REGULAR MEETING AGENDA
OF THE
ARVIN CITY COUNCIL / SUCCESSOR AGENCY TO THE
ARVIN COMMUNITY REDEVELOPMENT AGENCY /
ARVIN HOUSING AUTHORITY / ARVIN PUBLIC
FINANCING AUTHORITY (VIA TELECONFERENCE)

TUESDAY JULY 14, 2020  6:00pm
(Regular Session will commence no earlier than 6:00pm. Closed Session will
commence soon after Regular Session however, it is not open to the public.)

CITY HALL COUNCIL CHAMBERS
200 CAMPUS DRIVE, ARVIN

This meeting is compliant with the Governor’s Executive Order N-25-20 issued on March 4, 2020 and
N-29-20 issued on March 18, 2020, allowing for a deviation of teleconference rules required by the
Brown Act. The purpose of this is to provide a safe environment for staff and the public to conduct city
business, while allowing for public participation. The meeting will be held by teleconference only. The
public may participate by calling:

1-866-899-4679
Access Code 940-472-245#.

To join the meeting from your computer, tablet or smartphone click on the following link:
https://global.gotomeeting.com/join/940472245

The meeting agendas are available at: https://www.arvin.org/government/clerk/meeting-agendas-minutes/documents-page/
The city will accept comments on any items on the agenda, inclusive of closed session items, in writing,
and in advance of the meeting, up until Monday, July 13, 2020 at 3:00pm. Comments may be mailed
to City of Arvin, City Clerk’s Office, PO Box 548, Arvin, CA 93203 or emailed to cvela@arvin.org. In
the subject line, please provide “PUBLIC COMMENT ITEM #” (insert the item number relevant to your
comment) or “PUBLIC COMMENT NON-AGENDA ITEM”. All public comments will be provided to
the City Council and may be read into the record or compiled as part of the record.

CALL TO ORDER                            Mayor Jose Gurrola

PLEDGE OF ALLEGIANCE

INVOCATION

**************************************************************

ROLL CALL
Jose Gurrola        Mayor
Jazmin Robles       Mayor Pro Tem
Gabriela Martinez   Councilmember
Olivia Trujillo     Councilmember
Mark S. Franetovich Councilmember

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

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

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

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

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

(a) Disorderly, contemptuous or insolent behavior toward the City or any member thereof, tending to interrupt the due and orderly course of said meeting;

(b) A breach of the peace, boisterous conduct or violent disturbance, tending to interrupt the due and orderly course of said meeting;

(c) Disobedience of any lawful order of the Mayor, which shall include an order to be seated or to refrain from addressing the City; and

(d) Any other unlawful interference with the due and orderly course of said meeting.

AMERICANS with DISABILITIES ACT:
In compliance with the ADA, if you need special assistance to participate in a City meeting or other services offered by the City, please contact the City Clerk’s office, (661) 854-3134. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service.
I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one nation, under God, indivisible, with liberty and justice for all.
1. Approval of Agenda as To Form.

Motion ________  Second ____________  Vote ________
Roll Call: CM Martinez ___  CM Trujillo ___  CM Franetovich ___  MPT Robles ___  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. CLOSED SESSION REPORT FROM REGULAR CITY COUNCIL MEETING OF JUNE 23, 2020. (City Attorney)

4. CONSENT AGENDA ITEM(S)
   B. Approval of Payroll Register(s) of June 26, 2020 and July 10, 2020.
   C. Approval of the Minutes of the Regular Meeting(s) of June 23, 2020.
   D. Approval of A Resolution of the City Council of the City of Arvin Confirming and Ratifying Authority of the City Manager to Request Payment from the State of California Pursuant to the Applicable Provisions of Control Section 11.90(D) of the Budget Act of 2020 (COVID-19 Expenditures).
   E. Approval of A Resolution of the City Council of the City of Arvin Authorizing the Submittal, and Receipt of Local Government Planning Support Grant Program Funds for a Grant Application to the California Department of Housing and Community Development (HCD) to the Local Early Action Planning (LEAP) Grants Program; and Authorizing Related Actions.
   F. Approval of A Resolution of the City Council of the City of Arvin Adopting the California Department of Transportation Local Assistance Procedures Manual Into the City’s Policies for the Procurement of Architectural and Engineering Services for Federal and State Funded Projects.
   G. Approval of A Resolution of the City Council of the City of Arvin Approving An Audit Settlement Agreement Between the California Department of Transportation and the City of Arvin and Initiating Implementation of the Corrective Action Plan for Caltrans Projects No. ATPL-5370(027).

   Staff recommends approval of the Consent Agenda.

Motion ________  Second ____________  Vote ________
Roll Call: CM Martinez ___  CM Trujillo ___  CM Franetovich ___  MPT Robles ___  Mayor Gurrola ___
5. PUBLIC HEARING ITEM(S)

A. A Public Hearing to Consider:
   I) Approval of A Resolution of the City Council of the City of Arvin
      Authorizing the Submittal of a Grant Application to the State of California,
      Department of Housing and Community Development (HCD) Permanent
      Local Housing Allocation (PLHA) Program; and Authorizing Related
      Actions; and
   II) Approval of A Resolution of the City Council of the City of Arvin Adopting a
      Permanent Local Housing Allocation (PLHA) Plan; and Authorizing
      Related Actions. (Director of Administrative Services)

   Staff recommends the City Council open the hearing, allow for public
   testimony, close the hearing and consider approval of the Resolutions.

Motion __________  Second ___________  Vote _________
Roll Call: CM Martinez ___  CM Trujillo ___  CM Franetovich ___  MPT Robles ___  Mayor Gurrola ___

B. A Public Hearing to Consider Introduction of An Ordinance of the City Council of the City of Arvin Adopting An Uncodified Ordinance, Approving A Development Agreement Between the City of Arvin and Cana Rose Realty Holdings, LLC. and Life & Nature Farms, LLC. for the Development of Certain Commercial Cannabis Operations Located at 901 Potato Road, Arvin, Ca. (Director of Administrative Services)

   Staff recommends the City Council consider introducing the Ordinance to be
   read by title only, open the hearing, allow for public testimony, close the
   hearing, waive first reading of the Ordinance, and I) approve the introduction
   of the Ordinance and II) Adopt an exemption pursuant to California
   Environmental Quality Act Guidelines Section 15061(b)(3).

Motion __________  Second ___________  Vote _________
Roll Call: CM Martinez ___  CM Trujillo ___  CM Franetovich ___  MPT Robles ___  Mayor Gurrola ___

C. A Public Hearing to Consider Adoption of An Uncodified Urgency Ordinance of the City Council of the City of Arvin Again Extending Urgency Ordinance No. 2020-465 (Portion Regarding Compliance With State And County Emergency Orders in Response to the COVID-19 Pandemic).

   Staff recommends the City Council open the hearing, allow for public
   testimony, close the hearing and consider adoption of the Urgency
   Ordinance as appropriate (requires 4 votes).

Motion __________  Second ___________  Vote _________
Roll Call: CM Martinez ___  CM Trujillo ___  CM Franetovich ___  MPT Robles ___  Mayor Gurrola ___
6. **ACTION ITEM(S)**
   A. Discussion and Action on Measures to Mitigate the Impacts of the COVID-19 (Coronavirus) Pandemic.

   Staff recommends to discuss and take action as appropriate.

   Motion _______  Second _________  Vote _______

   Roll Call: CM Martinez  ___  CM Trujillo  ___  CM Franetovich  ___  MPT Robles  ___  Mayor Gurrola  ___

7. **STAFF REPORTS**

8. **COUNCIL MEMBER COMMENTS**

9. **CLOSED SESSION ITEM(S)**
   A. Threats to Public Services or Facilities (Pursuant to Government Code, § 54957(a).)
      Consultation with: City Attorney and/or City Emergency or Critical Function Personnel.

   B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Pursuant to Government Code § 54957(b)(1)
      Position: City Manager

   C. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Pursuant to Government Code § 54957(b)(1)
      Position: City Attorney

   D. CONFERENCE WITH LABOR NEGOTIATORS (Pursuant to Government Code, § 54957.6):  
      City Negotiator: Colin Tanner, Lead Negotiator and Pawan Gill, Director of Administrative Services
      Employee Organizations: Arvin Police Officers Association (APOA) and Central California Association of Public Employees SEIU Local 521.

10. **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 July 10, 2020.

Cecilia Vela, City Clerk
### Edit List of Invoices - Detail w/GL

**City of Arvin**

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<th>City</th>
<th>Address</th>
<th>State/Province Zip/Postal</th>
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<th>Account Name</th>
<th>Pay Amount</th>
<th>Pay Amount Description Line</th>
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<th>GL Description Line</th>
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<td>MAINTENANCE - VEHICLE</td>
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**Blue Shield of California**

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**O & M Services Jun 2020**

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**Attachment: Demand Registers of June 19, 2020 - July 10, 2020**
### City of Arvin

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<th>Pay. Date</th>
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### Distribution Total

| Vendor Total: | 252.5 |

### GL Number Account Name Distribution Line Description Pay Amount Relieve Amount

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### GL Number Account Name Distribution Line Description Pay Amount Relieve Amount

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### GL Number Account Name Distribution Line Description Pay Amount Relieve Amount

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### Attachment: Demand Registers of June 19, 2020 - July 10, 2020
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Vendor Total: 3,325.00

Attachment: Demand Registers of June 19, 2020 - July 10, 2020 (Demand Register(s) of June 19, 2020 - July 10, 2020.)
### Edit List of Invoices - Detail w/GL

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<tr>
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**Distribution Total:** 189.74

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**Distribution Total:** 137.50

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**Distribution Total:** 1,087.50

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**Distribution Total:** 525.00
Date: 06/25/2020  
Time: 5:04 pm

### City of Arvin

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<th>Email Address</th>
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<th>City</th>
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**Edit List of Invoices - Detail w/GL**

**Attachment: Demand Registers of June 19, 2020 - July 10, 2020**

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**Note:** The document includes a table with details of invoices, terms, and vendor information. The table is structured with columns for Vendor Name, Vendor Address, City, State, PO Number, Invoice Description, Gross Amount, and more. Each invoice detail includes the vendor's contact information, invoice date, amount, and distribution details. The document is part of a larger set of demand registers covering the period from June 19, 2020, to July 10, 2020.
<table>
<thead>
<tr>
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Vendor Total: 24,785.9

Distribution Total: 24,785.9

Attachment: Demand Registers of June 19, 2020 - July 10, 2020 (Demand Register(s) of June 19, 2020 - July 10, 2020)
**City of Arvin**

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>GL Number</th>
<th>Account Name</th>
<th>Distribution Line Description</th>
<th>Pay Amount</th>
<th>Relieve Amount</th>
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| O'REILLY AUTOMOTIVE, INC | 100-019-5008 | MAINTENANCE - OTHER | CONTROL FOR AMBER LIGHTS | 135.31 | 0.0 |
| PO BOX 9464 | 06/02/2020 | BOFA | 06/25/2020 | N | 135.3 |

| O'REILLY AUTOMOTIVE, INC | 100-019-5012 | MAINTENANCE - VEHICLE | UNIT 317 AMBER LIGHT | 5.82 | 0.0 |
| PO BOX 9464 | 06/02/2020 | BOFA | 06/25/2020 | N | 5.8 |

| PG & E | 100-002-5060 | UTILITIES EXPENSE | ELEC SVC 05.13.20 - 06.11.20 | 35.95 | 0.0 |
| BOX 997300 | 06/11/2020 | BOFA | 06/25/2020 | N | 35.9 |

| SACRAMENTO | 100-014-5060 | UTILITIES EXPENSE | 51446 | 0.0 |
| CA 95899-7300 | 06/11/2020 | BOFA | 06/25/2020 | N | 51446 |

**Vendor Total:** 197.3
## Edit List of Invoices - Detail w/GL

**City of Arvin**

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<th>Vendor Address</th>
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**PROTERRA**

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**Public Works County of Kern**

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**Staples Business Advantage**

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**Vendor Total:**

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**Vendor Total:**

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<td><strong>Vendor Total:</strong></td>
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**Vendor Total:**

<table>
<thead>
<tr>
<th>GL Number</th>
<th>Account Name</th>
<th>Distribution Line Description</th>
<th>Pay Amount</th>
<th>Relieve Amour</th>
</tr>
</thead>
<tbody>
<tr>
<td>100-001-5016</td>
<td>OFFICE SUPPLIES</td>
<td>222.05</td>
<td>0.0</td>
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<td><strong>Distribution Total</strong></td>
<td>222.05</td>
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**Attachment: Demand Registers of June 19, 2020 - July 10, 2020 (Demand Register(s) of June 19, 2020 - July 10, 2020).**
<table>
<thead>
<tr>
<th>GL Number</th>
<th>Account Name</th>
<th>Distribution Line Description</th>
<th>Pay Amount</th>
<th>Relieve Amount</th>
</tr>
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<tbody>
<tr>
<td>100-001-5016</td>
<td>OFFICE SUPPLIES</td>
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Vendor Total: 217.5

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<tbody>
<tr>
<td>100-014-5056</td>
<td>TELEPHONE</td>
<td></td>
<td>471.23</td>
<td>0.00</td>
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Vendor Total: 471.2

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<tr>
<td>100-014-5056</td>
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Vendor Total: 646.1

Grand Total: 1,003,202.5
Less Credit Memos: -4.5
Net Total: 1,003,202.5
Less Hand Check Total: 0.0
Outstanding Invoice Total: 1,003,202.5

Total Invoices: 43
### City of Arvin

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Post Date</th>
<th>Bank</th>
<th>Invoice Description Line 2</th>
<th>Gross Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-C ELECTRIC COMPANY</td>
<td>06/25/2020</td>
<td>BOFA</td>
<td>TRAILER ELECTRICAL SVC COVII</td>
<td>4,470.00</td>
</tr>
<tr>
<td>P.O. BOX 81977</td>
<td>06/26/2020</td>
<td>N</td>
<td></td>
<td>4,470.00</td>
</tr>
<tr>
<td>BAKERSFIELD</td>
<td>06/25/2020</td>
<td>N</td>
<td>N</td>
<td>0.00</td>
</tr>
<tr>
<td>01-153</td>
<td>06/25/2020</td>
<td>0.00</td>
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<tr>
<td>CA 93380-1977</td>
<td>06/25/2020</td>
<td>BL1704-1</td>
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### ACC BUSINESS

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<tbody>
<tr>
<td>319-001-5179</td>
<td>COVID-19 SUPPORT</td>
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### AT&T

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<th>Account Name</th>
<th>Pay Amount</th>
<th>Relieve Amount</th>
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</thead>
<tbody>
<tr>
<td>100-001-5056</td>
<td>TELEPHONE</td>
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<tr>
<td>100-007-5056</td>
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<td>400-023-5056</td>
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<tr>
<td>100-009-5056</td>
<td>TELEPHONE</td>
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<td>0.00</td>
</tr>
<tr>
<td>100-019-5056</td>
<td>TELEPHONE</td>
<td>18.07</td>
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<td>100-002-5056</td>
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### CAROL STREAM

<table>
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<th>Account Name</th>
<th>Pay Amount</th>
<th>Relieve Amount</th>
</tr>
</thead>
<tbody>
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<td>51449</td>
<td>ATLANTA</td>
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<tr>
<td>48-486</td>
<td>GA 30348-5306</td>
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<td>51449</td>
<td>CAROL STREAM</td>
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</tr>
<tr>
<td>26-909</td>
<td>IL 60197</td>
<td>541.94</td>
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</table>

### Demand Registers of June 19, 2020 - July 10, 2020

<table>
<thead>
<tr>
<th>GL Number</th>
<th>Account Name</th>
<th>Pay Amount</th>
<th>Relieve Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>100-001-5056</td>
<td>TELEPHONE</td>
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<tr>
<td>Distribution Total</td>
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</table>
### Edit List of Invoices - Detail w/GL

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Pay Date</th>
<th>PO Number</th>
<th>Bank Hold?</th>
<th>Invoice Description Line 2</th>
<th>Gross Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>City of Arvin</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ref. No.</td>
<td>City</td>
<td>Disc Date</td>
<td>Req. No.</td>
<td>Sep. Chk.?</td>
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</tr>
<tr>
<td>Vendor No.</td>
<td>State/Province Zip/Postal</td>
<td>Due Date</td>
<td>Disc. %</td>
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<tr>
<td>Email Address</td>
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<td>Invoice No.</td>
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<table>
<thead>
<tr>
<th>Date: 06/26/2020</th>
<th>Time: 4:55 pm</th>
</tr>
</thead>
</table>

#### Post Date: 06/25/2020

**BRETT BARKER**

<table>
<thead>
<tr>
<th>Invoice Description Line 2</th>
<th>Amount</th>
<th>Account Name</th>
<th>GL Number</th>
<th>Distribution Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>POST PERISH SKLS TRNG MEAL</td>
<td>260.00</td>
<td>TRAINING</td>
<td>100-014-5021</td>
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**City:** BAKERSFIELD

<table>
<thead>
<tr>
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<th>Account Name</th>
<th>GL Number</th>
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</thead>
<tbody>
<tr>
<td>UNIT 301 FUEL SYSTEM REPAIR</td>
<td>1,064.58</td>
<td>MAINTENANCE - VEHICLE</td>
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**City:** PASADENA

<table>
<thead>
<tr>
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<th>Amount</th>
<th>Account Name</th>
<th>GL Number</th>
<th>Distribution Total</th>
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</thead>
<tbody>
<tr>
<td>UNIT 317 REPLACE RADIATOR</td>
<td>490.13</td>
<td>MAINTENANCE - VEHICLE</td>
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**City:** CALSTART INC

<table>
<thead>
<tr>
<th>Invoice Description Line 2</th>
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<th>Account Name</th>
<th>GL Number</th>
<th>Distribution Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>BATTERY ELEC TRNST BUS DEP</td>
<td>7,191.58</td>
<td>PROFESSIONAL SERVICES</td>
<td>408-074-5034</td>
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**City:** CINTAS

<table>
<thead>
<tr>
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<th>Amount</th>
<th>Account Name</th>
<th>GL Number</th>
<th>Distribution Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>MATS LINENS UNIFORMS JUN20</td>
<td>648.60</td>
<td>MAINTENANCE - OTHER</td>
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<thead>
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<table>
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<td>TRAINING</td>
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<td>MAINTENANCE - VEHICLE</td>
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</tr>
<tr>
<td>MAINTENANCE - VEHICLE</td>
<td>490.13</td>
</tr>
<tr>
<td>MAINTENANCE - VEHICLE</td>
<td>7,191.58</td>
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<tr>
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<td>7,191.58</td>
</tr>
<tr>
<td>MAINTENANCE - VEHICLE</td>
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</tbody>
</table>

**Attachment:** Demand Registers of June 19, 2020 - July 10, 2020 (Demand Register(s) of June 19, 2020 - July 10, 2020)
### City of Arvin

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Vendor Address</th>
<th>Post Date</th>
<th>Pay. Date</th>
<th>PO Number</th>
<th>Bank</th>
<th>Hold?</th>
<th>Invoice Description Line 2</th>
<th>Invoice Description Line 2</th>
<th>Gross Amour</th>
</tr>
</thead>
<tbody>
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<thead>
<tr>
<th>Ref. No.</th>
<th>Vendor No.</th>
<th>City</th>
<th>State/Province</th>
<th>Zip/Postal</th>
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<tbody>
<tr>
<td>200-020-5023</td>
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<tr>
<td>100-019-5008</td>
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<table>
<thead>
<tr>
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<th>Bank</th>
<th>Hold?</th>
<th>Invoice Description Line 2</th>
<th>Invoice Description Line 2</th>
<th>Gross Amour</th>
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</thead>
<tbody>
<tr>
<td>06/26/2020</td>
<td>06/26/2020</td>
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<td></td>
<td>MAINTENANCE - OTHER</td>
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<td>14,756.68</td>
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<tr>
<td>03/10/2020</td>
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<td>1930 22ND STREET</td>
<td>N</td>
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<td>19-238 HAVEN DR. REHAB FEB20</td>
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</tr>
<tr>
<td>03/10/2020</td>
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<table>
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<tr>
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<tbody>
<tr>
<td>04/01/2020</td>
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<th>Relieve Amour</th>
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<table>
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<tr>
<th>GL Number</th>
<th>Distribution Total</th>
<th>Pay Amount</th>
<th>Relieve Amour</th>
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</thead>
<tbody>
<tr>
<td>100-007-5070</td>
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<table>
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<th>Date</th>
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<th>PO Number</th>
<th>Bank</th>
<th>Hold?</th>
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<th>Invoice Description Line 2</th>
<th>Gross Amour</th>
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<tbody>
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<td>06/01/2020</td>
<td>1930 22ND STREET</td>
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<td>19-238 HAVEN DR. REHAB MAY20</td>
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<table>
<thead>
<tr>
<th>GL Number</th>
<th>Distribution Total</th>
<th>Pay Amount</th>
<th>Relieve Amour</th>
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</thead>
<tbody>
<tr>
<td>100-007-5070</td>
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<table>
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<tr>
<th>Date</th>
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<th>PO Number</th>
<th>Bank</th>
<th>Hold?</th>
<th>Invoice Description Line 2</th>
<th>Invoice Description Line 2</th>
<th>Gross Amour</th>
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<table>
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<th>Hold?</th>
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<tbody>
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**FRESNO POLICE DEPARTMENT**

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<th>Gross Amount</th>
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**CA 93706**

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**GOLDEN EMPIRE FLEET SERVICI**

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**GRANITE CONSTRUCTION**

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<tbody>
<tr>
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**LOS ANGELES**

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**CA 90074-2478**

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**GRANITE CONSTRUCTION**

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**LOS ANGELES**

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**CA 90074-2478**

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**200-020-5031**

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<tbody>
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<td>3/8&quot; CMACOLDMIX ST REPAIRS</td>
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# Edit List of Invoices - Detail w/GL

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<thead>
<tr>
<th>Vendor Name</th>
<th>Post Date</th>
<th>Pay. Date</th>
<th>PO Number</th>
<th>Bank</th>
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<th>Relieve Amount</th>
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| Vendor Total: | 5,376.6 |

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<table>
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<th>Distribution Line Description</th>
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<tbody>
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| Vendor Total: | 6,091.3 |

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<tr>
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## Edit List of Invoices - Detail w/GL

### City of Arvin

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<th>Pay. Date</th>
<th>PO Number</th>
<th>Bank</th>
<th>Invoice Description Line 2</th>
<th>Gross Amount</th>
<th>Taxes Withholding</th>
<th>Disc. %</th>
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**GL Number** | **Account Name** | **Distribution Line Description** | **Pay Amount** | **Relieve Amount** |
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**Vendor Total:** 0.0

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<th>Relieve Amount</th>
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**Vendor Total:** 0.0

### Attachment: Demand Registers of June 19, 2020 - July 10, 2020

- Demand Register(s) of June 19, 2020 - July 10, 2020
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Vendor Total: 260.0
## City of Arvin

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---|---|---|---|---
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**Distribution Total:** 600.00

**Vendor Total:** 600.00

### GL Number | Account Name | Distribution Line Description | Pay Amount | Relieve Amount
---|---|---|---|---
100-019-5056 | TELEPHONE | | 186.95 | 0.0

**Distribution Total:** 186.95

**Vendor Total:** 186.95

### GL Number | Account Name | Distribution Line Description | Pay Amount | Relieve Amount
---|---|---|---|---
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200-020-5080 | FUEL EXPENSE | | 1,135.47 | 0.0
400-023-5080 | FUEL EXPENSE | | 454.75 | 0.0

**Distribution Total:** 4,348.99

**Vendor Total:** 4,348.99

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---|---|---|---|---
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**Distribution Total:** 693.94

**Vendor Total:** 693.94
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Date: 07/10/2020
Time: 11:43 am
Page: 8

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<tbody>
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<td>100-002-5077</td>
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| VANTAGE POINT TRANSFER AGE | 07/10/2020 | BOFA | 457K 07.10.20 | 556.04 |
| C/O M&T BANK               | 07/10/2020 | N    |                | 556.04 |
| BALTIMORE                   | 07/10/2020 | N    |                | 0.00  |
| 26-912 MD 21264            | 07/10/2020 | 0.00 |                | 0.00  |
| <Emailing Stub Disabled>   | 07/10/2020 | 457K 07.10.20 | 556.04 |

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| C/O M&T BANK               | 06/26/2020 | N    |                | 556.04 |
| BALTIMORE                   | 06/26/2020 | N    |                | 0.00  |
| 26-912 MD 21264            | 06/26/2020 | 0.00 |                | 0.00  |
| <Emailing Stub Disabled>   | 06/26/2020 | 457K 06.26.20 | 556.04 |

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| WAGEWORKS, INC. | 01/31/2020 | BOFA | C2791 MNTHLY COMPLIANCE | 79.52 |
| PO BOX 8363     | 01/31/2020 | N    | FEE COBRA JAN2020       | 79.52 |
| PASADENA        | 01/31/2020 | N    |                           | 0.00  |
| 48-505 CA 91109-8363 | 01/31/2020 | 0.00 |                           | 0.00  |
| <Emailing Stub Disabled> | 01/31/2020 | 0120-TR39927 | 79.52 |

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</thead>
<tbody>
<tr>
<td>100-001-5015</td>
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<td>Distribution Total</td>
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| WAGEWORKS, INC. | 02/29/2020 | BOFA | C2791 MNTHLY COMPLIANCE | 79.52 |
| PO BOX 8363     | 02/29/2020 | N    | FEE COBRA FEB2020       | 79.52 |
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| <Emailing Stub Disabled> | 02/29/2020 | 0220-TR39927 | 79.52 |

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<tr>
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Attachment: Demand Registers of June 19, 2020 - July 10, 2020 (Demand Register(s) of June 19, 2020 - July 10, 2020)
### Edit List of Invoices - Detail w/GL

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<tr>
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<th>PO Number</th>
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<th>Invoice Description Line 2</th>
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</table>

**4GL Number**  | **Account Name** | **Distribution Line Description** | **Pay Amount** | **Relieve Amount**
---|---|---|---|---
100-001-5015 | MEDICAL INSURANCE | | 79.52 | 0.00
**Distribution Total** | | | 79.52 | 0.00
100-001-5015 | MEDICAL INSURANCE | | 79.52 | 0.00
**Distribution Total** | | | 79.52 | 0.00
100-001-5015 | MEDICAL INSURANCE | | 79.52 | 0.00
**Distribution Total** | | | 79.52 | 0.00
100-001-5015 | MEDICAL INSURANCE | | 79.52 | 0.00
**Distribution Total** | | | 79.52 | 0.00
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**Grand Total:** 39,332.1
**Less Credit Memos:** 0.0
**Net Total:** 39,332.1
**Less Hand Check Total:** 0.0
**Outstanding Invoice Total:** 39,332.1

| Total Invoices: | 40 |
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### EARNINGS REPORT

**PAYROLL 6-26-2020**

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<td>DIFFL</td>
<td>FH</td>
<td>FTO</td>
<td>HLP</td>
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<tr>
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<td>LONG</td>
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Grand Total: Employee Count: 55

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### COST REPORT

**PAYROLL 6-26-2020**

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**Attachment: Payroll Registers of June 26, 2020 and July 10, 2020 (Payroll Register(s) of June 26, 2020 and**
### EARNINGS REPORT

**PAYROLL 7-10-2020**

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**Grand Total:**

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| 6,156.76 | 5,981.83 | 1,994.16 | 0.00 | 2,637.03 | 0.00 | 0.00 | 170.24 |
| 0.00 | 2,387.55 | 0.00 | 0.00 | 0.00 | 300.00 | 864.03 | 0.00 |
| 87,829.51 | 0.00 | 0.00 | 594.00 | 0.00 | 3,480.00 | 3,707.63 | 0.00 |
| 0.00 | 135.36 | 4,650.00 | 7,400.00 | 90.78 | 2,855.88 | 20,200.77 | 1,081.06 |
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### COST REPORT

**PAYROLL 7-10-2020**

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**Grand Total:**

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| 2,877.08 | 3,770.80 | 0.00 | 0.00 | 2,743.30 | 2,765.54 | 9,564.85 | 3,067.13 | 32,14 |

Emp. Code Desc.: CITY OF ARVIN
From 07/01/2020 to 07/10/2020
City of Arvin

Date: 7/9/2020
Time: 13:45:29
REGULAR MEETING MINUTES

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

JUNE 23, 2020

CALL TO ORDER @ 6:01PM

ROLL CALL: CM Martinez absent; All others present.

1. Approval of Agenda as To Form.

Motion to approve the Agenda.
Motion Mayor Gurrola        Second CM Trujillo        Vote 4-0

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

NONE

3. CLOSED SESSION REPORT FROM REGULAR CITY COUNCIL MEETING OF JUNE 09, 2020. (City Attorney)

CLOSED SESSION REPORT BY CITY ATTORNEY OF REGULAR CITY COUNCIL MEETING OF JUNE 09, 2020: No reportable action.

4. CONSENT AGENDA ITEM(S)
   A. Approval of Demand Register(s) of June 05, 2020 – June 18, 2020.

   B. Approval of Payroll Register(s) of June 12, 2020.

   C. Approval of the Minutes of the Regular Meeting(s) of June 09, 2020.

   D. Approval of A Resolution of the City Council of the City of Arvin Providing for the Collection of Sewer Charges by the Kern County Tax Collector for Fiscal Year 2020-21 In Compliance With The Applicable Provisions of Proposition 218 and the Arvin Municipal Code.

Resolution No. 2020-35
E. Approval of A Resolution of the City Council of the City of Arvin Receiving and Adopting the Annual Statement of Investment Policy and Authorizing the Investment of Surplus Funds Consistent With the Same.

Resolution No. 2020-36

F. Approval of A Resolution of the City Council of the City of Arvin Calling and Giving Notice of the Holding of A General Municipal Election to be Held on Tuesday, November 03, 2020, for the Election of One (1) Mayor and One (1) Member of the City Council.

Resolution No. 2020-37

G. 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 03, 2020 with the Statewide General Election to be held on the Same Date.

Resolution No. 2020-38

H. Approval to Participate in the Used Oil Payment Program Managed by the County of Kern for the Fiscal Year of 2020-2021.

I. A Resolution of the City Council of the City of Arvin Approving the Engagement Letter for Pun Group, LLC Related to the Fiscal Year 2019-2020 Audit.

Resolution No. 2020-39

J. Approval of A Resolution of the City Council of the City of Arvin Accepting the Work Completed By JTS Construction, Inc. and Filing the Notice of Completion for the City of Arvin Park and Ride Project.

Resolution No. 2020-40

K. Consideration and Approval of A Resolution of the City Council of the City of Arvin Accepting the Donations from Councilmember(s) to Assist with the City of Arvin's Fiscal Situation.

Resolution No. 2020-41

L. Approval of Letters of Support for the following Arvin Edison Water Storage District’s Groundwater Sustainability Plan Projects:
   1) Sunset Spreading Works Project
   2) Forrest Frick Discharge Pipeline / Eastside Canal Intertie
   3) Forrest Frick In-Lieu Unit
   4) DiGiorgio Expansion

Staff recommends approval of the Consent Agenda.

Motion to approve Consent Agenda Items 4A – 4L.
Motion MPT Robles Second Mayor Gurrola Vote 4-0
5. PUBLIC HEARING ITEM(S)
   A. A Public Hearing to Consider Adoption of An Uncodified Urgency Ordinance of the City Council of the City of Arvin Extending the Following Urgency Ordinances: I) Urgency Ordinance No. 2020-465 (requiring use of Facial Coverings and/or Personal Protective Equipment); and II) Urgency Ordinance No. 2020-467 (related to Businesses Being Required to Post Signage, and requiring continued compliance with State and County Emergency Orders in response to the COVID-19 Pandemic).

   Staff recommends the City Council open the hearing, allow for public testimony, close the hearing and consider adoption of the Urgency Ordinance as appropriate.

Motion to open for debate to discuss extending particular provision(s).
Motion Mayor Gurrola Second MPT Robles Vote 4-0

Motion to close the debate.
Motion Mayor Gurrola Second MPT Robles

Motion to approve extension of Section 4 of Urgency Ordinance No. 2020-465.
Motion Mayor Gurrola Second MPT Robles Vote 4-0

Ordinance No. 2020-468

6. STAFF REPORTS

7. COUNCIL MEMBER COMMENTS

8. CLOSED SESSION ITEM(S)
   A. CONFERENCE WITH LABOR NEGOTIATORS (Pursuant to Government Code, § 54957.6):
      City Negotiator: Colin Tanner, Lead Negotiator and Pawan Gill, Director of Administrative Services
      Employee Organizations: Arvin Police Officers Association (APOA) and Central California Association of Public Employees SEIU Local 521.

   B. Public Employment (Pursuant to Government Code, § 54957
      Position: Chief of Police

   C. Threats to Public Services or Facilities (Pursuant to Government Code, § 54957(a).)
      Consultation with: City Attorney and/or City Emergency or Critical Function Personnel.

CLOSED SESSION REPORT BY CITY ATTORNEY:
No reportable action.
9. **ADJOURNED @ 7:26PM**

Respectfully submitted,

____________________

Cecilia Vela, City Clerk

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*Attachment: Minutes of the Regular Arvin City Council Meeting of June 23, 2020 (Minutes of the Regular Meeting of June 23, 2020.)*
CITY OF ARVIN
Staff Report

Meeting Date: July 14, 2020

<table>
<thead>
<tr>
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<th>City Council</th>
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<tr>
<td>FROM:</td>
<td>Jeff Jones, Finance Director</td>
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<td>Jerry Breckinridge, City Manager</td>
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**BACKGROUND:**
The City of Arvin is eligible for an allocation of $267,649 in federal funding of costs associated with the Coronavirus Disease to support activities and expenses that promote public health and safety in response to the COVID-19 public health emergency, including, but not limited to, any of the following:

- State and local public safety, including implementation of social distancing guidelines in public facilities.
- State and local public health, including testing and contact tracing.
- Services for vulnerable populations, including increased caseload.
- K-12 learning loss mitigation.
- County public health, behavioral health, and health and human services.

The California Department of Finance is accepting local government certification for federal funding allocations to Counties and Cities. With the deadline being July 10, 2020. The funding allocation is to be used as a direct payment under the applicable provisions of subdivision (d) of Control Section 11.90 of the federal Budget Act of 2020 for costs that:

- Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)
- Were not accounted for in the budget most recently approved as of March 27, 2020, for government entity
- Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

To receive these funds, cities and counties must submit the provided certification form to the State Department of Finance by July 10, 2020.

Due to the very tight time constraints to submit the application Staff is seeking Council approval to provide retroactive authorization for the City Manager to request these funds and submit the certification form within the required time frame as Council was unable to reasonably hold a special meeting to do so within the short period prior to July 10, 2020, due to staffing shortages and issues associated with COVID-19, which was compounded by the Fourth of July weekend.

**FINANCIAL IMPACT:**
Through the federal stimulus CARES Act, $500 million has been allocated to cities with the City of Arvin set to receive $267,649. There are no matching funds required with these funds. Funding is contingent on the county’s adherence to federal guidance, the state’s stay-at-home requirements, and other health requirements as directed in gubernatorial Executive Order N-33-20, any subsequent executive orders or statutes, and all California Department of Public Health orders, directives, and guidance issued in response to the COVID-19 public health emergency. Upon confirmation that the funding is secured, staff will return to Council with recommendations for designating the use of the stimulus funds.
RESOLUTION


WHEREAS, on June 29, 2020, the Governor signed the Budget Act of 2020 (“Budget Act”); and

WHEREAS, said Budget Act provides for payments to certain local county and city jurisdictions throughout the state to pay for costs incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19); and

WHEREAS, these funds are to be used for costs that:

1. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19)
2. Were not accounted for in the budget most recently approved as of March 27, 2020, for the city.
3. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020; and.

WHEREAS, on July 1, 2020, the California Department of Finance notified the City of Arvin (“City”) that under the Budget Act the City is anticipated to receive a maximum funding amount of $267,649, which if granted will be paid in installments to the City; and

WHEREAS, to receive these funds, cities and counties must email a certification form to the California Department of Finance by no later than July 10, 2020; and

WHEREAS, in order to submit the certification form to the California Department of Finance, the City Manager or authorized designee must certify that they have authority on behalf of the City to request payment from the State of California pursuant to the application provisions of Control Section 11.90 of the Budget Act of 2020; and

WHEREAS, the City Manager has certain authority to act on behalf of the City pursuant to the Arvin Municipal Code, etc., and timely submitted the application to the State of California; and

WHEREAS, in addition to this authority, the City Council also desired to make clear that the City Manager is and was at all times authorized to request payment, but the Council was unable to reasonably hold a special meeting to do so within the short period prior to July 10, 2020, due to staffing shortages and issues associated with COVID-19, which was compounded by the Fourth of July weekend; and
WHEREAS, the City Council now desires to confirm that the City Manager had authority on behalf of the City of Arvin to request said payment, ratify the same, and authorize the City Manager to take any other action to effectuate the application for, and receipt of, said funding allocations.

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

1. The City Council hereby specifically finds that all of the facts set forth in the recitals above of this Resolution are true and correct and incorporated herein.

2. The City Council authorizes, grants, ratifies, and confirms the following:

   a. The City Manager was and is granted, and has authority on behalf of, the City to request payment from the State of California pursuant to the applicable provisions of subdivision (d) of Control Section 11.90 of the Budget Act of 2020.

   b. The City understands that the State will rely on the certification submitted by the City Manager as a material representation in making a direct payment to the City.

   c. The City’s proposed uses of the funds provided as direct payment under the applicable provisions of subdivision (d) of Control Section 11.90 of the Budget Act of 2020 will be used only for costs that:

      i. Are necessary expenditures incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).
      ii. Were not accounted for in the budget most recently approved as of March 27, 2020, for the City.
      iii. Were incurred during the period that begins on March 1, 2020, and ends on December 30, 2020.

   d. The City Manager was and is authorized to agree on behalf of the City to do all of the following as a condition of receipt of funds:

      i. Adhere to federal guidance and the state’s stay-at-home requirements and other health requirements as directed in gubernatorial Executive Order N-33-20, any subsequent Executive Orders or statutes, and all California Department of Public Health orders, directives, and guidance in response to COVID-19 emergency.
      ii. Use the funds in accordance with all applicable provisions of subdivision (d) of Control Section 11.90 of the Budget Act of 2020.
      iii. Report on expenditures and summarize regional collaboration and non-duplication of efforts within the region by September 1, 2020, and return any funds that are unspent by October 30, 2020 (unless extended by the Department of Finance based on reported
expenditures to date), and repay the state for any cost disallowed after federal review.

iv. Retain records to support reported COVID-19 eligible expenditures and participate in audits as outlined by the federal government and State.

3. The City Manager was authorized to submit a Certification for Receipt of Funds on or before July 10, 2020. The City Manager is also authorized and directed to take any other action or execute any other necessary documentation on behalf of the City required to secure said funding as may be warranted, including entering into a grant funding agreement or similar agreement(s) for the funds subject to approval as to legal form by the City Attorney.

4. This Resolution shall become effective immediately.
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 14th day of July, 2020 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 14, 2020

TO: City Council
FROM: Pawan Gill, Director of Administrative Services
       Jerry Breckinridge, City Manager
SUBJECT: A Resolution of the City Council of the City of Arvin Authorizing the Submittal, and Receipt of Local Government Planning Support Grant Program Funds for a Grant Application to the California Department of Housing and Community Development (HCD) to the Local Early Action Planning (LEAP) Grants Program; and Authorizing Related Actions.

BACKGROUND:
The City of Arvin is eligible to apply for non-entitlement formula funding of $150,000 for the preparation and adoption of planning documents, process improvements that accelerate housing production, and facilitate compliance in implementing the sixth cycle of the regional housing need assessment (RHNA).

The City staff proposes to use the funds for the development of an Accessory Dwelling Ordinance (ADU) in to promote housing production ($125,000) and for acquiring a source of match funds ($25,000) for a full-time Civic Spark Fellow in the Community Development Department to accelerate housing, implement programs as required by Arvin’s Housing Element, and to further Arvin’s energy efficiency and climate resiliency programs.

RECOMMENDATION:
Staff recommends approval of the Resolution.

FINANCIAL IMPACT:
No Fiscal Impact.

ATTACHMENTS:
A Resolution of the City Council of the City of Arvin Authorizing the Submittal, and Receipt of Local Government Planning Support Grant Program Funds for a Grant Application to the California Department of Housing and Community Development (HCD) to the Local Early Action Planning (LEAP) Grants Program; and Authorizing Related Actions.
Action Planning (LEAP) Grants Program; and Authorizing Related Actions.
RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN AUTHORIZING THE SUBMITTAL, AND RECEIPT OF LOCAL GOVERNMENT PLANNING SUPPORT GRANT PROGRAM FUNDS FOR A GRANT APPLICATION TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) TO THE LOCAL EARLY ACTION PLANNING (LEAP) GRANTS PROGRAM; AND AUTHORIZING RELATED ACTIONS.

WHEREAS, pursuant to Health and Safety Code 50515 et. Seq, the Department of Housing and Community Development (Department) is authorized to issue a Notice of Funding Availability (NOFA) as part of the Local Government Planning Support Grants Program (hereinafter referred to by the Department as the Local Early Action Planning Grants program or LEAP); and

WHEREAS, the City Council of the City of Arvin desires to submit a LEAP grant application package (“Application”), on the forms provided by the Department, for approval of grant funding for projects that assist in the preparation and adoption of planning documents and process improvements that accelerate housing production and facilitate compliance to implement the sixth cycle of the regional housing need assessment; and

WHEREAS, the Department has issued a NOFA and Application on January 27, 2020 in the amount of $119,040,000 for assistance to all California Jurisdictions;

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

SECTION 1. The City Manager is hereby authorized and directed to apply for and submit to the Department the Application package, subject to approval as to legal form by the City attorney;

SECTION 2. In connection with the LEAP grant, if the Application is approved by the Department, the City Manager is authorized to submit the Application, enter into, execute, and deliver on behalf of the City of Arvin, a State of California Agreement (Standard Agreement) for the amount of $150,000., and any and all other documents required or deemed necessary or appropriate to evidence and secure the LEAP grant, the City of Arvin’s obligations related thereto, and all amendments thereto; and

SECTION 3. The City of Arvin shall be subject to the terms and conditions as specified in the NOFA, and the Standard Agreement provided by the Department after approval. The Application and any and all accompanying documents are incorporated in full as part of the Standard Agreement. Any and all activities funded, information provided, and timelines represented in the Application will be enforceable through the fully executed Standard Agreement. Pursuant to the NOFA and in conjunction with the terms of the Standard Agreement, the City of Arvin hereby agrees to use the funds for eligible uses and allowable expenditures in the manner presented and specifically identified in the approved Application.
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 14th day of July, 2020 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.
BACKGROUND:
The City of Arvin may engage consultants to perform professional architectural, engineering, and related services to developed federal and/or state funded public projects.

