3 Bertha Rodriguez

1004 El Camino Real

4 Gustavo Lemeli

1004 El Camino Real

5 Aurora Ornelas

1004 El Camino Real

6 Yaretzi Aranda

1004 El Camino Real

7 Saydi Aranda

1004 El Camino Real

8 Camila Aranda

1004 El Camino Real

9 Filencio Rodriguez

1004 El Camino Real

10 Teresa Garcia

1112 El Camino Real

11 Melanie Garcia

1112 El Camino Real

12 Ana Garcia

1112 El Camino Real

13 Sergio Garcia

1112 El Camino Real

14 Tono Trujillo

1112 El Camino Real

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Hector Garcia

1409 VERDE CT ARVIN

2 Jose Munoz

299 Walker ST. Arvin

3 Carolina Munoz

299 Walker ST. Arvin

4 Juan P. Munoz

299 Walker ST. Arvin

5 Francisco Munoz

299 Walker ST. Arvin

6 Karina Aguilera

299 Walker ST. Arvin

7 LILIA Abriz

1409 VERDE CT

8 Manolo Reyes

1400 Hood St Apt 67 Arvin

9 Nancy Moreno

1424 LA ROSA AVE Arvin

10 Armando Luna

1412 VERDE CO Arvin

11 Eduardo Luna

\_\_\_\_\_

12 Maria Luna

\_\_\_\_\_

13 Maria Paz

1408 Verde Ct Arvin

14 Benjamin Ploot

1408 Verde Ct Arvin

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Faustino Duran

2304 Gregg Ln

2 Guadalupe Duran

"

3 Alex Duran

"

4 Faustino Garcia

"

5 Maricela Morales

908 Park Ct Arvin CA 93203

6 Antonio Morales

"

7 Angel Morales

"

8 Ivan Morales

"

9 Jose Tinoco

2105 James St

10 Jana Tinoco

"

11 Jos Tinoco

"

12 Luis G Morales

908 Park Ct Arvin CA 93203

13 Yaciela Duran

2105 James Ct Arvin CA 93203

14 \_\_\_\_\_

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Nombre/Name

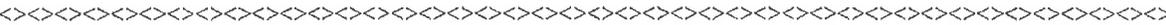
Address/Direccion

1 Rosa Tinoco2500 Gregg Ln2 Santiago Tinoco\_\_\_\_\_3 Cruz Escutia1169 Royal st4 Santiago Escutia1169 Royal st5 Ricardo Parra1712 Payne Dr6 Carlos Pantoja2404 Gregg Ln  
N7 Mary Gonzalez\_\_\_\_\_8 Nelly Gonzalez\_\_\_\_\_  
N9 Eda Garcia1609 La Meza10 Alonso Lopez\_\_\_\_\_11 Maria Jimenez1400 Verde12 Jaime Jimenez1400 Verde13 Gerardo Tinoco2500 Gregg Ln14 \_\_\_\_\_\_\_\_\_\_

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Janette schumaker

1404 Verde Ct Arvin

2 Don schumaker

1408 Verde ct Arvin

3 \_\_\_\_\_

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Marcelin Buita

1117. Los Cantos

2 Alfonso Buita

1117. Los Cantos

3 Rene Buita

1117 Los cantos ave

4 \_\_\_\_\_

\_\_\_\_\_

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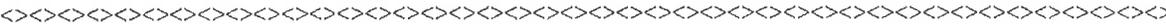
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Sincerely/Sinceramente

(Please see reverse for signatures)

512  
Arvin

Nombre/Name

Address/Direccion

1 Miguel Garcia 1716 PAYNE DR ARVIN CA2 Arturo Gonzalez NORA ST ARVIN CA 93203 IRMA Gonzalez NORA ST ARVIN CA 93204 MONICA Gonzalez NORA ST ARVIN CA 93205 Adriana Gonzalez NORA ST ARVIN CA 932036 Jose Santoyo 740 SICAMOR ARVIN CA 93207 Eneida Santoyo 740 SICAMOR ARVIN CA 93208 Jose santoyo Jr 740 SICAMOR ARVIN CA 9329 Guadalupe santoyo 740 SICAMOR ARVIN CA 932010 Marilu Parra 1712 PAYNE DR11 Manuel Parra 1712 PAYNE DR12 Ricardo Parra 1712 PAYNE DR13 Antoni Parra 1712 PAYNE DR14 LUZELY Parra 1712 PAYNE DR

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

- |    |   |                                    |
|----|---|------------------------------------|
| 1  | Gaspar Garcia   | 1425 LA ROSA AVE Arvin CA          |
| 2  | Pedro Martinez  | 1429 - La ROSA AVE Arvin CA        |
| 3  | Mario Martinez  |                                    |
| 4  | Gerardo Martinez  |                                    |
| 5  | Evelyn Garcia   | 1425 LA ROSA AV                    |
| 6  | Carolina Munoz Garcia   | 1424 La Rosa Ave. Arvin CA 93201   |
| 7  | Juan Carlos Garcia  | 1424 La Rosa Ave. Arvin, Ca. 93201 |
| 8  | Isaura Gomez  | 1424 La ROSA av                    |
| 9  | Ricardo Lopez   | 1420 LA ROSA AVE                   |
| 10 | Ismael Lopez  | 1417 La Lila Ave                   |
| 11 | Christina Lopez   | 1417 La Lila Ave                   |
| 12 | Christian Valencia  | 1410 Hood St Arvin 93201           |
| 13 |  | 1420 La Lila Ave.                  |
| 14 |  | 1420 La Lila Ave                   |

