



**MEETING OF THE FOWLER CITY COUNCIL
AGENDA
TUESDAY, AUGUST 16, 2022
7:00 P.M.
CITY COUNCIL CHAMBER
128 SOUTH 5TH STREET
FOWLER, CA 93625**

In compliance with the Americans with Disabilities Act, if you need assistance or accommodations to access the City Council Chambers or participate in this meeting, please contact the Clerk at (559) 834-3113 x102. Notification at least 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility.

City Council meetings are open to the public at the physical address listed above. There are numerous ways to participate in the City Council meetings: you may attend in person, you may appear by telephone as described below, or you may submit written comments via email to avasquez@ci.fowler.ca.us. Please include your name and reference the agenda item you are commenting on, if any. Written comments received that do not specify an agenda item will be marked for the general public comment portion of the agenda. Emails received by 8:00 am on the date of the meeting will be provided to the City Council at the meeting and made part of the record of proceedings but will not be read aloud.

En cumplimiento con la Acta de Americanos con Discapacidades si necesita asistencia o adaptaciones para acceder a las Cámaras del Concejo de la Ciudad o participar en esta reunión, comuníquese con el secretario de la ciudad al (559) 834-3113 x102. También puede ponerse en contacto con el secretario si necesita servicios de traducción. La notificación al menos 48 horas antes de la reunión permitirá a la Ciudad hacer arreglos razonables para garantizar la accesibilidad.

Consistent with Government Code 54953 as amended by AB 361, and City Council Resolution No. 2522, this meeting may be accessed by members of the public or City Council members via Zoom.

The telephone number and Zoom link listed below will provide access to the meeting via teleconference or video conference.

<https://us06web.zoom.us/j/82297073660?pwd=R1BzNGU5WFhnaK4rMWtua3JKZVJKZz09>

Telephone Number: (253) 215-8782

Meeting ID: 822 9707 3660

Passcode: 357523

Persons accessing the meeting will have an opportunity to provide comments at appropriate times during the meeting. To speak during a public comment period, press *9 on your phone to raise your hand or click “raise hand” in the webinar. At the appropriate time, you will be prompted to unmute yourself, and asked to identify yourself when providing public comment.

Any writing or document that is a public record and provided to a majority of the City Council regarding an open session item on the agenda will be made available for public inspection at City Hall, in the City Clerk's office, during normal business hours. In addition, such writings and documents may be posted on the City's website at www.fowlercivcity.org.

Resolutions and Ordinances - With respect to the approval of resolutions and ordinances, the reading of the title thereto shall be deemed a motion to waive a reading of the complete resolution or ordinance and unless there is a request by a Councilmember that the resolution or ordinance be read in full, further reading of the resolution or ordinance shall be deemed waived by unanimous consent of the Council.

1. Meeting Called to Order
2. Roll Call
3. Invocation by Pastor Wally Roberts of Rose of Sharon Church
4. Pledge of Allegiance
5. Public Comment

This portion of the meeting is reserved for persons desiring to address the Council on any matter not described on this agenda. Presentations are limited to 5 minutes per person and no more than 15 minutes per topic.

6. Consent Calendar

Items on the Consent Calendar are considered routine and include a recommended action from Staff and shall be acted on by one motion of the Council. If a Councilmember requests additional information or would like to pull an item for discussion, that item shall be pulled from the Consent Calendar and acted upon separately. A Councilmember may register an action on an individual item without pulling the item from the Consent Calendar. A motion to approve the Consent Calendar is deemed to include a motion to waive the full reading of any ordinance or resolution on the Consent Calendar. For adoption of ordinances, only those which received a unanimous vote of the Councilmembers present at introduction shall be eligible for placement on the Consent Calendar.

6-A. RATIFY Warrants for August 16, 2022

6-B. APPROVE Minutes of the August 2, 2022 City Council Special Meeting

6-C. APPROVE Minutes of the August 2, 2022 City Council Meeting

- 6-D. APPROVE Resolution No. 2588, A Resolution of the City Council of the City of Fowler Authorizing Continued Use of Remote Teleconferencing for City Council Meetings and Commission Meetings During Declared State of Emergency in Accordance with Government Code Section 54953 as amended by AB 361 (City Attorney)
- 6-E. Actions pertaining to electronic building entry access control system (City Clerk)
- 1) AUTHORIZE the City Manager to negotiate and execute an agreement with Hoffman Electronic Systems for the purchase and installation of an electronic building entry access control system for City Hall in the amount of \$29,995
 - 2) APPROVE Resolution No. 2589 amending the 2022-2023 Adopted Budget in the amount of \$4,995
- 6-F. APPROVE a professional services agreement with Price Paige & Company in the amount of \$55,000 for year-end closing and audit support services for fiscal year 2021-22 (Finance)
- 6-G. Actions pertaining to copier and printers (Information Technology)
- 1) APPROVE an agreement with Xerox Financial Services LLC in the amount of \$1,390.62 per month for 63 months for the lease of copiers and printers
 - 2) APPROVE an agreement with Image Source in an amount not to exceed \$26,000 for 63 months for the service, supplies, and maintenance of copiers and printers, based on actual meter readings
- 6-H. APPROVE Statement of Work Agreements with CivicPlus in the amount of \$14,104 for website and meeting management design and two (2) years of service, and authorize the City Manager to execute related documents (Information Technology)
- 6-I. ADOPT Ordinance No. 2022-06, repealing Chapter 3, of Title 9 of the Fowler Municipal Code to consolidate and clarify setback standards (Planning)
- 6-J. ADOPT Ordinance No. 2022-07 amending Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code (Planning)
- 6-K. ADOPT an Ordinance amending Title 4, Chapter 4, Article 2 of the Fowler Municipal Code regarding the parking of vehicles, towing of parked vehicles, and parking citations; and the repeal of Title 4, Chapter 4, Article 5 regarding trains (Planning)
- 6-L. APPROVE a Resolution setting parking violation amounts (Planning)
- 6-M. ACCEPT a donation to the City in the amount of \$1,050 from Adventist Health for Wednesday Nights at the Park (Recreation)
- 6-N. ACTIONS pertaining to approval of final map for Tract 6381
- 1) ADOPT Resolution No. 2591 approving the final map for Tract 6381 accepting on behalf of the public, the streets, and easements as offered on the map in accordance with the terms of the dedications

- 2) AUTHORIZE the City Engineer to transmit the Final Map of Tract 6381 and associated documents to the Fresno County Recorder's Office for recording
 - 3) AUTHORIZE the City Manager to execute the Subdivision Agreement for Tract 6381 on behalf of the City
7. Contested Consent Calendar - Items pulled from the Consent Calendar will be heard individually immediately after action is taken on the Consent Calendar.
8. General Administration
 - 8-A. Planning
 - i. APPROVE an agreement with Toole Design Group, LLC in the amount of \$82,234 for downtown streetscape conceptual design
 - 8-B. Public Works
 - i. INTRODUCE and receive direction regarding proposed park design standards
 - 8-C. City Council
 - i. APPOINT delegates to various boards, agencies, and commissions
 - 1) Consolidated Mosquito Abatement District: *Mejia*
 - 2) Finance Committee: *Kazarian and Parra*
 - 3) Five Cities Economic Development Authority: *Kazarian*
Alternate: Rodriquez
 - 4) Fowler Recreation Commission: *Mejia*
 - 5) Friends of Fowler Library: *Mejia*
 - 6) Fresno County Council of Governments (COG): *Parra*
Alternate: Kazarian
 - 7) Highway 99 Beautification Committee: *Rodriquez*
Alternate: Mejia
 - 8) SJV Air Pollution Control District Committee: *Rodriquez*
Alternate: Kazarian
 - 9) Selma-Kingsburg-Fowler Sanitation District (SKF): *Parra*
Alternate: Rodriquez
 - 10) South Kings Ground Water Sustainability Agency: *Kazarian*
 - 11) Southeast Regional Solid Waste Commission: *Rodriquez*
Alternate: Parra
9. City Manager Update
 - 9-A. Discussion and seek direction on negotiations with City of Selma, Ambulance/Emergency Medical Services Division

10. City Attorney Report
11. Staff Communications (City Manager)
12. Councilmember Reports and Comments
13. Adjourn

Next Ordinance No. 2022-08
Next Resolution No. 2592

CERTIFICATION: I, Angela Vasquez, Deputy City Clerk of the City of Fowler, California, hereby certify that the foregoing agenda was posted for public review on Friday, August 12, 2022.

Angela Vasquez

Angela Vasquez
Deputy City Clerk

CITY OF FOWLER
WARRANTS LIST
August 16, 2022

<u>ACCOUNTS PAYABLE CHECKS</u>	<u>CHECK NUMBERS</u>	<u>CHECK DATES</u>	<u>AMOUNT</u>
Regular checks	39926-39990	August 3 thru August 10	\$ 432,670.98
TOTAL ACCOUNTS PAYABLE CHECKS			<u>\$ 432,670.98</u>
<u>PAYROLL COSTS</u>			
First August Bi-Monthly Payroll		August 15, 2022	\$ 114,472.18
TOTAL PAYROLL COSTS			<u>\$ 114,472.18</u>
TOTAL CASH DISBURSEMENTS			<u>\$ 547,143.16</u>

NOTE:

Check #39926	Void check
Check #39982	Void check
Check #39970	Void check

SUPERION
DATE: 08/11/2022
TIME: 14:30:32

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 1
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39926' and '39990'
ACCOUNTING PERIOD: 2/23

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39926	08/02/22	14669	A BOUNCIN' BLAST	6120	NNO BOUNCE HOUSES	0.00	1,140.00
1001	39926 v	08/02/22	14669	A BOUNCIN' BLAST	6120	NNO BOUNCE HOUSES	0.00	-1,140.00
TOTAL	CHECK						0.00	0.00
1001	39927	08/03/22	14670	ANDERSON PUMP CO	5000	BASIN REPAIRS WATER	0.00	1,691.76
1001	39928	08/03/22	10153	J'S COMMUNICATIONS, INC	6120	COMPUTER REPAIR #15	0.00	187.88
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	REZONE 22-10	0.00	226.10
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	CUP 19-02	0.00	233.10
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	SPR 21-21	0.00	265.70
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	CUP 22-09	0.00	303.80
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	SPR 22-08	0.00	304.50
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	SPR 22-21	0.00	381.50
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	TTM 21-0015	0.00	1,038.80
1001	39929	08/03/22	13655	PROVOST & PRITCHARD	6150	VAR 22-0020	0.00	1,925.78
TOTAL	CHECK						0.00	4,679.28
1001	39930	08/03/22	10026	BCT CONSULTING	6030	VOIP 8/1/22	0.00	250.00
1001	39930	08/03/22	10026	BCT CONSULTING	6150	VOIP 8/1/22	0.00	250.00
1001	39930	08/03/22	10026	BCT CONSULTING	6120	VOIP 8/1/22	0.00	250.00
1001	39930	08/03/22	10026	BCT CONSULTING	5000	VOIP 8/1/22	0.00	250.00
TOTAL	CHECK						0.00	1,000.00
1001	39931	08/03/22	10024	BSK ASSOCIATES	5000	SUPPLIES-WATER	0.00	233.00
1001	39932	08/03/22	14131	CENTRAL VALLEY SWEEPING, 2250		STREET SWEEP JULY	0.00	3,025.00
1001	39933	08/03/22	14634	DEWBERRY ARCHITECTS INC	7200	PD SENIOR CTR DESIGN	0.00	9,444.50
1001	39934	08/03/22	13275	FERGUSON WATERWORKS #142	5000	SUPPLIES WATER	0.00	1,928.63
1001	39935	08/03/22	12567	FRESNO MOBILE RADIO INC	5000	SERVICE JULY 22	0.00	240.00
1001	39936	08/03/22	14671	HERO ALLIANCE	6400	FARMERS MKT CHARA	0.00	350.00
1001	39937	08/03/22	11018	HOME DEPOT CREDIT SERVIC	6200	SUPPLIES-CEMENT	0.00	72.79
1001	39938	08/03/22	10153	J'S COMMUNICATIONS, INC	6120	COMPUTER REMOVAL	0.00	465.00
1001	39939	08/03/22	12076	KEY DESIGN LOCKSMITHING	6130	KEY REPLACEMENT FIRE	0.00	434.10
1001	39940	08/03/22	14485	KOFF & ASSOCIATES, INC.	6020	COMP STUDY JUL22	0.00	1,240.00
1001	39941	08/03/22	14559	M.E.D. ENTERPRISES INC.	2000	CONSULTINGSVC JULY 22	0.00	3,360.00
1001	39942	08/03/22	10203	MID VALLEY PACKAGING & S	6020	COPY PAPER CITY HALL	0.00	183.56
1001	39942	08/03/22	10203	MID VALLEY PACKAGING & S	6200	JANITORIAL SUPPLY PW	0.00	768.95
TOTAL	CHECK						0.00	952.51
1001	39943	08/03/22	10885	NELSONS POWER CENTER	6200	SUPPLIES-PW	0.00	75.22

SUPERION
DATE: 08/11/2022
TIME: 14:30:32

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 2
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39926' and '39990'
ACCOUNTING PERIOD: 2/23

FUND - 100 - GENERAL FUND

CASH	ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	2250	MANN/GOLD ST. 7/26/22	0.00	1.48
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	SUMMER&MOGNOLA 7/15/2	0.00	4.41
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	ST LTS BEAL 7/15/22	0.00	8.80
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	TSFR 3LTS 7/15/22	0.00	9.41
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	363 N TEMPER 7-28-22	0.00	9.94
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-F HWY LT 7/15/22	0.00	10.28
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-E WHY LT 7/15/22	0.00	11.90
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	127 S. 6TH 7-28-22	0.00	13.79
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	8TH/VINE 7/15/22	0.00	13.94
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	ADAMS/DEEAN 7/15/22	0.00	14.28
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	429 E MERCED 7/24/22	0.00	14.28
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-A WHY LT 7/15/22	0.00	18.69
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	TR50907/15/22	0.00	21.02
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	2250	300 MERCED 7-28-22	0.00	28.59
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6130	220 E MAIN 7/24/22	0.00	28.65
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS2-A HWY LT 7/15/22	0.00	30.82
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	TEMP/PARL 7/15/22	0.00	30.82
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	2250	MAN/GLDST 7-28-22	0.00	42.02
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-F HWY LT 7/15/22	0.00	44.78
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS2-A WHY LT 7/15/22	0.00	46.09
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	TR5041 7/15/22	0.00	80.96
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	3079 E. MANN 7/21/22	0.00	86.96
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	T5088 7/15/22	0.00	100.21
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	2250	GODST/MAN SIG 7-28-22	0.00	105.77
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	2250	MERCED/8TH 7-28-22	0.00	138.54
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	GLDST/VLY DR 7-15-22	0.00	144.19
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	CLAYTON/ARMST 7/15/22	0.00	182.18
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-C HWY LT 7/15/22	0.00	294.03
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	630 W. FRESNO 7/21/22	0.00	341.68
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-F HWY LT 7/15/22	0.00	368.25
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6150	122 S 5TH #A 7-28-22	0.00	482.37
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	5000	325 S 5TH 7-28-22	0.00	623.51
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS2-A HWY LT 7/15/22	0.00	692.45
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS1-A 7/15/22	0.00	703.79
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	2250	700 MERCED #A 7-28-22	0.00	742.83
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LSI-E HWY LT 7/15/22	0.00	1,013.25
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6200	LS2-A WHY LT 7/15/22	0.00	1,053.08
1001		39944	08/03/22	10237	P G & E - SACRAMENTO	6130	220 E MAIN 7/24/22	0.00	1,524.08
TOTAL	CHECK							0.00	9,082.12
1001		39945	08/03/22	14672	PRETZER FARMS & SERVICES	5000	SAFETY TRAINING	0.00	750.00
1001		39945	08/03/22	14672	PRETZER FARMS & SERVICES	6200	SAFETY TRAINING	0.00	750.00
TOTAL	CHECK							0.00	1,500.00
1001		39946	08/03/22	10249	QUILL	6030	NOTARIZE FLAG TAB	0.00	8.71
1001		39946	08/03/22	10249	QUILL	6150	COPY STAMP	0.00	12.63
1001		39946	08/03/22	10249	QUILL	6150	COPY STAMP	0.00	14.48
1001		39946	08/03/22	10249	QUILL	6030	COPY STAMP	0.00	35.28
1001		39946	08/03/22	10249	QUILL	6020	PENS/FIRST AID	0.00	75.34
TOTAL	CHECK							0.00	146.44
1001		39947	08/03/22	13354	QUINN CAT	6200	SERVICE PW	0.00	1,739.70

SUPERION
DATE: 08/11/2022
TIME: 14:30:32

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 3
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39926' and '39990'
ACCOUNTING PERIOD: 2/23

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39948	08/03/22	11195	ROBERT V JENSEN INC	6130	FUEL ENGINE	0.00	148.79
1001	39948	08/03/22	11195	ROBERT V JENSEN INC	5000	FUEL PW	0.00	205.27
TOTAL	CHECK						0.00	354.06
1001	39949	08/03/22	13355	SITE ONE LANDSCAPE SUPPL	6260	SERVICE PARKS	0.00	125.00
1001	39950	08/03/22	13543	UNIFIRST CORPORATION	6700	JANITORIAL SNR CTR	0.00	48.21
1001	39950	08/03/22	13543	UNIFIRST CORPORATION	6020	MATS/MOPS ADMIN	0.00	62.10
1001	39950	08/03/22	13543	UNIFIRST CORPORATION	6130	MATS/MOPS	0.00	72.09
1001	39950	08/03/22	13543	UNIFIRST CORPORATION	6200	UNIFORMS PW	0.00	238.89
1001	39950	08/03/22	13543	UNIFIRST CORPORATION	6200	UNIFORMS PW	0.00	238.89
1001	39950	08/03/22	13543	UNIFIRST CORPORATION	6200	UNIFORMS PW	0.00	256.74
TOTAL	CHECK						0.00	916.92
1001	39951	08/03/22	10725	VERIZON WIRELESS	6160	CELL PHONE 7/19/22	0.00	41.42
1001	39951	08/03/22	10725	VERIZON WIRELESS	6160	CELL PHONE 7/19/22	0.00	50.69
1001	39951	08/03/22	10725	VERIZON WIRELESS	6020	CELL PHONE 7/19/22	0.00	51.42
1001	39951	08/03/22	10725	VERIZON WIRELESS	6030	CELL PHONE 7/19/22	0.00	51.42
1001	39951	08/03/22	10725	VERIZON WIRELESS	6150	CELL PHONE 7/19/22	0.00	51.42
1001	39951	08/03/22	10725	VERIZON WIRELESS	6120	CELL PHONE PD	0.00	523.59
TOTAL	CHECK						0.00	769.96
1001	39952	08/03/22	14359	WILLIAM AVERY & ASSOC.,	6120	RECRUIT-CHIEF	0.00	437.50
1001	39953	08/10/22	14670	ANDERSON PUMP CO	5000	PUMP TEST TEMPERANCE	0.00	250.00
1001	39954	08/10/22	11084	BARCO PRODUCTS	6260	PANZAK PARK TABLE	0.00	1,769.60
1001	39955	08/10/22	10087	DEPARTMENT OF TRANSPORTA	6200	2022 APR-JUNE	0.00	292.30
1001	39956	08/10/22	10122	FRESNO COUNTY FIRE PROTE	6130	DISPATCH1/1-6/30/2022	0.00	2,878.45
1001	39957	08/10/22	14271	MID VALLEY PUMP TESTING	5000	WELL TEST 4/18/22	0.00	1,000.00
1001	39958	08/10/22	13354	QUINN CAT	6200	REPAIR TRACTOR 80	0.00	3,376.82
1001	39959	08/10/22	10995	ADT SECURITY SERVICES	6700	SECURITY AUG-OCT 22	0.00	177.27
1001	39960	08/10/22	10007	ALERT-O-LITE, INC	6200	SUPPLIES PW	0.00	30.18
1001	39960	08/10/22	10007	ALERT-O-LITE, INC	6200	SUPPLIES PW	0.00	501.50
1001	39960	08/10/22	10007	ALERT-O-LITE, INC	6200	SUPPLIES PW	0.00	910.08
TOTAL	CHECK						0.00	1,441.76
1001	39961	08/10/22	11291	THE BUSINESS JOURNAL	6150	PUB NOT. ORD 2022-04	0.00	110.00
1001	39961	08/10/22	11291	THE BUSINESS JOURNAL	6150	PUB NOTICE - CC	0.00	357.50
1001	39961	08/10/22	11291	THE BUSINESS JOURNAL	6150	PUB NOTICE-PC	0.00	385.00
1001	39961	08/10/22	11291	THE BUSINESS JOURNAL	6080	PUB NOT RES. 2574	0.00	728.75
TOTAL	CHECK						0.00	1,581.25
1001	39962	08/10/22	14512	CSG CONSULTANTS	6160	BO SERVICES	0.00	160.00
1001	39962	08/10/22	14512	CSG CONSULTANTS	6160	PLAN CHECK	0.00	345.00

SUPERION
DATE: 08/11/2022
TIME: 14:30:32

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 4
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39926' and '39990'
ACCOUNTING PERIOD: 2/23

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39962	08/10/22	14512	CSG CONSULTANTS	6160	PLAN CHECK	0.00	1,380.00
TOTAL CHECK							0.00	1,885.00
1001	39963	08/10/22	14677	DANNY MENDOZA	6400	BAND 8/17/22	0.00	600.00
1001	39964	08/10/22	13275	FERGUSON WATERWORKS #142	5000	12-R900-WTR	0.00	4,897.26
1001	39965	08/10/22	10104	FPOA	100	EMP DED PAYROL 7/15	0.00	175.00
1001	39965	08/10/22	10104	FPOA	100	EMP DED PAYROLL 7/31	0.00	175.00
TOTAL CHECK							0.00	350.00
1001	39966	08/10/22	10122	FRESNO COUNTY FIRE PROTE	2000	50% PMT FIRE SVC AGMT	0.00	200,000.00
1001	39967	08/10/22	14156	FRESNO ECONOMIC OPPORTUN	6700	JULY 22 SR. MEALS	0.00	1,576.49
1001	39968	08/10/22	11116	GRAINGER	5000	BATTERY PACK-WTR	0.00	132.73
1001	39969	08/10/22	10149	ICMA-RC 457 PLAN 303879	100	EMP DED 7/15/22	0.00	40.00
1001	39969	08/10/22	10149	ICMA-RC 457 PLAN 303879	100	EMP DED 07/31/22	0.00	40.00
TOTAL CHECK							0.00	80.00
1001	39970	08/10/22	14485	KOFF & ASSOCIATES, INC.	6020	CLASS & COMP STUDY	0.00	1,240.00
1001	39970	08/10/22	14485	KOFF & ASSOCIATES, INC.	6020	CLASS & COMP STUDY	0.00	-1,240.00
TOTAL CHECK							0.00	0.00
1001	39971	08/10/22	14008	KUCKENBECKER TRACTOR CO	6200	SHORT PAY JUL22	0.00	1.50
1001	39972	08/10/22	14269	LOUIE'S PORTABLE WELDING	5000	WELDING-WELL #4	0.00	450.00
1001	39973	08/10/22	10201	METRO UNIFORM & ACCESSOR	6120	PD UNIFORM-MACIAS	0.00	65.33
1001	39973	08/10/22	10201	METRO UNIFORM & ACCESSOR	6120	CSO UNIFORMS ESCALANT	0.00	223.28
TOTAL CHECK							0.00	288.61
1001	39974	08/10/22	14428	NAVIA BENEFIT SOLUTIONS	6020	COBRA-JUL22	0.00	36.45
1001	39975	08/10/22	10215	NELSON HARDWARE & GIFTS	5000	SUPPLIES WATER	0.00	9.95
1001	39975	08/10/22	10215	NELSON HARDWARE & GIFTS	6700	SUPPLIES SNRCTR	0.00	16.26
1001	39975	08/10/22	10215	NELSON HARDWARE & GIFTS	6200	SUPPLIES-PW	0.00	22.31
1001	39975	08/10/22	10215	NELSON HARDWARE & GIFTS	5000	SUPPLIES WATER	0.00	31.44
TOTAL CHECK							0.00	79.96
1001	39976	08/10/22	10237	P G & E - SACRAMENTO	5000	WELL SITE 8 7/29/22	0.00	7,824.44
1001	39977	08/10/22	14513	PAC-AIR INC.	6700	SERVICE SNR CNTR	0.00	1,571.94
1001	39977	08/10/22	14513	PAC-AIR INC.	5000	SERVICE WELL #8	0.00	2,314.53
TOTAL CHECK							0.00	3,886.47
1001	39978	08/10/22	12384	PITNEY BOWES GLOBAL FINA	6020	LEASE 5/28-8/27	0.00	340.98
1001	39979	08/10/22	10694	POPSIE'S	6700	SENIOR LUNCH POPSIES	0.00	240.00
1001	39980	08/10/22	13354	QUINN CAT	6200	MASSEY FERG REPAIR	0.00	10,581.61

SUPERION
DATE: 08/11/2022
TIME: 14:30:32

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 5
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39926' and '39990'
ACCOUNTING PERIOD: 2/23

FUND - 100 - GENERAL FUND											
CASH	ACCT	CHECK	NO	ISSUE	DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001		39981		08/10/22	11195		ROBERT V JENSEN INC	6200	FUEL-TRUCK	0.00	150.00
1001		39982		08/10/22	14676		RUBEN SAUCEDA	6400	BAND 8/10/22	0.00	700.00
1001		39982		08/10/22	14676		RUBEN SAUCEDA	6400	BAND 8/10/22	0.00	700.00
1001		39982	V	08/10/22	14676		RUBEN SAUCEDA	6400	BAND 8/10/22	0.00	-700.00
1001		39982	V	08/10/22	14676		RUBEN SAUCEDA	6400	BAND 8/10/22	0.00	-700.00
TOTAL CHECK										0.00	0.00
1001		39983		08/10/22	10518		SIGNMAX!	6200	SIGN/DECAL DOG SIGN	0.00	158.20
1001		39984		08/10/22	10288		SMART & FINAL	6700	SUPPLIES/SC	0.00	151.12
1001		39984		08/10/22	10288		SMART & FINAL	6700	SUPPLIES S/C	0.00	164.50
TOTAL CHECK										0.00	315.62
1001		39985		08/10/22	12791		THE MOWERS EDGE	6260	SUPPLIES-PARKS	0.00	307.50
1001		39986		08/10/22	10327		UNDERGROUND SERVICE ALER	5000	MEMBERSHIP DUES 22	0.00	605.14
1001		39987		08/10/22	13543		UNIFIRST CORPORATION	6700	JANITORIAL/SC	0.00	48.21
1001		39987		08/10/22	13543		UNIFIRST CORPORATION	6700	JANITORIAL/SC	0.00	48.21
1001		39987		08/10/22	13543		UNIFIRST CORPORATION	6200	UNIFORMS PW	0.00	238.89
1001		39987		08/10/22	13543		UNIFIRST CORPORATION	6200	UNIFORMS PW	0.00	238.89
TOTAL CHECK										0.00	574.20
1001		39988		08/10/22	13999		WONDERWARE	5000	AGREEMENT NOV22	0.00	1,890.00
1001		39990		08/10/22	14676		RUBEN SAUCEDA	6400	BAND 08/10/22	0.00	700.00
TOTAL CASH ACCOUNT										0.00	295,170.98
TOTAL FUND										0.00	295,170.98

SUPERION
DATE: 08/11/2022
TIME: 14:30:32

CITY OF FOWLER
CHECK REGISTER - DISBURSEMENT FUND

PAGE NUMBER: 6
ACCTPA21

SELECTION CRITERIA: transact.check_no between '39926' and '39990'
ACCOUNTING PERIOD: 2/23

FUND - 201 - DISTRICT SALES TAX

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	39989	08/10/22	10122	FRESNO COUNTY FIRE PROTE	2010	50% PMT FIRE SVC AGMT	0.00	137,500.00
TOTAL CASH ACCOUNT							0.00	137,500.00
TOTAL FUND							0.00	137,500.00
TOTAL REPORT							0.00	432,670.98

**MINUTES OF THE JOINT SPECIAL MEETING OF THE FOWLER CITY COUNCIL
AND CITY OF FOWLER PLANNING COMMISSION MEETING
SPECIAL MEETING
Tuesday, August 2, 2022**

Mayor Pro-Tem Rodriquez called the meeting to order at 6:00 p.m.

Councilmembers Present: Rodriquez, Kazarian, Mejia

Councilmembers Absent: Parra

Planning Commissioners Present: Hammer, Kandarian, Prado, Rodriguez

Planning Commissioners Absent: Mellon

City Staff Present: City Manager Tucker, City Attorney Cross, Community
Development Director Gaffery, City Planner Marple,
Deputy City Clerk Vasquez

3. GENERAL ADMINISTRATION

3-A. Planning

- i. WORKSHOP on the Multi-Jurisdictional Housing Element**
No action. Staff provided this informational item.

4. ADJOURNMENT

Having no further business, the meeting adjourned at 6:30 p.m.

MINUTES OF THE FOWLER CITY COUNCIL MEETING
Tuesday, August 2, 2022

Mayor Pro-Tem Rodriquez called the meeting to order at 7:00 p.m.

Councilmembers Present: Rodriquez, Kazarian, Mejia, Parra

City Staff Present: City Manager Tucker, City Attorney Cross, Police Chief Reid, Public Works Director Dominguez, Community Development Director Gaffery, City Planner Marple, City Engineer Peters, Finance Director Moreno, Deputy City Clerk Vasquez

Councilmember Parra made a motion to remove Item 5-Ei from the agenda, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Kazarian, Rodriquez.

5. GENERAL ADMINISTRATION

5-A. City Manager's Office

i. Actions pertaining to the appointment of Michael S. Reid as Chief of Police

1) APPROVE Resolution No. 2580 adopting the salary classification schedule for all employees

Councilmember Parra made a motion to APPROVE Resolution No. 2580 adopting the salary classification schedule for all employees, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Rodriquez; Noes: Kazarian

2) APPROVE a Chief of Police Employment Agreement with Michael S. Reid

Councilmember Parra made a motion to APPROVE a Chief of Police Employment Agreement with Michael S. Reid, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Rodriquez; Noes: Kazarian

5-B. Finance

i. ACCEPT the Independent Auditor's Report for the Fiscal Year 2019-2020

Councilmember Kazarian made a motion to ACCEPT the Independent Auditor's Report for the Fiscal Year 2019-2020, seconded by Councilmember Parra. The motion carried by roll call vote: Ayes: Kazarian, Parra, Mejia, Rodriquez

ii. Actions pertaining to Coronavirus State and local Fiscal Recovery funds under the American Rescue Act of 2021

- 1) APPROVE Resolution No. 2581 amending the 2022-2023 Adopted Budget to reflect Coronavirus State and Local Fiscal Recovery funds received under the American Rescue Plan Act (ARPA) in the amount of \$812,156 and allocate those funds for various expenditures.**

Councilmember Mejia made a motion to APPROVE Resolution No. 2581 amending the 2022-2023 Adopted Budget to reflect Coronavirus State and Local Fiscal Recovery funds received under the American Rescue Plan Act (ARPA) in the amount of \$812,156 and allocate those funds for various expenditures, seconded by Councilmember Parra. The motion carried by roll call vote: Ayes: Mejia, Parra, Kazarian, Rodriguez

- 2) APPROVE Resolution No. 2582 authorizing an additional one-time premium of \$3,000 payment to eligible city employees performing essential work, who have been and continue to be relied upon to maintain continuity of city operations.**

Councilmember Mejia made a motion to APPROVE Resolution No. 2582 authorizing an additional one-time premium of \$3,000 payment to eligible city employees performing essential work, who have been and continue to be relied upon to maintain continuity of city operations seconded by Councilmember Parra. The motion carried by roll call vote: Ayes: Mejia, Parra, Kazarian, Rodriguez

5-C. Planning

- i. INTRODUCTION of Ordinance amending Title 4, Chapter 4, Article 2 of the Fowler Municipal Code regarding the parking of vehicles, towing of parked vehicles, and parking citations; and the repeal of Title 4, Chapter 4, Article 5 regarding trains**

Councilmember Kazarian made a motion to Approve INTRODUCTION of Ordinance amending Title 4, Chapter 4, Article 2 of the Fowler Municipal Code regarding the parking of vehicles, towing of parked vehicles, and parking citations; and the repeal of Title 4, Chapter 4, Article 5 regarding trains, seconded by Mejia. The motion carried by roll call vote: Ayes: Kazarian, Mejia, Parra, Rodriquez

- ii. Actions Pertaining to Planning Case Number 22-0028 the introduction of an Ordinance repealing Chapter 3, of Title 9 (“Setback Law”) of the Fowler Municipal Code, to consolidate the clarify the City’s zoning standards.**

- 1) ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061, subdivision (b)(3)**

Councilmember Parra made a motion to ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061, subdivision (b)(3), seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Kazarian, Rodriquez

- 2) INTRODUCTION of Ordinance No. 2022-06, repealing Chapter 3, of Title 9 of the Fowler Municipal Code to consolidate and clarify setback standards**

Councilmember Parra made a motion to Approve INTRODUCTION of Ordinance No. 2022-06, repealing Chapter 3, of Title 9 of the Fowler Municipal Code to consolidate and clarify setback standards, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Kazarian, Rodriquez

- iii. Actions pertaining to Planning Case Number 22-027 the introduction of an Ordinance amending Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code regarding the development standards and the reimbursement for open space.**

- 1) ADOPT a Categorical Exemption pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15061, subdivision (b)(3)**

Councilmember Mejia made a motion to ADOPT a Categorical Exemption pursuant to California Environmental Quality Act

(CEQA) Guidelines Section 15061, subdivision (b)(3), seconded by Councilmember Kazarian. The motion carried by roll call vote: Ayes: Mejia, Kazarian, Parra, Rodriquez

2) INTRODUCTION of Ordinance No. 2022-07 Amending Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code

Councilmember Mejia made a motion to Approve INTRODUCTION of Ordinance No. 2022-07 Amending Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code, seconded by Councilmember Kazarian. The motion carried by roll call vote: Ayes: Mejia, Kazarian, Parra, Rodriquez

5-D. Public Works

- i. Actions pertaining to collection of annual levy for the City's Landscape and Storm Drainage Facilities Maintenance District No. 1**

Councilmember Parra made a motion to APPROVE Resolution No. 2583, a Resolution Confirming the Diagram and Assessment of the Annual Levy for Fiscal Year 2022-23 for Landscaping and Storm Drainage Facilities Maintenance District No. 1, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Kazarian, Rodriquez

5-E. City Council

- i. APPROVE Resolution No. 2578, a Resolution of the City Council of the City of Fowler calling for and giving notice of the holding of a Special Municipal Election to be consolidated with the regularly scheduled general municipal election to be held on November 8, 2022, to present to voters a measure to adopt an ordinance enacting a 0.275% special transactions and use tax increase; requesting consolidation thereof with the statewide general election to be held on the same date; requesting that the Fresno County Board of Supervisors authorize the Fresno County Clerk to render specified services to the City of Fowler relating to the conduct of the Special Municipal Election; and approving the proposed ballot measure description.**

This item was removed from the agenda.

- ii. **WORKSHOP regarding potential funding opportunities for volunteer firefighter's training**
City Attorney Cross will provide an update at the next council meeting.

6. PUBLIC COMMENT

No members of the public spoke.

7. CONSENT CALENDAR

Councilmember Parra made a motion to approve the consent calendar, seconded by Councilmember Mejia. The motion carried by roll call vote: Ayes: Parra, Mejia, Kazarian, Rodriquez

8. CONTESTED CONSENT CALENDAR

N/A

9. STAFF COMMUNICATIONS (CITY MANAGER)

- Updates were provided by City Manager Tucker, Public Works Director Dominguez, Community Development Director Gaffery, and Finance Director Moreno.

10. COUNCILMEMBER REPORTS AND COMMENTS

N/A

11. ADJOURNMENT

Having no further business, the meeting adjourned at 9:05 p.m.



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-D

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM SCOTT CROSS, City Attorney

SUBJECT

APPROVE Resolution No. 2588, A Resolution of the City Council of the City of Fowler Authorizing Continued Use of Remote Teleconferencing for City Council Meetings and Commission Meetings During Declared State of Emergency in Accordance with Government Code Section 54953 as amended by AB 361

RECOMMENDATION

Approve Resolution No. 2581 if the City Council makes the findings required by Government Code Section 54953(e)(3) to continue to allow City Council members to attend City Council meetings via remote teleconferencing without following typical Brown Act requirements for teleconference participation by City Council members at City Council meetings. The Resolution also authorizes the City's other commissions to continue meeting remotely for as long as the City Council authorizes.

BACKGROUND

The City Council approved Resolution No. 2522 on October 19, 2021, authorizing remote teleconferencing for City Council and City commission meetings in accordance with Government Code Section 54953 as amended by AB 361 during the COVID-19 declared emergency. To continue with the "relaxed" remote teleconferencing for City Council and other commission meetings Government Code Section 54953 requires the City Council to make findings every 30 days that (1) it has reconsidered the circumstances of the state of emergency, and either (a) the state of emergency continues to directly impact the ability of the members to meet safely in person, or (b) state or local officials continue to impose or recommend measures to promote social distancing.

Fowler City Council meetings are currently conducted in a manner that allows the public and Council members to attend in person or via teleconference in compliance with applicable legal requirements. Approving this resolution would not change the way members of the public are allowed to participate in meetings (both in-person and teleconference attendance is allowed) and would also allow City Council members to continue to attend meetings via teleconference, if desired, without complying with the typical Brown Act requirements for teleconferencing attendance at City Council meetings.

The proclaimed COVID-19 emergency is still in effect and there may be occasions when the proclaimed emergency directly impacts the ability of members of the public or Council members to meet safely in person. Also, some state and local officials continue to recommend measures to promote social distancing. As a result, the necessary findings can be made, if desired, to continue with remote teleconferencing for City Council and other commission meetings. These findings must be made every 30 days to continue with the relaxed Brown Act teleconference requirements.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

No fiscal impact is anticipated whether this Resolution is approved or not.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Resolution No. 2588

RESOLUTION NO. 2588

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER AUTHORIZING CONTINUED USE OF REMOTE TELECONFERENCING FOR CITY COUNCIL MEETINGS AND COMMISSION MEETINGS DURING DECLARED STATE OF EMERGENCY IN ACCORANCE WITH GOVERNMENT CODE SECTION 54953 AS AMENDED BY AB 361

WHEREAS, on March 4, 2020, the Governor of California declared a state of emergency in the State as a result of the COVID-19 pandemic; and

WHEREAS, pursuant to Resolution 2461, approved by the Fowler City Council on March 17, 2020, the City Council declared a local emergency as a result of the threatened spread of COVID-19 in the City, surrounding areas, and the state; and

WHEREAS, on March 17, 2020, with the issuance of Executive Order N-29-20, the Governor suspended certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other remote means; and

WHEREAS, on June 11, 2021, the Governor issued Executive Order N-08-21, which placed an end date of September 30, 2021, for agencies to meet remotely; and

WHEREAS, AB 361 was enacted on September 16, 2021, enacting certain changes to the Brown Act for teleconferencing and remote participation at public meetings as set forth in Government Code Section 54953; and

WHEREAS, the state of emergency proclaimed by the Governor on March 4, 2020, has not been rescinded and remains in effect; and

WHEREAS, the City Council has determined that teleconferencing from remote locations by the public and City Council members has not limited participation of members of the public, Council members, or other attendees at City Council or other City commission meetings; and

WHEREAS, on October 19, 2021, the City Council approved Resolution No. 2522 authorizing remote teleconferencing for City Council and City commission meetings in accordance with Government Code Section 54953 as amended by AB 361; and

WHEREAS, Government Code Section 54953, as amended by AB 361, requires the City Council to make certain findings every 30 days after approving Resolution No. 2522 in order to continue with remote teleconferencing.

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

1. The City Council has reconsidered the circumstances of the COVID-19 state of emergency and finds that the following circumstances exist:

- A. The state of emergency continues to directly impact the ability of members of the public, City Council members, and members of other City commissions to meet safely in person; and
- B. State or local officials continue to recommend measures to promote social distancing.

2. This Resolution shall be effective immediately and a similar resolution shall be a standing item on City Council meeting agendas each month to reconsider the circumstances of the COVID-19 state of emergency and determine whether the state of emergency continues to directly impact the ability of members of the public, City Council members, and members of other City commissions to meet safely in person, or whether state or local officials continue to impose or recommend measures to promote social distancing, until the necessary findings required for continuing remote teleconferencing are no longer approved by the City Council.

PASSED, APPROVED AND ADOPTED this 16th day of August 2022, at a meeting of the Fowler City Council by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-E

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM ANGELA VASQUEZ, Deputy City Clerk

SUBJECT

Actions pertaining to electronic building entry access control system

- 1) AUTHORIZE the City Manager to negotiate and execute an agreement with Hoffman Electronic Systems for the purchase and installation of an electronic building entry access control system for City Hall in the amount of \$29,995
- 2) APPROVE Resolution No. 2589 amending the 2022-2023 Adopted Budget in the amount of \$4,995

RECOMMENDATION

Staff recommend the City Council approve the above proposed actions.

BACKGROUND

It is unknown the last time City Hall exterior doors were re-keyed and there are no consistent records of key issuance to City staff or others.

This system will improve security and minimize risk by implementing electronic access to the perimeter doors of City Hall. The system will allow electronic management of access control and audit records of building access. This project will also include the replacement of door strikes and related hardware.

Staff evaluated solutions from various vendors. Based on best value and references, Hoffman Security was selected, consistent with the provisions of the City's Purchasing Policy.

Since introduction of this item during the American Rescue Plans Act (ARPA) funding request on August 2, 2022, staff identified three additional locations where electronic access controls are needed. This additional scope increases the contract amount by \$4,995 and is reflected in the proposed budget amendment.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Council Resolution No. 2581, adopted on August 2, 2022, allocated \$25,000 in ARPA funds. The proposed Resolution No. 2589 would authorize an additional \$4,995 in ARPA funds for this project.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Scope of Work
- Resolution No. 2589

Fresno Area:
90 E. Escalon Ave. #120
Fresno, CA 93710
(559) 292-7871
ACO # 4638
Con. Lic. 484100



Merced Area:
2301 Aviation Dr.
Atwater, CA 95301
(209) 384-3305
(800) 972-0003
(209) 722-1107-Fax
HoffmanElectronics.com

PROPOSAL

Proposal Submitted to: City of Fowler Address: 128 S. 5th St, Fowler, CA 93625 Phone: (559) 834-3113 Submission Date: 8/10/22	Job Name: Access Control System Job Location: 128 S. 5th St, Fowler, CA 93625 Architect: Date of Plans:
--	--

Parts List:

1 EA Labor	11 EA Card Reader
1 EA XR550 Panel w/Network Module, Transformer, battery	7 EA Flush-Mount Door Strikes
1 EA Access Keypad	3 EA Electric Surface Door Strike
2 EA Power Supply 12V,24V, + 2 batteries, Xformer	20 EA Access Card
2 EA Battery	1 EA Conduit & Fittings
11 EA Access Control Module	

Hoffman proposes to install 11 doors of access control at City of Fowler Headquarters. Ten of the doors will have door strike hardware and card readers installed, one interior door already has a door strike. Exterior doors with deadbolts will require City to install standard locking doorknobs to work properly with new flush-mount door strikes. User Management will be done through Virtual Keypad Access using a standard web browser or smartphone app, utilizing the network connection to the panel. Proposal is calculated at prevailing-wage labor rates. Access Control App for User Maintenance is \$65 per month. Full Service, covering all normal wear and tear on equipment and labor cost, and including Access Control App, is optional at a total of \$125 per month.

We propose hereby to furnish material and labor - complete in accordance with above specifications for the sum of:

Twenty-Nine Thousand Nine Hundred Ninety-Five Dollars and No Cents \$29,995.00
Access Control App for User Maintenance: \$65.00 per month (Based on a three-year agreement)
Full Service, covering all normal wear and tear on equipment and labor cost, and including App, is optional at \$125.00 per month

All material is guaranteed to be as specified. All work is to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders and will become an extra charge over and above the estimate. All agreements are contingent upon strikes, accidents, or delays beyond our control. Owner is to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workman's Compensation Insurance.