Federal and state laws and regulations requires local agencies to award engineering and design related contracts that are federally and/or state funded based on fair and open competitive negotiations, at a fair and reasonable price. (40 U.S.C. § 1140; 23 CFR § 172; 48 CFR §§ 31.201-3; Cal. Gov. Code §§ 4526, 4529.10, 4529.12, 4529.16; Cal. Pub. Cont. Code § 6106; 16 C.C.R. § 474; see Cal. Const. art. XXII, § 1; Cal. Gov. Code § 4525 et seq.).

The California Department of Transportation (“Caltrans”) issues the Local Assistance Procedures Manual (“LAPM”), which describes the various procedures required to process federal and state funded local transportation projects.

Compliance with the LAPM ensures compliance with the federal and state laws and regulations applicable to contracting for professional engineering and design related services.

The City of Arvin desires to adopt Chapter 10 of the LAPM, as may be amended, into its procurement policies for the procurement of architectural and engineering services.

All City staff involved in the procurement of professional engineering and design related services, and any other appropriate City staff will undergo the Architectural and Engineering Consultant Procurement training provided by Caltrans, and report such training to the City Manager within 3 months of the adoption of this resolution.
FINANCIAL IMPACT:
There will be minor costs involving training city staff for implementation of this policy. The training costs are included in the Fiscal Year 2020-2021 budget.
RESOLUTION

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN
ADOPTING THE CALIFORNIA DEPARTMENT OF TRANSPORTATION LOCAL ASSISTANCE PROCEDURES MANUAL INTO THE CITY’S POLICIES FOR THE PROCUREMENT OF ARCHITECTURAL AND ENGINEERING SERVICES FOR FEDERAL AND STATE FUNDED PROJECTS

WHEREAS, the City of Arvin may engage consultants to perform professional architectural, engineering, and related services to developed federal and/or state funded public projects;

WHEREAS, federal and state laws and regulations requires local agencies to award engineering and design related contracts that are federally and/or state funded based on fair and open competitive negotiations, at a fair and reasonable price. (40 U.S.C. § 1140; 23 CFR § 172; 48 CFR §§ 31.201-3; Cal. Gov. Code §§ 4526, 4529.10, 4529.12, 4529.16; Cal. Pub. Cont. Code § 6106; 16 C.C.R. § 474; see Cal. Const. art. XXII, § 1; Cal. Gov. Code § 4525 et seq.)

WHEREAS, the California Department of Transportation (“Caltrans”) issues the Local Assistance Procedures Manual (“LAPM”), which describes the various procedures required to process federal and state funded local transportation projects;

WHEREAS, compliance with the LAPM ensures compliance with the federal and state laws and regulations applicable to contracting for professional engineering and design related services; and

WHEREAS, the City now desires to adopt Chapter 10 of the LAPM, as may be amended, into its procurement policies for the procurement of architectural and engineering services.

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

Section 1. The foregoing recitals are true and correct and are incorporated by reference.

Section 2. The City Council of the City of Arvin hereby adopts the Caltrans Local Assistance Procedures Manual, attached hereto as Exhibit “A” and as may periodically amended, into its procurement policies for the procurement of professional architectural and engineering services.

Section 3. The City Council of the City of Arvin hereby directs all City staff involved in the procurement of professional engineering and design related services, and any other appropriate City staff, to undergo the Architectural and Engineering Consultant Procurement training provided by Caltrans, and to report such training to the City Manager within 3 months of the adoption of this resolution.

Section 4. This Resolution shall be effective upon adoption.
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 14th day of July, 2020 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.
Chapter 10 Consultant Selection

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Consultant Selection

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https://dot.ca.gov/programs/local-assistance/forms/local-assistance-procedures-manual-forms

Exhibit 10-B: Suggested Consultant Evaluation Sheet
Exhibit 10-G: Individual A&E Task Order DBE Utilization (needs linked)
Exhibit 10-H: Sample Cost Proposal (Example#1 thru #4)
Exhibit 10-I: Notice to Proposers DBE Information
Exhibit 10-K: Consultant Annual Certification of Indirect Costs and Financial Management System
Exhibit 10-O1: Consultant Proposal DBE Commitment
Exhibit 10-O2: Consultant Contracts DBE Commitment
Exhibit 10-Q: Disclosure of Lobbying Activities
Exhibit 10-R: A&E Sample Contract Language
Exhibit 10-S: Consultant Performance Evaluation
Exhibit 10-T: Conflict of Interest & Confidentiality Statement
Exhibit 10-U: Consultant in Management Support Role Conflict of interest and Confidentiality Statement
**SECTION 10.1: FEDERALLY FUNDED A&E CONTRACTS**

*A local agency in a procurement planning role.*

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- *Select Project*
- *Set Project Objectives*
- *Determine Project Schedule*
- *Obtain CTC Allocation/Federal Authorization to Proceed prior to beginning reimbursable work*

*LPAM Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement, if applicable: submit Conflict of Interest (COI) and Scope of Work (SOW) to DLA-HQ prior to contract advertisement.

- *Identify Need for Consultant*
- *Appoint Contract Administrator*
- *Segment Project Work*
- *Define SOW of A&E Consultant*
- *Specify Products to be delivered*

- *Estimate Cost of Consultant Work (independent cost estimate)*
- *Determine Type of Contract (Project Specific or On-Call)*
- *Determine Method of Payment: Lump Sum; Cost-Plus- Fixed-Fee; Cost Per Unit of Work; or Specific Rate of Compensation*
- *Submit Exhibit 9-D to DLAE*

---

A&E = Architectural and Engineering  
IOAI = Caltrans Independent Office of Audits and Investigations  
CT = Caltrans  
DBE = Disadvantaged Business Enterprise  
DLA = Division of Local Assistance  
DLAE = District Local Assistance Engineer  
DLA-HQ = Division of Local Assistance-Headquarters  
LAPG = Local Assistance Program Guidelines  
LAPM = Local Assistance Procedures Manual  
MOP = Method of Payment  
RFP = Request for Proposal  
RFQ = Request for Qualifications  
SOQ = Statement of Qualifications  
SOW = Statement/Scope of Work

---

**Figure 10-1: A&E Contract Procurement Process Workflow Diagram**
### Solicitation Documents and Advertisement

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- **Determine Solicitation Document; RFP or RFQ**
- **Appoint Consultant Selection Committee**
- **Collect signed Conflict of Interest forms and Confidentiality Statements (see Exhibit 10-T: Conflict of Interest & Confidentiality Statement) from all members involved in process**
- **Develop Technical Criteria with level of importance (weights) for Evaluation of Proposals or the SOQ**
- **Prepare RFP or RFQ documents**
- **Include SOW, evaluation process/criteria, DBE goals, MOP and cost proposal format (see Exhibit 10-H: Sample Cost Proposal) minimum requirement of Proposal or SOQ, Notice to Proposers DBE Information (see Exhibit 10-I: Notice to Proposers DBE Information), submittal deadline**
- **Advertise RFP or RFQ on public forum (newspaper, technical publications, Web Hosting Site, other local websites)**
- **Issue RFP or RFQ (direct mailing, web posting)**
- **Prepare to respond to RFP/RFQ questions**
- **Conduct Proposers Conference, if applicable**
- **Receive Proposals or SOQs**

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**A&E = Architectural and Engineering**  
**IOAI = Caltrans Independent Office of Audits and Investigations**  
**CT = Caltrans**  
**DBE = Disadvantaged Business Enterprise**  
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**RFP = Request for Proposal**  
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**SOQ = Statement of Qualifications**  
**SOW = Statement/Scope of Work**

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**Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued**
Evaluation and Selection of Consultant

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*Distribute Proposals or SOQs to Selection Committee members
*Ensure Committee members receive the appropriate score sheet to use (see Exhibit 10-B: Suggested Consultant Evaluation Sheet)
*Convene Selection Committee and evaluate submittals; Perform reference checks
*Develop Final Ranking or Short List
*Notify proposers of ranking/Short List
*Retain all original score sheets and summaries

*Send out RFPs to Short List (two-step process)
*Conduct Interview of Short List (if needed)
*Develop Final Ranking of Consultants, and notify all interviewees
*Retain all original score sheets and summaries
*Provide a copy of Standard Contract language to top ranked consultant and invite for negotiations (see Exhibit 10-R: A&E Sample Contract Language for standard contract language and provisions)

*Open and analyze cost proposal from the Highest Ranked firm

Caltrans IOAI

*Review and evaluate 10-A package and supporting documents, if applicable
*Issue Financial Review Letter, if applicable
*Perform contract audits and reviews, if applicable, or review of CPA audited ICR workpapers to issue Cognizant Letter of Approval

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A&E = Architectural and Engineering
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SOQ = Statement of Qualifications
SOW = Statement/Scope of Work

Figure 10-1: A&E Contract Procurement Process Workflow Diagram- continued

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### Contract Negotiation

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* Negotiate contract costs with the most qualified Consultant
* Prepare and retain record of cost negotiations
* Initiate CT IOAI Financial Review Section (LAPM Section 10.1.3) and send documents (Exhibit 10-A: A&E Consultant Financial Document Review Request), if applicable, to Caltrans IOAI
* Receive and analyze findings of the Financial Review Letter from CT IOAI, if any
* Address and resolve all findings by IOAI and incorporate into final contract and cost proposal
* If negotiations with First ranked firm is unsuccessful, formally terminate cost negotiations with Consultant and begin Step 9 with next ranked consultant
* Complete Exhibit 10-C database to DLA-HQ prior to award or after award, but no later than the first invoice
* Retain Exhibit 10-C

### Contract Execution

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* Finalize contract, cost proposal
* Retain copy of contract Financial Review Letter with acceptance, denial, or adjustment of the ICR
* Sign and Execute contract
* Offer and conduct debriefing meetings with consultant who asked for one
* Send copies of executed contract and DBE Commitment (Exhibits 10-O1: Consultant Proposal DBE Commitment and Exhibit 10-O2: Consultant Contract DBE Commitment) to DLAE
* Close out contract procurement process

### A&E = Architectural and Engineering

### IOAI = Caltrans Independent Office of Audits and Investigations

### CT = Caltrans

### DBE = Disadvantaged Business Enterprise

### DLA = Division of Local Assistance

### DLA = District Local Assistance Engineer

### DLA-HQ = Division of Local Assistance-Headquarters

### LAPM = Local Assistance Program Guidelines

### LAPM = Local Assistance Procedures Manual

### MOP = Method of Payment

### RFP = Request for Proposal

### RFQ = Request for Qualifications

### SOQ = Statement of Qualifications

### SOW = Statement/Scope of Work

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**Figure 10-1:** A&E Contract Procurement Process Workflow Diagram- continued
10.1.1 GENERAL

Introduction
A local agency may engage consultants to perform architectural, engineering, and related services to develop a federal-aid funded project. Local agencies requesting federal funds to reimburse A&E Consultants must follow the selection and contracting procedures detailed in this chapter.

Definition of an Architectural and Engineering Consultant
23 Code of Federal Regulations §172 and CA State Law further defines A&E services and includes those private consulting firms providing architectural, landscape architectural, engineering, environmental, land surveying, construction engineering, or program management are termed Architectural and Engineering (A&E) Consultants.

Architectural and Engineering Consultants
The Brooks Act (40 USC, Section 1104) requires local agencies to award federally funded engineering and design related contracts based on fair and open competitive negotiations, demonstrated competence, and professional qualifications (23 Code of Federal Regulations (CFR), Part 172), at a fair and reasonable price (48 CFR 31.201-3).

Cost proposals submitted to the local agency must be sealed and shall not be included as a criterion for rating such consultants. After ranking, cost negotiations may begin with the most qualified consultant and only their cost proposal will be opened. Should negotiations fail or result in a price that the local agency does not consider fair and reasonable, negotiations must be formally terminated and the local agency must then undertake negotiations with the second most qualified consultant.

If the negotiations with the second most qualified firm are not successful, negotiations must be formally terminated and the local agency must then undertake negotiations with the third most qualified consultant, and so on, until the price is determined to be fair and reasonable by the local agency.

In selecting an A&E consultant, a detailed technical proposal or qualifications proposal, and a proposed contract will be required.

Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages (Federal Payment of Predetermined Minimum Wage applies only to federal-aid construction contracts). Prevailing wages will apply if the services to be performed will involve land surveying (such as flag persons, survey party chief, rodman or chainman), materials sampling and testing (such as drilling rig operators, pile driving, crane operators), inspection work, soils or foundation investigations, environmental hazardous materials and so forth. California State Prevailing Wage information is available through the California Department of Industrial Relations websites below:

Consultants will need to provide their Prevailing Wage Policy if their participation on the project includes prevailing wage work. The policy will include information on the accounting treatment of delta base and delta fringe, and verify the accounting treatment is consistent every year.
Non-A&E Consultants
Consultants other than A&E consultants may be selected using cost, cost and qualifications (best value) or other critical selection criteria. The procedures outlined in this chapter can be modified for selecting non-A&E consultants by adding a cost item to the contract proposal.

For more details on non-A&E consultants, see Section 10.3: Non-A&E Contracts of this chapter.

Selecting the Project
The local agency is responsible for selecting and initiating a federal-aid financed transportation project. The decision to begin project development is influenced by the project needs, its acceptability, the timing of studies, financing, and construction. The local agency must identify the project’s objectives including the general level of improvement or service, operating standards, maximum cost and the target date for project completion before commencing any consultant selection process.

Subcontracted Services
The consultant is responsible for performing the work required under the contract in a manner acceptable to the local agency. The consultant’s organization and all associated consultants and subconsultants must be identified in the proposal. If the consultant wishes to use a subconsultant not specified in the proposal, prior written approval must be obtained from the local agency. The subcontract must contain all required provisions of the prime contract. All subawards must include adequate oversight, management, and administration of engineering and design related consultant services and be administered in accordance with State laws and procedures specified in 23 U.S.C.106(g)(4) and 2 CFR 200.331.

Organizational and Consultant Conflicts of Interest
In the procurement of contracts for engineering services by private consulting firms using federal-aid highway funds, local agencies must take all the steps necessary to prevent fraud, waste, and abuse. The local agency must develop and maintain a written code of conduct governing the performance of its employees (including the contract administrator) engaged in the award and administration of federal-aid highway funded contracts, including the prevention of conflicts of interest in accordance with 23 CFR 172.7(b)(4).

A conflict of interest occurs when a public official’s private interests and his or her public duties and responsibilities diverge or are not consistent. Conflicts of interest may be direct or indirect (e.g., as result of a personal or business relationship). The appearance of a conflict of interest should be avoided as an apparent conflict may undermine public trust if not sufficiently mitigated.
Federal Regulation Governing Conflict of Interest (23 CFR 172.7(b)(4)) requires that:

- Local agency shall maintain a written code of standards of conduct for employees engaged in the award and administration of engineering and design service contracts;
- No contracting agency employee who participates in the procurement, management, or administration of federal funded contracts or subcontracts shall have, directly or indirectly, any financial or other personal interest in connection with such contract or subcontract;
- No person or entity performing services for a contracting agency in connection with a federal funded project shall have, directly or indirectly, any financial or other personal interest, other than employment or retention by the contracting agency, in any contract or subcontract in connection with such project;
- No person or entity performing services for a contracting agency in connection with a federal-aid highway funded project shall have, directly or indirectly, any financial or other personal interest in any real property acquired for the project;
- No contracting agency employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from consultants, potential consultants, or parties to subagreements;
- Local agency shall disclose in writing any potential conflict of interest to FHWA.

Consultants Performing Work on Multiple Phases of Federal-aid Projects

Local agencies sometimes wish to hire the same consultant firm to perform construction engineering and/or inspection services on the same project on which the firm also performed design services. This can cause project delivery efficiencies, as the design firm is well-suited to verify that the project is being constructed in accordance with the design and can resolve issues related to the design on behalf of the contracting agency. However, this may also pose a potential conflict of interest if the firm has a vested financial interest in failing to disclose deficiencies in its design work product and seeks to insulate itself from pecuniary liability in subsequent phases of the project, such as minimizing or ignoring design errors and omissions, rather than serving the best interests of the contracting agency and the public. Procuring a different firm from the design firm to provide the construction engineering and/or inspection services provides another level of review and reduces the risk of, or potential for, a conflict of interest.

Although federal regulations do not expressly prohibit the same firm from providing services on subsequent phases, the local agencies are responsible for ensuring the public interest is maintained throughout the life of a project and that a conflict of interest, real or apparent, does not occur or is sufficiently mitigated by appropriate public agency controls. Prior to allowing a consulting firm to provide services on subsequent phases of the same project, the contracting agency must establish appropriate compensating controls in policies, procedures, practices, and other safeguards to ensure a conflict of interest does not occur in the procurement, management, and administration of consultant services.

When design and construction phase services are procured under a single solicitation, the selection of the consulting firm must be based on the overall qualifications to provide both design and construction phase services, which require different skill sets, experience, and resources. Procuring these services under different solicitations may result in selection of a more qualified firm to perform services in each phase, as the most qualified firm to perform
design phase services may not be the most qualified firm to provide construction phase services. Similarly, the qualifications and capacity of a firm may change over time. As such, it may not be appropriate to contract with a consulting firm to provide construction phase services at the outset of a design phase, knowing that these services may not be needed for an extended period until the preconstruction phase of the project is complete and construction funding authorized. The contract with a consulting firm providing design phase services on a project may not be amended to include construction phase services unless the desired construction phase services were included within the original advertised scope of services and evaluation criteria of the solicitation from which a qualifications based selection was conducted. All consultants acting in a management support role must complete Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement (see Section 10.1.9: Miscellaneous Considerations in this chapter) and retain it in the local agency files.

Miscellaneous Considerations Authorization to Proceed

The Federal Highway Administration (FHWA) must give the local agency an Authorization to Proceed (E-76) with the work prior to performing of any work for which federal reimbursement is to be requested, (see the LAPM Chapter 3: Project Authorization). Eligible consultant contracts may be procured using local funds prior to receiving the E-76, but reimbursement is for work performed after the E-76 authorization date. If contract is procured using state or local funds, federal procedures must have been followed if seeking federal reimbursement. For state funded projects see Section 10.2: State-Only Funded A&E Contracts and the Local Assistance Program Guidelines (LAPG), Chapter 23: Local Agency State Transportation Improvement Program Projects, for guidance on when work may proceed.

Copies of the Authorization to Proceed and the consultant contract must be retained in the local agency project files for future audit.

10.1.2 IDENTIFYING & DEFINING A NEED FOR CONSULTANTS

The need for a consultant is identified by comparing the project’s schedule and objectives with the local agency’s capabilities, its staff availability of the required expertise, and its funding resources. If the local agency does not have sufficient staff capabilities, it may solicit assistance from another agency, or use a qualified private consultant to perform the required work.

If the local agency determines that there is a need to solicit assistance from another local agency, or to use a consultant, the District Local Assistance Engineer (DLAE) should be notified if federal-aid funds are to be requested for the project segment to be contracted out.

Appointing the Contract Administrator

The Contract Administrator is responsible for ensuring the quality of consultant contract products or services. The Contract Administrator is appointed as soon as the need for consultant services is identified. The Contract Administrator is involved throughout the development of the selection process and the contract provisions, and in the administration of the consultant’s work. The Contract Administrator must be a qualified local agency employee or have staff that is qualified to ensure the consultant’s work is complete, accurate, and consistent with the terms and conditions of the consultant contract. On federal-aid contracts, the Contract Administrator or staff members must be a full-time employee and familiar with the work to be contracted out and the standards to be used. The Contract Administrator must also abide by the laws, regulations and policies required as part of accepting federal or state funding for their
project. Non-compliance with the laws, regulations, and policies may result in loss of project funding.

The Contract Administrator’s duties are listed in 23 CFR 172.9(d)(1) and include:

- Contract negotiation, contract payment, and evaluation of compliance performance, and quality of services provided by the consultant;
- Being familiar with the contract requirements, scope of services to be performed, and products to be produced by the consultant;
- Being familiar with the qualifications and responsibilities of the consultant’s staff and evaluating any requested changes in key personnel;
- Scheduling and attending progress and project review meetings, commensurate with the magnitude, complexity, and type of work, to ensure the work is progressing in accordance with established scope of work and schedule milestones;
- Documenting contract monitoring activities and maintaining supporting contract records as specified in 2 CFR 200.333;
- Provides direction to ensure the proposed work is advertised properly;
- Prepares and distributes the Request for Qualifications (RFQ), description of work, and Request for Proposals (RFP), if used;
- Prepares the draft contract;
- Arranges for preparation before an independent estimate of the value of the work to be contracted out;
- Ensures that the selection procedures are followed;
- Analyzes the selected/best-qualified consultant’s cost proposal;
- Ensures contract audit and review procedure is followed;
- Ensures that fee/profit negotiation is conducted and keeps records;
- Serves as the local agency’s primary contact person for the successful consultant;
- Monitors the consultant’s progress and provides direction;
- Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant’s work;
- Identifies other local agency staff for the consultant to contact, if needed;
- Closes out the contract at completion, by processing the final invoice; completing a mandatory consultant evaluation, and final DBE utilization reports (Exhibit 17-F: Final Report Utilization of Disadvantaged Business Enterprises (DBE) and First-Tier Subcontractors).
Segmenting Consultant Work

Consultant services are most effective when consultant work is segmented appropriately. The extent of segmenting depends upon the type and complexity of the work. Combining preliminary engineering tasks with the preparation of the required environmental analysis is normally desirable. Preparing an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is more than simply writing a report. Assessment and impact reports include preliminary engineering needed to analyze project alternatives and produce an engineering and planning assessment. Initial project studies include only as much traffic and engineering analysis of alternatives, as is needed to produce a sound EA or EIS (see LAPM Chapter 6 Environmental Procedures and Standard Environmental Reference (SER) Chapters 31: Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) and Chapter 32: Environmental Impact Statement (EIS)). Final design shall not begin until NEPA environmental approval has been received if federal reimbursement is desired.

Refer to Figure 10-2: Segmenting Consultant Work below, which illustrates several satisfactory ways to segment consultant activities.

Specify Products to be Delivered

The Contract Administrator identifies the products and services to be delivered as a result of consultant contract work, and minimum qualification of consultant professionals and staff. These vary depending upon the type of projects and the phase of project development being addressed.

Scope of Consultant Work

The scope of work, which the contract must include, is a detailed description of the products or services the consultant is to provide. From a detailed scope of work, consultants respond to a project advertisement; determine personnel and time requirements; and develop a technical proposal. Therefore, the scope of work must be clear, concise, complete, and describe the
deliverables, standards for design and other work, quality control measures, acceptance criteria and deadlines.

Non-Discrimination Clause
The Non-Discrimination Clause (Exhibit 10-R: A&E Boilerplate Agreement Language, Article XVI Statement of Compliance) must be included in each consultant contract. The consultant must include the non-discrimination and compliance provisions of the Non-Discrimination Clause in all subcontracts to perform work under the contract.

Disadvantaged Business Enterprise (DBE) Participation
When administering federal-aid projects, federal regulations (49 CFR, Part 26) require a local agency to comply with the DBE program, and take necessary steps to ensure that DBE firms have the opportunity to participate in the projects. Refer to Chapter 9: Civil Rights and Disadvantaged Business Enterprises for DBE requirements for A&E Consultant Contracts.

Estimated Cost of Consultant Work
An independent estimate for cost or price analysis is needed for all consultant contracts (23 CFR 172.7(a)(1)(v)(B)) to ensure that consultant services are obtained at a fair and reasonable price. The estimate is prepared in advance of requesting a cost proposal from the top-ranked consultant, so the local agency’s negotiating team has a cost comparison of the project to evaluate the reasonableness of the consultant’s cost proposal. The estimate, which is specifically for the use of the local agency’s negotiating team, is to be kept confidential and maintained for records.

A good cost estimate can be prepared only if the scope of work is defined clearly. The scope of work must include a list of the products or services which the consultant is required to deliver, and a time schedule of when they must be delivered.

It should be stressed that all work to be derived from the consultant services, such as preliminary design, environmental or final design, must be clearly identified in the solicitation of consultant services (RFQ or RFP) and included in the cost estimate. The addition of work to the original scope by amendment should be avoided whenever possible. Contract modifications are required for any amendments to the terms of the existing contract that change the cost of the contract; significantly change the character, scope, complexity, or duration of the work; or significantly change the conditions under which the work is required to be performed.

Some of the costs estimating techniques are:

Analogous Estimating:
Analogous cost estimating is using the actual cost of a previous, similar contract as the basis for estimating the cost of the current contract. Analogous cost estimating is frequently used to estimate costs when there is a limited amount of detailed information about the project. Analogous cost estimating is generally less accurate and it is most reliable when previous projects are similar in fact, and not just in appearance, and it uses expert judgment.

Parametric Estimating:
Parametric estimating is a technique that uses statistical relationship between historical data and other variables to calculate a cost estimate for an activity resource. This technique can produce a higher level of accuracy depending upon the sophistication, as well as underlying
resource quantity and the cost data. A cost example would involve multiplying the planned quantity of work by the historical cost per unit to obtain the estimated cost of the contract.

**Bottom-up Estimating:**
This technique involves estimating the cost for individual work in the contract with the lowest level of detail. This detailed cost is then summarized or rolled up to determine a total cost of contract. Cost detail should include estimated hours per task, labor hourly cost for professional and non-professional classifications, subconsultant costs, other project direct costs, and profit. Labor costs should be broken down to direct labor and indirect cost rates, if possible.

If more than one project or phase of work is to be developed within the consultant contract, separate cost estimates are required for each project or phase of work. Separate cost estimates are required for each milestone and portion of the work expected to be subcontracted.

For on-call (as-needed) contracts, the cost estimate/analysis should include at minimum, a historical analysis of annual needs for consultant work, professional labor cost and market analysis, and reasonable profit analysis.

**Determine Type of Contract**
Types of contracts to be used are described as follows:

- **Project-specific contract** is between the local agency and consultant for the performance of services and a defined scope of work related to a specific project or projects.

- **Multi-phase contract** is a project-specific contract where the defined scope of work is divided into phases which may be negotiated and executed individually as the project progresses.

- **On-call contract** is a contract that may be utilized for a number of projects, under which task or work orders are issued on an as-needed basis, for an established contract period and **maximum total contract dollar amount**. On-call contracts are typically used when a specialized service of indefinite delivery or indefinite quantity is needed for a number of different projects, such as construction engineering, design, environmental analysis, traffic studies, geotechnical studies, and field surveying, etc. Many agencies use these contracts to address peaks in workload of in-house engineering staff and/or to perform a specialized service which the agency does not have. On-call contracts shall specify a reasonable maximum length of contract, not to exceed 5 years, and a maximum total contract dollar amount (23 CFR 172). The maximum dollar amount for all contracts awarded under the solicitation is stated in the solicitation. The maximum dollar amount is the aggregate of the on-call contracts anticipated to be awarded. If the solicitation lists that up to 5 contracts may be awarded, the aggregate amount of these 5 contracts is the maximum contract dollar amount. How many contracts are anticipated to be awarded must be stated in the solicitation. How task orders will be issued must be stated in the solicitation (two options exist: geographically designated areas or additional competitive solicitation to all consultants who provide the same type of service and awarded a contract under the same solicitation).

  - To maintain the intent of the Brooks Act (40 USC 1101-1104) in promoting open competition and selection based on demonstrated competence and qualifications, on-call consultant contracts established through the RFQ process must meet the following requirements:
- Must define a general scope of work, complexity, and professional nature of services.
- Specify a task order procedure the local agency uses to procure project specific work under the contract.
- No task order is valid unless the on-call contract is still enforced. For example, if the on-call contract is expired, all task orders issued after the contract expiration date will become invalid.
- If multiple consultants are to be selected and multiple on-call contracts awarded through a single solicitation for specific services, the number of consultants that may be selected or contracts that may be awarded must be identified.
- Specify procurement procedures in the contracts the local agency will use to award/execute task orders among the consultants:
  - Either through an additional qualification-based selection process (see the Two-Step RFQ/RFQ process later in this chapter), OR
  - On regional basis whereby the region is divided into areas identified in the solicitation, and consultants are selected to provide on-call services for assigned areas only. The RFP may list multiple regions that allow consultants to crossover or be a “backup” to other consultants that for specifically documented reasons are not able to perform the work in their assigned region. Per 23 CFR 172.9 (a)(3)(B)(2), the “backup” option needs to be listed in the respective contracts.
    - An example of acceptable contract wording in multiple on-call contracts for the same type of service:
      - “Agency has or will enter into three (3) task order contracts for performance of the Scope of Services identified in Exhibit "A", including this Agreement ("CM Services Task Order Contracts"). The other CM Services Task Order Contracts are [identify other two contracts by agreement numbers and consultant firms]. The total amount payable by Agency for the CM Services Task Order Contracts shall not exceed a cumulative maximum total value of Seven Million, Five Hundred Thousand Dollars ($7,500,000) ("NTE Sum"). It is understood and agreed that there is no guarantee, either expressed or implied that this dollar amount will be authorized under the CM Services Task Order Contracts through Task Orders. Each time a Task Order is awarded under any of the CM Services Task Order Contracts, the Agency shall send written notification to Consultant and each of the other consultants entering into the CM Services Task Order Contracts. The notice shall identify the total funds allocated under issued Task Orders, and the remaining unencumbered amount of the NTE Sum. Consultant acknowledges and agrees that Agency shall not pay any amount under this Agreement that
Determining the Project Schedule

The local agency develops a schedule for performance of work and completion of the project. The schedule must include sufficient time to allow for:

- Selecting the consultant;
- Developing the consultant contract;
- Completing the A&E consultant contract audit process;
- Conducting meetings and project reviews.

Determine Method of Payment

The method of payment of contract must be specified. Four methods are permitted depending on the scope of services to be performed reference 23 CFR 172.9(b):

- Cost-Plus-Fixed Fee (see Exhibit 10-H: Sample Cost Proposal, Example #1);
- Cost Per Unit of Work (see Exhibit 10-H, Example #3);
- Specific Rates of Compensation (see Exhibit 10-H, Example #2);
- Lump Sum (see Exhibit 10-H, Example #1).

The method of payment to the consultant shall be set forth in the original solicitation, contract, and in any contract modification thereeto. A single contract may contain different payment methods as appropriate for compensation of different elements of work.

The cost plus a percentage of cost and percentage of construction cost methods of payment shall not be used. Both of these methods are explicitly prohibited by Federal Regulations.

Cost-Plus-Fixed Fee

The consultant is reimbursed for costs incurred and receives an additional predetermined amount as a fixed fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The determination of the amount of the fixed fee shall take into account the size, complexity, duration, and degree of risk involved in the work. The fixed fee is not adjustable during the life of the contract. The fixed fee dollar amount must be clearly stated in the contract.

This method of payment is appropriate when the extent, scope, complexity, character, or duration of work cannot be precisely predicted. The fixed fee limit applies to the total direct and indirect costs. Fixed fees in excess of 15 percent of the total direct labor and indirect costs of the contract may be justified only when exceptional circumstances exist. The contract shall specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H: Sample Cost Proposal Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V, Option 1 in this chapter). The contract cost proposal must identify all key employees and/or classifications to be billed. New key employees and/or classifications must be approved by the local agency before they incur work on the contract or the costs can
be questioned or disallowed. Local agencies are not required to update the Exhibit 10-C database. For more details reference Section 10.1.8.

**Cost Per Unit of Work**

The consultant is paid based on specific item of work performed. The item of work must be similar, repetitious and measurable, such as geotechnical investigation and material testing. This method of payment is appropriate when the cost per unit of work can be determined with reasonable accuracy in advance, but the extent or quantity of the work is indefinite. Contract payment provisions must specify what is included in the price to be paid for each item. Any item of work not identified in the contract cost proposal is not eligible for reimbursement. New items of work (those within the original scope of work only) must be amended into the contract before work is performed. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H, Example #3 and Exhibit 10-R, Article V Option 2).

**Specified Rates of Compensation**

The consultant is paid at an agreed and supported specific fixed hourly, daily, weekly or monthly rate, for each class of employee engaged directly in the work. Such rates of pay include the consultant’s estimated costs and net fee (profit). Federal regulations require that profit be separately negotiated from contract costs. The specific rates of compensation, except for an individual acting as a sole proprietor, are to include an hourly breakdown, direct salary costs, fringe benefits, indirect costs, and net fee. Other direct costs may be included, such as travel and equipment rentals, if not already captured in the indirect cost rate. Other direct costs regardless of amount are to be listed on the cost proposal.

This method of payment should only be used when it is not possible at the time of procurement to estimate the extent or the duration of the work, or to estimate costs with any reasonable degree of accuracy. This method should not be used for project specific contracts and is recommended for on-call contracts for specialized or support type services, such as construction engineering and inspection, where the consultant is not in direct control of the number of hours worked, and it also requires management and monitoring of the consultant’s level of effort and the classification of employees used to perform the contracted work. The contract shall also specify a reasonable maximum length of contract period and a maximum total contract dollar amount (see Exhibit 10-H: Sample Cost Proposal, Example #2 and Exhibit 10-R, Article V Option 3).

**Lump Sum**

The consultant performs the services stated in the contract for an agreed amount as compensation, including a net fee or profit. This method of payment is appropriate only if the extent, scope, complexity, character, duration, and risk of the work have been sufficiently defined to permit fair compensation to be determined and evaluated by all parties during negotiations (see Exhibit 10-H: Sample Cost Proposal, Example #1 and Exhibit 10-R: A&E Sample Contract Language, Article V: Option 4). Normally, a lump sum contract will be paid in full at end of the contract when completed. However, a lump sum contract can be negotiated with progress payment if feasible. The progress payment shall be based on percent of work complete or completion of clearly defined milestones. The contract cost proposal shall document the agreed upon progress payment and include the necessary milestones costs, or the percent work complete schedule.
Changes to Exhibit 10-H requiring resubmittal to Independent Office of Audits and Investigations for review:

- Consultant name change
- New participating subconsultant
- Change in ICR rate

Since these changes require an amendment, local agency is to update the Exhibit 10-C database.

A firm fixed price method of payment is not the same as lump sum. A firm fixed price contract shall not be amended.

10.1.3 A&E CONSULTANT AUDIT AND REVIEW PROCESS

This section outlines the audit and review process for A&E contracts that at any time use state or federal funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans’ Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

Applicable Standards

State and federal requirements listed below, and specific contract requirements, serve as the standards for audits and reviews performed.

Local agencies, consultants, and subconsultants are responsible for complying with state, federal, and specific contract requirements. Local agencies are responsible for determining the eligibility of costs to be reimbursed to consultants.

Applicable standards include, but are not limited to:

- Caltrans Local Assistance Procedures Manual (LAPM);
- State and Federal agreements between local agencies and Caltrans, (i.e. Master Agreements);
- Project Program Supplemental Agreements;
- 23 United States Code (U.S.C.), Section 112 – Letting of Contracts;
- 40 U.S.C., Chapter 11: the Brooks Act;
- 23 CFR, Chapter 1, Part 172 - Procurement, Management, and Administration of Engineering and Design Related Services;
- 23 CFR, Chapter 1- Federal Highway Administration, Department of Transportation;
- 48 CFR, Federal Acquisition Regulation (FAR), Chapter 1, Part 31- Contract Cost Principles and Procedures;
- 48 CFR, Chapter 99 – Cost Accounting Standards (CAS), Subpart 9900;
- 2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
Consultant Selection

- United States Government Accountability Office, Government Auditing Standards - Generally Accepted Government Auditing Standards (GAGAS);
- California Government Code sections 4525-4529; and
- Proposed contract terms and conditions.

See Section 10.10: References of this Chapter for links to above referenced standards.

Audit Guidance Available

The American Association of State Highway and Transportation Officials, Uniform Audit & Accounting Guide (AASHTO Audit Guide), which is referred to frequently in this section, is a valuable tool to guide local agencies, consultants and Certified Public Accountants (CPA) through the requirements for establishing, and audits of FAR compliant Indirect Cost Rates (ICR). The AASHTO Audit Guide is used extensively as an industry guide in the audit and review process.

Local agencies may seek accounting assistance from internal audit staff and an independent CPA for compliance. The consultant may seek professional guidance in selecting its independent CPA. See also the AASHTO Audit Guide, Ch 2.5C. Selection of CPA Firm as Overhead Auditor for guidance in the selection process. Training is also offered by FHWA’s National Highway Institute (see http://www.nhi.fhwa.dot.gov/default.aspx). Courses offered include:

- Using the AASHTO Audit Guide for the Procurement and Administration of A&E Contracts (FHWA-NHI-231028)
- Using the AASHTO Audit Guide for the Development of A&E Consultant Indirect Cost Rates (FHWA-NHI-231029)
- Using the AASHTO Audit Guide for the Auditing and Oversight of A&E Consultant Indirect Cost Rates (FHWA-NHI-231030)

For training and additional information provided by Caltrans Local Assistance, visit Caltrans Local Assistance Blog at http://www.localassistanceblog.com/. For FHWA’s Q&A for ICRs and audits, and A&E related services, visit FHWA at http://www.fhwa.dot.gov/programadmin/172qa.cfm.

Allowable Costs

23 USC 112 (b)(2)(B) states that any A&E contract or subcontract awarded, whether funded in whole or in part with Federal-aid highway funds in furtherance of highway construction projects, shall be performed and audited in compliance with the Federal cost principles.

Local agencies are required to perform a cost analysis to ensure all costs are allowable and in compliance with federal and state requirements and retain documentation of negotiation activities and resources. Hourly rate(s) for each key personnel and/or classification of employee(s) proposed in cost proposals must be reasonable for the work performed and actual, allowable, and allocable in accordance with the Federal cost principles. Costs shall be allowable only if the cost is incurred and cost estimates included in negotiated prices are allowable in accordance with the federal and state regulations and procedures, and contract provisions. Examples of Cost Analysis Worksheets are provided at Exhibit 10-H1 through 4.

Local agencies are required to apply Caltrans accepted consultant or subconsultant’s ICRs, to contracts. An ICR is valid for the one-year applicable accounting period accepted or
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audited by Caltrans. Consultants shall update, on an annual basis, ICRs in accordance with the consultant’s annual accounting period and in compliance with the Federal cost principles. For further guidance, refer to 23 CFR Part 172.11(b)(1). If the consultant is subject to Cost Accounting Standards (CAS), the consultant must use the applicable ICR for the contract.

A consultant’s accepted ICR for its one-year applicable accounting period shall be applied to contracts; however, once an ICR is established for a contract, it may be extended beyond the one-year applicable period, through the duration of the specific contract, provided all concerned parties agree. Agreement to the extension of the one-year applicable period shall not be a condition or qualification to be considered for the work or contract award. The contract must clearly specify the ICR period if it is beyond the one-year applicable period.

Consultants shall account for costs appropriately and maintain records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allowable, reasonable, and allocable to the contract, and comply with Federal cost principles.

IOAI and representatives of the Federal Government have the right to conduct an audit of all contract costs. If the costs are subsequently determined to be unallowable, these costs are subject to repayment. For further guidance, refer to 23 CFR Part 172 and 48 CFR Part 31.

Generally, whenever local agencies, consultants and/or contractors are unable to provide requested documentation, it shall be viewed that the services were either not performed or the costs not properly recorded. Retention of all documents is required as it reduces the possibility of audit findings and disallowed costs. For more references, refer to Applicable Standards in this chapter.

Approval or Acceptance of Indirect Cost Rates

Cognizant Letters of Approval

A cognizant approved ICR has been audited by a Cognizant agency (a State transportation agency of the State where the consultant's accounting and financial records are located or a State transportation agency to which cognizance for the particular indirect cost rate(s) of a consulting firm has been delegated or transferred to in writing by the State transportation agency where the consultant's accounting and financial records are located) in accordance with generally accepted government auditing standards to test compliance with the requirements of the Federal cost principles (per 48 CFR part 31) and the cognizant agency has either 1) issued an audit report of the consultant's indirect cost rate or 2) conducted a review of an audit report and related workpapers prepared by a certified public accountant and issued a letter of concurrence with the audited indirect cost rate(s). The cognizant agency approves the ICR and a cognizant approval letter is issued.

Caltrans Acceptance of Indirect Cost Rate

When the ICRs have not been established by a cognizant agency, Caltrans shall perform an audit or review of a consultant’s and subconsultant’s ICR(s) to provide reasonable assurance of compliance with Federal cost principles.

An audit or review of the ICR may consist of one or more of the following:

- Perform a review to determine if the ICR was prepared in accordance with 23 CFR 172, and 48 CFR, Chapter 1, Part 31;
- Perform an audit to determine if the ICR was prepared in accordance with 23 CFR 172,
and 48 CFR, Chapter 1, Part 31; and issue an audit report;

- Review and accept an ICR audit report and related workpapers prepared by a CPA or another State Transportation Agency;

The outcome of an audit or review is for Caltrans to approve or accept the ICR so that it can be relied upon for future contracts with the consultant for a given one-year accounting period and for reliance by other contracting agencies using the same consultant. Local agencies shall ensure that only approved or accepted ICRs of consultants for the applicable one-year accounting period are applied to contracts, if rates are not under dispute. Local agencies may check IOAI’s website for consultant’s approved or accepted ICRs. All approved or accepted ICRs are issued an Acceptance Identification (ID) number by IOAI that is posted to IOAI’s website at https://ig.dot.ca.gov/audits/. This ID number should be referenced on all future contracts that use the same fiscal year ICR. ICR can be fixed for the life of the contract in prior written document or annually updated. Once it has been updated, it must be annually updated and the most current fiscal year of ICR must be used.

ICRs that have not been accepted by Caltrans will not be eligible for indirect cost payment. An ICR approved by a cognizant agency may be used across states for the one-year applicable accounting period, but an ICR accepted by Caltrans may only be applied to A&E contracts with Caltrans or local agency contracts using pass-through Caltrans funding. Local agencies include Cities, Counties, Metropolitan Planning Organization, Special Districts, and Regional Transportation Planning Agencies.

Financial Review Performed Prior to Contract Execution

All consultants, including prime and subconsultants, on a proposed contract with a dollar value greater than $150K are subject to an ICR financial review by IOAI. The financial documents required are detailed in Exhibit 10-A, A&E Consultant Financial Document Review Request Letter and Exhibit 10-A Checklist. IOAI will review the ICR financial documents to either accept or adjust the indirect cost rate prior to contract execution using a risk-based approach as dictated by factors that include but are not limited to:

- History of satisfactory performance and professional reputation of consultant;
- Prior FAR compliant history and audit frequency;
- Experience of consultant with FAHP contracts;
- General responsiveness and responsibility;
- The approximate contract volume and dollar amount of all A&E contracts awarded to the consultant by Caltrans or a local agency in California within the last three calendar years;
- The number of states in which the consultant does business;
- The type and complexity of the consultant’s accounting system;
- The relevant professional experience of any CPA performing audits of the consultants indirect cost rate;
- Assessment of consultant’s internal control. Responses to internal control questionnaire, see AASHTO Audit Guide, Appendix B;
• For ICRs that have been adjusted by IOAI, the consultant must provide a revised cost proposal that reflects the adjusted ICR.