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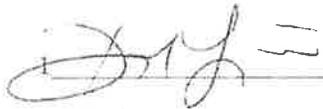
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Nombre/Name

Address/Direccion

1		1420 La Lila Ave
2	Mayra Reynoso	
3	Miguel A Reynoso	
4	Beatriz Rocio	1021 Los Cantos
5	Juana Zacarias	1021 Los Cantos
6	Juana B Zacarias	1021 Los Cantos
7	Juanap Zacarias	1021 Los Cantos
8	Carla Zacarias	Arvin ca
9	Ramon Ruiz	332 Longford Ave
10	Raymond G Ruiz	332 Longford Ave
11	Amador G Ruiz	332 Longford Ave
12	Ruben Magdaleno	1424 La Lila Ave.
13	Lourdes Magdaleno	1424 La Lila Ave.
14	Daniel Magdaleno	1424 La Lila Ave.

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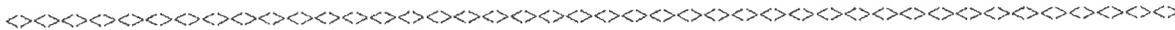
(Please see reverse for signatures)

Nombre/Name	Address/Direccion
1 Andrea Magdaleno	1424 La Lila Ave
2 Sandra Magdaleno	1424 La Lila Ave.
3 Juana Rodriguez	1428 LA lila ave
4 Ana Rodriguez	1428 LA lila ave
5 Orlando Rodriguez	1428 LA lila ave
6 Joanna Rodriguez	1428 LA lila ave
7 Diego Rodriguez	1428 LA lila ave
8 Eliczer Zavala	1425 La Lila ave
9 Jose Zavala	1425 La Lila ave
10 Andres Zavala	1425 La Lila ave
11 Asusena Zavala	1425 La Lila ave
12 Oscar Zavala	1425 La Lila ave
13 Roberto Garcia	1420 La Lila ave
14 Estela Escobedo	1420 La Lila ave

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Nombre/Name

Address/Direccion

1 Jorge GutierrezArvin CA2 Danny GarciaArvin CA3 Noah KinleyArvin CA.4 Enrique GomezArvin CA5 Abdon BenzelArvin CA.6 Isaac GarciaArvin CA.7 Ivan RojasArvin CA8 Anthony PerezArvin CA9 Salvador GomezArvin CA.10 Felipe AlvarezArvin CA11 Jasmine Santiago501 Walker St.12 Guadalupe DiazArvin CA.13 Maria Alvarez505 Walker St.14 Olga AlvarezArvin CA.

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Elias Saldaña317 Brower Arvin2 Atano Leon313 balasco Arvin3 Rosario Garcia313 balasco st Arvin4 Francisca Gario

))

5 Alicia auguayo702 la mayor st Ar

)) ))

6 Gustavo Vellaga7 Ramon Garcia465 Flouklia st Ar8 Eloisa ))

))

9 Vizente Garcia

))

10 Grera QuintanoArvin11 Rosa ))Arvin12 Pascual Goaz1204 Camino Real Arvin13 Mateo Gouzl

))

14 Elias Catteron

))

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Daniella C Santos501 Walker St Arvin CA 9322 Claudia C Santos501 Walker St Arvin CA 93203 Roberto Cruz501 Walker St Arvin CA 932034 Esther Cerda501 Walker St Arvin CA 93205 Jessica Santoyo501 Walker St Arvin CA 932036 PABLO REYES505 Walker St Arvin CA 932037 MCCAIN GONZALEZ550 Walker St Arvin CA 93208 Miguel Lopez9 Sergio BlancoSergio Blanco10 Braulio OrtizBraulio Ortiz11 SiSEBASTIAN LAGUNAS12 José Moreno601 Walker St Arvin13 Anais Castro633 Walker St Arvin CA 932014 Yesenia Morales601 Walker St

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Nombre/Name

Address/Direccion

1 Ruben Santoyo

501 Walker St.

2 Fernanda Calzada

661 Walker St

3 Paulina Parra

663 Walker St

4 Alfredo Ledesma

117 Meyer St

5 Micia Ledesma

117 Meyer St

6 Rafael Moreno

112 Meyer St

7 Blanca Mendoza

112 Meyer St.

8 Arnoldo Lara

701 Meyer St # 107

9 Marcel Jimenez

701 Meyer St

10 ELVIANDUKIA

701 Meyer St Apt 102

11 Ramon JR.

701 Meyer St Apt 102

12 Enrique medina

701 Meyer St Apt 102

13 Evelyn medina

701 Meyer St Apt 102

14 Sandra Lopez

801 Olson way

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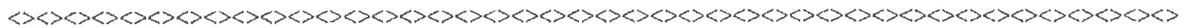
Address/Direccion

- | Nombre/Name          | Address/Direccion |
|----------------------|-------------------|
| 1 Jaime Santoyo      | 632 Langford rd   |
| 2 Roberto Santoyo    | Arvin CA.         |
| 3 <del>Ernesto</del> | 301 Laurel Av.    |
| 4 Alejandro Ruelas   | Arvin, Ca.        |
| 5 Manuel Morales     | # 300 TanFD.      |
| 6 Rodolfo Merino     | Arvin CA.         |
| 7 pantoja morales    | Arvin CA          |
| 8 Jose Duran         | Arvin CA          |
| 9 Javier Portofaja   | 616 Laurel ave    |
| 10 Adrian Gomez      | Arvin Ca          |
| 11 Miguel Morales M. | Arvin CA          |
| 12 Justo Flores      | Arvin CA          |
| 13 Faustino Garcia   | Arvin ca.         |
| 14 Edgar Rosales     | Arvin CA          |