Approved

By _____
Not valid unless signed by an officer of
Hoffman Electronic Systems

By *David Hoffman*
Sales Agent

Date _____

This Agreement shall not be binding upon Hoffman unless approved by an officer of Hoffman

This proposal may be withdrawn by us if not accepted within 20 days

ACCEPTANCE OF PROPOSAL - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

By: _____
Type or Print

Authorized
Date of Acceptance _____

Subscriber

RESOLUTION NO. 2589

**A RESOLUTION OF THE COUNCIL OF THE CITY OF FOWLER
APPROVING AND ADOPTING THE BUDGET AMENDMENT FOR THE AMERICAN
RESCUE PLAN ACT (ARPA) FUND FOR FISCAL YEAR 2022/2023**

WHEREAS, the FY 2022/2023 Annual Budget reflects the City of Fowler's ongoing commitment to providing core services; and

WHEREAS, the FY 2022/2023 Annual Budget was approved by the City Council on June 7, 2022, by Resolution 2563, and any subsequent amendments must be approved by Resolution; and

WHEREAS, the budget amendment request attached hereto specifies the details of the proposed ARPA Fund budget amendment.

NOW, THEREFORE, BE IT RESOLVED, the Fowler City Council hereby resolves that the FY 2022/2023 budget be amended to reflect ARPA Fund appropriations as described in the attachment hereto.

PASSED, APPROVED AND ADOPTED this 16th day of August 2022, at a regular meeting of the Fowler City Council by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



REQUEST FOR BUDGET AMENDMENT

Resolution No. 2589

Requested by: Margarita Moreno			
Account Numbers:		Fund Name Description	
Revenues:		Budget Amounts	
		Increase	Decrease
Appropriations:			
212.5710	City Hall electronic access control system	\$ 4,995	

Reason(s) for Budget Amendment:

To align the expenses and revenues for of FY 2022/2023 budget, staff is requesting a budget amendment to the following funds:

- To appropriate additional ARPA funding for the purchase and installation of an electronic building entry access control system for City Hall.

Department Director _____ Date _____

Approval Required Budget Amendment:

Finance Director _____ Date _____

Signature

City Manager _____ Date _____

Signature

City Council: ☐ Approved ☐ Resolution # _____ ☐ Denied Date _____



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-F

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM MARGARITA MORENO, Finance Director

SUBJECT

APPROVE a professional services agreement with Price Paige & Company in the amount of \$55,000 for year-end closing and audit support services for fiscal year 2021-22.

RECOMMENDATION

Staff recommend the City Council approve a professional services agreement with Price Paige & Company in the amount of \$55,000 for year-end closing and audit support services for fiscal year 2021-22.

BACKGROUND

The City has previously engaged Price Paige & Company for fiscal years 2018-19, 2019-20 and 2020-21 year-end closing and audit support services. Staff recommend continuing this engagement for fiscal year 2021-22, which ended on June 30, 2022. The engagement will include preparation of the 2021-22 financial statements, GASB 87 implementation, special reporting for water, Calpers reporting, employee benefits, assistance in the annual reporting of financial transactions, and serving as liaison with the City's external auditor. This engagement will ensure the audit is completed in a timely manner.

ENVIRONMENTAL REVIEW

This action does not constitute a "project" pursuant to the California Environmental Quality Act.

FISCAL IMPACT

On August 2, 2022, City Council approved Resolution No. 2581 appropriating funds for this agreement.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Agreement

**CITY OF FOWLER
ACCOUNTING CONSULTANT SERVICE AGREEMENT**

This Accounting Consultant Services Agreement ("Agreement") is entered into between the City of Fowler, a California general law city ("City") and Price Paige & Company ("Consultant") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on August 16, 2022 ("Effective Date").

RECITALS

- A. City desires to obtain non-audit accounting consultation services ("Services") more fully described in the proposal from Consultant attached as **Exhibit A**, which is incorporated herein by reference.
- B. Consultant is engaged in the business of furnishing the Services and hereby warrants and represents that Consultant is qualified, experienced, and capable of performing the Services, and possesses any required licenses, certifications, security/bonding, and/or training necessary to perform the Services.
- C. City desires to retain Consultant, and Consultant desires to provide the City with the Services, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, City and Consultant agree as follows:

AGREEMENT

1. **Scope of Services.** Consultant shall perform the Services described in the Recitals and detailed in **Exhibit A**. Changes in the scope of Services, including the work performed and/or deliverables produced, shall be made in writing and particularly describe the changes in Services, including payment/costs and schedule/term, as applicable.
2. **Priority and Conflicts: Exclusions.** If the terms and requirements of this Agreement conflict with **Exhibit A**, this Agreement shall control. No contractual terms and/or conditions found in **Exhibit A** shall purport to waive, disclaim, or limit Consultant's liability, indemnification obligations, warranties, damages for breach or delay, or any security, bonding, or insurance requirements, and any such provisions shall have no force or effect with respect to this Agreement and the Services performed by Consultant.
3. **Term of Agreement: Commencement of Services: Schedule.** Consultant shall begin performing the Services upon notice from the City on or after the Effective Date, unless otherwise instructed by City, and continue with the Services until satisfactorily completed, as determined by City. Consultant shall complete the Services not later than June 30, 2023 ("Completion Date"), unless extended beyond this date by mutual consent of the Parties. This Agreement may be terminated prior to the Completion Date pursuant to Section 17 herein. City and Consultant shall mutually agree on a schedule for performance of the Services and completion of any deliverables. The schedule shall be subject to modification based on the City's operational needs. City will notify Consultant in advance of any modification to the schedule.
4. **Payment for Services.** City shall pay Consultant for the Services performed pursuant to this Agreement according to Consultant's standard hourly rate(s). The total amount paid by City to Consultant for the Services shall not exceed Fifty Five Thousand Dollars (\$55,000).

The foregoing is inclusive of all labor, equipment, materials, costs and expenses, taxes, and overhead. City shall pay Consultant for Services satisfactorily performed pursuant to this Agreement. Consultant shall

submit monthly invoices to City containing detailed billing information regarding the Services provided and unless otherwise specified in **Exhibit A**, City shall tender payment to Consultant within thirty (30) days after receipt of invoice.

5. **Independent Contractor Status.** Consultant and its subcontractors, if any, shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of City. Consultant is engaged in an independently established trade, occupation, or business to perform the Services required by this Agreement and is hereby retained to perform work that is outside the usual course of City's business. Consultant is free from the control and direction of City in connection with the manner of performance of the work. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Consultant's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Consultant's employees or subcontractors, any claim or right of action against City.

6. **Consultant Representations; Standard of Care; Compliance with Law.** Consultant represents that Consultant and any subcontractors utilized by Consultant are and will be qualified in the field for which Services are being provided under this Agreement and Consultant and any subcontractors are now, and will be throughout their performance of the Services under this Agreement, properly licensed, certified, secured/bonded, trained, and/or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement, as may be required by law. Consultant and its subcontractors shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with all applicable laws, regulations, and industry standards, including without limitation applicable law for properly safeguarding any financial data and information obtained from City necessary to perform the Services.

7. [Reserved]

8. **Subcontractor Provisions.** Consultant shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Consultant owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions and other work product prepared and performed by subcontractors for Consultant; and (c) entitle City to impose upon subcontractors the assignment rights found elsewhere in this Agreement.

9. **Power to Act on Behalf of City.** Consultant is not acting as an agent of City and shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

10. **Record Keeping; Reports.** Consultant shall keep complete records showing the type of Services performed. Consultant shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Consultant and its subcontractors for inspection and audit purposes. Consultant shall provide City with a working draft of all reports upon reasonable request by City and of all final reports prepared by Consultant under this Agreement.

11. **Ownership and Inspection of Documents.** All data, tests, reports, analyses, documents, records, conclusions, opinions, recommendations and other work product generated by or produced for Consultant or its subcontractors in connection with the Services, regardless of the medium, including physical drawings and materials recorded on computer discs or other electronic devices ("Work Product"), shall be and remain the property of City. City shall have the right to use, copy, modify, and reuse the Work Product as it sees fit. Upon City's request, Consultant shall make available for inspection and copying all such Work Product and

all Work Product shall be turned over to City promptly at City's request or upon termination of this Agreement, whichever occurs first. Consultant shall not release any Work Product to third parties without prior written approval of City. This obligation shall survive termination of this Agreement and shall survive for four (4) years from the date of expiration or termination of this Agreement.

12. Confidentiality. All Work Product prepared and performed by and on behalf of Consultant in connection with the Services performed pursuant to this Agreement shall be kept confidential and shall be disclosed only to City, unless otherwise provided by law or expressly authorized by City. Consultant shall not disclose or permit the disclosure of any confidential information acquired during performance of the Services, except to its agents, employees and subcontractors who need such confidential information in order to properly perform their duties relative to this Agreement. Consultant shall also require its subcontractors to be bound to these confidentiality provisions.

13. [Reserved]

14. Conflicts of Interest. Consultant warrants that neither Consultant nor any of its employees have an improper interest, present or contemplated, in the Services which would affect Consultant's or its employees' performance of the Services and the Work Product produced. Consultant further warrants that neither Consultant nor any of its employees have real property, business interests or income that will be affected by the Services. Consultant covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During the performance of the Services, Consultant shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission.

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

16. [Reserved]

17. Termination of Agreement. This Agreement shall terminate as provided in Section 3, unless terminated earlier pursuant to the following:

a. Termination by City: For Convenience. City may at its discretion terminate this Agreement for convenience and without cause upon ten (10) days prior written notice to Consultant. Upon receipt of a termination notice pursuant to this subsection, Consultant shall promptly discontinue all Services affected, unless the notice directs otherwise.

b. Termination by City or Consultant: For Cause. Either party may terminate this Agreement upon ten (10) days prior written notice to the other party of a material breach, and a failure within that time period to cure or commence reasonable steps to cure the breach.

c. Compensation to Consultant Upon Termination. Consultant shall be paid compensation for Services satisfactorily performed prior to service of the written notice of termination. As to any phase partially performed but for which the applicable portion of Consultant's compensation has not become due, Consultant shall be paid the reasonable value of its Services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified Section 4. In the event of termination due to Consultant's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon termination of this Agreement, Consultant shall: (i) promptly discontinue all Services affected, unless the notice of termination directs otherwise; and (ii) deliver or otherwise make available to the City, without additional compensation, all Work Product and/or deliverables accumulated by the Consultant in performing this Agreement, whether completed or in process. Consultant may not refuse to provide such Work Product for any reason whatsoever.

18. Insurance. Consultant shall satisfy the insurance requirements set forth in **Exhibit B**.

19. Indemnity and Defense. Consultant hereby agrees to indemnify, defend and hold the City, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of Consultant or its subcontractors relating to the performance of Services and the safeguarding of any financial data and information obtained from City necessary to perform the Services described herein to the fullest extent permitted by law, unless the injuries or damages are the result of City's sole negligence or willful misconduct, subject to any limitations imposed by law. Consultant and City agree that said indemnity and defense obligations shall survive the expiration or termination of this Agreement for any items specified herein that arose or occurred during the term of this Agreement.

20. Taxes. Consultant agrees to pay all taxes, licenses, and fees levied or assessed by any governmental agency on Consultant incident to the performance of Services under this Agreement, and unemployment and workers' compensation insurance, social security, or any other taxes upon the wages of Consultant, its employees, agents, and representatives. Consultant agrees to obtain and renew an annual business license from City and pay the applicable business license fee to City during the term of this Agreement.

21. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Consultant without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Consultant shall not assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Consultant directly to Consultant.

22. Form and Service of Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served upon, or given to either party to this Agreement by the other party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods:

a. Personally delivered to the party to whom it is directed. Service shall be deemed the date of delivery.

b. Delivered by e-mail to a known address of the party to whom it is directed provided thee-mail is accompanied by an acknowledgment of receipt by the other party. Service shall be deemed the date of acknowledgement.

c. Delivery by a reliable overnight delivery service, ex., Federal Express, receipted, addressed to the addressees set forth below the signatories to this Agreement. Service shall be deemed the date of delivery.

d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered seventy-two (72) hours after deposit.

23. Entire Agreement. This Agreement, including the Exhibits and any other attachments, represents the entire Agreement between City and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein. This Agreement may be amended only by written instrument signed by both City and Consultant.
24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
25. [Reserved]
26. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.
27. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Consultant in the County of Fresno, California. Consultant shall perform the Services required under this Agreement in the County of Fresno, California.
28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.
29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.
30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.
31. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other party to this Agreement. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

32. Non-Discrimination. Consultant shall not discriminate based on any protected class under federal or State law in the provision of the Services or with respect to any Consultant employees or applicants for employment. Consultant shall ensure that any subcontractors are bound to this provision. A protected class includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

Now, therefore, the City and Consultant have executed this Agreement on the date(s) set forth below.

CONSULTANT

CITY OF FOWLER

By: _____
Fausto Hinojosa, Audit Partner

By: _____
Wilma Tucker, City Manager

Date: _____

Date: _____

Party Identification and Contact Information:

Consultant
Price Paige & Company
Attn: Fausto Hinojosa
Audit Partner
570 N. Magnolia
Clovis, CA 93612
fausto@ppcpas.com
559-299-9540

City of Fowler
Attn: Wilma Tucker
City Manager
128 S 5th Street
Fowler, CA 93625
wtucker@ci.fowler.ca.us
(559)834-3113

EXHIBIT A
CONSULTANT PROPOSAL



August 4, 2022

Ms. Wilma Tucker, City Manager
City of Fowler
128 S. 5th St.
Fowler, California 93625

Dear Ms. Quan:

This letter confirms the engagement of Price Paige & Company by the City of Fowler (the "City") as of and for the year ended June 30, 2022.

The professional consulting services we currently expect to provide include the following:

- 1) We will assist the City in the year-end close of its financial records for the year ending June 30, 2022 by performing reconciliations of certain balance sheet and income statement balances, as listed on the attached schedule, Exhibit A.
- 2) We will prepare the City's financial statements for the year ending June 30, 2022.
- 3) We will serve as a liaison with the City's external auditors for any inquiries directly related to certain balance sheet and income statement balances, as listed on the attached schedule for the year ending June 30, 2022.
- 4) We will provide the City with additional consultation as agreed-upon with City management. The scope, timing and extent of the additional consultation will be discussed prior to the commencement of any work.
- 5) We will prepare the annual reports of financial transactions for the City for the year ended June 30, 2022.

All workpapers or other documents used by us during this engagement will be maintained in segregated files, and such originals and all copies will be returned to you upon the completion of our engagement.

You agree to oversee all nonaudit services as they relate to Measure C and Transportation Development Act activity and account balances by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. We, in our sole

570 N. Magnolia Avenue, Suite 100
Clovis, CA 93611

tel 559.299.9540
fax 559.299.2344

professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

Electronic Data Communication and Storage and Use of Third-Party Service Provider

In the interest of facilitating our services to the City, we may communicate by facsimile transmission, send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data that is confidential to the City may be transmitted or stored using these methods. We may use third-party service providers to store or transmit this data, such as providers of tax return preparation and document management software. In using these data communication and storage methods, our firm employs measures designed to maintain data security. We use reasonable efforts to keep such communications and data access secure in accordance with our obligations under applicable laws and professional standards. We also require all of our third-party vendors to do the same.

You recognize and accept that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors, and consent to our use of these electronic devices and applications and submission of confidential client information to third-party service providers during this engagement.

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

Engagement Administration, Fees and Other

We will schedule the engagement based in part on deadlines, working conditions, and the availability of your key personnel. We will plan the engagement based on the assumption that your personnel will cooperate and provide assistance by performing tasks such as preparing requested schedules, retrieving supporting documents, and preparing confirmations. If, for whatever reason, your personnel are unavailable to provide the necessary assistance in a timely manner, it may substantially increase the work we have to do to complete the engagement within the established deadlines, resulting in an increase in fees over our original fee estimate.

It is our policy to keep records related to this engagement for a minimum of seven years after the report release date.

Our fees for the above services for the year ending June 30, 2022 will be as follows:

Consulting Services, as listed in items 1-3	\$ 35,500
Additional Consulting, as listed in item 4 (hourly, not to exceed)	15,000
City's Financial Transaction Report, as listed in item 5	<u>4,500</u>
Total	<u>\$55,000</u>

Our fees are based on expected hours required to perform the service at our standard hourly rates. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your consulting engagement. Our billing rates are reviewed annually and, where appropriate, adjusted for any increases due to inflation and other factors. We will issue a monthly billing statement for the work completed in that month. Payments for services are due when rendered and interim billings may be submitted as work progresses and expenses are incurred. Our fee estimate is based on anticipated cooperation from your personnel and assumption that unexpected circumstances will not be encountered during the services listed in Exhibit A. If significant time is necessary, we will

discuss it with you before we incur additional costs. The fees for these services will be billed at the hourly billing rate for the individual involved, plus out-of-pocket expenses.

If any dispute pertaining to our work product arises among the parties hereto, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Rules for Professional Accounting and Related Services Disputes before resorting to litigation. The costs of any mediation proceeding shall be shared equally by all parties.

All work will be suspended if your account becomes 90 days past due. No work will be resumed until your account is fully paid. You acknowledge and agree that in the event we stop work or withdraw from this engagement as a result of your failure to pay on a timely basis for services rendered as required by this engagement letter, we shall not be liable for any damages that occur as a result of our ceasing to render services. Client and accountant both agree that any dispute over fees charged by the accountant to the client will be submitted for resolution by arbitration in accordance with the Rules for Professional Accounting and Related Services Disputes of the American Arbitration Association. Such arbitration shall be binding and final. IN AGREEING TO ARBITRATION, WE BOTH ACKNOWLEDGE THAT, IN THE EVENT OF A DISPUTE OVER FEES CHARGED BY THE ACCOUNTANT, EACH OF US IS GIVING UP THE RIGHT TO HAVE THE DISPUTE DECIDED IN A COURT OF LAW BEFORE A JUDGE OR JURY AND INSTEAD WE ARE ACCEPTING THE USE OF ARBITRATION FOR RESOLUTION.

If information becomes known that would make our continued involvement in this engagement inappropriate, or parties involved change, we reserve the right to withdraw from this engagement. In addition, we will refuse to perform any requested act that we deem a violation of law, public policy, or our professional ethical standards, and may, as a result, withdraw from the engagement without penalty.

In no event will our firm be liable for incidental or consequential damages resulting from our performance on this engagement, even if we have been advised of the possibility of such damages.

If these terms are in accordance with your understanding and meet with your approval, please return a signed copy via email or regular mail at your earliest convenience. This agreement will become effective when you return the signed copy to us.

If the need for additional services arises, our agreement with you will need to be revised. It is customary for us to describe these revisions in an addendum to this letter.

Sincerely,



Josh Giosa, CPA
Price Paige & Company

RESPONSE:

This letter correctly sets forth the understanding of the **City of Fowler, California**.

Management Signature

Title

Date

Exhibit A

We will assist the City in the year-end close of its financial records for the year ending June 30, 2022 by performing reconciliations of balance sheet and income statement balances for the following audit areas:

- 1) Cash and Investments
- 2) Enterprise Revenue/Receivables (Including Deposits and Prepays)
- 3) Capital Assets
- 4) Long-Term Debt and Bond Trustee Reconciliation
- 5) Net Pension Liability and related Deferred Inflows and Outflows of Resources
- 6) Grant Reconciliation and Schedule of Expenditure of Federal Awards

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to commencement of the Services, Consultant shall take out and maintain at its own expense the insurance coverage required by this **Exhibit B**. Consultant shall cause any subcontractor with whom Consultant contracts for the performance of Services pursuant to this Agreement to take out and maintain equivalent insurance coverage. Said insurance shall be maintained at all times during Consultant's performance of Services under this Agreement, and for any additional period specified herein. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to the City.

a. Minimum Limits of Insurance. Consultant shall maintain the following types of insurance with limits no less than specified:

(i) Professional Liability Insurance (Errors and Omissions) in an amount not less than \$1,000,000.00 per occurrence or claim and \$1,000,000 in the aggregate. Said insurance shall be maintained for an additional period of five years following the earlier of completion of Consultant's Services under this Agreement or termination of this Agreement.

(ii) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.

(iii) Worker's Compensation Insurance as required by the State of California.

(iv) Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(v) Umbrella or Excess Liability. In the event Consultant 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). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

If Consultant maintains higher limits than the minimums shown above, the City shall be entitled to coverage at the higher limits maintained.

b. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(i) For any claims related to the Services performed pursuant to this Agreement, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute thereto.

(ii) Each insurance policy required by this section shall be endorsed to state that the City shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, or material modification of the coverages required herein.

(iii) Consultant grants to the City a waiver of any right to subrogation which any insurer of said Consultant may acquire against the City by virtue of the payment of any loss under such insurance. Consultant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(iv) Any deductibles or self-insured retentions must be declared to and approved by the City of Fowler. The City may require the Consultant to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Consultant shall deliver to City written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Consultant's right to be paid any compensation under this Agreement. City's failure, at any time, to object to Consultant's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of City's right to insist upon such insurance later.

d. Maintenance of Insurance. If Consultant fails to furnish and maintain the insurance required by this section, City may (but is not required to) purchase such insurance on behalf of Consultant, and the Consultant shall pay the cost thereof to City upon demand, and City shall furnish Consultant with any information needed to obtain such insurance. Moreover, at its discretion, City may pay for such insurance with funds otherwise due Consultant under this Agreement.

e. Subcontractors. If the Consultant should subcontract all or any portion of the work to be performed in this Agreement, the Consultant shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Consultant to City under this Agreement.



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-G

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM THOMAS W. GAFFERY IV, Community & Economic Development Director

SUBJECT

Actions pertaining to copier and printers

1. APPROVE an agreement with Xerox Financial Services LLC in the amount of \$1,390.62 per month for 63 months for the lease of copiers and printers.
2. APPROVE an agreement with Image Source in an amount not to exceed \$26,000 for 63 months for the service, supplies, and maintenance of copiers and printers, based on actual meter readings.

RECOMMENDATION

Staff recommend the City Council approve the above proposed actions.

BACKGROUND

The current printer and copier lease and service agreements with Xerox/Image Source were executed by the prior administration without City Council approval, even though the total cost of the Xerox lease alone was \$67,367.

Staff learned this when researching the Xerox/Image Sources agreement to make modifications that would better suit the City's business needs. Staff engaged with the City Attorney's Office to determine if it were feasible to exit the existing agreements. Additionally, staff reviewed proposals with Xerox/Image Source and determined the best value would be to extend the current agreement with

equipment modifications rather than make modifications without extending the term, or to attempt to exit the City from the existing contract.

The existing procurement does not meet the City's needs in a number of ways:

- The City Hall copier does not meet the volume or feature needs of the workgroup. It cannot even staple documents.
- The Community Development copier cannot print in color, which is essential for printing maps, architectural plans, and other planning documents.
- The Senior Center copier is of a larger scale than necessary, but cannot print in color, which is essential for printing fliers and other event-related materials.
- There is an unnecessary number of desktop printers, instead of shared printers, in City Hall.

The proposed agreement will result in two (2) new devices (City Hall & Senior Center), relocation of two (2) existing devices (City Hall to Community Development, and Community Development to Public Works), and the removal of five (5) devices (Senior Center, Public Works, and three (3) desktop printers in City Hall). This arrangement will result in the optimal allocation of copiers and printers to meet the City's business needs.

ENVIRONMENTAL REVIEW

This action does not constitute a "project" pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Staff estimate an additional monthly cost of approximately \$385. If necessary, a mid-year budget adjustment will be brought forward for City Council consideration.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Proposed Agreement and Rider with Xerox Financial Services LLC (2022)
- Proposed Agreement and Rider with Image Source (2022)
- Agreement with Xerox Financial Services LLC (2019)
- Agreement with Image Source (2019)
- Comparison Spreadsheet

Lease Agreement



Agreement Number:

"Supplier" Name: IMAGE SOURCE		Supplier Address:	
CUSTOMER			
Full Legal Name: City of Fowler		Phone: (559) 834-3113	
Billing Address: 128 S 5th Street		Contact Name: Margarita Moreno	
City: Fowler	State: CA	Zip Code: 93625	Contact Email: mmoreno@ci.fowler.ca.us
EQUIPMENT			
Quantity	Model and Description	Quantity	Model and Description
1	Xerox Altalink C8035	1	Xerox Versalink B7035
1	Xerox Primelink C9070	2	Xerox Versalink B400
1	Xerox Versalink C405		
1	Xerox Altalink C8055		
Equipment Location; (if different from Billing Address):			
TERM (in months)	LEASE PAYMENT (plus applicable taxes)	PURCHASE OPTION - ('FMV' unless otherwise noted)	
Initial Term: 63	\$1,390.62 Frequency: (Monthly if none selected): <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Other	<input checked="" type="checkbox"/> Fair Market Value ("FMV") <input type="checkbox"/> \$1 Purchase Option	
CUSTOMER ACCEPTANCE		OWNER ACCEPTANCE	
BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE AGREEMENT AND THAT YOU HAVE READ AND AGREED TO ALL APPLICABLE TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 HEREOF.		Xerox Financial Services LLC	
Authorized Signer X:		Federal Tax ID # (Required):	Accepted By X:
Print Name/Title:		Date:	Date:
TERMS & CONDITIONS			

1. Definitions. The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "XFS," "we," "us," "Owner" and "our" mean Xerox Financial Services LLC. "Party" means you or XFS, and "Parties" means both you and XFS. "Acceptance Date" is the date you irrevocably determine Equipment has been delivered, installed and operating satisfactorily. "Agreement" means this Lease Agreement, including any attached Equipment schedule. "Commencement Date" will be a date after the Acceptance Date, as set forth in our first invoice, for the purpose of facilitating an orderly transition and to provide a uniform billing cycle. "Discount Rate" means 3% per annum. "Equipment" means the items identified in "Equipment" above and in any attached Equipment schedule, plus any Software (as defined in Section 3 hereof), attachments, accessories, replacements, replacement parts, substitutions, additions and repairs thereto. "Interim Period" means the period, if any, between the Acceptance Date and the Commencement Date. "Interim Payment" means one thirtieth of the Lease Payment multiplied by the number of days in the Interim Period. "Payment" means the Lease Payment specified above. Taxes and other charges you, Supplier and XFS agree will be invoiced by XFS. "Maintenance Agreement" means a separate agreement between you and Supplier for maintenance and support purposes. "Origination Fee" means a one-time fee of \$125 billed on your first invoice, which you agree to pay, covering origination, documentation, processing and other initial costs. "Term" means the Interim Period, if any, together with the Initial Term plus any subsequent renewal or extension terms. "UCC" means the Uniform Commercial Code of the State(s) where XFS must file UCC-1 financing statements to perfect its security interest in the Equipment.

2. Agreement, Payments and Late Payments. You agree and represent that the Equipment was selected, configured and negotiated by you based on your judgment and supplied by Supplier. At your request, XFS will acquire same from Supplier to lease to you hereunder and you agree to lease same from XFS. The Initial Term commences on the Acceptance Date. You agree to remit to XFS each Payment as invoiced by us according to the frequency set forth above. You agree to pay us all sums due under each invoice via check, Automated Clearing House debit, Electronic Funds Transfer or direct debit from your bank account by the due date. **If any Payment is not paid in full within 5 days after its due date, you will pay a late charge of the greater of 10% of the amount due or \$25, not to exceed the maximum amount permitted by law.** For each dishonored or returned Payment, you will be assessed the applicable fee, not to exceed \$35. Restrictive covenants on any method of payment will be ineffective.

3. Equipment and Software. To the extent that Equipment includes intangible property or associated services such as software licenses, such intangible property shall be referred to as "Software." You acknowledge and agree that XFS is not the licensor of such Software, and therefore has no right, title or interest in it, and you will comply throughout the Term with any license and/or other agreement ("Software License") with the supplier of the Software ("Software Supplier"). You are responsible for determining with the Supplier whether any Software Licenses are required, and entering into them with Software Supplier(s) no later than 30 days after the Acceptance Date. **YOU AGREE THE EQUIPMENT IS FOR YOUR LAWFUL BUSINESS USE IN THE UNITED STATES, WILL NOT BE USED FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES, AND IS NOT BEING ACQUIRED FOR RESALE.** You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.

4. Non-Cancellable Agreement. THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED BY YOU PRIOR TO THE END OF THE INITIAL TERM. YOUR OBLIGATION TO MAKE ALL PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF THE EQUIPMENT, SUPPLIER, ANY THIRD PARTY OR XFS. Any pursued claim by you against XFS for alleged breach of our obligations hereunder shall be asserted solely in a separate action; provided, however, that your obligations hereunder shall continue unabated.

5. End of Agreement Options. If a \$1 Purchase Option is designated, you will be deemed to have exercised your option to purchase the Equipment as of the Acceptance Date. If an FMV purchase option is designated, if you are not in default and if you provide no greater than 150 days and no less than 60 days' prior written notice to XFS, you may, at the end of the Initial Term or any renewal term ("End Date"), either (a) purchase all, but not less than all, of the Equipment by paying its fair market value, as determined by XFS in its sole but reasonable discretion ("Determined FMV"), plus Taxes, or (b) return the Equipment within 30 days of the End Date, at your expense, fully insured, to a continental US location XFS shall specify. You cannot return Equipment more than 30 days prior to the End Date without our consent. If we consent, we may charge you, in addition to all undiscounted amounts due hereunder, an early termination fee. If you have not elected one of the above options, this Agreement shall renew for successive 3-month terms. Either party may terminate the Agreement as of the end of any 3-month renewal term on 30 days' prior written notice and by taking one of the actions identified in (a) or (b) in the preceding sentence of this section. Any FMV purchase option shall be exercised with respect to each item of Equipment on the day immediately following the date of expiration of the Term of such item, and by the delivery at such time by you to XFS of payment, in form acceptable to XFS, of the amount of the applicable purchase price. Upon payment of the applicable amount, XFS shall transfer our interest in the Equipment to you on an "AS IS, WHERE IS," "WITH ALL FAULTS" basis, without representation or warranty of any kind.

6. Equipment Delivery and Maintenance. You should arrange with Supplier to have the Equipment delivered to you at the location(s) specified herein, and you agree to execute a Delivery & Acceptance Certificate at XFS's request (and confirm same via telephone and/or electronically) confirming when you have received, inspected and irrevocably accepted the Equipment, and authorize XFS to fund the Supplier for the Equipment. If you fail to accept the Equipment, you shall no longer have any obligations hereunder; however, you remain liable for any Equipment purchase order or other contract issued on your behalf directly with Supplier. Equipment may not be moved to another physical address without XFS's prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term. You shall permit XFS or its agent to inspect Equipment and any maintenance records relating thereto during your normal business hours upon reasonable notice. You represent you have entered into a Maintenance Agreement to maintain the Equipment in good working order in accordance with the manufacturer's maintenance guidelines and to provide you with Equipment supplies. **You acknowledge that XFS is acting solely as an administrator for Supplier with respect to the billing and collecting of the charges under any Maintenance Agreement.** XFS IS NOT LIABLE FOR ANY BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS HEREUNDER BE MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY SUPPLIER.

7. Equipment Ownership, Labeling and UCC Filing. If and to the extent a court deems this Agreement to be a security agreement under the UCC, and otherwise for precautionary purposes only, you grant XFS a first priority security interest in your interest in the Equipment as defined above in order to secure your performance hereunder. Unless a \$1 Purchase Option is applicable, XFS is and shall remain the sole owner of the Equipment, except the Software. You authorize XFS to file a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. You agree to pay any filing fees and administrative costs for the filing of such financing statements. You agree to keep the Equipment free from any liens or encumbrances and to promptly notify XFS if there is any change in your organization such that a refiling or amendment to XFS's financing statement against you becomes necessary.

8. Meter Readings and Annual Adjustments. You agree that Meter Reading submittal is covered by the Maintenance Agreement. At any time after 12 months from the Commencement Date and for each successive 12 month period thereafter during the Term, XFS may increase your Base Payment and the Excess Charges by a maximum of fifteen percent (15%) of the then-current Base Payment therefor and you agree to pay such increased amounts.

9. Equipment Return. If the Equipment is returned to XFS, it shall be in the same condition as when delivered to you, except for "ordinary wear and tear" and, if not in such condition, you will be liable for all expenses XFS incurs to return the Equipment to such condition. **IT IS SOLELY YOUR RESPONSIBILITY TO SECURE ANY SENSITIVE DATA AND PERMANENTLY DELETE SUCH DATA FROM THE INTERNAL MEDIA STORAGE PRIOR TO RETURNING THE EQUIPMENT TO XFS. YOU SHALL HOLD XFS HARMLESS FROM YOUR FAILURE TO SECURE AND PERMANENTLY DELETE ALL SUCH CUSTOMER DATA AS OUTLINED IN THIS SECTION.**

10. Assignment. YOU MAY NOT ASSIGN, SELL, PLEDGE, TRANSFER, SUBLEASE OR PART WITH POSSESSION OF THE EQUIPMENT, THIS AGREEMENT OR ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT (COLLECTIVELY "ASSIGNMENT") WITHOUT XFS'S PRIOR WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, BUT SUBJECT TO THE SOLE EXERCISE OF XFS'S REASONABLE CREDIT DISCRETION AND EXECUTION OF ANY NECESSARY ASSIGNMENT DOCUMENTATION. If XFS agrees to an Assignment, you agree to pay the applicable assignment fee and reimburse XFS for any costs we incur in connection with that Assignment, which in the aggregate shall not exceed \$250. XFS may sell, assign or transfer all or any part of the Equipment, this Agreement and/or any of our rights (but none of our obligations except for invoicing and tax administration) hereunder. XFS's assignee will have the same rights that we have to the extent assigned. YOU AGREE NOT TO ASSERT AGAINST SUCH ASSIGNEE ANY CLAIMS, DEFENSES, COUNTERCLAIMS, RECOUPMENTS, OR SET-OFFS THAT YOU MAY HAVE AGAINST XFS, and you agree to remit Payments to such Assignee if so designated. XFS agrees and acknowledges that any Assignment by us will not materially change your obligations hereunder.

11. Taxes. You will be responsible for, indemnify and hold XFS harmless from, all applicable taxes, fees or charges (including sales, use, personal property and transfer taxes (other than net income taxes), plus interest and penalties) assessed by any governmental entity on you, the Equipment, this Agreement, or the amounts payable hereunder (collectively, "Taxes"), which will be included in XFS's invoices to you unless you timely provide continuing proof of your tax exempt status. Regardless of your tax-exempt status, XFS reserves the right to pass through, and you agree to pay, any such Taxes that are actually assessed by the applicable State on XFS as lessor of the Equipment. For jurisdictions where certain taxes are calculated and paid at the time of agreement initiation, you authorize XFS to finance and adjust your Payment to include such Taxes over the Term. Unless and until XFS notifies you in writing to the contrary, the following shall apply to personal property taxes and returns. If an FMV purchase option is applicable, XFS will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and collect from your account all personal property taxes on the Equipment. If a \$1 purchase option is applicable, you will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and provide us proof thereof upon our request. XFS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT.

12. Equipment Warranty Information and Disclaimers. XFS HAS NO INVOLVEMENT IN THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT. THEREFORE, XFS DISCLAIMS, AND YOU WAIVE SOLELY AGAINST XFS, ALL EQUIPMENT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE, AND XFS MAKES NO REPRESENTATIONS WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE EQUIPMENT'S SUITABILITY, FUNCTIONALITY, DURABILITY OR CONDITION. Since you have selected the Equipment and Supplier, you acknowledge that you are aware of the name of the manufacturer of each item of Equipment, Supplier's contact information, and agree that you will contact manufacturer and/or Supplier for a description of any warranty rights you may have under the Equipment supply contract, sales order, or otherwise. Provided you are not in default hereunder, XFS hereby assigns to you any Equipment warranty rights we may have against Supplier or manufacturer. If the Equipment is returned to XFS or you are in default, such rights are deemed reassigned by you to XFS. **IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE AS WARRANTED, BECOMES OBSOLETE, OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, YOU SHALL MAKE ALL RELATED CLAIMS SOLELY AGAINST MANUFACTURER OR SUPPLIER AND NOT AGAINST XFS, AND YOU SHALL NEVERTHELESS CONTINUE TO PAY ALL PAYMENTS AND OTHER SUMS PAYABLE UNDER THIS AGREEMENT.**

13. Liability and Indemnification. XFS IS NOT RESPONSIBLE FOR ANY LOSSES, DAMAGES, EXPENSES OR INJURIES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (COLLECTIVELY, "CLAIMS") TO YOU OR ANY THIRD PARTY CAUSED BY THE EQUIPMENT OR ITS USE. You assume the risk of liability for, and hereby agree to indemnify and hold safe and harmless, and covenant to defend, XFS, its employees, officers and agents from and against: (a) any and all Claims (including legal expenses of every kind and nature) arising out of the acceptance or rejection, ownership, leasing, possession, operation, use, return or other disposition of the Equipment; and (b) any and all loss or damage of or to the Equipment. Neither sentence in this Section shall apply to Claims arising directly and proximately from XFS's gross negligence or willful misconduct.

14. Default and Remedies. You will be in default hereunder if we do not receive Payment within 10 days after its due date, or you breach any other material obligation hereunder or any other agreement with us. If you default, and such default continues for 10 days after we provide notice to you, we may, in addition to other remedies (including disabling or repossessing Equipment and/or requesting Supplier to cease performing under the Maintenance Agreement), immediately require you to do one or more of the following: (a) as liquidated damages for loss of bargain and not as a penalty, pay the sum of (i) all amounts then due, plus interest from the due date until paid at the rate of 1.5% per month; (ii) Payments remaining in the Term (including the fixed maintenance component thereof, if permitted under the Maintenance Agreement), discounted to date of default at the Discount Rate, (iii) the Equipment's booked residual, and (iv) Taxes; and (b) require you to return the Equipment as provided herein. You agree to pay all reasonable costs, including attorneys' fees and disbursements, incurred by us to enforce this Agreement.

15. Risk of Loss and Insurance. You assume and agree to bear the entire risk of loss, theft, destruction or other impairment of the Equipment upon delivery. You, at your own expense, (i) shall keep Equipment insured against loss or damage at a minimum of full replacement value thereof, and (ii) shall carry liability insurance against bodily injury, including death, and against property damage in the amount of at least \$2 million (collectively, "Required Insurance"). All such Equipment loss/damage insurance shall be with lender's loss payable to "XFS, its successors and/or assigns, as their interests may appear," and shall be with companies reasonably acceptable to XFS. XFS shall be named as an additional insured on all liability insurance policies. The Required Insurance shall provide for 30 days' prior notice to XFS of cancellation. YOU MUST PROVIDE XFS OR OUR DESIGNEES WITH SATISFACTORY WRITTEN EVIDENCE OF REQUIRED INSURANCE WITHIN 30 DAYS OF THE ACCEPTANCE DATE AND ANY SUBSEQUENT WRITTEN REQUEST BY XFS OR OUR DESIGNEES. **IF YOU DO NOT DO SO, THEN IN LIEU OF OTHER REMEDIES FOR DEFAULT, XFS IN OUR DISCRETION AND AT OUR SOLE OPTION MAY (BUT IS NOT REQUIRED TO) OBTAIN INSURANCE FROM AN INSURER OF XFS'S CHOOSING, WHICH MAY BE AN XFS AFFILIATE, IN SUCH FORMS AND AMOUNTS AS XFS DEEMS REASONABLE TO PROTECT XFS'S INTERESTS (COLLECTIVELY "EQUIPMENT INSURANCE"). EQUIPMENT INSURANCE WILL COVER THE EQUIPMENT AND XFS; IT WILL NOT NAME YOU AS AN INSURED AND MAY NOT COVER ALL OF YOUR INTEREST IN THE EQUIPMENT AND WILL BE SUBJECT TO CANCELLATION AT ANY TIME. YOU AGREE TO PAY XFS PERIODIC CHARGES FOR EQUIPMENT INSURANCE (COLLECTIVELY "INSURANCE CHARGES") THAT INCLUDE: AN INSURANCE PREMIUM THAT MAY BE HIGHER THAN IF YOU MAINTAINED THE REQUIRED INSURANCE SEPARATELY; A FINANCE CHARGE OF UP TO 1.5% PER MONTH ON ANY ADVANCES MADE BY XFS OR OUR AGENTS; AND COMMISSIONS, BILLING AND PROCESSING FEES; ANY OR ALL OF WHICH MAY GENERATE A PROFIT TO XFS OR OUR AGENTS. XFS MAY ADD INSURANCE CHARGES TO EACH PAYMENT. XFS shall discontinue billing or debiting Insurance Charges for Equipment Insurance upon receipt and review of satisfactory evidence of Required Insurance.** You must promptly notify XFS of any loss or damage to Equipment which makes any item of Equipment unfit for continued or repairable use. You hereby irrevocably appoint XFS as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any such Required Insurance. Insurance proceeds from Required Insurance or Equipment Insurance received shall be applied, at XFS's option, to (x) restore the Equipment so that it is in the same condition as when delivered to you (normal wear and tear excepted), or (y) if the Equipment is not restorable, to replace it with like-kind condition Equipment from the same manufacturer, or (z) pay to XFS the greater of (i) the total unpaid Payments for the entire Term hereof (discounted to present value at the Discount Rate) plus, if an FMV purchase option is designated on the first page hereof, XFS's residual interest in such Equipment (herein agreed to be 20% of the Equipment's original cost to XFS) plus any other amounts due to XFS hereunder, or (ii) the Determined FMV immediately prior to the loss or damage. **NO LOSS OR DAMAGE TO EQUIPMENT, OR XFS'S RECEIPT AND APPLICATION OF INSURANCE PROCEEDS, SHALL RELIEVE YOU OF ANY OF YOUR REMAINING OBLIGATIONS UNDER THIS AGREEMENT.** Notwithstanding procurement of Equipment Insurance or Required Insurance, you remain primarily liable for performance under this Section in the event the applicable insurance carrier fails or refuses to pay any claim. **YOU AGREE (I) AT XFS'S SOLE ELECTION TO ARBITRATE ANY DISPUTE WITH XFS, OUR AGENTS OR ASSIGNS REGARDING THE EQUIPMENT INSURANCE UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN FAIRFIELD COUNTY, CT, (II) THAT IF XFS MAKES THE FOREGOING ELECTION ARBITRATION (NOT A COURT) SHALL BE THE EXCLUSIVE REMEDY FOR SUCH DISPUTES; AND (III) THAT CLASS ARBITRATION IS NOT PERMITTED.** This arbitration option does not apply to any other provision of this Agreement.

16. Authorization of Signer and Credit Review. You represent that you may lawfully enter into, and perform, this Agreement, that the individual signing this Agreement on your behalf has all necessary authority to do so, and that all financial information you provide accurately represents your financial condition. You agree to furnish financial information that XFS may request now, including your Federal Tax ID, and you authorize XFS to obtain credit reports on you in the future should you default or fail to make prompt payments hereunder.

17. Finance Lease and Customer Waivers. The parties agree this Agreement shall be construed as a "finance lease" under UCC Article 2A. Customer waives its rights as a lessee under UCC 2A sections 508-522.

18. Original and Sole Controlling Document. No Modifications Unless in Writing. This Agreement constitutes the entire agreement between the Parties as to the subjects addressed herein, and representations or statements not included herein are not part of this Agreement and are not binding on the Parties. You agree that an executed copy of this Agreement that is signed by your authorized representative and by XFS's authorized representative (an original manual signature or such signature reproduced by means of a reliable electronic form, such as electronic transmission of a facsimile or electronic signature) shall be marked "original" by XFS and shall constitute the only original document for all purposes. To the extent this Agreement constitutes UCC chattel paper, no security interest in this Agreement may be created except by the possession or transfer of the copy marked "original" by XFS. IF A PURCHASE ORDER OR OTHER DOCUMENT IS ISSUED BY YOU, NONE OF ITS TERMS AND CONDITIONS SHALL BE BINDING ON XFS, AS THE TERMS AND CONDITIONS OF THIS AGREEMENT EXCLUSIVELY GOVERN THE TRANSACTION DOCUMENTED HEREIN. **SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY OR NEGOTIATE THE TERMS OF THIS AGREEMENT. THIS AGREEMENT MAY NOT BE AMENDED OR SUPPLEMENTED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AND NO PROVISIONS CAN BE WAIVED EXCEPT IN A WRITING SIGNED BY XFS.** You authorize XFS to insert or correct missing information on this Agreement, including but not limited to your proper legal name, agreement/numbers, serial numbers and other Equipment information, so long as there is no material impact to your financial obligations.