**Local Agencies’ Responsibilities**

Local Agencies are responsible for obtaining all required ICR supporting documentation from A&E prime consultants and sub-consultants as outlined in Exhibit 10-A: A&E Consultant Financial Document Review Request and the Exhibit 10-A-Checklist. Local Agencies are responsible for forwarding these documents to IOAI for review. Local agencies are also required to ensure that IOAI has copies of the Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System and Exhibit 10-H: Cost Proposal for all consultants, both prime and sub-consultants. The ICR included in Exhibit 10-H must match the ICR included in the Exhibit 10-K and the consultant’s ICR schedule. The proposed ICR, however, can be lower than ICR in Exhibit 10-K and the consultant’s ICR schedule if the consultant elects to propose a lower ICR. For contracts spanning more than one year, local agencies are responsible for ensuring the Exhibit 10-K and cost proposals are updated annually unless all concerned parties agree to fix the ICR for the term of contract, and this is clearly specified in the contract. ICR updates are not required to IOAI if the ICR is fixed for the life of the contract. ICR’s are only reviewed for consultants that are being awarded a contract, not consultants on a shortlist or prequalified list.

The Exhibit 10-H: Cost Proposal includes contract costs: direct salary or wage rates, fixed fees, other direct costs, indirect costs, total costs, and certification for the costs. Local agencies must perform and retain documentation of activities and resources used to support that a cost analysis has been performed to establish that costs and elements were determined to be fair and reasonable in accordance with Federal cost principles.

All contract supporting documentation must be retained by the local agency in project files for the required retention period. Unsupported costs may be disallowed and required to be returned to Caltrans. Having proper documentation policies and procedures, trained staff and organized project files are essential for demonstrating that costs claimed and reimbursed have been incurred, are eligible, reasonable, allowable, and allocable to the contract and comply with Federal cost principles.

Contracts below $150,000 are not subject to the Caltrans Financial Document Review but local agencies are required to establish that all costs are in compliance with the Federal cost principles, 48 CFR, Chapter 1, Part 31, and other applicable requirements are met. All documents listed above and cost analysis documents are required to be retained in the project files to demonstrate compliance.

Instructions are provided in the Exhibit 10-A on the requirements for submitting a complete Financial Review packet. Financial packets can be e-mailed to: conformance.review@dot.ca.gov.

Alternatively, if you do not have Internet access, you can mail Financial Review packets to:

Department of Transportation
Independent Office of Audits and Investigations
MS 2 Attention: External Audit Manager
P.O. Box 942874
Sacramento, CA 94274-0001
Consultants’ Responsibilities (Both prime consultants and subconsultants)

A&E prime consultants and subconsultants in contract with local agencies using state or federal-aid highway funds should refer to Exhibit 10-A and the 10-A Checklist for the ICR financial documents required to be submitted to their local agency. Consultants must complete the “Annual Certification of Indirect Costs and Financial Management System” (Exhibit 10-K) that attests that the ICR rate proposed is in compliance with FAR (48 CFR, Chapter 1, Part 31) and that the consultant’s financial management system is adequate to accumulate and segregate, reasonable, allowable, and allocable direct and indirect project costs. The Exhibit 10-A and 10-K should be submitted to the local agency who will forward a copy to IOAI along with all other related and required financial documents. For all future contracts within a same fiscal year, the consultant needs to only provide a copy of the Exhibit 10-K to the Local Agency.

Consultants must follow all the federal, state, and contract requirements outlined above in the Section above, “Applicable Standards”. Each contracting consultant must ensure its ICR is not combined with any parent company’s or subsidiary’s ICR.

ICR schedules for both prime consultants and sub-consultants should be prepared using the accrual basis of accounting and be presented in compliance with the Federal cost principles. Figure 10-3 at the end of this chapter provides an example of a Standard Indirect Cost Rate Schedule that consultants can use when preparing their own.

For public works Prevailing Wage contracts, all workers must be paid the prevailing wage rate determined by the Director of the Department of Industrial Relations according to the type of work and location of the project. [http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html](http://www.dir.ca.gov/Public-Works/Prevailing-Wage.html).

For guidance see Caltrans’ Prevailing Wage Interpretive Guidance and webinar on IOAI’s website [https://ig.dot.ca.gov/audits](https://ig.dot.ca.gov/audits).

When determined necessary, IOAI may request additional information, such as a labor distribution summary and Executive Compensation Analysis (ECA). A consultant’s labor distribution summary report is a labor expense report that detail all hours worked (paid and unpaid) for a fiscal year, wages earned, and benefits accrued by all the consultant’s employees. The labor summary report should include employee names, salaries, hourly rates, total hours worked segregated by direct hours, indirect hours, paid time off hours, and uncompensated hours and amounts.

An ECA is an evaluation by the consultant to determine the allowability and reasonableness of executive compensation in compliance with Federal cost principles and the AASHTO Audit Guide that can be based on either the National Compensation Matrix or independent compensation surveys.

Independent Office of Audits and Investigations’ Responsibilities

After IOAI receives a consultant’s complete financial document packet (per Exhibit 10-A and Exhibit 10-A Checklist) from the local agency, IOAI will review the proposed ICR and supporting documents and notify local agencies in writing whether the proposed ICRs are accepted or adjusted.

Contracts will be executed after IOAI either accepts or adjusts the ICR and a revised final cost proposal (if applicable) is received. Correction of the final cost proposal, however, does NOT
need to be cleared through Caltrans IOAI before executing the contract. An email notification from IOAI serves as documentation to support an accepted ICR.

**Audits and Reviews to be Performed**

After contract execution, a consultant’s ICR may be subject to further detailed review or audit by IOAI based on certain risk factors. Costs that are determined to be unallowable as a result of the review or audit will be subject to repayment.

**Indirect Cost Rate Audits**

During an ICR audit, IOAI or an independent CPA will examine the consultant’s proposed ICR for a one-year accounting period to ensure that unallowable costs have been removed from the indirect costs, that allowable costs have been correctly measured and properly charged and allocated, and that the ICR has been developed in accordance with the Federal cost principles (as specified in 23 U.S.C. Section 112(b)(2)(B), 23 CFR Part 172.11, 48 CFR Part 31 and other FAR and State requirements). As a result of the audit, the local agency will work with the consultant to adjust the ICR based on audit recommendations.

For guidance regarding the existing policies and procedures set forth in the federal regulations, and acceptable ICR schedules, refer to the AASHTO Audit Guide, Chapter 5, and Figure 10-3 Standard Indirect Cost Rate Schedule in this Chapter. There is also a review program at Appendix A which serves as a guide for CPAs and IOAI when performing ICR audits and can also be used as a resource for consultants when preparing for an ICR audit.

**CPA Workpaper Reviews**

During a workpaper review of a CPA audit of an ICR, IOAI will review the CPA’s audit workpapers to determine whether to issue a Cognizant Letter of Approval for the ICR. The CPA Workpaper Review determines whether: (a) the CPA’s audit of the ICR was conducted in accordance with Generally Accepted Government Auditing Standards (GAGAS), (b) the CPA adequately considered the auditee’s compliance with the Federal cost principles and related federal and state laws and regulations.

Chapter 11 of the AASHTO Audit Guide provides information to the CPA on the required audit disclosures.

**Contract Audits**

During a Contract Audit, auditors will review a consultant’s financial management system and contract cost proposal to determine if:

- The consultants’ accounting system is adequate to accumulate and segregate costs;
- Costs are reasonable, allowable, allocable and supported adequately;
The contract contains all required fiscal provisions;
Proper state and federal procurement requirements were followed.

**Incurred Cost Audits**
During an Incurred Cost Audit, auditors will review incurred contract costs to determine if:

- Cost data are maintained in an accounting system that adequately gathers, records, classifies, summarizes, and reports accurate and timely financial data for direct and indirect project costs by account;
- Costs are adequately supported, reasonable, allowable, and allocable;
- Costs incurred are in compliance with state and federal laws and regulations;
- Costs incurred are in compliance with the Master Agreement and Supplemental Agreement;
- Costs incurred are in compliance with the fiscal provisions stipulated in the contract; and
- The terms required by the Master Agreement and federal laws and regulations are in the contract.

**Audit Findings and Review Deficiencies**
If a consultant's ICR is audited or reviewed, local agencies are responsible for ensuring all executed and future contracts reflect the audited and adjusted fiscal year ICR(s). Local agencies should request reimbursement from the consultant for overpayment on rates that were adjusted down.

The local agencies may be subject to sanctions outlined in [LAPM Chapter 20: Deficiencies and Sanctions](#) if the state or federal government determines that any reimbursements to the consultant are the result of lack of proper contract provisions, unallowable charges, unsupported activities, or an inadequate financial management system.
Example of a FAR Compliant Indirect Cost Rate Schedule - Sample Consulting Company

Statement of Direct Labor, Fringe Benefits, and General Overhead for the Year Ended December 31, 20xx

<table>
<thead>
<tr>
<th>Description</th>
<th>General Ledger Balance</th>
<th>Unallowable</th>
<th>FAR Reference</th>
<th>Total Proposed</th>
<th>Home Office</th>
<th>Field Office</th>
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<td>Direct Labor</td>
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<td>($934,568)</td>
<td>(1)(15)</td>
<td>$122,522,221</td>
<td>$85,765,555</td>
<td>$36,756,666</td>
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<tr>
<td>Fringe Benefits</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vacation/Paid Leaves</td>
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<td></td>
<td></td>
<td>$17,283,950</td>
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<td>Payroll Taxes</td>
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<td>(15)</td>
<td>$1,500,247</td>
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<td>Medical Insurance</td>
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<td></td>
<td>$10,864,197</td>
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<td>401K Match</td>
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<td></td>
<td>$4,938,272</td>
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<td>Incentives and Bonus</td>
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<td>(2)</td>
<td>$12,185,186</td>
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<td>Other Employee Benefits</td>
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<td>(3)</td>
<td>$1,961,847</td>
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<td>Total Fringe Benefits</td>
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<td>$48,733,700</td>
<td>$34,113,590</td>
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<td>Indirect Overhead Labor</td>
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<td>($4,452,541)</td>
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<td>Purchased Labor/Subconsultants</td>
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<td>($22,433,019)</td>
<td>(5)</td>
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<td>$ -</td>
<td>$ -</td>
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<td>Office Rent</td>
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<td>($987,654)</td>
<td>(6)</td>
<td>$11,358,025</td>
<td>$11,038,025</td>
<td>$320,000</td>
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<td>Supplies &amp; Utilities</td>
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<td></td>
<td>$5,753,086</td>
<td>$4,027,160</td>
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<td>Postage and Shipping</td>
<td>$1,770,000</td>
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<td>(5)</td>
<td>$2,091,456</td>
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<td>Equipment and Maintenance</td>
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<td></td>
<td>$3,812,346</td>
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<td>(7)</td>
<td>$4,856,791</td>
<td>$3,205,482</td>
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<tr>
<td>Interest</td>
<td>$123,456</td>
<td>($123,456)</td>
<td>(8)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Dues and Subscription</td>
<td>$123,456</td>
<td>($12,345)</td>
<td>(9)</td>
<td>$111,111</td>
<td>$77,778</td>
<td>$33,333</td>
</tr>
<tr>
<td>Advertising &amp; Marketing</td>
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<td>($147,403)</td>
<td>(5)(11)(14)</td>
<td>$5,748,720</td>
<td>$4,024,104</td>
<td>$1,724,616</td>
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<tr>
<td>Bad debts</td>
<td>$12,345</td>
<td>($12,345)</td>
<td>(12)</td>
<td>$ -</td>
<td>$ -</td>
<td>$ -</td>
</tr>
<tr>
<td>Legal and Accounting Services</td>
<td>$3,713,580</td>
<td>($222,815)</td>
<td>(13)</td>
<td>$3,490,765</td>
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<td>$ -</td>
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<td>Fines and Penalties</td>
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<td>($80,000)</td>
<td>(16)</td>
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<td>Total General &amp; Admin. Overhead</td>
<td>$135,388,995</td>
<td>($29,541,478)</td>
<td></td>
<td>$105,847,517</td>
<td>$95,898,280</td>
<td>$9,949,237</td>
</tr>
<tr>
<td>Total Indirect Costs</td>
<td></td>
<td></td>
<td></td>
<td>$154,581,216</td>
<td>$130,011,870</td>
<td>$24,569,347</td>
</tr>
</tbody>
</table>

Indirect Cost Rates

|               | 126.17% | 151.59% | 66.84% |

Figure 10.3: Standard Indirect Cost Rate Schedule
**FAR References:**

- FAR 31.205-6: Profit distribution and excess of the reasonable compensation.
- FAR 31.201-2: Administrative staff costs billed to projects/clients.
- FAR 31.201-2: Subconsultant labor and other direct costs billed to and paid by contracts/clients.
- FAR 31.205-36 and 31.205-17: Capital lease costs, rent paid in excess of reasonable costs, and idle facilities and capacity costs.
- FAR 31.205-2 & 31.205-6: Costs relates to personal use by employees and luxury vehicles.
- FAR 31.205-20: Interest and other financial costs not allowable.
- FAR 31.201-2: Non-business related dues and subscriptions.
- FAR 31.205-1: Costs for advertisement and public relations costs and trade show expense including labor.
- FAR 31.205-46(d) and 31.205-6(m)(2): Personal use of vehicle and lack of mileage logs and business purpose.
- FAR 31-205-3: Bad debts and collection costs.
- FAR 31.205-27 and 31.205-47: Reorganization and capital raising related costs and costs incurred in connection with violation of a law or regulation by the consultant.
- FAR 31.205-46: Unreasonable costs and costs not supported by documents and lack of business purpose.
- FAR 31.201-6(a) & CAS 405-40: Labor costs associated with unallowable costs.
- FAR 31.205-15: Fines and penalties resulting from violations of laws and regulations.

This section outlines the audit and review process for A&E contracts that at any time use federal and/or state funds. All proposed A&E contracts and supporting documents are subject to audit or review by Caltrans’ Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government. Not all proposed contracts will be audited or reviewed; rather, they will be selected on a risk-based approach.

**10.1.4 CONSULTANT SELECTION METHODS**

Figure 10-4: Consultant Selection Flowchart shows the three methods normally used in selecting a consultant. They are:

- One-Step RFP;
- One-Step RFQ;
- Two-Step RFQ/RFP.

The method used depends upon the scope of work, the services required, the project’s complexity, and the time available for selection of the consultant.

Beginning with Section 10.1.5: Consultant Selection Using the One–Step RFP Method, each of the selection methods is explained in detail. Regardless of the method used, the local agency shall retain all consultant selection documentation in their project files as required by 23 CFR Part 172.
One-Step RFP
The One-Step RFP method may be used for Project–specific contracts when the scope of work is well defined or for Multi-phased contracts where the defined scope of work is divided into phases. Other considerations include when the consultant’s services are highly specialized and there are few qualified consultants.

One-Step RFQ
The One-Step RFQ method is used when the requested services are specialized, or the scope of work is defined broadly and may include multiple projects. Typical services are preliminary engineering, surveying, environmental studies, preparation of Plans Specifications and Estimate (PS&E) and environmental documents, or construction management. This method or the two-step selection process is used for procurement of on-call contract(s). Note that specifications and requirements in the RFQ must cover all aspects of the final need. A RFP specific to the project, task, or service must be included in the solicitation for evaluation of a consultant's specific technical approach and qualifications.

Two-Step (RFQ Followed by RFP)
The Two-Step RFQ/RFP method may be used when the scope of work is complex or unusual. This method also may be preferred by local agencies that are inexperienced about negotiations and procedures for establishing compensation. However, the Two-Step RFQ/RFP method is recommended for procurement of multiple on-call contracts, or on-call list, through a single solicitation. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant’s qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications. For more information, refer to description of on-call contract in Section 10.1.2: Identifying & Defining a Need for Consultants. This method requires substantially more work and time than the other two methods described above.
Local Assistance Procedures Manual

Chapter 10

Consultant Selection

1. Identify need for consultant
2. Segregate Project Work
3. Define Scope of Consultant Work
4. Specify Products to be delivered:
   - Lump Sum
   - Cost-Plus-Fixed Fee
   - Cost-Plus-Incentive Fee
   - Other
5. Determine Type of Contract
6. Determine Project Schedule
7. Complete First Step
   - Set Project Objective
   - Determine Project Administrative Schedule

**Select Consultants**

- Develop Technical Criteria for Evaluation of Proposals
- Develop Qualification Criteria for Evaluation of Proposals
- Appoint Consultant Selection Committee and Develop Schedule for Selection
- Develop Qualification Criteria for Evaluation of Proposals
- Appoint Consultant Selection Committee and Develop Schedule for Selection
- Evaluate Reference Checks & Other Information Gathered Independently
- Evaluate Consultant's Qualifications
- Prepare Statements of Qualifications
- Receive Statements of Qualifications
- Notify Consultant's Conference or Answer Written Questions
- Interview Consultant's Conference or Answer Written Questions
- Receive and Evaluate Technical Proposals
- Interview & Develop Final Ranking of Consultants
- Notify Consultants of Results
- Develop Final Interview & Ranking of Consultant

**One-Step, RFP** Method: Request for Proposal followed by Negotiation

(Use when there are few consultants)

- Develop Request for Proposal (RFP)
- Appoint Consultant Selection Committee and Develop Schedule for Selection
- Evaluate Consultant's Qualifications
- Prepare Statements of Qualifications
- Receive Statements of Qualifications
- Notify Consultant's Conference or Answer Written Questions
- Interview Consultant's Conference or Answer Written Questions
- Receive and Evaluate Technical Proposals
- Interview & Develop Final Ranking of Consultants
- Notify Consultants of Results
- Develop Final Interview & Ranking of Consultant

**One-Step, RFQ** Method: Request for Qualifications followed by Interviews and Negotiation

(Use when there are many consultants)

- Develop Request for Qualifications (RFQ)
- Appoint Consultant Selection Committee and Develop Schedule for Selection
- Evaluate Consultant's Qualifications
- Prepare Statements of Qualifications
- Receive Statements of Qualifications
- Notify Consultant's Conference or Answer Written Questions
- Interview Consultant's Conference or Answer Written Questions
- Receive and Evaluate Technical Proposals
- Interview & Develop Final Ranking of Consultants
- Notify Consultants of Results
- Develop Final Interview & Ranking of Consultant

**Two-Step, RFQ/RFP** Method: Request for Qualifications followed by Request for Proposal and Negotiation

(Use when scope of work is complex)

- Develop Request for Qualifications (RFQ)
- Appoint Consultant Selection Committee and Develop Schedule for Selection
- Evaluate Consultant's Qualifications
- Prepare Statements of Qualifications
- Receive Statements of Qualifications
- Notify Consultant's Conference or Answer Written Questions
- Interview Consultant's Conference or Answer Written Questions
- Receive and Evaluate Technical Proposals
- Interview & Develop Final Ranking of Consultants
- Notify Consultants of Results
- Develop Final Interview & Ranking of Consultant

**Complete Project**

- Negotiate Contract with Next Highest Ranked Consultant until Successful
- Develop Contract
- Initiate A&E Consultant Audit Process (Figure 10-2)
- Request Cost Proposal & Negotiate Contract with Top-Ranked Consultant
- Develop Contract
- Initiate A&E Consultant Audit Process (Figure 10-2)
- Request Cost Proposal & Negotiate Contract with Top-Ranked Consultant
- Develop Contract
- Initiate A&E Consultant Audit Process (Figure 10-2)
- Request Cost Proposal & Negotiate Contract with Top-Ranked Consultant
- Develop Final Contract
- Execute Contract
- Issue Notice to Proceed to Consultant
- Administer Contract

Figure 10-4: Consultant Selection Flowchart

4.F.1 Attachment: Exhibit A to Reaso Adopting Policy for Procurement of Architectural and Engineering Consultants - LAPM Ch. 10 (Approve CalTrans)

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January 2020
10.1.5 **CONSULTANT SELECTION USING THE ONE-STEP RFP METHOD**

Of the three methods discussed, this one is most easily modified for non-A&E consulting contracts. This procurement procedure usually involves a single step process with issuance of a request for proposal (RFP) to all interested consultants. For non-A&E consulting contracts, a cost proposal shall be part of the RFP and the selection criteria. For A&E contracts, the cost proposal is not requested until the consultants have been final ranked based upon their submitted technical proposal.

**Appoint Consultant Selection Committee**

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews materials submitted by consultants, develops a shortlist of qualified consultants, and develops a final ranking of the most qualified proposals. Representation on the committee includes the Contract Administrator and subject matter experts from the project’s functional area. The members should be familiar with the project/segment to be contracted out and with the local agency standards that will be used in the contract. Participation by a Caltrans district representative is at the option of the agency and subject to availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

**Develop Technical Criteria for Evaluation of Proposals**

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant proposals. In-State or local preference shall not be used as factor in the evaluation, ranking, and selection phase. All non-technical evaluation criteria, including DBE participation, shall not exceed 10 percent (23 CFR 172.7(a)(1)(iii)(D)). All price or cost related items which include, but are not limited to, cost proposals, direct salaries/wage rates, indirect cost rates, and other direct costs are prohibited from being used as evaluation criteria.

The criteria and relative weights must be included in the RFP, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.
Develop Schedule for Consultant Selection

Before the contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm key dates with all selection committee members before completing the schedule.

Prepare RFP

The information required in an RFP solicitation includes the following:

- Description of project;
- Clear, accurate, detailed Scope of work, technical requirements, and qualifications;
- Services to be performed;
- Deliverables to be provided;
- Procurement schedule;
- Applicable standards, specifications, and policies;
- Schedule of work (including estimated start and end dates of the contract);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate concealed format. Cost proposals are requested from the highest ranked firm. If these negotiations are formally terminated, the cost proposal is then requested from the next highest ranked firm. See Exhibit 10-H: Sample Cost Proposal (Example 3) for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.3: A&E Consultant Audit and Review Process);
- Proposal format and required contents;
- Method, criteria and weighting for selection;
- Requirements for any discussions that may be conducted with three or more of the most highly qualified consultants following submission and evaluation of proposals;
- Specify contract type;
- Special provisions or contracts requirements;
- A DBE contract goal is specified in the solicitation (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement;
- Protest procedures and dispute resolution process per 2 CFR Part 200.318(k), 2 CFR 172.5(c)(18).

The RFP specifies the content of a proposal, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from the mailing address. A minimum of fourteen (14) calendar days is required between the time the RFP is published and time that proposals must be submitted. More time may be required for complex contracts or projects.
Items typically required in a technical proposal include:

- Work plan (specify what is to be covered);
- Organizational chart;
- Schedule and deadlines;
- Staffing plan;
- Proposed Team—complete for prime consultant and all key subconsultants;
- Key personnel names and classifications—key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Names of consultant’s project manager and the individual authorized to negotiate the contract on behalf of the consulting firm;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;
- References.

**Financial Management and Accounting System Requirements**

The local agency must ensure that consultant contract solicitation and advertising documents (RFPs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

**Advertise for Consultants**

The solicitation process for consultant services shall be by public advertisement, or by any other public forum or method that assures qualified in-State and out-of-State consultants are given a fair opportunity to be considered for award of contract. The minimum length of advertisement is 14 calendar days.

Advertisement of the RFP in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting government contract solicitations such as BidSync, Planetbids, or posting the RFP on the local agency’s or other widely used websites are all acceptable methods of solicitation.

To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

**Issue/Publish RFP**

The local agency shall publish the RFP on line and also issue the RFP to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded RFP on line as well as those receiving an RFP through other means, to ensure that any inquiry responses, addendums, or amendments to the RFP are given to all consultants that received the RFP.
Conduct Proposer’s Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer’s conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer’s conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer’s conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each proposal contains all of the forms and other information required by the RFP. If all required information is not provided, a proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended. The members of the consultant selection committee must evaluate each proposal according to the technical criteria listed in the RFP. Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. The justification should state that the solicitation did not contain conditions or requirements that arbitrarily limited competition per 23 CFR 172(a)(1)(iv) (D) and competition is determined to be inadequate and it is not feasible or practical to re-compete under a new solicitation per 23 CFR 172(a)(3)(iii)(C). If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee evaluates each proposal; interviews the three or more highest ranked consultants (short listed) if noted in solicitation; and develops a final ranking of the highest ranked consultants. All consultants that submitted proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. The local agency may have an established procedure adopted for conducting debriefings but may also consider the following: The selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally,
the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as Exhibit 10-K: Consultant Certification of Contract Costs and financial Management System of Costs and Financial Management System and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist, whichever is applicable (see Section 10.1.3: A&E Consultant Audit and Review Process) should be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultants with their technical proposal.

The cost proposal for the most qualified consultant will be opened and used to begin negotiations. If agreement cannot be reached, then negotiations proceeds to the next most qualified consultant. Each consultant’s cost proposal must remain sealed until negotiations commence with that particular consultant. The goal of negotiations is to agree on a final contract that delivers the services, or products required at a fair and reasonable cost to the local agency. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFP and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be returned unopened or properly disposed of in accordance with the local agency’s written policies and procedures.

The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations or terminating unsuccessful negotiations with the most qualified consultant. Items necessary for the independent cost estimate include, hours/detailed work, direct labor costs, indirect labor costs, other direct costs, and profit/fee. Agencies must retain documentation of how the cost estimate was developed. It can be revised, if needed, for use in negotiations with the next most qualified consultant. A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process in this chapter). Local agency Contract Administrator ensures that all required documentations are provided to Caltrans IOAI within 10 days of written request, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Document Review until all required documentation is completed correctly and submitted. Negotiations should be finalized after addressing all deficiencies noted in the Caltrans IOAI Financial Review Letter if applicable. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan;
- Schedule and deadlines (for deliverables and final duration of contract);
• Products to be delivered;
• Classification, wage rates, and experience level of personnel to be assigned;
• Cost items, payments, and fees. Fee is required to be negotiated as a separate element;
• Hours, level of effort by task and/or classification.

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. The local agency and the consultant will agree on the final cost proposal and incorporate into final contract. Retain all documentation related to negotiations.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist: https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement) and adjustment or denial of ICR as identified in the Financial Review Letter has been included in the final cost proposal, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the local agency must submit a completed Exhibit 10-C for all new or amended federal funded A&E consultant contracts using the database at http://dlaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser).

If there are any changes requiring an amendment to the contract after submittal of Exhibit 10-C, the local agency must submit an updated Exhibit 10-C and all contract amendments to http://dlaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts.

10.1.6 CONSULTANT SELECTION USING THE ONE-STEP RFQ METHOD

The RFQ method is used when the services being procured are specialized, or the scope of work is defined broadly and may include multiple projects.

Appoint Consultant Selection Committee

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The committee reviews and scores the materials submitted by consultants in response to the RFQ, develops a shortlist of qualified consultants, interviews those consultants, and develops a final ranking of the most qualified consultants. Representation on the committee includes the Contract Administrator and subject matter experts from the project’s functional area. The members should be familiar with the scope of work to be contracted out and with the local agency standards that will be used in the contract.

Participation by a Caltrans district representative is at the option of the local agency and subject to the availability of the DLAE staff. Caltrans participation on the interview panel does not relieve the local agency of its responsibility to ensure that proper procurement procedures are followed and all requirements are met.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement.
prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T: Panel Member Conflict of Interest & Confidentiality Statement.

**Develop Technical Criteria for Evaluation of Qualifications**

The Contract Administrator is responsible for developing the technical criteria, and their relative importance which are used to evaluate and rank the consultant qualifications. The criteria and relative weights must be included in the RFQ, and the same criteria and relative weights must be used in the evaluation sheets. Failure to include criteria and relative weights and to use the same criteria and weights during the evaluation will result in the contract costs being ineligible for federal or state reimbursement. Exhibit 10-B: Suggested Consultant Evaluation Sheet is a recommended evaluation sheet with criteria and rating points for A&E consultants, where cost is not used as a rating factor. This format is not mandatory, but it is recommended in the interest of developing consistency among the hundreds of agencies and consultants operating in the state. The local agency should consult with the DLAE before making major changes to the suggested approach.

**Develop Schedule for Consultant Selection**

Before a contract is advertised, the Contract Administrator completes a contract procurement schedule including key dates for consultant selection activities. The Contract Administrator should confirm target dates with all selection committee members before completing the schedule.

**Prepare RFQ**

As a minimum, the RFQ generally includes the following:

- General description of the services or project(s);
- Scope of work;
- Schedule of work (including contract begin and end dates);
- Method of payment, and cost proposal requirements. The cost proposal is submitted in a separate sealed envelope. See Exhibit 10-H: Sample Cost Proposal for sample cost proposal formats;
- Contract audit and review process requirements (see Section 10.1.3: A&E Consultant Audit and Review Process);
- Statement of Qualification (SOQ) format and required content to be submitted;
- Method and criteria and weights for selection;
- A DBE contract goal is specified in the solicitation (see Exhibit 10-I: Notice to Proposers DBE Information), if a federal-aid contract;
- Consultants acting in a management support role requirements Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement; Protest procedures and dispute resolution process per 2 CFR Part 200.318(k).

The RFQ specifies the content of the SOQ, the number of copies required, due date, mailing address, and a physical address where the submittals may be hand delivered if different from
the mailing address. Two to four weeks is usually allowed between the time the RFQ is published and time that SOQs must be submitted. More time may be required for complex contracts or scope of work.

Items typically required in a statement of qualification include:

- Qualifications of key personnel (including consultant project manager) proposed for the contract. Key team members identified in the original proposal/cost proposal shall not change (be different than) in the executed contract;
- Staff resumes;
- Related projects that key personnel have worked on;
- Qualifications/experience of the firm;
- Organizational chart;
- Forecast or Schedule of work;
- Consultant DBE Commitment document, see Exhibit 10-O1: Consultant Proposal DBE Commitment;
- References.

Financial Management and Accounting System Requirements

The local agency must ensure that Consultant contract solicitation and advertising documents (RFQs) clearly specify that contracts shall not be awarded to a consultant without an adequate financial management and accounting system as required by 48 CFR Part 16.301-3, 2 CFR Part 200, and 48 CFR Part 31. The local agency must ensure the selected consultants have adequate financial management systems as required by the applicable federal regulations.

Advertise for Consultants

The solicitation process for consultant services shall be by public advertisement or any other public forum or method that assures qualified in-State and out-of-State consultant are given a fair opportunity to be considered for award of contract. The RFQ must contain sufficient project work information, so that interested consultants can submit an appropriate SOQ.

Advertisements for RFQ may take one of two approaches. The most common is an advertisement or publication of the RFQ in a major newspaper of general circulation, technical publication of widespread circulation, professional associations and societies, recognized DBE organizations, web hosting or clearing houses known for posting contract solicitations such as Bid Sync, PlanetBids, or posting the RFQ on other widely used websites. To document website postings, the local agency should retain copies of screen shots displaying the posted begin/end dates.

In the second approach, the local agency advertises the availability of the RFQ in a major newspaper of general circulation, technical publications of widespread circulation, professional associations and societies, recognized DBE organizations, or through a web hosting or clearing houses known for posting contract solicitations such as BidSync or PlanetBids, and requests that interested consultants send a letter of interest to the local agency for the RFQ. The RFOs shall then be sent to those firms who indicated interest in the RFQ. In some cases, it may be desirable to advertise nationwide for a particular project or service. This approach provides a
registry for firms who received the RFQ and therefore facilitates the broadcast of any revisions or addenda to the RFQ, if necessary.

**Issue/Publish RFQ**

The local agency shall publish the RFQ online and also issue the RFQ to all consultants responding to newspaper advertisement. The local agency shall keep a record of all consultants that have downloaded the RFQ on line as well as those receiving an RFQ through other means, to ensure that any inquiry responses, addendums, or amendments to the RFQ are given to all consultants that received the RFQ.

**Receive/Evaluate Statements of Qualifications and Develop Shortlist**

The first step in the evaluation process is to determine that each SOQ contains all forms and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, and submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

Minimum of three proposals must be received and evaluated. If only two proposals are received, a justification must be documented to proceed with the procurement. If only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) must be documented and signed by the DLAE. In either case, the re-advertisement of the RFP should be considered as an option.

The consultant selection committee reviews the submitted SOQ according to the published evaluation criteria and weighting factors. The committee makes an independent random check of one or more of the consultant’s references. This check applies to major subconsultants also. The committee establishes a shortlist of consultants who are considered to be best qualified to perform the contract work. The shortlist includes enough qualified consultants to ensure that at least three consultants are interviewed.

**Notify Consultants of Shortlist**

All consultants that submitted an SOQ must be notified of the results of the review. The notification also identifies those consultants (short list) that will be requested to attend interviews if interviews were an option in the solicitation. Most consultants will request information as to why they were not placed on the shortlist. Therefore, the selection committee should keep notes why a particular consultant was not selected for the shortlist. When a consultant requests a debriefing, the reasons given for not being selected must be objective reasons. Consultants should not be compared with each other during the debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

**Interview Top-Ranked Consultants**

Each consultant to be interviewed is given a copy of the draft of the proposed contract, defining the detailed scope of work, and/or description of required services, and other information. This should be sent with the initial notification of the interview.
Between the time of the notification of the shortlist and interviews, the local agency may answer any questions concerning the scope of work to be contracted out, if not done earlier during the solicitation. In addition, the local agency may conduct additional reference checks for each consultant to be interviewed. Consultants should submit their questions about the RFQ and receive their answers from the local agency in writing. It is required that all consultants on the shortlist receive the questions and answers and are given the same information.

The committee should evaluate reference checks and other information that is gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks and other information may be discussed with the consultant at the interview.

Interviews are to be structured and conducted in a formal manner. Each consultant shall be allowed the opportunity to make a presentation if desired; however, a time limit should be specified. Interview questions are prepared in advance.

Two types of questions may be asked:

- Questions that are to be asked of all competing consultants, and
- Questions relating to each specific consultant, based upon the reference checks, and the strengths and weaknesses identified during evaluation of the SOQ

The agency can request competing consultants to bring additional information or examples of their work to the interviews; if the additional information facilitates the interview or evaluation process. Additional information requested should be kept at a minimum, that is, only information required to select the most qualified consultant for the contract. The selection committee or local agency shall not gather additional information concerning the consultants after the interviews are completed.

**Develop Final Ranking and Notify Consultants of Results**

All consultants interviewed must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not selected as the most qualified. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective. Consultants should not be compared with each other or provided with information about other consultants during the debriefing.

Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing. The next two sections provide guidance when the RFQ is solicited for specialized services and additional information is required prior to cost negotiations with consultant. For on-call contracts, skip the next two sections and begin Negotiation phase.

**Conduct Scoping Meeting**

The Contract Administrator meets with the first-ranked consultant’s project manager to review the project, and to ensure that the consultant has a complete understanding of the work that is
required. The consultant is shown as much material as is available regarding the project. Any technical questions regarding the project are answered for the consultant.

**Request Cost Proposal**

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant’s cost proposal must follow the same format as the prime consultant’s cost proposal.

**Negotiate Contract with Top-Ranked Consultant**

Cost proposal (for both Prime and all Subconsultant), and contract audit and review documents such as **Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System** and **Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist**, whichever applicable (see **Section 10.1.3: A&E Consultant Audit and Review Process**) will be submitted in a separate sealed envelope. Typically, the cost proposals are submitted by the short-listed consultants only, at time of interview. However, if time is of the essence and it can be justified, or if no interviews are planned, the cost proposal can be requested from all consultant with their statements of qualification.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and compares it with the local agency’s confidential detailed independent cost estimate and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated. Negotiations then proceed to the next most qualified consultant, and so on. Each consultant's cost proposal must remain sealed until negotiations commence with that particular consultant.

At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

Cost proposals in electronic form shall be submitted separately from the RFQ and contained in a secure database that is inaccessible to the members involved in the A&E consultant contract procurement process. Only the cost proposal of the most qualified consultant will be requested to be sent to the members. Cost proposals of unsuccessful consultants are confidential and shall not be opened by the local agency or any private entity that the local agency uses to store the cost proposals. Any concealed cost proposals of the unsuccessful consultants must be
returned unopened or properly disposed of by permanently deleting the cost proposals in accordance with local agency’s written policies and procedures.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process earlier in this chapter). Local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Financial Review, if applicable. Caltrans IOAI will not proceed with a Financial Review until all required documentation is completed correctly and submitted. Negotiations may be completed after receipt of the Caltrans IOAI Financial Review Letter. An indirect cost audit may be performed within the record retention period of the contract.

The items typically negotiated include:

- Work plan;
- Staffing plan;
- Schedule (including contract begin and end dates);
- Products to be delivered;
- Classification, wage rates, and experience level of personnel to be assigned;
- Cost items, payments and fee. Fee is required to be negotiated as a separate element.

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency. For on-call contracts, typically a price agreement is reached based on specific rate of compensation for the term of the contract. The subsequent task orders (or mini agreements for individual project work) is negotiated based on cost plus fee, or lump sum, which is derived from the wage rates agreed upon earlier for the on-call contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist at https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement), and receive Caltrans IOAI’s Financial Review acceptance letter, if applicable.

Prior to contract award, or after contract award but no later than the first invoice, the local agency must submit a completed Exhibit 10-C for all new or amended federal funded A&E consultant contracts using the database at http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser).

If there are any changes to the contract after submittal of Exhibit 10-C, the local agency must submit an updated Exhibit 10-C and all contract amendments to http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C. Submission of Exhibit 10-C to Caltrans HQ is not required for non-A&E consultant contracts.
10.1.7 **CONSULTANT SELECTION USING THE TWO-STEP RFQ/RFP METHOD**

**Combined RFQ and RFP**

Selecting consultants using the Two-Step RFQ/RFP method requires combining certain steps from each of the other two methods previously described. The consultants are rated based upon both their qualifications and their technical proposals. This procurement procedure involves a **two-step** process with issuance of a request for qualifications (RFQ) whereby responding consultants are evaluated and ranked based on qualifications and an RFP is then provided to three or more of the most highly qualified consultants. **The two-step method leads to an executed project specific contract.**

A different process may also be used that includes assessing minimum qualifications of consultants to perform services under general work categories or areas of expertise through a prequalification process whereby annual statements of qualifications and performance data are encouraged. These consultants are not ranked, and an RFP must be submitted to the entire list for evaluation and consideration. Regardless of any process utilized for prequalification of consultants or for an initial assessment of a consultant's qualifications under a RFQ, a RFP specific to the project, task, or service is required for evaluation of a consultant's specific technical approach and qualifications.

The initial steps in this method (up to the development and notification of the shortlist) are similar to the steps followed when using the One-Step RFQ method. At this point, the consultants from the shortlist are issued an additional RFP. The remaining steps are the same as the later steps followed in the One-Step RFP method. The combination of these steps is indicated in Figure 10-4: Consultant Selection Flowchart. Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use only when the scope of work is not clearly known, very complex or unusual.

The Two-Step RFQ/RFP is also well suited for procuring multiple on-call contracts through a single solicitation. The outcome of the first step RFQ will be multiple contracts, or on-call list of consultants. For multiple on-call contracts, project work will be procured thru subsequent competition or mini-RFPs amongst the on-call consultants. The mini-RFP or the task order will be negotiated with first ranked firm from each competition. Task order (mini-RFP) cost will be based on wage rates established in the master on-call contract, and the time and deliverable requirements in the task order.

Local agencies may also use this method to:

1. **Develop and maintain a pre-qualified file/list of consultant firms by specific work categories or areas of expertise.** This list includes all consultants that meet the minimum published pass/fail requirements. The pre-qualified list can be updated annually or at least every two years and must be maintained by the agency. This list has not gone through the evaluation process.

2. **Create a short list of evaluated and ranked consultants that leads to executed contracts**

The mini-RFP contains evaluation criteria that matches the strengths of the qualified firms to the specifics of the known tasks, thereby selecting the most qualified firm for each task. The evaluation can include: availability of personnel, staff capabilities, DBE (10% or less of overall
score), completion time, experience of consultant, specialized expertise, and past performance. The overall DBE goal was established at the master on-call contract.

Because it is a combination of the One-Step RFQ and One-Step RFP methods, this method of consultant selection requires more work and time than the other two methods. Consequently, the combined RFQ/RFP method is recommended for use when the scope of work is very complex or unusual.

**Categorize work**

Descriptions of the categories of work, deliverables and the minimum qualification standards for each category must be clearly identified.

The local agency may prequalify consulting firms in the following (or more) categories:

- Roadway Design
- Bridge Design
- Bridge Inspection
- Traffic Engineering
- Environmental Services
- Roadway Construction Inspection and Administration
- Landscape Architecture
- Land Surveying
- Intelligent Transportation System (ITS)
- Federal–aid Highway Project Development Support Services

**Establish Minimum Qualifications**

In an effort to ensure quality performance and results, a consultant should be required to meet certain minimum qualifications to be eligible for consideration in the pre-qualification process.

General criteria guidelines should be established for consultant selection for a pre-qualified list. The criteria may be established by an individual or a panel of subject matter experts for the specific task of developing the criteria. Some agencies also establish appropriate weights for each criterion. It may be necessary to modify the criteria to fit specific cases. When a RFQ is published, it should state the criteria that will be used in the selection process.

Criteria for evaluating statements of qualifications, may include but are not limited to:

- Special expertise and experience of the firm’s key employees
- Proposed staffing (include number of licensed and specialized staff) for the project and previous experience of those identified
- Experience of the firm and their personnel on previous projects similar to the one under consideration
- Consultant DBE Commitment document (see Exhibit 10-O1)
- Professional references by the firm with the local agency
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- Understanding of the project by the firm as demonstrated by their approach to organizing and management of the work
- Current workload of the firm and their ability to meet the proposed project schedule
- Quality of previous performance by the firm with the local agency
- Use of sub-consultants to accomplish work on the project
- Equipment the firm has available and proposes to use as compatibility with Computer-Aided Drafting and Design (CADD) and other equipment proposed to be used in accomplishing the work
- Familiarity with federal, state, and local codes, requirements, standards, and procedure
- Examples of minimum qualifications for work categories above are provided here based on Caltrans best practices

Issue RFQ

The need for services of a consulting firm may be advertised in appropriate national, state, and local publications and web sites. Notices can also be sent to firms known to be qualified to do specific work, to professional societies, and to recognized Disadvantaged Business Enterprises (DBE) organizations. The advertisements and notices seek statements of interest and qualifications from consultants who are interested in the project. The DBE goal is established at the master on-call contract and included in the solicitation document.

The SOQ should list consulting firm details, names of principals, office locations, personnel by discipline, project experience and examples, current workload, types of service the firms are qualified to perform, and previous performance. Also, resumes of key persons, specialists, and other associates that may be assigned to the project or projects should be included. This information should be the basis for evaluating and placing a consulting firm on a general pre-qualification list.

Federal regulations require that any procedures related to pre-qualifying consultant cannot restrict competition.

Pre-qualification of consultants may be allowed as a condition for submitting a technical proposal for a contract only if the period between the date of the issuance of the RFP and the deadline for submitting a technical proposal affords sufficient time to enable a consultant to obtain pre-qualification status.