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Nombre/Name

Address/Direccion

1 Jairo HernandezTucker St. Arvin2 Maria CastilloTucker St. Arvin3 PAUL GonzalezArvin4 JOSE ESTRADAARVIN5 Santiago VinamontesArvin6 Margarita VinamontesArvin7 Santiago Vinamontes JrArvin8 Manuela SierraArvin9 Cristian GarciaArvin10 Sonia MadrigalArvin11 Carlos MadrigalArvin12 Jose MadrigalArvin13 Dobres CruzArvin Tucker St.14 Ramon CruzArvin

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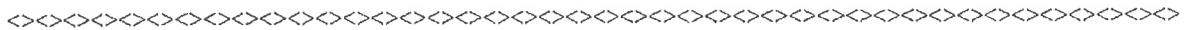
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1 Perla AguirreTucker St. Arvin2 Angela AguirreTucker St. Arvin3 Moses LealArvin CA Tucker St4 Francisco RuizArvin CA5 Adela MartinezArvin CA Tucker St6 Maria MartinezArvin CA Tucker St7 Andrea SimentalArvin8 JUAN SimentalArvin9 Isabel SimentalArvin10 Juan Jr. SimentalArvin11 Arlene ClementeArvin12 JOSE ClementeArvin13 Alma DelizArvin14 Gabriel OrtizArvin

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- |    |                   |       |
|----|-------------------|-------|
| 1  | JAVIER Alcaraz    | Arvin |
| 2  | Angelina Alcaraz  | Arvin |
| 3  | ROSA Alcaraz      | Arvin |
| 4  | Alejandra Alcaraz | Arvin |
| 5  | Javier Alcaraz    | Arvin |
| 6  | Joaquin Morales   | Arvin |
| 7  | Kesulba Morales   | Arvin |
| 8  | Raquel Ortiz      | Arvin |
| 9  | Rosali Ortiz      | Arvin |
| 10 | Ana Ortiz         | Arvin |
| 11 | Leticia Chavez    | Arvin |
| 12 | Gabriel Chavez    | Arvin |
| 13 | FERNANDA CHAVEZ   | Arvin |
| 14 | Joanna Chavez     | Arvin |

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Nombre/Name

Address/Direccion

- |    |                     |                            |
|----|---------------------|----------------------------|
| 1  | Oziel Benavidez     | 1300 Wilson, ct ARVIA ct   |
| 2  | Rudine Benavidez    | 1300 Nelson, ct, ARVIA, ct |
| 3  | ANDREW Benavidez    | 1300 Nelson ct, ARVIA CA   |
| 4  | Oziel Benavidez     | 1300 Wilson ct, ARVIA, ct  |
| 5  | Jennicka Benavidez  | 1300 Wilson, ct ARVIA, ct  |
| 6  | Byanka Santoyo      | 1204 Packard Drive         |
| 7  | Richard Santoyo     | 1204 Packard Drive         |
| 8  | Trinidad Santoyo    | 1204 Packard Drive         |
| 9  | Bertha Santoyo      | 1204 Packard Drive         |
| 10 | ERICK Rocha         | 1214 packard Dr            |
| 11 | Rubi Cammona        | 1300 Packard DR.           |
| 12 | Mavisol Cammona     | 1300 Packard DR.           |
| 13 | Maria Luisa Cammona | 1300 Packard DR.           |
| 14 | Enrique M. Cammona  | 1300 Packard DR.           |

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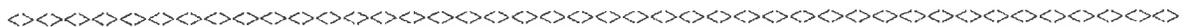
Address/Direccion

1 Antonio Calderon912 WALNUT DR Arvin CA  
9322 Antonio P. Calderon912 Walnut Dr. Arvin CA  
9323 Evelia Torres11 11 114 Ricardo Moreno11 1 1 115 Rosa Malagon11 1 16 Dalila Moreno11 1 1 17 Ricardo Moreno M926 walnut Dr Arvin CA8 Maria Martinez930 Walnut Dr Arvin Ca9 Bertha A pantoja1064 Borden ct Arvin CA10 Maria Arellano933 walnut DR. Arvin11 Maria Perez\_\_\_\_\_12 Francisco Lopez931 walnut DR.13 Miguel Tinoco923- WALNUT- DR Arvin CA14 Lilia Garcia921 Walnut DR Arvin

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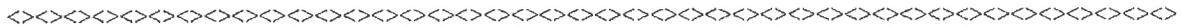
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1. Peli Villanar921 - Walnut2. Jame Arreguin919 Walnut3. Fernando Gomez911 Walnut4. Consuelo Gomez843 Walnut Dr5. Froylan Silva843 Walnut Dr6. Sergio Lopez841 Walnut Dr.7. Carolina Baños8. Maria Fidelia Baños9. Lorenzo Arellano JR825 Walnut DR10. Cynthia Buenavista  
Fidel Rangel809 Walnut DR11. Patricia Beltran801 Walnut Dr12. Ricardo Beltran Jr13. Angel Beltran14. Ricardo Beltran

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 José Pérez2 Miguel B. Esquivel3 Eulogio Caballero4 Maria Pérez5 Eva Preciado6 Jesus Ruiz7 Obdulia Ruiz8 Maria Porra9 Manuel Porra10 Angelica Parra11 Juan Jimenez12 Samuel Carrera13 Cassandra Carrera14 Beatriz Moreno Najera

323 Walnut Dr.

333 Walnut Dr

333 Walnut Dr

maria mendoza

341 Walnut

Rosa morse

533 Walnut Dr.

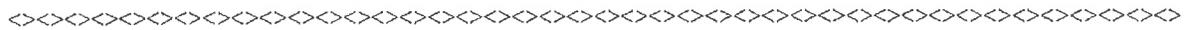
588 Walnut Fr.