19. Governing Law, Jurisdiction, Venue and JURY TRIAL WAIVER. THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT. THE JURISDICTION AND VENUE OF ANY ACTION TO ENFORCE THIS AGREEMENT, OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL BE IN A FEDERAL OR STATE COURT IN FAIRFIELD COUNTY, CONNECTICUT OR, EXCLUSIVELY AT XFS'S OPTION, IN ANY OTHER FEDERAL OR STATE COURT WHERE THE EQUIPMENT IS LOCATED OR WHERE XFS'S OR YOUR PRINCIPAL PLACES OF BUSINESS ARE LOCATED, AND YOU HEREBY WAIVE ANY RIGHT TO TRANSFER VENUE. **THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.**

20. Miscellaneous. Your obligations under the "Taxes" and "Liability" Sections commence upon execution, and survive the expiration or earlier termination, of this Agreement. Notices hereunder must be in writing. Notices to you will be sent to the "Billing Address" provided on the first page hereof, and notices to XFS shall be sent to our address provided on the first page hereof. Notices will be deemed given 5 days after mailing by first class mail or 2 days after sending by nationally recognized overnight courier. Invoices are not considered notices and are not governed by the notice terms hereof. You authorize XFS to communicate with you by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address you provide to us. If a court finds any term of this Agreement unenforceable, the remaining terms will remain in effect. The failure by either Party to exercise any right or remedy will not constitute a waiver of such right or remedy. If more than one party has signed this Agreement as Customer, each such party agrees that its liability is joint and several. The following four sentences control over every other part of this Agreement: Both Parties will comply with applicable laws. XFS will not charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for the last four sentences of this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is modified by this Section to limit the amounts chargeable hereunder to the maximum amount allowed under the legal limit. If, in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by XFS in excess of that legally allowed will be applied by us to the payment of amounts legally owed hereunder or refunded to you.

**CITY OF FOWLER
EQUIPMENT LEASE RIDER**

XEROX COPIER LEASE AGREEMENT

City of Fowler ("City") and Xerox Financial Services, LLC ("Company") have entered into that certain equipment lease entitled Lease Agreement ("Contract") as of _____, [EFFECTIVE DATE]. This Equipment Lease Rider ("Rider") supplements and amends the terms of the Contract, as set forth below.

1. GOVERNING LAW AND VENUE: The Contract shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in Fresno County.
2. CHANGES: No change or modification in pricing, fees, or other charges may be made without express authorization in writing from City.
3. NON-APPROPRIATION. The City's obligation to remit the Payments and any other amounts due is contingent upon approval of the appropriation of funds by the City's governing body. In the event funds are not appropriated for any forthcoming fiscal period equal to amounts due under the Contract, and the City has no other funds legally available to be allocated to the payment of its obligations hereunder, the City may terminate the Contract effective on the first day of such forthcoming fiscal period ("Termination Date") if: (a) the City has used due diligence to exhaust all funds legally available, and (b) the City has provided Company with written notice from at least 30 days before the Termination Date. At Company's request, the City shall promptly provide supplemental documentation as to such non-appropriation. Upon the occurrence of such non-appropriation, the City shall not be obligated for any Payment for any forthcoming fiscal period for which funds have not been so appropriated, and the City shall promptly return the Equipment as set forth in the return provisions of the Contract.
4. CONFIDENTIAL INFORMATION; PUBLIC RECORD. The Contract, and this Rider will be presented to the City Council for approval and will be a public record, including its financial terms. The City will make any records public as required by the California Public Records Act. Anything that Company deems confidential or proprietary that would not customarily be considered as such must be particularly labeled as such. If City receives a request for a record that it believes is a public record, but Company has labeled as proprietary, City will notify Company of the request prior to release of the record and allow Company and opportunity to file a legal action to prevent the disclosure.
5. TERM; RENEWAL. The Contract will be for a term of 63-months. The City will provide notice of its intent to purchase or return the assets 30 days prior to the end of the initial 63-month contract. If the City has not performed one of the options identified in subsection (a) or (b) of Section 5 of the Contract, the Contract will renew for successive 1-month terms. Either party may terminate the Contract as of the end of any 1-month renewal term with 30 days prior

written notice, and by taking one of the actions identified in subsection (a) or (b) of Section 5 of the Contract.

6. COMPANY'S LIMITATIONS OF LIABILITY. Any exclusions of liability and limitations on damages in favor of Company shall not apply to personal injury, death, or physical property damage due to the gross negligence, intentional misconduct, or fraud of Company.

7. LIMITATIONS OF LIABILITY. But for Section 14 of the Contract, neither party shall be liable to the other for any indirect, special, exemplary, consequential, or punitive damages, or for lost revenue, loss of profits, savings, or other indirect or contingent event-based economic loss arising out of or in connection with the Contract.

8. LIQUIDATED DAMAGES. Subsection (a) in Section 14 of the Contract (Default and Remedies) is hereby amended to read as follows: "(a) as liquidated damages for loss of bargain and not as a penalty, pay the sum of (i) all amounts then past due, plus interest from the due date until paid at the rate in accordance with the laws of your State of formation covering state agencies and the applicable codes covering political subdivisions; (ii) the Payments remaining in the Term, discounted at the Discount Rate, (iii) the Equipment's booked residual (if you do not return the Equipment as provided herein), and (iv) Taxes, if you are no longer tax-exempt; and (b) require you to return the Equipment as provided herein."

9. CURE. In the event City defaults and subsequently cures said default, pursuant to Section 14 of the Contract, any equipment shall be returned to City and services by Company shall be reinstated, even if said cure occurs after the notice period.

10. RISK OF LOSS AND INSURANCE. The following sentence is hereby deleted from Section 15 of the Contract: "You hereby irrevocably appoint XFS as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any such Required Insurance."

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Rider, as of the day and year set forth below.

XEROX FINANCIAL SERVICES, LLC CITY OF FOWLER

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

CUSTOMER INSTALL		Agreement No.		Lessee PO# (Optional)	
Full Legal Name	City of Fowler			DBA	
Address	128 S 5th Street			City	Fowler
		State	CA	ZIP	93625
CUSTOMER BILL TO					
Name	City of Fowler				
Address	128 S 5th Street			City	Fowler
		State	CA	ZIP	93625
Phone	559-834-3113	Accounts Payable Contact	Margarita Moreno	Accounts Payable Contact Email	mmoreno@ci.fowler.ca.us
				Paperless Billing	[] YES [] NO
Monthly Base Maintenance Payment = \$ 100.00 Excess Per Image Charge stated in the below table					
Model(s)	B&W Monthly Allowance included in Monthly Base	Black & White Rate	Color Monthly Allowance included in Monthly Base	Color Rate	
Xerox Altalink C8035	0	\$0.0079	0	\$0.049	
Xerox Primelink C9070	0	\$0.0079	0	\$0.049	
Xerox Versalink C405	0	\$0.0099	0	\$0.990	
Xerox Altalink C8055	0	\$0.0079	0	\$0.049	
Xerox Versalink B7035	0	\$0.0049	N/A	N/A	
Xerox Versalink B400	0	\$0.0099	N/A	N/A	
Xerox Versalink B400	0	\$0.0099	N/A	N/A	

DEFINITIONS: The words **Customer, You** and **Your** refer to customer indicated above. The words **Company, We, Us** and **Our** to Image Source.

SERVICES OFFERED: We agree to provide all consumables, along with device environment monitoring, auto toner replenishment, proactive service error monitoring, phone technical support, service, and quarterly environment reporting under this Cost Per Image Agreement. Further information on the Service Management details are stated on the back of this document. Covered equipment, along with Cost Per Image pricing, is listed in the table above, or separately in Schedule(s) A, and/or B.

IMAGE CHARGES: Payments are due monthly, beginning the date the Agreement is initiated (as noted by the Agreement date below) or any later date designated by Us and continuing on the same day of each following month until fully paid. You are entitled to make the total number of images reflected in the Monthly Image Allowance shown in the table above, or separately in Schedule(s) A, and/or B, each month (if consolidated), or the monthly amount Image Allowance Per Machine or Group (if not consolidated). If You use more than the applicable Allowance(s) in any month, You will pay Us an additional charge equal to the number of additional metered images multiplied by the applicable Excess Per Image Charge. If the meter reading required for periodic billing is not available, Company may bill for use based on an average volume for the most recent 3 months. You agree that We may proportionally increase Your Per Image Charges at any time if Our estimated average page coverage is exceeded in any month during the term of this Agreement. Each print that is larger than 145 square inches, but less than or equal to 19.3 inches in length, may register as two (2) prints on the applicable (B&W/color) meter. For Primelink Equipment with extra-long print capability, for any impressions greater than 19.3 inches and less than or equal to 26 inches will register as three (3) prints on the applicable (B&W/color) meter. For AltaLink Equipment with extra-long print capability, for any impressions greater than 19.3 inches will register as four (4) on the applicable (B&W/color) meter. In addition to the foregoing, You agree that effective on each/any anniversary of this Agreement, We may annually increase both the Minimum Monthly Payment and the Excess Per Image Charge by amounts determined at our discretion. You agree to comply with billing and meter collection procedures designated by Us, including notifying Us of the meter reading on the billing date. If meters are not received, We reserve the right to estimate Your usage for the billing period. Invoice credit memos shall be automatically applied to the oldest unpaid invoice.

GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION: This Agreement and each addendum shall be governed by the laws of the State of California. You agree that any dispute arising under or related to this agreement will be adjudicated in the federal or state court located in San Bernardino. You hereby consent to personal jurisdiction and venue in that court and waive any right to transfer venue. Each party waives any right to a trial by jury.

LATE FEES: If any amount payable to Us is not paid when due, You will pay Us a late charge equal to 1) a rate of 1.5% per month of balance overdue or 2) a minimum of \$5 per month. The Customer will also pay collection costs and reasonable attorney's fees should the account be placed for collection.

AGREEMENT PERIOD: This agreement is for a period of 63 months from the date the Agreement is initiated, and is non-cancelable. In addition to any other rights under this contract, Company may terminate this contract at any time by giving the Customer 30 day prior written notice. Unless notified in writing no greater than 90 days and no less than 30 days prior to the contract expiration date, this agreement shall renew for 12-month periods.

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THIS PAGE, THE REVERSE SIDE, AND, IF APPLICABLE, ATTACHED SCHEDULE(S) A AND/OR B, ALL OF WHICH PERTAIN TO THIS AGREEMENT AND WHICH YOU ACKNOWLEDGE HAVING READ. THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY US. YOU CERTIFY ALL ACTIONS REQUIRED TO AUTHORIZE EXECUTION OF THIS AGREEMENT, INCLUDING YOUR AUTHORITY, HAVE BEEN FULFILLED.			
IMAGE SOURCE: (As Stated Above)		CUSTOMER: (As Stated Above)	
Signature		Signature	
Print Name & Title	Date Accepted	Print Name & Title	Date

I. MAINTENANCE AND SUPPLIES.

- A. Cost Per Image Charges.** The charges stated in the Agreement include charges for maintenance (from 8 a.m. to 5 p.m. local time, except weekends and holidays ("Regular Service Hours"), inspection, adjustment, parts replacement, cleaning material required for proper operation, and toner and developer for such Equipment and may also include charges for such maintenance and supplies provided to You for the Equipment. Paper and staples are not included in this maintenance agreement. You must purchase staples separately, from Us. Supplies required in excess of manufacturer's suggested yield will be invoiced separately. Specialty toner and dry inks excluded from consumable supplies. Consumable supplies exclude any toners and dry inks (and their associated developers) other than standard cyan, magenta, yellow, and black. Specialty toner and dry inks (and their associated developers) must be purchased separately from Us. We may charge a fulfillment fee to cover simple network monitoring protocol which enables supply auto replenishment and delivery.
- B. Equipment Eligible for Coverage.** This only applies to the Equipment identified in the table on page one, or separately in Schedule(s) A, and/or B. You represent and warrant that, other than as set forth in the table on page one, or separately in Schedule(s) A, and/or B, there is no other equipment located at Your site(s) capable of using Our supplied toner and ink consumables. All Equipment capable of using Our supplied toner and ink consumables must be included in this Agreement. To the best of Your knowledge, there are no equipment conditions that do not meet manufacturer's specifications ("Pre-Existing Conditions"), other than those specifically identified in the table on page one, or separately in Schedule(s) A and/ or B. You agree that We shall have the right to inspect and verify any Equipment covered by this Agreement which was previously owned by You. We reserve the right, at Our sole discretion, to exclude from this agreement any Equipment that We determine to have material faults, and/or to be unfit for service. If applicable, We may discount the Monthly Base Maintenance Payment by the amount reasonably allocated to any excluded Equipment.
- C. Definition of Services Provided.** We agree (a) to perform only those repairs involving worn Equipment components that have failed during ordinary use of the Equipment under normal operating conditions (trays, covers and other non-consumable parts are not covered), and (b) to supply You with all toner and ink consumables required to operate the Equipment. Requests for services outside of Regular Service Hours will be provided on a best effort basis at Our prevailing time and material hourly rate. Such charges for services outside of Regular Service Hours are in addition to the prepaid Minimum Monthly Payment. This Agreement does not cover after-hours service, shop overhauls, and service made necessary by accident, fire, water, natural disasters, or failure by You to meet the manufacturer's electrical requirements.
- D. Access to Equipment.** We shall have the right to access Your site and any other of Your premises that may house Equipment upon reasonable notice for access with Your supervision during regular work hours. We reserve the right to invoice You at Our prevailing time and material hourly rate, separate from the Minimum Monthly Payment, when access to the Equipment is denied for greater than fifteen (15) minutes, when You initiated the request for service. We shall apply an estimated monthly page volume to any and all Equipment that cannot be accessed for page count recording purposes.
- E. Authorized Maintenance Providers.** We, at Our discretion, may authorize Our approved maintenance subcontractors or approved service providers to perform maintenance and repairs to the Equipment. In cases where We manage Your third party service agreement on Your behalf, then all sums currently due under that agreement must be paid in full before We will assume any obligation or responsibility.
- F. Repair Responsibility.** Maintenance services excludes repairs due to: (a) misuse, neglect or abuse; (b) failure of the installation site or the PC or workstation used with the Equipment to comply with manufacturer's published specifications; (c) use of options, accessories or products not serviced by Us; (d) non-Image Source alterations, relocation, service or supplies; or (e) failure to perform operator maintenance procedures identified in operator manuals, or (f) failure by You to meet the manufacturer's electrical requirements. Equipment may not be moved to another physical address without Our prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term.
- G. Analyst Services.** You agree to pay Us periodic charges for Analyst Services. We shall discontinue billing or debiting Analyst Services upon receipt of a written request to discontinue Analyst Services support for Equipment. Upon cancellation, You agree to bear the entire cost of Analyst Services related to the Equipment covered by this Agreement. Includes dark web monitoring service and a cybersecurity review and evaluation. Upon completion a cybersecurity executive summary and scorecard will be provided.
- H. IT Help Desk Support.** You agree to pay Us periodic charges for IT Help Desk Support. The IT Help Desk Support shall include up to 3 help desk support calls per year, and additional support may be available upon request. We shall discontinue billing or debiting IT Help Desk Services upon receipt of a written request.
- I. Data Security.** Certain Equipment can be configured to include a variety of data security features. There may be an additional cost associated with certain data security features. The selection, suitability and use of data security features are solely Your responsibility. Upon request, We will provide additional information to You regarding the security features available for particular Equipment.
- J. Cloud-based Apps.** The Equipment supported under this Agreement may include Cloud-based Apps. The Cloud-based Apps may be fee based, paid-for services with service fees deducted from the credits that were included in the initial lease or purchase, for each page processed. You agree that in order to maintain uninterrupted services, if You consume all of the credits purchased, We shall invoice you for additional credits equal to the original amount of purchased credits. The Cloud-based Apps may be, fee based, paid-for services with either monthly or annual service fees, depending on the plan You selected. You agree that in order to maintain uninterrupted services, if Your paid-for services expire, We shall invoice you for an additional time period equal to the original time period purchased or leased.
- K. Ownership and Control of Toner and Ink Consumables.** All toner and ink consumables supplies provided under this Agreement shall at all times remain the property of Us. You may use the toner and ink consumables pursuant to the terms of this Agreement, but You shall not have any ownership rights in or to the toner or ink consumables. You shall not be charged for any toner or ink consumables in use upon the expiration of this Agreement. The ordering of consumables significantly in excess of the number of copies or prints produced may be charged to You by Us.
- L. Additional Equipment and Right of Inspection.** 1. You shall notify Us promptly upon installing any additional equipment ("Additional Equipment") at Your site capable of using Our supplied toner and ink consumables. Additional Equipment installed subsequent to the date of this Agreement will be evaluated by Us, and included in, or excluded from, this Agreement at the sole discretion of Us. 2. Additional Equipment deemed included in the Agreement by Us shall be added to this Agreement and will automatically be covered by and considered Equipment under the terms of this Agreement. Billings or surcharges for Additional Equipment output will be reflected in the billing cycle immediately following the billing cycle in which the Additional Equipment is installed. If You add Additional Equipment, both the Minimum Monthly Payment and the Cost Per Images may be adjusted accordingly, at Our sole discretion. 3. If any such Additional Equipment is used equipment, You represent and warrant to Us that, except for Pre-Existing Conditions duly disclosed to Us prior to such Additional Equipment being covered by this Agreement, all of the Additional Equipment shall, on the date such coverage commences, be in good working order. We shall be entitled to take a physical inventory of the Additional Equipment, upon or prior to its being covered by this Agreement, to determine whether they are in working order. In the event, as of the date coverage commences under this Agreement, any Additional Equipment is not in good working order, You shall have such Additional Equipment repaired at Your sole expense and, until such Additional Equipment is so repaired, any Additional Equipment with Pre-Existing Conditions shall not be covered under this Agreement. An initial meter reading of zero (0) is agreed, unless You provide timely information to the contrary, for any Additional Equipment that meets the conditions of I.1
- M. Access.** You hereby grant to Us the right to monitor, diagnose, manipulate, communicate with, retrieve information from, and otherwise access Your computer network stations(s) for the purpose of enabling Us to service the Equipment.
- N. Liability Limitations.** This paragraph limits the liabilities arising under this Agreement, and is a bargained-for and material part of this Agreement. In no event shall We be liable to You for any indirect, special, exemplary, consequential or punitive damages, or for lost revenue, loss of profits, savings, or other indirect or contingent event-based economic loss arising out of or in connection with this Agreement, or for any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by any delay in furnishing services offered under this Agreement, even if a party has been advised of the possibility of such damages. Our aggregate liability to You for damages from any and all claims or causes whatsoever, and regardless of the form of any such action(s), that arise from or relate to this Agreement (collectively, "Claims"), whether in contract, tort, indemnification, or negligence, shall be limited solely to the amount of the Your actual and direct damages, not to exceed the amount of fees paid by You to Us for the specific services offered upon which the applicable claim(s) is/are based during the six (6) month period immediately prior to the date on which the cause of action accrued.
- O. YourOfficeSupplySource.com.** If you receive a credit from Image Source it will be available on the date the equipment is installed and will automatically expire on the first anniversary of the installation date. The credit may only be used for the purchase of supplies.

- II. WARRANTY.** Notwithstanding anything in this Agreement to the contrary, We warrant (a) that all personnel performing services hereunder by or on behalf of Us will have appropriate training and experience and (b) all equipment is in accordance with industry standards, and all supplies and materials are of good quality. Without limiting the generality of the foregoing (and without limiting any obligation of Us to make repairs under this Agreement), You expressly agree and acknowledge that in no event shall any manufacturer's warranty, including but not limited to any implied warranty of merchantability, and fitness for a particular purpose, be deemed given by or otherwise transferred or applied to Us. If You notify Us within ninety (90) days from performance of the services that the services or a part thereof fails to conform to the standards specified herein, Your sole and exclusive remedy is that We shall promptly repair, replace, or re-perform the non-conforming services.

III. MONITORING SOFTWARE.

- A. You grant Permission to Install and Maintain Software.** We license software ("Monitoring Software") that enables Us to monitor the usage of, and the copy count produced on, the Equipment. You agree that We shall have the right, at any time during the term of this Agreement, to install the Monitoring Software on one or more of Your computer networked station(s). You agree to provide Us, during normal business hours, access to Your computer-networked station(s) to enable Us to upgrade, modify or maintain the Monitoring Software or to install new releases or additions to the Monitoring Software. Under no circumstances will the Monitoring Software provide Us access to Your information other than information directly related to this Agreement. You agree to not delete or remove the Monitoring Software or to alter, modify or otherwise render it unusable during the term of this Agreement without the prior written consent of Us. If You disagree, then We retain the right to invoice You the prevailing hourly billable rate for labor required to obtain meter readings, per meter reading cycle.
- B. No License, other Prohibitions.** Nothing herein shall be construed as granting a license to You for the use of the Monitoring Software. You may not, nor may You permit or cause any other person to (a) use or copy the Monitoring Software, in whole or in part, in any manner, (b) modify, translate, reverse engineer, decompile or disassemble the Monitoring Software, (c) rent, lease, loan, resell, distribute, use in a customer-server network to provide third parties access to, or otherwise transfer the Monitoring Software, or (d) remove any proprietary notices on the Monitoring Software.
- C. Intellectual Property Rights.** All rights (including all intellectual property rights, whether recognized currently or in the future) in and to the Monitoring Software (including any source code, executable code, object code, tools and/or libraries related to the Monitoring Software) will at all times be owned by Us. No modifications and/or use by You of the Monitoring Software shall under any circumstances transfer any right, title or interest in or to the Monitoring Software to You or any third party.
- D. Monitoring Software Warranty, Liability.** You acknowledge that the Monitoring Software will be installed on Your networked workstation(s) "as is" without warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We do not warrant that the Monitoring Software will be error free or will operate without interruption. We shall in no event be liable to You or any third party for any special, consequential, incidental or indirect damages in connection with the Monitoring Software. If the software is found to cause issues on Your network, and these issues can be reasonably associated to the installation of the software through uniform software testing and tracing methodologies, Our liability will be limited to the removal of said Monitoring Software from Your environment.

IV. MISCELLANEOUS.

- A. Software.** Performance issues related to Software and/or connectivity are not covered under the terms of this Agreement. Any warranties related to Software will be those offered by the manufacturer and will be passed directly to the user.
- B. Software/Hardware.** Connectivity and performance issues related to Software and non-standard hardware are not covered under the terms of this Agreement. Any warranties related to these solutions, which include but are not limited to: Xerox ConnectKey Applications, PaperCut, XMedius Fax, Umango, Square9, Ysoft, Nuance, Formax, NeoPost, or Xerox FreeFlow, any computers and scanners, will be those offered by the manufacturer and passed directly to the user. Operation and configuration of the Software will be the responsibility of You after initial install and operation test is completed by Us.

**CITY OF FOWLER
CONSUMER CONTRACT RIDER**

IMAGE SOURCE COST PER IMAGE AGREEMENT

City of Fowler ("City") and Image Source ("Company") have entered into that certain consumer contract entitled Cost Per Image Agreement ("Contract") as of 2/14/22, [EFFECTIVE DATE]. This Consumer Contract Rider ("Rider") supplements and amends the terms of the Contract, as set forth below.

1. **GOVERNING LAW AND VENUE:** The Contract shall be governed by and construed in accordance with the laws of the State of California. Venue shall be with the appropriate state or federal court located in Fresno County.

2. **PRICING, FEES, & OTHER CHARGES; CHANGES:** All pricing, fees, and other charges shall be disclosed to City prior to entering into the Contract and/or this Rider and Company shall not charge City any rate(s), fee(s), and other charge(s) that exceed those rate(s), fee(s), and other charge(s) then in effect. No charge for services, supplies, equipment, or for any other purpose will be paid by the City unless expressly included and itemized on an Invoice. No change or modification in pricing, fees, or other charges may be made without express authorization in writing from City.

3. **NON-APPROPRIATION.** The term of the Contract extends beyond the City's budgeted fiscal year. If, during the term of the Contract, or any renewal term, as applicable, the City budget does not appropriate sufficient funds for the Contract, then City may elect to terminate the Contract, at its sole discretion, by giving thirty (30) days' prior written notice of termination to Company. Upon termination of the Agreement under this section, the City shall have no further liability to pay any funds to Company or to furnish any other consideration under the Contract, and Company shall not be obligated to perform any provisions of the Contract or to provide services intended to be funded pursuant to the Contract. If partial funds are appropriated or provided, the City shall have the option to either terminate the Contract with no liability to the City or offer an amendment to Company to reflect the reduced amount. City represents and warrants that (i) as of the Effective Date, it has appropriated the funds for the Contract for the current fiscal year and (ii) it shall not use the foregoing right to terminate for non-appropriation as a means to terminate for convenience. Company's assumption of risk of possible non-appropriation is part of the consideration for the Contract. City budget decisions are subject to the discretion of the City Council.

4. **CONFIDENTIAL INFORMATION; PUBLIC RECORD.** The Contract, and this Rider will be presented to the City Council for approval and will be a public record, including its financial terms. The City will make any records public as required by the California Public Records Act. Anything that Company deems confidential or proprietary that would not customarily be considered as such must be particularly labeled as such. If City receives a request for a record that it believes is a public record, but Company has labeled as proprietary, City will

notify Company of the request prior to release of the record and allow Company and opportunity to file a legal action to prevent the disclosure.

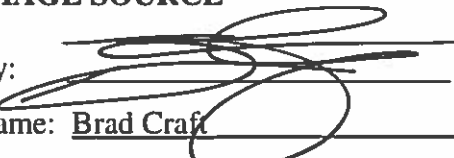
4. TERM; RENEWAL. The Contract will be for a term of 63-months without automatic renewal. Renewal of the Contract and/or extension of the term beyond 63 months must be approved by the City Council.

5. COMPANY'S LIMITATIONS OF LIABILITY. Any exclusions of liability and limitations on damages in favor of Company shall not apply to personal injury, death, or physical property damage due to the negligence, intentional misconduct, or fraud of Company.

6. CITY'S LIMITATIONS OF LIABILITY. City shall not be liable to Company for any indirect, special, exemplary, consequential, or punitive damages, or for lost revenue, loss of profits, savings, or other indirect or contingent event-based economic loss arising out of or in connection with the Contract. City's liability for breach of the Contract shall be limited to the amount of fees paid by City to Company during the three (3) month period immediately prior to the breach.

IN WITNESS WHEREOF, the parties have, by their duly authorized representatives, executed this Rider, as of the day and year set forth below.

IMAGE SOURCE

By: 
Name: Brad Craft
Title: President
Date: 2/14/22

CITY OF FOWLER

By: _____
Name: _____
Title: _____
Date: _____

Lease Agreement



Supplier Name: IMAGE SOURCE		Supplier Address:	
Owner: XEROX FINANCIAL SERVICES LLC - 201 Merritt 7, Norwalk, CT 06851			Agreement Number:
CUSTOMER INFORMATION			
Full Legal Name: City of Fowler			Phone:
Billing Address: 128 S Fifth ST.		Contact Name: Randy Uyeda	
City: Fowler	State: CA	Zip Code: 93625	Contact Email: ruyeda@ci.fowler.ca.us
EQUIPMENT			
Quantity	Model and Description	Quantity	Model and Description
1	C 8055 H2	1	C 9035 H2
2	B 7035 SS2	4	B 400 DN
Equipment Location (if different from Billing Address):			
TERM	LEASE PAYMENT - (Monthly frequency unless otherwise noted)		PURCHASE OPTION - ("FMV" unless otherwise noted)
Initial Term: 63 (in months)	Lease Payment (plus applicable taxes): \$1,005.82 Frequency: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually		<input checked="" type="checkbox"/> Fair Market Value Purchase Option ("FMV") <input type="checkbox"/> \$1 Purchase Option
CUSTOMER ACCEPTANCE			
BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE AGREEMENT AND THAT YOU HAVE READ AND AGREED TO ALL APPLICABLE TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 HEREOF.			
Authorized Signer X:	Randy Uyeda	Date: 12-11-19	Federal Tax ID # (Required): 94-6000337
Print Name:	Finance Director	Title:	
OWNER ACCEPTANCE			
Accepted By: Xerox Financial Services LLC	Name and Title:		Date:

TERMS & CONDITIONS

1. **Definitions.** The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "XFS," "we," "us," "Owner" and "our" mean Xerox Financial Services LLC. "Party" means you or XFS, and "Parties" means both you and XFS. "Supplier" means the entity identified as "Supplier" above. "Acceptance Date" means the date you irrevocably determine Equipment has been delivered, installed and operating satisfactorily. "Agreement" means this Lease Agreement, including any attached Equipment schedule. "Commencement Date" will be a date after the Acceptance Date, as set forth in our first invoice, for the purpose of facilitating an orderly transition and to provide a uniform billing cycle. "Discount Rate" means 3% per annum. "Equipment" means the items identified in "Equipment" above and in any attached Equipment schedule, plus any Software (as defined in Section 3 hereof), attachments, accessories, replacements, replacement parts, substitutions, additions and repairs thereto. "Interim Period" means the period, if any, between the Acceptance Date and the Commencement Date. "Interim Payment" means one thirtieth of the Lease Payment multiplied by the number of days in the Interim Period. "Payment" means the Lease Payment specified above, Taxes and other charges you, Supplier and XFS agree will be invoiced by XFS. "Maintenance Agreement" means a separate agreement between you and Supplier for maintenance and support purposes. "Origination Fee" means a one-time fee of \$125 billed on your first invoice, which you agree to pay, covering origination, documentation, processing and other initial costs. "Term" means the Interim Period, if any, together with the Initial Term plus any subsequent renewal or extension terms. "UCC" means the Uniform Commercial Code of the State(s) where XFS must file UCC-1 financing statements to perfect its security interest in the Equipment.

2. **Agreement, Payments and Late Payments.** You agree and represent that the Equipment was selected, configured and negotiated by you based on your judgment and supplied by Supplier. At your request, XFS will acquire same from Supplier to lease to you hereunder and you agree to lease same from XFS. The Initial Term commences on the Commencement Date. You agree to pay XFS the first Payment plus any applicable Interim Payment no later than 30 days after the Commencement Date; each subsequent Payment shall be payable on the same date of each month thereafter. You agree to pay us all sums due under each invoice via check, Automated Clearing House debit, Electronic Funds Transfer or direct debit from your bank account by the due date. If any Payment is not paid in full within 5 days after its due date, you will pay a late charge of the greater of 10% of the amount due or \$25, not to exceed the maximum amount permitted by law. For each dishonored or returned Payment, you will be assessed the applicable fee, not to exceed \$35. Restrictive covenants on any method of payment will be ineffective.

3. **Equipment and Software.** To the extent that Equipment includes intangible property or associated services such as software licenses, such intangible property shall be referred to as "Software." You acknowledge and agree that XFS is not the licensor of such Software, and therefore has no right, title or interest in it, and you will comply throughout the Term with any license and/or other agreement ("Software License") with the supplier of the Software ("Software Supplier"). You are responsible for determining with the Supplier whether any Software Licenses are required, and entering into them with Software Supplier(s) no later than 30 days after the Acceptance Date. **YOU AGREE THE EQUIPMENT IS FOR YOUR LAWFUL BUSINESS USE IN THE UNITED STATES, WILL NOT BE USED FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES, AND IS NOT BEING ACQUIRED FOR RESALE.** You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.

4. **Non-Cancellable Agreement.** THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED BY YOU PRIOR TO THE END OF THE INITIAL TERM. YOUR OBLIGATION TO MAKE ALL PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF THE EQUIPMENT, SUPPLIER, ANY THIRD PARTY OR XFS. Any pursued claim by you against XFS for alleged breach of our obligations hereunder shall be asserted solely in a separate action; provided, however, that your obligations hereunder shall continue unabated.

5. **Equipment Delivery and Maintenance.** You should arrange with Supplier to have the Equipment delivered to you at the location(s) specified herein, and you agree to execute a Delivery & Acceptance Certificate at XFS's request (and confirm same via telephone and/or electronically) confirming when you have received, inspected and irrevocably accepted the Equipment, and authorize XFS to fund the Supplier for the Equipment. If you fail to accept the Equipment, you shall no longer have any obligations hereunder; however, you remain liable for any Equipment purchase order or other contract issued on your behalf directly with Supplier. Equipment may not be moved to another physical address without XFS's prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term. You shall permit XFS or its agent to inspect Equipment and any maintenance records relating thereto during your normal business hours upon reasonable notice. You represent you have entered into a Maintenance Agreement to maintain the Equipment in good working order in accordance with the manufacturer's maintenance guidelines and to provide you with Equipment supplies. You acknowledge that XFS is acting solely as an administrator for Supplier with respect to the billing and collecting of the charges under any Maintenance Agreement. **XFS IS NOT LIABLE FOR ANY BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS HEREUNDER BE MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY SUPPLIER.**

6. **End of Agreement Options.** If a \$1 Purchase Option is designated, you will be deemed to have exercised your option to purchase the Equipment as of the Acceptance Date. If an FMV purchase option is designated, if you are not in default and if you provide no greater than 150 days and no less than 60 days' prior written notice to XFS, you may, at the end of the Initial Term or any renewal term ("End Date"), either (a) purchase all, but not less than all, of the Equipment by paying its fair market value, as determined by XFS in its sole but reasonable discretion ("Determined FMV"), plus Taxes, or (b) return the Equipment within 30 days of the End Date, at your expense, fully insured, to a continental US location XFS shall specify. You cannot return Equipment more than 30 days prior to the End Date without our consent. If we consent, we may charge you, in addition to all undiscounted amounts due hereunder, an early termination fee. If you have not elected one of the above options, this Agreement shall renew for successive 3-month terms. Either party may terminate the Agreement as of the end of any 3-month renewal term on 30 days' prior written notice and by taking one of the actions identified in (a) or (b) in the preceding sentence of this section. Any FMV purchase option shall be exercised with respect to each item of Equipment on the day immediately following the date of expiration of the Term of such item, and by the delivery at such time by you to XFS of payment, in form acceptable to XFS, of the amount of the applicable purchase price. Upon payment of the applicable amount, XFS shall transfer our interest in the Equipment to you on an "AS IS, WHERE IS," "WITH ALL FAULTS" basis, without representation or warranty of any kind.

7. **Equipment Return.** If the Equipment is returned to XFS, it shall be in the same condition as when delivered to you, except for "ordinary wear and tear" and, if not in such condition, you will be liable for all expenses XFS incurs to return the Equipment to such condition. **IT IS SOLELY YOUR RESPONSIBILITY TO SECURE ANY SENSITIVE DATA AND PERMANENTLY DELETE SUCH DATA FROM THE INTERNAL MEDIA STORAGE PRIOR TO RETURNING THE EQUIPMENT TO XFS. YOU SHALL HOLD XFS HARMLESS FROM YOUR FAILURE TO SECURE AND PERMANENTLY DELETE ALL SUCH CUSTOMER DATA AS OUTLINED IN THIS SECTION.**

8. **Meter Readings and Annual Adjustments.** You acknowledge and agree that any cost-per-copy charges and associated meter readings/submittals are not a part of this Agreement, but will be your responsibility under the Maintenance Agreement. In addition, at any time after 12 months from the Commencement Date and for each successive 12 month period thereafter during the Term, XFS may increase your Lease Payment by a maximum of fifteen percent (15%) of the then-current Lease Payment therefor and you agree to pay such increased amounts.

9. Equipment Ownership, Labeling and UCC Filing. If and to the extent a court deems this Agreement to be a security agreement under the UCC, and otherwise for precautionary purposes only, you grant XFS a first priority security interest in your interest in the Equipment as defined above in order to secure your performance hereunder. Unless a \$1 Purchase Option is applicable, XFS is and shall remain the sole owner of the Equipment, except the Software. You authorize XFS to file a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. You agree to pay any filing fees and administrative costs for the filing of such financing statements. You agree to keep the Equipment free from any liens or encumbrances and to promptly notify XFS if there is any change in your organization such that a re-filing or amendment to XFS's financing statement against you becomes necessary.

10. Assignment. YOU MAY NOT ASSIGN, SELL, PLEDGE, TRANSFER, SUBLEASE OR PART WITH POSSESSION OF THE EQUIPMENT, THIS AGREEMENT OR ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT (COLLECTIVELY "ASSIGNMENT") WITHOUT XFS'S PRIOR WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, BUT SUBJECT TO THE SOLE EXERCISE OF XFS'S REASONABLE CREDIT DISCRETION AND EXECUTION OF ANY NECESSARY ASSIGNMENT DOCUMENTATION. IF XFS agrees to an Assignment, you agree to pay the applicable assignment fee and reimburse XFS for any costs we incur in connection with that Assignment, which in the aggregate shall not exceed \$250. XFS may sell, assign or transfer all or any part of the Equipment, this Agreement and/or any of our rights (but none of our obligations except for invoicing and tax administration) hereunder. XFS's assignee will have the same rights that we have to the extent assigned. YOU AGREE NOT TO ASSERT AGAINST SUCH ASSIGNEE ANY CLAIMS, DEFENSES, COUNTERCLAIMS, RECOUPMENTS, OR SET-OFFS THAT YOU MAY HAVE AGAINST XFS, and you agree to remit Payments to such Assignee if so designated. XFS agrees and acknowledges that any Assignment by us will not materially change your obligations hereunder.

11. Taxes. You will be responsible for, indemnify and hold XFS harmless from, all applicable taxes, fees or charges (including sales, use, personal property and transfer taxes (other than net income taxes), plus interest and penalties) assessed by any governmental entity on you, the Equipment, this Agreement, or the amounts payable hereunder (collectively, "Taxes"), which will be included in XFS's invoices to you unless you timely provide continuing proof of your tax exempt status. Regardless of your tax-exempt status, XFS reserves the right to pass through, and you agree to pay, any such Taxes that are actually assessed by the applicable State on XFS as lessor of the Equipment. For jurisdictions where certain taxes are calculated and paid at the time of agreement initiation, you authorize XFS to finance and adjust your Payment to include such Taxes over the Term. Unless and until XFS notifies you in writing to the contrary, the following shall apply to personal property taxes and returns. If an FMV purchase option is applicable, XFS will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and collect from your account all personal property taxes on the Equipment. If a \$1 purchase option is applicable, you will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and provide us proof thereof upon our request. XFS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT.

12. Equipment Warranty Information and Disclaimers. XFS HAS NO INVOLVEMENT IN THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT. THEREFORE, XFS DISCLAIMS, AND YOU WAIVE SOLELY AGAINST XFS, ALL EQUIPMENT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE, AND XFS MAKES NO REPRESENTATIONS WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE EQUIPMENT'S SUITABILITY, FUNCTIONALITY, DURABILITY OR CONDITION. Since you have selected the Equipment and Supplier, you acknowledge that you are aware of the name of the manufacturer of each item of Equipment, Supplier's contact information, and agree that you will contact manufacturer and/or Supplier for a description of any warranty rights you may have under the Equipment supply contract, sales order, or otherwise. Provided you are not in default hereunder, XFS hereby assigns to you any Equipment warranty rights we may have against Supplier or manufacturer. If the Equipment is returned to XFS or you are in default, such rights are deemed reassigned by you to XFS. IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE AS WARRANTED, BECOMES OBSOLETE, OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, YOU SHALL MAKE ALL RELATED CLAIMS SOLELY AGAINST MANUFACTURER OR SUPPLIER AND NOT AGAINST XFS, AND YOU SHALL NEVERTHELESS CONTINUE TO PAY ALL PAYMENTS AND OTHER SUMS PAYABLE UNDER THIS AGREEMENT.

13. Liability and Indemnification. XFS IS NOT RESPONSIBLE FOR ANY LOSSES, DAMAGES, EXPENSES OR INJURIES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (COLLECTIVELY, "CLAIMS") TO YOU OR ANY THIRD PARTY CAUSED BY THE EQUIPMENT OR ITS USE. You assume the risk of liability for, and hereby agree to indemnify and hold safe and harmless, and covenant to defend, XFS, its employees, officers and agents from and against: (a) any and all Claims (including legal expenses of every kind and nature) arising out of the acceptance or rejection, ownership, leasing, possession, operation, use, return or other disposition of the Equipment; and (b) any and all loss or damage of or to the Equipment. Neither sentence in this Section shall apply to Claims arising directly and proximately from XFS's gross negligence or willful misconduct.

14. Default and Remedies. You will be in default hereunder if XFS does not receive any Payment within 10 days after its due date or you breach any other material obligation hereunder or any other agreement with XFS. If you default, and such default continues for 10 days after XFS provides notice to you, XFS may, in addition to other remedies (including disabling or repossessing the Equipment and/or requesting Supplier to cease performing under the Maintenance Agreement), immediately require you to do one or more of the following: (a) as liquidated damages for loss of bargain and not as a penalty, pay the sum of (i) all amounts then past due, plus interest from the due date until paid at the rate of 1.5% per month; (ii) the Payments remaining in the Term (including the fixed maintenance component thereof, if permitted under the Maintenance Agreement), discounted at the Discount Rate to the date of default, (iii) the Equipment's booked residual, and (iv) Taxes; and (b) require you to return the Equipment as provided in Sections 6 and 9 hereof. You agree to pay all reasonable costs, including attorneys' fees and disbursements, incurred by XFS to enforce this Agreement.

15. Risk of Loss and Insurance. You assume and agree to bear the entire risk of loss, theft, destruction or other impairment of the Equipment upon delivery. You, at your own expense, (i) shall keep Equipment insured against loss or damage at a minimum of full replacement value thereof, and (ii) shall carry liability insurance against bodily injury, including death, and against property damage in the amount of at least \$2 million (collectively, "Required Insurance"). All such Equipment loss/damage insurance shall be with lender's loss payable to "XFS, its successors and/or assigns, as their interests may appear," and shall be with companies reasonably acceptable to XFS. XFS shall be named as an additional insured on all liability insurance policies. The Required Insurance shall provide for 30 days' prior notice to XFS of cancellation. YOU MUST PROVIDE XFS OR OUR DESIGNEES WITH SATISFACTORY WRITTEN EVIDENCE OF REQUIRED INSURANCE WITHIN 30 DAYS OF THE ACCEPTANCE DATE AND ANY SUBSEQUENT WRITTEN REQUEST BY XFS OR OUR DESIGNEES. IF YOU DO NOT DO SO, THEN IN LIEU OF OTHER REMEDIES FOR DEFAULT, XFS IN OUR DISCRETION AND AT OUR SOLE OPTION MAY (BUT IS NOT REQUIRED TO) OBTAIN INSURANCE FROM AN INSURER OF XFS'S CHOOSING, WHICH MAY BE AN XFS AFFILIATE, IN SUCH FORMS AND AMOUNTS AS XFS DEEMS REASONABLE TO PROTECT XFS'S INTERESTS (COLLECTIVELY "EQUIPMENT INSURANCE"). EQUIPMENT INSURANCE WILL COVER THE EQUIPMENT AND XFS; IT WILL NOT NAME YOU AS AN INSURED AND MAY NOT COVER ALL OF YOUR INTEREST IN THE EQUIPMENT AND WILL BE SUBJECT TO CANCELLATION AT ANY TIME. YOU AGREE TO PAY XFS PERIODIC CHARGES FOR EQUIPMENT INSURANCE (COLLECTIVELY "INSURANCE CHARGES") THAT INCLUDE: AN INSURANCE PREMIUM THAT MAY BE HIGHER THAN IF YOU MAINTAINED THE REQUIRED INSURANCE SEPARATELY; A FINANCE CHARGE OF UP TO 1.5% PER MONTH ON ANY ADVANCES MADE BY XFS OR OUR AGENTS; AND COMMISSIONS, BILLING AND PROCESSING FEES; ANY OR ALL OF WHICH MAY GENERATE A PROFIT TO XFS OR OUR AGENTS. XFS MAY ADD INSURANCE CHARGES TO EACH PAYMENT. XFS shall discontinue billing or debiting Insurance Charges for Equipment Insurance upon receipt and review of satisfactory evidence of Required Insurance. You must promptly notify XFS of any loss or damage to Equipment which makes any item of Equipment unfit for continued or repairable use. You hereby irrevocably appoint XFS as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any such Required Insurance. Insurance proceeds from Required Insurance or Equipment Insurance received shall be applied, at XFS's option, to (x) restore the Equipment so that it is in the same condition as when delivered to you (normal wear and tear excepted), or (y) if the Equipment is not restorable, to replace it with like-kind condition Equipment from the same manufacturer, or (z) pay to XFS the greater of (i) the total unpaid Payments for the entire Term hereof (discounted to present value at the Discount Rate) plus, if an FMV purchase option is designated on the first page hereof, XFS's residual interest in such Equipment (herein agreed to be 20% of the Equipment's original cost to XFS) plus any other amounts due to XFS hereunder, or (ii) the Determined FMV immediately prior to the loss or damage. NO LOSS OR DAMAGE TO EQUIPMENT, OR XFS'S RECEIPT AND APPLICATION OF INSURANCE PROCEEDS, SHALL RELIEVE YOU OF ANY OF YOUR REMAINING OBLIGATIONS UNDER THIS AGREEMENT. Notwithstanding procurement of Equipment Insurance or Required Insurance, you remain primarily liable for performance under this Section in the event the applicable insurance carrier fails or refuses to pay any claim. YOU AGREE (I) AT XFS'S SOLE ELECTION TO ARBITRATE ANY DISPUTE WITH XFS, OUR AGENTS OR ASSIGNS REGARDING THE EQUIPMENT INSURANCE UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN FAIRFIELD COUNTY, CT, (II) THAT IF XFS MAKES THE FOREGOING ELECTION ARBITRATION (NOT A COURT) SHALL BE THE EXCLUSIVE REMEDY FOR SUCH DISPUTES; AND (III) THAT CLASS ARBITRATION IS NOT PERMITTED. This arbitration option does not apply to any other provision of this Agreement.