Another practice is to qualify consultants on a project-by-project basis. This is accomplished for some agencies by advertising or publishing notices in national, state, and local publications for needed services for specific, individual projects. These notices include a precise project location, a defined preliminary scope of services to be performed, a specific schedule within which the work is to be completed, and a list of products and deliverables to be provided by the consultant. Specific project advertisements usually are published when the proposed project is large and complex, in-house resources are not available, special expertise is required, or the objectivity of an outside authority is desired.

Appropriate Federal-aid requirements should be complied with on Federal-aid projects.
Set-Up Evaluation Process

The first step in the evaluation process is to determine that each SOQ contains all forms, qualifications and other information required by the RFQ. Otherwise, the submittals may be considered nonresponsive and rejected without evaluation. Documentation of when each SOQ was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

If all required information is not provided, a SOQ may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed.

Local agency must establish a process by which SOQs are evaluated and consultants who are deemed meeting the minimum qualifications are accepted and placed on a per-qualified list. Whether the Local agency has a “committee” of experts evaluating the SOQs or individuals responsible for the evaluation, the process must be well defined, open and transparent. The pre-qualification process must also allow for consultants to be re-evaluated in cases of denials. The local agency must specify how long the pre-qualified list last, not to exceed two years. Federal regulation recommends refreshing the SOQs on an annual basis.

Local agency Contract Administrator ensures that all committee members meet the conflict of interest requirements (23 CFR 172) by completing and signing a conflict of interest statement prior to selection process initiation. A sample conflict of interest form is provided in Exhibit 10-T.

Evaluate Qualifications and Add Firm to List

All SOQs received should first be reviewed for completeness. Each response must contain all required forms and any other information requested in the advertisement. The response may be considered incomplete and rejected without further evaluation if all required information is not provided or if the submittal is late.

The qualifications of all responding firms are then reviewed according to established evaluation criteria or factors. The agency then establishes a short list of at least three consultants that are determined to be the most highly qualified to perform the required work. Firms not selected should be notified in writing.

Maintain List

Pre-qualification of a consultant expires in two years. Pre-qualified consultants must renew their pre-qualification status every two years. Firms can apply to be on the list at any time. After a period of two years, firms should re-apply (repeat the process of submitting SOQs) to be on the list. In addition to the required two-year renewal process, the consultant should also be required to update the firm’s organizational structure within one year when there is a corporate/affiliate change, ownership control, type of work expertise, capacity, or any other major change.

If the consultant does not meet the minimum requirements and their SOQ is rejected, the committee must respond to the consultant explaining the reason for their rejection. The consultant is allowed to reapply to be on the list again provided the reasons for rejection are corrected.

The list of qualified firms can be maintained online through the agency’s website. Firms can also apply to be on the list through the agency website for ease of operation.
Issue RFP to Pre-Qualified Consultants on List

An RFP is sent to the short-listed firms. The RFP should indicate the content of the technical proposal, technical review procedures, anticipated schedule of activities, scope of work, project description, where the technical proposals are to be delivered, the number of copies required, and the due date.

Some agencies receive the technical proposal orally as part of an interview conducted for this purpose. In these cases, written documentation may not be required.

Items typically required in a technical proposal include:

- Work plan
- Organization plan
- Schedule for meeting time frame
- Available computer equipment and programs
- Staffing plan and resumes including sub-consultants
- Pre-award audit/financial package information (if deemed appropriate)
- Examples of similar work previously completed
- Sub-consultants, DBE, their proposed participation, and other related information

Conduct Proposer’s Conference or Answer Written Questions

The local agency may allow for clarification of the RFP by inviting submittal of written questions or by conducting a proposer’s conference, or by doing both. The local agency must publish or mail their responses to any written questions to all consultants receiving the RFP. No response should be given to verbal questions. It is important that all competing consultants receive the same information. If a proposer’s conference is to be held, the exact time and place must be specified in the RFP. Attendance at a proposer’s conference normally is not mandatory. However, consultants not attending the conference do not receive notes from the meeting unless they request the notes.

Receive and Evaluate Technical Proposals

The Contract Administrator must verify that each technical proposal contains all forms and other information required by the RFP. If all required information is not provided, a technical proposal may be considered nonresponsive and rejected without evaluation. Late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each technical proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.

A consultant selection committee with a minimum of three members is appointed at the beginning of the consultant selection process. The members of the consultant selection committee must evaluate each technical proposal according to the technical criteria listed in the RFP. A minimum of three technical proposals must be received and evaluated.

If only two technical proposals are received, a justification must be documented to proceed with the procurement. If only one technical proposal is received, a Non-Competitive process must be
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justified and a Public Interest Finding (LAPM Exhibit 12-F) must be documented. In either case, the re-advertisement of the RFP should be considered as an option.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

Develop Final Ranking and Notify Consultants of Results

The selection committee discusses and documents the strengths and weaknesses of each technical proposal, interviews the three or more highest ranked consultants (shortlisted), and develops a final ranking of the highest ranked consultants. All consultants that submitted technical proposals must be informed about the final ranking of consultants. It is important that all competing consultants receive the same information.

Most consultants will request information as to why they were not the highest ranked. Therefore, the selection committee should keep notes as to why a particular consultant was not selected. When a consultant requests debriefing, the reasons for not being selected must be objective reasons. The consultant should not be compared to others and should not be provided with information about other consultants during this debriefing. Normally, the Contract Administrator does the debriefing; however, any member of the selection committee may be designated to do the debriefing.

Request Cost Proposal and Negotiate Contract with Top-Ranked Consultant

The first-ranked consultant is asked to provide a cost proposal to perform the work described in the draft contract and discussed at the scoping meeting. The work is to be performed according to the conditions described in the draft contract using the payment method described therein. Alternatively, if time is of the essence and it can be justified, sealed cost proposals may be requested from all of the consultants on the shortlist.

If the contract involves more than one project, the consultant must provide a separate cost proposal for each project in addition to a summary cost proposal for the total contract. If the contract involves milestones, the consultant must furnish a separate cost proposal for each milestone with a summary cost proposal for the total costs. If the contract involves subconsultants, the prime consultant must include a separate cost proposal for each subconsultant. Each subconsultant’s cost proposal must follow the same format as the prime consultant’s cost proposal.

Cost proposal (for both prime and all subconsultants) and contract audit and review documents, such as Exhibit 10-K and Exhibit 10-A, whichever applicable (see Section 10.1.3: A&E Consultant Audit and Review Process), will be submitted in a separate sealed envelope.

After the top-ranked consultant submits a sealed cost proposal, the local agency reviews the cost proposal and enters into negotiations. The goal of negotiation is to agree on a final contract that delivers to the local agency the services or products required at a fair and reasonable cost. The independent cost estimate, developed by the local agency in advance of requesting a cost proposal from the top-ranked consultant, is an important basis and tool for negotiations.

Negotiations should commence with the most qualified consultant. If agreement on a fair and reasonable price cannot be reached, negotiations should then be formally terminated.
Negotiations then proceed to the next most qualified consultant, and so on. Each consultant’s cost proposal must remain sealed until negotiations commence with that particular consultant. At the completion of successful cost negotiations, all remaining sealed envelopes containing cost proposals shall be returned to consultants.

A contract audit and review may be required (see Section 10.1.3: A&E Consultant Audit and Review Process). The local agency Contract Administrator is responsible for the submittal of all required documentations to Caltrans IOAI in a timely fashion, including all documents for a Conformance Review, if applicable. Negotiations may be completed after receipt of the Caltrans IOAI Conformance Letter. An indirect cost audit may be performed within the record retention period of the contract.

Items typically negotiated include:

- Work plan
- Schedule and deadlines (for deliverables and final duration of contract)
- Products to be delivered
- Classification, wage rates, and experience level of personnel to be assigned
- Other Direct Cost items, and profit or fee

The consultant’s ICR is not a negotiable item. A lower rate cannot be negotiated by the local agency.

The local agency and the consultant will agree on the final cost proposal and incorporate into final contract.

Before executing the consultant contract, the local agency must review contract to ensure that all federal and state requirements have been met (see A&E Consultant Procurement Checklist at https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement).

10.1.8 Completing the Project

Develop the Final Contract

The Contract Administrator requests a revised cost proposal from the consultant after: (1) negotiations have been completed, (2) the local agency and consultant have agreed to a fair and reasonable price, and (3) a letter, if applicable, is released by Caltrans IOAI that accepts, denies or makes an adjustment to the proposed ICR. The Contract Administrator should review the revised cost proposal to ensure that all the items and changes discussed during negotiation were included. This revised cost proposal then becomes the final cost proposal, is attached to and made a part of the consultant contract. Sample contract language and format have been included as Exhibit 10-R: A&E Boilerplate Agreement Language.

The Contract Administrator has responsibility to ensure that the final negotiated contract is complete and has verified that all required backup documents have been provided. Copies of the contract are sent to the consultant for signature first.
Review and Approval of Contracts

Proposed contracts for consultant services (including subcontracted work) must be reviewed by the local agency to verify that:

- Compensation is fair and reasonable and includes prevailing wage rates, if applicable;
- Work activities and schedules are consistent with the nature and scope of the project;
- DBE goal Exhibit 10-O2: Consultant Contract DBE Commitment is included for all contracts regardless of goal;
- Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subs), and Exhibit 10-A: A&E Consultant Financial Document Review Request and Checklist and all supporting documents, if applicable (contracts above $150,000), have been submitted to Caltrans IOAI;
- If applicable, adjustment or denial of the ICR identified in the Financial Review Letter have been included in the final cost proposal;
- Exhibit 10-C: A&E Consultant Contract Database must be used to ensure that required documentation has been provided;
- A cost proposal (see Exhibit 10-H: Sample Cost Proposal), must include the costs of materials, direct salaries, payroll additions, other direct costs, indirect costs, fees, and backup calculations.

Before approving a contract for consulting services, the Contract Administrator must be satisfied that the consultant’s organization:

- Is qualified to perform the services required;
- Is in a position, considering other work commitments, to provide competent and experienced personnel to perform the services in the time allowed;
- Is fully aware of all applicable federal and state laws including implementing regulations, design standards, specifications, previous commitments that must be incorporated into the design of the project, and administrative controls including those of Caltrans and FHWA.
- Has an adequate financial management system as required by the applicable federal regulations.
- Is not disbarred or suspended from state or federally funded contracts. Per 23 CFR 172.7(b)(3) “A contracting agency shall verify suspension and debarment actions and eligibility status of consultants and subconsultants prior to entering into an agreement or contract in accordance with 2 CFR part 1200 and 2 CFR part 180.

The contract must provide for a defined level of acceptability and a statement to the effect that the consultant may be required to modify its work as necessary; to meet that level of acceptability as defined in the contract. The contract shall provide for local agency reviews at appropriate stages during performance of the work, to determine if any changes or other actions are warranted.
The contract shall provide that the consultant and subconsultants shall maintain all books, documents, papers, accounting records, and other information pertaining to costs incurred. Such materials must be available for inspection and audit by federal, State, and local agency authorized representatives; and copies thereof shall be furnished, if requested.

Following final settlement of the contract accounts with the State or FHWA, such records and documents may be archived at the option of the local agency and shall be retained for a three-year period after processing of the final voucher by FHWA.

**Execute Contract and Issue Notice to Proceed to Consultant**

The Contract Administrator sends the consultant a fully executed copy of the contract with an original signature and issues a notice to proceed. Funds may not be used to reimburse the agency for any work or costs incurred before the Authorization to Proceed is issued, or for consultant costs incurred prior to the execution of the consultant contract. All executed contracts shall have a begin and end date. Local agency consultant selection and contract execution costs may be reimbursable.

For on-call contracts, a fully executed copy of the contract with original signatures will be send to the consultant. Each subsequent task order (for individual project) will be accompanied with a copy of the signed task order and a Notice to Proceed, once it is negotiated and approved. Task order expiration dates may not exceed the Master On-call agreement end date.

**Administer the Contract**

Project work begins as specified in the contract after the notice to proceed is issued to the consultant. Thereafter, the local agency manages and administers the contract to ensure that a complete and acceptable product is received on time, within standards, and within budget and terms of the contract.

Contract administration activities help to ensure that contractual obligations are completed satisfactorily. Generally, these activities include:

- Monitoring project progress and compliance with contract requirements;
- Receiving, reviewing and assessing reports, plans, and other required products/deliverables;
- Receiving and reviewing state prevailing wages. (See Department of Industrial Relations websites below.
  - DIR FAQ website: [http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html](http://www.dir.ca.gov/OPRL/FAQ_PrevailingWage.html)
  - DIR Wage Determination website: [http://www.dir.ca.gov/oprl/DPreWageDetermination.htm](http://www.dir.ca.gov/oprl/DPreWageDetermination.htm)
- Reviewing invoices to ensure costs claimed are in accordance to the method of payment and contract cost proposal, approving payments;
- If new consultant personnel are added or substituted, labor rates must be verified prior to approving invoices.
- Record keeping and reporting;
- Controlling costs;
• Identifying changes to the scope of work and preparation of amendments (must ensure that any changes to the scope is within the constraints of the original RFP/RFQ;

• Completing the consultant performance evaluations (see Exhibit 10-S: Consultant Performance Evaluation).

Substitution of Consultant Personnel and Subconsultants

After contract execution the consultant should not substitute key personnel (project manager and others listed by name in the cost proposal) or subconsultants without prior written approval from the local agency. Refer to LAPM Chapter 9: Civil Rights & Disadvantaged Business Enterprise and Title 49 CFR 26 for DBE substitution requirements. To do so can result in the costs being ineligible for federal or state reimbursement. The consultant must request and justify the need for the substitution and obtain approval from the local agency prior to use of a different subconsultant on the contract.

The proposed substituted person must be as qualified as the original, and at the same or lower cost. For engineering types of consultant contracts, the consultant’s project manager must be a registered engineer in the State of California.

Invoicing (or Progress Payments)

The frequency and format of the invoices/progress payments are to be determined by the contract. Program Supplement Agreements (see LAPM Chapter 3: Project Authorization) need to have been prepared prior to any payments being requested. Payments to the consultant are to be in arrears. In other words, the consultant must have actually incurred and paid the costs before invoicing the local agency.

For federal reimbursement of consultant costs on a project, the local agency must submit the following to the DLAE, for each consultant or consulting firm used on the project (failure to do so will result in the consultant’s invoices for reimbursement being returned to the agency unprocessed):

• Copy of Executed Consultant contract;

• Exhibit 10-O1: Consultant Proposal DBE Commitment

• Exhibit 10-O2: Consultant Contract DBE Information

DLAE must confirm that the local agency has submitted copies of Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System (for Prime and Subconsultants) to Caltrans IOAI and agency has submitted Exhibit 10-C: Consultant Contract Database to Caltrans.

The local agency is to follow the procedures given in LAPM Chapter 5: Invoicing, to obtain reimbursement of federal or state funds.

Contract Amendments

Contract amendments are required to modify the terms of the original contract for changes such as extra time, added work, or increased costs. Only work within the original advertised scope of services shall be added by amendment to the contract. The addition of work outside the original advertised scope will make that work ineligible for federal or state reimbursement (see Q&As at: http://www.fhwa.dot.gov/programadmin/172qa_01.cfm).
There is no prescribed format for contract amendments. They may take the form of letter-type agreements meeting the legal requirements of the local agency, clearly outlining the changes and containing a mutually agreed upon method of compensation. Such agreements must conform to the requirements of this manual with regard to payment.

A consultant contract may be amended at any time prior to the expiration date of the original contract. The most common amendment is to extend the ending date of the contract. All contract amendments must be fully executed before the ending date of the contract by formal amendment. Failure to amend a contract prior to the ending date will make the subsequent costs ineligible for federal and state reimbursement. Task orders are not considered an amendment and therefore not appropriate to extend the terms of the contract.

All contract amendments shall be negotiated following the same procedures as the negotiation of the original contract and must be in writing and fully executed by the consultant and local agency before reimbursable work begins on the amendment. For any additional engineering and design related services outside of the scope of work established in the original solicitation, a contracting agency shall either procure the series under a new solicitation, perform the work itself using agency staff, or use a different, existing contract under which the services would be within the scope of work. Overruns in the costs of the work shall not automatically warrant an increase in the fixed fee portion of a cost plus fixed fee reimbursed contract. Permitted changes to the scope of work or duration may warrant consideration for adjustment of the fixed fee portion of cost plus fixed fee or lump sum reimbursed contracts. If an emergency exists of such magnitude that a delay cannot be tolerated, the local agency and the consultant may agree on an amendment initiating the work, so that reimbursable work may begin. The initiating amendment is then followed by a final amendment once the full scope of the emergency work is known and agreed to by both parties. In both cases, sufficient funding should be included in the amendments to pay for all work to be performed by the consultant. The final amendment must be executed as quickly as possible. Failure to fully comply with this section may result in the loss of local agency funding. Section 10.1.3: A&E Consultant Audit and Review Process of this chapter shall apply to the entire contract and must be completed prior to execution of the contract amendment. All amendments shall incorporate any current requirements of the federal regulations including the federal fiscal provisions and submit Exhibit 10-C: Consultant Contract Reviewers Checklist Database to http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser).

Performance Evaluation

Pursuant to 23 CFR §172.9(d)(2) agencies are required to prepare an evaluation of the consultant when the project has been completed. The Contract Administrator evaluates the consultant’s performance after the consultant’s final report has been submitted, and the Contract Administrator has conducted a detailed evaluation with the consultant’s project manager. See Exhibit 10-S: Consultant Performance Evaluation for a suggested format for use by the local agency.

Project Records

Federal-Aid Highway Program funding recipients and sub-recipients must maintain adequate and readily accessible project performance and financial records, supporting documents, and other records considered pertinent to the grant agreement and in compliance with Federal laws and regulations (e.g., 23 USC 112; 40 USC 1101-1104, 23 CFR 172, 48 CFR 31, and 2 CFR
Part 200). These records shall be maintained for a minimum of three (3) years following issuance of the final voucher from FHWA (forwarded by Caltrans) and the closure of all other pending matters (2 CFR Part 200.333).

For audit purposes, project records and documentation shall be kept for three (3) years after payment of the final federal or state voucher. Among the records to be retained are as follows (not an all-inclusive list):

- Copies of RFPs and RFQs, changes, addendums, etc. and bidder’s list;
- Solicitation and advertisement records;
- Identification of selection committee members;
- Record of receiving proposals, statement of qualifications;
- Evaluation and ranking records such as original score sheets from all panel members, short list questions and other documentation (see Exhibit 10-B: Suggested Consultant Evaluation Sheet);
- Independent cost estimate (prepared in advance of requesting a cost proposal from the top-ranked consultant);
- Record of negotiations (to include a separate negotiation of profit in accordance with federal guidelines);
- Financial Review Letter and Cognizant Agency Letter, when applicable;
- CPA-audited ICR Audit Report or Approved State DOT Cognizant Indirect Rate Letter, if any;
- Consultant Certification of Costs and Financial Management (Exhibit 10-K: Consultant Certification of Contract Costs and Financial Management System) for contracts over $150,000 or more;
- A&E Consultant Audit Request Letter and Checklist (Exhibit 10-A: A&E Consultant Audit Request Letter and Checklist) for contracts over $150,000 and all supporting documentation.
- Executed consultant contracts, cost proposals and amendments (see Exhibit 10-R: A&E Boilerplate Agreement Language and Exhibit 10-H: Sample Cost Proposal);
- Contract oversight and progress meeting documents;
- Progress and final payments, and supporting documentation;
- Performance evaluation (see Exhibit 10-S: Consultant Performance Evaluation);
- Consultant contract checklists (see Exhibit 10-C: A&E Consultant Contract Database);
• Accounting records documenting compliance with State and federal administrative requirements;

• Certifications and Conflict of Interest forms (Exhibit 10-T: Conflict of Interest & Confidentiality Statement), all personnel involved in the procurement of the agreement should complete Exhibit 10-T Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement and Exhibit 10-Q: Disclosure of Lobbying Activities, as appropriate). Exhibit 10-Q is included in the solicitation and shall be completed if the consultant needs to disclose any lobbying activities.

Retention Clauses
At the option of the local agency, a retention clause may be included in the consultant contract. A retention clause in the consultant contract is recommended (see Exhibit 10-R: A&E Boilerplate Agreement Language, Article XXXI).

Review of Local Agency Actions
Federal-aid or state reimbursement is contingent on meeting the federal or state requirements and can be withdrawn, if these procedures are not followed and documented. The local agency files are to be maintained in a manner to facilitate future FHWA or Caltrans process reviews and audits. As specified in the Review and Approval of Contracts above, the Contract Administrator must review the proposed consultant contract before execution.

Exhibit 10-C: A&E Consultant Contract Database is to be completed prior to award, or after contract award but no later than the first invoice. A copy of Exhibit 10-C must be retained in the local agency project files.

10.1.9 MISCELLANEOUS CONSIDERATIONS

Agreements with Other Governmental Agencies
Intergovernmental or inter-entity agreements are encouraged if appropriate. If another governmental agency is requested to do work or provide services to an agency, an interagency agreement is needed. See 2 CFR 200 and CA Government Codes 10340 and 11256.

Small Purchase Contracts
Contracts that are less than $250,000 are considered small contracts in accordance with federal regulations. However, within the State of California, there is not a recognized small purchase procedure and all A&E contracts are procured using qualifications based selection and not cost. For federal contracts that are less than $250,000 and are not anticipated to exceed this amount, the agency shall use Section 10.2: State-Only Funded A&E Contracts or the federal guidance for contracts greater than $250,000. If the contract is anticipated to exceed $250,000, use one of the accepted procurement procedures listed in the previous sections. Small contracts using the simplified acquisition procedure (State-Only funded section) shall not exceed $250,000 or the additional costs are considered not reimbursable. The entire contract could also be considered ineligible by FHWA depending on circumstances. The scope of work, project phases, and contract requirements shall not be broken down into smaller components to permit the use of small purchase procedure. DBE requirements apply for all federally funded projects.
Noncompetitive Negotiated Contracts (Sole-Source)

Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under sealed bids or competitive proposals (23 CFR 172.7(a)(3)).

FHWA considers these types of contracts as Sole Source contracts and should be used only in very limited circumstances. A Public Interest Finding prepared by the local agency and approved by Caltrans is required before establishing these services (23 CFR 172.7(a)(3); also see Exhibit 12-F: Cost-Effectiveness/Public Interest Finding.

Conditions under which noncompetitive negotiated contracts may be acceptable include:

- Only one organization is qualified to do the work;
- An emergency exists of such magnitude that cannot permit delay;
- Competition is determined to be inadequate after solicitation of a number of sources.

The local agency shall:

- Follow its defined process for noncompetitive negotiation;
- Develop an adequate scope of work, evaluation factors, and cost estimate before solicitation;
- Conduct negotiations to ensure a fair and reasonable cost.

The local agency must carefully document details of the special conditions, obtain Caltrans approval on a Public Interest Finding and retain all documents in the project files for future Caltrans’ or FHWA’s review.

Retaining a Consultant as an Agency Engineer or in Management Support Role

A local agency may retain qualified consultants in a management support role on its staff in professional capacities for federal-aid projects such as:

- A City Engineer (or equivalent) who manages the engineering unit for the city, providing oversight of a project, series of projects, managing or directing work of other consultants or contractors on behalf of the City.
- A County Engineer (or equivalent) who manages the engineering unit for the county such as duties described above.
- A Project Manager (or equivalent) who manages and oversees a project, series of projects or the work of other consultants and contractors on behalf of the public agency.
- A Program Manager (or equivalent) who manages and oversees an element of a highway program, function, or service on behalf of the public agency.

However, typically a consultant in a management support role is not:

- A consultant engineer performing project-specific design, and/or construction contract administration and construction engineering for the public agency.
- A consultant providing support to administrative duties such as federal authorization process, labor compliance activities, and other management and administrative tasks.
The use of a consultant in a management support role should be limited to unique or very unusual situations. These situations require a thorough justification as to why the local agency cannot perform the management. Consultants used in management support roles must be selected using the same procedures as those for other consultants specified in this chapter. Consultants in a Management Support Role funded by local or state funds must have approval from FHWA to be considered qualified to manage federal projects or consultants providing services on federal projects.

Eligibility for federal or state reimbursement for a consultant in a management support role requires the following:

- Compliance with the selection procedures specified in this chapter;
- Existence of a contract between the local agency and the consultant specifying the local agency engineering services to be performed;
- Written designation by the local agency of the responsibilities and authority of the consultant as an agency engineer;
- For a federal-aid project, completion of Exhibit 10-T: Conflict of Interest & Confidentiality Statement by all members (both consultants and employees) prior to participating in the Architect & Engineering (A&E) Selection Panel pertaining to the specific selection process and the firms being considered;
- Selection of consultants for A&E management positions shall be by the use of qualification based selection procedures on an open and competitive basis resulting in a contract with defined beginning and ending dates not to exceed five (5) years;
- For a federal-aid project, a local agency consultant in a management support role shall not:
  - Participate in, or exercise authority over the A&E selection process, if that consultant’s firm is one of the proposing firms, or subconsultant to a proposing firm;
  - Participate in, or exercise authority over management of work performed by the consultant’s firm, or to a consultant’s firm of which the local agency consultant firm is a subconsultant. This would include, but not be limited to, managing or directing the work, approving changes in the schedule, scope, or deliverables; and approving invoices.
  - Apply for or receive reimbursement of federal-aid funds for the local agency’s federal-aid project if either of the foregoing has occurred. However, reimbursement for the construction contract portion of the project will still be allowed provided all other federal-aid requirements have been met.
  - Where benefiting more than a single federal-aid project, allocability of consultant contract costs for services related to a management support role shall be distributed consistent with the cost principles applicable to the contracting agency in 23 CFR 172.7(b)(5).

If engineering services for a project are within the scope of the services described in the retained consultant’s contract, these services may be performed by the person or firm designated as an agency engineer. If the services are not within the scope, eligibility for federal
reimbursement for these services require a new consultant contract to be developed using the selection procedures in this chapter. Retained consultants involved in the preparation of the RFP or RFQ shall not be considered in the selection of consultants for the resulting project specific work.

When engineering or architectural consultants in a management support role are procured with federal-aid funds, the local agency (subgrantee) shall fully comply with the following:

- Subparagraphs of 2 CFR 200.318 maintain a contract administration system and maintain a written code of standards. No employee, officer or agent of the subgrantee shall participate in selection, or in the award or administration of a contract supported by federal funds if a conflict of interest, real or apparent, would be involved.

- Subparagraph of 23 CFR §172.7(b) requires that the local agency shall receive approval from FHWA. In addition, any federal-aid projects designated as Projects of Division Interest may also need approval from FHWA.

- Liability insurance should normally be required from the consultant (errors and omissions, etc.).

For federally funded projects, local agencies that solicit to hire A&E consultant(s) in a management support role must obtain FHWA approval prior to contract execution.

In order for a contract for a consultant in a management support role to be federally eligible, the following are required prior to contract execution:

- The local agency shall submit a request for approval via email, the Scope of Work (SOW) and Conflict of Interest (COI) Policy to the Division of Local Assistance-Headquarters (DLA-HQ) at aeoversight@dot.ca.gov, prior to solicitation.

- Once the local agency receives FHWA’s written response, the local agency may need to revise the documents reflecting FHWA’s opinions and can proceed with the RFQ.

- After consultant selection, the local agency shall submit the completed **Exhibit 10-U: Consultant in Management Support Role Conflict of Interest and Confidentiality Statement** to the DLA-HQ at aeoversight@dot.ca.gov. Local agency will receive FHWA’s approved **Exhibit 10-U** via email.
Construction Engineering Services

Under federal-aid regulations and state policy, the primary responsibility for general supervision of construction must remain with the local agency. The local agency must also ensure that the work is performed in accordance with the approved plans and specifications, by employing or retaining as a consultant a registered engineer for construction engineering services on the project.

All construction engineering activities performed by a consultant must be under the overall supervision of a full-time employee of the agency who is in responsible charge. These activities may include preparation of contract change orders, construction surveys, foundation investigations, measurement, and computation of quantities, testing of construction materials, checking of shop drawings, preparation of estimates, reports, and other inspection activities necessary to ensure that the construction is being performed in accordance with the plans and specifications. The construction engineering consultant’s contract defines the relative authorities and responsibilities of the full-time employee of the local agency in charge of the project and the consultant’s construction engineering staff.

If a technical inspection consultant is to provide professional assistance to the local agency, a formal consultant contract must be executed which follows this chapter’s requirements. The contract shall provide for reviews at appropriate stages during performance of the work to determine if any changes or other actions are warranted. These reviews are to be made by the local agency.
10.1.10 PROGRAM MANAGEMENT

According to 23 CFR §172.5, local agencies are required to adopt written policies and procedures prescribed by Caltrans. The local agency shall adopt Caltrans Local Assistance Chapter 10: Consultant Selection. Local agencies are responsible for providing all resources necessary for the procurement, management, and administration of A&E consultant contracts including subcontracts. Ensuring consultant costs billed are allowable in accordance with the Federal cost principles and consistent with the contract terms as well as the acceptability and progress of the consultant's work;

- Monitoring the consultant's work and compliance with the terms, conditions, and specifications of the contract;
- Preparing a consultant's performance evaluation when services are completed and using such performance data in future evaluation and ranking of consultant to provide similar services;
- Closing-out a contract;
- Retaining supporting programmatic and contract records, as specified in 2 CFR 200.333 and the requirements of this part;
- Determining the extent to which the consultant, which is responsible for the professional quality, technical accuracy, and coordination of services, may be reasonably liable for costs resulting from errors and omissions in the work furnished under its contract;
- Assessing administrative, contractual, or legal remedies in instances where consultants violate or breach contract terms and conditions, and providing for such sanctions and penalties as may be appropriate; and
- Resolving disputes in the procurement, management, and administration of engineering and design related consultant services.

An example resolution is located at: https://dot.ca.gov/programs/local-assistance/environmental-and-other-policy-issues/consultant-selection-procurement.

10.1.11 REFERENCES

23 CFR, Part 172 Administration of Engineering and Design Related Service Contracts
http://www.ecfr.gov/cgi-bin/text-idx?rgn=div5&node=23:1.0.1.2.3

40 USC, Section 1104 Brooks Act
http://www.fhwa.dot.gov/programadmin/121205.cfm

41 CFR Public Contracts and Property Management
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title41/41tab_02.tpl

41 USC Public Contracts
http://law.onecle.com/uscode/41/index.html

23 USC Letting of Contracts
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48 CFR, Chapter 1, Part 15.404
https://www.acquisition.gov/far/html/FARTOCP15.html

48 CFR, Chapter 1, Part 31
https://www.acquisition.gov/far/html/FARTOCP15.html

Title 48, Part 16 – Types of Contracts

48 CFR 27, Subpart 27.3 – Patent Rights under Government Contracts

48 CFR 31.201-3

48 CFR, Chapter 99 – Cost Accounting Standards, Subpart 9900

2 CFR Part 200
http://www.ecfr.gov/cgi-bin/text-idx?SID=eb0db4a32ce93f6c5815e6fe58791d9d&mc=true&tpl=/ecfrbrowse/Title02/cfr200/main_02.tpl

49 CFR, Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs
http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

American Association of State Highway and Transportation Officials (AASHTO) Uniform Audit and Accounting Guide
http://audit.transportation.org/Pages/default.aspx

Caltrans Division of Procurement and Contracts Website
http://www.dot.ca.gov/dpac/index.html

California Labor Code, Section 1775
http://law.onecle.com/california/labor/1775.html

Government Auditing Standards (GAS) issued by the United States Government Accountability Office
http://www.gao.gov/yellowbook/overview

Government Code Sections 4525 through 4529.5
http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=04001-05000&file=4525-4529.5

OMB Circular A-110 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations
https://www.whitehouse.gov/omb/circulars_a110

Standard Environmental Reference (SER)
http://www.dot.ca.gov/ser/
10.2: STATE-ONLY FUNDED A&E CONTRACTS

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10.2.1 GENERAL

Local Agencies are required to follow all applicable local and state regulations including those listed in LAPM Chapter 10 in accordance with their State Master Agreement. Although the requirements listed in this section are minimum requirements, the local agency shall use good engineering judgment and best practices to document their processes and procedures when procuring A&E contracts utilizing qualifications based selections.


Agency state-only funded (SOF) agreements must contain the required federal fiscal provisions from 2 CFR 200 in all Division of Local Assistance funded agreements. Exhibit 10-R: A&E Boilerplate Agreement Language contains 2 CFR 200 requirements and may also be used in SOF agreements. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

All proposed A&E contracts and supporting documents (including state-only funded) are subject to audit or review by Caltrans’ Independent Office of Independent Office of Audits and Investigations (IOAI), other state audit organizations, or the federal government and required to follow LAPM Section 10.1.3 A&E Consultant Audit and Review Process.

For consultant contracts, procured with local or state funds, to provide services for federal-aid projects, or to oversee or manage other consultants providing these services, the Consultant in Management Support Role process must be completed to be eligible for reimbursement. Refer to Chapter 10.1.9 Miscellaneous Considerations: Retaining a Consultant as an Agency Engineer or in a Management Support Role.

DBE contract goals are not required for state-only funded contracts.

This guidance is for contracts utilizing state funds only. If any federal funds are added or reimbursed, the federal process must be followed.

Non-A&E consultant contracts reference LAPM Section 10.3: Non-A&E Contracts.

Reference: California Government Code Title 1, Division 5, Chapter 10, Contracts with Private Architects, Engineering, Land Surveying, and Construction Project Management Firms §4525-4529.5.
10.2.2 DEFINITION OF A&E

Architectural, landscape architectural, engineering, environmental, and land surveying services includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

Construction project management means those services provided by a licensed architect, registered engineer, or licensed general contractor. Any individual or firm proposing to provide construction project management services shall provide evidence that the individual or firm and its personnel carrying out onsite responsibilities have expertise and experience in construction project design review and evaluation, construction mobilization and supervision, bid evaluation, project scheduling, cost-benefit analysis, claims review and negotiation, and general management and administration of a construction project.

Environmental services mean those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws.

Reference: California Government Code §4527

10.2.3 MINIMUM AUDIT REQUIREMENTS

A. Written Procedures
Local agencies shall follow the minimum requirements listed below in addition to any local laws and regulations.

Reference: California Government Code §4526

B. Conflict of Interest
The local agency must develop and maintain a written code of conduct governing the performance of its employees engaged in the award and administration of state funded contracts, including the prevention of conflicts of interest.

References:
California Government Code §4526
California Government Code §1090
California Government Code §4529.12

C. Records
Local agencies shall keep adequate records of all contracts including the procurement, project management, accounting and financial administration.

References:
California Government Code §4529.14
California Government Code §4006
D. Full & Open competition
All A&E contracts shall be procured through a qualifications based selection utilizing open and fair competition. Evaluate at least three consultants using published evaluation criteria and rank these firms in order of preference. If less than three consultants are evaluated, provide justification for agency file.

References:
California Government Code §4526
California Government Code §4527

E. Selection Basis
Selection of a firm shall be based on qualifications and the order of ranked preference.

References:
California Government Code §4526
California Government Code §4527

F. Publication
Solicitations for A&E contracts shall be in a manner that is open and competitive.

Reference: California Government Code §4527

G. Solicitation
The solicitations shall include published evaluation criteria to rank in order of preference. Clearly define expectations in the solicitation in order to evaluate firms.

Reference: California Government Code §4527

H. Cost Analysis
An independent cost comparison to the consultant’s cost proposal shall be done in order to ensure the contract is negotiated at a fair and reasonable price.

Reference: California Government Code §4528

I. Negotiations
Negotiations must be documented to verify a fair and reasonable contract has been executed using public funds.

Reference: California Government Code §4528

J. Audit and Review Process
A&E contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits. All agencies shall follow the Audit and Review Process as stated in LAPM Section 10.3: A&E Consultant Audit and Review Process.

http://www.dot.ca.gov/hq/LocalPrograms/lam/LAPM/ch10.pdf
http://www.dot.ca.gov/hq/LocalPrograms/lam/forms/chapter10/10a.pdf

Reference: California Government Code §4529.14
K. Exhibit 10-C: A&E Consultant Contract Database
Exhibit 10-C: A&E Consultant Contract Database must be completed at http://dlaaeoversight.dot.ca.gov/fmi/webd/Exhibit%2010-C (please use Firefox or Chrome if not supported by your browser) prior to contract award, or after contract award but no later than the first invoice.
CA Government Code References

California GOV §1090
(a) Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

(b) An individual shall not aid or abet a Member of the Legislature or a state, county, district, judicial district, or city officer or employee in violating subdivision (a).

(c) As used in this article, “district” means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

California GOV §4006
Plans, specifications, work authorizations describing work to be performed, and all other information referred to in this chapter are open to inspection and examination as a public record.

California GOV §4525
For purposes of this chapter, the following terms have the following meaning:
(a) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice the profession of architecture, landscape architecture, engineering, environmental services, land surveying, or construction project management.

(b) “State agency head” means the secretary, administrator, or head of a department, agency, or bureau of the State of California authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(c) “Local agency head” means the secretary, administrator, or head of a department, agency, or bureau of any city, county, city and county, whether general law or chartered, or any district which is authorized to contract for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

(d) “Architectural, landscape architectural, engineering, environmental, and land surveying services” includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.

(e) “Construction project management” means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

(f) “Environmental services” means those services performed in connection with project development and permit processing in order to comply with federal and state environmental laws. “Environmental services” also includes the processing and awarding of claims pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

California GOV §4526
Notwithstanding any other provision of law, selection by a state or local agency head for professional services of private architectural, landscape architectural, engineering, environmental, land surveying, or construction project management firms shall be on the basis of demonstrated competence and on the professional qualifications necessary for the satisfactory performance of the services required. In order to implement this method of selection, state agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services shall adopt by regulation, and local agency heads contracting for private architectural, landscape architectural, professional engineering, environmental, land surveying, and construction project management services may adopt by ordinance, procedures that assure that these services are engaged on the basis of demonstrated competence and qualifications for the types of services to be performed and at fair and reasonable prices to the public agencies. Furthermore, these procedures shall assure maximum participation of small business firms, as defined by the Director of General Services pursuant to Section 14837.
In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this section which would subject those employees to the prohibition of Section 87100.

**California GOV §4527**

In the procurement of architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, the state agency head shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data.

(a) When the selection is by a state agency head, statewide announcement of all projects requiring architectural, landscape architectural, engineering, environmental, land surveying, or construction project management services shall be made by the agency head through publications of the respective professional societies. The agency head, for each proposed project, shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with no less than three firms regarding anticipated concepts and the relative utility of alternative methods of approach for furnishing the required services and then shall select therefrom, in order of preference, based upon criteria established and published by him or her, no less than three of the firms deemed to be the most highly qualified to provide the services required.

(b) When the selection is by a local agency head, the agency head may undertake the procedures described in subdivision (a). In addition, these procedures shall specifically prohibit practices which might result in unlawful activity including, but not limited to, rebates, kickbacks, or other unlawful consideration, and shall specifically prohibit government agency employees from participating in the selection process when these employees have a relationship with a person or business entity seeking a contract under this section.

**California GOV §4528**

(a) When the selection is by a state agency head the following procedures shall apply:

(1) The state agency head shall negotiate a contract with the best qualified firm for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services at compensation which the state agency head determines is fair and reasonable to the State of California or the political subdivision involved.

(2) Should the state agency head be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the agency head determines to be fair and reasonable to the State of California or the political subdivision involved, negotiations with that firm shall be formally terminated. The state agency head shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the state agency head shall terminate negotiations. The state agency head shall then undertake negotiations with the third most qualified firm.

(3) Should the state agency head be unable to negotiate a satisfactory contract with any of the selected firms, the state agency head shall select additional firms in order of their competence and qualification and continue negotiations in accordance with this chapter until an agreement is reached.

(b) When the selection is by a local agency head, the local agency head may undertake the procedures described in subdivision (a).

**California GOV §4529**

This chapter shall not apply where the state or local agency head determines that the services needed are more of a technical nature and involve little professional judgment and that requiring bids would be in the public interest.

**California GOV §4529.12**

All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a
Local Assistance Procedures Manual

Consultant Selection

The consultant shall not have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

California GOV §4529.14
Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

California GOV §4529.20
This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.


Attachment A: FHWA 2 CFR 200 Uniform Guidance – Questions and Answers

Question 21: "Will the FHWA/USDOT provide a waiver of the requirements in 2 CFR 200.317 for subrecipients to comply with State procurement requirements or other policies and procedures approved by the State (200.317)?"

Answer: Yes. The USDOT requested and received an OMB waiver of the requirements in 2 CFR 200.317 concerning procurement by subrecipients. This waiver provides an exception to the requirement for all subrecipients of a state to follow the procurement requirements in Sections 200.318 through 200.326. The waiver will allow States and subrecipients to continue to use state-approved procurement procedures as they did under part 18 prior to the adoption of the Uniform Guidance.
**Figure 10.2 State-Only Funded Procurement Criteria**


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*Mini Brooks Act - State regulation requiring the initial selection of engineering and architecture firms be based upon qualifications and experience rather than by price. Price is then later negotiated.*
10.3: NON-A&E CONTRACTS

Scope
This section covers the procurement requirements for the services that are not included in Section 10.1 Federal and Section 10.2 State-Only. This guidance is for contracts utilizing federal-aid funds and state funds. Federal regulations refer to state and local regulations for non-A&E type contracts. Although local agencies are required to follow 2 CFR 200: Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards for all contracts, the Procurement Standards section §200.318-200.326 is exempt. The guidance in this section follows the established regulations in the California Public Contract Code. Depending upon the scope of work, the required contract provisions may need to include the California State Prevailing Wages.

Local agency shall designate one person within the local agency as a contract manager.

(PCC 10348.5)

Determining Non-A&E
After identifying that there is a need for consulting services, the local agency shall determine that the services needed are more of a technical nature and involve minimal professional judgement and that requiring a cost proposal would be in the public’s best interest. These type of consultant services that are not directly related to a highway construction project or that are not included in the definition of engineering and design related services are considered non-A&E. The services must not be included in Section 10.2.2 Definition of A&E.

The determining factor is whether the services being procured are related to a specific construction project and whether the services require work to be performed, provided by, or under the direction of a registered engineer or architect.

Example of Determining Non-A&E
Material testing has been requested to ensure quality assurance on a construction project. The service includes only performing the material test and providing material test data. Although the service is related to a construction project, the overall service did not provide an evaluation or a discipline report. In this example, the local agency can determine that the service provided is more of a technical nature and is therefore a non-A&E service.

The following is a list of the more common non-A&E services:

- Right-of-Way Appraisal
- Right-of-Way acquisition activities
- Conducting public outreach during environmental clearance or construction
- Active Transportation Program educational and outreach activities
- Intelligent Transportation System (ITS)
- Non-Infrastructure
Intelligent Transportation System (ITS) Projects

Intelligent Transportation System (ITS) means electronic, communications, or information processing used singly or in combination to improve the efficiency or safety of a surface transportation system. ITS projects are those that in whole or in part, funds the acquisition of technologies or systems of technologies that provide significant contributions to the provision of one or more ITS user services as defined in the National ITS Architecture.