569 Walnut

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(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Alma Hamed

1305 Nelson ct

César Hamed

1305 Nelson ct

3 Leticia Garcia

1304 Nelson ct

4 Rene Garcia

1304 Nelson

5 Eduardo Garcia

1304 Nelson ct

6 Jose Zavala

1302 Nelson ct

7 Mariana Zavala

1302 Nelson ct

8 Jose Zavala Jr

1302 Nelson ct

9 Alvaro Lopez

1304 Nance st

10 Lucila Lopez

1304 Nance st

11 Mariana Lopez

1304 Nance st

12 Luis Adrian Lopez

1304 Nance st

13 Teresa Rocha

1214 Packard Dr

14 Guadalupe Rocha

1214 Packard Dr

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Nombre/Name

Address/Direccion

1 Socorro Giles

Arvin Ca

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(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 [Signature]

430 W 1st Ave

2 [Signature]

\_\_\_\_\_

3 [Signature]

410 Walnut Drive

4 Antonio Maldonado

301 South Hill

5 Ysaura Ramirez

810 Walnut Dr.

6 Mania Concepcion

301 South Hill St.

7 Jim Diller

40 Walnut Drive

8 Justina Sainza

\_\_\_\_\_

9 Cresencia Duran

\_\_\_\_\_

10 Julio Diller

\_\_\_\_\_

11 Aruba Zapata

308 Walnut Dr.

12 \_\_\_\_\_

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Nombre/Name

Address/Direccion

1 Irma Chavez

1302 Packard Dr

2 Pedro Chavez

11

3 Angie Chavez

11

4 Pedro jr Chavez

11

5 Raul Pacheco

1206 Packard Drive

6 Martha Pacheco

''

7 Natalia Pacheco

''

8 Victoria Pacheco

''

9 Liseith Pacheco

''

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11 \_\_\_\_\_

12 \_\_\_\_\_

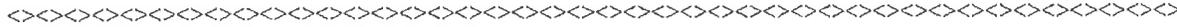
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Nombre/Name

Address/Direccion

1 Francisco Gonzalez1307 Nelson St Arvin CA 932002 Cecilia Flores=3 Tomás Alvarez=4 Anita Alvarez-5 Karem Hamed1305 Nelson Ct6 Erasmo Delgado1306 Nancy St.7 Raul Gonzalez1306 Nancy St.8 Marisol Gonzalez1306 Nancy St9 Jose A Cortez1309 Nancy St10 Maria Cortez1309 Nancy St11 Emma A Gonzalez1208 Packard Dr

12 \_\_\_\_\_

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13 \_\_\_\_\_

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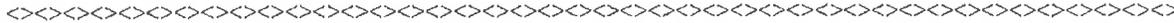
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Address/Direccion

- |    |                            |                                   |
|----|----------------------------|-----------------------------------|
| 1  | <u>Marcos Perez</u>        | <u>319 So. Acala ARVIN CA 932</u> |
| 2  | <u>Luis Perez</u>          | <u>319 So. Acala ARVIN CA 932</u> |
| 3  | <u>Angel Perez</u>         | <u>319 So. Acala</u>              |
| 4  | <u>Emily Perez</u>         | <u>319 So. Acala</u>              |
| 5  | <u>Teresa Gonzalez</u>     | <u>1341 Haven DR ARVIN CA 932</u> |
| 6  | <u>Bardomiano Gonzalez</u> | <u>1341 Haven DR ARVIN CA 932</u> |
| 7  | <u>Oscar Gonzalez</u>      | <u>1341 Haven DR ARVIN CA 932</u> |
| 8  | <u>Ivett Gonzalez</u>      | <u>1341 Haven DR ARVIN</u>        |
| 9  | <u>Maurilio Jimenez</u>    | <u>Tucker ARVIN</u>               |
| 10 | <u>Senaida Bello</u>       | <u>Tucker ARVIN CA</u>            |
| 11 | <u>Veronica Perez</u>      | <u>409-Haven Dr. ARVIN CA</u>     |
| 12 | <u>Jose Rosario Perez</u>  | <u>409 Haven DR ARVIN CA</u>      |
| 13 | <u>Aditene Perez</u>       | <u>409 Haven DR</u>               |
| 14 | <u>Maritza Jimenez</u>     | <u>Tucker St ARVIN CA 9320</u>    |

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- |    |                         |                            |
|----|-------------------------|----------------------------|
| 1  | Zabriela Ojeda          | 1000 E / Camino Real Arvin |
| 2  | <del>A</del> HZEL Ojeda | 1000 E / Camino Real Arvin |
| 3  | Itzcawtzin Ojeda        | 1000 E / Camino Real Arvin |
| 4  | Aquileo Moran           | 1000 EL CAMINO REAL        |
| 5  | JOSÉ P. Ojeda           | 1000 EL CAMINO REAL. Arvin |
| 6  | Linette Ojeda           | 1000 el camino real Arvin  |
| 7  | Amado Zacarias          | Arvin                      |
| 8  | MARCE ZACARIAS          | 1308 Serinidad             |
| 9  | Marcelino Zacarias      | Arvin.                     |
| 10 | Feliciano Alonso        | 1308 Serinidad             |
| 11 | Christian Herrera       | 1909 Meyer St              |
| 12 | Alex Alonso             | 1909 Meyer St              |
| 13 | Pascual Gonzalez        | 1021 Santos                |
| 14 | MARCOS ZACARIAS         | 1308 Serinidad.            |

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Nombre/Name

Address/Direccion

1 Edon Velazquez

Laurel Ave Arvin

2 Petra Velazquez

Laurel Ave Arvin

3 Lisa Velazquez

Laurel Ave Arvin

4 Demetrio Garcia

Laurel Ave Arvin

5 Veronica Garcia

Laurel ave arvin

6 Rosa Estrada

Arvin CA

7 FRANCISCA ESTRADA

ARVIN CA

8 Lma Ortiz

arvin

9 ARMANDO O.

ARVIN CA

10 Juan Ortiz

Arvin Ca

11 Orlando Perez

Arvin Ca.