16. Finance Lease and Customer Waivers. The parties agree this Agreement shall be construed as a "finance lease" under UCC Article 2A. Customer waives its rights as a lessee under UCC 2A sections 508-522.

17. Authorization of Signer and Credit Review. You represent that you may lawfully enter into, and perform, this Agreement, that the individual signing this Agreement on your behalf has all necessary authority to do so, and that all financial information you provide accurately represents your financial condition. You agree to furnish financial information that XFS may request now, including your Federal Tax ID, and you authorize XFS to obtain credit reports on you in the future should you default or fail to make prompt payments hereunder.

18. Original and Sole Controlling Document. No Modifications Unless in Writing. This Agreement constitutes the entire agreement between the Parties as to the subjects addressed herein, and representations or statements not included herein are not part of this Agreement and are not binding on the Parties. You agree that an executed copy of this Agreement that is signed by your authorized representative and by XFS's authorized representative (an original manual signature or such signature reproduced by means of a reliable electronic form, such as electronic transmission of a facsimile or electronic signature) shall be marked "original" by XFS and shall constitute the only original document for all purposes. To the extent this Agreement constitutes UCC chattel paper, no security interest in this Agreement may be created except by the possession or transfer of the copy marked "original" by XFS. IF A PURCHASE ORDER OR OTHER DOCUMENT IS ISSUED BY YOU, NONE OF ITS TERMS AND CONDITIONS SHALL BE BINDING ON XFS, AS THE TERMS AND CONDITIONS OF THIS AGREEMENT EXCLUSIVELY GOVERN THE TRANSACTION DOCUMENTED HEREIN. SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY OR NEGOTIATE THE TERMS OF THIS AGREEMENT. THIS AGREEMENT MAY NOT BE AMENDED OR SUPPLEMENTED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AND NO PROVISIONS CAN BE WAIVED EXCEPT IN A WRITING SIGNED BY XFS. You authorize XFS to insert or correct missing information on this Agreement, including but not limited to your proper legal name, agreement/numbers, serial numbers and other Equipment information, so long as there is no material impact to your financial obligations.

19. Governing Law, Jurisdiction, Venue and JURY TRIAL WAIVER. THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT. THE JURISDICTION AND VENUE OF ANY ACTION TO ENFORCE THIS AGREEMENT, OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL BE IN A FEDERAL OR STATE COURT IN FAIRFIELD COUNTY, CONNECTICUT OR, EXCLUSIVELY AT XFS'S OPTION, IN ANY OTHER FEDERAL OR STATE COURT WHERE THE EQUIPMENT IS LOCATED OR WHERE XFS'S OR YOUR PRINCIPAL PLACES OF BUSINESS ARE LOCATED, AND YOU HEREBY WAIVE ANY RIGHT TO TRANSFER VENUE. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.

20. Miscellaneous. Your obligations under the "Taxes" and "Liability" Sections commence upon execution, and survive the expiration or earlier termination, of this Agreement. Notices hereunder must be in writing. Notices to you will be sent to the "Billing Address" provided on the first page hereof, and notices to XFS shall be sent to our address provided on the first page hereof. Notices will be deemed given 5 days after mailing by first class mail or 2 days after sending by nationally recognized overnight courier. Invoices are not considered notices and are not governed by the notice terms hereof. You authorize XFS to communicate with you by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address you provide to us. If a court finds any term of this Agreement unenforceable, the remaining terms will remain in effect. The failure by either Party to exercise any right or remedy will not constitute a waiver of such right or remedy. If more than one party has signed this Agreement as Customer, each such party agrees that its liability is joint and several. The following four sentences control over every other part of this Agreement: Both Parties will comply with applicable laws. XFS will not charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for the last four sentences of this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is modified by this Section to limit the amounts chargeable hereunder to the maximum amount allowed under the legal limit. If, in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by XFS in excess of that legally allowed will be applied by us to the payment of amounts legally owed hereunder or refunded to you.

CUSTOMER INSTALL				Agreement No.	
Full Legal Name City of Fowler			DBA		
Address 128 S 5th St.			City Fowler		State CA ZIP 93625
CUSTOMER BILL TO					
Name City of Fowler					
Address 128 S 5th St.			City Fowler		State CA ZIP 93625
Phone 559-934-3113	Contact Name Randy Uyeda	Contact Email ruyeda@ci.fowler.ca.us	Lessee PO# (Optional)		
Monthly Base Maintenance Payment = \$ 125.- Excess Per Image Charge stated in the below table					
Model(s)	B&W Monthly Allowance included in Monthly Base	Black & White Rate	Color Monthly Allowance included in Monthly Base	Color Rate	
XEROX C8055 H2	0	\$.0079	\$.049 0	\$.049	
XEROX C8035 H2	0	\$.0079	0	\$.049	
2- XEROX B7035	0	\$.0079			
XEROX 5955	0	\$.0049			
4- XEROX B400 DN	0	\$.0099			
HP OFFICE JET 8600	0	\$.0099	0	\$.09	

DEFINITIONS: The words Customer, You and Your refer to customer indicated above. The words Company, We, Us and Our to Image Source.

SERVICES OFFERED: We agree to provide all consumables, along with device environment monitoring, auto toner replenishment, proactive service error monitoring, phone technical support, service, and quarterly environment reporting under this Cost Per Image Agreement. Further information on the Service Management details are stated on the back of this document. Covered equipment, along with Cost Per Image pricing, is listed in the table above, or separately in Schedule(s) A, and/or B.

IMAGE CHARGES: Payments are due monthly, beginning the date the Agreement is initiated (as noted by the Agreement date below) or any later date designated by Us (see "Transitional Billing" section below) and continuing on the same day of each following month until fully paid. You are entitled to make the total number of images reflected in the Monthly Image Allowance shown in the table above, or separately in Schedule(s) A, and/or B, each month (if consolidated), or the monthly amount Image Allowance Per Machine or Group (if not consolidated). If You use more than the applicable Allowance(s) in any month, You will pay Us an additional charge equal to the number of additional metered images multiplied by the applicable Excess Per Image Charge. If the meter reading required for periodic billing is not available, Company may bill for use based on an average volume for the most recent 3 months. You agree that We may proportionally increase Your Per Image Charges at any time if Our estimated average page coverage is exceeded in any month during the term of this Agreement. Each print made that is larger than 145 square inches may register as 2 prints on the meter. In addition to the foregoing, You agree that effective on each/any anniversary of this Agreement, We may annually increase both the Minimum Monthly Payment and the Excess Per Image Charge by amounts determined in Our discretion, but not to exceed ten percent (10%) of the then current payment and/or charge in each year. You agree to comply with billing and meter collection procedures designated by Us, including notifying Us of the meter reading on the billing date. If meters are not received, We reserve the right to estimate Your usage for the billing period.

TRANSITIONAL BILLING: If We designate as the Agreement commencement date or effective date a date which is later than the date the Agreement is/was initiated (as noted by the Agreement Date below), then You shall pay Us an interim payment for each day, from the date the Agreement is/was initiated until the commencement date, equal to the minimum monthly payment divided by 30. If this Cost Per Image Agreement has no minimum monthly amount (as designated in in the table above, or separately in Schedule(s) A, and/or B), We will bill You for actual pages copied or printed from the Agreement initiation date until the designated commencement date.

GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION: This Agreement and each addendum shall be governed by the laws of the State of California. You agree that any dispute arising under or related to this agreement will be adjudicated in the federal or state court located in San Bernardino. You hereby consent to personal jurisdiction and venue in that court and waive any right to transfer venue. Each party waives any right to a trial by jury.

LATE FEES: If any amount payable to Us is not paid when due, You will pay Us a late charge equal to 1) a rate of 1.5% per month of balance overdue or 2) a minimum of \$5 per month. The Customer will also pay collection costs and reasonable attorney's fees should the account be placed for collection.

AGREEMENT PERIOD: This agreement is for a period of 60 months from the date the Agreement is initiated, and is non-cancelable. In addition to any other rights under this contract, Company may terminate this contract at any time by giving the Customer 30 day prior written notice. Unless notified in writing 30 days prior to the contract expiration date, this agreement shall renew for 12-month periods.

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THIS PAGE, THE REVERSE SIDE, AND, IF APPLICABLE ATTACHED SCHEDULE(S) A AND/OR B, ALL OF WHICH PERTAIN TO THIS AGREEMENT AND WHICH YOU ACKNOWLEDGE HAVING READ. THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY US. YOU CERTIFY ALL ACTIONS REQUIRED TO AUTHORIZE EXECUTION OF THIS AGREEMENT, INCLUDING YOUR AUTHORITY, HAVE BEEN FULFILLED.			
IMAGE SOURCE: (As Stated Above)		CUSTOMER: (As Stated Above)	
Signature		Signature	
Print Name & Title	Date Accepted	Print Name & Title	Date
		Randy Uyeda	12/11/19

Randy Uyeda
Finance Director

I. MAINTENANCE AND SUPPLIES.

- A. **Cost Per Image Charges.** The charges stated in the Agreement include charges for maintenance (from 8 a.m. to 5 p.m. local time, except weekends and holidays ("Regular Service Hours"), inspection, adjustment, parts replacement, cleaning material required for proper operation, and toner and developer for such Equipment and may also include charges for such maintenance and supplies provided to You for the Equipment. Paper and staples are not included in this maintenance agreement. You must purchase staples separately from Us. Color toner and developer supplies will be provided for production of pages, with an average 20% page coverage. Supplies required for production in excess of 20% page coverage will be invoiced separately. Specialty toner and dry inks excluded from consumable supplies. Consumable supplies exclude any toners and dry inks (and their associated developers) other than standard cyan, magenta, yellow, and black. Specialty toner and dry inks (and their associated developers) must be purchased separately from Us. We may charge a fulfillment fee to cover equipment monitoring and supply replenishment and delivery.
- B. **Equipment Eligible for Coverage.** This only applies to the Equipment identified in the table on page one, or separately in Schedule(s) A, and/or B. You represent and warrant that, other than as set forth in the table on page one, or separately in Schedule(s) A, and/or B, there is no other equipment located at Your site(s) capable of using Our supplied toner and ink consumables. All Equipment capable of using Our supplied toner and ink consumables must be included in this Agreement. To the best of Your knowledge, there are no equipment conditions that do not meet manufacturer's specifications ("Pre-Existing Conditions"), other than those specifically identified in the table on page one, or separately in Schedule(s) A, and/or B. You agree that We shall have the right to inspect and verify any Equipment covered by this Agreement which was previously owned by You. We reserve the right, at Our sole discretion, to exclude from this agreement any Equipment that We determine to have material faults, and/or to be unfit for service. If applicable, We may discount the Monthly Base Maintenance Payment by the amount reasonably allocated to any excluded Equipment.
- C. **Definition of Services Provided.** We agree (a) to perform only those repairs involving worn Equipment components that have failed during ordinary use of the Equipment under normal operating conditions (trays, covers and other non-consumable parts are not covered), and (b) to supply You with all toner and ink consumables required to operate the Equipment. Requests for services outside of Regular Service Hours will be provided on a best effort basis at Our prevailing time and material hourly rate. Such charges for services outside of Regular Service Hours are in addition to the prepaid Minimum Monthly Payment. This Agreement does not cover after-hours service, shop overhauls, and service made necessary by accident, fire, water, natural disasters, or failure by You to meet the manufacturer's electrical requirements.
- D. **Access to Equipment.** We shall have the right to access Your site and any other of Your premises that may house Equipment upon reasonable notice for access with Your supervision during regular work hours. We reserve the right to invoice You at Our prevailing time and material hourly rate, separate from the Minimum Monthly Payment, when access to the Equipment is denied for greater than fifteen (15) minutes, when You initiated the request for service. We shall apply an estimated monthly page volume to any and all Equipment that cannot be accessed for page count recording purposes.
- E. **Authorized Maintenance Providers.** We, at Our discretion, may authorize Our approved maintenance subcontractors or approved service providers to perform maintenance and repairs to the Equipment. In cases where We manage Your third party service agreement on Your behalf, then all sums currently due under that agreement must be paid in full before We will assume any obligation or responsibility.
- F. **Repair Responsibility.** Maintenance services excludes repairs due to: (a) misuse, neglect or abuse; (b) failure of the installation site or the PC or workstation used with the Equipment to comply with manufacturer's published specifications; (c) use of options, accessories or products not serviced by Us; (d) non-image Source alterations, relocation, service or supplies; or (e) failure to perform operator maintenance procedures identified in operator manuals, or (f) failure by You to meet the manufacturer's electrical requirements. Equipment may not be moved to another physical address without Our prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term.
- G. **Analyst Services.** We agree to provide Analyst Services, at no additional charge, for the first 90 days of this Agreement. After 90 days, You agree to pay Us periodic charges for Analyst Services. We shall discontinue billing or debiting Analyst Services upon receipt of a written request to discontinue Analyst Services support for Equipment. Upon cancellation, You agree to bear the entire cost of Analyst Services retained to the Equipment covered by this Agreement.
- H. **Ownership and Control of Toner and Ink Consumables.** All toner and ink consumables supplies provided under this Agreement shall at all times remain the property of Us. You may use the toner and ink consumables pursuant to the terms of this Agreement, but You shall not have any ownership rights in or to the toner or ink consumables. You shall not be charged for any toner or ink consumables in use upon the expiration of this Agreement. The ordering of consumables significantly in excess of the number of copies or prints produced may be charged to You by Us.
- I. **Additional Equipment and Right of Inspection.** 1. You shall notify Us promptly upon installing any additional equipment ("Additional Equipment") at Your site capable of using Our supplied toner and ink consumables. Equipment installed subsequent to the date of this Agreement will be evaluated by Us, and included in, or excluded from, this Agreement at the sole discretion of Us. 2. Additional Equipment deemed included in the Agreement by Us shall be added to this Agreement and will automatically be covered by and considered Equipment under the terms of this Agreement. Billings or surcharges for Additional Equipment output will be reflected in the billing cycle immediately following the billing cycle in which the Additional Equipment is installed. If You add Additional Equipment, the Minimum Monthly Payment may be adjusted accordingly, at Our sole discretion. 3. If any such Additional Equipment is used equipment, You represent and warrant to Us that, except for Pre-Existing Conditions duly disclosed to Us prior to such Additional Equipment being covered by this Agreement, all of the Additional Equipment shall, on the date such coverage commences, be in good working order. We shall be entitled to take a physical inventory of the Additional Equipment, upon or prior to its being covered by this Agreement, to determine whether they are in working order. In the event, as of the date coverage commences under this Agreement, any Additional Equipment is not in good working order, You shall have such Additional Equipment repaired at Your sole expense and, until such Additional Equipment is so repaired, any Additional Equipment with Pre-Existing Conditions shall not be covered under this Agreement. An initial meter reading of zero (0) is agreed, unless You provide timely information to the contrary, for any Additional Equipment that meets the conditions of I.1.
- II. **WARRANTY.** Notwithstanding anything in this Agreement to the contrary, We warrant (a) that all personnel performing services hereunder by or on behalf of Us will have appropriate training and experience and (b) all equipment is in accordance with industry standards, and all supplies and materials are of good quality. Without limiting the generality of the foregoing (and without limiting any obligation of Us to make repairs under this Agreement), You expressly agree and acknowledge that in no event shall any manufacturer's warranty, including but not limited to any implied warranty of merchantability, and fitness for a particular purpose, be deemed given by or otherwise transferred or applied to Us. If You notify Us within ninety (90) days from performance of the services that the services or a part thereof fails to conform to the standards specified herein, Your sole and exclusive remedy is that We shall promptly repair, replace, or re-perform the non-conforming services.

III. MONITORING SOFTWARE.

- A. **You grant Permission to Install and Maintain Software.** We license software ("Monitoring Software") that enables Us to monitor the usage of, and the copy count produced on, the Equipment. You agree that We shall have the right, at any time during the term of this Agreement, to install the Monitoring Software on one or more of Your computer networked station(s). You agree to provide Us, during normal business hours, access to Your computer-networked station(s) to enable Us to upgrade, modify or maintain the Monitoring Software or to install new releases or additions to the Monitoring Software. Under no circumstances will the Monitoring Software provide Us access to Your information other than information directly related to this Agreement. You agree to not delete or remove the Monitoring Software or to alter, modify or otherwise render it unusable during the term of this Agreement without the prior written consent of Us. If You disagree, then We retain the right to invoice You the prevailing hourly billable rate for labor required to obtain meter readings, per meter reading cycle.
- B. **No License, other Prohibitions.** Nothing herein shall be construed as granting a license to You for the use of the Monitoring Software. You may not, nor may You permit or cause any other person to (a) use or copy the Monitoring Software, in whole or in part, in any manner, (b) modify, translate, reverse engineer, decompile or disassemble the Monitoring Software, (c) rent, lease, loan, resell, distribute, use in a customer-server network to provide third parties access to, or otherwise transfer the Monitoring Software, or (d) remove any proprietary notices on the Monitoring Software.
- C. **Intellectual Property Rights.** All rights (including all intellectual property rights, whether recognized currently or in the future) in and to the Monitoring Software (including any source code, executable code, object code, tools and/or libraries related to the Monitoring Software) will at all times be owned by Us. No modifications and/or use by You of the Monitoring Software shall under any circumstances transfer any right, title or interest in or to the Monitoring Software to You or any third party.
- D. **Monitoring Software Warranty, Liability.** You acknowledge that the Monitoring Software will be installed on Your networked workstation(s) "as is" without warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We do not warrant that the Monitoring Software will be error free or will operate without interruption. We shall in no event be liable to You or any third party for any special, consequential, incidental or indirect damages in connection with the Monitoring Software. If the software is found to cause issues on Your network, and these issues can be reasonably associated to the installation of the software through uniform software testing and tracing methodologies, Our liability will be limited to the removal of said Monitoring Software from Your environment.

IV. MISCELLANEOUS.

- A. **Software.** Performance issues related to Software and/or connectivity are not covered under the terms of this Agreement. Any warranties related to Software will be those offered by the manufacturer and will be passed directly to the user.
- B. **Software/Hardware.** Connectivity and performance issues related to Software and non-standard hardware are not covered under the terms of this Agreement. Any warranties related to these solutions, which include but are not limited to: Xerox ConnectKey Applications, PaperCut, XMedius Fax, Umango, Square9, Ysoft, Nuance, Formax, NeoPost, or Xerox Freedom, any computers and scanners, will be those offered by the manufacturer and passed directly to the user. Operation and configuration of the Software will be the responsibility of You and initial install and operation test is completed by Us.

Lease Agreement



Supplier Name: IMAGE SOURCE		Supplier Address:	
Owner: XEROX FINANCIAL SERVICES LLC - 201 Merritt 7, Norwalk, CT 06851			Agreement Number:
CUSTOMER INFORMATION			
Full Legal Name: City of Fowler			Phone:
Billing Address: 128 S Fifth ST.		Contact Name: Randy Uyeda	
City: Fowler	State: CA	Zip Code: 93625	Contact Email: ruyeda@ci.fowler.ca.us
EQUIPMENT			
Quantity	Model and Description	Quantity	Model and Description
1	C 8055 H2	1	C 9035 H2
2	B 7035 SS2	4	B 400 DN
Equipment Location (if different from Billing Address):			
TERM	LEASE PAYMENT - (Monthly frequency unless otherwise noted)		PURCHASE OPTION - ("FMV" unless otherwise noted)
Initial Term: 63 (in months)	Lease Payment (plus applicable taxes): \$1,005.82 Frequency: <input checked="" type="checkbox"/> Monthly <input type="checkbox"/> Quarterly <input type="checkbox"/> Annually		<input checked="" type="checkbox"/> Fair Market Value Purchase Option ("FMV") <input type="checkbox"/> \$1 Purchase Option
CUSTOMER ACCEPTANCE			
BY YOUR SIGNATURE BELOW, YOU ACKNOWLEDGE THAT YOU ARE ENTERING INTO A NON-CANCELLABLE AGREEMENT AND THAT YOU HAVE READ AND AGREED TO ALL APPLICABLE TERMS AND CONDITIONS SET FORTH ON PAGES 1 AND 2 HEREOF.			
Authorized Signer X:	Randy Uyeda	Date: 12-11-19	Federal Tax ID # (Required): 94-6000337
Print Name:	Finance Director	Title:	
OWNER ACCEPTANCE			
Accepted By: Xerox Financial Services LLC	Name and Title:		Date:

TERMS & CONDITIONS

1. **Definitions.** The words "you" and "your" mean the legal entity identified in "Customer Information" above, and "XFS," "we," "us," "Owner" and "our" mean Xerox Financial Services LLC. "Party" means you or XFS, and "Parties" means both you and XFS. "Supplier" means the entity identified as "Supplier" above. "Acceptance Date" means the date you irrevocably determine Equipment has been delivered, installed and operating satisfactorily. "Agreement" means this Lease Agreement, including any attached Equipment schedule. "Commencement Date" will be a date after the Acceptance Date, as set forth in our first invoice, for the purpose of facilitating an orderly transition and to provide a uniform billing cycle. "Discount Rate" means 3% per annum. "Equipment" means the items identified in "Equipment" above and in any attached Equipment schedule, plus any Software (as defined in Section 3 hereof), attachments, accessories, replacements, replacement parts, substitutions, additions and repairs thereto. "Interim Period" means the period, if any, between the Acceptance Date and the Commencement Date. "Interim Payment" means one thirtieth of the Lease Payment multiplied by the number of days in the Interim Period. "Payment" means the Lease Payment specified above, Taxes and other charges you, Supplier and XFS agree will be invoiced by XFS. "Maintenance Agreement" means a separate agreement between you and Supplier for maintenance and support purposes. "Origination Fee" means a one-time fee of \$125 billed on your first invoice, which you agree to pay, covering origination, documentation, processing and other initial costs. "Term" means the Interim Period, if any, together with the Initial Term plus any subsequent renewal or extension terms. "UCC" means the Uniform Commercial Code of the State(s) where XFS must file UCC-1 financing statements to perfect its security interest in the Equipment.

2. **Agreement, Payments and Late Payments.** You agree and represent that the Equipment was selected, configured and negotiated by you based on your judgment and supplied by Supplier. At your request, XFS will acquire same from Supplier to lease to you hereunder and you agree to lease same from XFS. The Initial Term commences on the Commencement Date. You agree to pay XFS the first Payment plus any applicable Interim Payment no later than 30 days after the Commencement Date; each subsequent Payment shall be payable on the same date of each month thereafter. You agree to pay us all sums due under each invoice via check, Automated Clearing House debit, Electronic Funds Transfer or direct debit from your bank account by the due date. If any Payment is not paid in full within 5 days after its due date, you will pay a late charge of the greater of 10% of the amount due or \$25, not to exceed the maximum amount permitted by law. For each dishonored or returned Payment, you will be assessed the applicable fee, not to exceed \$35. Restrictive covenants on any method of payment will be ineffective.

3. **Equipment and Software.** To the extent that Equipment includes intangible property or associated services such as software licenses, such intangible property shall be referred to as "Software." You acknowledge and agree that XFS is not the licensor of such Software, and therefore has no right, title or interest in it, and you will comply throughout the Term with any license and/or other agreement ("Software License") with the supplier of the Software ("Software Supplier"). You are responsible for determining with the Supplier whether any Software Licenses are required, and entering into them with Software Supplier(s) no later than 30 days after the Acceptance Date. **YOU AGREE THE EQUIPMENT IS FOR YOUR LAWFUL BUSINESS USE IN THE UNITED STATES, WILL NOT BE USED FOR PERSONAL, HOUSEHOLD OR FAMILY PURPOSES, AND IS NOT BEING ACQUIRED FOR RESALE.** You will not attach the Equipment as a fixture to real estate or make any permanent alterations to it.

4. **Non-Cancellable Agreement.** THIS AGREEMENT CANNOT BE CANCELLED OR TERMINATED BY YOU PRIOR TO THE END OF THE INITIAL TERM. YOUR OBLIGATION TO MAKE ALL PAYMENTS IS ABSOLUTE AND UNCONDITIONAL AND NOT SUBJECT TO DELAY, REDUCTION, SET-OFF, DEFENSE, COUNTERCLAIM OR RECOUPMENT FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF THE PERFORMANCE OF THE EQUIPMENT, SUPPLIER, ANY THIRD PARTY OR XFS. Any pursued claim by you against XFS for alleged breach of our obligations hereunder shall be asserted solely in a separate action; provided, however, that your obligations hereunder shall continue unabated.

5. **Equipment Delivery and Maintenance.** You should arrange with Supplier to have the Equipment delivered to you at the location(s) specified herein, and you agree to execute a Delivery & Acceptance Certificate at XFS's request (and confirm same via telephone and/or electronically) confirming when you have received, inspected and irrevocably accepted the Equipment, and authorize XFS to fund the Supplier for the Equipment. If you fail to accept the Equipment, you shall no longer have any obligations hereunder; however, you remain liable for any Equipment purchase order or other contract issued on your behalf directly with Supplier. Equipment may not be moved to another physical address without XFS's prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term. You shall permit XFS or its agent to inspect Equipment and any maintenance records relating thereto during your normal business hours upon reasonable notice. You represent you have entered into a Maintenance Agreement to maintain the Equipment in good working order in accordance with the manufacturer's maintenance guidelines and to provide you with Equipment supplies. You acknowledge that XFS is acting solely as an administrator for Supplier with respect to the billing and collecting of the charges under any Maintenance Agreement. **XFS IS NOT LIABLE FOR ANY BREACH BY SUPPLIER OF ANY OF ITS OBLIGATIONS TO YOU, NOR WILL ANY OF YOUR OBLIGATIONS HEREUNDER BE MODIFIED, RELEASED OR EXCUSED BY ANY ALLEGED BREACH BY SUPPLIER.**

6. **End of Agreement Options.** If a \$1 Purchase Option is designated, you will be deemed to have exercised your option to purchase the Equipment as of the Acceptance Date. If an FMV purchase option is designated, if you are not in default and if you provide no greater than 150 days and no less than 60 days' prior written notice to XFS, you may, at the end of the Initial Term or any renewal term ("End Date"), either (a) purchase all, but not less than all, of the Equipment by paying its fair market value, as determined by XFS in its sole but reasonable discretion ("Determined FMV"), plus Taxes, or (b) return the Equipment within 30 days of the End Date, at your expense, fully insured, to a continental US location XFS shall specify. You cannot return Equipment more than 30 days prior to the End Date without our consent. If we consent, we may charge you, in addition to all undiscounted amounts due hereunder, an early termination fee. If you have not elected one of the above options, this Agreement shall renew for successive 3-month terms. Either party may terminate the Agreement as of the end of any 3-month renewal term on 30 days' prior written notice and by taking one of the actions identified in (a) or (b) in the preceding sentence of this section. Any FMV purchase option shall be exercised with respect to each item of Equipment on the day immediately following the date of expiration of the Term of such item, and by the delivery at such time by you to XFS of payment, in form acceptable to XFS, of the amount of the applicable purchase price. Upon payment of the applicable amount, XFS shall transfer our interest in the Equipment to you on an "AS IS, WHERE IS," "WITH ALL FAULTS" basis, without representation or warranty of any kind.

7. **Equipment Return.** If the Equipment is returned to XFS, it shall be in the same condition as when delivered to you, except for "ordinary wear and tear" and, if not in such condition, you will be liable for all expenses XFS incurs to return the Equipment to such condition. **IT IS SOLELY YOUR RESPONSIBILITY TO SECURE ANY SENSITIVE DATA AND PERMANENTLY DELETE SUCH DATA FROM THE INTERNAL MEDIA STORAGE PRIOR TO RETURNING THE EQUIPMENT TO XFS. YOU SHALL HOLD XFS HARMLESS FROM YOUR FAILURE TO SECURE AND PERMANENTLY DELETE ALL SUCH CUSTOMER DATA AS OUTLINED IN THIS SECTION.**

8. **Meter Readings and Annual Adjustments.** You acknowledge and agree that any cost-per-copy charges and associated meter readings/submittals are not a part of this Agreement, but will be your responsibility under the Maintenance Agreement. In addition, at any time after 12 months from the Commencement Date and for each successive 12 month period thereafter during the Term, XFS may increase your Lease Payment by a maximum of fifteen percent (15%) of the then-current Lease Payment therefor and you agree to pay such increased amounts.

9. Equipment Ownership, Labeling and UCC Filing. If and to the extent a court deems this Agreement to be a security agreement under the UCC, and otherwise for precautionary purposes only, you grant XFS a first priority security interest in your interest in the Equipment as defined above in order to secure your performance hereunder. Unless a \$1 Purchase Option is applicable, XFS is and shall remain the sole owner of the Equipment, except the Software. You authorize XFS to file a UCC financing statement to show, and to do all other acts to protect, our interest in the Equipment. You agree to pay any filing fees and administrative costs for the filing of such financing statements. You agree to keep the Equipment free from any liens or encumbrances and to promptly notify XFS if there is any change in your organization such that a re-filing or amendment to XFS's financing statement against you becomes necessary.

10. Assignment. YOU MAY NOT ASSIGN, SELL, PLEDGE, TRANSFER, SUBLEASE OR PART WITH POSSESSION OF THE EQUIPMENT, THIS AGREEMENT OR ANY OF YOUR RIGHTS OR OBLIGATIONS UNDER THIS AGREEMENT (COLLECTIVELY "ASSIGNMENT") WITHOUT XFS'S PRIOR WRITTEN CONSENT, WHICH SHALL NOT BE UNREASONABLY WITHHELD, BUT SUBJECT TO THE SOLE EXERCISE OF XFS'S REASONABLE CREDIT DISCRETION AND EXECUTION OF ANY NECESSARY ASSIGNMENT DOCUMENTATION. IF XFS agrees to an Assignment, you agree to pay the applicable assignment fee and reimburse XFS for any costs we incur in connection with that Assignment, which in the aggregate shall not exceed \$250. XFS may sell, assign or transfer all or any part of the Equipment, this Agreement and/or any of our rights (but none of our obligations except for invoicing and tax administration) hereunder. XFS's assignee will have the same rights that we have to the extent assigned. YOU AGREE NOT TO ASSERT AGAINST SUCH ASSIGNEE ANY CLAIMS, DEFENSES, COUNTERCLAIMS, RECOUPMENTS, OR SET-OFFS THAT YOU MAY HAVE AGAINST XFS, and you agree to remit Payments to such Assignee if so designated. XFS agrees and acknowledges that any Assignment by us will not materially change your obligations hereunder.

11. Taxes. You will be responsible for, indemnify and hold XFS harmless from, all applicable taxes, fees or charges (including sales, use, personal property and transfer taxes (other than net income taxes), plus interest and penalties) assessed by any governmental entity on you, the Equipment, this Agreement, or the amounts payable hereunder (collectively, "Taxes"), which will be included in XFS's invoices to you unless you timely provide continuing proof of your tax exempt status. Regardless of your tax-exempt status, XFS reserves the right to pass through, and you agree to pay, any such Taxes that are actually assessed by the applicable State on XFS as lessor of the Equipment. For jurisdictions where certain taxes are calculated and paid at the time of agreement initiation, you authorize XFS to finance and adjust your Payment to include such Taxes over the Term. Unless and until XFS notifies you in writing to the contrary, the following shall apply to personal property taxes and returns. If an FMV purchase option is applicable, XFS will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and collect from your account all personal property taxes on the Equipment. If a \$1 purchase option is applicable, you will file all personal property tax returns covering the Equipment, pay the personal property taxes levied or assessed thereon, and provide us proof thereof upon our request. XFS MAKES NO WARRANTY, EXPRESS OR IMPLIED, REGARDING THE TAX OR ACCOUNTING TREATMENT OF THIS AGREEMENT.

12. Equipment Warranty Information and Disclaimers. XFS HAS NO INVOLVEMENT IN THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, USE OR MAINTENANCE OF THE EQUIPMENT. THEREFORE, XFS DISCLAIMS, AND YOU WAIVE SOLELY AGAINST XFS, ALL EQUIPMENT WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR PARTICULAR PURPOSE, AND XFS MAKES NO REPRESENTATIONS WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, THE EQUIPMENT'S SUITABILITY, FUNCTIONALITY, DURABILITY OR CONDITION. Since you have selected the Equipment and Supplier, you acknowledge that you are aware of the name of the manufacturer of each item of Equipment, Supplier's contact information, and agree that you will contact manufacturer and/or Supplier for a description of any warranty rights you may have under the Equipment supply contract, sales order, or otherwise. Provided you are not in default hereunder, XFS hereby assigns to you any Equipment warranty rights we may have against Supplier or manufacturer. If the Equipment is returned to XFS or you are in default, such rights are deemed reassigned by you to XFS. IF THE EQUIPMENT IS NOT PROPERLY INSTALLED, DOES NOT OPERATE AS WARRANTED, BECOMES OBSOLETE, OR IS UNSATISFACTORY FOR ANY REASON WHATSOEVER, YOU SHALL MAKE ALL RELATED CLAIMS SOLELY AGAINST MANUFACTURER OR SUPPLIER AND NOT AGAINST XFS, AND YOU SHALL NEVERTHELESS CONTINUE TO PAY ALL PAYMENTS AND OTHER SUMS PAYABLE UNDER THIS AGREEMENT.

13. Liability and Indemnification. XFS IS NOT RESPONSIBLE FOR ANY LOSSES, DAMAGES, EXPENSES OR INJURIES OF ANY KIND OR TYPE, INCLUDING, BUT NOT LIMITED TO, ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (COLLECTIVELY, "CLAIMS") TO YOU OR ANY THIRD PARTY CAUSED BY THE EQUIPMENT OR ITS USE. You assume the risk of liability for, and hereby agree to indemnify and hold safe and harmless, and covenant to defend, XFS, its employees, officers and agents from and against: (a) any and all Claims (including legal expenses of every kind and nature) arising out of the acceptance or rejection, ownership, leasing, possession, operation, use, return or other disposition of the Equipment; and (b) any and all loss or damage of or to the Equipment. Neither sentence in this Section shall apply to Claims arising directly and proximately from XFS's gross negligence or willful misconduct.

14. Default and Remedies. You will be in default hereunder if XFS does not receive any Payment within 10 days after its due date or you breach any other material obligation hereunder or any other agreement with XFS. If you default, and such default continues for 10 days after XFS provides notice to you, XFS may, in addition to other remedies (including disabling or repossessing the Equipment and/or requesting Supplier to cease performing under the Maintenance Agreement), immediately require you to do one or more of the following: (a) as liquidated damages for loss of bargain and not as a penalty, pay the sum of (i) all amounts then past due, plus interest from the due date until paid at the rate of 1.5% per month; (ii) the Payments remaining in the Term (including the fixed maintenance component thereof, if permitted under the Maintenance Agreement), discounted at the Discount Rate to the date of default, (iii) the Equipment's booked residual, and (iv) Taxes; and (b) require you to return the Equipment as provided in Sections 6 and 9 hereof. You agree to pay all reasonable costs, including attorneys' fees and disbursements, incurred by XFS to enforce this Agreement.

15. Risk of Loss and Insurance. You assume and agree to bear the entire risk of loss, theft, destruction or other impairment of the Equipment upon delivery. You, at your own expense, (i) shall keep Equipment insured against loss or damage at a minimum of full replacement value thereof, and (ii) shall carry liability insurance against bodily injury, including death, and against property damage in the amount of at least \$2 million (collectively, "Required Insurance"). All such Equipment loss/damage insurance shall be with lender's loss payable to "XFS, its successors and/or assigns, as their interests may appear," and shall be with companies reasonably acceptable to XFS. XFS shall be named as an additional insured on all liability insurance policies. The Required Insurance shall provide for 30 days' prior notice to XFS of cancellation. YOU MUST PROVIDE XFS OR OUR DESIGNEES WITH SATISFACTORY WRITTEN EVIDENCE OF REQUIRED INSURANCE WITHIN 30 DAYS OF THE ACCEPTANCE DATE AND ANY SUBSEQUENT WRITTEN REQUEST BY XFS OR OUR DESIGNEES. IF YOU DO NOT DO SO, THEN IN LIEU OF OTHER REMEDIES FOR DEFAULT, XFS IN OUR DISCRETION AND AT OUR SOLE OPTION MAY (BUT IS NOT REQUIRED TO) OBTAIN INSURANCE FROM AN INSURER OF XFS'S CHOOSING, WHICH MAY BE AN XFS AFFILIATE, IN SUCH FORMS AND AMOUNTS AS XFS DEEMS REASONABLE TO PROTECT XFS'S INTERESTS (COLLECTIVELY "EQUIPMENT INSURANCE"). EQUIPMENT INSURANCE WILL COVER THE EQUIPMENT AND XFS; IT WILL NOT NAME YOU AS AN INSURED AND MAY NOT COVER ALL OF YOUR INTEREST IN THE EQUIPMENT AND WILL BE SUBJECT TO CANCELLATION AT ANY TIME. YOU AGREE TO PAY XFS PERIODIC CHARGES FOR EQUIPMENT INSURANCE (COLLECTIVELY "INSURANCE CHARGES") THAT INCLUDE: AN INSURANCE PREMIUM THAT MAY BE HIGHER THAN IF YOU MAINTAINED THE REQUIRED INSURANCE SEPARATELY; A FINANCE CHARGE OF UP TO 1.5% PER MONTH ON ANY ADVANCES MADE BY XFS OR OUR AGENTS; AND COMMISSIONS, BILLING AND PROCESSING FEES; ANY OR ALL OF WHICH MAY GENERATE A PROFIT TO XFS OR OUR AGENTS. XFS MAY ADD INSURANCE CHARGES TO EACH PAYMENT. XFS shall discontinue billing or debiting Insurance Charges for Equipment Insurance upon receipt and review of satisfactory evidence of Required Insurance. You must promptly notify XFS of any loss or damage to Equipment which makes any item of Equipment unfit for continued or repairable use. You hereby irrevocably appoint XFS as your attorney-in-fact to execute and endorse all checks or drafts in your name to collect under any such Required Insurance. Insurance proceeds from Required Insurance or Equipment Insurance received shall be applied, at XFS's option, to (x) restore the Equipment so that it is in the same condition as when delivered to you (normal wear and tear excepted), or (y) if the Equipment is not restorable, to replace it with like-kind condition Equipment from the same manufacturer, or (z) pay to XFS the greater of (i) the total unpaid Payments for the entire Term hereof (discounted to present value at the Discount Rate) plus, if an FMV purchase option is designated on the first page hereof, XFS's residual interest in such Equipment (herein agreed to be 20% of the Equipment's original cost to XFS) plus any other amounts due to XFS hereunder, or (ii) the Determined FMV immediately prior to the loss or damage. NO LOSS OR DAMAGE TO EQUIPMENT, OR XFS'S RECEIPT AND APPLICATION OF INSURANCE PROCEEDS, SHALL RELIEVE YOU OF ANY OF YOUR REMAINING OBLIGATIONS UNDER THIS AGREEMENT. Notwithstanding procurement of Equipment Insurance or Required Insurance, you remain primarily liable for performance under this Section in the event the applicable insurance carrier fails or refuses to pay any claim. YOU AGREE (I) AT XFS'S SOLE ELECTION TO ARBITRATE ANY DISPUTE WITH XFS, OUR AGENTS OR ASSIGNS REGARDING THE EQUIPMENT INSURANCE UNDER THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION IN FAIRFIELD COUNTY, CT, (II) THAT IF XFS MAKES THE FOREGOING ELECTION ARBITRATION (NOT A COURT) SHALL BE THE EXCLUSIVE REMEDY FOR SUCH DISPUTES; AND (III) THAT CLASS ARBITRATION IS NOT PERMITTED. This arbitration option does not apply to any other provision of this Agreement.

16. Finance Lease and Customer Waivers. The parties agree this Agreement shall be construed as a "finance lease" under UCC Article 2A. Customer waives its rights as a lessee under UCC 2A sections 508-522.

17. Authorization of Signer and Credit Review. You represent that you may lawfully enter into, and perform, this Agreement, that the individual signing this Agreement on your behalf has all necessary authority to do so, and that all financial information you provide accurately represents your financial condition. You agree to furnish financial information that XFS may request now, including your Federal Tax ID, and you authorize XFS to obtain credit reports on you in the future should you default or fail to make prompt payments hereunder.

18. Original and Sole Controlling Document. No Modifications Unless in Writing. This Agreement constitutes the entire agreement between the Parties as to the subjects addressed herein, and representations or statements not included herein are not part of this Agreement and are not binding on the Parties. You agree that an executed copy of this Agreement that is signed by your authorized representative and by XFS's authorized representative (an original manual signature or such signature reproduced by means of a reliable electronic form, such as electronic transmission of a facsimile or electronic signature) shall be marked "original" by XFS and shall constitute the only original document for all purposes. To the extent this Agreement constitutes UCC chattel paper, no security interest in this Agreement may be created except by the possession or transfer of the copy marked "original" by XFS. IF A PURCHASE ORDER OR OTHER DOCUMENT IS ISSUED BY YOU, NONE OF ITS TERMS AND CONDITIONS SHALL BE BINDING ON XFS, AS THE TERMS AND CONDITIONS OF THIS AGREEMENT EXCLUSIVELY GOVERN THE TRANSACTION DOCUMENTED HEREIN. SUPPLIER AND ITS REPRESENTATIVES ARE NOT OUR AGENTS AND ARE NOT AUTHORIZED TO MODIFY OR NEGOTIATE THE TERMS OF THIS AGREEMENT. THIS AGREEMENT MAY NOT BE AMENDED OR SUPPLEMENTED EXCEPT IN A WRITTEN AGREEMENT SIGNED BY AUTHORIZED REPRESENTATIVES OF THE PARTIES AND NO PROVISIONS CAN BE WAIVED EXCEPT IN A WRITING SIGNED BY XFS. You authorize XFS to insert or correct missing information on this Agreement, including but not limited to your proper legal name, agreement/numbers, serial numbers and other Equipment information, so long as there is no material impact to your financial obligations.