The federal-aid procurement regulations identify three possible contract procurement procedures for ITS projects including engineering and design related services (A&E), construction, and non-engineering/non-architectural (non-A&E).

If ITS projects include physical installation of field devices and/or communications infrastructure, such as new traffic signals, new controller cabinets, changeable message signs, radio and computers, vehicle detectors, and conduits for cabling in the roadway, then that work and required equipment usually meets the definition of construction. The construction contract must be procured based on competitive bidding. If the ITS project involves software development, system integration, hiring engineers and specialists for ITS design and installation support, inspection, design documentation, training and deployment, it may be considered an engineering and design services contract and the contract must be procured as an A&E consultant contract. If the scope of work is unclear as to whether it is an A&E type of work, contact aeoversight@dot.ca.gov for assistance.

However, if an ITS project does not meet either the definition of construction or engineering and design services, then the contract may be considered to be a non-A&E consultant contract.

Examples of non-A&E consultant contracts are:

- The procurement of hardware and software associated with incident management system;
- Software systems for arterial and freeway management systems;
- Operating the 511 traveler information service;
- Nonprofessional services for system support such as independent validation and verification, testing and specification development;

For more information regarding Intelligent Transportation Systems (ITS) Program procurement requirements, refer to LAPG, Chapter 13 LAPG Chapter 13: Intelligent Transportation Systems.

Non-Infrastructure Projects

Non-infrastructure (NI) projects are those transportation-related projects that do not involve either engineering design, Right-of-Way acquisition (for additional guidance refer to LAPM Chapter 13), or the eventual physical construction of transportation facilities.

Procurement of non-A&E consultant contracts associated with non-infrastructure projects must follow Non-A&E procurement procedures described in this chapter. For more information on NI projects, refer to LAPM Chapter 3: Project Authorization.
Governing Regulations and Codes for Non-A&E


Procurement of Non-A&E Consultant Contracts

All non-A&E procurements contracts must be conducted in a manner providing full and open competition consistent with federal and state standards. Local agency must meet the code of conduct governing the performance of its employees engaged in the award and administration of federal-aid and state-funded contracts, including the prevention of conflict of interest in PCC 10410.

The following are the fundamental rules when procuring a non-A&E consultant contract.

1. The request for proposal (RFP) shall not limit the competition directly or indirectly to any one consultant. The RFP must be publicized and all evaluation factors and their relative importance identified. (PCC 10339)

2. Splitting a single transaction into a series of transactions for the purpose of evading the procurement requirements is not allowed. (PCC 10329)

3. Local agency shall secure at least three competitive proposals for each contract. (PCC 10340) When receiving less than three proposals, refer to the Cost-Effective/Public Interest Finding in this section as an alternative to re-advertisement.

4. No proposals shall be considered which have not been received at the place, and prior to the closing time as stated in the RFP. (PCC 10344(a))

5. Local agency must have a written procedure for evaluating proposals. (PCC 10344)

RFP Basic Requirements

A. There are two general types of consulting service contract solicitations:

B. Request for Proposal using Cost only

C. Request for Proposal using Cost and Qualifications

The local agency must include the following in the request for proposal:

A. A clear, precise description of the work to be performed or services to be provided.

B. Description of the format that proposals shall follow and the elements they shall contain.

C. The standards the agency will use in evaluating proposals. This includes qualifications and certifications if applicable.

D. The date the proposals are due.
E. The procurement schedule that the local agency will follow in reviewing and evaluating the proposals.

(PCC 10344)

Additional Requirements and Evaluation Criteria

Additional Requirements for Request for Proposal using Cost only

A. Local agency must require consultants to submit their proposals and cost in a separate, sealed envelope.

B. Local agency shall determine those that meet the format requirements and the standards specified in the request for proposal.

C. The sealed envelopes containing the price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

D. Contract must be awarded to the lowest responsible consultant meeting the standards.

(PCC 10344(b))

Additional Requirements for Request for Proposal using Cost and Qualifications

A. Local agency must include in the proposal the description of the evaluation and scoring method. Substantial weight in relationship to all other criteria utilized shall be given to the cost amount proposed by the consultant.

B. Local agency shall determine those that meet the format requirements specified in the RFP.

C. Local agency evaluation committee must evaluate and score the proposals using the methods specified in the RFP. All evaluation and scoring sheets shall be available for public inspection after the committee scoring process. Evaluation committee should comply to the prevention of conflict of interest in PCC 10410.

D. The non-A&E contract shall be awarded to the consultant whose proposal is given the highest score by the evaluation committee.

(PCC 10344(c))

When using RFP (Cost and Qualifications), the criteria used to evaluate the consultant’s proposals must have a logical foundation within the scope of work or within other technical requirements contained in the RFP. Each criterion must have a weight or level of importance, and it is recommended that total possible score for the evaluation criteria be one hundred (100) points. The proposed cost should be at least thirty percent (30%) of total points in evaluation criteria.

An example RFP for non-A&E is provided on the Local Assistance website at https://dot.ca.gov/-media/dot-media/programs/local-assistance/documents/ae/files/rfp-example-non-ae.docx and may be modified.

Submission of Exhibit 10-C: Consultant Contract Database to Caltrans HQ is not required for non-A&E consultant contracts.
Consultant's Proposal
The consultant’s proposal should include the following information:

- Consultant Project Manager – qualifications, roles and responsibilities.
- Methodology - description of work and overall approach, specific techniques that will be used and specific administrative and operations expertise to be used.
- Workplan and Work Schedule - the technical proposal should include activities and tasks, and their delivery schedule.
- Personnel - List of personnel who will be working on the project, and their resumes.
- Facilities and resources (If applicable) - Explanation of where the services will be provided and what type of equipment is needed to perform services.
- Sub-contracts - Identify all sub-contracts that are to be used, description of each and the work by each sub-consultant/sub-contractor. No work shall be subcontracted unless listed in the technical proposal. Sub-consultant resumes should be provided.
- References - The technical proposal should provide at least three (3) clients for whom the proposer has performed work of similar nature to the request.

Cost Proposal Worksheet
The RFP should provide a standard format for cost proposal that all proposers must include in their proposal. The cost proposal format can be broken down by specific tasks, showing hourly labor rates, level of effort and material, and/or by milestones and deliverables.

Local agency is not required to award a contract if it is determined that the contract price is not reasonable. (PCC 10340(c))

DBE Consideration
DBE consideration is required on all federal-aid funded contracts including non-A&E.

Administrative Requirements
Advertisement for RFPs may be through the local agency website, local publications, and national publications. Minimum solicitation time is 14 calendar days. The solicitation should inform potential qualified consultants that questions must be submitted in writing to the Agency Contract Manager/Administrator by a specified date and time. All pertinent technical information and answers to consultant’s questions shall be provided to all potential consultants. Written responses to all questions will be collectively compiled and provided as an addendum.

A proposal may be considered nonresponsive and rejected without evaluation if all required information is not provided. Proposals without information regarding, or not meeting, the required DBE utilization goal or without a Good Faith Effort documentation, late submittals, submittals to the wrong location, or submittals with inadequate copies are considered nonresponsive and shall be rejected. Submittal of additional information after the due date shall not be allowed. Documentation of when each proposal was received must be maintained in the project files. Copies of date stamped envelope covers or box tops are recommended.
No consultant who has been awarded a consulting service contract may be awarded a subsequent contract for the services or goods which are required as an end product of the consulting service contract, unless the subcontract is no more than 10 percent of the total monetary value of the consulting services contract. Excludes A&E contracts.

(PCC 10365.5)

Contracts may be modified or amended only if the contracts so provide. Amendments must be requested and executed prior to the termination date of the most recently approved original or amended contract. All records of contract activities shall be kept for three years after federal final voucher E-76 or state final voucher for State-Only funds. Costs are reimbursable after state allocation by the California Transportation Commission (CTC) and/or the issuance of the federal E-76. The per diem rate shall not exceed the state rate. Contract Managers are responsible for monitoring expenditures on all contracts and verifying categories of work that require prevailing wage. A person in Responsible Charge of contract management is required for all federally funded projects.

**Oral Presentations Optional**

When oral presentations are required by the local agency, the evaluation criteria must include factors/sub-factors and weights used to score the proposers performance at the oral presentation. The evaluation committee will only be able to score each proposer based upon these criteria. The Contract Manager/Administrator should develop a set of questions related to the scope of work or the project to be asked during the evaluation committee question and answer (Q & A) section of the oral presentations. All proposers are asked the same questions for consistency.

The committee must also evaluate reference checks and other information gathered independently. Reference checks shall be completed and other information gathered before the interviews are conducted. If necessary, the results of the reference checks or other information may be discussed with the highest ranked qualified consultants at the interviews.

**Cost-Effective / Public Interest Finding**

A minimum of three proposal must be evaluated to establish effective competition. Any agency that has received less than three proposals on a contract shall document the names and addresses of the firms or individuals it solicited for proposals. Prepare an explanation as to why less than three proposals were received. When only two proposals are received, a justification must be documented to proceed with the procurement. When only one proposal is received, a Non-Competitive process must be justified and a Public Interest Finding (PIF) (LAPM Exhibit 12-F: Cost-Effective/Public Interest Finding) must be documented. In either case, the re-advertisement of the RFP should be considered as an option. Retain document as supporting documentation in the contract file.

(PCC 10340(c))

**Protest / Appeals / Reinstatement Procedures**

Both state and federal regulations require well-defined protest/reinstatement procedures. It is essential that the procedures include a reasonable opportunity for the prospective consultant to present his/her case. The appeals procedures strengthen the process by which the contracting agency reaches its ultimate goal and helps defends its action against a claim of lack of due process. A termination clause and a provision for settlement of contract disputes are required. Protest procedures and dispute resolution processes should be in accordance with PCC 10345.
TO: City Council
FROM: Jeff Jones, Finance Director
Jerry Breckinridge, City Manager
SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN APPROVING AN
AUDIT SETTLEMENT AGREEMENT BETWEEN THE CALIFORNIA DEPARTMENT
OF TRANSPORTATION AND THE CITY OF ARVIN AND INITIATING
IMPLEMENTATION OF THE CORRECTIVE ACTION PLAN FOR CALTRANS
PROJECT NO. ATPL-5370(027).

BACKGROUND:
The City of Arvin entered into a Master Agreement with the California Department of
Transportation (“Caltrans”) for Active Transportation Program (“ATP”) funds on October 8,
2014 under Agreement No. 00479S (“Master Agreement”) and filed as Caltrans Project No.
ATPL-5370(027).

The Master Agreement and the corresponding Program Supplement Agreement No. 00479S-
N71 dated July 15, 2015 (“Project Agreements”), provided $680,000 in Caltrans administered
funds (“ATP Funds”) to the City for the construction of paved walkways, access ramps and
crosswalks at various locations in the City (“Project”).

Caltrans’ Independent Office of Audits and Investigations performed an audit of the City’s
performance of the Project and in its findings, issued on June 29, 2018, determined that the
City’s performance and use of $557,986 of the ATP Funds was allegedly not in compliance with
the terms of the Project Agreements and certain state regulations (“Audit Findings”).

In July of 2018, the City disputed the Audit Findings, and entered into discussion with Caltrans
regarding the same.

In May of 2019, the City contracted with the County of Kern to assign performance of the
Project, as well as ATP funds, to the County of Kern per the Agreement and Assignment of
Transportation Development Act (TDA) Local Transportation Funds - Local Funds for Project
Delivery Services, dated May 14, 2019 (“Assignment Agreement”).
In April of 2020, Caltrans accepted the City’s assignment of the Project and ATP Funds to the County of Kern, and has issued to the City a Corrective Action Plan, attached as Exhibit “A” and incorporated herein, which lists the terms, conditions and actions the City must undertake to address the Audit Findings and complete the Project.

Caltrans has prepared an Audit Settlement Agreement "Exhibit B" between Caltrans and the City, wherein the City agrees: (i) to abide by and carry out the terms of the Corrective Action Plan; (ii) to complete the Project in compliance with the terms of the Project Agreements and all applicable laws, regulations, and Caltrans guidelines; (iii) to complete the Project by December 31, 2021; and (iv) to submit timely quarterly Project status reports to Caltrans.

Approval of this resolution:

(1) Authorizes the City Manager to execute the Audit Settlement Agreement subject to approval as to legal form by the City Attorney; and

(2) Directs the City Manager to initiate implementation of the Corrective Action Plan, in accordance with the Audit Settlement Agreement and the Corrective Action Plan.

**FINANCIAL IMPACT:**
No impact to the general fund. However, as costs have increased since the project was approved in 2015 and additional tasks identified to complete the project, approximately $350,000 in additional TDA funds will be used to complete the project. This project is included in the fiscal year 2020-2021 budget.
RESOLUTION


WHEREAS, the City of Arvin entered into a Master Agreement with the California Department of Transportation ("Caltrans") for Active Transportation Program ("ATP") funds on October 8, 2014 under Agreement No. 00479S ("Master Agreement") and filed as Caltrans Project No. ATPL-5370(027);

WHEREAS, the Master Agreement and the corresponding Program Supplement Agreement No. 00-479S-N71 dated July 15, 2015 ("Project Agreements"), provided $680,000 in Caltrans administered funds ("ATP Funds") to the City for the construction of paved walkways, access ramps and crosswalks at various locations in the City ("Project");

WHEREAS, the City contracted with former City Engineering Firm Quad Knopf ("QK") to complete the Project work, as well as additional tasks to be funded by the City using non-ATP Funds;

WHEREAS, Caltrans’ Independent Office of Audits and Investigations performed an audit of the City’s performance of the Project and in its findings, issued on June 29, 2018, determined that the City’s performance and use of $557,986 of the ATP Funds was allegedly not in compliance with the terms of the Project Agreements and certain state regulations ("Audit Findings");

WHEREAS, the City disputed the Audit Findings, and entered into discussion with Caltrans regarding the same;

WHEREAS, the City wishes to complete the Project and has contracted with the County of Kern to assign performance of the Project, as well as ATP funds, to the County of Kern per the Agreement and Assignment of Transportation Development Act (TDA) Local Transportation Funds - Local Funds for Project Delivery Services, dated May 14, 2019 ("Assignment Agreement");

WHEREAS, Caltrans has accepted the City’s assignment of the Project and ATP Funds to the County of Kern, and has issued to the City a Corrective Action Plan, attached as Exhibit "A" and incorporated herein, which lists the terms, conditions and actions the City must undertake to address the Audit Findings and complete the Project; and

WHEREAS, Caltrans has prepared an Audit Settlement Agreement "Exhibit B" between Caltrans and the City, wherein the City agrees: (i) to abide by and carry out the terms of the Corrective Action Plan; (ii) to complete the Project in compliance with the terms of the Project Agreements and all applicable laws, regulations, and Caltrans guidelines; (iii) to complete the
Project by December 31, 2021; and (iv) to submit timely quarterly Project status reports to Caltrans.

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

Section 1. The foregoing recitals are true and correct and are incorporated by reference.

Section 2. The City Council of the City of Arvin authorizes the City Manager to execute the Audit Settlement Agreement subject to approval as to legal form by the City Attorney.

Section 3. The City Council of the City of Arvin direct the City Manager to initiate implementation of the Corrective Action Plan, in accordance with the Audit Settlement Agreement and the Corrective Actions specified in the Corrective Action Plan, and in coordination with the County of Kern, as is necessary, pursuant to the Assignment Agreement.
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 14th day of July, 2020 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.
Dear Mr. Breckinridge:

This letter serves as the California Department of Transportation (Caltrans) Division of Local Assistance’s (DLA) Corrective Action Plan (CAP) for the findings described in the Active Transportation Program (ATP) audit, File P1575-0057, for the City of Arvin (City), dated June 2018.

Finding 1 – Lack of Performance Results
The City did not meet deliverables and project outcomes consistent with their ATP application and their executed project agreement ATPL-5370(027).

Corrective Actions Required by DLA
1. The City is placed on probation for administering federal-aid and state funded transportation projects and procurements until Caltrans determines that the City can meet the minimum qualification to administer such projects and procurements.

2. In lieu of paying $557,986 in disallowed cost, the City must obtain resolution, sign the attached Audit Settlement Agreement, attach the City resolution to the Audit Settlement Agreement as Exhibit 3, and return the agreement back to Caltrans. The Audit Settlement Agreement legally requires project ATPL-5370(027) to be constructed according to the scope described in the ATP application.
3. Project ATPL-5370(027) shall be completed by **December 31, 2021**. If project ATPL-5370(027) is not completed by December 31, 2021, DLA will require reimbursement for the $557,986 in disallowed costs as recommended by the ATP audit.

4. The City shall allow Caltrans to perform enhanced oversight on all programmed federal and State funded transportation projects and procurements that are currently being administered by the City, including but not limited to Architecture and Engineering (A&E) procurement reviews, pre-advertise review of Plans, Specifications and Estimate (PS&E) packages, status updates attached with each invoice, and access to project construction sites.

5. Caltrans will conduct a future minimum qualification evaluation of the City to assess and ensure the City will be able to administer federal and State-funded projects and procurements on their own. Until the City successfully demonstrates its ability to meet and sustain minimum qualifications, and successfully complete all corrective actions, the City will remain on probation and prohibited from administering any future federal and State-funded projects and procurements. The City will provide Caltrans with status reports every quarter citing its progress towards completion of the corrective actions.

6. While on probation, the City will need to partner with another Caltrans-recommended agency, such as the County, to administer future programmed federal and State-funded transportation projects and procurements on the City's behalf.

7. City must develop and maintain contract management & project implementation procedures and guidelines in accordance with existing federal and state regulations, including but not limited to:
   a. Project costs, schedules, and reporting requirements so that deliverables are met.
   b. Contract dollar thresholds are determined for each contract.
   c. Method of payment is defined in each proposal.
   d. Task order dollar thresholds are adhered to per the terms of the executed contract.

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"
e. A fee schedule is developed to identify the components of loaded costs (a lump sum or hourly rate) in the consultant’s proposal.

f. Agreed-upon labor rates that are reimbursed per the terms of the executed contract.

Finding 2 - Conflict of Interest
The City did not have compensating controls to prevent the potential for conflicts of interest.

Corrective Actions Required by DLA
1. Adopt Chapter 10 of the Local Assistance Procedures Manual (LAPM) for the procurement of Architectural & Engineering (A&E) consultants. The City will provide a resolution showing that Chapter 10 has been adopted into their procurement policies:

2. City will ensure appropriate staff receive A&E Consultant Procurement training which is available through the link below and on DLA’s website. The training focuses on Chapter 10 of the LAPM. The City will provide a list of attendees.

https://www.youtube.com/watch?v=CtJGAzh1Jjc&feature=youtu.beUpd

Finding 3 - Inadequate Procurement Policies and Procedures
The procurement process used to procure a contract with Quad Knopf for A&E professional services was not in compliance with State requirements.

Corrective Actions Required by DLA
Refer to corrective actions 1 and 2, under Finding 2.

Finding 4 - Inadequate Contract Management
The City did not properly manage the third-party contract with Quad Knopf.

Corrective Actions Required by DLA
Refer to corrective actions 7 a-f, under Finding 1.

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability"
If you have any questions, please contact Daniel Burke, at (916) 654-5854 or <daniel.burke@dot.ca.gov>.

Sincerely,

Dee Lam, Acting Chief
Division of Local Assistance

c: Adam Ojeda, PE, City Engineer, City of Arvin
Ahron Hakimi, Executive Director, Kern Council of Governments
Mitch Weiss, Executive Director, California Transportation Commission
Rhonda Craft, Inspector General, independent Office of Audits and Investigations
MarSue Morrill, Chief, Independent Office of Audits and Investigations
Luisa Ruvalcaba, Audit Manager, Independent Office of Audits and Investigations
Shari Bender Ehler, District Director, District 6, Caltrans
Laura Gordon, Acting Deputy Director, Transportation Planning, District 6, Caltrans
James Perrault, District Local Assistance Engineer, District 6, Caltrans
Jeanie Ward-Waller, Deputy Director, Planning and Modal Programs, Caltrans
Mark Samuelson, Assistant Division Chief, Division of Local Assistance, Caltrans
Felicia Haslem, Acting Chief, Office of Guidance and Oversight, Division of Local Assistance, Caltrans
Jaime Espinoza, Chief, Office of State Programs, Division of Local Assistance, Caltrans
Teresa McWilliams, ATP Manager South, Office of State Programs, Division of Local Assistance, Caltrans

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability."
Audit Settlement Agreement

between

California Department of Transportation

and

City of Arvin

This AGREEMENT, effective on ________________________, is between the State of California, acting through its Department of Transportation, referred to as Caltrans and;

City of Arvin, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as City.

Recitals

1. The City applied and received Active Transportation Program (ATP) funds in the amount of $680,000 to construct sidewalks at various locations, hereinafter referred to as PROJECT, and as specified in the project application hereinafter referred to as APPLICATION which is attached to and made a part of this AGREEMENT by reference.

2. Caltrans administered the $680,000 through its Master Agreement titled Administering Agency-State Agreement for State Funded Projects which is attached to and made a part of this AGREEMENT by reference and the corresponding Program Supplement No. N71 attached to this AGREEMENT as Exhibit 1, together referred to as PROJECT AGREEMENTS.

3. Caltrans’s Independent Office of Audits and Investigations performed an audit and issued findings on June 29, 2018, attached to this AGREEMENT by reference and referred to herein after as AUDIT FINDINGS, and found that $557,986 in expenditures were not in compliance with the PROJECT AGREEMENTS, state and federal regulations, CTC program guidelines, nor did the deliverables and outcomes meet the PROJECT’s scope, schedule and benefits described in the APPLICATION.

4. The AUDIT FINDINGS recommended the repayment of $557,986 by the City to Caltrans.
5. Caltrans has a legal and fiduciary responsibility to ensure that all state and federal funds passed through Caltrans are expended in compliance with state and federal laws, regulations, and agreements.

6. The Master Agreement titled Administering Agency-State Agreement for State Funded Projects (Article IV, PARA. 19-21) provides for the return of any PROJECT costs for which the City has received payment or credit that are determined by subsequent audit to be unallowable.

7. Caltrans recognizes the financial burden that such a repayment places on the City.

8. Caltrans understand the City’s desire to complete the PROJECT as originally applied by using other financing sources to realize project benefit to the community. Rather than seek recovery of ineligible costs, Caltrans and City propose a resolution that fulfills the purpose of the grant.

9. Per the Agreement and Assignment Of Transportation Development Act (TDA) Local Transportation Funds – Local Funds For Project Delivery Services, dated May 14, 2019 between the City and the County of Kern, and attached to this AGREEMENT as Exhibit 2, specifies the assignment of funds from the City to the County of Kern and in return, the County of Kern will deliver the PROJECT according to the APPLICATION.

Caltrans has prepared and is issuing to the City a Corrective Action Plan listing terms, conditions and actions in response to the AUDIT FINDING, which is attached to and made a part of this AGREEMENT by reference and hereinafter referred to as the CORRECTIVE ACTION PLAN.

Agreement

The PARTIES agree to the following:

1. Caltrans agrees not to require repayment of $557,986 in disallowed cost upon City completing PROJECT to Caltrans satisfaction in full compliance with terms of this AGREEMENT.
2. City agrees to abide by, and carry out, all the terms, conditions and actions cited in the Caltrans issued Corrective Action Plan, including the requirement to obtain City resolution approving this AGREEMENT, and signing the AGREEMENT with legally authorized City representatives.

3. City is responsible for, and shall ensure completion of, the PROJECT in full compliance with terms of the AGREEMENT, CTC approved APPLICATION, PROJECT AGREEMENTS, applicable laws, regulations, CTC ATP guidelines and Accountability & Transparency guidelines including any updated guidelines. All terms and conditions stated in the above documents shall be fully effective except the PROJECT schedule that is being replaced by the updated schedule stated hereinunder.

4. City shall ensure completion of PROJECT, according to the scope specified in the APPLICATION, by December 31, 2021.

5. If PROJECT is not completed by December 31, 2021, according to the scope specified in the APPLICATION, Caltrans will request reimbursement for the $557,986 in disallowed costs.

6. City will ensure quarterly PROJECT status reporting occurs and is submitted on time.

7. City agrees to allow Caltrans to perform project inspections during project construction.

8. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of other documents that have been included within the terms of this AGREEMENT by reference, the terms of the AGREEMENT will prevail.

9. Neither Caltrans nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by City, Kern Country, Kern COG, their contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon City under this AGREEMENT. It is understood and agreed that City, will defend, indemnify, and save harmless Caltrans and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring
by reason of anything done or omitted to be done by City, Kern Country, Kern COG, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

10. Parties do not intend this AGREEMENT to create a third-party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT.

11. List of Exhibits.

   Exhibit 1. Program Supplement

   Exhibit 2. Project Agreement between County of Kern and City of Arvin


12. This AGREEMENT will terminate upon completion of PROJECT that all parties have met all scope, cost, and schedule commitments included in this AGREEMENT and Caltrans has signed a letter acknowledging that City has completed all obligations arising under this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, operation, maintenance and ownership articles will remain in effect until terminated or modified in writing by agreement.
Parties are legally empowered by to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

CITY OF ARVIN

Jose Gurrola
Mayor

Date

CITY OF ARVIN

Jose Gurrola
Mayor

Date

CALTRANS

Toks Omishakin
Director

Date

CALTRANS

Toks Omishakin
Director

Date

APPROVED AS TO FORM

Shannon L. Chaffin
City Attorney

Date

APPROVED AS TO FORM

Shannon L. Chaffin
City Attorney

Date

APPROVED AS TO CONTENT

Jerry Breckinridge
City Manager

Date

APPROVED AS TO CONTENT

Jerry Breckinridge
City Manager

Date

APPROVED AS TO CONTENT

Meera Danday
Deputy Attorney

03/20/20

APPROVED AS TO CONTENT

Meera Danday
Deputy Attorney

03/20/20

APPROVED AS TO CONTENT

Dee Lam
Acting Chief
Division of Local Assistance

3/23/20

APPROVED AS TO CONTENT

Dee Lam
Acting Chief
Division of Local Assistance

3/23/20
Dear Mr. Breckinridge:

This letter serves as the California Department of Transportation (Caltrans) Division of Local Assistance’s (DLA) Corrective Action Plan (CAP) for the findings described in the Active Transportation Program (ATP) audit, File P1575-0057, for the City of Arvin (City), dated June 2018.

Finding 1 - Lack of Performance Results
The City did not meet deliverables and project outcomes consistent with their ATP application and their executed project agreement ATPL-5370(027).

Corrective Actions Required by DLA
1. The City is placed on probation for administering federal-aid and state funded transportation projects and procurements until Caltrans determines that the City can meet the minimum qualification to administer such projects and procurements.

2. In lieu of paying $557,986 in disallowed cost, the City must obtain resolution, sign the attached Audit Settlement Agreement, attach the City resolution to the Audit Settlement Agreement as Exhibit 3, and return the agreement back to Caltrans. The Audit Settlement Agreement legally requires project ATPL-5370(027) to be constructed according to the scope described in the ATP application.

April 17, 2020

Jerry Breckinridge
City Manager
City of Arvin
200 Campus Drive
Arvin, CA 93203
3. Project ATPL-5370(027) shall be completed by **December 31, 2021**. If project ATPL-5370(027) is not completed by December 31, 2021, DLA will require reimbursement for the $557,986 in disallowed costs as recommended by the ATP audit.

4. The City shall allow Caltrans to perform enhanced oversight on all programmed federal and State funded transportation projects and procurements that are currently being administered by the City, including but not limited to Architecture and Engineering (A&E) procurement reviews, pre-advertise review of Plans, Specifications and Estimate (PS&E) packages, status updates attached with each invoice, and access to project construction sites.

5. Caltrans will conduct a future minimum qualification evaluation of the City to assess and ensure the City will be able to administer federal and State-funded projects and procurements on their own. Until the City successfully demonstrates its ability to meet and sustain minimum qualifications, and successfully complete all corrective actions, the City will remain on probation and prohibited from administering any future federal and State-funded projects and procurements. The City will provide Caltrans with status reports every quarter citing its progress towards completion of the corrective actions.

6. While on probation, the City will need to partner with another Caltrans-recommended agency, such as the County, to administer future programmed federal and State-funded transportation projects and procurements on the City’s behalf.

7. City must develop and maintain contract management & project implementation procedures and guidelines in accordance with existing federal and state regulations, including but not limited to:
   a. Project costs, schedules, and reporting requirements so that deliverables are met.
   b. Contract dollar thresholds are determined for each contract.
   c. Method of payment is defined in each proposal.
   d. Task order dollar thresholds are adhered to per the terms of the executed contract.

---

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California’s economy and livability"
e. A fee schedule is developed to identify the components of loaded costs (a lump sum or hourly rate) in the consultant's proposal.

f. Agreed-upon labor rates that are reimbursed per the terms of the executed contract.

**Finding 2 - Conflict of Interest**
The City did not have compensating controls to prevent the potential for conflicts of interest.

**Corrective Actions Required by DLA**
1. Adopt Chapter 10 of the Local Assistance Procedures Manual (LAPM) for the procurement of Architectural & Engineering (A&E) consultants. The City will provide a resolution showing that Chapter 10 has been adopted into their procurement policies.

2. City will ensure appropriate staff receive A&E Consultant Procurement training which is available through the link below and on DLA's website. The training focuses on Chapter 10 of the LAPM. The City will provide a list of attendees.
   [https://www.youtube.com/watch?v=CtJGAzh1jJc&feature=youtu.be](https://www.youtube.com/watch?v=CtJGAzh1jJc&feature=youtu.be)

**Finding 3 - Inadequate Procurement Policies and Procedures**
The procurement process used to procure a contract with Quad Knopf for A&E professional services was not in compliance with State requirements.

**Corrective Actions Required by DLA**
Refer to corrective actions 1 and 2, under Finding 2.

**Finding 4 - Inadequate Contract Management**
The City did not properly manage the third-party contract with Quad Knopf.

**Corrective Actions Required by DLA**
Refer to corrective actions 7 a-f, under Finding 1.
If you have any questions, please contact Daniel Burke, at (916) 654-5854 or <daniel.burke@dot.ca.gov>.

Sincerely,

Dee Lam, Acting Chief
Division of Local Assistance

c:  Adam Ojeda, PE, City Engineer, City of Arvin
    Ahron Hakimi, Executive Director, Kern Council of Governments
    Mitch Weiss, Executive Director, California Transportation Commission
    Rhonda Craft, Inspector General, Independent Office of Audits and Investigations
    MarSue Morrill, Chief, Independent Office of Audits and Investigations
    Luisa Ruvalcaba, Audit Manager, Independent Office of Audits and Investigations
    Shari Bender Ehler, District Director, District 6, Caltrans
    Laura Gordon, Acting Deputy Director, Transportation Planning, District 6, Caltrans
    James Perrault, District Local Assistance Engineer, District 6, Caltrans
    Jeanie Ward-Waller, Deputy Director, Planning and Modal Programs, Caltrans
    Mark Samuelson, Assistant Division Chief, Division of Local Assistance, Caltrans
    Felicia Haslem, Acting Chief, Office of Guidance and Oversight, Division of Local Assistance, Caltrans
    Jaime Espinoza, Chief, Office of State Programs, Division of Local Assistance, Caltrans
    Teresa McWilliams, ATP Manager South, Office of State Programs, Division of Local Assistance, Caltrans

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"
Audit Settlement Agreement

between
California Department of Transportation

and
City of Arvin

This AGREEMENT, effective on ________________________, is between the State of California, acting through its Department of Transportation, referred to as Caltrans and:

City of Arvin, a body politic and municipal corporation or chartered city of the State of California, referred to hereinafter as City.

Recitals

1. The City applied and received Active Transportation Program (ATP) funds in the amount of $680,000 to construct sidewalks at various locations, hereinafter referred to as PROJECT, and as specified in the project application hereinafter referred to as APPLICATION which is attached to and made a part of this AGREEMENT by reference.

2. Caltrans administered the $680,000 through its Master Agreement titled Administering Agency-State Agreement for State Funded Projects which is attached to and made a part of this AGREEMENT by reference and the corresponding Program Supplement No. N71 attached to this AGREEMENT as Exhibit 1, together referred to as PROJECT AGREEMENTS.

3. Caltrans’ Independent Office of Audits and Investigations performed an audit and issued findings on June 29, 2018, attached to this AGREEMENT by reference and referred to herein after as AUDIT FINDINGS, and found that $557,986 in expenditures were not in compliance with the PROJECT AGREEMENTS, state and federal regulations, CTC program guidelines, nor did the deliverables and outcomes meet the PROJECT’s scope, schedule and benefits described in the APPLICATION.

4. The AUDIT FINDINGS recommended the repayment of $557,986 by the City to Caltrans.
5. Caltrans has a legal and fiduciary responsibility to ensure that all state and federal funds passed through Caltrans are expended in compliance with state and federal laws, regulations, and agreements.

6. The Master Agreement titled Administering Agency-State Agreement for State Funded Projects (Article IV, PARA, 19-21) provides for the return of any PROJECT costs for which the City has received payment or credit that are determined by subsequent audit to be unallowable.

7. Caltrans recognizes the financial burden that such a repayment places on the City.

8. Caltrans understand the City’s desire to complete the PROJECT as originally applied by using other funding sources to realize project benefit to the community. Rather than seek recovery of ineligible costs, Caltrans and City propose a resolution that fulfills the purpose of the grant.

9. Per the Agreement and Assignment Of Transportation Development Act (TDA) Local Transportation Funds – Local Funds For Project Delivery Services, dated May 14, 2019 between the City and the County of Kern, and attached to this AGREEMENT as Exhibit 2, specifies the assignment of funds from the City to the County of Kern and in return, the County of Kern will deliver the PROJECT according to the APPLICATION.

Caltrans has prepared and is issuing to the City a Corrective Action Plan listing terms, conditions and actions in response to the AUDIT FINDING, which is attached to and made a part of this AGREEMENT by reference and hereinafter referred to as the CORRECTIVE ACTION PLAN.

**Agreement**

The PARTIES agree to the following:

1. Caltrans agrees not to require repayment of $557,986 in disallowed cost upon City completing PROJECT to Caltrans satisfaction in full compliance with terms of this AGREEMENT.
2. City agrees to abide by, and carry out, all the terms, conditions and actions cited in the Caltrans issued Corrective Action Plan, including the requirement to obtain City resolution approving this AGREEMENT, and signing the AGREEMENT with legally authorized City representatives.

3. City is responsible for, and shall ensure completion of, the PROJECT in full compliance with terms of the AGREEMENT, CTC approved APPLICATION, PROJECT AGREEMENTS, applicable laws, regulations, CTC ATP guidelines and Accountability & Transparency guidelines including any updated guidelines. All terms and conditions stated in the above documents shall be fully effective except the PROJECT schedule that is being replaced by the updated schedule stated hereinunder.

4. City shall ensure completion of PROJECT, according to the scope specified in the APPLICATION, by December 31, 2021.

5. If PROJECT is not completed by December 31, 2021, according to the scope specified in the APPLICATION, Caltrans will request reimbursement for the $557,986 in disallowed costs.

6. City will ensure quarterly PROJECT status reporting occurs and is submitted on time.

7. City agrees to allow Caltrans to perform project inspections during project construction.

8. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of other documents that have been included within the terms of this AGREEMENT by reference, the terms of the AGREEMENT will prevail.

9. Neither Caltrans nor any of its officers and employees, are responsible for any injury, damage, or liability occurring by reason of anything done or omitted to be done by City, Kern County, Kern COG, their contractors, sub-contractors, and/or its agents under or in connection with any work, authority, or jurisdiction conferred upon City under this AGREEMENT. It is understood and agreed that City, will defend, indemnify, and save harmless Caltrans and all of its officers and employees from all claims, suits, or actions of every name, kind, and description brought forth under, but not limited to, tortious, contractual, inverse condemnation, or other theories and assertions of liability occurring
by reason of anything done or omitted to be done by City, Kern Country, Kern COG, its contractors, sub-contractors, and/or its agents under this AGREEMENT.

10. Parties do not intend this AGREEMENT to create a third-party beneficiary or define duties, obligations, or rights for entities not signatory to this AGREEMENT.

11. List of Exhibits.

   Exhibit 1. Program Supplement

   Exhibit 2 Project Agreement between County of Kern and City of Arvin

   Exhibit 3 Resolution of City Council.

12. This AGREEMENT will terminate upon completion of PROJECT that all parties have met all scope, cost, and schedule commitments included in this AGREEMENT and Caltrans has signed a letter acknowledging that City has completed all obligations arising under this AGREEMENT. However, all indemnification, document retention, audit, claims, environmental commitment, legal challenge, operation, maintenance and ownership articles will remain in effect until terminated or modified in writing by agreement.
Parties are legally empowered by to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this AGREEMENT.

CITY OF ARVIN

________________________     ________________________
Jose Gurrola                  Toks Omishakin
Mayor                         Director

________________________     ________________________
Shannon L. Chaffin            Meera Danday
City Attorney                 Deputy Attorney

APPROVED AS TO FORM

APPROVED AS TO CONTENT

________________________     ________________________
Jerry Breckinridge            Dee Lam
City Manager                  Acting Chief

Attachment: Exhibit C - Arvin CAP - Director Signedv2 (CalTrans ATP Audit Settlement)
**PROGRAM SUPPLEMENT NO. N71**

**to**

**ADMINISTERING AGENCY-STATE AGREEMENT**

**FOR STATE FUNDED PROJECTS NO 004798**

---

**Adv Project ID**: 0615000171  
**Date**: July 15, 2015  
**Location**: 06-KER-6-ARV  
**Project Number**: ATPL-5370(027)  
**E.A. Number**: 5370  
**LocIds**: 5370

This Program Supplement, effective , hereby adopts and incorporates into the Administering Agency-State Agreement No. 004798 for State Funded Projects which was entered into between the ADMINISTERING AGENCY and the STATE with an effective date of and is subject to all the terms and conditions thereof. This PROGRAM SUPPLEMENT is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. approved by the ADMINISTERING AGENCY on (See copy attached).

The ADMINISTERING AGENCY further stipulates that as a condition to the payment by the State of any funds derived from sources noted below encumbered to this project, Administering Agency accepts and will comply with the Special Covenants and remarks set forth on the following pages.

**PROJECT LOCATION:**

In the City of Arvin, bounded by Corrancha Drive, Sycamore Road, Derby Street, and Varsity Ave.

**TYPE OF WORK:** Construction of paved walkways, access ramps, and crosswalks

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<th>State Funds</th>
<th>Local</th>
<th>Matching Funds</th>
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CITY OF ARVIN

By  

Title  

Date  

Attest

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer

Date $7/15/15$  

$880,000.00

---

Program Supplement 00-4798-N71-SERIAL
SPECIAL COVENANTS OR REMARKS

1. A. This PROJECT will be administered in accordance with the applicable CTC STIP guidelines and the Active Transportation Program guidelines as adopted or amended, the Local Assistance Procedures Manual (LAPM), the Local Assistance Program Guidelines (LAPG), and this PROGRAM SUPPLEMENT.

B. This PROJECT is programmed to receive State funds from the Active Transportation Program (ATP). Funding may be provided under one or more components. A component(s) specific fund allocation is required, in addition to other requirements, before reimbursable work can occur for the component(s) identified. Each allocation will be assigned an effective date and identify the amount of funds allocated per component(s).

This PROGRAM SUPPLEMENT has been prepared to allow reimbursement of eligible PROJECT expenditures for the component(s) allocated. Unless otherwise determined, the effective date of the component specific allocation will constitute the start of reimbursable expenditures.

C. STATE and ADMINISTERING AGENCY agree that any additional funds made available by future allocations will be encumbered on this PROJECT by use of a STATE-approved Allocation Letter and STATE Finance Letter. ADMINISTERING AGENCY agrees that STATE funds available for reimbursement will be limited to the amount allocated by the California Transportation Commission (CTC) and/or the STATE.

D. Upon ADMINISTERING AGENCY request, the CTC and/or STATE may approve supplementary allocations, time extensions, and fund transfers between components. Funds transferred between allocated project components retain their original timely use of funds deadlines, but an approved time extension will revise the timely use of funds criteria for the component(s) and allocation(s) requested. Approved supplementary allocations, time extensions, and fund transfers between components made after the execution of this PROGRAM SUPPLEMENT will be documented and considered subject to the terms and conditions thereof. Documentation will consist of a STATE approved Allocation Letter, Fund Transfer Letter, Time Extension Letter, and Finance Letter, as appropriate.

E. This PROJECT is subject to the timely use of funds provisions enacted by the Active Transportation Program guidelines, as adopted or amended, and by approved CTC and State procedures as outlined below.

Funds allocated for the environmental & permits (E&P), plan specifications & estimate (PS&E), and right-of-way components are available for expenditure until the end of the second fiscal year following the year in which the funds were allocated.

Funds allocated for the construction component are subject to an award deadline and contract completion deadline. ADMINISTERING AGENCY agrees to award the contract within 6 months of the construction fund allocation and to complete and accept the construction within 36 months of award.

F. Award information shall be submitted by the ADMINISTERING AGENCY to the District
Local Assistance Engineer immediately after project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract. Failure to do so will cause a delay in the State processing of invoices for the construction phase.

G. The ADMINISTERING AGENCY shall invoice STATE for environmental & permits (E&P), plans specifications & estimate (PS&E), and right-of-way costs no later than 180 days after the end of last eligible fiscal year of expenditure. For construction costs, the ADMINISTERING AGENCY has 180 days after project completion or contract acceptance to make the final payment to the contractor prepare the final Report of Expenditures and final invoice, and submit to STATE for verification and payment.

H. ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LAPM and the Active Transportation Program (ATP) Guidelines.

I. ADMINISTERING AGENCY agrees to comply with Office of Management and Budget (OMB) Circular A-87, Cost Principles for State and Local Governments, and 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Notwithstanding the foregoing, ADMINISTERING AGENCY will not be required to comply with 49 CFR, Part 18.35 (i), subsections (3), (4), (5), (6), (8), (9), (12), and (13).