12 Gilberto Perez

Arvin CA.

13 Cara Perez

Arvin Ca

14 Antonio Giles

Arvin Ca

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Lucrecia zacarias

1021 Los cantos.

2 Alex Feliziano

1308 Serenidad.

3 Tsidro Gonzalez

1716 PAYNE DR ARVIN

4 Daisy Gonzalez

1716 Payne Dr

5 LILIA GONZALEZ

ARVIN

6 Isidro Gonzalez

ARVIN

7 Durie Gomez

ARVIN

8 Maricarmen Gonzalez

ARVIN

9 Raul perez

609  
~~709~~ CHARLES ST ARVIN  
609

10 Raul Perez II

~~709~~ CHARLES ST ARVIN

11 Diego Perez

609  
~~709~~ CHARLES ST ARVIN

12 Jesus Martinez

Charles St ARVIN CA

13 Carmen Martinez

Charles St ARVIN CA

14 alex martinez

Charles St ARVIN CA

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Sincerely/Sincieramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Alfredo Gonzalez

1580 - SHANE CT Arvin

2 Maria Escobar

1513 Shane ct. Arvin

3 Maria C Garcia

1557 Shane<sup>ct</sup> Arvin ca 93203

4 Juan M Garcia

1551 Shane<sup>ct</sup> Arvin ca 93203

5 Paul Busambian

1549 Shane<sup>ct</sup> Arvin CA 93203

6 Guadalupe Guizado

7 SALVADOR MORENO P

1515 SHANE CT.

8 Rosalva Juarez

1517 Shane ct.

9 Maria Mendoza

1509 Shane ct

10 Jose De laera

1509 Shane ct

11 Serafin Posada

1540 Shane ct

12 Rosalba

Shane ct

13 Fabal Davis

1500 Shane ct.

14 Gamaltes Ramirez

1508 Shane ct

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Sincerely/Sinceramente

(Please see reverse for signatures)

Nombre/Name

Address/Direccion

1 Manuel Martinez

1516 Shane Ct.

2 Diego Martinez

3 Maria Martinez

4 Liliana Martinez

5 Manuel Martinez JR

6 Chris Gutierrez

1524 Shane Court

7 ~~Seal~~

8 Chusy Acosta

Calle Charles St.

9 Maria Moreno

1532 Shane Ct.

10 Alicia Perez

1548 Shane Ct

11 Patricia Perez

12 Yolanda Prado

1556 Shane Ct

13 Elsa Hong

1564 Shane Ct

14 Raymond Hong

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Sincerely/Sinceramente

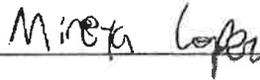
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Arvin resident

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Sincerely,

Alfredo Lopez

Arvin resident

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Sincerely,

Maricela Lopez

Arvin resident

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Sincerely,

Jennifer L. Lopez

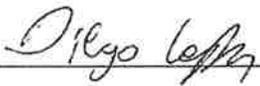
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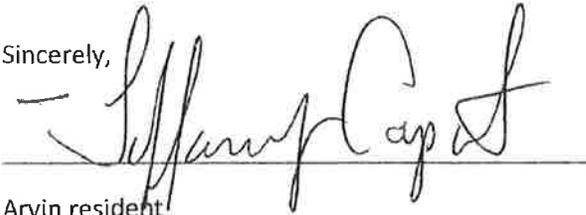
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Sincerely,

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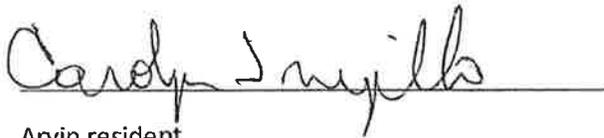
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Sincerely,

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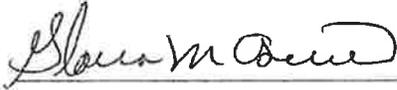
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A handwritten signature in cursive script, reading "Glenn Mantey", is written over a horizontal line.

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Naami Espinoza

Arvin resident

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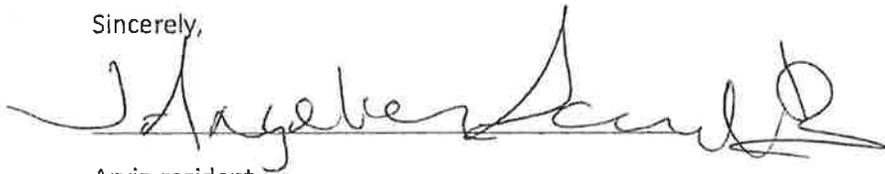
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Arvin resident

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We need the ordinance updates to protect our air and water, and our community from risks and dangers. This updates only ask the Oil Industry to move its operations further away from where we live, work and play. We are not banning the Oil Industry from Arvin, and only want them to be good neighbors and consider our health and well-being.