19. Governing Law, Jurisdiction, Venue and JURY TRIAL WAIVER. THIS AGREEMENT IS GOVERNED BY, AND SHALL BE CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF CONNECTICUT. THE JURISDICTION AND VENUE OF ANY ACTION TO ENFORCE THIS AGREEMENT, OR OTHERWISE RELATING TO THIS AGREEMENT, SHALL BE IN A FEDERAL OR STATE COURT IN FAIRFIELD COUNTY, CONNECTICUT OR, EXCLUSIVELY AT XFS'S OPTION, IN ANY OTHER FEDERAL OR STATE COURT WHERE THE EQUIPMENT IS LOCATED OR WHERE XFS'S OR YOUR PRINCIPAL PLACES OF BUSINESS ARE LOCATED, AND YOU HEREBY WAIVE ANY RIGHT TO TRANSFER VENUE. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION RELATED TO OR ARISING OUT OF THIS AGREEMENT.

20. Miscellaneous. Your obligations under the "Taxes" and "Liability" Sections commence upon execution, and survive the expiration or earlier termination, of this Agreement. Notices hereunder must be in writing. Notices to you will be sent to the "Billing Address" provided on the first page hereof, and notices to XFS shall be sent to our address provided on the first page hereof. Notices will be deemed given 5 days after mailing by first class mail or 2 days after sending by nationally recognized overnight courier. Invoices are not considered notices and are not governed by the notice terms hereof. You authorize XFS to communicate with you by any electronic means (including cellular phone, email, automatic dialing and recorded messages) using any phone number (including cellular) or electronic address you provide to us. If a court finds any term of this Agreement unenforceable, the remaining terms will remain in effect. The failure by either Party to exercise any right or remedy will not constitute a waiver of such right or remedy. If more than one party has signed this Agreement as Customer, each such party agrees that its liability is joint and several. The following four sentences control over every other part of this Agreement: Both Parties will comply with applicable laws. XFS will not charge or collect any amounts in excess of those allowed by applicable law. Any part of this Agreement that would, but for the last four sentences of this Section, be read under any circumstances to allow for a charge higher than that allowed under any applicable legal limit, is modified by this Section to limit the amounts chargeable hereunder to the maximum amount allowed under the legal limit. If, in any circumstances, any amount in excess of that allowed by law is charged or received, any such charge will be deemed limited by the amount legally allowed and any amount received by XFS in excess of that legally allowed will be applied by us to the payment of amounts legally owed hereunder or refunded to you.

CUSTOMER INSTALL				Agreement No.	
Full Legal Name City of Fowler			DBA		
Address 128 S 5th St.			City Fowler		State CA ZIP 93625
CUSTOMER BILL TO					
Name City of Fowler					
Address 128 S 5th St.			City Fowler		State CA ZIP 93625
Phone 559-934-3113	Contact Name Randy Uyeda	Contact Email ruyeda@ci.fowler.ca.us	Lessee PO# (Optional)		
Monthly Base Maintenance Payment = \$ 125.- Excess Per Image Charge stated in the below table					
Model(s)	B&W Monthly Allowance included in Monthly Base	Black & White Rate	Color Monthly Allowance included in Monthly Base	Color Rate	
XEROX C8055 H2	0	\$.0079	\$.049 0	\$.049	
XEROX C8035 H2	0	\$.0079	0	\$.049	
2- XEROX B7035	0	\$.0079			
XEROX 5955	0	\$.0049			
4- XEROX B400 DN	0	\$.0099			
HP OFFICE JET 8600	0	\$.0099	0	\$.09	

DEFINITIONS: The words Customer, You and Your refer to customer indicated above. The words Company, We, Us and Our to Image Source.

SERVICES OFFERED: We agree to provide all consumables, along with device environment monitoring, auto toner replenishment, proactive service error monitoring, phone technical support, service, and quarterly environment reporting under this Cost Per Image Agreement. Further information on the Service Management details are stated on the back of this document. Covered equipment, along with Cost Per Image pricing, is listed in the table above, or separately in Schedule(s) A, and/or B.

IMAGE CHARGES: Payments are due monthly, beginning the date the Agreement is initiated (as noted by the Agreement date below) or any later date designated by Us (see "Transitional Billing" section below) and continuing on the same day of each following month until fully paid. You are entitled to make the total number of images reflected in the Monthly Image Allowance shown in the table above, or separately in Schedule(s) A, and/or B, each month (if consolidated), or the monthly amount Image Allowance Per Machine or Group (if not consolidated). If You use more than the applicable Allowance(s) in any month, You will pay Us an additional charge equal to the number of additional metered images multiplied by the applicable Excess Per Image Charge. If the meter reading required for periodic billing is not available, Company may bill for use based on an average volume for the most recent 3 months. You agree that We may proportionally increase Your Per Image Charges at any time if Our estimated average page coverage is exceeded in any month during the term of this Agreement. Each print made that is larger than 145 square inches may register as 2 prints on the meter. In addition to the foregoing, You agree that effective on each/any anniversary of this Agreement, We may annually increase both the Minimum Monthly Payment and the Excess Per Image Charge by amounts determined in Our discretion, but not to exceed ten percent (10%) of the then current payment and/or charge in each year. You agree to comply with billing and meter collection procedures designated by Us, including notifying Us of the meter reading on the billing date. If meters are not received, We reserve the right to estimate Your usage for the billing period.

TRANSITIONAL BILLING: If We designate as the Agreement commencement date or effective date a date which is later than the date the Agreement is/was initiated (as noted by the Agreement Date below), then You shall pay Us an interim payment for each day, from the date the Agreement is/was initiated until the commencement date, equal to the minimum monthly payment divided by 30. If this Cost Per Image Agreement has no minimum monthly amount (as designated in in the table above, or separately in Schedule(s) A, and/or B), We will bill You for actual pages copied or printed from the Agreement initiation date until the designated commencement date.

GOVERNING LAW, CONSENT TO JURISDICTION AND VENUE OF LITIGATION: This Agreement and each addendum shall be governed by the laws of the State of California. You agree that any dispute arising under or related to this agreement will be adjudicated in the federal or state court located in San Bernardino. You hereby consent to personal jurisdiction and venue in that court and waive any right to transfer venue. Each party waives any right to a trial by jury.

LATE FEES: If any amount payable to Us is not paid when due, You will pay Us a late charge equal to 1) a rate of 1.5% per month of balance overdue or 2) a minimum of \$5 per month. The Customer will also pay collection costs and reasonable attorney's fees should the account be placed for collection.

AGREEMENT PERIOD: This agreement is for a period of 60 months from the date the Agreement is initiated, and is non-cancelable. In addition to any other rights under this contract, Company may terminate this contract at any time by giving the Customer 30 day prior written notice. Unless notified in writing 30 days prior to the contract expiration date, this agreement shall renew for 12-month periods.

THIS AGREEMENT IS SUBJECT TO THE TERMS AND CONDITIONS PRINTED ON THIS PAGE, THE REVERSE SIDE, AND, IF APPLICABLE ATTACHED SCHEDULE(S) A AND/OR B, ALL OF WHICH PERTAIN TO THIS AGREEMENT AND WHICH YOU ACKNOWLEDGE HAVING READ. THIS AGREEMENT IS NOT BINDING UNTIL ACCEPTED BY US. YOU CERTIFY ALL ACTIONS REQUIRED TO AUTHORIZE EXECUTION OF THIS AGREEMENT, INCLUDING YOUR AUTHORITY, HAVE BEEN FULFILLED.			
IMAGE SOURCE: (As Stated Above)		CUSTOMER: (As Stated Above)	
Signature		Signature	
Print Name & Title	Date Accepted	Print Name & Title	Date
Randy Uyeda		Randy Uyeda	12/11/19

Randy Uyeda
Finance Director

I. MAINTENANCE AND SUPPLIES.

- A. **Cost Per Image Charges.** The charges stated in the Agreement include charges for maintenance (from 8 a.m. to 5 p.m. local time, except weekends and holidays ("Regular Service Hours"), inspection, adjustment, parts replacement, cleaning material required for proper operation, and toner and developer for such Equipment and may also include charges for such maintenance and supplies provided to You for the Equipment. Paper and staples are not included in this maintenance agreement. You must purchase staples separately from Us. Color toner and developer supplies will be provided for production of pages, with an average 20% page coverage. Supplies required for production in excess of 20% page coverage will be invoiced separately. Specialty toner and dry inks excluded from consumable supplies. Consumable supplies exclude any toners and dry inks (and their associated developers) other than standard cyan, magenta, yellow, and black. Specialty toner and dry inks (and their associated developers) must be purchased separately from Us. We may charge a fulfillment fee to cover equipment monitoring and supply replenishment and delivery.
- B. **Equipment Eligible for Coverage.** This only applies to the Equipment identified in the table on page one, or separately in Schedule(s) A, and/or B. You represent and warrant that, other than as set forth in the table on page one, or separately in Schedule(s) A, and/or B, there is no other equipment located at Your site(s) capable of using Our supplied toner and ink consumables. All Equipment capable of using Our supplied toner and ink consumables must be included in this Agreement. To the best of Your knowledge, there are no equipment conditions that do not meet manufacturer's specifications ("Pre-Existing Conditions"), other than those specifically identified in the table on page one, or separately in Schedule(s) A, and/or B. You agree that We shall have the right to inspect and verify any Equipment covered by this Agreement which was previously owned by You. We reserve the right, at Our sole discretion, to exclude from this agreement any Equipment that We determine to have material faults, and/or to be unfit for service. If applicable, We may discount the Monthly Base Maintenance Payment by the amount reasonably allocated to any excluded Equipment.
- C. **Definition of Services Provided.** We agree (a) to perform only those repairs involving worn Equipment components that have failed during ordinary use of the Equipment under normal operating conditions (trays, covers and other non-consumable parts are not covered), and (b) to supply You with all toner and ink consumables required to operate the Equipment. Requests for services outside of Regular Service Hours will be provided on a best effort basis at Our prevailing time and material hourly rate. Such charges for services outside of Regular Service Hours are in addition to the prepaid Minimum Monthly Payment. This Agreement does not cover after-hours service, shop overhauls, and service made necessary by accident, fire, water, natural disasters, or failure by You to meet the manufacturer's electrical requirements.
- D. **Access to Equipment.** We shall have the right to access Your site and any other of Your premises that may house Equipment upon reasonable notice for access with Your supervision during regular work hours. We reserve the right to invoice You at Our prevailing time and material hourly rate, separate from the Minimum Monthly Payment, when access to the Equipment is denied for greater than fifteen (15) minutes, when You initiated the request for service. We shall apply an estimated monthly page volume to any and all Equipment that cannot be accessed for page count recording purposes.
- E. **Authorized Maintenance Providers.** We, at Our discretion, may authorize Our approved maintenance subcontractors or approved service providers to perform maintenance and repairs to the Equipment. In cases where We manage Your third party service agreement on Your behalf, then all sums currently due under that agreement must be paid in full before We will assume any obligation or responsibility.
- F. **Repair Responsibility.** Maintenance services excludes repairs due to: (a) misuse, neglect or abuse; (b) failure of the installation site or the PC or workstation used with the Equipment to comply with manufacturer's published specifications; (c) use of options, accessories or products not serviced by Us; (d) non-image Source alterations, relocation, service or supplies; or (e) failure to perform operator maintenance procedures identified in operator manuals, or (f) failure by You to meet the manufacturer's electrical requirements. Equipment may not be moved to another physical address without Our prior written consent, which shall not be unreasonably withheld or delayed. You agree that you will not take the Equipment out of service during the Term.
- G. **Analyst Services.** We agree to provide Analyst Services, at no additional charge, for the first 90 days of this Agreement. After 90 days, You agree to pay Us periodic charges for Analyst Services. We shall discontinue billing or debiting Analyst Services upon receipt of a written request to discontinue Analyst Services support for Equipment. Upon cancellation, You agree to bear the entire cost of Analyst Services retained to the Equipment covered by this Agreement.
- H. **Ownership and Control of Toner and Ink Consumables.** All toner and ink consumables supplies provided under this Agreement shall at all times remain the property of Us. You may use the toner and ink consumables pursuant to the terms of this Agreement, but You shall not have any ownership rights in or to the toner or ink consumables. You shall not be charged for any toner or ink consumables in use upon the expiration of this Agreement. The ordering of consumables significantly in excess of the number of copies or prints produced may be charged to You by Us.
- I. **Additional Equipment and Right of Inspection.** 1. You shall notify Us promptly upon installing any additional equipment ("Additional Equipment") at Your site capable of using Our supplied toner and ink consumables. Equipment installed subsequent to the date of this Agreement will be evaluated by Us, and included in, or excluded from, this Agreement at the sole discretion of Us. 2. Additional Equipment deemed included in the Agreement by Us shall be added to this Agreement and will automatically be covered by and considered Equipment under the terms of this Agreement. Billings or surcharges for Additional Equipment output will be reflected in the billing cycle immediately following the billing cycle in which the Additional Equipment is installed. If You add Additional Equipment, the Minimum Monthly Payment may be adjusted accordingly, at Our sole discretion. 3. If any such Additional Equipment is used equipment, You represent and warrant to Us that, except for Pre-Existing Conditions duly disclosed to Us prior to such Additional Equipment being covered by this Agreement, all of the Additional Equipment shall, on the date such coverage commences, be in good working order. We shall be entitled to take a physical inventory of the Additional Equipment, upon or prior to its being covered by this Agreement, to determine whether they are in working order. In the event, as of the date coverage commences under this Agreement, any Additional Equipment is not in good working order, You shall have such Additional Equipment repaired at Your sole expense and, until such Additional Equipment is so repaired, any Additional Equipment with Pre-Existing Conditions shall not be covered under this Agreement. An initial meter reading of zero (0) is agreed, unless You provide timely information to the contrary, for any Additional Equipment that meets the conditions of I.1.
- II. **WARRANTY.** Notwithstanding anything in this Agreement to the contrary, We warrant (a) that all personnel performing services hereunder by or on behalf of Us will have appropriate training and experience and (b) all equipment is in accordance with industry standards, and all supplies and materials are of good quality. Without limiting the generality of the foregoing (and without limiting any obligation of Us to make repairs under this Agreement), You expressly agree and acknowledge that in no event shall any manufacturer's warranty, including but not limited to any implied warranty of merchantability, and fitness for a particular purpose, be deemed given by or otherwise transferred or applied to Us. If You notify Us within ninety (90) days from performance of the services that the services or a part thereof fails to conform to the standards specified herein, Your sole and exclusive remedy is that We shall promptly repair, replace, or re-perform the non-conforming services.

III. MONITORING SOFTWARE.

- A. **You grant Permission to Install and Maintain Software.** We license software ("Monitoring Software") that enables Us to monitor the usage of, and the copy count produced on, the Equipment. You agree that We shall have the right, at any time during the term of this Agreement, to install the Monitoring Software on one or more of Your computer networked station(s). You agree to provide Us, during normal business hours, access to Your computer-networked station(s) to enable Us to upgrade, modify or maintain the Monitoring Software or to install new releases or additions to the Monitoring Software. Under no circumstances will the Monitoring Software provide Us access to Your information other than information directly related to this Agreement. You agree to not delete or remove the Monitoring Software or to alter, modify or otherwise render it unusable during the term of this Agreement without the prior written consent of Us. If You disagree, then We retain the right to invoice You the prevailing hourly billable rate for labor required to obtain meter readings, per meter reading cycle.
- B. **No License, other Prohibitions.** Nothing herein shall be construed as granting a license to You for the use of the Monitoring Software. You may not, nor may You permit or cause any other person to (a) use or copy the Monitoring Software, in whole or in part, in any manner, (b) modify, translate, reverse engineer, decompile or disassemble the Monitoring Software, (c) rent, lease, loan, resell, distribute, use in a customer-server network to provide third parties access to, or otherwise transfer the Monitoring Software, or (d) remove any proprietary notices on the Monitoring Software.
- C. **Intellectual Property Rights.** All rights (including all intellectual property rights, whether recognized currently or in the future) in and to the Monitoring Software (including any source code, executable code, object code, tools and/or libraries related to the Monitoring Software) will at all times be owned by Us. No modifications and/or use by You of the Monitoring Software shall under any circumstances transfer any right, title or interest in or to the Monitoring Software to You or any third party.
- D. **Monitoring Software Warranty, Liability.** You acknowledge that the Monitoring Software will be installed on Your networked workstation(s) "as is" without warranty of any kind, either express or implied, including the implied warranties of merchantability, fitness for a particular purpose and non-infringement. We do not warrant that the Monitoring Software will be error free or will operate without interruption. We shall in no event be liable to You or any third party for any special, consequential, incidental or indirect damages in connection with the Monitoring Software. If the software is found to cause issues on Your network, and these issues can be reasonably associated to the installation of the software through uniform software testing and tracing methodologies, Our liability will be limited to the removal of said Monitoring Software from Your environment.

IV. MISCELLANEOUS.

- A. **Software.** Performance issues related to Software and/or connectivity are not covered under the terms of this Agreement. Any warranties related to Software will be those offered by the manufacturer and will be passed directly to the user.
- B. **Software/Hardware.** Connectivity and performance issues related to Software and non-standard hardware are not covered under the terms of this Agreement. Any warranties related to these solutions, which include but are not limited to: Xerox ConnectKey Applications, PaperCut, XMedius Fax, Umango, Square9, Ysoft, Nuance, Formax, NeoPost, or Xerox Freedom, any computers and scanners, will be those offered by the manufacturer and passed directly to the user. Operation and configuration of the Software will be the responsibility of You and initial install and operation test is completed by Us.



CITY OF FOWLER California

Current Situation

	Model Number	Included Features	Serial Number	Department Location	Lease Payment	Maintenance Base	Meter Type	Mo Vol Included	Actual Mo Volume	Cost Per Page	Monthly Usage Cost	Monthly Totals	
1	Xerox C8035	35ppm B/W 35ppm Color Copy / Print / One Touch Color Scan / Fax / 4Tray	New	Police Dept.	\$1,005.82	\$125.00	B/W Color	0 0	1,398 3,049	\$0.0079 \$0.0490	\$11.04 \$149.40	\$1,291.27	
2	Xerox C8055	55ppm B/W 55ppm Color Copy / Print / One Touch Color Scan / Fax / 4Tray	New	Administration			B/W Color	0 0	10,411 773	\$0.0079 \$0.0490	\$82.25 \$37.88	\$120.12	
3	Xerox B7035	35ppm B/W Copy / Print / One Touch Color Scan / Fax / 4Tray	New	Yvonne			B/W	0	381	\$0.0049	\$1.87	\$1.87	
4	Xerox B7035	35ppm B/W Copy / Print / One Touch Color Scan / Fax / 4Tray	New	City Hall - Planning			B/W	0	489	\$0.0049	\$2.40	\$2.40	
5	Xerox 5955	55ppm B/W Copy / Print / Scan / Fax / 4Tray	Certified pre - owned	Public Works			B/W	0	1,500	\$0.0049	\$7.35	\$7.35	
6	Xerox B400 DN	47 ppm B/W duplex printer	New	Maggie			B/W		673	\$0.0099	\$6.66	\$8.88	
7	Xerox B400 DN	47 ppm B/W duplex printer	New	Angela			B/W		224	\$0.0099	\$2.22	\$2.22	
9	Xerox B400 DN	47 ppm B/W duplex printer	New	Krystle			B/W		0	\$0.0099	\$0.00	\$0.00	
10	Xerox B400 DN	47 ppm B/W duplex printer	New	Nancy			B/W		0	\$0.0099	\$0.00	\$0.00	
63 Month FMV					Total:	\$1,005.82	\$125.00	B/W Vol	15,076	Col Vol.	4,046	Monthly Total:	\$1,434.10

Proposed Solution

	Model Number	Included Features	Serial Number	Department Location	Lease Payment	Maintenance Base	Meter Type	Mo Vol Included	Actual Mo Volume	Cost Per Page	Monthly Usage Cost	Monthly Totals	
1	Xerox C8035	35ppm B/W 35ppm Color Copy / Print / One Touch Color Scan / Fax / 4Tray		Police Dept.	\$1,390.62	\$100.00	B/W Color	0 0	1,398 3,049	\$0.0079 \$0.0490	\$11.04 \$149.40	\$1,651.07	
2	Xerox C9070	70ppm B/W 70ppm Color Copy / Print / One Touch Color Scan / Fax / 4Tray		Administration			B/W Color	0 0	10,411 773	\$0.0079 \$0.0490	\$82.25 \$37.88	\$120.12	
3	C405	36ppm B/W 36ppm Color Copy / Print / Color Scan / Fax		Yvonne			B/W Color	0 0	381 0	\$0.0099 \$0.9900	\$3.77 \$0.00	\$3.77	
4	Xerox C8055	55ppm B/W 55ppm Color Copy / Print / One Touch Color Scan / Fax / 4Tray		City Hall - Planning			B/W Color	0 0	489 0	\$0.0079 \$0.0490	\$3.86 \$0.00	\$3.86	
5	Xerox B7035	35ppm B/W Copy / Print / Scan / Fax / 4Tray		Public Works			B/W	0	1,500	\$0.0049	\$7.35	\$7.35	
6	Xerox B400 DN	47 ppm B/W duplex printer		Krystle			B/W		673	\$0.0099	\$6.66	\$8.88	
7	Xerox B400 DN	47 ppm B/W duplex printer		Maggie			B/W		224	\$0.0099	\$2.22	\$2.22	
63 Month FMV					Total:	\$1,394.40	\$100.00	B/W Vol	13,576	Color Vol	3,822	Monthly Total:	\$1,797.27

Pricing Valid through June 30th, 2022

Price does not include applicable sales tax

Immediate Advantages:

Removal of your current Toshiba leased equipment

Xerox ConnectKey Technology - including Apple AirPrint, benchmark security, one touch scanning, application defaults & much more!

Includes all maintenance, supplies, parts, toner, labor, equipment delivery, setup, and staff training (excluding paper and staples)

Includes Analyst services at no additional charge for 90 days after installation



Scott Dobyms, Region Vice President . sdobyms@imagesourceusa.com . Ph. 909-890-4040 ext. 25605

Image Source Total Satisfaction Guarantee





CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-H

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM THOMAS W. GAFFERY IV, Community & Economic Development Director
ANGELA VASQUEZ, Deputy City Clerk

SUBJECT

APPROVE Statement of Work Agreements with CivicPlus in the amount of \$14,104 for website and meeting management design and two (2) years of service, and authorize the City Manager to execute related documents.

RECOMMENDATION

Staff recommend the City Council approve the above proposed action.

BACKGROUND

The City currently uses CivicPlus (formerly Municode) for codification services. The City does not currently have an automated workflow for meeting and agenda management. The City's current website is outdated, not mobile-friendly, and has ADA accessibility issues. Additionally, the current website requires City staff to contact the vendor for any changes, including simple tasks like uploading agendas. The CivicPlus interface will allow City staff to directly make simple changes using a web interface. After the branding and marketing vendor has completed their work, staff will be able to work with CivicPlus to make any necessary updates to the City's website templates.

ENVIRONMENTAL REVIEW

This action does not constitute a "project" pursuant to the California Environmental Quality Act.

FISCAL IMPACT

On August 2, 2022, City Council approved Resolution No. 2581 appropriating funding funds for this scope of work.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Statement of Work: Municode Meetings
- Statement of Work: Municode Web Premium

**CivicPlus**

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #:

Q-27983-1

Date:

8/9/2022 9:29 AM

Expires On:

11/7/2022

Product:

CivicClerk

Client:

Fowler CA - CivicClerk

Bill To:

Fowler CA - CivicClerk

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Christopher Rogers	x	crogers@civicplus.com		Net 30

CivicClerk - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	Municode Meetings Premium – One-Time Build Cost	Municode Meetings Premium – One-Time Build Cost	One-time
1.00	Municode Meetings Premium Annual	Municode Meetings Premium Annual	Renewable
1.00	Municode Meetings Additional Meetings Bodies	Municode Meetings Additional Meetings Bodies	Renewable

List Price - Year 1 Total	USD 4,500.00
Total Investment - Year 1	USD 3,600.00
Annual Recurring Services - Year 2	USD 3,780.00

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at <https://www.civicplus.com/master-services-agreement> ("MSA"), to which this SOW is hereby attached as the CivicClerk Statement of Work. By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.
2. This SOW shall remain in effect for an initial term equal to 365 days from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".
3. The Total Investment - Year 1 will be invoiced at signing of this SOW. Client will pay all invoices within 30 days of the date of invoice.

4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 2 of service.
5. Client shall have sole control and responsibility over the determination of which data and information shall be included in the content that is to be transmitted and stored by CivicPlus. Client shall not provide to CivicPlus or allow to be provided to CivicPlus any content that (a) infringes or violates any 3rd party's Intellectual Property rights, rights of publicity or rights of privacy, (b) contains any defamatory material, or (c) violates any federal, state, local, or foreign laws, regulations, or statutes.
6. The scope of the initial implementation services to be delivered by CivicPlus are as listed above. Client is responsible for providing all information required for the configuration of the services in accordance with the scope and project timeline.
7. Upon Go-Live, any unused implementation services (ie: board configuration) will expire. Any configuration of additional boards by CivicPlus after Go-Live may incur additional one-time charges based on the scope of the desired configuration, design, and training services.
8. Completion of implementation services will be determined by Go Live status. The parties agree to cooperate in a timely manner to complete all implementation tasks and deliverables in order to obtain Go-Live status of the services. CivicPlus will make reasonable efforts to confirm Go Live status with the Client, but reserves the right to deem Client's use of the services in the intended course of business as Go Live. "Go-Live" is defined as the Client's use of the services implemented by CivicPlus under this SOW for the intended purpose and with the intended audience.

Signature Page to follow.

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: <https://www.civicplus.com/master-services-agreement>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization

URL

Street Address

Address 2

City

State

Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays).
Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for
ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact

E-Mail

Phone

Ext.

Fax

Billing Address

Address 2

City

State

Postal Code

Tax ID #

Sales Tax Exempt #

Billing Terms

Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [] or N []

Please list all external sources: _____

Contract Contact

Email

Phone

Ext.

Fax

Project Contact

Email

Phone

Ext.

Fax

**CivicPlus**

302 South 4th St. Suite 500
Manhattan, KS 66502
US

Quote #:

Q-27975-1

Date:

8/8/2022 5:03 PM

Expires On:

11/6/2022

Product:

CivicEngage

Client:

Fowler CA - CivicEngage

Bill To:

Fowler CA - CivicEngage

SALESPERSON	Phone	EMAIL	DELIVERY METHOD	PAYMENT METHOD
Christopher Rogers	x	crogers@civicplus.com		Net 30

CivicEngage - Statement of Work

QTY	PRODUCT NAME	DESCRIPTION	PRODUCT TYPE
1.00	Municode Web Premium Civic Open Subscription	Municode Web Premium Civic Open Subscription	Renewable
1.00	Municode Web Premium Civic Open Build	Premium Municode Web Civic Open Build: Standard Design, 150 pages migration, 3yrs meetings migration, 3 1hr virtual training sessions	One-time

List Price - Year 1 Total	USD 4,100.00
Total Investment - Year 1	USD 3,280.00
Annual Recurring Services - Year 2	USD 3,444.00

Total Days of Quote:365

1. This Statement of Work ("SOW") shall be subject to the terms and conditions of the CivicPlus Master Services Agreement located at <https://www.civicplus.com/master-services-agreement> ("MSA"), to which this SOW is hereby attached as the CivicEngage Statement of Work. By signing this SOW, Client expressly agrees to the terms and conditions of the MSA throughout the Term of this SOW.
2. This SOW shall remain in effect for an initial term equal to 365 days from the date of signing ("Initial Term"). In the event that neither party gives 60 days' notice to terminate prior to the end of the Initial Term, or any subsequent Renewal Term, this SOW will automatically renew for an additional 1-year renewal term ("Renewal Term"). The Initial Term and all Renewal Terms are collectively referred to as the "Term".
3. The Total Investment - Year 1 will be invoiced upon signing of this SOW.
4. Annual Recurring Services shall be invoiced on the start date of each Renewal Term. Annual Recurring Services, including but not limited to hosting, support and maintenance services, shall be subject to a 5% annual increase beginning in year 2 of service. Client will pay all invoices within 30 days of the date of such invoice.

5. Client agrees that CivicPlus shall not migrate, convert, or port content or information that could reasonably be construed as time sensitive, such as calendar or blog content, during the Project Development.
6. If a Recurring Redesign line item is included with the Client's quote in this SOW, starting after 48 months of continuous service under this SOW, Client shall be entitled to receive a redesign at no additional cost. Client may initiate such redesign any time after 48 months of continuous service. Upon the initiation of an eligible redesign project, Client may begin accumulating eligibility towards a subsequent redesign after another 48 months of continuous service. Redesigns that include additional features not available on the original website may be subject to additional charges. Additional features include, but are not limited to, additional modules and integration of third-party software. Recurring Redesigns are eligible for the website, subsite, and department headers included in this SOW only. Any subsequently purchased website, subsite, and department header shall not be included in a redesign hereunder.
7. Client allows CivicPlus to display a "Government Websites by CivicPlus" insignia, and web link at the bottom of their web pages. Client understands that the pricing and any related discount structure provided under this SOW assumes such perpetual permission.

Signature Page to Follow.

Acceptance

By signing below, the parties are agreeing to be bound by the covenants and obligations specified in this SOW and the MSA terms and conditions found at: <https://www.civicplus.com/master-services-agreement>.

IN WITNESS WHEREOF, the parties have caused this SOW to be executed by their duly authorized representatives as of the dates below.

Client

CivicPlus

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Contact Information

*all documents must be returned: Master Service Agreement, Statement of Work, and Contact Information Sheet.

Organization

URL

Street Address

Address 2

City

State

Postal Code

CivicPlus provides telephone support for all trained clients from 7am –7pm Central Time, Monday-Friday (excluding holidays).
Emergency Support is provided on a 24/7/365 basis for representatives named by the Client. Client is responsible for
ensuring CivicPlus has current updates.

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Emergency Contact & Mobile Phone

Billing Contact

E-Mail

Phone

Ext.

Fax

Billing Address

Address 2

City

State

Postal Code

Tax ID #

Sales Tax Exempt #

Billing Terms

Account Rep

Info Required on Invoice (PO or Job #)

Are you utilizing any external funding for your project (ex. FEMA, CARES): Y [] or N []

Please list all external sources: _____

Contract Contact

Email

Phone

Ext.

Fax

Project Contact

Email

Phone

Ext.

Fax



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-I

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM DAWN E. MARPLE, City Planner

SUBJECT

ADOPT Ordinance No. 2022-06, repealing Chapter 3, of Title 9 of the Fowler Municipal Code to consolidate and clarify setback standards.

RECOMMENDATION

Ordinance 2022-06 was introduced by unanimous approval of the City Council on August 2, 2022. It is recommended that the Ordinance be adopted.

BACKGROUND

This item was introduced at the August 2, 2022 City Council meeting.

Chapter 5, of Title 9 of the Fowler Municipal Code, adopted in 2009, is known as the City's Zoning Ordinance. It contains the necessary regulations to ensure that the City grows in an orderly manner. Chapter 3, of Title 9 of the Fowler Municipal Code, adopted in 1951, is part of the Planning and Zoning Title, but contains provisions that conflict with Chapter 5, which was adopted many years later.

Chapter 3 defines a "structure" as one that includes, among other things, fences and swimming pools. Therefore, fences and swimming could not be located within front and rear yards, respectively, which conflicts with both the standards within Chapter 5 and the legislative body's later expressed intent with the adoption of Chapter 5 in 2009.

Duplicative provisions include zoning violations, variances, zone map amendments, appeals, and nonconforming structures. Repealing Chapter 3 would ensure fewer conflicts and ensure that both City staff and the public can more easily understand, interpret, apply, and implement the City's Zoning regulations.

The table below provides a summary of each section in Chapter 3, with each corresponding section in Chapter 5.

Chapter 3 Section	Description	Chapter 5 Section
9-3.01	Introduces this Chapter as the “Setback Law of the City of Fowler”	9-5.102, Short Chapter
9-3.02	Allows for the adoption of a “precise plan” that limits where buildings and other improvements can be located.	Article 3, Establishment of Zoning Districts
9-3.03	Intention of Setback Law	9-5.101, Purpose
9-3.04	Defines terms used in Chapter 3. Defines “building” as including fences and swimming pools.	Article 2, Definitions
9-3.05	Allows for the adoption of setback lines and allows them to be modified	9-5.420, Amendment of Zoning Map and 9-5.421 and .422, Allows for zoning amendments
9-3.06	Grants authority of Variances to recommend by Planning Commission and approval by City Council	Article 27, Variances and Minor Deviations
9-3.07	Granting or denial criteria of Variances	
9-3.08	Variance procedures	
9-3.09	Legal nonconforming procedures	Article 29, Nonconforming Uses
9-3.10	Allows for amendments to Chapter 3	9-5.420, Amendment of Zoning Map and 9-5.421 and .422, Allows for zoning amendments
9-3.11	Appeal procedures	9-5.418 and .419, Appeals
9-3.12	Public nuisances	9-5.107, Code Enforcement, and 9-5.110, Penalties for Violation

ENVIRONMENTAL FINDINGS

Planning Case Number 22-0028 has been reviewed pursuant to the California Environmental Quality Act (CEQA), and has been determined to be exempt pursuant from environmental review pursuant to CEQA Guidelines Section 15061(b)(3).

FISCAL IMPACT

Staff do not anticipate any fiscal impact due to this ordinance.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments:

- Ordinance No. 2022-06

ORDINANCE 2022-06

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER REPEALING CHAPTER 3, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE REGARDING SETBACK STANDARDS, AND TO ADOPT AN EXEMPTION UNDER CEQA GUIDELINES SECTION 15061, SUBDIVISION (B)(3).

WHEREAS, on February 3, 2009, the City Council of the City of Fowler adopted Ordinance No. 2009-01, amending Chapter 5, of Title 9 of the Fowler Municipal Code, which was a comprehensive update to the City's Zoning Ordinance and is referred to as the City's "Zoning Ordinance"; and

WHEREAS, Chapter 3, of Title 9 of the City's Municipal Code, referred to as the City's "Setback Law", contains a conflicting definition of a "structure", resulting in conflicting interpretations within the Zoning Ordinance; and

WHEREAS, the Planning Commission adopted Resolution No. 675, on July 7, 2022, recommending that the City Council adopt an ordinance to repeal Chapter 3, of Title 9 of the Fowler Municipal Code; and

WHEREAS, the City Council desires to repeal Chapter 3, of Title 9 of the Fowler Municipal Code to ensure consistent and streamlined interpretations of the City's Zoning Ordinance.

THE CITY COUNCIL OF THE CITY OF FOWLER DOES ORDAIN AS FOLLOWS:

SECTION 1: Chapter 3, of Title 9 of the Fowler Municipal Code is hereby repealed in its entirety.

~~9-3.01 Title.~~

~~This chapter shall be known as the "Setback Law of the City of Fowler".~~

~~9-3.02 Precise plan: Adoption and purpose.~~

~~There is hereby adopted a precise plan limiting the location of buildings and other improvements with respect to existing or planned rights-of-way pursuant to the authority of the Zoning and Planning Law of the State for the purpose of implementing the General Plan of the City, and to furnish a guide for the orderly physical growth and development~~

~~of the City, and to promote and protect the public health, safety, and general welfare. Such specific plan may be developed progressively by the addition thereto from time to time, in the manner prescribed by law, of detailed plans for certain streets or highways.~~

~~9-3.03 Scope.~~

~~The provisions of this chapter are intended to:~~

- ~~(a) — Regulate the future location of buildings and other improvements so as to furnish sufficient visibility for the safe operation of vehicles upon, and entering into, streets and highways and sufficient visibility and places of safety for pedestrians in present and future rights-of-way; and~~
- ~~(b) — Regulate the future location of buildings and other improvements so that such buildings and other improvements shall conform to the zoning provisions set forth in Chapter 5 of this title with relation to the distance from the lot line determined by the new right-of-way line when street or highway rights-of-way are extended to the specific plan lines.~~

~~9-3.04 Definitions.~~

~~For the purposes of this chapter, unless otherwise apparent from the context, certain words and phrases used in this chapter are defined as follows:~~

- ~~(a) — "Building" shall mean any building, structure, or installation, whether located in, on, over, or under the ground, and shall include, but shall not be limited to, the following: walls, fences other than open fences, wells for water, oil, or other~~

~~hydrocarbon products, tanks, off-street parking spaces or facilities required by any law of the City, and swimming pools. "Building" shall not include or apply to the following: trees, shrubs, agricultural crops, open fences, public utilities installed pursuant to the provisions of law or a franchise, walks, driveways, irrigation pipes and related fixtures, off-street parking facilities or spaces not required by laws of the City, streets, curbs, and other municipal facilities or installations.~~

~~(b) — "Commission" shall mean the Planning Commission of the City.~~

~~(c) — "Improvement" shall have the same meaning as "building", as defined in subsection (a) of this section.~~

~~(d) — "Open fence" shall mean a fence, fifty (50%) percent or more of the surface of which is open to the passage of light and vision on either any and all horizontal planes, or any and all vertical planes, perpendicular to the vertical surface thereof.~~

~~(e) — "Setback line" shall mean that line, measured from the specific plan line, beyond which no building or improvement would be permitted to be erected or constructed pursuant to the zoning provisions set forth in Chapter 5 of this title if the lot line, as defined in the zoning provisions, were the same as the specific plan line.~~

~~(f) — "Specific plan line" shall mean a line indicating the exterior boundary of the proposed right-of-way of any street or highway on any map on which the specific plan is expressed.~~

~~(g) — "Verification" shall mean and include a declaration under penalty of perjury.~~

~~9-3.05 Setback lines: Establishment: Amendments: Authority.~~

~~A specific plan establishing a setback line shall be adopted by means of a map or a written statement, or by a combination of a map and a written statement, which shows or describes such line. Such maps and written statements shall be as much a part of this chapter as if the matters and information set forth on them were fully described in this chapter. Such maps and written statements shall be kept on file in the office of the City Clerk. Additional setback lines may be adopted, and changes in the established lines may be made by adding new maps, amendments to all or parts of maps, and written statements, or combinations of the same.~~

~~Such maps may be divided into parts and subparts, which may be separately shown or employed for the purposes of amending such maps.~~

~~9-3.06 Variances: Authority of Commission.~~

~~(a) — All duties with respect to the hearings, considerations, and recommendations for variances from the provisions of this chapter are hereby assigned and delegated to the Commission pursuant to the provisions of Article 12 of Chapter 3 of Title 7 of the Government Code of the State (Sections 65700 et seq.) and Article 10 of Chapter 5 of this title.~~

~~(b) — The Commission shall have the authority to grant variances to the setback lines established pursuant to the provisions of this chapter and to specify the terms and conditions thereof, subject to the final approval of the Council. Any such variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privilege inconsistent with the~~

~~limitations upon other properties in the vicinity in which the subject property is situated and such other conditions as the Commission shall deem necessary to carry out the purposes of this chapter. Any action by the Commission and Council in such cases shall be by resolution.~~

~~9-3.07 Variances: Granting or denial: Criteria.~~

~~(a) — Variances to the setback lines established pursuant to the provisions of this chapter shall be granted if the applicant shows, and the Commission finds, that any of the following is true:~~

~~(1) — That because of special circumstances applicable to the subject property, including size, shape, topography, or location, the strict application of the provisions of this chapter would deprive the subject property of privileges enjoyed by a substantial number of other properties in the vicinity and fronting on the same street or highway;~~

~~(2) — That the nature of the property of the applicant is such that he will be substantially damaged unless the proposed building or improvement is authorized;~~

~~(3) — That the property of the applicant will not earn a fair return on the investment of the applicant unless the proposed building or improvement is authorized; or~~

~~(4) — That, balancing the interests of the public in effecting the purposes of the provisions of this chapter against the interests of the applicant in using his~~

~~property with the proposed building or improvement thereon, the granting of the variance is required by consideration of justice and equity.~~

~~(b) — Such variance shall not be granted if the Commission shall find that any of the following is true:~~

~~(1) — That the applicant will not be substantially damaged by locating the proposed building or other improvement at a point on his property behind the setback line; or~~

~~(2) — That, balancing the interests of the public in effecting the purposes of this chapter against the interests of the applicant in using his property with the proposed building or improvement thereon, the resulting disadvantages to the public would be unreasonably disproportionate to the advantages to the applicant to be derived from so using his property.~~

~~9-3.08 Variances: Procedure.~~

~~(a) — Initiation. Variances to the setback lines established pursuant to the provisions of this chapter shall be initiated by the verified application of any owner of property claiming to be entitled to a variance therefor, or of his agent, which application shall be filed with the Commission.~~

~~(b) — Commission hearings: Notices. The Commission shall hold at least one public hearing on the matter of an application for such variance. Notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the City at least ten (10) days before the hearing and by such other means as the Commission may deem necessary.~~

- ~~(c) — Commission hearings: Continuance. Any such hearing may be continued by the vote of the majority of the members present at such hearing who may fix a time and place to which such hearing shall be so continued, even in the absence of a quorum, in which case the presiding officer at such hearing shall publicly announce, prior to the conclusion of the hearing, the time and place to which the hearing is to be continued, and no further notice shall be required.~~
- ~~(d) — Commission hearings: Quorum: Voting. The number of members necessary for a quorum, and the number of votes necessary for the adoption of any resolution granting or denying such variance, shall be a majority of the total voting membership of the Commission. All other matters shall be determined by the majority vote of the members present.~~
- ~~(e) — Commission hearings: Reports of investigations. The Commission may consider at such hearing any report of any investigation by a committee of one or more members of the Commission, or its staff, authorized by the Commission in its discretion.~~
- ~~(f) — Commission hearings: Granting: Filing with Council. Within thirty (30) days after the adoption of a resolution granting such variance, the Commission shall file a copy of such resolution with the Council.~~
- ~~(g) — Council hearings. Within thirty (30) days after the receipt of a copy of such resolution, the Council shall consider such resolution at a public meeting. No notice of the consideration of such matter shall be required.~~

- (h) ~~Council hearings: Decisions. The approval or disapproval by the Council of the granting of such variance, or of any conditions attached to such variance, shall be upon the grounds set forth in Section 9-3.07 of this chapter. The Council may impose new or different conditions to the granting of the variance. The action of the Council shall be final.~~
- (i) ~~Automatic granting. If the Council fails to adopt a resolution approving or disapproving the granting of such variance, or imposing a new or different condition to the granting thereof, within thirty (30) days after the date of the receipt of the copy of the resolution of the Commission by the City Clerk, then such variance shall be deemed to be granted with the conditions as provided in the resolution of the Commission.~~

~~9-3.09 Effect of provisions.~~

- (a) ~~Location of buildings and other improvements. On and after May 16, 1974, it shall be unlawful to erect or locate any building or other improvement:~~
- (1) ~~Within the space between a setback line and the adjacent street right-of-way line; or~~
- (2) ~~Within the space between adjacent setback lines.~~
- (b) ~~Controlling provisions. In the event the provisions of this chapter impose more stringent restrictions on the erection or location of buildings or improvements than may be imposed or required by any other law, rule, or regulation or by any easement, covenant, or agreement, then the provisions of this chapter shall control.~~

- ~~(c) — Subdivisions. The street and highway design and the location of right-of-way lines in any subdivision falling under the provisions of the Subdivision Map Act of the State, or under the provisions of any law of the City controlling subdivisions and/or divisions of land other than subdivisions, shall be based on the specific plan lines established pursuant to the provisions of this chapter.~~
- ~~(d) — Zoning and setback lines. All building setback lines designated by the zoning provisions set forth in Chapter 5 of this title shall be measured from the specific plan lines set forth on the maps thereof. Building setback lines shall be that distance from the specific plan lines as designated for the respective zone classifications in the zoning provisions.~~
- ~~(e) — Nonconforming buildings and improvements. Any building or other improvement existing on April 16, 1974, the erection of which would be contrary to the provisions of this chapter, may continue with reasonable maintenance; provided, however, such nonconforming buildings or improvement shall not be moved, enlarged, or reconstructed except in a manner which shall cause such nonconforming building or improvement to conform to the provisions of this chapter, except to replace any portion destroyed by fire or other casualty which destroys not more than seventy-five (75%) percent of its reasonable value.~~

~~9.3.10 Amendments.~~

~~The procedure for the adoption of amendments to the provisions of this chapter shall be as set forth in Article 11 of Chapter 3 of Title 7 of the Government Code of the State (Sections~~

65650 et seq.), and otherwise under the applicable provisions of this chapter, if any, not in conflict therewith.

9-3.11 Appeals.