J. By executing this PROGRAM SUPPLEMENT, ADMINISTERING AGENCY agrees to comply with all reporting requirements in accordance with the Active Transportation Program guidelines, as adopted or amended.
Attachment: Exhibit C - Arvin CAP - Director Signedv2 (CalTrans ATP Audit Settlement)

<table>
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<th>CHAPTER</th>
<th>STATUTES</th>
<th>ITEM</th>
<th>YEAR</th>
<th>PEC / PECT</th>
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TOTAL $680,000.00

ADA Notice: For individuals with sensory disabilities, this document is available in alternate formats. For information, call (215) 654-6410 or TDD (215) 654-6292 or write Records and Forms Management, 1120 N. Street, MS-06, Sacramento, CA 95814.
AGREEMENT AND ASSIGNMENT OF
TRANSPORTATION DEVELOPMENT ACT (TDA) LOCAL
TRANSPORTATION FUNDS – LOCAL FUNDS FOR
PROJECT DELIVERY SERVICES
(Kern County-City of Arvin)

THIS AGREEMENT AND ASSIGNMENT, is made and entered into on
MAY 14, 2019, by and between COUNTY OF KERN, a political
subdivision of the State of California (hereinafter referred to as "COUNTY"), and
the City of Arvin, a municipal corporation (hereinafter referred to as CITY);

WITNESSETH:

WHEREAS, Government Code Section 54981 provides that a Board of
Supervisors may contract with a City and that a City Council may contract with a
County Board of Supervisors for the performance city and county functions by
appropriate officers and employees; and

WHEREAS, CITY desires to contract with COUNTY to provide PROJECT
DELIVERY SERVICES for the CITY'S Active Transportation Program (ATP) Cycle
1 project (hereinafter referred to as PROJECT) as described in Exhibit A; and

WHEREAS, PROJECT DELIVERY SERVICES includes, PRELIMINARY
ENGINEERING, solicitation of construction bids and award of construction
contract, and CONTRACT ADMINISTRATION for the PROJECT; and

WHEREAS, COUNTY is willing, under the terms herein set forth, to perform or
cause to be performed the PROJECT DELIVERY SERVICES for PROJECT; and

WHEREAS, the COST OF PROJECT, includes the costs of PRELIMINARY
ENGINEERING, COST OF CONSTRUCTION CONTRACT and
CONSTRUCTION ADMINISTRATION as more fully set forth herein; and

WHEREAS, COUNTY is willing to accept the CITY'S assignment of Transportation
Development Act (TDA) Local Transportation Funds and utilize the assignment as
credit toward the CITY'S total COST OF PROJECT; and

WHEREAS, CITY is willing to finance all COST OF PROJECT in excess of the
Transportation Development Act (TDA) Local Transportation Funds assigned to
the COUNTY; and

WHEREAS, the Kern Council of Governments has procedures in effect that permit
the transfer of Transportation Development Act (TDA) Local Transportation Funds
between public agencies.

NOW, THEREFORE, in consideration of the benefits to be derived by CITY and of
the promises herein contained, it is hereby agreed as follows:
1) DEFINITIONS:

a) PRELIMINARY ENGINEERING as referred to in this AGREEMENT AND ASSIGNMENT shall consist of preparation of cost estimates for grant applications, and funding allocation requests; environmental findings and approvals/permits; design survey; traffic index and geotechnical investigation; preparation of plans, specifications, and cost estimates; right-of-way engineering; utility engineering; and all other necessary work prior to advertising of the PROJECT for construction bids.

b) COST OF CONSTRUCTION CONTRACT as referred to in this AGREEMENT AND ASSIGNMENT shall consist of the total of all payments to the construction contractor(s) for the PROJECT and the total of all payments to utility companies or contractor(s) for the relocation of facilities necessary for the construction of the PROJECT, and the cost of any additional unforeseen work that is necessary for the construction of the PROJECT in accordance with plans and specifications approved by the CITY and the COUNTY.

c) CONSTRUCTION ADMINISTRATION is referred to in the AGREEMENT AND ASSIGNMENT shall consist of the of construction contract administration, construction inspection, materials testing, construction survey, traffic detour, signing and striping, construction engineering, utility relocation and coordination matters, changes and modifications of plans and specifications for PROJECT necessitated by unforeseen or unforeseeable field conditions encountered during construction of PROJECT, construction contingencies, and all other necessary work after advertising of PROJECT for construction bids to cause PROJECT to be constructed in accordance with said plans and specifications approved by CITY and COUNTY.

d) COST OF PROJECT as referred to in the AGREEMENT AND ASSIGNMENT shall consist of the COST OF CONSTRUCTION CONTRACT and costs of PRELIMINARY ENGINEERING; CONSTRUCTION ADMINISTRATION; right-of-way clearance matters and acquisition, and all other work necessary to complete PROJECT in accordance with the plans and specifications approved by the CITY and the COUNTY and shall include percentages added to total salaries, wages, and equipment costs to cover overhead and fringe benefits, administration, and depreciation in connection with any or all of the aforementioned items.

e) Completion of PROJECT as referred to in this AGREEMENT AND ASSIGNMENT shall be defined as the date of field acceptance of construction of PROJECT by COUNTY and a written notification to CITY'S City Manager that the improvements are transferred to CITY for the purpose of operation and maintenance.
2) COUNTY AGREES:

a) To perform or cause to be performed, consistent with industry standards, the PRELIMINARY ENGINEERING, bidding and contract award(s), CONSTRUCTION ADMINISTRATION, right-of-way clearance matters, and all other work or action necessary to complete PROJECT.

b) To accept the CITY'S assignment of Transportation Development Act (TDA) Local Transportation Funds to finance the CITY'S estimated COST OF PROJECT.

c) To furnish to CITY within one hundred eighty (180) calendar days after final payment to contractor a final accounting of the actual COST OF PROJECT, including an itemization of actual unit costs and actual quantities for PROJECT.

d) To comply with all applicable Federal, State, and local laws, rules, and ordinances in the performance of this AGREEMENT AND ASSIGNMENT, including the California Environmental Quality Act (CEQA), and requirements of any funding source including Caltrans requirements.

e) To furnish the CITY with Plans and Specifications 30 days prior to advertising for confirmation that the PROJECT satisfies the grant requirements and CITY's design standards prior to solicitation for construction bids.

f) To be solely responsible to maintain all records, timely respond to, and address any compliance audit(s) from Caltrans or other source of funds, related to the PROJECT, even after the completion of the PROJECT.

g) To provide copies all documents related to the PROJECT to the CITY upon request of the CITY.

3) CITY AGREES:

a) To finance the total COST OF PROJECT, the actual amount of which is to be determined by a final accounting. Thus, the cost of all work or improvements (including all engineering, administration, and all other costs incidental to PROJECT work) shall be borne by CITY.

b) To assign CITY'S available Transportation Development Act (TDA) Local Transportation Funds to COUNTY as credit to finance the estimated COST OF PROJECT. Such assignment shall be effective upon full execution of this AGREEMENT AND ASSIGNMENT with no further action required by COUNTY.

c) To cooperate with the COUNTY in conducting negotiations with and, where appropriate, to issue notices to public utility organizations and owners of substructure and overhead facilities regarding the relocation, removal, operation, and maintenance of all surface and underground utilities and facilities, structures, and transportation services, which interfere with the proposed construction. CITY will take all necessary steps to grant, transfer, or assign all prior rights over the utility companies and owners of
substructure and overhead facilities to COUNTY when necessary to construct, complete, and maintain PROJECT or to appoint COUNTY as its attorney-in-fact to exercise such prior rights.

d) To be financially responsible for disposal and/or mitigation measures, if necessary, should any hazardous materials, chemicals, or contaminants be encountered during construction of PROJECT.

e) Upon completion of PROJECT and receiving written notification from COUNTY to assume all responsibilities for the maintenance of all improvements constructed as part of PROJECT at CITY'S expense.

f) To fully and completely indemnify and hold harmless the County and its officers, directors, employees and agents from and against any, and all, claims, damages, losses, judgements, liabilities, expenses or other costs, including litigation costs and attorney fees, arising out of, resulting from, or in connection with any action taken or omitted to be taken in accordance with this Agreement, except to the extent directly caused by, the gross negligence or willful misconduct of the County, or its officers, directors, employees or agents.

4) IT IS MUTUALLY UNDERSTOOD AND AGREED AS FOLLOWS:

a) The CITY shall pay for such PROJECT services as are provided under this AGREEMENT AND ASSIGNMENT at rates to be determined by the COUNTY in accordance with the policies and procedures established by the Public Works Director. These rates shall be readjusted by COUNTY biannually effective the first day of July and January of each year to reflect the cost of such services.

b) The CITY shall be held fully liable for losses to the COUNTY resulting from the delay and/or inaction of the CITY with regards to this AGREEMENT AND ASSIGNMENT.

c) No PROJECT service shall be performed unless the CITY shall have available funds previously appropriated to cover the cost thereof.

d) No PROJECT service shall be performed by COUNTY unless requested in writing by the CITY on order of the City Council or such officer as it may designate, and each such PROJECT service shall be performed at the times and under circumstances which do not interfere with the performance of regular COUNTY operations.

e) Upon written request by the CITY for PROJECT services, the COUNTY shall provide CITY with an estimated COUNTY cost of said services. CITY will be responsible for maintaining funds from which COUNTY can withdraw at any time to cover all services not covered by grant funding (i.e. scoping, agency match, initial estimate and preparation).

f) The COUNTY shall have no obligation to proceed with each PROJECT phase until the CITY shall provide the COUNTY with written authorization.
to proceed with the PROJECT phase. The CITY shall immediately deposit with the COUNTY the full estimated amount of the CITY's financial liability for that phase of the PROJECT, as indicated in the cost estimate.

g) This AGREEMENT AND ASSIGNMENT may be amended, or modified only by mutual written consent of CITY and COUNTY. Amendments and modifications of a nonmaterial nature may be made by the mutual written consent of the parties' Director of Public Works/City Manager or their delegates.

h) Any correspondence, communication, or contact concerning this AGREEMENT AND ASSIGNMENT shall be directed to the following:

CITY: Mr. Jerry Breckinridge
City Manager
City of Arvin
200 Campus Drive
P.O. Box 548
Arvin, CA 93203

COUNTY: Mr. Craig Pope
Director of Public Works
County of Kern
2700 "M" Street, Suite 400
Bakersfield, CA 93301

i) This AGREEMENT AND ASSIGNMENT shall become effective upon adoption by the Board of Supervisors of the COUNTY, and shall terminate upon receipt and acceptance by COUNTY of final payment from CITY for any unpaid PROJECT costs as determined in Section 2.c of this AGREEMENT AND ASSIGNMENT.

j) The COUNTY may terminate this AGREEMENT AND ASSIGNMENT at any time by giving thirty (30) days' prior written notice to the CITY. The CITY may terminate this AGREEMENT AND ASSIGNMENT as of the first day of July of any year upon thirty (30) days' prior written notice to the COUNTY.

k) Upon termination of this AGREEMENT AND ASSIGNMENT by either party, any unexpended TDA funds shall automatically be assigned back to the CITY by the COUNTY without further action by the CITY or COUNTY. Additionally, COUNTY shall refund any other unexpended credits or payments associated with the PROJECT that may have been provided by the CITY. Said assignment or refunds shall be after deduction of those funds necessary for the COUNTY to satisfy any unpaid PROJECT services. If there are inadequate funds available to satisfy any unpaid PROJECT services, the CITY shall pay the COUNTY the same.
IN WITNESS WHEREOF the parties hereto have duly caused this Agreement to be executed on the date hereinabove first written.

"CITY"

CITY OF ARVIN

By

Jose Guerra, Mayor

APPROVED AS TO FORM:

City of Arvin

By

Shannon L. Chaffin, City Attorney

APPROVED AS TO CONTENT:

City of Arvin

By

Jerry Breckinridge, City Manager

"COUNTY"

COUNTY OF KERN

By

Chairman, Board of Supervisors

APPROVED AS TO FORM:

Office of County Counsel

By

[Signature]

APPROVED AS TO CONTENT:

County of Kern

By

[Signature]

Kern County Public Works Department

By

[Signature]

Craig Pope, Director
EXHIBIT A

Scope of Work:

Complete as required all necessary processes to construct curb and gutter, sidewalks, ADA compliant curb ramps, ADA compliant drive approaches, cross drains, driveway tie-ins, walkway tie-ins, Hot Mix Asphalt tie-ins, and all appurtenances needed to complete the project. As depicted and further described in the City of Arvin’s ATP Cycle 1 application and attached to this Exhibit by reference.

The work will be performed at the following locations:

<table>
<thead>
<tr>
<th>Street</th>
<th>Approximate Limits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schipper Street</td>
<td>Cul-de-Sac to Walker Street</td>
</tr>
<tr>
<td>Olsen Street</td>
<td>Meyer Street to ‘A’ Street</td>
</tr>
<tr>
<td>Durham Street</td>
<td>Comanche Drive to Walnut Drive</td>
</tr>
<tr>
<td>Hansen Lane</td>
<td>Meyer Street to ‘A’ Street</td>
</tr>
<tr>
<td>Royal Street</td>
<td>Comanche Drive Intersection (East Side)</td>
</tr>
<tr>
<td>Mark Street</td>
<td>Comanche Drive to Walnut Drive</td>
</tr>
<tr>
<td>‘A’ Street</td>
<td>Langford Avenue to Franklin Street (West Side)</td>
</tr>
<tr>
<td>Combs Avenue</td>
<td>200’ West of ‘A’ Street to ‘A’ Street</td>
</tr>
<tr>
<td>4th Avenue</td>
<td>North Hill Street to North Acala Street</td>
</tr>
<tr>
<td>Orchard Drive</td>
<td>Plumtree Drive to North Hill Street</td>
</tr>
</tbody>
</table>

Estimated COST OF PROJECT: $530,000
Exhibit 3

**Place Holder**

City of Arvin Resolution to Enter into the Audit Settlement Agreement
CITY OF ARVIN
Staff Report

Meeting Date: July 14, 2020

TO: Arvin City Council

FROM: Pawan Gill, Director of Administrative Services
       Jerry Breckinridge, City Manager

SUBJECT: A Public Hearing to Consider I) Approval of A Resolution of the City Council of the City of Arvin Authorizing the Submittal of a Grant Application to the State of California, Department of Housing and Community Development (HCD) Permanent Local Housing Allocation (PLHA) Program; and Authorizing Related Actions; and II) Approval of A Resolution of the City Council of the City of Arvin Adopting a Permanent Local Housing Allocation (PLHA) Plan; and Authorizing Related Actions.

RECOMMENDATION:
Staff recommends the City Council open the hearing, allow for public testimony, close the hearing and consider approval of the Resolutions.

BACKGROUND:
The California Department of Housing and Community Development (Department) released a Notice of Funding Availability (NOFA) for approximately $195 million in funding for the Permanent Local Housing Allocation (PLHA) program for Entitlement and Non-entitlement Local governments. The NOFA is funded from moneys deposited in the Building Homes and Jobs Trust Fund (Fund) in calendar year 2019.

Funding for this NOFA is provided pursuant to Senate Bill (SB) 2 (Chapter 364, Statutes of 2017). SB 2 established the Fund and authorized the Department to allocate 70 percent of moneys collected and deposited in the Fund, beginning in calendar year 2019, to Local governments for eligible housing and homelessness activities. The intent of the bill is to provide a permanent, ongoing source of funding to Local governments for housing-related projects and programs that assist in addressing the unmet housing needs of their communities.

For the 2019-20 fiscal year, the Department will issue two separate NOFAs to award the (PLHA) funds:
   1) Entitlement and Non-entitlement Local government formula component NOFA; and
   2) Non-entitlement Local government competitive component NOFA (anticipated in August 2020)

The Entitlement and Non-entitlement formula allocation NOFA outlines threshold and application requirements, as well as defines the method in which funds will be distributed for Entitlement and Non-entitlement Local governments. Ninety percent of the money will be allocated based on the formula used under Federal law to allocate CDBG funds within California, as specified in Title 42
United States Code (USC), Section 5306 and will be distributed to Entitlement Local governments and Non-entitlements local governments via a competitive grant program. Non-entitlement Local government allocations come from ten percent of the moneys available and allocated equitably among Non-entitlement local governments. Allocations are distributed on an annual basis in response to an application defining the eligible planned use of funds for five years.

Eligible activities include:

1) Predevelopment, development, acquisition, rehabilitation and preservation of multifamily, residential live work, rental housing that is affordable to extremely low-, very low-, or moderate-income households, including necessary operating subsidies.

2) Predevelopment, development, acquisition, rehabilitation, and preservation of affordable rental and ownership housing, including accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of Area Median Income (AMI), or 150 percent of AMI in High-cost areas. ADU’s shall be available for occupancy for a term of no less than 30 days.

3) Matching portions of funds into local or regional housing trust fund.

4) Matching portions of funds available through the Low- and Moderate Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.

5) Capitalize reserves for Services connected to the preservation and creation of new permanent supportive housing.

6) Assist persons experiencing or at risk of homelessness, including, but no limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.

7) Accessibility modifications in Lower-income Owner-occupied housing.

8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.

9) Homeownership opportunities, including, but not limited to, down payment assistance.

10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more affordable housing projects or matching funds invested by the county in an Affordable housing development project in a city within the county, provided that the city has made an equal or greater investment in the project.

**PLAN:** The proposed plan must describe the manner in which the allocated funds will be used for eligible activities. Describe the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below 60% of AMI. Describe how the Plan is consistent with programs set forth in the City’s Housing Element. Be authorized and approved by resolution, and ensuring the public had adequate opportunity to review and comment on the contents of the Plan. The annual allocation for the City of Arvin is $138,593 for a five-year total of $831,563.

**The City of Arvin’s proposed five-year plan activities are:**

To provide payment assistance (rent, mortgage and utilities) and financial assistance for the repair or development of ADU'S targeting households with income at or below 60% AMI.

1) **First year of program will assist residents with mortgage and rental payment subsidies.** The remaining four years of the program will be used to assist residents with loans for Accessory Dwelling Unit (ADU) upgrades. The City will have flexibility on determining the amounts offered, and length of time for each program depending on the how well they programs are received by the community and the level to which they are subscribed.
2) Five percent of each annual allocation can be used to cover administrative cost associated with the administration of the plan. Staffing and overhead cost directly related to carrying out the eligible activities are “activity costs” not subject to the cap on “administrative cost.”

The application and approved five-year plan are due by 5:00 PM on July 27, 2020. Department anticipates issuing award letters between August 2020 and October 2020.

FINANCIAL IMPACT:
$2,500 for application preparation services to Self-Help Enterprises (SHE).
RESOLUTION NO. __________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN AUTHORIZING THE SUBMITTAL OF A GRANT APPLICATION TO THE STATE OF CALIFORNIA, DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT (HCD) PERMANENT LOCAL HOUSING ALLOCATION (PLHA) PROGRAM; AND AUTHORIZING RELATED ACTIONS

[All, or A necessary quorum and majority] of the council members of the City of Arvin, a municipality (“The City of Arvin”) hereby consents to, adopts and ratifies the following resolution:

WHEREAS, the Department is authorized to provide up to $195 million under the SB 2 Permanent Local Housing Allocation Program Formula Component from the Building Homes and Jobs Trust Fund for assistance to Cities and Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)), and;

WHEREAS, the State of California (the “State”), Department of Housing and Community Development (“Department”) issued a Notice of Funding Availability (“NOFA”) dated 02/26/2020 under the Permanent Local Housing Allocation (PLHA) Program, and;

WHEREAS, the City of Arvin is an eligible Local government applying for the program to administer one or more eligible activities, or a Local or Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation, and;

WHEREAS, the Department may approve funding allocations for PLHA Program, subject to the terms and conditions of the Guidelines, NOFA, Program requirements, the Standard Agreement and other contracts between the Department and PLHA grant recipients;

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

Section 1: If the City of Arvin receives a grant of PLHA funds from the Department pursuant to the above referenced PLHA NOFA, it represents and certifies that it will use all such funds in a manner consistent and in compliance with all applicable state and federal statutes, rules, regulations, and laws, including without limitation all rules and laws regarding the PLHA Program, as well as any and all contracts the City of Arvin may have with the Department.

Section 2: The City of Arvin is hereby authorized and directed to receive a PLHA grant, in an amount not to exceed the five-year estimate of the PLHA formula allocations, as stated in Appendix C of the current NOFA $831,563 in accordance with all applicable rules and laws.

Section 3: The City of Arvin hereby agrees to use the PLHA funds for eligible activities as approved by the Department and in accordance with all Program requirements, Guidelines, other rules and laws, as well as in a manner consistent and in compliance with the Standard Agreement and other contracts between the City of Arvin and the Department.
Section 4: Jerry Breckinridge, the City Manager, is authorized to execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the PLHA grant awarded to The City of Arvin, as the Department may deem appropriate, subject to approval of the City Attorney as to legal form.

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 14th day of July 2020 by the following vote:

AYES: __________________________________________

NOES: __________________________________________

ABSTAIN: _______________________________________

ABSENT: ________________________________________

ATTEST

______________________________, 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.
Permanent Local Housing Allocation (PLHA) Formula Allocation

2020 Application

State of California
Governor, Gavin Newsom

Lourdes Castro Ramírez, Secretary
Business, Consumer Services and Housing Agency

Douglas R. McCauley, Acting Director
Department of Housing and Community Development

Program Design and Implementation, PLHA Program
2020 West El Camino Avenue, Suite 150, Sacramento, CA 95833
PLHA Program Email: PLHA@hcd.ca.gov

Final Filing Date: April 27, 2020 through July 27, 2020 at 5 P.M. PST
HCD will only accept applications through a postal carrier service such as U.S. Postal Service, UPS, FedEx or other carrier services that provide date stamp verification confirming delivery to HCD's office. A complete original application and an electronic copy on a USB flash drive with all applicable information must be received by HCD via postal carrier no later than 5:00 p.m. on:

Monday, July 27, 2020

Applications must be on the Department’s forms and cannot be altered or modified by the Applicant. Excel forms must be in Excel format and unprotected, not a .pdf document. Application errors please fill out the Application Support worksheet and email the entire workbook to Application Support for application errors at AppSupport@hcd.ca.gov.

General Instructions (Additional instructions and guidance are given throughout the Supplemental Application in “red” text and in cell comments.

Guideline references are made with “§” and the corresponding guideline section number.

“Yellow” cells are for Sponsor input. Failure to provide the required attachments and documentation may disqualify your application from consideration or may negatively impact your point score.

Required attachments are indicated in “orange” throughout the Supplemental Application. Failure to provide the required attachments and documentation may disqualify your application from consideration or may negatively impact your point score. Electronically attached files must use the naming convention in the Supplemental Application. For example, “App1 Payee Data” for Sponsor 1 Payee Data Record/STD. 204.

Threshold items are indicated in “blue” cells.

“Red” shaded cells indicate that the Sponsor has failed to meet a requirement of the program. Point cells in the Scoring worksheet shaded in “red” indicate that the Sponsor has failed to meet the minimum points required.

Sponsor must complete the following worksheets in the PLHA Formula Allocation Application.

Formula Allocation Application

302(c)(4) Plan

Legislative Contacts

Checklist

<table>
<thead>
<tr>
<th>Binder Tab #</th>
<th>Threshold Requirement</th>
<th>Electronic File Name</th>
<th>Document Description</th>
<th>Included?</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>X</td>
<td>App1 Resolution</td>
<td>PLHA webpage for Resolution Document</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>X</td>
<td>App1 Signature Block</td>
<td>Signature Block - upload in Microsoft Word Document</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>X</td>
<td>App1 TIN</td>
<td>Taxpayer Identification Number Document</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>X</td>
<td>Applicant Agreement</td>
<td>Legally binding agreement between Delegating and Administering Local Governments</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>X</td>
<td>Plan Adoption</td>
<td>§302(c)(4)(D) Evidence that the Plan was authorized and adopted by resolution by the Local jurisdiction and that the public had an adequate opportunity to review and comment on its content.</td>
<td></td>
</tr>
</tbody>
</table>

Disclosure of Application (California Public Records Act Statutes of 1968 Chapter 1473): Information provided in the application will become a public record available for review by the public, pursuant to the California Public Records Act Statutes of 1968 Chapter 1473. As such, any materials provided will be disclosable to any person making a request under this Act. The Department cautions Applicants to use discretion in providing information not specifically requested, including but not limited to, bank accounts, personal phone and home addresses. By providing this information to the Department, the Applicant is waiving any claim of confidentiality and consents to the disclosure of submitted materials.
Local Government Formula Allocation

Eligible Applicant Type: Nonentitlement
Local Government Recipient of PLHA Formula Allocation: City of Arvin
Approximate PLHA Formula Allocation Amount: $138,593
Allowable Local Admin (%): 5%
Allowable Local Admin ($): $6,929

Instructions: If the Local Government Recipient of the PLHA Formula Allocation delegated its PLHA formula allocation to a Local Housing Trust Fund or to another Local Government, the Applicant (for which information is required below) is the Local Housing Trust Fund or administering Local Government. The PLHA award will be made to the Applicant (upon meeting threshold requirements) and the Applicant is responsible for meeting all program requirements throughout the term of the Standard Agreement.

The 302(c)(4) Plan template worksheet requires first choosing one or more of the Eligible Activities listed below. If “Yes” is clicked, the 302(c)(4) Plan worksheet opens a series of questions about what precise activities are planned. Some specific activities, such as providing downpayment assistance to lower-income households for acquisition of an affordable home, could be included under either Activity 2 or 5. Please only choose one of those Activities; don’t list the downpayment assistance under both Activities.

If the PLHA funds are used for the same Activity but for different Area Median Income (AMI) level, select the same Activity twice (or more times) and the different AMI level the Activity will serve. Please enter the percentage of funds allocated to the Activity in only the first Activity listing to avoid double counting the funding allocation.

Eligible Applicants $300

$300(a) and (b) Eligible Applicants for the entitlement and Non-entitlement formula component described in Section §100(b)(1) and (2) are limited to the metropolitan cities and urban counties allocated a grant for the federal fiscal year 2017 pursuant to the federal CDBG formula specified in 42 USC, Section §5306 and Non-entitlement local governments.

Applicant: City of Arvin
Address: 200 Campus Drive
City: Arvin State: CA Zip: 93203 County: Kern

§300(d) Is Applicant delegated by another Local government to administer on its behalf its formula allocation of program funds?

No

§300(f) If Applicant answered “Yes” above, has the Applicant attached the legally binding agreement required by §300 (c) and (d)?

N/A

File Name: Appt Resolution PLHA webpage for Resolution Document Attached and on USB?

Yes

File Name: Appt TIN Taxpayer Identification Number Document Attached and on USB?

Yes

File Name: Applicant Agreement Legally binding agreement between Delegating and Administering Local Governments Attached and on USB?

Yes

§301(a) Eligible activities are limited to the following:

§301(a)(1) The predetermination, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to Extremely low-, Very low-, Low-, or Moderate-income households, including necessary operating subsidies.

Yes

§301(a)(2) The predetermination, development, acquisition, rehabilitation, and preservation of affordable rental and ownership housing, including Accessory Dwelling Units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.

Yes

§301(a)(3) Matching portions of funds placed into Local or Regional Housing Trust Funds.

YES

§301(a)(4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.

YES

§301(a)(5) Capitalized Reserves for services connected to the preservation and creation of new permanent supportive housing.

YES

§301(a)(6) Assisting persons who are experiencing or at-risk of homelessness, including, but not limited to, providing rapid re-housing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.

YES

§301(a)(7) Accessibility modifications in Lower-income Owner-occupied housing.

YES

§301(a)(8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.

YES

§301(a)(9) Homeownership opportunities, including, but not limited to, down payment assistance.

YES

§301(a)(10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more affordable housing Projects, or matching funds invested by a county in an affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the Project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low-interest deferred loan to the affordable housing Project.

YES

Threshold Requirements, §302

§302(a) Housing Element compliance: Applicant or Delegating Local Government’s Housing Element was adopted by the Local Government’s governing body by the application deadline and subsequently determined to be in substantial compliance with state Housing Element Law pursuant to Government Code Section 65585.

Yes

§302(b) Applicant or Delegating Local Government has submitted the current or prior year’s Annual Progress Report to the Department of Housing and Community Development pursuant to Government Code Section 65400.

Yes

§302(c) Applicant certifies that submission of the application was authorized by the governing board of the Applicant.

Yes

§302(c)(3) Applicant certifies that, if the Local Government proposes allocation of funds for any activity to another entity, the Local government’s selection process had no conflicts of interest and was accessible to the public.

Yes

§302(c)(4) Does the application include a Plan in accordance with §302(c)(4)?

Yes

§302(c)(4)(D) Applicant certifies that the Plan was authorized and adopted by resolution by the Local Government and that the public had an adequate opportunity to review and comment on its content.

Yes

§302(c)(6) Applicant certifies that the Plan submitted is for a term of five years. Local Governments agree to inform the Department of changes made to the Plan in each succeeding year of the term of the Plan.

Yes

§302(c)(8) Applicant certifies that it will ensure compliance with §302(c)(6) if funds are used for the acquisition, construction, or rehabilitation of for-sale housing projects or units within for-sale housing projects.

Yes

§302(c)(7) Applicant certifies that it will ensure the PLHA assistance is in the form of a low-interest, deferred loan to the Sponsor of the Project, if funds are used for the development of an Affordable Rental Housing Development. The loan shall be evidenced through a Promissory Note secured by a Deed of Trust.

Yes

§302(c)(8) Has Applicant attached a program income reuse plan describing how repaid loans will be reused for eligible activities specified in Section 301?

Yes

Administration

Applicant agrees to adhere to §500, Accounting Records.

Yes

Applicant agrees to adhere to §501, Audits/Monitoring of PLHA Files.

Yes

Applicant agrees to adhere to §502, Cancellation/Termination.

Yes

Applicant agrees to adhere to §503, Reporting.

Yes

Certifications

On behalf of the entity identified below, I certify that: The information, statements and attachments included in this application are, to the best of my knowledge and belief, true and correct and I possess the legal authority to submit this application on behalf of the entity identified in the signature block.

Jerry Breckenridge
City Manager

Authorized Representative Printed Name
Title
Phone Number: (661)854-3134
Signature
Date

Entity name: City of Arvin
Entity Address: 200 Campus Drive, P.O. Box 548
City: Arvin State: CA Zip: 93203
§302(c)(4) Plan

§302(c)(4)(A) Describe the manner in which allocated funds will be used for eligible activities.

The City of Arvin will utilize year one funding to assist residents impacted by COVID-19 with rental, mortgage, or utility expenses in an effort to prevent eviction or foreclosure, while providing housing stability for those that are currently behind on payments or unable to make current payments. Year two through five funding will be used to assist households with Accessory Dwelling Unit (ADU) repairs to bring them into compliance with local codes and ordinances, in an effort to ensure tenant safety and/or to assist with the cost of constructing new ADU utilizing plans developed under the City's ADU Program.

§302(c)(4)(B) Provide a description of the way the Local government will prioritize investments that increase the supply of housing for households with incomes at or below 60 percent of Area Median Income (AMI).

Both activities proposed by the City will be targeted to those with incomes at or below 60 percent of AMI, and will ensure that 100% of funding in year one is provided to households with incomes below 60% of AMI. Households assisted under the ADU program in years two through five may have incomes up to 120% of AMI; however, occupancy of the ADU must be targeted to households below 60% of AMI in an effort to promote affordability that meets the needs of a growing workforce. Should the property owners household have income over AMI or below, the ADU may be made available to renters with incomes up to 120% of AMI.

§302(c)(4)(C) Provide a description of how the Plan is consistent with the programs set forth in the Local Government’s Housing Element.

The 2013-2023 City of Arvin Housing Element (Housing Element) focuses on the quality, quantity, condition and occupancy of the City's dwelling units. The City of Arvin's plan relies on the concerns of the citizens that clean, fair and upgraded housing be of primary importance in the development of the community. The Housing Element considers the current concern of affordable housing as a key issue that needs immediate attention. The ADU program directly supports this objective by providing funding to property owners with substandard ADUs with an effort to improve affordable rental housing. The Housing Element objective to conserve affordable units includes a subtotal for the number of at-risk multifamily units that does not take into consideration single family units within the predominately low-income community that could be lost due to unforeseen emergencies, pandemic or major employment shifts. In an effort to sustain the City's housing market and population, while also assisting those at risk of homelessness due to the National Health Pandemic (COVID-19), the City's assistance program being provided in year one directly supports policies in the City's Housing Element to conserve affordable housing.

Activities Detail (Activities Detail (Must Make a Selection on Formula Allocation Application worksheet under Eligible Activities, §301))

§301(a)(1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is affordable to extremely low-, very low-, or moderate-income households, including necessary Operating subsidies.

§301(a)(2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory Dwelling Units (ADUs) that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.

§302(c)(4)(E)(i) Provide a description of how allocated funds will be used for each proposed Affordable Rental and Ownership Housing Activity.

The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory Dwelling Units (ADUs), that promotes the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.

Complete the table below for each proposed Affordable Rental and Ownership Housing Activity to be funded with 2019-2023 PLHA allocations. If a single Activity will be assisting households at more than one level of Area Median Income, please list the Activity as many times as needed to capture all of the AMI levels that will be assisted, but only show the percentage of annual funding allocated to the Activity one time (to avoid double counting).

<table>
<thead>
<tr>
<th>Funding Allocation Year</th>
<th>2020</th>
<th>2020</th>
<th>2021</th>
<th>2021</th>
<th>2022</th>
<th>2022</th>
<th>2023</th>
<th>2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Type of Affordable Housing Activity</td>
<td>ADU</td>
<td>ADU</td>
<td>ADU</td>
<td>ADU</td>
<td>ADU</td>
<td>ADU</td>
<td>ADU</td>
<td>ADU</td>
</tr>
<tr>
<td>§302(c)(4)(E)(ii) Area Median income Level Served</td>
<td>60%</td>
<td>80%</td>
<td>60%</td>
<td>80%</td>
<td>60%</td>
<td>80%</td>
<td>60%</td>
<td>80%</td>
</tr>
<tr>
<td>§302(c)(4)(E)(ii) Unmet share of the RHNA at AMI Level</td>
<td>199</td>
<td>86</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Describe the manner in which allocated funds will be used for each proposed Affordable Rental and Ownership Housing Activity.

Beginning in year two through year five, 100% of funding will be used to support the ADU program. Funds will be provided at zero interest deferred payment loans to homeowners and/or landlords to own, repair, or construct new ADU's. The City will provide pre-approved plans to participants at no cost and financing up to $20,000 per unit for eligible applicants. Loans provided to homeowners with incomes under 60% of AMI may rent units to tenants with incomes up to 120% of AMI. Homeowners with incomes above 60% of AMI will be required to rent units to households with incomes at or below 60% of AMI. Rent restrictions will be for a term of 10 years, will require affordable rents, and must be occupied for a term of at least 30 days. Loans will be due upon sale or transfer of title.
§302(c)(4)(E)(i) Percentage of Funds Allocated for Each Affordable Housing Activity

<table>
<thead>
<tr>
<th>Year</th>
<th>100%</th>
<th>100%</th>
<th>100%</th>
<th>100%</th>
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</thead>
</table>

§302(c)(4)(E)(ii) Projected Number of Households Served

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<tr>
<th>Year</th>
<th>4</th>
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<th>3</th>
<th>2</th>
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§302(c)(4)(E)(iv) Period of Affordability for the Proposed Activity (55 years required for rental housing projects)

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<tr>
<th>Year</th>
<th>10yrs</th>
<th>10yrs</th>
<th>10yrs</th>
<th>10yrs</th>
<th>10yrs</th>
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§302(c)(4)(E)(iii) A description of major steps/actions and a proposed schedule for the implementation and completion of each Affordable Rental and Ownership Housing project.

In year one, the City will finalize unit plans, program policies, legal documents, layout the process, develop an application and marketing materials for the ADU program. A series of community education/marketing events will be scheduled and held to inform the public of the opportunities and process. In year two, the City will take applications on a first come, first serve basis, which will be processed by their Housing Consultant, whom will determine eligibility, review program requirements with applicant, prepare documents for loan approval, release funding per established policies. Applicants will be required to attend a joint meeting with City building staff and housing consultant to review program requirements prior to signing. Initial activity is expected to be slow as community members learn more about the program and become comfortable. The first loan is expected to be approved within the months of the funding year, with four additional loans closing by the end of the funding year and five loans closing each year after that.

§302(c)(4)(E)(i) Provide a description of how allocated funds will be used for the proposed Activity.

Year one, 100% of funding will be used to provide financial assistance to households at risk of homelessness or in need of rental assistance, as a direct result of wage loss due to COVID-19. Funding may be made available to households with incomes at or below 60% of AMI to cover back or current rent/mortgage payments and/or utilities up to $3,000 per household.

Complete the table below for each proposed Activity to be funded with 2019-2023 PLHA allocations. If a single Activity will be assisting households at more than one level of Area Median Income, please list the Activity as many times as needed to capture all of the AMI levels that will be assisted, but only show the percentage of annual funding allocated to the Activity one time to avoid double counting.

Funding Allocation Year

<table>
<thead>
<tr>
<th>Year</th>
<th>2019</th>
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Type of Activity for Persons Experiencing or At Risk of Homelessness

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<tr>
<th>Type</th>
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<tr>
<td>Permanent</td>
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§302(c)(4)(E)(i) Percentage of Funds Allocated for the Proposed Activity

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<tr>
<th>Percentage</th>
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<tr>
<td>100.00%</td>
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§302(c)(4)(E)(ii) Area Median Income Level Served

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<thead>
<tr>
<th>Income Level</th>
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<td>60%</td>
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§302(c)(4)(E)(ii) Unmet share of the RHNA at AMI Level

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<th>Share</th>
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<tr>
<td>199</td>
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§301(a)(3) Matching portions of funds placed into Local or Regional Housing Trust Funds.

§301(a)(4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.

§301(a)(5) Capitalized Reserves for Services connected to the preservation and creation of new permanent supportive housing.

§301(a)(6) Assisting persons who are experiencing or At risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
Upon award, the program will be deployed to the public within 30 days. Marketing materials will be prepared and distributed along with a brief application, identifying needed supporting documents. Outreach efforts will be made to Food Banks and other service providers likely to service the target population. Upon receipt of a complete application and supporting documents the City’s Housing Consultant will work with the applicant to issue payments directly to Landlords, Mortgage Companies and/or utility companies. For rental assistance, ongoing need will have to be provided prior to issuance of monthly payments. Clients receiving assistance will also receive referral services for financial and housing counseling job training.

<table>
<thead>
<tr>
<th>§302(c)(4)(E)(ii)</th>
<th>Number of Households Served</th>
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<tr>
<td>§302(c)(4)(E)(iv)</td>
<td>Period of Affordability for the Proposed Activity (55 years required for rental housing projects)</td>
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<tr>
<td>§302(c)(4)(E)(iii)</td>
<td>A description of major steps/actions and a proposed schedule for the implementation and completion of the Activity.</td>
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Upon award, the program will be deployed to the public within 30 days. Marketing materials will be prepared and distributed along with a brief application, identifying needed supporting documents. Outreach efforts will be made to Food Banks and other service providers likely to service the target population. Upon receipt of a complete application and supporting documents the City’s Housing Consultant will work with the applicant to issue payments directly to Landlords, Mortgage Companies and/or utility companies. For rental assistance, ongoing need will have to be provided prior to issuance of monthly payments. Clients receiving assistance will also receive referral services for financial and housing counseling job training.

| §301(a)(7) | Accessibility modifications in Lower-income Owner-occupied housing. |
| §301(a)(8) | Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments. |
| §301(a)(9) | Homeownership opportunities, including, but not limited to, down payment assistance. |
| §301(a)(10) | Fiscal incentives made by a county to a city within the county to incentivize approval of one or more affordable housing Projects, or matching funds invested by a county in an affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the Project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low-interest deferred loan to the affordable housing Project. |

File Name: Plan Adoption

§302(c)(4)(D) Evidence that the Plan was authorized and adopted by resolution by the Local jurisdiction and that the public had an adequate opportunity to review and comment on its content.

Attached and on USB?: Yes
## Legislative and Congressional Information

Provide the Legislative and Congressional information for the applicant and each activity location, (if different from applicant location), included in this application.

To locate or verify the Legislative and Congressional information, click on the respective links below and enter the applicant office location zip code, the activity location site zip code(s) (i.e. zip code(s) where activities are performed), and any additional activity location site(s), as applicable.

<table>
<thead>
<tr>
<th>California State Assembly</th>
<th>California State Senate</th>
<th>U.S. House of Representatives</th>
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<tbody>
<tr>
<td>** Applicant Office Location **</td>
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<tr>
<td>32</td>
<td>Rudy</td>
<td>Salas, Jr.</td>
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<tr>
<td>14</td>
<td>Melissa</td>
<td>Hurtado</td>
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<td>21</td>
<td>T.J.</td>
<td>Cox</td>
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<p>| ** Activity Location 1 (if different from applicant location) ** | | |</p>
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<p>| ** Activity Location 8 (if different from applicant location) ** | | |</p>
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<p>| ** Activity Location 9 (if different from applicant location) ** | | |</p>
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<p>| ** Activity Location 10 (if different from applicant location) ** | | |</p>
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<p>| ** Activity Location 11 (if different from applicant location) ** | | |</p>
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<p>| ** Activity Location 12 (if different from applicant location) ** | | |</p>
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Application Development Team (ADT) Support Form

Please complete the "yellow" cells in the form below and email a copy to: AppSupport@hcd.ca.gov. A member of the Application Development Team will respond to your request within ASAP.

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<th>Cell#</th>
<th>Update/Comment</th>
<th>Urgency</th>
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Full Name: Date Requested: Application Version Date:

Organization: Email: Contact Phone:

Justification:

Application Support

RESOLUTION NO. _________

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ARVIN
ADOPTING A PERMANENT LOCAL HOUSING ALLOCATION (PLHA)
PLAN; AND AUTHORIZING RELATED ACTIONS

[All, or A necessary quorum and majority] of the council members of the City of Arvin, a municipality (“The City of Arvin”) hereby consents to, adopts and ratifies the following resolution:

WHEREAS, the Department is authorized to provide up to $195 million under the SB 2 Permanent Local Housing Allocation Program Formula Component from the Building Homes and Jobs Trust Fund for assistance to Cities and Counties (as described in Health and Safety Code section 50470 et seq. (Chapter 364, Statutes of 2017 (SB 2)), and;

WHEREAS, the State of California (the “State”), Department of Housing and Community Development (“Department”) issued a Notice of Funding Availability (“NOFA”) dated 02/26/2020 under the Permanent Local Housing Allocation (PLHA) Program, and;

WHEREAS, The City of Arvin is an eligible Local government applying for the program to administer one or more eligible activities, or a Local or Regional Housing Trust Fund to whom an eligible Local government delegated its PLHA formula allocation, and;

WHEREAS, the Department may approve funding allocations for PLHA Program, subject to the terms and conditions of the Guidelines, NOFA, Program requirements, the Standard Agreement and other contracts between the Department and PLHA grant recipients;

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

Section 1: The City of Arvin in pursuant with threshold requirements outlined in the PLHA NOFA, has provided adequate opportunity for the public to review and comment on the proposed PLHA five-year plan.

Section 2: The City of Arvin hereby agrees the PLHA plan contains eligible activities as approved by the Department and in accordance with all Program requirements, Guidelines, other rules and laws, as well as in a manner consistent with Local government’s Housing Element.

Section 3: The City of Arvin is hereby authorized and adopts the PLHA five-year plan for the formula allocations, as stated in Appendix C of the current NOFA of $831,563 in accordance with all applicable rules and laws.