We urge the City Council to not bow down to the Oil Industry's pressure. The amended ordinance would create even more jobs to move those oil-operations to a safer distance from our homes, parks, and schools. Arvin's existing ordinance for oil and gas has not been updated since before the 1970's, and simply cannot protect our health, air and water. Please vote to adopt the amendments to the Oil and Gas Ordinance.

Sincerely,

Felipe Ramirez

Arvin resident

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Sincerely,

Francisco Garcia

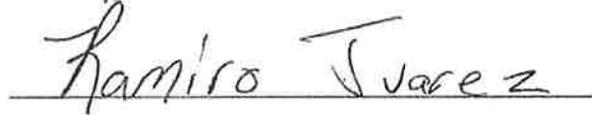
Arvin resident

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Sincerely,

A handwritten signature in black ink that reads "Ramiro Juarez". The signature is written in a cursive style and is positioned above a solid horizontal line.

Arvin resident



### City of Arvin

### NOTICE OF EXEMPTION

CEQA: California Environmental Quality Act

TO:  Office of Planning and Research  
State of California  
1400 Tenth Street  
Sacramento, CA 90815

X City of Arvin  
City Clerk, P.O. Box 548  
300 Campus Drive, Arvin, CA 93203  
661-854-3134 Office, 661-854-0817 Fax

X COUNTY CLERK  
County of Kern,  
1115 Truxtun Ave. 1st Floor,  
Bakersfield, CA 93301

**Project Title:** Text Amendment No. 17-01: Adoption Of An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code. (Oil and Gas Code Update)

**Project Location- Specific:** City of Arvin (city-wide application)

**Project Location- City:** Arvin

**Project Location- County:** Kern County

**Description of Nature, Purpose, and Beneficiaries of Project:** This environmental assessment is for Text Amendment Nos. 17-04, an adoption of an oil and gas Ordinance to the Municipal Code regarding regulation of petroleum facilities and operations, including repeals and amendments to the Municipal Code. The Ordinance will repeal Chapter 17.46, Title 17, and add Chapter 17.46 to Title 17, of the Arvin Municipal Code. The purpose of the ordinance is to protect the public health, safety, welfare, physical environment and natural resources of the City of Arvin, and to prevent nuisances, in connection with impacts from petroleum operations and facilities within the City of Arvin. Beneficiaries include the environment, residents, and petroleum operators who receive regulatory clarity. (See attachment for additional details.)

**Name of Public Agency Approving Project:** City of Arvin

**Name of Person or Agency Carrying Out Project:** City of Arvin

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec 21080 (b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- X Categorical Exemption. Section 15308 (Actions by Regulatory Agencies for Protection of the Environment)
- Statutory Exemptions.

**Reasons why project is exempt:** The Class 8 exemption is applicable because the Ordinance will enhance regulation of petroleum production and facilities in the City to better protect the environment. No exception to the exemption under CEQA Guideline section 15300.2 applies. (See attachment for additional details.)

#### Lead Agency

**Contact Person:** Jake Raper, Community Dev. Director

**Area Code/Telephone:** (661) 854-2822

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

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

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

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

- X Signed by Lead Agency
- Signed by Applicant

Date received for filing at OPR:

Attachment: Draft Notice of Exemption\_Oil and Gas Ordinance [Revision 1] (First Reading - Oil and Gas Code Ordinance)

## ATTACHMENT TO NOTICE OF EXEMPTION

THE PROJECT DESCRIBED HEREIN IS DETERMINED TO BE CATEGORICALLY EXEMPT FROM THE PREPARATION OF ENVIRONMENTAL DOCUMENTS PURSUANT TO CEQA GUIDELINES SECTION 15308.

APPLICANT: City of Arvin  
P.O. Box 548  
300 Campus Drive  
Arvin, CA 93203

LEAD AGENCY: City of Arvin

PROJECT LOCATION: City of Arvin (city-wide application)

APN: Not Applicable

PROJECT TITLE: Text Amendment No. 17-01: Adoption Of An Ordinance By The City Council Of The City Of Arvin, California, To Adopt Text Amendment No. 2017-04, An Oil And Gas Ordinance For Regulation Of Petroleum Facilities And Operations, By Repealing Chapter 17.46, Title 17, And Adding Chapter 17.46 To Title 17, Of The Arvin Municipal Code. (Oil and Gas Code Update)

### PROJECT DESCRIPTION:

This project involves the consideration and adoption of an Oil and Gas Ordinance to the Arvin Municipal Code regarding regulation of petroleum facilities and operations, including repeals and amendments to the Municipal Code. The Ordinance will repeal Chapter 17.46, Title 17, and add Chapter 17.46 to Title 17, of the Arvin Municipal Code.

The Oil and Gas Ordinance updates the Arvin Municipal Code and provides for regulations governing petroleum operations and facilities. The Ordinance addresses administrative procedures, development standards for operations, and development standards for well or site abandonment, re-abandonment, site restoration and redevelopment designed to minimize the environmental effects of such operation.

The purpose of the ordinance is to protect the public health, safety, welfare, physical environment and natural resources of the City of Arvin, and to prevent nuisances, in connection with impacts from petroleum operations and facilities within the City of Arvin. Beneficiaries include the environment, residents, and petroleum operators who receive regulatory clarity.

EXEMPTION: CEQA Guideline §15308, Actions by Regulatory Agencies for Protection of the Environment

### EXPLANATION:

The California Environmental Quality Act (CEQA) provides several “categorical exemptions” for certain projects and activities that do not have a significant adverse effect on the environment. A Lead Agency may approve and rely on a categorical exemption to satisfy the requirements of CEQA, as long as there is substantial evidence in the record that the project fits within the categorical exemption description and that there is no exception to the categorical exemption.