- (a) ~~Filing. Any applicant not satisfied with the action of the Commission, or whose application has been denied, or whose application has not been finally acted upon by the Commission within a period of sixty (60) days after the filing of the application may file an appeal in writing with the Council within ten (10) days after the final action of the Commission, or within sixty (60) days after the filing of such application in the case of no final action, and the Council shall hold a public hearing with respect thereto.~~
- (b) ~~Hearings. Such public hearing shall be conducted within thirty (30) days after the filing of such written appeal, and the final decision of the Council shall be made within thirty (30) days after the public hearing. The failure of the Council to take final action within sixty (60) days after the date of the filing of the written appeal shall be deemed to be a denial of the appeal.~~
- (c) ~~Hearings: Notices. Notice of the time and place of such hearing shall be given by at least one publication in a newspaper of general circulation in the City at least ten (10) days prior to the hearing.~~
- (d) ~~Decisions. On such appeal, the Council may grant the variance, deny the granting of such variance, or attach conditions thereto upon the grounds set forth in Section 9-3.07 of this chapter.~~

~~9-3.12 Public nuisances.~~

- ~~(a) Any building or other improvement erected, located, or maintained contrary to the provisions of this chapter shall be and the same is hereby declared to be unlawful and a public nuisance.~~
- ~~(b) Any act or condition declared to be unlawful and a public nuisance shall be subject to the abatement and cost recovery proceedings set forth in Title 5, Chapters 21, 22 and 23.~~

SECTION 2. The City Council has determined that the Project is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061, subdivision (b)(3) (Common Sense Exemption).

SECTION 3. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. The City Clerk is further directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Fowler, within fifteen (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

* * * * *

The foregoing ordinance was introduced at a regular meeting of the City Council held on August 2, 2022, and was adopted at a regular meeting of said Council held on August 16, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-J

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM: DAWN E. MARPLE, City Planner

SUBJECT

ADOPT Ord No. 2022-07 amending Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code.

RECOMMENDATION

Ordinance 2022-07 was introduced by unanimous approval of the City Council on August 2, 2022. It is recommended that the Ordinance be adopted.

BACKGROUND

This item was introduced at the August 2, 2022 City Council meeting.

Staff has determined that the existing Zoning Ordinance is inconsistent with the Subdivision Ordinance and the General Plan, and recommends adopting a text amendment of the Zoning Ordinance to remove the inconsistency.

The City of Fowler Zoning Ordinance is designed to implement the goals, objectives, and policies of the Fowler General Plan. The General Plan seeks to develop 1 acre of community park space per 1,000 residents, and 2 acres of neighborhood park space per 1,000 residents.

The Zoning Ordinance requires residential subdivisions provide five percent of the developable area as open space. Open space is flexibly defined, and includes parks. Additionally, the Zoning Ordinance allows single-family residential developers to seek reimbursement of up to fifty (50) percent of the open space value. The typical result seen are neighborhood parks whose construction value is double the amount of the City's Park and Recreation Impact Fees that would be collected from the developer of the subdivision. As such open space is currently reimbursed at 50% of the cost, no Park Impact Fees are collected and thus no funding goes towards the acquisition and construction of regional community parks. This frustrates the objectives of the General Plan.

The Subdivision Ordinance already has provisions to accommodate necessary Quimby Act reimbursements in compliance with California Government Code, such as when development is proposed on land designated for a Community Park. Additionally, the City's Parks and Recreation Facilities Impact Fee is intended to fund the acquisition and development of community park space.

This proposed amendment to the Zoning Ordinance will clarify the amount of open space required to be implemented in single-family residential subdivisions by specifying the amount desired by the General Plan. Additionally, it removes the reimbursement provision. Below is a table that describes the typical open space and parks cost differences between the existing provisions of the Zoning Ordinance, and that which is proposed.

Typical Effects of a 100-lot Subdivision

	Existing	Proposed
Parks Impact Fees Generated ¹	\$309,157	\$309,157
Open Space Construction Cost	\$618,314	\$309,157
Open Space Cost Reimbursed ²	\$309,157	\$0
Total Developer Cost	\$309,157	\$309,157
Total Parks Impact Fees Collected	\$0	\$309,157
¹ \$3,091.57 per dwelling unit		
² 50% of open space value		

In summary, the existing Zoning Ordinance is inconsistent with the Subdivision Ordinance and frustrates the objectives of the General Plan. The proposed ordinance would remove inconsistencies with the Subdivision Ordinance and align with the following General Plan policies of the Land Use Element:

- Section 4.3, Residential Land Use, Policy 16: All residential projects shall provide usable open space within the boundaries of the development. This open space shall be in addition to any development fees paid for neighborhood or community park space.
 - b. Within single family projects, either attached or detached, a minimum of 5% of the project site shall be developed with usable open space which could include common recreation areas, mini-parks, common green belts/recreation trails, and landscaping. Such open space shall be maintained by assessment district, landscape/lighting district, homeowners' association, or other appropriate maintenance entity.
- Section 4.7, Open Space, Public, and Institutional Land Use, Policy 10: Develop park space based on a standard of 3.0 acres/1,000 residents (2.0 acres for neighborhood parks and 1.0 acre for community parks).

ENVIRONMENTAL REVIEW

Planning Case Number 22-0027 has been reviewed pursuant to the California Environmental Quality Act (CEQA) and has been determined to be exempt from environmental review pursuant to CEQA Guidelines Section 15061, subdivision (b)(3).

FISCAL IMPACT

Adopting this ordinance would result in a net increase to fees collected for the purposes of acquiring and developing community park space.

Not adopting this ordinance would likely result in no fees collected for the purpose of acquiring and developing community park space.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments:

- Ordinance No. 2022-07

ORDINANCE 2022-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER AMENDING SECTION 1605, OF CHAPTER 5, OF TITLE 9 OF THE FOWLER MUNICIPAL CODE, TO AMEND THE DEVELOPMENT AND REIMBURSEMENTS STANDARDS OF OPEN SPACE, AND TO ADOPT AN EXEMPTION UNDER CEQA GUIDELINES SECTION 15061, SUBDIVISION (B)(3).

WHEREAS, on February 3, 2009, the City Council of the City of Fowler adopted Ordinance No. 2009-01, amending Chapter 5, of Title 9 of the Fowler Municipal Code, which was a comprehensive update to the City's Zoning Ordinance and is referred to as the "Zoning Ordinance";

WHEREAS, the City of Fowler has established a General Plan policy to develop three (3) acres of park space for every 1,000 residents;

WHEREAS, the City of Fowler designates one (1) acre of park space for every 1,000 residents for community park purposes;

WHEREAS, the existing Zoning Ordinance has resulted in the non-collection of impact fees towards the acquisition and development of community parks;

WHEREAS, the Planning Commission adopted Resolution No. 674, on July 7, 2022, recommending that the City Council adopt an ordinance to amend Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code; and

WHEREAS, the City Council desires to amend Section 9-5.1605 of the Zoning Ordinance to ensure the development of Community Park space.

THE CITY COUNCIL OF THE CITY OF FOWLER DOES ORDAIN AS FOLLOWS:

SECTION 1. Section 9-5.1605, of Chapter 5, of Title 9 of the Fowler Municipal Code is hereby amended as follows:

K. Open Space. All residential subdivisions shall provide usable open space within the boundaries of the development. ~~A maximum of fifty (50) percent of the cost of the open space facility may be in lieu of required park fees.~~

1. Within single-family projects, either attached or detached, ~~a portion~~ five percent of the site shall be developed with usable open space such as common recreation areas, mini-parks,

green belts/trails, and landscaping. This usable open space shall ~~to be~~ maintained by a landscape/lighting district, homeowners' association, or other appropriate maintenance entity.

SECTION 2. The City Council has determined that the Project is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061, subdivision (b)(3) (Common Sense Exemption).

SECTION 3. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 4. The City Clerk is further directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Fowler, within fifteen (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the City Council meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

* * * * *

The foregoing ordinance was introduced at a regular meeting of the City Council held on August 2, 2022, and was adopted at a regular meeting of said Council held on August 16, 2022, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-K

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM THOMAS W. GAFFERY IV, Community & Economic Development Director

SUBJECT

ADOPT an Ordinance amending Title 4, Chapter 4, Article 2 of the Fowler Municipal Code regarding the parking of vehicles, towing of parked vehicles, and parking citations; and the repeal of Title 4, Chapter 4, Article 5 regarding trains

RECOMMENDATION

This item was introduced at the August 2, 2022 City Council meeting.

Staff recommend the City Council adopt an Ordinance amending Title 4, Chapter 4, Article 2 of the Fowler Municipal code regarding the parking of vehicles, towing of parked vehicles, and parking citations; and the repeal of Title 4, Chapter 4, Article 5 regarding trains.

BACKGROUND

A text amendment to the current sections of the Fowler Municipal Code related to parking is necessary for clarity, simplicity, and the removal of outdated and no longer relevant portions of the Code. Due to the scale of the revisions, staff plan to bring forward additional text amendments at a later date.

The proposed text amendment includes:

- Clarification on red, yellow, white, and green curb markings
- Clarification and simplification of loading zone regulations
- Removal of outdated sections regarding parking on 6th Street, 8th Street, and Manning Avenue
- Simplification of regulations regarding vehicles parked for purposes of sale

- Addition of a regulation that vehicles be parked in the direction of travel and no more than eighteen inches from the curb
- Addition of regulations for City-owned off-street facilities
- Addition of a regulation that vehicles park within a parking space, where designated
- Addition of a regulation for on-street parking of City-owned vehicles
- Addition of a regulation allowing for the creation of “No Stopping Tow-Away” zones to reduce the amount of red curb areas needed and provide flexibility for managing parking in busy areas such as commercial zones and areas where commercial, industrial, and residential zones are adjacent.
- Addition of a regulation clarifying that penalties shall be assessed via parking citations pursuant to California Vehicle Code and that fines shall be set by Council Resolution
- Removal of sections regarding trains that do not fall within the authority of the City

In addition, Staff cannot locate a resolution adopting the parking fines, which have been in place for at least 2004. After adoption of this ordinance, staff will bring forward a resolution adopting the parking fines.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Staff do not anticipate any fiscal impact due to this ordinance.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Ordinance 2022-05

ORDINANCE 2022-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FOWLER AMENDING TITLE 4, CHAPTER 4, ARTICLE 2 OF THE FOWLER MUNICIPAL CODE REGARDING THE PARKING OF VEHICLES, TOWING OF PARKED VEHICLES, AND PARKING CITATIONS; AND THE REPEAL OF TITLE 4, CHAPTER 4, ARTICLE 5 REGARDING TRAINS

WHEREAS, regulating on-street parking is essential for the safety of the community; and

WHEREAS, sufficient on-street parking is a key to creating a vibrant downtown; and

WHEREAS, illegally parked vehicles, abandoned, and inoperable vehicles are a detriment to the community; and

WHEREAS, the current ordinance regulating on-street parking is incomplete and confusing.

THE CITY COUNCIL OF THE CITY OF FOWLER DOES ORDAIN AS FOLLOWS:

SECTION 1: Title 4, Chapter 4, Article 2 of the Fowler Municipal Code is hereby amended to read:

4-4.201 - Curb markings.

(a) Placement—Authority. The ~~City Superintendent~~ City Manager or designee is hereby authorized, ~~subject to the approval of the Chief of Police,~~ to place and, when required by the provisions of this article, shall place, the following curb markings or signage to indicate parking or standing regulations, and such curb markings shall have the following meanings:

- (1) Red shall mean no stopping, standing, or parking at any time, except as permitted by the provisions of the California Vehicle Code ~~of the State~~.
- (2) Yellow shall mean no stopping, standing, or parking at any time between 7:00 a.m. and 6:00 p.m. on any day, except Sundays and City-observed

holidays, for any purpose other than the loading or unloading of passengers or materials; provided, however, the loading or unloading of passengers and personal baggage shall not consume more than three (3) minutes, and the loading or unloading of materials shall ~~not consume more than thirty (30) minutes~~ comply with the provisions of section 4-4.202 of this Code.

(3) White shall mean no stopping, standing, or parking for any purpose other than the loading or unloading of passengers and personal baggage which shall not exceed three (3) minutes, and such restriction shall apply between 7:00 a.m. and 6:00 p.m. on any day, except Sundays and holidays, and except when such zone is indicated by signage or paint ~~in front of the Justice Court or the City Hall and is designated as reserved parking for designated official~~ vehicles.

(4) Green shall mean no standing or parking for longer than thirty (30) ~~fifteen (15) minutes, unless signs are posted otherwise,~~ at any time between 7 ~~9:00~~ a.m. and 6:00 p.m. on any day, except Sundays and holidays. The City Manager City or designee shall keep an official list of all time limited parking zones.

~~(b) — Obedience. When the City Superintendent has caused curb markings to be placed, as set forth in this section, no person shall stop, stand, or park a vehicle adjacent to any such legible curb marking in violation to any of the provisions of this article.~~

4-4.202 - Loading and unloading.

- ~~(a)~~ The permission granted by the provisions of this article to stop or stand a vehicle for the purposes of loading or unloading materials shall apply only to commercial vehicles and shall not extend beyond the time necessary therefor, and in no event for more than ~~twenty~~ (20) thirty (30) minutes or so long as is necessary to accommodate the loading and unloading of materials.
- ~~(b)~~ ~~The loading or unloading of materials shall apply only to commercial deliveries and to the delivery or pickup of express and parcel post packages and United States mail.~~
- ~~(c)~~ ~~The permission granted by the provisions of this article to stop or park a vehicle for the purposes of loading or unloading passengers shall include the loading or unloading of personal baggage and shall not extend beyond the time necessary therefor, and in no event for more than three (3) minutes.~~
- ~~(d)~~ ~~Within the total time limits set forth in this section, the provisions of this section shall be enforced so as to accommodate necessary and reasonable loading or unloading but without permitting abuses of the privileges granted.~~
- ~~(b)~~ Loading zones shall be indicated by signage at least 150-feet apart or yellow paint upon the top and face of curbs and “LOADING ZONE” stenciled in black letters.

- (c) Passenger loading zones shall be indicated by signage at least 150-feet apart or yellow paint upon the top and face of curbs and “PASSENGER LOADING ZONE” stenciled in black letters.

4-4.207 - Parking on Sixth Street.

Repealed in its entirety. ~~It is unlawful for any person to park any vehicle upon that portion of the east side of Sixth Street fronting upon Lots 22, 23, 24, and 25 of Block 34 of the Townsite of Fowler for a period longer than fifteen (15) consecutive minutes.~~

4-4.208 - Parking on Eighth Street.

Repealed in its entirety. ~~It is unlawful for any person to park any vehicle on the east curb of Eighth Street.~~

4-4.211 - Parking on Manning Avenue.

Repealed in its entirety.

~~(a) — It is unlawful for any person to park any vehicle along either the north or south side of Manning Avenue.~~

~~(b) — The designated area shall be marked or posted as provided by law.~~

4-4.213 - Prohibition of parking vehicles for purposes of sale (including for hire or rent).

- (a) No person shall park a vehicle on a ~~public or private~~ an off-street parking lot ~~for more than one hour, or on any public or private property,~~ for the purpose of displaying such vehicle for sale, unless the property is ~~zoned~~ entitled by the City

for such purpose and the person is duly licensed to transact such business at that location.

~~(b) Subsection (a) shall not prohibit any person from parking a vehicle owned by that person on a public street for the purpose of displaying the vehicle for sale, except in the following areas:~~

~~(1) Along either the north or south curb of Merced Street between Sumner Avenue and Adams Avenue;~~

~~(2) Along either the east or west curbs of 5th, 6th, 7th, 8th, 9th and 10th Streets between Toulumne and Main Streets;~~

~~(3) Along either the north or south curb of Sumner Avenue between Merced Street and Sunnyside Avenue.~~

~~(c) Subsections (a) and (b) shall not prohibit any person from parking a vehicle on private residential property belonging to or occupied by the owner of the vehicle, nor on the public street immediately adjacent to said private residential property, for the purpose of displaying the vehicle for sale.~~

~~(d) The parking of any vehicle with a sign or other advertising device indicating the vehicle is for sale when the vehicle is parked within the same block or public or private property as two (2) or more other vehicles marked for sale, shall constitute prima facie evidence that such vehicle was parked or placed for the purpose of displaying same for sale.~~

~~(e) Any person parking a vehicle for sale in accordance with this section must also comply with the remaining provisions of Chapter 4 of Title 4 of the Fowler Municipal Code.~~

- (b) Violations and Penalties. Any person violating any of the provisions of this article shall be subject to the penalty provisions in Chapter 2 of Title 1 and Chapter 8 of Title 1 of the Fowler Municipal Code. Each separate date, or any portion thereof, during which any violation of this article occurs or continues shall be deemed to constitute a separate offense and shall be punishable as provided in this section.

4-4.214 Parking parallel with the curb.

- (a) Except as provided otherwise no vehicle shall stand or park in a roadway other than parallel with the edge of the roadway headed in the direction of traffic and with the wheels of the vehicle within eighteen inches of the curb line or edge of the roadway, except on any street or portions of a street where signs or pavement markings are in place indicating diagonal parking.

4-4.215 Parking in City-owned off-street facilities.

The City Manager or designee shall install signs and markings on City-owned or operated parking facilities designating the method, location, and position in which vehicles shall park. No person shall park any vehicle inconsistent with such signs and markings.

4-4.216 Parking space markings.

The City Manager or designee is authorized to install and maintain parking space markings to indicate parking spaces adjacent to curbs where parking is permitted. When such parking space markings are placed on the street, subject to other and more restrictive limitations, no vehicle shall be stop, stand, or park other than within a single space unless the size or shape of such vehicle makes compliance impossible.

4-4.217 Official vehicle zones.

The City Manager or designee is authorized to install and maintain Official Vehicle Zones.
No vehicle shall stop, stand or park in any Official Vehicle Zone unless such vehicle is
owned by the City of Fowler or displays a permit issued by the City Manager or designee.
Official vehicle zones shall be indicated by signage at least 150-feet apart or white paint
upon the top and face of curbs and "OFFICIAL VEHICLE ZONE" stenciled in black
letters.

4-4.218 No Stopping tow-away zones.

The City Manager may establish "No Stopping Tow-Away" zones with stopping prohibited
at all times or limited to specific hours, days, or either. Signs shall indicate the specific
days and hours, if any, that stopping of vehicles is prohibited. When designated, it shall be
unlawful for the operator of any vehicle to stop in any such zone. Any authorized City
employee may cite or remove a vehicle from a "No Stopping Tow-Away" consistent with
the California Vehicle Code. "No Stopping Tow-Away" zones shall be indicated by
signage at least 150-feet apart.

4-4.219 Violations.

Unless stated otherwise, violations of this Article shall be subject to a parking citation
pursuant to the California Vehicle Code at the violation amount as set by Council
Resolution. Such parking citations may be issued by any peace officer or a Code
Enforcement Officer, as defined by Chapter 7 of Title 1 of the Fowler Municipal Code.

SECTION 2: Title 4, Chapter 4, Article 5 of the Fowler Municipal Code is hereby repealed in its entirety.

~~Article 5. Trains~~

~~4-4.501 Speed.——~~

~~For the better protection of the rights of persons traveling the streets or public ways of the City, it is unlawful for any person in charge of, having the control of, or directing the movement of any railroad engine, locomotive, car, or train to be propelled or moved along or across any street or road crossing of the City at a greater rate of speed than forty-five (45) miles per hour while such train is within the City limits.~~

~~4-4.502 Blocking streets.——~~

~~No person shall cause or permit any railway train, car, or similar vehicle on rails to stop, stand, or be operated in such a manner as to prevent the use of any street for the purposes of travel for a period of time longer than five (5) minutes; provided, however, the provisions of this section shall not apply to railway trains, cars, or similar vehicles on rails while blocking or obstructing a crossing because of an accident which requires the operator of the train, car, or similar vehicle on rails to stop at or near the scene of the accident.~~

SECTION 3. The City Council has determined that the Project is exempt from the California Environmental Quality Act under CEQA Guidelines Section 15061, subdivision (b)(3) (Common Sense Exemption).

SECTION 4. This Ordinance shall take effect thirty (30) days after its adoption.

SECTION 5. The City Clerk is further directed to cause this ordinance or a summary of this ordinance to be published once in a newspaper of general circulation published and circulated within the City of Fowler, within fifteen (15) days after its adoption. If a summary of the ordinance is published, then the City Clerk shall cause a certified copy of the full text of the proposed ordinance to be posted in the office of the City Clerk at least five (5) days prior to the City Council

meeting at which the ordinance is adopted and again after the meeting at which the ordinance is adopted. The summary shall be approved by the City Attorney.

The foregoing ordinance was introduced at a regular meeting of the City Council held on August 2, 2022, and was adopted at a regular meeting of said Council held on August 16, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-L

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM THOMAS W. GAFFERY IV, Community Development Director

SUBJECT

APPROVE a Resolution setting parking violation amounts.

RECOMMENDATION

Staff recommend the City Council approve a resolution setting parking violation amounts.

BACKGROUND

If Ordinance 2022-05 is approved, parking violation amounts will be set by Council resolution. Exhibit A presents the proposed parking violation amounts in a redline format, with added descriptions for clarity, setting new violation amounts pursuant to Ordinance 2022-04, and adjusting some parking violation penalty amounts based on the life-safety impact of the violation.

In researching the current parking violation amounts, Staff could not confirm a previous City Council action adopting parking violation amounts. Staff estimate the current parking violation amounts shown in Exhibit A have been in effect since at least July 1, 2004, per the data from the City's parking citation processing vendor.

ENVIRONMENTAL REVIEW

This action does not constitute a "project" pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Staff anticipate a minor increase in parking citation revenue by adopting these parking violation amounts.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Resolution No. 2590
- Exhibit A: Master Fee Schedule – Parking Violation Amounts

RESOLUTION NO. 2590

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CITY OF FOWLER
ADOPTING PARKING VIOLATION AMOUNTS**

WHEREAS, pursuant to Fowler Municipal Code, certain parking violations are subject to a citation in accordance with the California Vehicle Code; and

WHEREAS, Ordinance 2022-05 requires parking violation amounts to be set by Council Resolution; and

WHEREAS, the proposed violation amounts are attached hereto as Exhibit A; and

WHEREAS, these violation amounts shall become effective after codification of Ordinance 2022-05.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fowler that parking violation amounts are set pursuant to Exhibit A.

PASSED, APPROVED AND ADOPTED this August 16, 2022, at a regular meeting of the Fowler City Council by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro Tem

ATTEST:

Angela Vasquez, Deputy City Clerk

CITY OF FOWLER
Master Fee Schedule

* * On-Street Parking * *

Description	Old Rate	New Rate	Reso/FMC
Green Indicates Additions			
Red Strikethrough Indicates Deletions			
Red curb Violation (FMC 4-4.201(a)(1))	\$28	\$100	
Loading zone overtime (FMC 4-4.202)		\$30	
Green curb overtime (FMC 4-4.201(a)(4))		\$30	
Parking for more than 72 hours (FMC 4-4.204)		\$50	
Parking in alleys (FMC 4-4.205)	\$43	\$100	
Prohibited truck parking (FMC 4-4.212)	\$43	\$50	
Not parked within 18" from curb (FMC 4-4.214)	\$44	\$50	
Parked wrong way on street (FMC 4-4.214)		\$50	
Unauthorized parking in City-owned facility (FMC 4-4.215)		\$30	
Not parked within marked space (FMC 4-4.216)		\$50	
Official vehicle zone (FMC 4-4.217)		\$30	
No stopping tow-away zone (FMC 4-4.218)		\$50	
Delinquent parking citation DMV registration hold fee ^		\$4	
Late fee		\$10	

^ Adjusted automatically based on current fee charged by DMV



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-M

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM YVONNE HERNANDEZ, Recreation Supervisor

SUBJECT

ACCEPT a donation to the City in the amount of \$1,050 from Adventist Health for Wednesday Nights at the Park.

RECOMMENDATION

Staff recommend the City Council accept a donation to the City in the amount of \$1,050 from Adventist Health for Wednesday Nights at the Park.

BACKGROUND

Per Resolution 1881, donations to the City of \$500 or more shall be approved by the City Manager, and then presented to the City Council for acceptance.

These donated funds will be used for charter experiences and live music for family friendly entertainment.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Donation revenue enhances the City's ability to provide programs and services to residents.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- None



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 6-N

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM DAVID PETERS, City Engineer

SUBJECT

Actions pertaining to approval of final map for Tract 6381

- 1) ADOPT Resolution No. 2591 approving the final map for Tract 6381 accepting on behalf of the public the streets and easements as offered on the map in accordance with the terms of the dedications.
- 2) AUTHORIZE the City Engineer to transmit the Final Map of Tract 6381 and associated documents to the Fresno County Recorder's Office for recording.
- 3) AUTHORIZE the City Manager to execute the Subdivision Agreement for Tract 6381 on behalf of the City.

RECOMMENDATION

Staff recommends that Council adopts the resolution approving the final map, authorize the City Engineer to transmit the map for recording and authorize the City Manager to sign the subdivision agreement.

BACKGROUND

The applicant, KB Home South Bay Inc., a California Corporation is proposing to develop a 74-lot subdivision on the east side of Armstrong Avenue between Adams Avenue and Clayton Avenue.

The applicant has complied with the conditions of approval of the approved tentative map.

A subdivision agreement has been prepared for the development because the off-site improvements have not yet been constructed. The subdivision agreement requires that the applicant post bonds or

instruments of security with the City in order to guarantee the construction of the improvements, which have been submitted to the City. The subdivision agreement also sets forth the development fees that the applicant must pay to the City prior to the delivery of the final map to the County Recorder.

The applicant has submitted the public improvement plans and the final map to the City, both of which have been reviewed and approved by the City Engineer. A conceptual plan of the park improvement is attached. The Council is required by law to accept the final map unless they can site deficiencies in the final documents.

The applicant has paid development fees as described above and in accordance with City fee resolutions. These fees will provide for review costs by the City and other capital improvement requirements.

The subdivision is zoned residential and complies with the City's General Plan.

Following acceptance of this map by the City, the City Engineer shall deliver the final map and subdivision agreement to the Fresno County Recorder for recordation.

ENVIRONMENTAL REVIEW

A Mitigated Negative Declaration has been adopted for the project.

FISCAL IMPACT

Approval of the project will result in the collection of plan check and inspection fees and development fees. No direct City expenditures related to this project are anticipated.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Final Map 6381
- Resolution No. 2591
- Tract 6381 Subdivision Agreement
- Conceptual Trail

SUBDIVISION MAP OF
TRACT NO. 6381
MARSHALL ESTATES II

IN THE CITY OF FOWLER,
COUNTY OF FRESNO, STATE OF CALIFORNIA
SURVEYED AND PLATTED IN JANUARY 2022,
BY GATEWAY ENGINEERING, INC.
CONSISTING OF 4 SHEETS
SHEET 1 OF 4

OWNER'S STATEMENT

THE UNDERSIGNED, BEING ALL PARTIES HAVING ANY RECORD TITLE INTEREST IN THE LAND WITHIN THIS SUBDIVISION, HEREBY CONSENT TO THE PREPARATION AND RECORDATION OF THIS MAP, AND

- OFFER FOR DEDICATION FOR PUBLIC USE THE STORM DRAIN EASEMENT AS INDICATED ON THIS MAP, AND
- OFFER FOR DEDICATION FOR PUBLIC USE OUTLOTS 'A' AND 'B' FOR PUBLIC PARK AND PONDING BASIN PURPOSES, TO BE OWNED BY CITY OF FOWLER, AND
- CERTIFY THAT THE TEMPORARY PONDING BASIN SHOWN ON THIS MAP SHALL BE VACATED PER THIS MAP,

KB HOME SOUTH BAY, INC. A CALIFORNIA CORPORATION

BY: _____
ZACH GOMES, VICE PRESIDENT

NOTARY ACKNOWLEDGEMENT

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

STATE OF CALIFORNIA }
COUNTY OF _____ }

ON _____ BEFORE ME, _____, NOTARY PUBLIC, PERSONALLY APPEARED ZACH GOMES, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE WITHIN INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME IN HIS AUTHORIZED CAPACITY, AND THAT BY HIS SIGNATURE ON THE INSTRUMENT THE PERSON, OR THE ENTITY UPON BEHALF OF WHICH THE PERSON 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

SIGNATURE _____ NAME _____

COUNTY OF _____ MY COMMISSION EXPIRES _____

COMMISSION NUMBER _____

PLANNING COMMISSION STATEMENT

I, SENNAIDA ZAVALA, SECRETARY OF THE PLANNING COMMISSION OF THE CITY OF FOWLER, DO HEREBY CERTIFY THAT I HAVE EXAMINED THIS MAP, THAT THE SUBDIVISION SHOWN HEREON CONFORMS TO AND IS IN SUBSTANTIAL COMPLIANCE WITH THE APPROVED TENTATIVE TRACT MAP AND THE REQUIREMENTS IMPOSED BY THE CITY OF FOWLER PLANNING COMMISSION AS A CONDITION TO ITS ACCEPTANCE. THIS FINAL TRACT MAP IS IN AGREEMENT WITH THE ADOPTED GENERAL PLAN FOR THE CITY OF FOWLER.

SECRETARY TO THE PLANNING COMMISSION _____ DATE: _____

RIGHT TO FARM STATEMENT

THIS MAP PROVIDES NOTICE TO EACH PURCHASER THAT THERE ARE PRE-EXISTING AGRICULTURAL OPERATIONS ON ADJACENT OR NEIGHBORING PARCELS, AND THAT THESE AGRICULTURAL OPERATIONS MAY EMIT NOISE, DUST, ODOR, AND MAY OCCASIONALLY USE FERTILIZERS, PESTICIDES AND HERBICIDES IN THE NORMAL PURSUIT OF AGRICULTURAL OPERATIONS. PURCHASERS OR RESIDENTS OF THIS SUBDIVISION SHALL NOT HAVE THE RIGHT TO LODGE COMPLAINTS FOR DUST, NOISE, ODOR, OR OTHER DESCRIPTIONS ASSOCIATED SO LONG AS THOSE OPERATIONS ARE CONDUCTED IN ACCORDANCE WITH THE REGULATIONS, RULES AND GUIDELINES OF THE CITY OF FOWLER, COUNTY OF FRESNO, STATE OF CALIFORNIA, AND THE UNITED STATES OF AMERICA.

LEGAL DESCRIPTION

THE LAND DESCRIBED HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF FRESNO, UNINCORPORATED AREA, DESCRIBED AS FOLLOWS:

PARCEL A:

LOT 10 OF NORRIS COLONY IN SECTION 10, TOWNSHIP 15 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED APRIL 08, 1886 IN BOOK 2, PAGE 28 OF PLATS, FRESNO COUNTY RECORDS.

EXCEPTING THEREFROM THAT PORTION OF SAID LOT BOUNDED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT, THENCE RUNNING NORTH ALONG THE WEST LINE OF SAID LOTS, 6 RODS, THENCE AT RIGHT ANGLES EAST TO THE EAST LINE OF SAID LOT; THENCE AT RIGHT ANGLES SOUTH ON SAID EAST LINE, 6 RODS TO THE SOUTHEAST CORNER OF SAID LOT; THENCE WEST TO THE POINT OF BEGINNING.

PARCEL B:

THE NORTH LINE OF THE NORTH HALF OF LOTS 5 AND 6 AND THE SOUTH SIX RODS OF LOT 10 OF NORRIS COLONY, IN SECTION 10, TOWNSHIP 15 SOUTH, RANGE 21 EAST, MOUNT DIABLO BASE AND MERIDIAN, IN THE COUNTY OF FRESNO, STATE OF CALIFORNIA, ACCORDING TO THE MAP THEREOF RECORDED APRIL 08, 1886 IN BOOK 2, PAGE 28 OF PLATS, FRESNO COUNTY RECORDS.

APN: 340-130-14

SOILS ENGINEER'S CERTIFICATE

A SOILS REPORT FOR THIS TRACT WAS PREPARED BY KRAZAN & ASSOCIATES, INC. REPORT NO. 012-21297, SIGNED BY DAVID R. JAROSZ, II, R.C.E. NO. 60185 AND R.G.E. NO. 2698, DATED JANUARY 17, 2022 AND HAS BEEN PLACED ON FILE WITH THE CITY OF FOWLER.

SUBDIVISION AGREEMENT

THE SUBDIVISION TRACT IS AFFECTED BY AN AGREEMENT WITH THE CITY OF FOWLER RECORDED _____ AS DOCUMENT NO. _____ OFFICIAL RECORDS OF FRESNO COUNTY.

THIS PROPERTY IS SUBJECT TO THE FOLLOWING: ☒

PTR - INFORMATION PER PRELIMINARY TITLE REPORT FROM PLACER TITLE COMPANY, ORDER NO. P-519061, DATED JANUARY 31, 2022:

- RIGHTS OF THE PUBLIC AND OF THE COUNTY OF FRESNO, AS TO THAT PORTION OF THE HEREIN DESCRIBED PROPERTY LYING WITHIN NORTH ARMSTRONG AVENUE, A PUBLIC ROAD. *EXCEPTION BLANKET IN NATURE, NOT PLOTTABLE. EXCEPTION NO. 5 ON PTR.*
- AN AGREEMENT PURSUANT TO THE CALIFORNIA LAND CONSERVATION ACT OF 1965, PLACING THE HEREIN DESCRIBED PROPERTY WITHIN AN AGRICULTURE PRESERVE, EXECUTED BY THE COUNTY OF FRESNO, RECORDED FEBRUARY 9, 1989 (INSTRUMENT) 89014985, OFFICIAL RECORDS.

AND RE-RECORDED MARCH 14, 1989, (INSTRUMENT) 89026950, OFFICIAL RECORDS. *EXCEPTION BLANKET IN NATURE, NOT PLOTTABLE. EXCEPTION NO. 6 ON PTR.*

☒ *AN EASEMENT OVER SAID LAND FOR PUBLIC UTILITIES AND STORM DRAIN AND INCIDENTAL PURPOSES AS GRANTED TO CITY OF FOWLER, IN DEED RECORDED SEPTEMBER 4, 2013, (INSTRUMENT) 2013-0126180, OFFICIAL RECORDS.

AFFECTS: AS DESCRIBED THEREIN

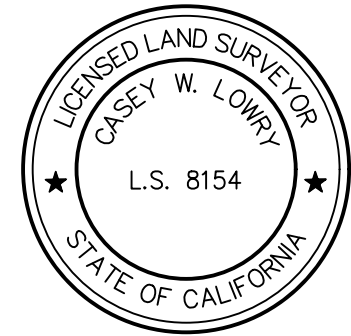
*AN EASEMENT AFFECTS SUBJECT PROPERTY, PLOTTED. *EXCEPTION NO. 8 ON PTR. THIS EASEMENT IS TO BE VACATED BY THIS MAP.*

☒ THE TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN THE DOCUMENT ENTITLED "RETENTION BASIN AGREEMENT", BY AND BETWEEN SUNSHINE RAISIN CORPORATION, A CALIFORNIA CORPORATION AND CITY OF FOWLER, DATED FEBRUARY 2, 2021, RECORDED FEBRUARY 4, 2021, AS (INSTRUMENT) 2021-0018134, OFFICIAL RECORDS. *EXCEPTION BLANKET IN NATURE, NOT PLOTTABLE. EXCEPTION NO. 9 ON PTR.*

- ANY RIGHT, INTEREST OR CLAIM THAT MAY EXIST, ARISE OR BE ASSERTED AGAINST THE TITLE UNDER OR PURSUANT TO THE PERISHABLE AGRICULTURE COMMODITIES ACT OF 1930, AS AMENDED, 7 USC 499a et seq., THE PACKERS AND STOCKYARD ACT OF 1921, AS AMENDED, 7 USC 181 et seq., OR ANY SIMILAR STATE LAWS. *EXCEPTION BLANKET IN NATURE, NOT PLOTTABLE. EXCEPTION NO. 10 ON PTR.*

SURVEYOR'S STATEMENT

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF LINDAKAY ABDULIAN ON NOVEMBER 2018. I HEREBY STATE THAT ALL THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED OR THAT THEY WILL BE SET IN THOSE POSITIONS WITHIN A YEAR OF RECORDATION OF THIS MAP, AND THAT THE MONUMENTS ARE, OR WILL BE, SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED TENTATIVE MAP.



BY: _____
CASEY W. LOWRY, LS 8154

DATE: _____

CITY ENGINEER'S CERTIFICATE

I, DAVID PETERS, CITY OF FOWLER CITY ENGINEER, DO HEREBY STATE THAT I HAVE EXAMINED THIS MAP, AND THAT THE SUBDIVISION SHOWN IS SUBSTANTIALLY THE SAME AS IT APPEARED ON THE APPROVED TENTATIVE MAP, AND ANY APPROVED ALTERATIONS THEREOF, THAT ALL PROVISIONS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF THE TENTATIVE MAP HAVE BEEN COMPLIED WITH.

BY: _____
DAVID M. PETERS, P.E. C52685
EXP. 12/31/2022
CITY ENGINEER

DATE: _____

CONSULTING LAND SURVEYOR'S CERTIFICATE

ON BEHALF OF THE CITY OF FOWLER, I STEVEN F. REY, AM SATISFIED THAT THE MAP IS TECHNICALLY CORRECT.

BY: _____
STEVEN F. REY, P.L.S. 8047
EXP. 12/31/2023
CITY SURVEYOR

DATE: _____

CITY CLERK'S CERTIFICATE

I HEREBY CERTIFY THAT THE COUNCIL OF THE CITY OF FOWLER, BY RESOLUTION NO. _____ DATED _____ ACCEPTED ON BEHALF OF THE PUBLIC, ALL PARCELS OF LAND, STREETS, ALLEYS, PEDESTRIAN PARKWAYS AND EASEMENTS, SUBJECT TO IMPROVEMENTS, OFFERED FOR DEDICATION FOR PUBLIC USE IN CONFORMITY WITH THE TERMS OF THE OFFER OF DEDICATION, AND APPROVED THE ABANDONMENT OF THOSE PUBLIC EASEMENTS FOR STORM DRAIN PURPOSES AND TEMPORARY BASIN AGREEMENT AS SHOWN ON THE MAP.

ANGELA VASQUEZ, DEPUTY CITY CLERK _____ DATE: _____

RECORDER'S CERTIFICATE

DOCUMENT NO. _____ FEE: \$ 14.00

FILED THIS _____ DAY OF _____, 2022,

AT _____ M IN BOOK _____ OF PLATS, AT PAGE(S) _____,

AT THE REQUEST OF PLACER TITLE COMPANY.

PAUL DICTOS, C.P.A., COUNTY ASSESSOR-RECORDER

BY: _____
DEPUTY

GATEWAY
ENGINEERING, INC.
CIVIL ENGINEERS & LAND SURVEYORS
P. 559-320-0344 F. 559-320-0345 WWW.GATEWAYENG.COM
405 PARK CREEK DRIVE, CLOVIS, CA 93611-4435

SUBDIVISION MAP OF
TRACT NO. 6381

MARSHALL ESTATES II
IN THE CITY OF FOWLER,
COUNTY OF FRESNO, STATE OF CALIFORNIA
SURVEYED AND PLATTED IN JANUARY 2022,
BY GATEWAY ENGINEERING, INC.
CONSISTING OF 4 SHEETS
SHEET 2 OF 4

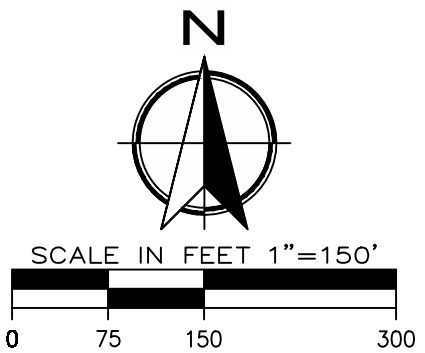
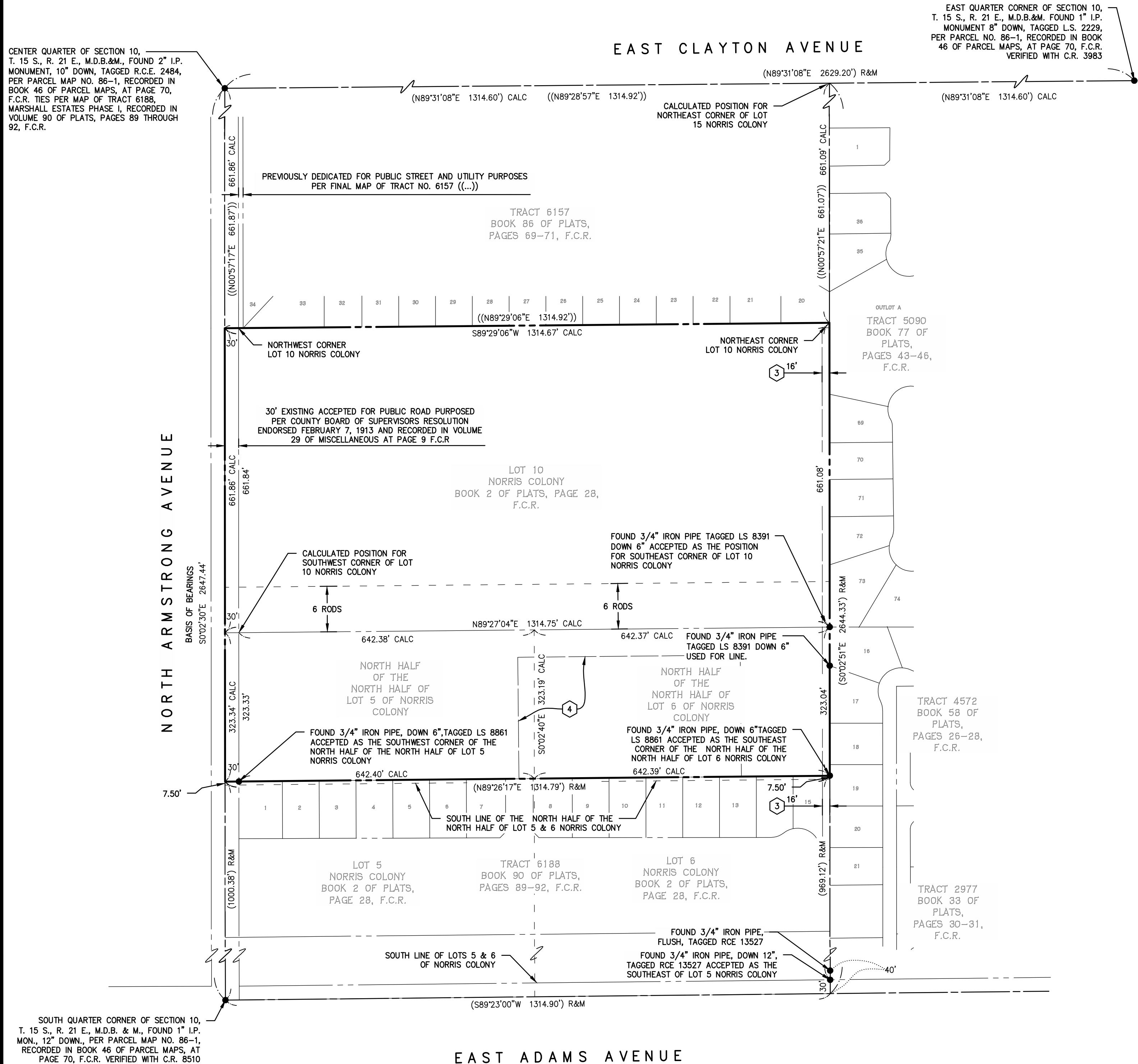
SEE SHEET 4 FOR LINE,
CURVE AND RADIAL TABLES

BASIS OF BEARINGS

THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 10, TOWNSHIP 15 SOUTH, RANGE 21 EAST MOUNT DIABLO BASE AND MERIDIAN TAKEN TO BE NORTH 89° 23' 00" EAST ACCORDING TO THE MAP OF TRACT NO. 2977, AHRONIAN ESTATES, NO. 4 RECORDED IN BOOK 33 OF PLATS AT PAGES 30-31, FRESNO COUNTY RECORDS.