Section 4: Jerry Breckinridge, City Manager is authorized to submit the hereby adopted five-year PLHA plan and execute the PLHA Program Application, the PLHA Standard Agreement and any subsequent amendments or modifications thereto, as well as any other documents which are related to the Program or the PLHA grant awarded to The City of Arvin, as the Department may deem appropriate, subject to approval of the City Attorney as to legal form.
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 14th day of July 2020 by the following vote:

AYES: _____________________________________________

NOES: ________________________________________________

ABSTAIN: ____________________________________________

ABSENT: ______________________________________________

ATTEST

__________________________, 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
PLHA REUSE ACCOUNT PLAN

The State of California Department of Housing and Community Development has made funds available through the Permanent Local Housing Allocation (PLHA) Program for the purpose of providing a permanent, on-going source of funding to Local governments for housing-related projects and programs that assist in addressing the unmet needs of their local communities.

The City of Arvin as a recipient of funding under the PLHA Program is required to follow specific guidelines in the accounting for, and use of, all monies received as repayments of loan principal and/or loan interest. The City of Arvin has formulated this document to comply with Sections 301 and 500 of the PLHA Guidelines.

Tracking of all repayments of loan principal and any loan interest is are posted in the accounting system that tracks PLHA funds separately from other funding sources. All accrued interest earned on PLHA funds shall accrue to the PLHA Reuse Account.

Funds in the reuse account shall only be used as follows:

(a) Eligible Activities are limited to one or more of the following:

(1) The predevelopment, development, acquisition, rehabilitation, and preservation of multifamily, residential live-work, rental housing that is Affordable to Extremely low-, Very low-, Low-, or Moderate-income households, including necessary Operating subsidies.

(2) The predevelopment, development, acquisition, rehabilitation, and preservation of Affordable rental and ownership housing, including Accessory dwelling units (ADUs), that meets the needs of a growing workforce earning up to 120 percent of AMI, or 150 percent of AMI in high-cost areas. ADUs shall be available for occupancy for a term of no less than 30 days.

(3) Matching portions of funds placed into Local or Regional Housing Trust Funds.

(4) Matching portions of funds available through the Low- and Moderate-Income Housing Asset Fund pursuant to subdivision (d) of HSC Section 34176.

(5) Capitalized Reserves for Services connected to the preservation and creation of new Permanent supportive housing.

(6) Assisting persons who are experiencing or At risk of homelessness, including, but not limited to, providing rapid rehousing, rental assistance, supportive/case management services that allow people to obtain and retain housing, operating and capital costs for navigation centers and emergency shelters, and the new construction, rehabilitation, and preservation of permanent and transitional housing.
(A) This Activity may include sub-awards to Administrative Entities as defined in HSC Section 50490(a)(1-3) that were awarded CESH program or HEAP funds for rental assistance to continue assistance to these households.

(B) Applicants must provide rapid rehousing, rental assistance, navigation centers, emergency shelter, and transitional housing activities in a manner consistent with the Housing First practices described in 25 CCR, Section 8409, subdivision (b)(1)-(6) and in compliance with WIC Section 8255(b)(8). An Applicant allocated funds for the new construction, rehabilitation, and preservation of Permanent supportive housing shall incorporate the core components of Housing First, as provided in WIC Section 8255, subdivision (b).

(7) Accessibility modifications in Lower-income Owner-occupied housing.

(8) Efforts to acquire and rehabilitate foreclosed or vacant homes and apartments.

(9) Homeownership opportunities, including, but not limited to, down payment assistance.

(10) Fiscal incentives made by a county to a city within the county to incentivize approval of one or more Affordable housing Projects, or matching funds invested by a county in an Affordable housing development Project in a city within the county, provided that the city has made an equal or greater investment in the Project. The county fiscal incentives shall be in the form of a grant or low-interest loan to an Affordable housing Project. Matching funds investments by both the county and the city also shall be a grant or low-interest deferred loan to the Affordable housing Project.

(b) A Local government that receives an allocation shall use no more than 5 percent of the allocation for costs related to the administration of the Activity(ies) for which the allocation was made. Staff and overhead costs directly related to carrying out the eligible activities described in Section 301 are “activity costs” and not subject to the cap on “administrative costs.” A Local government may share any funds available for administrative costs with entities that are administering its allocation.

(c) Two or more Local governments that receive PLHA allocations may expend those moneys on an eligible jointly funded project as provided for in Section 50470 (b)(2)(B)(ii)(IV). An eligible jointly funded project must be an eligible Activity pursuant to Section 301(a) and be located within the boundaries of one of the Local governments.

(d) Entitlement Local governments may use the flow of PLHA funds to incentivize private lender loans and to guarantee payments for some or all public agency bond financings for activities consistent with the uses identified in Section 301 “Eligible Activities”. This loan guarantee Activity must be identified and fully explained in the Applicant’s “Plan”.

Any loan funds not expended at completion of an individual homeowner transaction will be deposited into the Reuse Account, will be considered a “principal reduction”, and will
be applied to the principal loan balance, thereby reducing the amount owed by the borrower. Borrowers will receive a closeout letter after the 30-day retention period indicating the amount of their Note, the credit, and the ending balance on their loan. A copy of this credit along with the final cost break-down will be retained in the borrowers file.
PROOF OF PUBLICATION

The BAKERSFIELD CALIFORNIAN
3700 PEGASUS DRIVE
BAKERSFIELD, CA 93308

CITY OF ARVIN/LEGALS
200 CAMPUS DR
ARVIN, CA 93203

STATE OF CALIFORNIA
COUNTY OF KERN


AND WHICH NEWSPAPER HAS BEEN ADJUDGED A NEWSPAPER OF GENERAL CIRCULATION BY THE SUPERIOR COURT OF THE COUNTY OF KERN, STATE OF CALIFORNIA, UNDER DATE OF FEBRUARY 5, 1952, CASE NUMBER 57610; THAT THE NOTICE, OF WHICH THE ANNEXED IS A PRINTED COPY, HAS BEEN PUBLISHED IN EACH REGULAR AND ENTIRE ISSUE OF SAID NEWSPAPER AND NOT IN ANY SUPPLEMENT THEREOF ON THE FOLLOWING DATES, TO WIT: 6/29/20

ALL IN YEAR 2020

I CERTIFY (OR DECLARE) UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATED AT BAKERSFIELD CALIFORNIA 6.29.2020
TO: City Council

FROM: R. Jerry Breckinridge, City Manager
       Mitzy Cuxum, Senior Planner

SUBJECT: Public Hearing to Consider and I) Approve An Ordinance of the City Council of the City of Arvin Adopting An Uncodified Ordinance, Approving A Development Agreement Between the City of Arvin and Cana Rose Realty Holdings, LLC., and Life & Nature Farms LLC., for the Development of Certain Cannabis Operations located at 901 Potato Road, Arvin, CA, and II) adopt an exemption pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3).

RECOMMENDATION:
Staff recommends that the City Council consider introducing the Ordinance to be read by title only, open the hearing, allow for public testimony, close the hearing, waive first reading of the Ordinance, and I) approve the introduction of the Ordinance and II) Adopt an exemption pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3).

APPLICANT AND LOCATION:

<table>
<thead>
<tr>
<th>Applicant:</th>
<th>Cana Rose Realty Holdings, LLC and Life and Nature Farms, LLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address:</td>
<td>5016 California Avenue, Bakersfield CA 93309</td>
</tr>
<tr>
<td>Project Address:</td>
<td>901 Potato Road, Arvin, CA 93203</td>
</tr>
<tr>
<td>Assessor Parcel No.</td>
<td>193-150-18</td>
</tr>
<tr>
<td>Zoning</td>
<td>M-2, Light Manufacturing Zone</td>
</tr>
<tr>
<td>General Plan Land Use Designation</td>
<td>Industrial</td>
</tr>
</tbody>
</table>
BACKGROUND:

On July 13, the Planning Commission held a public hearing. In this meeting the Planning Commission recommended the City Council of the City of Arvin to approve the Development Agreement between the City of Arvin and Cana Rosa Realty Holdings LLC., and Nature Farms LLC., for the development of certain cannabis operations.

The City adopted Chapter 17.64 Commercial Cannabis Activity on June 19, 2018, permitting specific commercial cannabis activities by conditional use permit, including within the M-2 zoned district. The ordinance includes protections for the community, including restricting uses near homes, schools, parks and libraries. The City’s ordinances also allow the City to enter development agreements with developer. The development agreement details the obligations of the City and the developer and it specifies the standards and conditions that will govern the development of the property.

Development agreements are contracts approved by the City Council after consideration of the Planning Commission recommendation. They are entered into by the City and a developer to expressly define a development project’s rules, regulations, commitments, and policies for a specific period of time. The purpose is to strengthen the public planning process by encouraging private participation in the achievement of comprehensive planning goals and reducing the economic costs of development. A development agreement reduces the risks associated with development, thereby enhancing the City’s ability to obtain public benefits beyond those achievable through existing ordinances and regulations.

Cana Rose Realty Holdings, LLC., and Life & Nature Farms, LLC., (“Developer”) has filed applications, including a development agreement, with the City for development of 901 Potato Rd.
Road, in Arvin, California, which is generally located north of Sycamore Road between and East of Fallbrook. Commercial cannabis uses are proposed within the existing buildings. The Planning Commission approved a site plan and conditional use permit for this location in 2019.

Along with the Development Agreement, a Conditional Use Permit (CUP) and Site Development Plan (SDP) (collectively “entitlements”) will allow for commercial cannabis activities to operate at the site with the appropriate City permits and State licenses. The Cannabis uses include: Cultivation, Manufacturing and Non-store front retail (delivery only).

The proposed Development Agreement complies with the purposes, goals and policies of the City's General Plan. Accordingly, the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement. As existing facilities are proposed to be used, the Development Agreement does not include a subdivision as defined in section 66473.7 of the Government Code.

COMMUNITY BENEFITS:

The Development Agreement will provide substantial benefit to the community including the following:

- Developer to pay $100,000.00 in unrestricted community benefit funds.
- Developer to pay 1.00 per square foot of cultivated cannabis every quarter.
- Developer to pay 100% of the cost of processing Developer’s applications.
- Developer shall make a one-time payment of $0.044 per square foot of permitted use to offset the proportionate amount of the City’s costs of preparation of Ordinance No. 447 – Chapter 17.64 Commercial Cannabis Activities.
- Developer shall pay the City one of the following maximum rates for cultivation activities within the Project Area:
  - For all space utilized as cultivation area where Mixed-Light Cultivation is used one dollars ($1) per square foot on a quarterly basis;
  - For all space utilized as cultivation area other than as specified in subparagraph (i) – one dollars and fifty cents ($1.50) per square foot on a quarterly basis.
- Developer shall pay the City, other than for cultivation, the following rates on a quarterly basis:
  (i) For testing – up to two percent (2%) of Proceeds.
  (ii) For manufacturing, up to the following tiered rate, based on a quarterly term:
    a. Six percent (6%) of Proceeds up to and including $625,000;
    b. Three point seven five percent (3.75%) of Proceeds over $625,000 and up to and including $2,500,000;
    c. Two point eight percent (2.8%) of Proceeds over $2,500,000.
  (iii) For distribution – up to two percent (2%) of Proceeds.
  (iv) For retail sales – up to three point seven five percent (3.75%) of Proceeds.
  (v) For all operations, other than as specified, up to four percent (4%) of Proceeds.
It is anticipated that the City Council may exercise its authority to further refine and clarify the requirements of the Development Agreement as may be appropriate.

ENVIRONMENTAL CONSIDERATIONS:

The City has performed a preliminary assessment of this project and, pursuant to the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3), proposes to determine with certainty that there is no possibility this project will have a significant effect on the environment. Further, none of the exceptions to categorical exemptions set forth in CEQA Guidelines, section 15300.2, apply to this project.

PUBLIC NOTIFICATION:

The City properly noticed the July 14, 2020 hearing before the City Council for the proposed Development Agreement 2020-01 pursuant to Government Code sections 65090 and 65091 by publication in the newspaper on July 01, 2020. A copy of the notice is attached to this Staff report. In addition, the City Clerk provided notice of by mailing the public notice to all property owners within the 300-foot radius.

ATTACHMENTS:

1. An Ordinance of the City Council of the City of Arvin to I) Adopt the Uncodified Ordinance of the City Council of the City of Arvin, Approving A Development Agreement Between the City of Arvin and Cana Rose Realty Holdings, LLC for the Development of Certain Cannabis Operations located at 901 Potato Road, Arvin, CA, and II) adopt an exemption pursuant to California Environmental Quality Act Guidelines Section 15061(b)(3).

2. Public Hearing Notice.
ORDINANCE NO. _______

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN, CALIFORNIA, ADOPTING AN UNCODIFIED ORDINANCE, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF ARVIN AND CANA ROSE REALTY HOLDINGS, LLC. AND LIFE & NATURE FARMS, LLC. FOR THE DEVELOPMENT OF CERTAIN COMMERCIAL CANNABIS OPERATIONS LOCATED AT 901 POTATO ROAD, ARVIN, CA

WHEREAS, Sections 65864-65869.5 of the California Government Code authorize the City of Arvin (“City”) to enter into development agreements and requires the planning agency of the City to find the proposed development agreement to be consistent with the policies and programs of the General Plan and any applicable specific plan, which the Planning Commission has done; and

WHEREAS, Government Code section 65865 authorizes the City to enter into development agreements with any person having a legal or equitable interest in real property; and

WHEREAS, Cana Rose Realty Holdings, LLC. and Life & Nature Farms, LLC. (“Developer”) has filed the a development agreement application with the City for development of 901 Potato Road, in Arvin, California, APN: 193-150-18, which is generally located north of Sycamore Road and East Fallbrook Avenue, (the “Project Area” or “Property”) for the development of cannabis uses under for Cultivation, Manufacture and Non-storefront delivery, to be completed in six phases (the “Project”) as approved on their Conditional Use Permit (Resolution No. APC2019-05). The various entitlements are collectively referred to as “Project Approvals;” and

WHEREAS, the City performed a preliminary environmental assessment pursuant to the requirements of the California Environmental Quality Act (California Public Resources Code section 21000, et seq.) and the Guidelines thereunder (14 California Code of Regulations section 15000, et seq.) (collectively, “CEQA”), and determined the Project Approvals were subject to exemptions pursuant to CEQA Guidelines section 15061(b)(3).

WHEREAS, On July 13th the Planning Commission held a public hearing. In this meeting the Planning Commission recommended to the City Council of the City of Arvin to approve the Development Agreement between the City of Arvin and Cana Rosa Realty Holdings LLC., and Nature Farms LLC., for the development of certain cannabis operations.

WHEREAS, the City properly noticed the July 14, 2020, regular meeting of the City Council of the City of Arvin to consider the proposed development agreement pursuant to Government Code sections 65090 and 65091 by publication in the newspaper and provided notice to all property owners within three hundred (300’) feet of the proposed projects; and
NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Arvin as follows:

1. The above recitals are true, correct and hereby incorporated by reference.

2. The City Council adopts a CEQA determination pursuant to CEQA Guidelines section 15061(b)(3) as it can be seen with certainty that there is no possibility that the Development Agreement will have a significant, adverse, physical effect on the environment. Further, none of the exceptions to categorical exemptions set forth in CEQA Guidelines, section 15300.2, apply to this project.

3. The City Council approves the Development Agreement By And Between The City Of Arvin, A Municipal Corporation, and Cana Rose Realty Holdings, LLC., and Life & Nature Farms, LLC., A California Corporation and uncodified ordinance attached hereto as Exhibit “A,” and recommends the City Council make the following attendant findings:

   a. Finding 1: The proposed Development Agreement complies with the purposes, goals and policies of the City’s General Plan. Accordingly, the Development Agreement is consistent with all applicable provisions of the General Plan. The proposed land uses and the density are also compliant per this requirement.

   b. Finding 2: The Development Agreement is consistent with and furthers a number of goals and objectives identified in the City’s General Plan.

   c. Finding 3: The Development Agreement does not include a subdivision as defined in section 66473.7 of the Government Code.

4. This Ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. If either said approval or payments have not occurred within sixty (60) days of the date of the adoption of this Ordinance, this Ordinance shall not take effect and will be null and void.

//////
I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council of the City of Arvin after waiving reading, except by Title, at a regular meeting thereof held on the 14th of July 2020, and adopted the Ordinance after the second reading at a regular meeting held on the _____ day of __________ 2020, by the following roll call vote:

AYES: ____________________________________________________________

NOES: __________________________________________________________

ABSTAIN: _______________________________________________________

ABSENT: ________________________________________________________

ATTEST:

__________________________, 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.
DEVELOPMENT AGREEMENT

by and between

The City of Arvin
a municipal corporation

and

Cana Rose Realty Holdings, LLC
a California Limited Liability Company

and

Life & Nature Farms, LLC,
a California Limited Liability Company
DEVELOPMENT AGREEMENT

This Development Agreement (the “Agreement”) is made this ______ day of __________, 2020, by and between the City of Arvin, a municipal corporation, organized and existing pursuant to the laws of the State of California (the “City”) and Cana Rose Realty Holdings, LLC, a California limited liability company and Life & Nature Farms, LLC, a California limited liability company. Cana Rose Realty Holdings, LLC and Life & Nature Farms, LLC are collectively referred to herein as (“Developer”). City and Developer are hereinafter sometimes collectively referred to as the “Parties” and each may be referred to as a “Party”.

RECITALS

A) Pursuant to Section 65864 through 65869.5 of the California Government Code (the “Development Agreement Laws”), the City is authorized to enter into binding development agreements with Persons (as hereinafter defined) having legal or equitable interests in real property for the development of such real property.

B) The following application(s) have been filed by the Developer with the City for 901 Potato Road, Arvin, California, APN: 193-150-18-00, that is generally located at the intersection of Derby and Sycamore Roads, Arvin, California (the “Project Area” or “Property”) for the development of commercial cannabis related uses (the “Project”):

1) An application for this Development Agreement (the “DA Application”).
2) An application filed by the Developer (the “CUP Application”) for a conditional use permit for commercial cannabis cultivation, which would allow the use of the entire Project Area, including any existing structures, appurtenances or planned improvements thereto (as more particularly described in the CUP Application).
3) An application for a site development permit filed by the Developer (the “Site Development Application”) for architectural treatment, drainage, site aesthetics, and similar development within the Project Area (as more particularly described in the Site Plan Application).
4) An application filed by the Developer (the “Commercial Cannabis Permit Application”) for a Commercial Cannabis Permit, as required by Chapter 17.64 of the Arvin Municipal Code, for cannabis uses in the Project Area (as more particularly described in the Commercial Cannabis Permit application).

The CUP Application, the Site Development Application and the Commercial Cannabis Permit Application are hereinafter sometimes collectively referred to as the “Project Applications”. Approval of the Project Applications is hereinafter sometimes collectively referred to as the “Project Approvals.” The Project Area is depicted on Exhibit “A” to this Agreement, and the legal description is set forth on Exhibit “B.”

C) All required fees and costs have been paid for the filing, and the City’s processing of, the Project Applications except for the payment of the City Preparation Costs (as hereinafter defined) which will be paid within thirty (30) days of the Effective Date (as hereinafter defined) of this Agreement.
D) Subsequent to the filing of the Project Applications, the City performed a preliminary environmental assessment pursuant to the requirements of the California Environmental Quality Act (California Public Resources Code section 21000, et seq.) and the Guidelines thereunder (14 California Code of Regulations section 15000, et seq.) (collectively, “CEQA”), and determined the Project Approvals were subject to exemptions pursuant to CEQA Guidelines Section 15061(b)(3) and 15301 (Existing Facilities).

E) Developer filed the DA Application for approval of this Agreement in order to: (1) vest the land use and zoning policies established in the Existing City Requirements (as hereinafter defined) as of the Adoption Date (as hereinafter defined) of this Agreement for the duration of the Term (as hereinafter defined) with respect to the Project Area and the Project; and (2) memorialize certain other agreements made between the City and Developer with respect to the Project Area and the Project.

F) The City has determined that this Agreement furthers the public health, safety and general welfare, and that the provisions of this Agreement are consistent with the goals and policies of the 2035 Arvin General Plan. For the reasons recited herein, the City and Developer have determined that the Project is a development for which this Agreement is appropriate. This Agreement will eliminate uncertainty regarding Project Approvals and certain subsequent development approvals, thereby encouraging planning for, investment in and commitment to use and develop the Project Area. Continued use and development of the Project Area is anticipated to, in turn, provide the following substantial benefits and contribute to the provision of needed infrastructure for area growth, thereby achieving the goals and purposes for which the Development Agreement Laws were enacted: (1) Provide for the development of unused land; (2) Provide increased tax revenues for the City; (3) Provide for jobs and economic development in the City; and (4) Provide infrastructure improvements that can be utilized by regional users and future users. It is based upon these benefits to the City that the City is agreeable to proceeding with the proposed Project Applications and Project Approvals.

G) The City has further determined that it is appropriate to enter into this Agreement to: (1) provide certainty to encourage investment in the comprehensive development and planning of the Project; (2) secure orderly development and progressive fiscal benefits for public services, improvements and facilities planning for the Project Area and neighboring areas, as appropriate; and (3) fulfill and implement applicable adopted City plans, goals, policies and objectives.

H) The City has further determined that the provisions of this Agreement, including the uses and activities authorized herein, are compatible with the uses authorized in, and the regulations prescribed for, the zoning district and area in which the Property is located, and will not adversely affect the orderly development of property or the preservation of property values in the City.

I) The City has further determined that this Agreement, will provide for or result in contributions, services, or facilities that benefit the community and provides for payment by the Developer or all costs associated with preparing and entering into this Agreement as stated this Agreement.

J) The City has further determined that this Agreement provides a reasonable penalty for violation of its terms, as stated in Section 10 hereof.

K) This Agreement will survive beyond the term or terms of the present City Council.
L) On ____, at a duly noticed public meeting and after due review and consideration of (i) the report of City staff on the Project Applications, (ii) all other evidence heard and submitted at the public hearing, and (iii) all other appropriate documentation and circumstances, the Planning Commission of the City adopted resolutions recommending that the City Council: (1) adopt the exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15301(Existing Facilities) in compliance with CEQA; (2) approve the CUP Application, and Site Development Application subject to the express conditions of approval set forth therein (collectively, the “Conditions of Approval”); and (3) approve this Development Agreement.

M) On _____________, 2020, at a duly noticed public meeting and after introduction of the ordinance due review and consideration of (i) the report of City staff on the Project Applications, (ii) the recommendations of the Planning Commission, (iii) all other evidence heard and submitted at the duly noticed public hearing conducted and closed, and (iv) all other appropriate documentation and circumstances, the City Council adopted an ordinance to: (a) adopt the exemption pursuant to CEQA Guidelines Sections 15061(b)(3) and 15301(Existing Facilities) in compliance with CEQA and adopt any attendant findings required by CEQA; (b) to effectuate the approval of this Agreement, upon making the findings required by section 17.64.200 of the Arvin Municipal Code; and (c) direct the City Manager to finalize and execute this Agreement on behalf of the City (collectively, the “City Council Ordinance”).

AGREEMENT

NOW, THEREFORE, with reference to the above Recitals, and in consideration of the mutual covenants and agreements contained in this Agreement, the City and the Developer agree as follows:

1. Interests of Developer.

1.1 Recordation. This Agreement shall be recorded in the Official Records of the County of Kern County, and the City and Developer shall execute any documents reasonably required by the other to effectuate such recordation. This Agreement must be recorded with the Kern County Recorder prior to commencement of any commercial cannabis use on the Property, regardless of the existence of any conditional use permit, site plan, entitlement, City-issued commercial cannabis permit or State-issued license for cannabis operations at the Property or in the Property Area.

1.2 Recordation of Agreement. Within ten (10) calendar days following mutual execution of this Agreement by the City and Developer, the City shall cause this Agreement to be recorded in the official records of Kern County, California (the “Official Records”) with respect to the Property. Following the recordation of this Agreement in the Official Records, the City shall deliver to Developer a conformed copy of this Agreement evidencing the recording information.

1.3 Binding Covenants. The Developer represents: (1) it has a legal right of possession to the Property and/or equitable interest in the Project Area; (2) it has provided proof of such interest to the satisfaction of the City Manager; (3) it has provided proof of the authority of any agent or representative to act for the Developer in connection with this Agreement to the satisfaction of the City Manager; and (4) all other persons holding legal title in the Project Area are bound by this Agreement. It is intended and determined that the provisions of this Agreement shall constitute covenants which shall run with the land in the Project Area, and the burdens and benefits hereof shall bind an inure to all successors in interest to the Parties.
2. **Term of Agreement.**

2.1 **Definitions.** For purposes of this Agreement, the following shall have the meanings set forth below:

**“Adoption Date”** means the date on which the City Council adopted the ordinance approving this Agreement and authorizing the City Manager to execute this Agreement on behalf of the City.

**“Effective Date”** means the later of: (a) thirty (30) days after the Adoption Date; or (b) if a referendum petition is timely and duly circulated and filed with respect to this Agreement, the date the election results on the ballot measure by City voters approving this Agreement are certified by the City Council in the manner provided in the Elections Code.

**“Laws”** means the Constitution and laws of the State, the Constitution of the United States, and any codes, statutes, regulations, or executive mandates thereunder, and any court decision, State or federal, thereunder.

**“State”** means the State of California.

**“Terminate”** means the expiration of the Term of this Agreement, whether by the passage of time or by any earlier occurrence pursuant to any provision of this Agreement. The term “Terminate” includes any grammatical variant thereof, including “Termination” or “Terminated”.

2.2 **Term.** The term of this Agreement (the “Term”) shall commence on the Effective Date and shall continue for a period of ten (10) years following the Effective Date, unless otherwise extended pursuant to the mutual agreement of the Developer, and the City of Arvin, and, provided, further, that such period shall be extended for any events of Force Majeure pursuant to Section 13.1 and during the pendency of any legal action challenging the Project Approvals, the adoption of an environmental finding or document for the Project pursuant to CEQA, or any legal action challenging or contesting the adoption of this Agreement. Any extension based upon an event described in this Section 2.2 shall be granted pursuant to the procedures set forth in Section 13.2.

2.3 **Effect of Termination.** Upon any Termination of this Agreement, each Party shall retain any and all of the respective benefits that it received as of the date of Termination under or in connection with this Agreement. Termination of this Agreement shall not: (a) alter, impair or otherwise affect any City Permits for the Project that were issued by the City prior to the date of Termination; or (b) prevent, impair or delay Developer from (i) commencing, performing or completing the construction of any buildings or improvements in the Project or (ii) obtaining any certificates of occupancy or similar approvals from the City for the use and occupancy of completed buildings or improvements in the Project, that were authorized pursuant to City Permits for such construction issued by the City prior to the date of Termination. Nothing herein shall preclude the City, in its discretion, from taking any action authorized by Laws or Existing City Requirements to prevent, stop or correct any violation of Laws or Existing City Requirements occurring before, during or after construction of the buildings and improvements in the Project by Developer.

3. **Development of the Project.**

3.1 For purposes of this Agreement, the following shall have the meanings set forth
Applicable Rules” collectively means: (a) the terms and conditions of the Project Approvals; (b) the terms and conditions of this Agreement; and (c) the Existing City Requirements.

“City Agency” means any office, board, commission, department, division or agency of the City.

“City Manager” means the City Manager of the City of Arvin, or designee.

“City Permits” collectively means any and all permits or approvals that are required under the City Requirements in order to develop, use and operate the Project, other than: (a) the Plan Amendments; (b) the Zoning Amendments; (c) the Project Approvals (except for a commercial cannabis permit); and (d) Future Discretionary Approvals (as hereinafter defined) that the Developer may elect to obtain from the City pursuant to Section 3.4. “City Permits” specifically include, without limitation, commercial cannabis permits, building permits and Technical City Permits.

“City Requirements” collectively means all of the following which are in effect from time to time: (a) the Arvin Municipal Code; and (b) all rules, regulations and official plans and policies, including the 2035 Arvin General Plan and any applicable Specific Plan, of the City governing development, subdivision and zoning that are applicable to the Project Area. The City Requirements may include, without limitation, requirements governing building height, maximum floor area, permitted and conditionally permitted uses, floor area ratios, maximum lot coverage, building setbacks and setbacks, parking, signage, landscaping, Exactions (as hereinafter defined) and dedications, growth management, environmental consideration, grading, construction, security measures, odor control and other items.

“Developer Approved Changes” means those amendments, revisions or additions to the City Requirements adopted or enacted after the Adoption Date that: (a) Developer elects, in its sole discretion, to have applied to the development and occupancy of the Project and the Project Area during the Term of this Agreement; and (b) the City Manager approves such application, which approval shall not be unreasonably withheld.

“Existing City Requirements” means the City Requirements that are in effect as of the Adoption Date of this Agreement.

“Permitted Rules Revisions” collectively means the following: (a) any Minor Changes to this Agreement that are proposed by Developer and approved by the City in accordance with Section 3.3; (b) any commercial cannabis activity regulations enacted by the City Manager; (c) any Future Discretionary Approvals that are applied for by Developer and approved by the City pursuant to Section 3.4; (d) any Authorized Code Revisions under Section 3.5 that are uniformly applied on a City-wide basis; and (e) written amendments to this Agreement that are mutually executed by City and Developer pursuant to Section 16.2.

“Technical City Permits” collectively means any of the following technical permits issued by the City or any City Agency in connection with any building or improvement in the Project: (a) demolition, excavation and grading permits; (b) foundation permits; (c) permits for the installation of underground lines and facilities for utilities, including without limitation, water, sewer,
storm drain and dry utilities (electrical, gas, phone and cable); (d) any encroachment permits; and (e) any street improvement permits, including without limitation, permits for street lighting and traffic signals. “Technical City Permits” specifically excludes building permits from the City or any City Agency for the construction of particular buildings or improvements in the Project.

3.2 Applicable Rules.

3.2.1 Except for the Permitted Rules Revisions and any Developer Approved Changes, Developer shall have the right to develop and occupy the Project during the Term in accordance with the Applicable Rules. In the event of any conflict between the provisions in this Agreement, the Project Approvals and the Existing City Requirements, such conflict shall be resolved in the following order of priority: (a) first, the requirements of Chapter 17.64 of the Arvin Municipal Code; (b) then, commercial cannabis activity regulations enacted by the City Manager; (c) then, this Agreement; (d) then, the Project Approvals; and (e) finally, any other Existing City Requirements.

3.2.2 Except for the Permitted Rules Revisions and any Developer Approved Changes, no amendment to, revision of, or addition to any of the City Requirements that is adopted or enacted after the Effective Date shall (i) be effective or enforceable by the City with respect to the Project or the Project Area or (ii) modify or impair the rights of Developer under this Agreement during the Term without the Developer’s written approval, whether such amendment, revision or addition is adopted or approved by: (a) the City Council; (b) any City Agency; or (c) by the people of the City through referendum or initiative measure.

3.3 Minor Changes.

3.3.1 The Parties acknowledge that further planning and development of the Project may demonstrate that refinements and changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire that Developer retain a certain degree of flexibility with respect to the details of the development of the Project and with respect to those items covered in general terms under this Agreement. If and when Developer finds that Minor Changes (as hereinafter defined) are necessary or appropriate, then upon written request by Developer, the Parties shall, unless otherwise required by federal, state or local ordinance and/or regulation, effectuate such changes or adjustments through administrative amendments executed by the Developer and the City Manager or his or her designee, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further changed and amended from time to time as necessary, with approval by the City Manager and the Developer.

3.3.2 The term “Minor Changes” collectively means: (a) minor deviations to the Project Approvals that are permitted under the Existing City Requirements and are reasonably approved by the City Manager; (b) a reduction in the parking ratio requirements for the Project under consistent with the Arvin Municipal Code, provided that (i) the reduction does not exceed ten percent (10%) of the Code requirement, and (ii) the reduction is approved by the City Manager, which approval shall not be unreasonably withheld or denied; or (c) such other changes, modifications or adjustments to the Project Approvals, which the City Manager determines are consistent with the overall intent of the Project Approvals and which do not materially alter the overall nature, scope, or design of the Project, and which are consistent with the requirements of Chapter 17.64 of the Arvin Municipal Code and any commercial cannabis activity regulations enacted by the City Manager.
3.3.3 In effecting any Minor Changes, the City shall cooperate with the Developer, provided that the permitted uses are not modified from those in the Project Approvals and any changes are in accordance with the Existing City Requirements. Minor Changes shall not be deemed to be an amendment to this Agreement under California Government Code Section 65868 but are ministerial clarifications and adjustments, and unless otherwise required by law, no such administrative amendments shall require prior notice or hearing by the Planning Commission and City Council. Any amendment or change requiring an environmental impact report, or a supplement thereto, pursuant to CEQA shall not be considered a Minor Change, but shall be considered substantive amendment which shall be reviewed and approved by the Planning Commission or the City Council as determined by the applicable provisions of the Arvin Municipal Code relating to the hearing and approval procedures for the specific Project Approval.

3.4 Future Discretionary Approvals. Nothing in this Agreement is intended, should be construed or shall operate to preclude or otherwise impair the rights of Developer from applying to the City during the Term of this Agreement for any of the following new approvals with respect to any proposed buildings and improvements in the Project (collectively, the “Future Discretionary Approvals”): (a) any new variance or conditional use permit that is required under the Existing City Requirements; (b) any subsequent commercial cannabis permit; and (c) any other approval (i) which is not otherwise addressed or set forth in this Agreement and (ii) which the Existing City Requirements mandate must be reviewed and approved by the Planning Commission or City Council. The City shall process, review and approve or disapprove any application for a Future Discretionary Approval filed by Developer in accordance with the City Requirements then in effect. The approval by the City of an application by Developer for a Future Discretionary Approval shall not require an amendment of this Agreement.

3.5 Authorized Code Revisions. This Agreement shall not prevent the City from applying to the Project the following rules, regulations and policies adopted or enacted after the Adoption Date, if uniformly applied on a City-wide basis (collectively, the “Authorized Code Revisions”):

3.5.1 Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure, provided that such changes in procedural regulations do not have the effect of materially interfering with the substantive benefits conferred to Developer by this Agreement.

3.5.2 Regulations which are not in conflict with this Agreement and which would not, alone or in the aggregate, cause development of the Project to be materially different, more burdensome, time consuming or expensive.

3.5.3 Regulations which are necessary to avoid serious threats to the public health and safety, provided that, to the maximum extent possible, such regulations shall be construed and applied in a manner to preserve the substantive benefits conferred to Developer by this Agreement.

3.5.4 Mandatory regulations of the State and the United States of America applicable to the Project, provided that, to the maximum extent if possible, such regulations shall be construed and applied in a manner to preserve to the Developer the substantive benefits conferred to Developer by this Agreement.

3.5.5 City Requirements imposing life safety, fire protection, mechanical,
electrical and/or building integrity requirements with respect to the design and construction of buildings and improvements, including the then current applicable building codes.

3.5.6 Any commercial cannabis activity regulations enacted by the City Manager which are in compliance with the mandatory requirements of the Arvin Municipal Code.

3.6 Timing of Development. The actual timing and order of the development of any particular building(s) within the Project shall be determined by Developer, in its sole discretion, based upon the then projected needs and resources of Developer, as long as all requirements set forth in this Agreement and the Project Approvals related to each designated building or buildings are satisfied by Developer. The Developer has proposed a phased development of the Project as detailed and set forth in Exhibit “C” attached hereto and incorporated herein by this reference.

3.7 No Obligation to Develop. Nothing in this Agreement is intended, should be construed nor shall require Developer to proceed with the construction of any improvements in the Project Area. The decision to proceed or to forbear or delay in proceeding with the implementation or construction of the Project or any buildings or improvements on the Project Area shall be in the sole discretion of Developer and the failure of Developer to proceed with construction of the Project or any such buildings or improvements on the Project Area shall not: (a) give rise to any rights of the City to terminate this Agreement; or (b) constitute an Event of Default (as hereinafter defined) or give rise to any liability, claim for damages or cause of action against Developer.

3.8 Hold on Certificate of Occupancy. Except as otherwise provided in Section 6.2.3, the City reserves the right to place a hold on the issuance of any required Certificate of Occupancy for a building in the Project in the event the Existing City Requirements or Conditions of Approval with respect to that building have not been substantially completed by Developer.

4. City Permits.

4.1 Review and Processing of City Permits. Except as otherwise expressly provided in this Agreement, all City Permits required for the construction, development and operation of the Project and any buildings and improvements therein which comply with the requirements of the Applicable Rules: (a) shall be issued over-the-counter by the City Manager or the director of the other applicable City Agency having responsibility for the issuance of such City Permits, such as the City Manager for commercial cannabis permits; (b) shall not require the approval of the Planning Commission, City Council or any other City board or commission; and (c) shall not require a public hearing.

4.2 [Reserved.]

5. [Reserved.]

6. Exactions and City Development Fees.

6.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“City Application Fees” means fees levied or assessed by the City and any City Agency to review and process applications for City Permits.
“City Development Fees” means any and all fees and assessments, other than City Application Fees, charged or required by the City or any City Agency as a condition of, or in connection with, the Project Approvals or any City Permits: (a) to defray, offset or otherwise cover the cost of public services, improvements or facilities; or (b) that are imposed for a public purpose.

“Exaction” means any exactions or mitigation measures, other than the payment of City Development Fees and City Application Fees, that are imposed by the City or any City Agency, as a condition of, or in connection with, the Project Approvals. “Exactions” includes, without limitation: (a) a requirement for the dedication of any portion of the Project Area to the City or any City Agency; (b) an obligation for the construction of any on-site or off-site improvements, including any Off-Site Improvements; (c) an obligation to provide services; or (d) the requirement to dedicate any easements, rights or privileges with respect to the Project or any portion thereof to the City or any City Agency.

6.2 Exactions.

6.2.1 All of the Exactions that Developer shall be required to perform or caused to be performed in connection with the development, construction, use and occupancy of the Project, during the term of the Agreement (collectively, the “Required Exactions”), and the timing requirements for the performance of such Required Exactions, are set forth in this Agreement. The Required Exactions include the following:

6.2.1.1 Developer shall tender payment to the City in the amount of One Hundred Thousand Dollars ($100,000.00) in unrestricted community benefit funds. The community benefit funds may be utilized by the City in any manner deemed necessary by majority vote of the City Council. The first payment of Fifty Thousand Dollars ($50,000.00) in community benefit funds shall be paid in full by Developer within sixty (60) days after the Execution Date of this Agreement. The second payment of Fifty Thousand Dollars ($50,000.00) in community benefit funds shall be paid in full by Developer on or before sixty (60) days after issuance of the certificate of occupancy or operations commence, whichever is first.

6.2.1.2 On a quarterly basis, Developer shall pay the City in the amount one dollar ($1.00) per square foot of cultivated cannabis. The first payment shall be due on ________ 2020. The square footage shall be determined by measuring the canopy of the cannabis being cultivated consistent with Exhibit “D.” Upon request of the City, Developer shall allow City staff to independently verify the measurement of the canopy of the cannabis being cultivated. In addition to any other remedies, failure to permit City staff to verify Developer’s measurement of the cannabis canopy shall also be grounds for the City to terminate this Agreement.

6.2.1.3 Developer shall pay to the City an amount as determined by the City, in restricted funds to be utilized on a draw down basis for the City costs to process the Developer’s application(s) relating to its proposed commercial cannabis business. Should the restricted funds be exhausted prior to the City completing its processing of the application(s), Developer shall pay an additional amount to the City sufficient to process the application(s). The restricted funds shall be paid in full by Developer on or before 90 days after approval of this Agreement. Any excess payment from the Developer shall be returned by the City after all processing costs have been satisfied.
6.2.1.4 Developer shall make a one-time payment of $0.044 per square foot of permitted use to offset the proportionate amount of the City’s costs of preparation of Ordinance No. 447 – Chapter 17.64 Commercial Cannabis Activities. The payment shall be made within 30 days of the Effective Date of this Agreement.

6.2.1.5 Developer shall pay Required Exactions and fees set forth in Exhibit “D.”

In addition, the Required Exactions include, without limitation, all Conditions of Approval imposed by the City, to fully mitigate adverse impacts resulting from, and reasonably related to, the development of the Project.

6.2.2 Except for the Required Exactions and fees listed in this Agreement, no Exaction shall be imposed by the City or any City Agency during the Term of this Agreement in connection with: (a) the development, construction, use or occupancy of the Project; or (b) any applications filed for any City Permit for the development, construction, use or occupancy of the Project or any portion thereof.

6.3 [Reserved]

6.4 City Development Fees.

6.4.1 All of the City Development Fees that Developer shall be required to pay to the City and all City Agencies in connection with the development, construction, use and occupancy of the Project (collectively, the “Required Development Fees”), and the timing requirements for the payment of such Required Development Fees, are set forth in Exhibit “C” to this Agreement.

6.4.2 Notwithstanding the provisions of Section 6.4.1, Developer shall be responsible for paying: (a) any fees that Developer is obligated to directly pay to any Federal, State, County or local agency (other than any City Agency) under applicable Federal, State, County or local law; and (b) any fees the City is legally required to collect for other State or Federal agencies pursuant to (i) State or Federal law or (ii) any City agreement or City ordinance that the City is legally mandated or required to adopt or enter into to comply with State or Federal law or a judgment of a court of law, but only to the extent necessary to satisfy such compliance.

6.4.3 Except for the Required Development Fees listed on Exhibit “C” to this Agreement, or other fees identified in this Agreement, and any fees for a required building inspection or other required process for occupancy to be charged at the then current rate charged by the City to other developers, no City Development Fees shall be imposed by the City or any City Agency during the Term of this Agreement in connection with: (a) the development, construction, use or occupancy of the Project; or (b) any application filed for any City Permit for the development, construction, use or occupancy of the Project. After the term of this Agreement, development and use of the Property shall comply with all laws, regulations, enactments (including taxes), ordinances, then currently in effect.

6.5 City Application Fees. Developer shall pay to the City the City Application Fees chargeable in accordance with the City’s Fee Schedule that is in effect at the time the relevant
application for a City Permit is made; provided that such City Application Fees are uniformly imposed by the City and any City Agency at similar stages of project development on all similar applications for development in the City.

6.6 [Reserved]

7. Actions by City.

7.1 Other Governmental Permits. The City agrees to cooperate with Developer in Developer's endeavors to obtain permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project Area or portions thereof (such as, for example, but not by way of limitation, public utilities or utility districts and agencies having jurisdiction over transportation facilities and air quality issues) so long as the cooperation by the City will not require the City to exercise legislative action or incur any cost, liability or expense without adequate indemnity against or right of reimbursement therefore from Developer.

7.2 Cooperation in Dealing with Legal Challenge. If any action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of this Agreement (collectively, a “Third Party Action”), the Parties shall cooperate in the defense of the Third Party Action to the maximum extent reasonably possible under the circumstances unless otherwise required by law.