Here, adoption of the Ordinance is categorically exempt under Class 8 (Actions by Regulatory Agencies for Protection of the Environment) pursuant to CEQA Guidelines section 15308. That section applies to:

“[A]ctions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment. Construction activities and relaxation of standards allowing environmental degradation are not included in this exemption.”

The Ordinance addresses the maintenance, restoration, enhancement and protection of the environment and the public health, safety, welfare of the citizens of Arvin as related to potential impacts from petroleum operations and facilities within the City. The variety of environmental issues addressed include air, water, soil, geology, storm water and wastewater infrastructure, transportation, noise, emergency response, aesthetic issues, and petroleum operations near potentially sensitive receptors. It does not relax regulatory standards.

The Ordinance does not have some sort of unique feature that distinguishes it from other types of ordinances or procedures contemplated by Section 15308 of the Guidelines. Section 15308 contemplates the restriction, not relaxation, of standards. Adoption of Text Amendment No. 2017-04 does not relax standards within the City of Arvin. Speculation that imposing heightened standards will result in more intense uses and potential for resulting environmental impacts at other sites is without basis. Under existing regulations multiple wells, directional drilling and associated equipment, and oil and gas operations in general (including associated potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed as potential uses at such sites; the Ordinance does not relax standards to allow additional intensity at those (or any site). Additionally, underground pools oil and gas resources cannot be moved; oil and gas facilities need to be located close to the underground pools in order to access the resource. This means that the Ordinance in itself will not cause more intense uses to be shifted to other remote locations. Further, putting aside the fact that use of such sites are already allowed under the current regulatory environment, whether the Ordinance could lead to an increased level of hypothetical and speculative future intensity at other locations is just that - speculation. Any such projects would also be subject to individual, project-level environmental review as required by CEQA. As a result, this Ordinance does not have some sort of unique feature that distinguishes it from other sorts of regulations designed to protect the environment. Instead, this Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection. It does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

Under the current ordinance, multiple wells, directional drilling and associated equipment and operations (including resultant potential impacts from traffic, air quality, noise, greenhouse gas, etc.) are already allowed. Adoption of Text Amendment No. 2017-04 does not change this. In other words, this Ordinance in itself will not cause more intense uses to be shifted to other locations, as any such level of hypothetical and speculative intensity at other locations would already be allowed under the current regulatory environment, and such projects would also be subject to individual CEQA review. This Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection; it does not provide for the relaxation of standards as compared to the current regulations in the Arvin Municipal Code. Instead, the Ordinance strengthens environmental standards related to petroleum operations and facilities, and thereby advances the protection of environmental resources within the City of Arvin as compared to the existing regulatory environment.

Additionally, there are no unusual circumstances (including future activities) resulting in (or which might reasonably result in) significant impacts that threaten the environment. Specifically, the exceptions to the categorical exemptions articulated in Section 15300.2 of the State CEQA Guidelines are not applicable as:

(a) Location. Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located -- a project that is ordinarily insignificant in its impact on the environment may in a

particularly sensitive environment be significant. These classes are considered to apply in all instances, except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

Here, the Categorical Exemption applied is a Class 8; therefore, this exception does not apply to the proposed Ordinances.

(b) Cumulative Impact. All exemptions for these classes are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.

Here, the Categorical Exemption applied is Class 8; therefore, this exception does not apply to the proposed Ordinance. Additionally, the Ordinance does not relax standards for environmental protection, but instead enhance procedures and prohibitions that provide for further maintenance, restoration, enhancement, and protection of the environment from petroleum operations and facility uses which are currently allowed, or are not fully regulated by, the Arvin Municipal Code. As such, such a reduction to the impact of petroleum operations and facilities would not have substantial adverse impact on the environment, cumulative or otherwise. Likewise arguments that the Ordinance may cause more intense use at other locations are without basis, as that level of hypothetical and speculative intensity is already allowed under the current regulatory environment and would be required to be assessed under CEQA at that time for impacts if such intensity ever occurred at some future date; this Ordinance merely reduces the potential impacts at certain locations by establishing standards for environmental protection.

(c) Significant Effect. A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.

Here, the Oil and Gas Ordinance update clarifies and expands regulation of the permit process and procedure for any petroleum extraction or production projects and require that such projects obtain approval authority from the City Planning Commission or the City Council. Prior to such approval, these bodies must consider the potential environmental impacts related to petroleum operations or facilities and make appropriate determinations regarding potential impacts as required by CEQA.

The proposed Ordinance also further enhances the ability of the City of Arvin to protect the environment and avoid significant effects by ensuring that petroleum extraction and production operations are subject to a more comprehensive permitting process with CEQA review and regulatory oversight to ensure appropriate compliance. Additionally, the Ordinance further limits – not relaxes – the environmental impacts petroleum operations may potentially have on the environment including air quality, greenhouse gas emissions, water resources, geology, noise, traffic and public health and safety.

As such, there are no “unusual circumstances” that would create a reasonable possibility that adoption of the Ordinance would have a significant adverse effect on the environment.

(d) Scenic Highways. A categorical exemption shall not be used for a project which may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway. This does not apply to improvements, which are required as mitigation by an adopted negative declaration or certified EIR.