LEGEND

- MONUMENT FOUND AND ACCEPTED AS DESCRIBED, UNLESS OTHERWISE NOTED
- (R & M) RECORD AND MEASURED DATA PER MAP OF MARSHALL ESTATES PHASE I, TRACT NO. 6188, RECORDED IN BOOK 90 OF PLATS AT PAGES 89-92, F.C.R.
- ((...)) RECORD DATA PER FINAL MAP OF, TRACT NO. 6157, RECORDED IN BOOK 86 OF PLATS AT PAGES 69-71, F.C.R.
- CALC CALCULATED
- F.C.R. FRESNO COUNTY RECORDS
- INDICATES LIMITS OF THIS SUBDIVISION
- ③ AN EASEMENT OVER SAID LAND FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, AS GRANTED TO CITY OF FOWLER, IN DEED RECORDED SEPTEMBER 4, 2013, (INSTRUMENT) 2013-0126180, OFFICIAL RECORDS. AN EASEMENT AFFECTS SUBJECT PROPERTY, PLOTTED. THIS EASEMENT IS TO VACATED BY THIS MAP.
- ④ THE TERMS, CONDITIONS AND PROVISIONS AS CONTAINED IN THE DOCUMENT ENTITLED "RETENTION BASIN AGREEMENT", BY AND BETWEEN SUNSHINE RAISIN CORPORATION, A CALIFORNIA CORPORATION AND CITY OF FOWLER, DATED FEBRUARY 2, 2021, RECORDED FEBRUARY 4, 2021, AS (INSTRUMENT) 2021-0018134, OFFICIAL RECORDS. AN EASEMENT AFFECTS SUBJECT PROPERTY, PLOTTED. THIS EASEMENT IS TO VACATED BY THIS MAP.



SUBDIVISION MAP OF TRACT NO. 6381

MARSHALL ESTATES II
IN THE CITY OF FOWLER,
COUNTY OF FRESNO, STATE OF CALIFORNIA
SURVEYED AND PLATTED IN JANUARY 2022,
BY GATEWAY ENGINEERING, INC.
CONSISTING OF 4 SHEETS
SHEET 3 OF 4

SEE SHEET 4 FOR LINE,
CURVE AND RADIAL TABLES

LEGEND

- MONUMENT FOUND AND ACCEPTED AS DESCRIBED, UNLESS OTHERWISE NOTED
- ◆ SET 3/4" X 30" LONG IRON PIPE DOWN 6" TAGGED LS 8154 AS WITNESS CORNER ON LOT LINE 3.00' FROM PROPERTY CORNER
- ((...)) RECORD DATA PER MAP OF KINSINGTON ESTATES, PHASE III, TRACT NO. 6157, RECORDED IN BOOK 86 OF PLATS AT PAGES 69-71, F.C.R.
- [...] RECORD DATA PER MAP OF MARSHALL ESTATES PHASE I, TRACT NO. 6188, RECORDED IN BOOK 90 OF PLATS AT PAGES 89-92, F.C.R.
- CALC CALCULATED FROM RECORD DATA
- (R) RADIAL BEARING, SEE SHEET 4 FOR TABLE
- F.C.R. FRESNO COUNTY RECORDS
- ▲ INDICATES RELINQUISHMENT OF DIRECT ACCESS RIGHTS
- ③ *AN EASEMENT OVER SAID LAND FOR PUBLIC UTILITIES AND INCIDENTAL PURPOSES, AS GRANTED TO CITY OF FOWLER, IN DEED RECORDED SEPTEMBER 4, 2013, (INSTRUMENT) 2013-0126180, OFFICIAL RECORDS. AN EASEMENT AFFECTS SUBJECT PROPERTY, PLOTTED.
- *THIS EASEMENT IS TO BE VACATED BY THIS MAP.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED AS AN EASEMENT FOR PUBLIC PURPOSES:

- PUE PUBLIC UTILITY EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC USE.
- ▲ EASEMENT NOW OFFERED FOR DEDICATION FOR PUBLIC STREET AND UTILITY PURPOSES.

THE REAL PROPERTY DESCRIBED BELOW IS DEDICATED IN FEE FOR PUBLIC PURPOSES:

- OUTLOT 'A' IS DEDICATED IN FEE TO THE CITY OF FOWLER FOR PARK PURPOSES SUBJECT TO CITY ACCEPTANCE OF DEVELOPER INSTALLED REQUIRED IMPROVEMENTS.
- OUTLOT 'B' IS DEDICATED IN FEE TO THE CITY OF FOWLER FOR PONDING BASIN PURPOSES SUBJECT TO CITY ACCEPTANCE OF DEVELOPER INSTALLED REQUIRED IMPROVEMENTS.

NOTES

- SET 3/4" X 30" IRON PIPE, DOWN 0.5', TAGGED "LS 8861", AT ALL LOT CORNERS, BLOCK CORNERS, ANGLE POINTS AND CURVE POINTS.
- FRONT LOT CORNER ADJACENT TO PUBLIC STREET SIDEWALK ARE MONUMENTED AS WITNESS CORNERS AND ARE MARKED BY A BRASS TAG AND NAIL TAGGED "LS 8861" IN TOP OF CURB AT PROLONGATION OF PROPERTY LINE. SEE SHEET 4 FOR DETAIL.
- REAR/SIDE LOT CORNERS ADJACENT TO PUBLIC STREETS ARE MONUMENTED AS WITNESS CORNERS AND ARE MARKED BY A 3/4" X 30" IRON PIPE, DOWN 0.5', TAGGED "LS 8861". SEE SHEET 4 FOR DETAIL.
- ALL CURVES ARE TANGENTIAL UNLESS A RADIAL BEARING IS SHOWN.

FOUND 3/4" IRON PIPE, DOWN 6" TAGGED LS 8861 ACCEPTED AS THE SOUTHWEST CORNER OF THE NORTH HALF OF THE NORTH HALF OF LOT 5 NORRIS COLONY



SCALE IN FEET 1"=80'
0 40 80 160

TRACT 6157
BOOK 86 OF PLATS
PAGES 69-71, F.C.R.

TRACT 6188
BOOK 90 OF PLATS
PAGES 89-92, F.C.R.

SUBDIVISION MAP OF
TRACT NO. 6381

MARSHALL ESTATES II
IN THE CITY OF FOWLER,
COUNTY OF FRESNO, STATE OF CALIFORNIA
SURVEYED AND PLATTED IN JANUARY 2022,
BY GATEWAY ENGINEERING, INC.
CONSISTING OF 4 SHEETS
SHEET 4 OF 4

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	25.00'	S89° 19' 49"W
L2	16.47'	S45° 18' 08"E
L3	20.00'	S89° 26' 14"W
L4	16.38'	S44° 41' 52"W
L5	16.56'	S45° 18' 08"E
L6	20.11'	S89° 57' 09"W
L7	16.39'	S44° 41' 52"W
L8	16.46'	N45° 18' 08"W
L9	25.01'	S89° 26' 14"W
L10	16.38'	S44° 41' 52"W
L11	16.47'	N45° 20' 08"W
L12	16.45'	S44° 42' 50"W
L13	16.63'	S45° 16' 43"E
L14	16.39'	S44° 41' 52"W

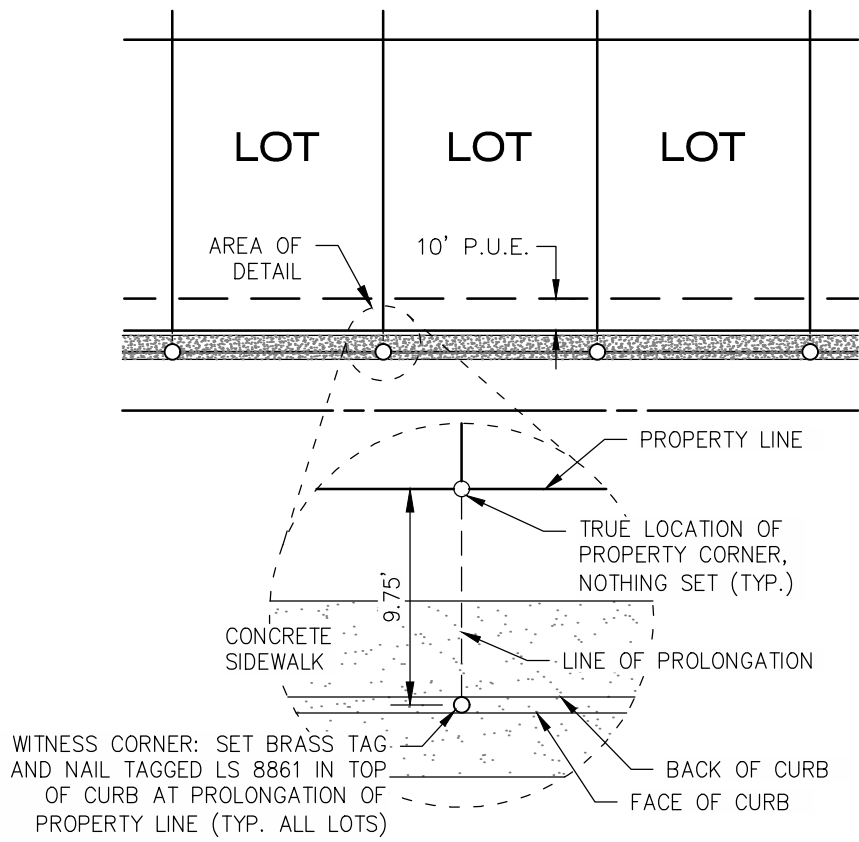
LINE TABLE		
LINE #	LENGTH	DIRECTION
L15	16.88'	N45° 16' 43"W
L16	16.38'	N44° 41' 52"E
L17	16.47'	S45° 18' 08"E
L18	16.80'	N44° 43' 17"E
L19	16.47'	S45° 18' 08"E
L20	16.38'	S44° 41' 52"W
L21	16.47'	N45° 18' 08"W
L22	16.44'	S45° 12' 02"E
L23	16.42'	S44° 48' 02"W
L24	26.40'	S00° 02' 30"E
L25	55.00'	N00° 02' 30"W
L26	13.74'	N00° 02' 30"W
L27	110.00'	N89° 29' 03"E

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C1	84.26'	50.00'	96° 33' 47"
C2	25.95'	50.00'	29° 44' 07"
C3	34.51'	55.00'	35° 57' 02"
C4	34.51'	55.00'	35° 57' 02"
C5	15.60'	50.00'	17° 52' 32"
C6	77.02'	50.00'	88° 15' 22"
C7	49.08'	50.00'	56° 14' 24"
C8	34.51'	55.00'	35° 57' 02"
C9	34.51'	55.00'	35° 57' 02"
C10	21.77'	50.00'	24° 56' 31"
C11	88.15'	50.00'	101° 00' 31"
C12	89.41'	50.00'	102° 27' 09"
C13	20.51'	50.00'	23° 29' 53"
C14	34.51'	55.00'	35° 57' 02"
C15	34.51'	55.00'	35° 57' 02"
C16	22.64'	50.00'	25° 56' 31"
C17	88.60'	50.00'	101° 31' 26"
C18	88.51'	50.00'	101° 25' 37"
C19	20.08'	50.00'	23° 00' 30"
C20	34.51'	55.00'	35° 57' 02"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C21	34.51'	55.00'	35° 57' 02"
C22	26.95'	50.00'	30° 52' 55"
C23	82.96'	50.00'	95° 04' 07"
C24	89.06'	50.00'	102° 03' 09"
C25	20.85'	50.00'	23° 53' 53"
C26	34.51'	55.00'	35° 57' 02"
C27	34.51'	55.00'	35° 57' 02"
C28	21.71'	50.00'	24° 52' 58"
C29	87.90'	50.00'	100° 43' 25"
C30	15.24'	170.00'	5° 08' 12"
C31	62.71'	170.00'	21° 08' 06"
C32	29.33'	230.00'	7° 18' 27"
C33	76.13'	230.00'	18° 57' 51"
C34	71.06'	354.00'	11° 30' 03"
C35	3.16'	354.00'	0° 30' 44"
C36	68.15'	354.00'	11° 01' 49"
C37	71.31'	354.00'	11° 32' 32"
C38	2.71'	230.00'	0° 40' 30"
C39	82.03'	230.00'	20° 26' 06"
C40	20.72'	230.00'	5° 09' 41"

CURVE TABLE			
CURVE #	LENGTH	RADIUS	DELTA
C41	77.95'	170.00'	26° 16' 18"
C42	219.83'	50.00'	251° 54' 04"
C43	141.70'	50.00'	162° 22' 32"
C44	219.83'	50.00'	251° 54' 04"
C45	219.83'	50.00'	251° 54' 04"
C46	219.83'	50.00'	251° 54' 04"
C47	105.46'	230.00'	26° 16' 18"
C48	77.95'	170.00'	26° 16' 18"
C49	105.46'	230.00'	26° 16' 18"
C50	91.71'	200.00'	26° 16' 18"
C51	91.71'	200.00'	26° 16' 18"

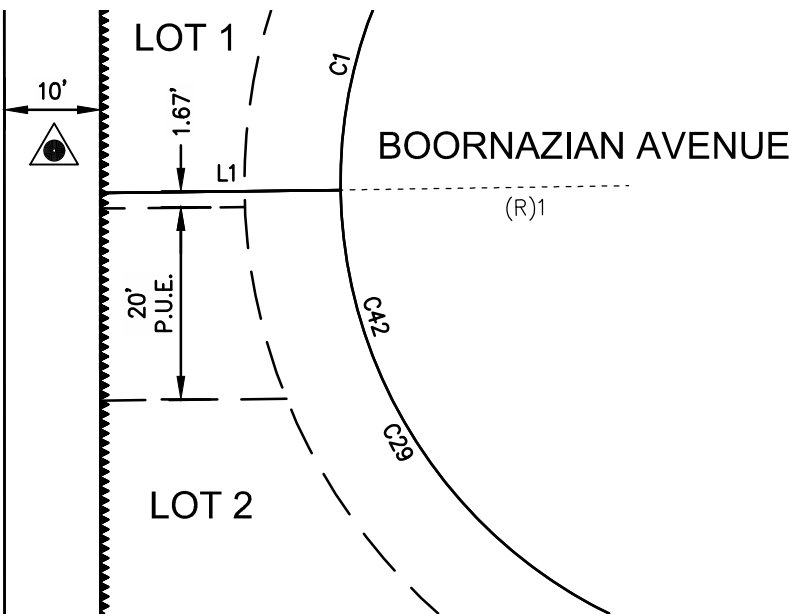
RADIAL TABLE	
LINE #	DIRECTION
(R)1	S89° 08' 17"W
(R)2	N05° 42' 04"E
(R)3	S11° 35' 06"E
(R)4	N18° 35' 28"W
(R)5	N69° 40' 09"E
(R)6	N11° 34' 17"W
(R)7	N89° 26' 14"E
(R)8	S11° 53' 23"W
(R)9	N11° 34' 17"W
(R)10	N89° 57' 09"E
(R)11	S11° 22' 46"W
(R)12	S05° 37' 53"E
(R)13	S89° 26' 14"W
(R)14	N11° 29' 23"E
(R)15	S84° 54' 18"E
(R)16	N71° 04' 39"W
(R)17	N79° 00' 41"W
(R)18	S89° 22' 00"E
(R)19	S68° 55' 53"E



WITNESS CORNER DETAIL FOR FRONT YARDS

NO SCALE

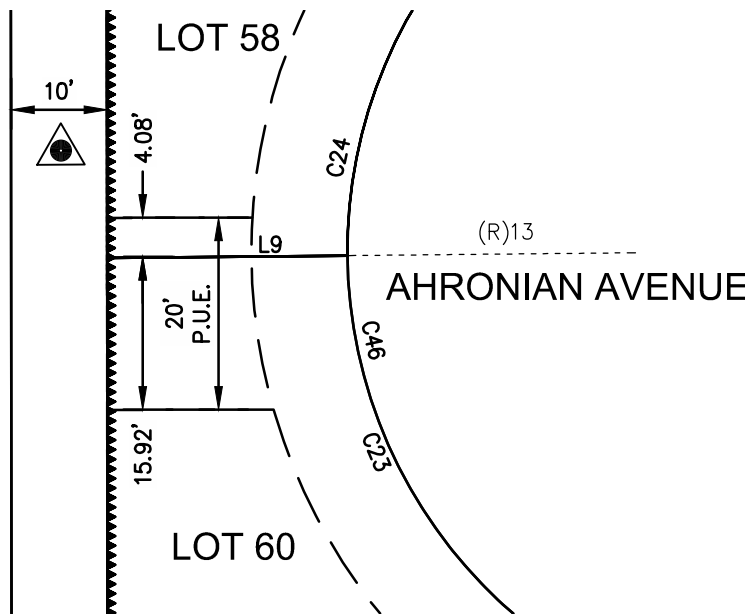
ARMSTRONG AVENUE



DETAIL "A"

1" = 20'

ARMSTRONG AVENUE



DETAIL "B"

1" = 20'

RESOLUTION NO. 2591

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER
APPROVING FINAL TRACT MAP NO. 6381 AND ACCEPTING STREET DEDICATION
AND EASEMENTS**

WHEREAS, KB Home South Bay Inc., a California Corporation, the Owner and Subdivider, has presented to the City Council of the City of Fowler, a Municipal Corporation, a Final Map of Tract No. 6381 for approval by the City Council; and

WHEREAS, the City Engineer has verified that all of the provisions of the Subdivision Map Act and of Chapter 4, "Subdivisions," of the Fowler Municipal Code have been complied with, and that said Final Map is substantially the same as the Tentative Map thereof, as previously approved by the City Council and Planning Commission; and

WHEREAS, certain streets to be developed in Tract Map No. 6381 have been offered for dedication to the City of Fowler; and

WHEREAS, the Fowler Subdivision Ordinance requires that street dedications and easements be accepted by the City Council; and

WHEREAS, the City Council also determined that it would be in the best interests of the City at this time to accept the streets and easements offered for dedication on the Final Tract Map No. 6381; and

WHEREAS, the City Council hereby authorizes the City Manager to enter into the Subdivision Agreement, which has been previously executed by the Subdivider, related to the construction of public improvements associated with the subdivision.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Fowler that the Final Map of Tract No. 6381 and the dedication of the street and easements offered for dedication as shown on Final Tract Map 6381 be accepted, and the Mayor and/or City Manager and City Clerk be authorized and directed to sign the documents for improvements and recordation.

PASSED, APPROVED AND ADOPTED this 16th day of August 2022, at a regular meeting of the Fowler City Council by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

Mark Rodriquez, Mayor Pro-Tem

ATTEST:

Angela Vasquez, Deputy City Clerk

**CITY OF FOWLER
SUBDIVISION AGREEMENT**

TRACT NO. 6381

THIS SUBDIVISION AGREEMENT ("AGREEMENT") is made and entered into this ____ day of _____, 2022, by and between KB Home South Bay Inc., a California Corporation ("SUBDIVIDER"), and the CITY OF FOWLER, a Municipal Corporation ("CITY").

RECITALS

A. Tentative Map No. 6381 (attached hereto as Exhibit "A") has been filed with City for a proposed division of land adjacent to the intersection of Sunnyside Avenue and Sumner Avenue which is located within the corporate limits of the City. This tentative map has been approved and is being developed in a single phase. SUBDIVIDER has requested that the CITY accept and approve the Final Map and the dedications delineated and shown on the Final Map for the use and purposes specified thereon and to otherwise approve the Final Map in order that the same may be recorded as required by law.

B. The CITY requires as a condition precedent to the acceptance and approval of the Final Map, the dedication of the streets and public improvements and easements as delineated and shown on the Final Map, and deems the same as necessary for the public use, and requires and deems as necessary for the public use that any and all streets, public improvements and easements delineated and shown on the Final Map shall be improved by the construction thereof and the installation of the improvements specified in this Agreement.

C. Certain public improvements are required to be made by SUBDIVIDER in accordance with the approved tentative map of the Subdivision and have not yet been completed. Section 66462 of the California Government Code provides, as a condition precedent to the approval of the Final Map, that the City shall require the SUBDIVIDER to enter into an agreement to complete said public improvements.

D. The SUBDIVIDER and CITY enter into this agreement to perform and complete the work and matters as hereinafter described in this Agreement, in conformance with the City of Fowler Municipal Code, which Sections by this reference are incorporated into this Agreement made a part hereof.

NOW THEREFORE, it is hereby agreed as follows:

1. Improvements. SUBDIVIDER shall construct and install all public improvements in the Subdivision as identified on the Final Map and Improvement plans in accordance with all of the requirements and standards as set forth in the approval or conditional approval of the tentative map of the Subdivision, the Fowler Municipal Code, all applicable laws, codes and regulations as determined by the City Engineer and the terms and conditions of this Agreement (collectively "Work"). In accordance with the Fowler Municipal Code, all of the Improvements shall be completed no later than twelve (12) months after the recording of the Final Map and commencement of construction. The SUBDIVIDER shall notify the City Engineer in writing two weeks (14 calendar days) prior to the commencement of construction activities. The City Engineer will then document in writing the beginning of the construction period. Construction shall commence not later than 12 months after recordation of the Final Map. Request to extend

the time for completion of the Improvements must be in written form and received by the CITY not less than thirty (30) days prior to expiration of said twelve (12) month period and shall include facts to support the extension of time for completion as required by the City Engineer. Only the City Council shall have the authority to extend such time period. The extension period shall not exceed three (3) months.

Within thirty (30) days after the SUBDIVIDER notifies the City Engineer that the required Work has been completed, the City Engineer shall inspect such Work and, if the Work has been performed in the required manner and in accordance with this Agreement, the Final Map, the Fowler Municipal Code and all other applicable laws, codes and regulations, the City Engineer shall advise the City Council that the public improvements are ready for acceptance by the CITY.

2. Inspection. The CITY shall inspect all work in accordance with Section 16 of the Fowler Municipal Code, including the SUBDIVIDER'S conformance with the CITY's standard specifications and any and all applicable conditions, standards or requirements, including, without limitation, all conditions, standards or requirements identified at the preconstruction conference held prior to commencing the Work.

As part of the inspection process, SUBDIVIDER shall retain, at its sole cost and expense, a materials testing company to perform any testing or retesting of the Work as required by the City's Department of Public Works and/or Building Official. The materials testing firm must be approved by the CITY before any testing or retesting begins. The City's Inspector shall designate the locations for compaction tests, and shall observe all testing procedures. In addition to street areas, compaction testing shall be performed in building pad areas.

The SUBDIVIDER'S Engineer shall check the grade of all streets prior to surfacing and shall, prior to surfacing, provide written confirmation to the City's Department of Public Works that the street grades conform to the approved grades. In the case of asphalt concrete surfacing, the SUBDIVIDER'S Engineer shall, prior to surfacing, set grade stakes and shall be in attendance at the time all surfacing is performed.

SUBDIVIDER shall construct all required improvements in accordance with the applicable improvement plans and specifications. Where concrete curbs and gutters are required and where driveway approaches are not constructed at the time curbs and gutters are constructed, the curb and gutter shall be continuous.

CITY shall schedule a preliminary final inspection and a deficiency list shall be compiled and submitted to the SUBDIVIDER for correction. Upon completion of all corrections or additional work as outlined by the deficiency list, the SUBDIVIDER shall certify, in writing, that all corrections have been completed and request a final inspection. Upon finding that all items have been corrected and receipt of as-built improvement plans, the Subdivision shall be placed on the City Council agenda for acceptance.

The completion of corrections indicated by the deficiency list shall not relieve the SUBDIVIDER from the responsibility of correcting any deficiency not shown on the deficiency list that may be subsequently discovered. Should the CITY require payment of additional engineering and inspection fees and costs for improvements constructed after the stated date of completion, the SUBDIVIDER must pay said additional fees and costs prior to acceptance by the City Council of the improvements.

3. Costs and Fees. The SUBDIVIDER shall be responsible for all costs and expenses associated with the Work, including, without limitation, the costs identified in the Improvement Cost Estimate attached hereto and made a part hereof and identified as Exhibit "B" to this Agreement. SUBDIVIDER agrees to all amounts identified on Exhibit "B" and agrees to pay when due, all amounts identified on Exhibit "B", including, without limitation, all CITY engineering and inspection fees.

4. Security. SUBDIVIDER agrees to furnish security, which complies with Section 66499 et. seq. of the California Government Code, and in such amounts as are required by the CITY, to guarantee the faithful performance of this Agreement including, without limitation, the construction of the Improvements and completion of the Work, and to guarantee payment to contractors, subcontractors, laborers, material men and other persons involved in the performance of the Work. In the sole discretion of the CITY and with the written authorization of the CITY, the sureties provided by the SUBDIVIDER may be released in whole or in part in the following manner:

- (a) Faithful performance sureties, not in excess of ninety percent (90%) of the estimated costs of the individual items of the Improvements and Work, may be released, or the required surety amounts may be reduced, as work is satisfactorily completed and accepted by the CITY.
- (b) Forty-five (45) days after recordation of the Notice of Completion for the Subdivision, the sureties securing the payment to contractors and subcontractors, and to persons furnishing labor, materials, or equipment, may be released if claims including, without limitation, stop notices, have not been filed.
- (c) Twenty-Five percent (25%) of the total faithful performance surety, retained as the public improvement warranty, may be released one year after the Notice of Completion for the SUBDIVISION has been recorded. In the alternative, SUBDIVIDER shall provide CITY with new warranty security of not less than twenty-five percent (25%) of the Improvement Cost Estimate identified in Exhibit "B" hereto, which security shall have a term of one (1) year from the date of recordation of the Notice of Completion for the Subdivision.

The SUBDIVIDER shall furnish, in writing, proof of adequate security deposit to all utility companies for the installation of electricity, gas, telephone, cable television and any other utility which charges are not part of the Improvement Cost Estimate set forth in Exhibit "B".

No final map shall be signed by the City Engineer or recorded until all improvement securities required by the Fowler Municipal Code and this Agreement have been received and approved by the CITY. The form of securities shall be one or the combination of forms as approved by the CITY.

5. Liability. As a condition precedent, and prior to commencement of the Work to be performed pursuant to this Agreement, SUBDIVIDER shall furnish the CITY with a certificate of insurance with a separate endorsement evidencing the following insurance coverages:

Commercial and general liability insurance with a combined single limit of not less than Two Million Dollars (\$2,000,000.00) per occurrence. Such insurance shall include

products/completed operations liability, owners and contractors protective blanket contractual liability, personal injury liability, broad form property damage coverage and explosion, collapse and underground hazard coverage. The insurance shall name the CITY, its appointed and elected officials, officers, employees and agents and Peters Engineering Group as additional insureds; and be primary with respect to any insurance or self-insurance programs maintained by the CITY, and shall protect them from claims for personal injury, death or property damage suffered by third persons or by officers, employees, agents or independent contractors of the SUBDIVIDER, and arising out of or in any way connected with the Work which is the subject of this Agreement. Such policy or policies of insurance shall specifically provide that the CITY shall receive at least thirty (30) days prior to written notice of any cancellation of such policy or policies. Any such notice shall be sent to the attention of the City Engineer. Notwithstanding an inconsistent statement in the insurance policy or certificate or subsequent endorsement attached thereto, the CITY shall be insured or named as an additional insured covering the Work which is the subject of this Agreement, whether liability is attributable to the SUBDIVIDER or to the passive or active negligence of the CITY. The insurance shall be in effect on the date of this Agreement and shall expire no sooner than one year after the date of recordation of the Notice of Completion for the Subdivision. The cost of providing all required insurance shall be borne solely by the SUBDIVIDER.

All such insurance shall provide coverage for SUBDIVIDER's obligations of indemnification as set forth in paragraph 6 of this Agreement.

The expiration or proposed cancellation of any such insurance policy or policies, for any reason whatsoever, shall constitute a material breach of this Agreement.

6. Indemnification. SUBDIVIDER hereby agrees to and shall protect, indemnify, defend and hold harmless the CITY and all officials, officers, agent, representatives and employees and Peters Engineering Group from and against any and all liability, loss, claims, expenses, or damages of whatsoever kind or character, including attorney's fees and costs of all types, in any way arising out of, or in any way related, directly or indirectly to the Work to be performed pursuant to this Agreement or the acts or omissions of the SUBDIVIDER, SUBDIVIDER'S independent contractors, employees, representatives, agents and invitees, and the passive or active negligent acts or omissions of the CITY or its officials, officers, employees, contractors, representatives, and agents while acting within the scope of their duties and regarding, in any way, the Work to be performed pursuant to this Agreement. These indemnification and hold harmless provisions shall be in full force and effect regardless of whether or not there is insurance policies covering the applicable damages, claims, or liability. This indemnification shall be binding upon the SUBDIVIDER whether or not there are any allegations of fault, negligence or liability of the parties indemnified hereunder and shall survive the completion of construction of the Improvements and completion of the Work.

SUBDIVIDER agrees that the use of any and all public streets and improvements, which are part of the Subdivision, shall be, at all times prior to the final acceptance by the CITY, the sole and exclusive risk of the SUBDIVIDER.

7. Permits and Compliance. Should SUBDIVIDER be required to perform any Work within any public rights-of-way or easements, which are located beyond the Subdivision limits, SUBDIVIDER shall satisfy any and all requirements necessary to obtain an encroachment permit from the CITY or any other agency.

The SUBDIVIDER shall install underground, all gas main services, telephone, cable television, and electrical lines, and all electrical transformers, splice boxes, pull boxes, and other existing facilities providing service to within the limits of this Subdivision.

SUBDIVIDER agrees to make all financial arrangements with Pacific Gas and Electric, Southern California Gas, Comcast Cable, ATT, and any other applicable utility company, to guarantee the installation of all utilities and services to the Subdivision. Copies of all agreements and written evidence of these financial arrangements shall be furnished to the CITY along with a composite underground utility plan prior to beginning construction of the Improvements within the limits of the subdivision.

SUBDIVIDER shall make arrangements for the relocation of all overhead and underground public utility facilities along the frontages or that interfere with the construction of the Improvements. The SUBDIVIDER shall be responsible for the full cost of relocating such utilities and facilities.

The SUBDIVIDER shall repair any damage to public streets or other public property or improvements, which results from, or is incidental to, the construction of the Improvements, or in lieu of making such repairs, the SUBDIVIDER shall pay to the CITY the full cost of such repairs.

Building permits for individual lots of the Subdivision may be issued after primary completion of the infrastructure improvements as approved by the City Engineer following inspection. Primary completion is defined as completion of all required improvements except paving, sidewalks, landscaping and street lighting.

No occupancy permit for any dwelling to be constructed within the Subdivision shall be issued until all required Work and Improvements are substantially complete subject to City Engineer approval. Substantial completion is defined as completion of all required improvements with only minor corrections known as "punch list" items remaining. No inspections or approval by the City Engineer will be deemed acceptance by the City Council.

In accordance with the Fowler Municipal Code, construction methods and materials for all Improvements shall conform to the standard plans and specifications of the CITY. Construction shall not commence until required improvements plans have been approved by the City Engineer and payment of all fees have been received by the CITY.

The Improvements shall be constructed in accordance with all applicable street, plumbing, building, electrical and zoning codes and any other applicable codes, rules or regulations of the CITY and the State of California.

The SUBDIVIDER shall require contractors and subcontractors to provide and maintain barricades and warning signs to protect and warn the public of construction hazards. Traffic control shall conform to a traffic control plan approved by the City Engineer. If in the opinion of the City Engineer, proper barricades and warning signs are not being provided, the Contractor will be required to immediately stop work until proper traffic control is provided and approved by the City Engineer.

The SUBDIVIDER shall require all contractors and subcontractors to conform to the applicable provisions of the California Occupational Safety and Health Act ("OSHA"). On site inspection of the work will be requested of OSHA officials and all work subject to this Agreement

shall immediately stop if, in the opinion of the City Engineer, any such work is being performed in violation of OSHA, or when appropriate safety measures are not being utilized for the Work.

SUBDIVIDER shall be responsible for obtaining an NPDES permit for construction sites in excess of one acre, and shall develop a dust control plan and erosion control plan to mitigate soil migration from the Subdivision. SUBDIVIDER shall be responsible for soil and erosion control throughout the one-year warranty period called for in this Agreement. The SUBDIVIDER shall sweep the streets and alleys periodically throughout the one-year warranty period, at a minimum frequency of once per month.

The SUBDIVIDER and its contractors and subcontractors shall pay for any materials, provisions and other supplies used in, upon, for, or about the performance of the Work, and for any and all work or labor associated therewith and for all amounts due under the worker's compensation and the unemployment insurance acts and all other applicable laws or regulations of the State of California or the United States with respect to such work or labor, including, without limitation, as required by Section 3200 of the California Labor Code and Section 4200 of the California Government Code.

The SUBDIVIDER shall provide and plant one street tree per lot at a location approved by the City's Building Official. The trees shall be planted at the time the dwelling unit on the lot is occupied and shall be selected from a street tree list provided by the CITY. Trees shall be furnished with root barriers and watered via a City approved irrigation system for each lot.

The SUBDIVIDER shall install streetlights in the Subdivision. A streetlight plan shall be submitted to the City Engineer for review and approval. Streetlights shall be LED and be furnished and installed in accordance with CITY, PG&E and Caltrans' standards. The street lighting system shall become the property of the CITY upon completion and acceptance of the work, without further consideration to SUBDIVIDER. SUBDIVIDER'S contract with PG&E ("PG&E" Contract) for the furnishing of electrical power to the Subdivision shall specifically state that all streetlights shall become the property of the City. Each street light shall be furnished with an electrical pull box and grounding rod. The SUBDIVIDER shall number the street light poles in accordance with PG&E requirements. The PG&E Contract shall identify a maintenance rate schedule for the streetlights of LS2C.

Fencing improvements shall be constructed in accordance with City Standards, with appropriate fencing offsets to be provided for sanitation and garbage collection service to each lot, including allowance for approved number and/or style of garbage cans, green waste, and recycling containers. Fencing improvements shall be constructed in such a manner as to eliminate any dirt strip between the fence and the adjacent alley. Where framing improvements face the alley, the SUBDIVIDER shall construct a concrete mow strip in accordance with City standards between the fence and the alley paving. When new homes abut existing homes, developer shall coordinate with the existing homeowners and make arrangements for improvements to or replacement of fence between the homes.

The SUBDIVIDER shall furnish to the CITY a set of reproducible as-built plans for all street improvements ("Street Plans"). The Street Plans shall be original ink on vellum or mylar copies. The Street Plans shall include the location of all underground utilities, finished grades for all curb returns and building pads. The SUBDIVIDER'S engineer shall provide a copy of the tract, in digitized format (AutoCAD 2020 or equivalent format as approved by the City Engineer) to the City prior to final acceptance of the Improvements and Work by the City.

SUBDIVIDER agrees to install security devices, acceptable to the City of Fowler Public Works Department in order to protect streetlight and water meter facilities from vandalism.

Prior to the acceptance of the Work and release of the security, the SUBDIVIDER shall provide to the CITY a certification from its engineer that all work and the construction and installation of all Improvements conform with the approved plans for the Subdivision and the recommendations contained in the Preliminary Soils Reports. A certification shall also be furnished by the SUBDIVIDER'S engineer that all utility trenches have been uniformly compacted to the percentages specified in the City Standards.

SUBDIVIDER agrees that the City shall inspect all Work and Improvements. All of said Work and Improvements and materials shall be completed, performed and installed under the inspection of and to the satisfaction of the City Engineer. It shall further be the responsibility of SUBDIVIDER to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which Work is to be started to allow for arrangements for appropriate and adequate inspection services. SUBDIVIDER'S failure to notify the City Engineer may cause inspection delays for which SUBDIVIDER will be solely responsible.

Defective work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective work and unsuitable materials may have been previously overlooked or approved by the City Engineer or inspector. Any damage to the sewer system, water system, storm drainage facilities, concrete work, street paving, or any other improvements that occurs after installation shall be made good to the satisfaction of the City Engineer by SUBDIVIDER before final acceptance of completed work by the City Council. Defective work appearing after final acceptance shall be repaired/replaced under the warranty provisions herein. Upon final acceptance by the City Council of all Work and Improvements as provided herein, SUBDIVIDER shall warrant said Work and Improvements from any defects in materials or workmanship for a period of one (1) year following said acceptance, and a one-year warranty bond shall be furnished by SUBDIVIDER to the City as herein provided herein.

8. Other Conditions. The SUBDIVIDER shall annex the Subdivision to the City's Landscape and Storm Drainage Maintenance District for the provision of maintenance of the landscape areas. The SUBDIVIDER shall provide a signed and notarized covenant and consent for annexation of the Subdivision to the Landscape Maintenance District. The SUBDIVIDER shall notify every potential buyer of lots within the Subdivision that the Subdivision is part of a Landscape Maintenance District. The SUBDIVIDER shall provide the City with a signed copy of such notice indicating acceptance of the notice by the buyer.

SUBDIVIDER shall ensure that all solid waste is collected and disposed of by the City's contract agent, Waste Management, as required by Section 6-2.307 of the Fowler Municipal Code. If SUBDIVIDER uses persons or companies other than Waste Management for general clean up, SUBDIVIDER shall ensure that all solid waste is collected and disposed of by Waste Management.

The City Engineer is assumed to be a just arbitrator between CITY, SUBDIVIDER and SUBDIVIDER'S Contractor (herein "Contractor") and the entire work is under his jurisdiction to such end. It is his function to interpret the drawings and specifications; pass upon merits of materials and workmanship.

It is agreed that all conditions of approval of the Tentative Map and any Site Plan Review shall apply to and be included in the Agreement.

9. Scheduling. It shall be the responsibility of the SUBDIVIDER to coordinate all Work performed by its contractors and subcontractors, such as scheduling the sequence of operations and the determination of liability of one contractor or subcontractor operation delays another. In no case shall representatives of the CITY be placed in the position of making decisions that are the responsibility of the SUBDIVIDER. It shall further be the responsibility of the SUBDIVIDER to give the City Engineer written notice not less than two (2) working days in advance of the actual date on which work is to be started. Failure on the part of the SUBDIVIDER to notify the City Engineer may cause delay for which the SUBDIVIDER shall be solely responsible.

10. Soil and Dust Control Provisions. The SUBDIVIDER is responsible for arrangement for and payment of all CITY required soil tests at locations as determined by the City Engineer. Payment for said tests shall be made directly by the SUBDIVIDER to the certified testing firm of the SUBDIVIDER'S choice.

Adequate dust control shall be maintained by the SUBDIVIDER on all streets and areas, including, without limitation, undeveloped lots within the Subdivision and all streets outside of the Subdivision, from the time Work is first commenced until all work is completed. "Adequate dust control" as used herein shall mean the sprinkling of the streets with water or approved dust palliative with sufficient frequency to prevent the scattering of dust by wind or the activity of vehicles and equipment onto any street area or private property adjacent to the Subdivision. Whenever, in the opinion of the City Engineer, adequate dust control is not being maintained on any street or streets, or other areas of the Subdivision, the City Engineer shall give notice to the SUBDIVIDER to comply with these provisions, or, at the election of the City Engineer, notice may be mailed to the SUBDIVIDER at his address on file with the City Engineer. If, within twenty-four (24) hours after personal service or within forty-eight (48) hours after mailing of notice, the SUBDIVIDER has not commenced to maintain adequate dust control or at any time thereafter fails to maintain adequate dust control, the City Engineer may, without further notice of any kind, cause any street or streets to be sprinkled with water or an approved dust palliative as may be deemed necessary by the City Engineer to eliminate the scattering of dust. Such dust control shall be performed by equipment and personal of the CITY or by contract as the City Engineer shall determine, and the SUBDIVIDER agrees to pay to CITY, upon receipt of the billing therefore, the entire cost to the CITY of such dust control.

When the surfacing on any existing street is disturbed, SUBDIVIDER shall immediately replace the surfacing with temporary surfacing and permanently pave the existing street within fourteen (14) calendar days thereafter. All streets shall be maintained in a safe and passable condition at all times between the commencement of construction of Improvements and final completion thereof.

11. Reimbursement. If the City Municipal Code provides SUBDIVIDER with the right to receive cash reimbursement or Development Impact Fee credit because of the construction of certain Improvements or the oversizing thereof, SUBDIVIDER must request payment of the cash reimbursement or preparation of a reimbursement agreement, whichever is applicable, or the Development Impact Fee credit. Such request must be made in writing and received by the City Engineer prior to the date of final acceptance of all Improvements by FOWLER City Council. SUBDIVIDER agrees that should it fail to make such written request by the date identified herein, SUBDIVIDER forever waives its right to request and receive any reimbursement, reimbursement agreement or Development Impact Fee credit.

The following items are eligible for reimbursement related to this Subdivision:

1. There are no identified reimbursements for this tract.

12. Prevailing Wage Laws, Rules and Regulations. SUBDIVIDER shall comply with and shall require all contractors to comply with all prevailing wage laws, rules and regulations applicable to the Subdivision, the Work and the Improvements. Unless otherwise advised in writing by the CITY, SUBDIVIDER shall be solely responsible for making any and all decisions regarding the payment of prevailing wages for any portion or aspect of the Subdivision, Work or Improvements, including, without limitation, any form of reimbursement by the CITY to the SUBDIVIDER or any contractor. Further, SUBDIVIDER will be solely responsible for the payment of any claims, fines, penalties, reimbursements, payments or any other actions that may be initiated against SUBDIVIDER, any contractor, or the CITY as a result of failure to pay prevailing wages.

SUBDIVIDER shall defend, indemnify and hold harmless the CITY, Peters Engineering Group, its officials, officers, employees, representatives, agents and attorneys from and against any and all claims, damages, losses, judgments, liabilities, expenses and other costs, including, without limitation, litigation costs and attorney's fees arising out of, resulting from or in any way in connection with any violation or claim of violation of any prevailing wage law, rule or regulation applicable to any portion or aspect of the Subdivision, the Work or the Improvements. SUBDIVIDER's obligation to defend, indemnify and hold the CITY harmless specifically includes, but is not limited to, any suit or administrative action against the CITY which claims a violation of any prevailing wage law, rule or regulation applicable to any portion or aspect of the Subdivision, Work or Improvements.

SUBDIVIDER's obligations to defend, indemnify and hold the CITY, Peters Engineering Group, its officials, officers, employees, representatives, agents and attorneys harmless as set forth herein, shall include, but shall not be limited to, staff time, copying costs, court costs, the costs of any judgments or awards against the CITY for damages, losses, litigation costs or attorney fees arising out of any violation or claim of violation of any prevailing wage law, rule or regulation applicable to any portion or aspect of the Subdivision, Work or Improvements and costs of any settlement representing damages, litigation costs and attorney's fees to be paid to other parties arising out of any such proceeding or suit.

The CITY may, at any time, require the SUBDIVIDER to reimburse the CITY for costs that have been, or which the CITY reasonably anticipates will be, incurred by the CITY during the course of any action. SUBDIVIDER shall reimburse the CITY within thirty (30) days of receipt of an itemized written invoice from the CITY. Failure of the SUBDIVIDER to timely reimburse the CITY shall be considered a material breach of this Agreement. All of the provisions of this paragraph 12 shall survive the completion of construction of the Improvements and completion of the Work.

13. Sole and Only Agreement. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding such matters. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or

anyone acting on behalf of any party which are not embodied in this Agreement and no other agreement, statement or promises shall be valid or binding.

14. Invalidity. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

15. Attorneys' Fees. If an action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this Agreement, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue of the Superior Court in the County of Fresno, State of California for any proceeding arising hereunder.

16. Successors and Assigns. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the heirs, successors and assigns of the parties hereto. This Agreement shall not be assigned by SUBDIVIDER without the express prior written consent of CITY, which consent may be withheld in the sole and absolute discretion of CITY.