7.3 Indemnification.

7.3.1 Third Party Actions. To the fullest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, damages and costs (including attorney's fees, litigation expenses and administrative record preparation costs) arising from, resulting from, or in connection with any Third Party Action (as hereinafter defined). The term “Third Party Action” collectively means any legal action or other proceeding instituted by (i) a third party or parties or (ii) a governmental body, agency or official other than the City or a City Agency, that: (a) challenges or contests any or all of this Agreement, the Project Applications and Approvals, and the Project Approvals; or (b) claims or alleges a violation of CEQA or another law by the City Council; or (c) the grant, issuance or approval by the City of any or all of this Agreement, the Project Applications and Approvals, and the Project Approvals. Developer's obligations under this Section 7.3.1 shall apply regardless of whether City or any of its officers, officials, employees, agents or volunteers are actively or passively negligent, but shall not apply to any loss, liability, fines, penalties forfeitures, costs or damages caused solely by the active negligence or willful misconduct of the City or any of its officers, officials, employees, agents or volunteers. The provisions of this Section 7.3.1 shall survive the termination of this Agreement.

7.3.2 Additional Claims. To the fullest extent permitted by law, Developer shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers (“City Indemnies”) from any and all loss, liability, fines, penalties, forfeitures, costs and damages, including but not limited to personal injury, death at any time, and property damage, and including further attorney's fees, litigation and legal expenses incurred by the City Indemnity or held to be the liability of the City Indemnitee (including plaintiff’s or petitioner’s attorney’s fees if awarded, in connection with the City Indemnitee’s defense of its actions in any proceeding) (collectively, “Losses”) incurred by any City Indemnitees from any
and all claims, demands and actions in law or equity (collectively, a “Claim”), whether in contract, tort or strict liability, resulting from, arising or alleged to have arisen directly or indirectly out of performance or in any way connected with: (i) the making of this Agreement; (ii) the performance of this Agreement; (iii) the issuance of the CUP, permits, licenses, or other entitlements related to a cannabis operations; or (iv) the City’s granting, issuing or approving use of this Agreement. If any portion of a claim, demand or action in law gives rise to indemnification under this Agreement, Developer shall be responsible for indemnifying, holding harmless or defending the City as to the entire claim, demand or action in law. Developer’s indemnification obligations under the proceeding portions of this paragraph shall apply regardless of whether the City Indemnites are negligent, but shall not apply to any Loses caused solely by the gross negligence or willful misconduct of any City Indemnites.

In addition, Developer shall indemnify, hold harmless and defend the City Indemnities from any and all federal enforcement action(s) arising from (i) the execution of this Agreement, (ii) the issuance of the CUP, permits, licenses, or other entitlements, and/or (iii) any other entitlements or approvals by the City to operate the Developer’s commercial cannabis business. Further, Developer shall indemnify, hold harmless and defend the City Indemnites from any and all violation(s) of federal, state and/or local law by Developer, its officers, officials, employees, agents, subcontractors, independent contractors and volunteers.

If Developer should subcontract all or any portion of the work to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend the City Indemnites in accordance with the terms of the two prior paragraphs of this Section. Notwithstanding the preceding sentence, any subcontractor who is a “design professional” as defined in Section 2782.8 of the California Civil Code shall, in lieu of indemnity requirements set forth in the two prior paragraphs of this Section, be required to indemnify, hold harmless and defend the City Indemnities to the fullest extent allowed by law, from any and all Claims and Loses that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

7.3.3 Damage Claims. The nature and extent of Developer’s obligations to indemnify, defend and hold harmless the City with regard to events or circumstances not addressed in Section 7.3.1 and 7.3.2 shall be governed by this Section 7.3.3. To the furthest extent allowed by law, Developer shall indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by City, Developer or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement or the performance of any or all work to be done by Developer or its contractors, agents, successors and assigns pursuant to this Agreement (including, but not limited to design, construction and/or ongoing operation and maintenance of any required Off-Site Improvements unless and until such Off-Site Improvements are dedicated to and officially accepted by the City). Developer's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, consultants, attorneys, agents, or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of City or any of its officers, officials, employees, agents or volunteers.
If Developer should subcontract all or any portion of the services to be performed under this Agreement, Developer shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers in accordance with the terms of the preceding paragraph. The Developer further agrees that the use for any purpose and by any person of any and all of the streets and improvements required under this Agreement, shall be at the sole and exclusive risk of the Developer, at all times prior to final acceptance by the City of the completed street and other improvements, unless any loss, liability, fines, penalties, forfeitures, costs or damages arising from said use were caused by the active or sole negligence, or the willful misconduct, of the City or any of its officers, officials, employees, consultants, attorneys, agents or authorized volunteers.

Notwithstanding the preceding paragraph, to the extent that Subcontractor is a “design professional” as defined in section 2782.8 of the California Civil Code and performing work hereunder as a “design professional” shall, in lieu of the preceding paragraph, be required to indemnify, hold harmless and defend City and each of its officers, officials, employees, consultants, attorneys, agents and volunteers to the fullest extent allowed by law, from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in Agreement, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, its principals, officers, employees, consultants, attorneys, agents or volunteers in the performance of this Agreement.

This Section 7.3 shall survive termination or expiration of this Agreement.

7.4 Insurance. Except for any Off-Site Improvements constructed pursuant to the terms of this Agreement (in which case insurance for the Off-Site Improvements shall be required through the date of the City’s final formal acceptance of Off-Site Improvements constructed), from the Effective Date of this Agreement and at all times herein (the “Insurance Period”), Developer shall obtain and pay for and maintain in full force and effect all policies of comprehensive commercial general liability insurance described in this section with an insurance company(ies) either (i) 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. The following policies of insurance are required:

7.4.1 COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and shall include insurance for bodily injury, property damage and personal injury with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, contractual liability (including indemnity obligations under this Agreement), with limits of liability of not less than $2,000,000.00 per occurrence for bodily injury and property damage, $1,000,000.00 per occurrence for personal injury, $2,000,000.00 general aggregate and $2,000,000.00 aggregate for products and completed operations and $2,000,000.00 general aggregate.

7.4.2 COMMERCIAL AUTOMOBILE LIABILITY insurance which 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 (Code 1 B Any Auto), with combined single limits of liability of not less than $2,000,000.00 per accident for bodily injury and property damage.
7.4.3 WORKERS' COMPENSATION insurance as required under the California Labor Code.

7.4.4 EMPLOYERS' LIABILITY with minimum limits of liability of not less than $1,000,000.00 each accident, $1,000,000.00 policy limit and $1,000,000.00 for each employee.

In the event Developer purchases an Umbrella or Excess insurance policy(ies) to meet the “Minimum Limits of Insurance,” this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

Developer shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Developer shall also be responsible for payment of any self-insured retentions.

The above described policies of insurance shall be endorsed to provide an unrestricted thirty (30) calendar day written notice in favor of City of policy cancellation of coverage, except for the Workers' Compensation policy which shall provide a ten (10) calendar day written notice of such cancellation of coverage. In the event any policies are due to expire during the term of this Agreement, Developer shall provide a new certificate evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy(ies). Upon issuance by the insurer, broker, or agent of a notice of cancellation in coverage, Developer shall file with City a new certificate and all applicable endorsements for such policy(ies).

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form and shall name City, its officers, officials, agents, employees, consultants, attorneys, and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Developer’s insurance shall be primary and no contribution shall be required of City. Any Workers' Compensation insurance policy shall contain a waiver of subrogation as to City, its officers, officials, agents, employees, consultants, attorneys, and volunteers. Developer shall have furnished City with the certificate(s) and applicable endorsements for all required insurance prior to start of construction of any phase of development. Developer shall furnish City with copies of the actual policies upon the request of City's City Manager at any time during the life of the Agreement or any extension, and this requirement shall survive termination or expiration of this Agreement.

If at any time during the Insurance Period, Developer fails to maintain the required insurance in full force and effect, the City Engineer, or his/her designee, may order that the Developer, or its contractors or subcontractors, immediately discontinue any further work under this Agreement and take all necessary actions to secure the work site to insure that public health and safety is protected until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. The insurance requirements set forth in this Section 7.4 are material terms of this Agreement.

If Developer should hire a general contractor to provide all or any portion of the services or work to be performed under this Agreement, Developer shall require the general contractor to provide insurance protection in favor of City, its officers, officials, employees, consultants, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that the general contractor’s certificates and endorsements shall be on file with Developer and City prior to the commencement of any work by the general contractor.
If the general contractor should subcontract all or a portion of the services or work to be performed under this Agreement to one or more subcontractors, Developer shall require the general contractor to require each subcontractor to provide insurance protection in favor of City, its officers, officials, employees, consultants, attorneys, volunteers and agents in accordance with the terms of each of the preceding paragraphs, except that each subcontractor shall be required to pay for and maintain Commercial General Liability insurance with limits of liability of not less than $1,000,000.00 per occurrence for bodily injury and property damage, $1,000,000.00 per occurrence for personal injury, $2,000,000.00 aggregate for products and completed operations and $2,000,000.00 general aggregate and Commercial Automobile Liability insurance with limits of liability of not less than $1,000,000.00 per accident for bodily injury and property damage. Subcontractors’ certificates and endorsements shall be on file with the general contractor, Developer and City prior to the commencement of any work by the subcontractor. Developer’s failure to comply with these requirements shall constitute an “Event of Default” as that term is defined in Section 10.1.

8. Benefits

8.1 Benefits to the City. The City has extensively reviewed the terms and conditions of this Agreement and, in particular, has specifically considered and approved the impact and benefits of the Project upon the regional welfare. The terms and conditions of this Agreement have been found by the City to be fair, just, and reasonable, and to provide appropriate benefits to the City. This Agreement and the development of the Project will serve the best interests, and the public health, safety, and welfare of the residents and invitees, of the City and the general public. This Agreement will help provide effective and efficient development of any Off-Site Improvements and other Required Exactions in the vicinity of the Project Area; help maximize effective utilization of resources within the City; increase City tax revenues; and provide other substantial public benefits to the City and its residents by achieving the goals and purposes of the Development Agreement Laws, the Arvin Municipal Code and the 2035 Arvin General Plan (as may have been amended).

8.2 Benefits to the Developer. The Developer has expended and will continue to expend substantial amounts of time and money on the planning and development of the Project. In addition, the Developer may expend substantial amounts of time and money for the construction of the Off-Site Improvements, if required, and other Required Exactions and for the payment of the Required Development Fees in connection with the Project. The Developer would not make such expenditures except in reliance upon this Agreement. The benefit to the Developer under this Agreement consists of the assurance that the City will preserve the rights of Developer to develop the Project Area as planned and as set forth in the Project Approvals and this Agreement.

9. Annual Review of Compliance

9.1 Annual Review. City and Developer shall annually review this Agreement, and all actions taken pursuant to the terms of this Agreement with respect to the Project in accordance with the provisions of California Government Code section 65865.1 and this Section 9. The Parties recognize that this Agreement and the Project Approvals and City Permits referenced herein contain extensive requirements and that evidence of each and every requirement would be a wasteful exercise of the Parties’ resources. Accordingly, Developer shall be deemed to have satisfied its duty of demonstration if it presents evidence satisfactory to the City of its good faith compliance, as that term is used in Government Code, section 65865.1, with the material provisions of this Agreement.
9.2 **Developer Report.** Not later than the first anniversary date of the Effective Date, and not later than each anniversary date of the Effective Date thereafter during the Term, Developer shall apply for annual review of this Agreement. Developer shall submit with such application a report to the City Manager describing Developer's good faith compliance with the terms of this Agreement during the preceding year (the “Developer Report”). The Developer Report shall include a statement that the report is submitted to City pursuant to the requirements of California Government Code section 65865.1.

9.3 **Finding of Compliance.** Within thirty (30) days after Developer submits the Developer Report under Section 9.2, the City Manager shall review Developer's submission to ascertain whether Developer has demonstrated good faith compliance with the material terms of this Agreement. If the City Manager finds and determines that Developer has in good faith complied with the material terms of this Agreement, or does not determine otherwise within thirty (30) days after delivery of the Developer Report, the annual review shall be deemed concluded. If the City Manager initially determines that the Developer Report is inadequate in any respect, he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith compliance with the material terms of this Agreement. If the City Manager concludes that Developer has not demonstrated good faith compliance with the material terms of this Agreement, he or she shall so notify Developer prior to the expiration of the thirty (30) day period herein specified and prepare a staff report to the City Council with respect to the conclusions of the City Manager and the contentions of Developer with respect thereto (the “Staff Report”).

9.4 **Hearing Before City Council to Determine Compliance.** After submission of the Staff Report of the City Manager, the City Council shall conduct a noticed public hearing to determine the good faith compliance by Developer with the material terms of this Agreement. At least sixty (60) days prior to such hearing, the City Manager shall provide to the City Council, Developer, and to all other interested Persons requesting the same, copies of the Staff Report and other information concerning Developer's good faith compliance with the material terms of this Agreement and the conclusions and recommendations of the City Manager. At such public hearing, Developer and any other interested Person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the Staff Report on, or with respect or germane to, the issue of Developer's good faith compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time adequate to bring Developer's performance into good faith compliance with the material terms of this Agreement. If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, subject to Force Majeure pursuant to Section 13.1, then the City Council may by subsequent noticed public hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), Terminate or modify this Agreement (in which case notice of said action shall be recorded pursuant to Arvin Municipal Code Section 17.64.200(c)), or take such other actions as may be specified in the Development Agreement Laws. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to perfect the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefor and all facts demonstrating such noncompliance or failure, so
that Developer may address the issues raised in the notice of noncompliance or failure on a point-by-point basis in any hearing held by the City Council hereunder.

9.5 **Meet and Confer Process.** If either the City Manager or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant to which the Parties shall meet and confer in order to determine a resolution acceptable to both Parties of the basis upon which the City Manager or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. If, as a result of such meet and confer process, the Parties agree on a resolution on the basis related to the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, the results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution achieved through such meet and confer process. Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon City Council acceptance of the results and recommendations of the meet and confer process.

9.6 **Certificate of Compliance.** If the City Manager (or the City Council, if applicable) finds good faith substantial compliance by Developer with the material terms of this Agreement, the City Manager shall issue a certificate of compliance within ten (10) days thereafter, certifying Developer's good faith compliance with the material terms of this Agreement through the period of the applicable annual review. Such certificate of compliance shall be in recordable form and shall contain such information as may be necessary in order to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record the certificate of compliance in the Official Records.

9.7 **Effect of City Council Finding of Noncompliance; Rights of Developer.** If the City Council determines that Developer has not substantially complied in good faith with the material terms of this Agreement pursuant to Section 9.4 and takes any of the actions specified in Section 9.4 with respect to such determination of noncompliance, Developer shall have the right to contest any such determination of noncompliance by the City Council pursuant to a legal action filed in accordance with Section 16.5.

9.8 **City Costs.** Developer shall reimburse the City for all of the City’s reasonable costs, (including but not limited to, staff time, attorney’s fees, and administrative costs) incurred in connection with Sections 9.1 through 9.8 of this Agreement. Pursuant to this section, Developer shall remit a deposit of Two Thousand Dollars ($2,000.00) to the City at the time of submission of the required Developer Report. If the deposit is insufficient to reimburse the City, the City may submit an invoice to Developer, who shall rendered payment to the City within thirty (30) days of receiving an invoice from the City for its costs. Any excess monies deposited by Developer to the City pursuant to this Section 9.8 shall be returned to Developer by the City within thirty (30) days after issuance of the certificate of compliance or completion of any of the actions set forth in Section 9.7 of this Agreement.

10. **Events Of Default; Remedies; Estoppel Certificates.**
10.1 Events of Default.

10.1.1 The failure by a Party to perform any material term or provision of this Agreement (including but not limited to the failure of a Party to approve a matter or take an action within the applicable time periods governing such performance under this Agreement) shall, subject to the provisions of this Agreement, constitute an “Event of Default”, if: (a) such defaulting Party does not cure such failure within thirty (30) days following delivery of a Notice (as hereinafter defined) of default from the other Party (“Notice of Default”), where such failure is of a nature that can be cured within such thirty (30) day period; or (b) where such failure is not of a nature which can be cured within such thirty (30) day period, the defaulting Party does not within such thirty (30) day period commence substantial efforts to cure such failure, or thereafter does not within a reasonable time prosecute to completion with diligence and continuity the curing of such failure. Any Notice of Default given hereunder shall specify in reasonable detail the nature of the failures in performance by the defaulting Party and the manner in which such failures of performance may be satisfactorily cured in accordance with the terms and conditions of this Agreement.

10.1.2 Any Notice of Default to the defaulting Party pursuant to Section 10.1.1 shall satisfy the requirements of Section 15 of this Agreement and shall include a provision in at least fourteen face bold type substantially as follows: “YOU HAVE FAILED TIMELY TO PERFORM OR RENDER AN APPROVAL OR TAKE AN ACTION REQUIRED UNDER THE DEVELOPMENT AGREEMENT: [SPECIFY IN DETAIL]. YOUR FAILURE TO COMMENCE TIMELY PERFORMANCE AND COMPLETE SUCH PERFORMANCE AS REQUIRED UNDER THE AGREEMENT OR RENDER SUCH APPROVAL TO TAKE SUCH ACTION WITHIN THIRTY (30) DAYS AFTER THE DATE OF THIS NOTICE SHALL ENTITLE THE UNDERSIGNED TO TAKE ANY ACTION OR EXERCISE ANY RIGHT OR REMEDY TO WHICH IT IS ENTITLED UNDER THE AGREEMENT AS A RESULT OF THE FOREGOING CIRCUMSTANCES.”

10.2 Remedies. Upon the occurrence of an Event of Default, each Party shall have the right, in addition to all other rights and remedies available under this Agreement, to: (a) bring any proceeding in the nature of specific performance, injunctive relief or mandamus; and/or (b) bring any action at law or in equity as may be permitted by laws of the State of California or this Agreement.

10.3 Waiver; Remedies Cumulative. Failure by a Party to insist upon the strict or timely performance of any of the provisions of this Agreement by the other Party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such Party’s right to demand strict compliance by such other Party in the future. No waiver by a Party of any failure of performance, including an Event of Default, shall be effective or binding upon such Party unless made in writing by such Party, and no such waiver shall be implied from any omission by a Party to take any action with respect to such failure. No express written waiver shall affect any other action or inaction, or cover any other period of time, other than any action or inaction and/or period of time specified in such express waiver. One or more written waivers under any provision of this Agreement shall not be deemed to be a waiver of any subsequent action or inaction. Nothing in this Agreement shall limit or waive any other right or remedy available to a party to seek injunctive relief or other expedited judicial and/or administrative relief to prevent irreparable harm.

10.4 Estoppel Certificate. Either Party may, at any time, and from time to time, deliver written notice to the other Party requesting such other Party to certify in writing: (a) that this Agreement is in full force and effect and a binding obligation of the Parties; (b) that this Agreement
has not been amended or modified either orally or in writing, and if so amended, identifying the amends; (c) to the knowledge of such other Party, that neither Party has committed an Event of Default under this Agreement, or if an Event of Default has to such other Party's knowledge occurred, to describe the nature of any such Event of Default; and (d) such other certifications that may be reasonably requested by the other Party or a Mortgagee (as hereinafter defined). A Party receiving a request hereunder shall execute and return such certificate within twenty (20) days following the receipt thereof, and if a Party fails so to do within such twenty (20) day period, the information in the requesting Party's notice shall conclusively be deemed true and correct in all respects. The City Manager, as to the City, shall execute certificates requested by Developer hereunder. Each Party acknowledges that a certificate hereunder may be relied upon by Transferees (as hereinafter defined) and Mortgagees (as hereinafter defined). No Party shall, however, be liable to the requesting Party, or other Person requesting or receiving a certificate hereunder, on account of any information therein contained, notwithstanding the omission for any reason to disclose correct and/or relevant information, but such Party shall be estopped with respect to the requesting Party, or such third Person, from asserting any right or obligation, or utilizing any defense, which contravenes or is contrary to any such information.

11. [Reserved].

12. Transfers.

12.1 Definitions. For purposes of this Agreement, the following terms shall have the meanings set forth below:

“Affiliate” means any Person directly or indirectly Controlling, Controlled by or under Common Control with Owner.

“Control” means the ownership (direct or indirect) by one Person of an interest in the profits and capital and the right to manage and control the day to day affairs of another Person. The term “Control” includes any grammatical variation thereof, including "Controlled" and "Controlling".

“Common Control” means that two Persons are both controlled by the same other Person.

"Person" means an individual, partnership, firm, association, corporation, trust, governmental agency, administrative tribunal or other form of business or legal entity.

“Transfer” means the sale, assignment, or other transfer by Developer of this Agreement, or any right, duty or obligation of Developer under this Agreement, including by foreclosure, trustee sale, or deed in lieu of foreclosure, under a Mortgage, but excluding: (a) a dedication of any portion of the Project Area to the City or another governmental agency; (b) a Mortgage; (c) ground leases, leases, subleases, licenses and operating agreements entered into by Developer with tenants or occupants of the Project for occupancy of space in any buildings or improvements (together with any appurtenant tenant rights and controls customarily included in such leases or subleases) in the Project, and any assignment or transfer of any such ground lease, lease, sublease, license or operating agreement by either party thereto; (d) any sale of a building pad and surrounding area in the Project Area to a future retail or restaurant occupant (or its affiliated entity) for
the intended purpose of the development and occupancy of a building or improvement thereon; and (e) any Collateral Assignment of this Agreement to a Mortgagee.

“Transferee” means the Person to whom a Transfer is effected.

12.2 Conditions Precedent to Developer Right to Transfer. Except as otherwise provided in this Section 12, Developer shall only have the right to effect a Transfer subject to and upon fulfillment of the following conditions precedent:

12.2.1 No Event of Default by Developer shall be outstanding and uncured as of the effective date of the proposed Transfer, unless the City Council has received adequate assurances satisfactory to the City Council that such Event of Default shall be cured in a timely manner either by Developer or the Transferee under the Transfer.

12.2.2 Prior to the effective date of the proposed Transfer, Developer or the proposed Transferee has delivered to the City an executed and acknowledged assignment and assumption agreement (the “Assumption Agreement”) in recordable form. Such Assumption Agreement shall include provisions regarding: (a) the rights and interest proposed to be Transferred to the proposed Transferee; (b) the obligations of Developer under this Agreement that the proposed Transferee will assume; and (c) the proposed Transferee’s acknowledgment that such Transferee has reviewed and agrees to be bound by this Agreement. The Assumption Agreement shall also include the name, form of entity, and address of the proposed Transferee, and shall provide that the Transferee assumes the obligations of Developer to be assumed by the Transferee in connection with the proposed Transfer. The Assumption Agreement shall be recorded in the Official Records concurrently with the consummation of the Transfer.

12.2.3 Prior to the effective date of the proposed Transfer, City consents in writing to the Transfer. City's consent shall not be unreasonably withheld. Factors the City may consider in determining whether to consent to the transfer include the financial capacity of the proposed Transferee to comply with all of the terms of the Agreement and the history, if any, of compliance of Transferee, its principals, officers or owners with the provisions of federal or state law, the Arvin Municipal Code or agreements with the City relating to development projects within the City of Arvin.

12.3 Transfer to Affiliate. Notwithstanding the provisions of Section 12.2, Developer shall have the right to Transfer all of its rights, duties and obligations under this Agreement to an Affiliate of Developer. Such Affiliate shall become a Transferee upon: (a) the acquisition by such Affiliate of the affected interest of Developer under this Agreement; (b) delivery to the City of an Assumption Agreement executed by the Affiliate pursuant to which the Affiliate assumes, from and after the date such Affiliate so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement and (c) delivery to the City of documents and other evidence establishing, to the reasonable satisfaction of the City, the Affiliate’s financial capacity to meet all of its duties and obligations under this Agreement. By virtue of its demonstrated status as an Affiliate of Developer and recognizing that Transfers to Affiliates will facilitate Developer’s ability to develop the Project consistent with this Agreement, the City hereby consents to any Transfer to an Affiliate in accordance with this Section 12.3 and no further consent of the City shall be required for any Transfer by Developer to an Affiliate.

12.4 Mortgagee as Transferee. No Mortgage (including the execution and delivery
thereof to the Mortgagee) shall constitute a Transfer. A Mortgagee shall be a Transferee only upon: (a) the acquisition by such Mortgagee of the affected interest of Developer encumbered by such Mortgagee’s Mortgage; and (b) delivery to the City of an Assumption Agreement executed by the Mortgagee pursuant to which the Mortgagee assumes, from and after the date such Mortgagee so acquires its interest, the applicable rights, duties and obligations of Developer under this Agreement. No further consent of the City shall be required for any such Transfer to a Mortgagee.

12.5 Effect of Transfer. A Transferee shall become a Party to this Agreement only with respect to the interest transferred to it under the Transfer and then only to the extent set forth in the Assumption Agreement delivered under Sections 12.2.2, 12.3 and 12.4. When and if Developer Transfers all of its rights, duties and obligations under this Agreement in accordance with Section 12.2, 12.3 or 12.4, Developer shall be released from any and all obligations accruing after the date of the Transfer under this Agreement. If Developer effectuates a Transfer as to only some but not all of its rights, duties and obligations under this Agreement, Developer shall be released only from its obligations accruing after the date of the Transfer which the Transferee assumes in the Assumption Agreement.

12.6 No Transfer of Commercial Cannabis Permit. Notwithstanding any other provision of this Agreement, a commercial cannabis permit shall not be subject to the transfer process, and prior to any transfer Transferee must seek qualify for and obtain a commercial cannabis permit as required by Chapter 17.64 of the Arvin Municipal Code.

13. Enforced Delay; Extension of Time of Performance; Excused Performance.

13.1 Force Majeure. In addition to specific provisions of this Agreement, performance by any Party hereunder shall not be deemed to be in default where delays or failures to perform are due to war, insurrection, strikes, walk-outs, riots, floods, earthquakes, civil unrest, the discovery and remediation of hazardous waste or significant geologic, hydrologic, archaeologic or paleontologic problems on the Project Area, fires, casualties, acts of God, shortages of labor or material, governmental restrictions imposed or mandated by governmental agencies or entities other than the City, enactment of conflicting state or federal statutes or regulations, judicial decisions, litigation not commenced by a Party to this Agreement claiming the enforced delay, or any other basis for excused performance which is not within the reasonable control of the Party to be excused. Causes for delay as set forth above are collectively referred to as “Force Majeure."

13.2 Notice. If Notice (as hereinafter defined) of such delay or impossibility of performance is provided to a Party within thirty (30) days after the commencement of such delay or condition of impossibility, an extension of time for such cause shall not be unreasonably denied by such Party. The extension shall be for the period of the enforced delay, or longer as may be mutually agreed upon by the applicable Parties in writing. Any performance rendered impossible shall be excused in writing by the Party so notified.

14. Project Approvals Independent. Except to the extent otherwise recognized by CEQA, all City Permits which may be granted pursuant to this Agreement, and all Project Approvals which have been issued or granted by the City with respect to the Project Area and the Project, constitute independent actions and approvals by the City. If any provision of this Agreement or the application of any provision of this Agreement to a particular situation is held by a court of competent jurisdiction to be invalid or unenforceable, or if this Agreement is Terminated for any reason, then such invalidity, unenforceability or Termination of this Agreement, or any part hereof, shall not affect the validity or
effectiveness of any such City Permits or the Project Approvals. In such cases, such City Permits and Project Approvals will remain in effect pursuant to their own terms, provisions, and conditions of approval. As such, the City may place conditions of approval on all City Permits which may be granted pursuant to this Agreement, and Project Approvals which have been issued or granted by the City with respect to the Project Area and the Project, so long as such conditions are consistent with the terms of this Agreement.

15. Notices

15.1 Form of Notices; Addresses. All notices and other communications (the “Notices”) required or permitted to be given by any Party to another Party pursuant to this Agreement shall be properly given only if the Notice is: (a) made in writing (whether or not so stated elsewhere in this Agreement); (b) given by one of the methods prescribed in Section 15.2; and (c) sent to the Party (to which it is addressed at the address set forth below (with a copy to the appropriate entity as indicated below) or at such other address as such Party (or the addressee required to be sent a copy) may hereafter specify by at least five (5) calendar days’ prior written notice:

If to City:

City of Arvin
Attn: City Manager
City Hall
200 Campus Drive
PO Box 548
Arvin, CA 93203
Facsimile: (661) 854-0817

and to:

Aleshire & Wynder, LLP
Attn: Shannon Chaffin, City Attorney
2440 Tulare Street, Suite 410
Fresno, CA 93721
Facsimile: (559) 486-1568

If to Developer:

Cana Rose Realty Holdings, LLC
5016 California Avenue
Bakersfield, California 93309
Attn: J. Thorn, Manager
Email: JThorn47@me.com

With a copy to: David R. Altshuler, a Law Corporation
865 Via de la Paz #300
Pacific Palisades, California 90272
Email: dra@drataxlaw.com

15.2 Methods of Delivery. Notices may be either: (a) delivered by hand; (b) delivered by a nationally recognized overnight courier which maintains evidence of receipt; or
(c) sent by facsimile transmission with a confirmation copy delivered the following day by a nationally recognized overnight courier which maintains evidence of receipt. Notices shall be effective on the date of receipt.

16. **General Provisions.**

16.1 **City’s Reservation of Authority.** The Parties acknowledge and agree that the intent of the Parties is that this Agreement be construed in a manner that protects the vested rights granted to Developer herein. Except for the limitations on the exercise by the City of its police power which are provided in this Agreement or which are construed in accordance with the immediately preceding sentence, the Parties further acknowledge and agree that: (a) the City reserves all of its police power and/or statutory or other legal powers or responsibilities; (b) the City reserves all of its authority to enact additional regulations, whether enacted by the City Council or the City Manager, relating to commercial cannabis business activities; and (3) this Agreement shall not be construed to limit the authority or obligation of the City to hold necessary public hearings, to limit the discretion of the City or any of its officers or officials with regard to rules, regulations, ordinances, laws, and entitlement of use which require the exercise of discretion by the City or any of its officers or officials. This Agreement shall not be construed to limit the obligations of the City to comply with CEQA or any other federal or state law.

16.2 **Amendment or Cancellation.** Subject to meeting the notice and hearing requirements of section 65867 of the California Government Code, this Agreement may be amended from time to time, or canceled in whole or in part, by mutual written consent of the City and Developer, or their respective successors in interest in accordance with the provisions of section 65868 of the California Government Code.

16.3 **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the party against whom enforcement of a waiver is sought and referring expressly to this Section. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence of event.

16.4 **Successor and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties, and any subsequent owners of all or any portion of the Project Area and their respective successors and assigns. Any successors in interest to the City shall be subject to the provisions set forth in sections 65865.4 and 65868.5 of the California Government Code.

16.5 **Interpretation and Governing State Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objective and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, both Parties having been represented by counsel in the negotiation and preparation hereof. All legal actions brought to enforce the terms of this Agreement shall be brought and heard solely in the Superior Court of the State of California, County of Kern.

16.6 **No Third Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other Person shall have
any right of action based upon any provision of this Agreement.

16.7 Future Acquisitions. In the event that Developer or an affiliate of Developer acquires or obtains a legal or equitable interest in any portion of the Project Area other than the Project Area (the “After Acquired Land”) during the Term of this Agreement, the City and Developer shall engage in good faith negotiations for a development agreement between the City and Developer pursuant to the Development Agreement Laws for the development of a portion of the Project on the After Acquired Land.

16.8 Attorneys’ Fees. If either Party commences any action for the interpretation, enforcement, termination, cancellation or rescission hereof, or for specific performance of the breach hereof, the prevailing party shall be entitled to its reasonable attorneys’ fees and litigation expenses and costs, and any judgment, order or decree rendered in such action, suit or proceeding shall include an award thereof. Attorneys’ fees under this Section shall include attorneys’ fees on any appeal and any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

16.9 Limitation of Legal Acts. Except as provided in Section 16.8, in no event shall the City, or its officers, agents or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the Developer’s sole legal remedy for a breach or violation of this Agreement by the City shall be a legal action in mandamus, specific performance or other injunctive or declaratory relief to enforce the provisions of this Agreement.

16.10 Validation. If so requested in writing by the Developer, the City agrees to initiate appropriate procedure under California Code of Civil Procedure section 860 et seq., in order to validate this Agreement, and the obligations thereunder. Any validation undertaken at the request of the Developer shall be at the sole cost of the Developer.

16.11 Successor Statutes Incorporated. All references to a statute or ordinance, shall incorporate any, or all, successor statute or ordinance enacted to govern the activity now governed by the statute or ordinance, noted herein to the extent, however, that incorporation of such successor statute or ordinance does not adversely affect the benefits and protections granted to the Developer under this Agreement.

16.12 Incorporation of Attachments. All recitals and attachments to this Agreement, including all Exhibits referenced herein, and all subparts thereto, are incorporated herein by this reference.

16.13 Negation of Partnership. The Parties specifically acknowledge that the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in the businesses of Developer, the affairs of the City, or otherwise, or cause them to be considered joint venturers or members of any joint enterprise. This Agreement is not intended and shall not be construed to create any third party beneficiary rights in any Person who is not a Party or a Transferee; and nothing in this Agreement shall limit or waive any rights Developer may have or acquire against any third Person with respect to the terms, covenants or conditions of this Agreement.
16.14 **Not A Public Dedication.** Except for Required Exactions specifically set forth in this Agreement and then only when made to the extent so required, nothing herein contained shall be deemed to be a gift or dedication of the Project Area or any buildings or improvements constructed in the Project, to the general public, for the general public, or for any public use or purpose whatsoever, it being the intention and understanding of the Parties that this Agreement be strictly limited to and for the purposes herein expressed for the development of the Project Area as private property.

16.15 **Severability.** Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person or circumstance and the same shall remain in full force and effect, unless enforcement of this Agreement as so invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement.

16.16 **Counterparts.** This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.

16.17 **Signature Pages.** For convenience, the signatures of the Parties to this Agreement may be executed and acknowledged on separate pages which, when attached to this Agreement, shall constitute this as one complete Agreement.

16.18 **LLMD and CFD.** If required as a condition of a Project Approval, and at the written request of Developer, the City agrees to reasonably cooperate with Developer, at no cost or expense to the City, in the establishment of a Lighting and Landscaping Maintenance District (LLMD) or community facility district (CFD) encompassing the Project Area to assist in the financing of certain off-site improvements and Exactions related to the Project. In the alternative, upon request by the City, Developer i) agrees to join a Landscape and Lighting District or annex to the same; and ii) agrees to become part of a Community Facility District, under the Mello-Roos Community Facilities Act, or equivalent mechanism to address services such as fire, police, storm drainage maintenance, road infrastructure maintenance, or similar services, and agrees to annex or join the same. Developer shall be solely responsible for paying its proportionate cost for services associated with the same, including i) any costs of formation or annexation, including those incurred by the City; and ii) costs required by participants in said District(s). This provision will survive the termination of the Agreement.

16.19 **Days.** Unless otherwise specified in this Agreement, the term “days” means calendar days.

SIGNATURES ARE ON THE FOLLOWING PAGE
IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement.

“CITY”

CITY OF ARVIN,
a municipal corporation

By: __________________________
    Jerry Breckinridge, City Manager
    ________________, 2020

ATTEST:

______________________
Cecilia Vela, City Clerk

APPROVED AS TO FORM:

______________________
Shannon L. Chaffin,
City Attorney

“DEVELOPER”

Cana Rose Realty Holdings, LLC
a California limited liability company

By: __________________________
    Jeffrey D. Thorn,
    Its Manager
    ________________, 2020

Life & Nature Farms, LLC
a California limited liability company

By: __________________________
    Mario Delis,
    Its Manager
    ________________, 2020

Note: Developer’s signature shall be notarized, and appropriate attestations shall be included as may be required by the bylaws, articles of incorporation, or other rules or regulations applicable to developer’s business entity.
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA
COUNTY OF ___________________

On __________, 2020 before me, ____________________, personally appeared ________________, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.
Signature: _____________________________________

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER

☐ INDIVIDUAL
☐ CORPORATE OFFICER
☐ PARTNER(S) ☐ LIMITED
☐ ☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER______________________________

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
_____________________________________________

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

TITLE(S) __________________________

NUMBER OF PAGES __________________

DATE OF DOCUMENT __________________

SIGNER(S) OTHER THAN NAMED ABOVE

_______________________________________

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

Address: 901 Potato Rd, Suite A, B, C and D.
APN: 193-150-18

E Fallbrok Avenue
APN: 193-150-18

Attachment: Dev Agmt Cana Rose Realty Holdings LLC and Life and Nature Farms LLC_901 Potato Rd_CC Mtg 071420 (Public Hearing -
EXHIBIT B – SCHEDULE OF EXTRACTIONS AND FEES

- Developer to pay $100,000.00 in unrestricted community benefit funds.
- Developer to pay 1.00 per square foot of cultivated cannabis every quarter.
- Developer to pay 100% of the cost of processing Developer’s applications.
- Developer shall make a one-time payment of $0.044 per square foot of permitted use to offset the proportionate amount of the City’s costs of preparation of Ordinance No. 447 – Chapter 17.64 Commercial Cannabis Activities.
- Developer shall pay the City one of the following maximum rates for cultivation activities within the Project Area:
  - For all space utilized as cultivation area where Mixed-Light Cultivation is used one dollars ($1) per square foot on a quarterly basis;
  - For all space utilized as cultivation area other than as specified in subparagraph (i) – one dollars and fifty cents ($1.50) per square foot on a quarterly basis.
- Developer shall pay the City, other than for cultivation, the following rates on a quarterly basis:
  - (i) For testing – up to two percent (2%) of Proceeds.
  - (ii) For manufacturing, up to the following tiered rate, based on a quarterly term:
    - a. Six percent (6%) of Proceeds up to and including $625,000;
    - b. Three point seven five percent (3.75%) of Proceeds over $625,000 and up to and including $2,500,000;
    - c. Two point eight percent (2.8%) of Proceeds over $2,500,000.
  - (iii) For distribution – up to two percent (2%) of Proceeds.
  - (iv) For retail sales – up to three point seven five percent (3.75%) of Proceeds.
  - (v) For all operations, other than as specified, up to four percent (4%) of Proceeds.
Exhibit “C”
To Development Agreement

Schedule of Proposed Property Improvements

Owner agrees to undertake the following phased improvements, within the relative timelines, for the Property. Refer to the approved site and street plans for additional phasing details. Modifications to the below phasing shall only be made if approved in writing by the City Engineer:

June 2020-June 2021

1. Obtain agency approval of all improvement plans, to include building “architecturals”, site plans, street plans, grading, utilities, landscaping and irrigation plans, SWPPP, DCP and other pertinent regulatory approvals.
2. Retrofit and upgrade existing buildings.
3. Perform select demolition on-site to remove obstructions and hazards where needed, to improve the onsite surface and drainage.
4. Construct on-site curb returns, ADA ramps signage and striping, other vehicular striping, on-site curb and gutters, on-site walkways, site fencing and gates, trash enclosure, site and street landscaping and irrigation.
5. Make new connections to the municipal sanitary sewer system as shown on the site and street plans. Pay connection fees to the city.
6. Aggregate base will be placed at select locations.
7. Grade native material on Potato Road to smooth ruts and provide improved drainage.
8. Place and compact a 3-inch depth of class 2 aggregate base within the paving limits of Potato Road. The Site’s entrance driveways will be done in concrete. This will provide an all-weather surface for emergency vehicles that will extend to Sycamore from Potato Road.
9. Fronting the Project site only, construct curb and gutter, sidewalk, a single catch basin, and landscaping. The catch basin would be routed into the existing sump.

July 2021-February 2024
1. In accordance with all previously approved onsite plans, complete all “conditioned” construction of the site, to include grading and ground covering of the site, drainage improvements, building pad preparation, backfill of the existing sump, excavation of a new sump, installation of drainage pipeline from the street catch basin to the new sump, and connections to previously extended sewer line and existing domestic water system.
2. Provide new asphalt pavement and cross gutters where shown on the approved plans.
3. Construct all remaining street improvements shown on the approved street plans.
4. Retrofit and upgrade existing buildings.
5. Construction of new structures as approved.
URGENCY ORDINANCE NO. ______

AN UNCODIFIED URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARVIN AGAIN EXTENDING URGENCY ORDINANCE NO. 2020-465 (PORTION REGARDING COMPLIANCE WITH STATE AND COUNTY EMERGENCY ORDERS IN RESPONSE TO THE COVID-19 PANDEMIC)

WHEREAS, on March 17, 2020, the City of Arvin declared a local emergency due to the COVID-19 pandemic; and

WHEREAS, on May 12, 2020, the City Council of the City of Arvin adopted Urgency Ordinance No. 2020-465 Related to Facial Coverings and /or Personal Protective Equipment and Compliance with State and County Emergency Orders, in Response to the COVID-19 pandemic; and

WHEREAS, ON June 23, 2020, the City Council extended a portion of Urgency Ordinance 2020-465 to continue to require compliance with State and County emergency orders in response to the COVID-19 pandemic; and

WHEREAS, the City of Arvin still has the highest ratio of reported COVID-19 cases per 1,000 citizens in Kern County, and the City Council desires to extend the duration of that portion of portion of Urgency Ordinance 2020-465 to continue to require compliance with State and County emergency orders in response to the COVID-19 pandemic.

NOW, THEREFORE, the City Council of the City of Arvin does ordain as follows:

SECTION 1. Recitals. The foregoing recitals are true and correct, and are incorporated herein by reference as findings of fact.

SECTION 2. Urgency and Emergency Findings. The City Council finds that there is a current and immediate threat to public health, safety, and welfare posed by COVID-19, and adopts and ratifies the findings as set forth by Urgency Ordinance 2020-465 and Urgency Ordinance 2020-467. Additionally, the community of Arvin continues to have higher incidences of COVID-19 cases as compared to other communities of a similar size within Kern County.

SECTION 3. Urgency Ordinance Shall Be Extended. Section 4 of Urgency Ordinance 2020-465 is hereby extended to the sooner of i) the termination of the City’s local emergency; or ii) termination of the State emergency declared by the Governor.

SECTION 4. Violations Enforceable. Violation of these requirements shall be enforceable, and all State and County Emergency Orders in Response to the COVID-19 Pandemic shall be complied with, under and within the City limits per Arvin City Municipal Code Title 8, Chapter 8.12 which provides for enforcement of violations as infractions and/or misdemeanors.
SECTION 5. Adoption and Effective Date. Pursuant to Government Code Section 36937, this urgency ordinance shall take effect immediately. The City Council finds and determines that the same is necessary to the preservation of the public peace, health or safety.

SECTION 6 Severability. The severability clause in Urgency Ordinance 2020-465 is incorporated herein as if set forth in full.

PASSED, APPROVED and ADOPTED by a four-fifths (4/5) vote on this 14th day of July 2020.

I HEREBY CERTIFY that the foregoing Urgency Ordinance No. ______ was duly adopted at its regular meeting held on the 14th day of July 2020, 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.