Here, the Ordinance does not involve the approval of surface petroleum extraction and production operations in a manner that damages scenic resources. There are no state-designated scenic highways located within or immediately adjacent to the City of Arvin and, as such, the Ordinance does not have the potential to impact any of these state designated scenic resources. As an additional matter, expansion of the regulatory oversight and permitting requirements will require additional discretionary approvals for petroleum operations and facilities by the City, which in turn will also require expanded CEQA review and protections for any potential scenic resources

as compared to the current process. Finally, prohibition of certain activities would limit, not expand, environmental protections for scenic resources.

(e) Hazardous Waste Sites. A categorical exemption shall not be used for a project located on a site, which is included on any list compiled pursuant to Section 65962.5 of the Government Code.

Here, the Ordinance is proposed to apply city-wide, and does not propose construction on “a site.” Likewise, the Ordinance does not negatively impact approval of any petroleum operations or facilities in a location listed as a hazardous waste site as compared to the current regulatory process. Instead, the Ordinance provides additional regulatory grounds to ensure the maintenance, restoration, enhancements and protection of the environment, as well as a regulatory process for the protection of the environment.

(f) Historical Resources. A categorical exemption shall not be used for a project, which may cause a substantial adverse change in the significance of a historical resource.

Here, the proposed Ordinance does not negatively impact any approval of petroleum operations and facilities in a manner that causes substantial adverse change in the significance of a historical resource. As noted above, the Ordinance provides for enhanced - not relaxed - regulations for protection of the environment as compared to the current regulatory process. The proposed Ordinance does not modify the current restrictions and protections put into place by the City of Arvin regarding historical resources, nor is there substantial information in the record that the ordinance may cause a substantial adverse change in the significance of a historical resource.

DRAFT



# CITY OF ARVIN

## OFFICE OF MAYOR JOSE GURROLA

**MAYOR**

Jose Gurrola

**MAYOR PRO TEM**

Jazmin Robles

**COUNCIL MEMBERS**Erika Madrigal  
Gabriela Martinez  
Jess Ortiz**CITY MANAGER**

Alfonso Noyola, ICMA-CM

**FOR IMMEDIATE RELEASE:**

June 25, 2018

**Contact:**

Mayor Jose Gurrola , City of Arvin

[jgurrola@arvin.org](mailto:jgurrola@arvin.org)

(661) 487 - 4010

## **Oil and Gas Code goes to Arvin City Council with Support of State Attorney General's Office**

**ARVIN, CA**—After enduring evacuations from toxic gas leaks, odors from wells, and stiff opposition from the petroleum industry, it looks like Arvin may be getting an updated oil and gas code. The City Council will be considering the code update at the first of two meetings starting on July 3, 2018 - but this time with the support of the State Attorney General's Office.

The road to the update has been difficult for this community. Eight Arvin families were evacuated after a toxic gas leak from an underground oilfield production pipeline located near their homes in 2014. Some have now been re-occupied by concerned residents with no other options; other homes still stand empty. Meanwhile, a short distance away an older pump jack labors day and night next to homes pumping oil mixed with water to a nearby tank. Despite multiple complaints to state agencies of odors and noise by the residents, they are told by the agencies that there is nothing that can be done under the current regulations. The pump jack continues to creak along as children walk nearby on their way to school, covering their faces as the smell occasionally drifts their direction.

“This is unacceptable,” said Jose Gurrola, Mayor of the City of Arvin. “The people of Arvin deserve a clean, safe environment. No one should be forced to either live in a contaminated or odor-filled home or to be homeless.”

Stepping in where State and federal regulations were insufficient, the City of Arvin has been taking steps to protect the community, including a proposal to update a sparse four-page City oil and gas code which had been in place since 1965. The proposed oil and gas code update includes provisions to protect homes, parks, hospitals and other sensitive uses from the impacts of petroleum operations including

Phone (661) 854-3134  
Fax (661) 854-0817200 Campus Drive  
P.O. Box 548  
Arvin, California 93203

noise, odor, and glare. It also provides for a process of ensuring safe redevelopment of land, and promotes safer locations for facilities. “It’s common sense,” said Mayor Gurrola.

That may be, but it still came as a surprise to some when at the last minute the petroleum industry came out in strong opposition to the proposed ordinance in November. In a standing-room-only meeting, industry representatives and community members spoke to the City Council for hours. “There was a lot of misinformation out there, including rumors that the ordinance was a ban on oil and gas operations” said Interim City Manager R. Jerry Breckinridge. “It was evident that the industry needed more time to read and understand what the ordinance actually did and did not do.” The City Council eventually continued the item to allow for more time and outreach efforts, with direction to incorporate certain modifications.

"Our city has stood by for far too long as our residents suffer from terrible air quality. The health and safety of our residents has always been and will always be our number one concern. We will no longer allow companies and corporations dictate what is best for our city and our people or push us around because we are a small city. We will continue to take the necessary steps to protect the health and safety of the people of Arvin," said Councilmember Jazmin Robles.

Now the ordinance is coming back to the City Council – with the support of the State Attorney General’s office. In an unusual step, the State Attorney General’s office submitted an extensive letter in support of the proposed code update, citing its efforts to protect the public health, safety and environment. “The Attorney General’s Office even noted that the proposed update is a ‘reasonable regulation,” said Mayor Gurrola. “We agree.”

The Council Agenda for the upcoming meeting will be available at [www.arvin.org/aboutnews/council-agendas](http://www.arvin.org/aboutnews/council-agendas) by June 29th, and the meeting will start at 6:00 p.m. at Arvin City Hall on July 3rd. If introduced, the Council may consider adoption of the updated code at its meeting on July 17, 2018.

###

Meetings are held at City of Arvin Council Chambers, 200 Campus Drive, Arvin, CA 93203.