17. Governing Law. This Agreement shall be construed and governed pursuant to the laws of the State of California.

18. Time of the Essence. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the ____ day of _____, 2022.

CITY OF FOWLER

SUBDIVIDER

FOWLER CITY MANAGER

KB Home South Bay Inc, a California Corporation, it's Vice President

By: _____
Wilma Tucker

By: _____

APPROVED AS TO CONTENT:

ATTEST:

By: _____
David Peters, PE
City Engineer

By: _____
Deputy City Clerk

TENTATIVE TRACT MAP 6381

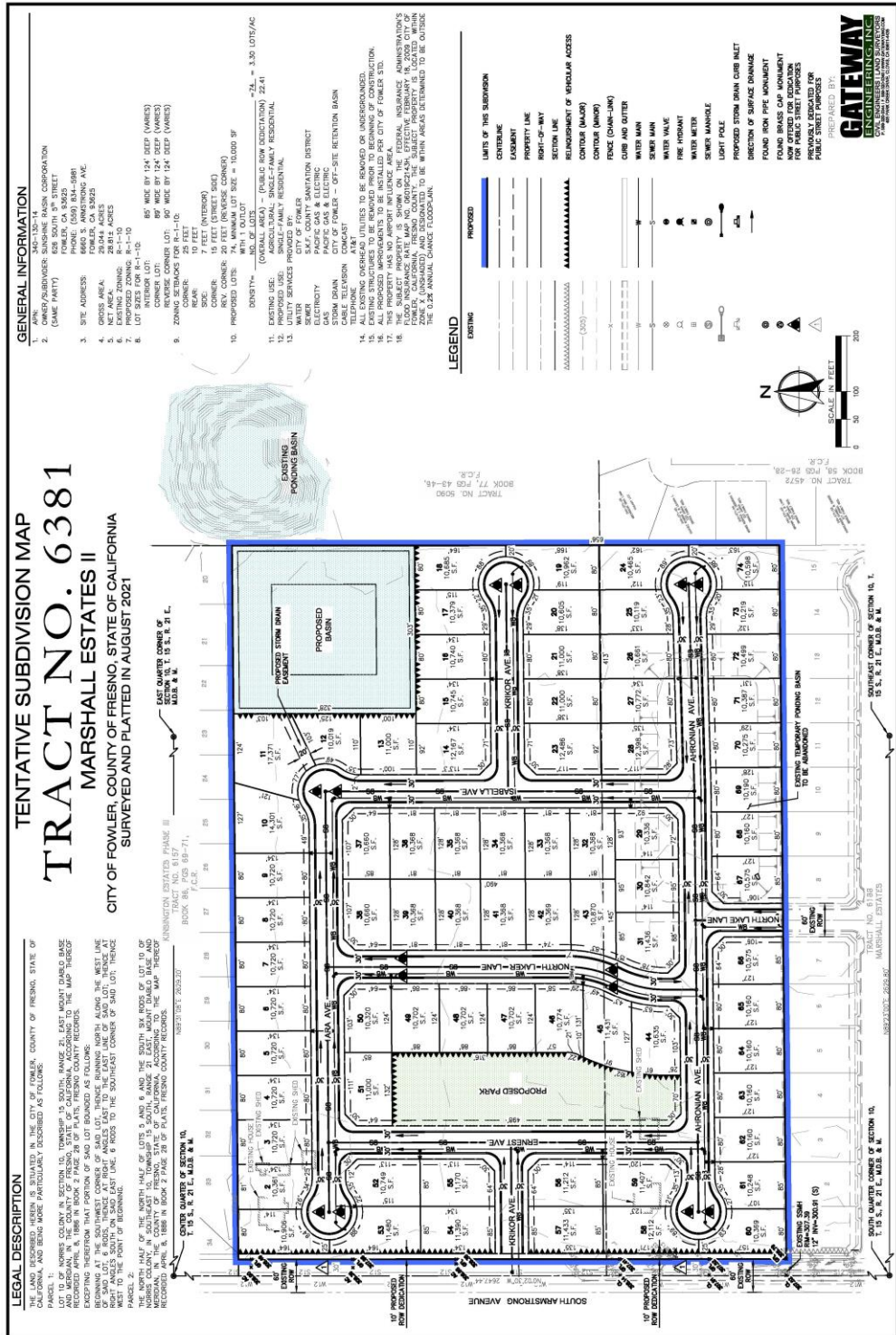


EXHIBIT "B"

IMPROVEMENT COST ESTIMATE

Estimated construction costs used in this Agreement are increased for projected inflation computed to the estimated mid-point of construction.

ESTIMATED CONSTRUCTION COST

Site Preparation

Construction of all rough grading, fencing, and wall improvements as shown on the approved improvement plans and in accordance with City Standards and Specifications.

\$ 697,156

Sanitary Sewer System

Construction of all sanitary sewerage facilities as shown on the approved improvement plans in accordance with City Standards and Specifications.

\$ 296,060

Storm Drainage System

Construction of underground cross drains, storm sewerage conductor, and disposal facilities as shown on the approved improvement plan in accordance with City Standards and Specifications.

\$ 451,525

Water System

Install all water mains, hydrants, services and appurtenances as shown on the approved Improvement Plans in accordance with City Standards and Specifications.

\$ 384,360

Dry Utilities

Install all gas, electric, telephone, cable, street lights, and other dry utilities as shown on the approved Improvement Plans in accordance with City and Utility Standards and Specifications.

\$ 764,000

Street Construction

Construct Type "B" asphalt concrete surfacing over Class 2 aggregate base, curb and gutter, sidewalk, wheelchair ramps, drive approaches, valley gutters, streetlights and misc. improvements as shown on the approved Improvement Plans in accordance with City Standards and Specifications.

\$ 905,604

Total Estimate Construction Costs =

\$ 3,498,705

SECURITY REQUIREMENTS

Performance	\$ <u>3,498,705</u>
Labor and Material	\$ <u>1,749,352</u>
Warranty	\$ <u>874,676</u>
Monumentation Security	\$ <u>12,000</u>

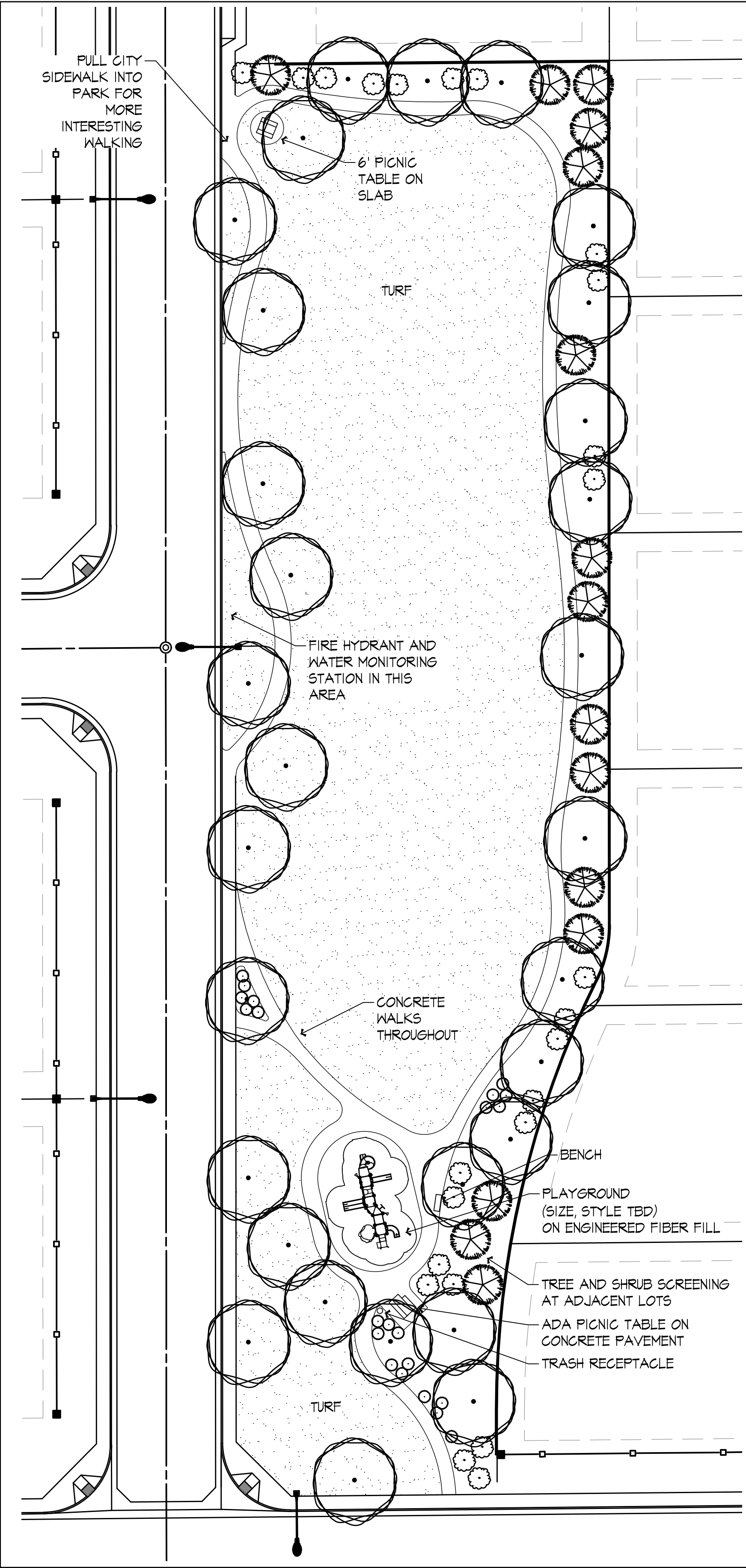
PLAN CHECK AND INSPECTION FEE

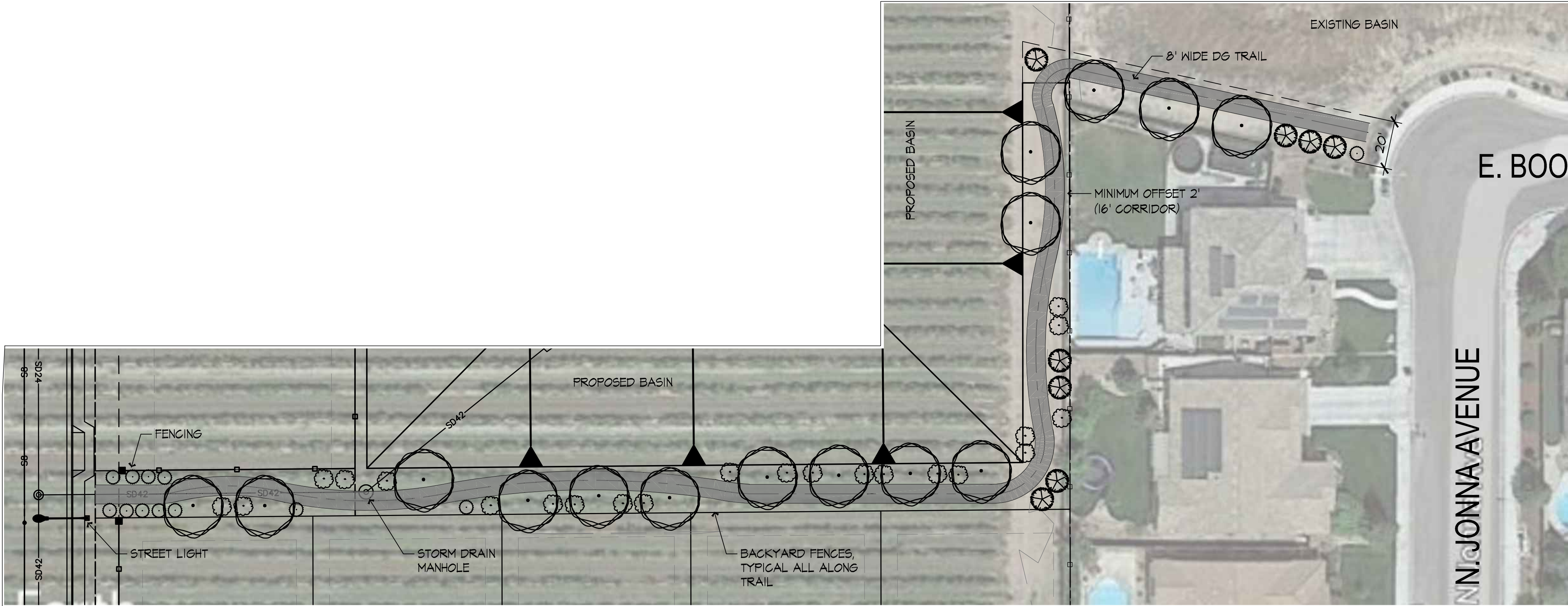
Improvement Plan Check and Inspection Fees (3%) =	\$104,961
Less Previously Paid =	<u>\$26,240</u>
Total Due =	\$78,721

Actual plan check and inspections fees in excess of the total amount provided herein shall be invoiced to the Owner by the City for Payment prior to acceptance of the improvements.

DEVELOPMENT FEES

All development fees are due and payable at the time of issuance of a building permit. Development fees will be determined using the fee schedule in effect at the time of payment.





MARSHALL ESTATES II BASIN TRAIL

CONCEPTUAL DESIGN



CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 8-Ai

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM THOMAS W. GAFFERY IV, Community & Economic Development Director

SUBJECT

APPROVE an agreement with Toole Design Group, LLC in the amount of \$82,234 for downtown streetscape conceptual design.

RECOMMENDATION

Staff recommend the City Council approve the above proposed action.

BACKGROUND

City Staff solicited a Request for Qualifications for a “Downtown Streetscape Plan and Conceptual Design.” The goal of this solicitation was to find a highly-qualified firm to develop a comprehensive plan for streetscape elements such as outdoor seating and dining, public art, wayfinding signage, street furniture, lighting, landscaping, and others. The study area will be the Merced Street corridor from the Union Pacific railroad to Panzak Park, including two blocks of 5th, 6th & 7th Streets and alleys.

Eight proposals were submitted. After evaluating the proposals and conducting multiple rounds of interviews, staff determined Toole Design Group, LLC to be the most qualified and best value to perform the work. As a part of the evaluation, downtown business owners were invited to participate in the process. Talene Kasparian-Cleveland and Connie Khasigian participated in interviews with proposers.

This action will authorize Toole to proceed with tasks 1-4, as identified in Exhibit A of the Agreement. Toole’s subconsultants include Opticos Design, who completed the 2007 Central Fowler Revitalization Plan, and Yamabe & Horn Engineering. Toole’s design process also includes a plan for robust

community engagement and outreach. Staff will also provide regular updates at City Council meetings, as well as Workshop on the conceptual design.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

On August 2, 2022, City Council approved Resolution No. 2581 appropriating \$75,000 in funds for this project. Staff will bring forward a budget amendment during the mid-year budget process, based on project delivery and timing.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Agreement with Exhibits

CITY OF FOWLER
CONTRACT SERVICES AGREEMENT FOR PROFESSIONAL SERVICES

This Contract Services Agreement for Professional Services ("Agreement") is entered into between the City of Fowler, a California general law city ("City") and Toole Design Group, LLC ("Vendor"), a Maryland Limited Liability Company, with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on the last date indicated below ("Effective Date").

RECITALS

- A. City desires to engage the services of a qualified vendor for downtown streetscape design as more fully described in **Exhibit A**, which is attached hereto and incorporated by reference.
- B. Vendor is engaged in the business of providing these Services and hereby represents that Vendor is qualified, experienced, and capable of providing these Services, and possesses any required licenses, certifications, security/bonding, and/or training necessary thereto.
- C. City desires to contract with Vendor to provide these Services on the terms and conditions as set forth in this Agreement.

Now, therefore, in consideration of the promises and mutual agreements herein, City and Vendor agree as follows:

AGREEMENT

1. **Scope of Work.** Vendor agrees to perform the services as more fully described in **Exhibit A** attached hereto and incorporated herein by reference ("Services"). Changes in the scope of Services, including work incidental to the Services, shall be made in writing and particularly describe the changes in Services, payment/costs, and schedule/term, as applicable.
2. **Schedule.** City and Vendor shall mutually agree on a schedule for performing the Services. The schedule shall be subject to modification based on the City's operational needs. City will notify Vendor in advance of any modification to the schedule.
3. **Term of Agreement; Commencement of Services.** The term of this Agreement shall begin on the Effective Date and shall terminate on June 30, 2023, unless extended by mutual written agreement of the Parties. Notwithstanding the preceding sentence, this Agreement may be terminated during the term in accordance with Section 17 herein.
4. **Payment for Services.** City shall pay Vendor for the Services performed pursuant to this Agreement as follows: time and materials, per **Exhibit A**. At this time, Vendor is authorized to proceed with Tasks 1-4 as indicated in **Exhibit A**. The total amount paid by City to Vendor pursuant to this Agreement shall not exceed eighty-two thousand two hundred thirty-four dollars (\$82,234).

The foregoing is inclusive of all labor, equipment, materials, costs and expenses, taxes, and overhead. City shall pay Vendor for Services satisfactorily performed pursuant to this Agreement. Vendor shall submit an invoice to City containing detailed billing information regarding the Services provided and City shall tender payment to Vendor within thirty (30) days after receipt of invoice.

5. **Independent Contractor Status.** Vendor and its subcontractors, if any, shall perform the Services as independent contractors and not as officers, employees, agents or volunteers of City. Vendor is engaged in an independently established trade, occupation, or business to perform the Services required by this Agreement

and is hereby retained to perform work that is outside the usual course of City's business. Vendor is free from the control and direction of City in connection with the manner of performance of the work. Nothing contained in this Agreement shall be deemed to create any contractual relationship between City and Vendor's employees or subcontractors, nor shall anything contained in this Agreement be deemed to give any third party, including but not limited to Vendor's employees or subcontractors, any claim or right of action against City.

6. Vendor Representations; Standard of Care; Compliance with Law. Vendor represents that Vendor and any subcontractors utilized by Vendor are and will be qualified in the field for which Services are being provided under this Agreement, and Vendor and any subcontractors are now, and will be throughout their performance of the Services under this Agreement, properly licensed, certified, secured/bonded, trained, and/or otherwise qualified and authorized to perform the Services required and contemplated by this Agreement, as may be required by law. Vendor and its subcontractors shall utilize the standard of care and skill customarily exercised by members of their profession, shall use reasonable diligence and best judgment while performing the Services, and shall comply with all applicable laws, regulations, and industry standards, including anti-discrimination and anti-harassment laws. Vendor shall comply with all Labor Code requirements for public works projects if applicable to Vendor's work under this Agreement.

7. [Reserved]

8. Subcontractor Provisions. Vendor shall include in its written agreements with its subcontractors, if any, provisions which: (a) impose upon the subcontractors the obligation to provide to City the same insurance and indemnity obligations that Vendor owes to City; (b) make clear that City intends to rely upon the reports, opinions, conclusions and other work product prepared and performed by subcontractors for Vendor; and (c) entitle City to impose upon subcontractors the assignment rights found elsewhere in this Agreement.

9. Power to Act on Behalf of City. Vendor is not acting as an agent of City and shall not have any right, power, or authority to create any obligation, express or implied, or make representations on behalf of City except as may be expressly authorized in advance in writing from time to time by City and then only to the extent of such authorization.

10. Record Keeping; Reports. Vendor shall keep complete records showing the type of Services performed. Vendor shall be responsible and shall require its subcontractors to keep similar records. City shall be given reasonable access to the records of Vendor and its subcontractors for inspection and audit purposes. Vendor shall provide City with a working draft of all reports upon reasonable request by City and of all final reports prepared by Vendor under this Agreement.

11. [Reserved]

12. [Reserved]

13. City Name and Logo. Vendor shall not use City's name or insignia, photographs relating to the City projects or work for which Vendor's services are rendered, or any publicity pertaining to the Vendor's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production, internet website, social media, or other similar medium without the prior written consent of City. However, nothing herein shall prevent Vendor from referencing its work on this project in future marketing materials.

14. Conflicts of Interest. Vendor warrants that neither Vendor nor any of its employees have an improper interest, present or contemplated, in the Services which would affect Vendor's or its employees' performance of the Services. Vendor further warrants that neither Vendor nor any of its employees have real property, business interests or income that will be affected by the Services. Vendor covenants that no person having any such interest, whether an employee or subcontractor shall perform the Services under this Agreement. During

the performance of the Services, Vendor shall not employ or retain the services of any person who is employed by the City or a member of any City Board or Commission.

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

16. City Right to Employ Other Vendors. Unless **Exhibit A** specifically provides that the Services City seeks pursuant to this Agreement are exclusive to Vendor, this Agreement and the performance of the Services are non-exclusive and City reserves the right to employ other vendors or contractors in connection with the Services while this Agreement is in effect.

17. Termination of Agreement. This Agreement shall terminate as provided in Section 3, unless terminated earlier pursuant to the following:

a. Termination by City: For Convenience. City may at its discretion terminate this Agreement for convenience and without cause upon fourteen (14) days prior written notice to Vendor. Upon receipt of a termination notice pursuant to this subsection, Vendor shall promptly discontinue all Services affected, unless the notice directs otherwise.

b. Termination by City or Vendor: For Cause. Either party may terminate this Agreement upon ten (10) days prior written notice to the other party of a material breach, and a failure within that time period to cure or commence reasonable steps to cure the breach.

c. Compensation to Vendor Upon Termination. Vendor shall be paid compensation for Services satisfactorily performed prior to notice of termination. As to any phase partially performed but for which the applicable portion of Vendor's compensation has not become due, Vendor shall be paid the reasonable value of its Services provided. However, in no event shall such payment when added to any other payment due under the applicable part of the work exceed the total compensation of such part as specified Section 4. In the event of termination due to Vendor's failure to perform in accordance with the terms of this Agreement through no fault of City, City may withhold an amount that would otherwise be payable as an offset to City's damages caused by such failure.

d. Effect of Termination. Upon termination of this Agreement, Vendor shall promptly discontinue all Services affected, unless the notice of termination directs otherwise.

18. Insurance. Vendor shall satisfy the insurance requirements set forth in **Exhibit B**.

19. Indemnity and Defense. Vendor hereby agrees to indemnify, and hold the City, its officials, officers, employees, agents, and volunteers harmless from and against all claims, demands, causes of action, actions, damages, losses, expenses, and other liabilities, (including without limitation reasonable attorney fees and costs of litigation) of every nature to the extent arising out of or in connection with the alleged or actual acts, errors, omissions or negligence of Vendor or its subcontractors relating to the performance of Services described herein to the fullest extent permitted by law, unless the injuries or damages are the result of City's sole negligence or willful misconduct, subject to any limitations imposed by law. Vendor and City agree that said indemnity obligations shall survive the expiration or termination of this Agreement for any items specified herein that arose or occurred during the term of this Agreement.

20. Taxes. Vendor agrees to pay all taxes, licenses, and fees levied or assessed by any governmental agency on Vendor as a result of the sale of the Equipment and/or performance of Services under this Agreement, and unemployment and workers' compensation insurance, social security, or any other taxes upon the wages of Vendor, its employees, agents, and representatives. Vendor agrees to obtain and maintain a

business license from City and pay the applicable business license fee to City during the term of this Agreement.

21. Assignment. Neither this Agreement nor any duties or obligations hereunder shall be assignable by Vendor without the prior written consent of City. In the event of an assignment to which City has consented, the assignee shall agree in writing to personally assume and perform the covenants, obligations, and agreements herein contained. In addition, Vendor shall not assign the payment of any monies due Vendor from City under the terms of this Agreement to any other individual, corporation or entity. City retains the right to pay any and all monies due Vendor directly to Vendor.

22. Form and Service of Notices. Any and all notices or other communications required or permitted by this Agreement or by law to be delivered to, served upon, or given to either party to this Agreement by the other party shall be in writing and shall be deemed properly delivered, served or given by one of the following methods:

- a. Personally delivered to the party to whom it is directed. Service shall be deemed the date of delivery.
- b. Delivered by e-mail to a known address of the party to whom it is directed provided the e-mail is accompanied by an acknowledgment of receipt by the other party. Service shall be deemed the date of acknowledgement.
- c. Delivery by a reliable overnight delivery service, ex., Federal Express, receipted, addressed to the addressees set forth below the signatories to this Agreement. Service shall be deemed the date of delivery.
- d. Delivery by deposit in the United States mail, first class, postage prepaid. Service shall be deemed delivered ninety-six (96) hours after deposit.

23. Entire Agreement. This Agreement, including any referenced Exhibits, represents the entire agreement between City and Vendor and supersedes all prior negotiations, representations or agreements, either written or oral with respect to the subject matter herein.

24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

25. Authority. The signatories to this Agreement warrant and represent that they have the legal right, power, and authority to execute this Agreement and bind their respective entities.

26. Severability. In the event any term or provision of this Agreement is declared to be invalid or illegal for any reason, this Agreement will remain in full force and effect and will be interpreted as though such invalid or illegal provision were not a part of this Agreement. The remaining provisions will be construed to preserve the intent and purpose of this Agreement and the parties will negotiate in good faith to modify any invalidated provisions to preserve each party's anticipated benefits.

27. Applicable Law and Interpretation and Venue. This Agreement shall be interpreted in accordance with the laws of the State of California. The language of all parts of this Agreement shall, in all cases, be construed as a whole, according to its fair meaning, and not strictly for or against either party. This Agreement is entered into by City and Vendor in the County of Fresno, California. Vendor shall perform the Services required under this Agreement in the County of Fresno, California. Thus, in the event of litigation, venue shall only lie with the appropriate state or federal court in Fresno County.

28. Amendments and Waiver. This Agreement shall not be modified or amended in any way, and no provision shall be waived, except in writing signed by the parties hereto. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any such waiver constitute a continuing or subsequent waiver of the same provision. Failure of either party to enforce any provision of this Agreement shall not constitute a waiver of the right to compel enforcement of the remaining provisions of this Agreement.

29. Third Party Beneficiaries. Nothing in this Agreement shall be construed to confer any rights upon any party not a signatory to this Agreement.

30. Execution in Counterparts. This Agreement may be executed in counterparts such that the signatures may appear on separate signature pages. A copy or an original, with all signatures appended together, shall be deemed a fully executed Agreement.

31. Alternative Dispute Resolution. If a dispute arises out of or relating to this Agreement, or the alleged breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties, otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, either party may pursue litigation to resolve the dispute.

Demand for mediation shall be in writing and delivered to the other party to this Agreement. A demand for mediation shall be made within reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal or equitable proceedings based on such a claim, dispute or other matter in question would be barred by California statutes of limitations.

32. Non-Discrimination. Contractor shall not discriminate on the basis of any protected class under federal or State law in the provision of the Services or with respect to any Contractor employees or applicants for employment. Contractor shall ensure that any subcontractors are bound to this provision. A protected class, includes, but is not necessarily limited to race, color, national origin, ancestry, religion, age, sex, sexual orientation, marital status, and disability.

Now, therefore, the City and Vendor have executed this Agreement on the date(s) set forth below.

TOOLE DESIGN GROUP, LLC

CITY OF FOWLER

1322 Webster Street, Suite 108
Oakland, CA 94612

128 South 5th Street
Fowler, CA 93625

Name: _____
Title: _____

Wilma Tucker
City Manager

Date: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

INSURANCE REQUIREMENTS

Prior to commencement of the Services, Vendor shall take out and maintain at its own expense the insurance coverage required by this **Exhibit C**. Vendor shall cause any subcontractor with whom Vendor contracts for the performance of Services pursuant to this Agreement to take out and maintain equivalent insurance coverage. Said insurance shall be maintained at all times during Vendor's performance of Services under this Agreement, and for any additional period specified herein. All insurance shall be placed with insurance companies that are licensed and admitted to conduct business in the State of California and are rated at a minimum with an "A:VII" by A.M. Best Company, unless otherwise acceptable to the City.

a. Minimum Limits of Insurance. Vendor shall maintain the following types of insurance with limits no less than specified:

(i) General Liability Insurance (including operations, products and completed operations coverages) in an amount not less than \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(ii) Worker's Compensation Insurance as required by the State of California.

(iii) Automobile Liability Insurance in an amount not less than \$1,000,000 per accident for bodily injury and property damage.

(iv) Umbrella or Excess Liability. In the event Vendor 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). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents and volunteers.

If Vendor maintains higher limits than the minimums shown above, the City shall be entitled to coverage at the higher limits maintained.

b. Other Insurance Provisions. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(i) The City, its officers, officials, employees, agents, and volunteers are to be covered as insured's with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Vendor; and with respect to liability arising out of work or operations performed by or on behalf of the Vendor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Vendor's insurance (at least as broad as ISO Form 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33 or CG 20 38; and CG 20 37 forms if later revisions used).

(ii) For any claims related to the Services performed pursuant to this Agreement, the Vendor's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Vendor's insurance and shall not contribute with it.

(iii) Each insurance policy required by this section shall be endorsed to state that the City shall receive written notice at least thirty (30) days prior to the cancellation, non-renewal, of the coverages required herein. Vendor shall provide (30) days prior written notice of any material change in coverage.

(iv) Vendor grants to the City a waiver of any right to subrogation which any insurer of said Vendor may acquire against the City by virtue of the payment of any loss under such insurance. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

(v) Any deductibles or self-insured retentions must be declared to and approved by the City of Fowler Risk Services. The City may require the Vendor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

c. Evidence of Coverage. Vendor shall deliver to City written evidence of the above insurance coverages, including the required endorsements prior to commencing Services under this Agreement; and the production of such written evidence shall be an express condition precedent, notwithstanding anything to the contrary in this Agreement, to Vendor's right to be paid any compensation under this Agreement. City's failure, at any time, to object to Vendor's failure to provide the specified insurance or written evidence thereof (either as to the type or amount of such insurance), shall not be deemed a waiver of City's right to insist upon such insurance later.

d. Maintenance of Insurance. If Vendor fails to furnish and maintain the insurance required by this section, City may (but is not required to) purchase such insurance on behalf of Vendor, and the Vendor shall pay the cost thereof to City upon demand, and City shall furnish Vendor with any information needed to obtain such insurance. Moreover, at its discretion, City may pay for such insurance with funds otherwise due Vendor under this Agreement.

e. Subcontractors. If the Vendor should subcontract all or any portion of the work to be performed in this Agreement, the Vendor shall cover the subcontractor, and/or require each subcontractor to adhere to all the requirements contained herein. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.

f. Special Risks or Circumstances. The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

g. Indemnity and Defense. Except as otherwise expressly provided, the insurance requirements in this section shall not in any way limit, in either scope or amount, the indemnity and defense obligations separately owed by Vendor to City under this Agreement.

EXHIBIT C
CERTIFICATE OF INSURANCE

Exhibit D

Statement of Qualifications

EXHIBIT A -- Fowler Downtown Streetscape Plan and Concept Design Cost Proposal

7/26/2022

Tasks	Toole Design Group						Opticos				Yamabe and Horn									
	Kevin Perry Project Manager	Cindy Zerger Principal in Charge	Teresa Damaske Landscape Architect	Anjulie Palta Project Planner	Total Hours	Total Labor Cost	Stefan Pellegrini Principal	Mitali Ganguly Senior Associate	Total Hours	Total Labor Cost	David Horn Principal	Kenny Reyes (CE II)	McKay Romero (AE I)	Josue Villanueva (AS II)	Mark Medina (GIS)	Gonzalo Zamora (CAD)	2-Person Survey Crew	Total Hours	Total Labor Cost	
Rate	\$ 202.00	\$ 230.00	\$ 156.00	\$ 151.00			\$ 335.00	\$ 225.00			\$ 205.00	\$ 160.00	\$ 115.00	\$ 135.00	\$ 125.00	\$ 125.00	\$ 265.00	\$ -		
Task 1 - PROJECT PLANNING AND COORDINATION																				
1.1 Project Team Site Visit and Assessment	10	10	0	0	20	\$ 4,320.00	10	10	20	\$ 5,600.00	6	0	0	0	0	0	0	6	\$ 1,230.00	
1.2 Monthly Meetings (1/2 hour meetings)	5	0	0	5	10	\$ 1,765.00		5	5	\$ 1,125.00	5	0	0	0	0	0	0	5	\$ 1,025.00	
1.3 Progress Reports and Invoicing	6	0	0	6	12	\$ 2,118.00	0	0	0	\$ -	0	0	0	0	0	0	0	0	\$ -	
Task 1 Total Hours	21	10	0	11	42		10	15	25		11	0	0	0	0	0	0	11		
Task 1 Total Labor Cost	\$ 4,242.00	\$ 2,300.00	\$ -	\$ 1,661.00		\$ 8,203.00	\$ 3,350.00	\$ 3,375.00		\$ 6,725.00	\$ 2,255.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 2,255.00	
Task 2- DATA COLLECTION/OPPORTUNITIES AND CONSTRAINTS ANALYSIS																				
2.1 Collect Data on Existing Conditions	6	0	0	10	16	\$ 2,722.00	0	0	0	\$ -	1	0	0	4	0	0	24	29	\$ 7,105.00	
2.2 Prepare Base Maps	6	0	6	12	24	\$ 3,960.00	0	0	0		2	2	2	8	16	16	0	46	\$ 6,040.00	
2.3 Existing Conditions Memo	4	2	0	8	14	\$ 2,476.00	0	0	0		1	4	4	0	0	0	0	9	\$ 1,305.00	
Task 2 Total Hours	16	2	6	30	54		0	0	0		4	6	6	12	16	16	24	84		
Task 2 Total Labor Cost	\$ 3,232.00	\$ 460.00	\$ 936.00	\$ 4,530.00		\$ 9,158.00	\$ -	\$ -		\$ -	\$ 820.00	\$ 960.00	\$ 690.00	\$ 1,620.00	\$ 2,000.00	\$ 2,000.00	\$ 6,360.00		\$ 14,450.00	
Task 3 - COMMUNITY ENGAGEMENT/DESIGN DEVELOPMENT																				
3.1 Plan and Coordinate Workshop Event Logistics	2	2	0	0	4	\$ 864.00	0	0	0	\$ -	0	0	0	0	0	0	0	0	\$ -	
3.2 Two-day Workshop	24	24	0	24	72	\$ 13,992.00	0	0	0	\$ -	0	0	0	0	0	0	0	0	\$ -	
Task 3 Total Hours	26	26	0	24	76		0	0	0		0	0	0	0	0	0	0	0		
Task 3 Total Labor Cost	\$ 5,252.00	\$ 5,980.00	\$ -	\$ 3,624.00		\$ 14,856.00	\$ -	\$ -		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -	
Task 4 - DRAFT CONCEPTUAL DESIGN																				
4.1 Develop and Refine Design Alternatives	18	4	28	20	70	\$ 11,944.00	8	12	20	\$ 5,380.00	4	8	4	0	4	8	0	28	\$ 4,060.00	
4.2 Review City Comments	4	2	2	2	10	\$ 1,882.00	2	2	4	\$ 1,120.00	2	0	0	0	0	0	0	2	\$ 410.00	
4.3 Concept Revisions and Council Approvals	4	2	12	4	22	\$ 3,744.00	2	2	4	\$ 1,120.00	2	0	0	0	0	0	0	2	\$ 410.00	
4.4 Concept Design Framework																				
Task 4 Total Hours	26	8	42	26	102		12	16	28		8	8	4	0	4	8	0	32		
Task 4 Total Labor Cost	\$ 5,252.00	\$ 1,840.00	\$ 6,552.00	\$ 3,926.00		\$ 17,570.00	\$ 4,020.00	\$ 3,600.00		\$ 7,620.00	\$ 1,640.00	\$ 1,280.00	\$ 460.00	\$ -	\$ 500.00	\$ 1,000.00	\$ -		\$ 4,880.00	
Task 5 - IMPLEMENTATION PLAN AND COST ESTIMATES																				
5.1 Develop Implementation Plan	12	2	8	8	30	\$ 5,340.00	0	0	0	\$ -	8	16	4	0	8	8	0	44	\$ 6,660.00	
5.2 Cost Estimates	2	2	12	10	26	\$ 4,246.00	0	0	0	\$ -	2	4	0	0	0	0	0	6	\$ 1,050.00	
Task 5 Total Hours	14	4	20	18	56		0	0	0		10	20	4	0	8	8	0	50		
Task 5 Total Labor Cost	\$ 2,828.00	\$ 920.00	\$ 3,120.00	\$ 2,718.00		\$ 9,586.00	\$ -	\$ -		\$ -	\$ 2,050.00	\$ 3,200.00	\$ 460.00	\$ -	\$ 1,000.00	\$ 1,000.00	\$ -		\$ 7,710.00	
Task 6 - FINAL DOWNTOWN STREETScape PLAN AND CONCEPTUAL DESIGN																				
6.1 Prepare Admin. Draft Downtown Streetscape Plan	8	2	20	32	62	\$ 10,028.00	4	8	12	\$ 3,140.00	6	2	0	0	0	0	0	8	\$ 1,550.00	
6.2 Review City Comments	4	2	2	2	10	\$ 1,882.00	2	2	4	\$ 1,120.00	2	0	0	0	0	0	0	2	\$ 410.00	
6.3 Prepare Final Concept Design	12	2	32	24	70	\$ 11,500.00	0	0	0	\$ -	0	0	0	0	0	0	0	0	\$ -	
6.4 Revise and Prepare Final Downtown Streetscape Plan	8	4	48	36	96	\$ 15,460.00	4	10	14	\$ 3,590.00	2	2	0	0	0	0	0	4	\$ 730.00	
6.5 Plan Submission and Council Adoption	4	2	0	4	10	\$ 1,872.00	0	0	0	\$ -	0	0	0	0	0	0	0	0	\$ -	
Task 6 Total Hours	36	12	102	98	248		10	20	30		10	4	0	0	0	0	0	14		
Task 6 Total Labor Cost	\$ 7,272.00	\$ 2,760.00	\$ 15,912.00	\$ 14,798.00		\$ 40,742.00	\$ 3,350.00	\$ 4,500.00		\$ 7,850.00	\$ 2,050.00	\$ 640.00	\$ -	\$ -	\$ -	\$ -	\$ -		\$ 2,690.00	
Total Hours	139	62	170	207	578	\$ 100,115.00	32	51	83	\$ 22,195.00	43	38	14	12	28	32	24	191	\$ 31,985.00	
Budget by Firm						\$ -														
Total Labor Cost						\$ 100,115				\$ 22,195									\$ 31,985	

Toole Design Direct Expenses-

Day Trip Expense 2 @ \$150 = \$300

Charrette Trip Expense
Hotel: 9@ \$150/night = \$1,350
Meals: 9@ \$50/day = \$450
Printing = \$2500

Total= \$4,600

Opticos Direct Expenses-

Day Trip Expense = \$600

2022 Approx. Task 1-4 \$ 82,234.00
2023 Approx. Task 5-6 \$ 77,078.00

Labor Total	\$ 154,295
Team Direct Expense	\$ 5,200
Project Total Cost	\$ 159,495

TOOLE
DESIGN

APRIL 21, 2022

**CITY OF FOWLER
DOWNTOWN STREETScape PLAN
AND CONCEPTUAL DESIGN**





1322 WEBSTER STREET
SUITE 208
OAKLAND, CA 94612

510.298.0740
TOOLEDDESIGN.COM

April 21, 2022

City of Fowler
ATTN: Thomas Gaffery
128 S. 5th Street
Fowler, CA 93625
Submitted via email at tgaffery@ci.fowler.ca.us

RE: Downtown Streetscape Plan and Conceptual Design

Dear Mr. Gaffery:

Toole Design Group is pleased to submit our qualifications to work with the City of Fowler to prepare the Downtown Streetscape Plan and Conceptual Design. We commend the City and its partners for developing a sound project approach and scope of work that will yield a visionary and implementable plan for the City of Fowler. We have reviewed your RFQ and assembled an outstanding team of urban designers, planners, landscape architects, engineers, and architects to work with the City and its project partners to develop a community-driven Downtown Streetscape Plan and Conceptual Design.

We understand you are looking for a consultant who will be a collaborative partner in this endeavor, specifically experts in active transportation planning and design, urban infill and redevelopment, and civil engineering, and community-oriented placemaking. Toole Design, in collaboration with Opticos Design, has successfully collaborated on similar projects of size, scale, communities of diversity, and complexity in places throughout California. We have recently provided similar downtown planning and design services in Modesto and Mariposa, and we are excited at the prospect of working with the City of Fowler and its project partners.

Toole Design is the nation's leading expert in active transportation and multimodal street design. Our passion is creating thoughtfully designed multimodal network and streetscape environments that are inviting for people of all ages and abilities. We center a multimodal approach to allow walking and bicycling to become viable transportation options. Our team brings a wealth of experience in multimodal planning, design, and engineering and pride ourselves in being able to translate community feedback into visionary and implementable design solutions.

We are delighted to be partnering with **Opticos Design** on this project. Opticos is a nationally-recognized urban design, planning, and architecture firm with a passion for creating vibrant, healthy, and sustainable places. For 20 years, they have prepared downtown plans, revitalization strategies, transit-oriented development, and offered strategic advice for communities across the country. They bring a wealth of experience in communities throughout the Central Valley, having helped develop 24 equity-focused, community-based downtown and corridor revitalization strategies since 2005, including working with the City of Fowler to develop the *Central Fowler Revitalization Plan*. Our firms have a shared philosophy in that the work we do must be rooted in a community-based process to create vibrant, walkable, sustainable environments. The synergy of our firms leads cohesive urban design strategies that address both transportation and land use challenges that respond to the context in which we work.

EXHIBIT D -- Page 3

To complete our team, we are also partnering with **Yamabe & Horn Engineering, Inc.** for surveying services. Yamabe & Horn Engineering delivers a comprehensive range of engineering services in the preliminary, design, and construction phases of municipal, private land development, institutional, industrial and traffic related projects. Yamabe & Horn Engineering has achieved invaluable experience serving cities primarily in the Central Valley.

Our team will be led by nationally recognized landscape architect **Kevin Robert Perry, FASLA, PLA**. Kevin brings over two decades of experience managing interdisciplinary teams focused on streetscape and public realm improvements throughout the West Coast and is based in Toole Design's Oakland office. Kevin has a clear understanding for how to encourage creative design solutions that are as functional as they are visionary. Kevin's projects are award-winning streetscape retrofit examples and he proudly intertwines the art and ecological function of green infrastructure to also help communities meet their sustainability goals. Kevin will work closely with **Stefan Pellegrini, RA, AICP**, who is adept at crafting urban design and infill redevelopment strategies that result vibrant, walkable communities. Our team is rounded out by a fantastic multidisciplinary team of planners, designers, and engineers.

We are excited to work with you. Thank you for the opportunity to share our approach and exceptional team. We have many satisfied clients and would be happy to share their positive feedback. If you have any questions, please contact Kevin Perry at 510.298.0740 x616 or kperry@tooledesign.com. Thank you for considering our team.

Sincerely,



Jennifer L. Toole, AICP, ASLA
President

Years in Business	19
Years with Present Name	19
Types of Services	Urban design and placemaking; LID, green stormwater infrastructure, landscape design; universal design and accessible shared spaces; downtown visioning; Complete Streets design; multimodal transportation planning, research, engineering, and design; new mobility/micromobility/shared mobility research, policy, planning, and design; public and stakeholder engagement; graphic design, visualization, animation; GIS analysis and mapping; grant application
Subsidiaries	Toole Design Group Canada Inc. performs services in Canada. 10055 106 Street NW, Unit 1270, Edmonton AB T5J 2Y2
Affiliates	TDG Engineering, Inc. performs engineering services in California. TDG, LLP performs engineering and landscape architecture services in North Carolina. Transportation Engineering Design, DPC. performs engineering services in New York, Connecticut, and Michigan.

Toole Design does not operate as a franchise. All of our affiliates and subsidiaries operate under the same parent company (Toole Design Group, LLC) and principals.

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PROJECT AND TEAM EXPERIENCE

PROJECT TEAM AND EXPERIENCE

TOOLE DESIGN

Toole Design creates livable communities characterized by active, accessible, multimodal transportation networks. We employ a “path as place” philosophy and believe that through thoughtful planning and design, streets can feel as special as the destinations to which they lead. Great streetscapes, connected multimodal networks, and thoughtful attention to the spaces we move through are foundational for healthy, vibrant communities and dynamic economies. Consideration of how streets contribute to a community’s character is fundamental to our planning and design process.

Our interdisciplinary team is passionate about working collaboratively with communities to create vibrant, walkable spaces and places. For over 19 years we have transformed the way people move and experience place. This work is a result of our fundamental belief that working with clients and the community in an authentic, transparent manner yields the best results. Engaging communities and stakeholders from the beginning to the end of a project process is a cornerstone of our approach. To create culturally, economically, and environmentally sensitive designs

requires the voices of the community and we are adept at translating feedback and distilling it into design solutions. Our project experience includes convening multidisciplinary teams in multi-day charrettes to develop design and policy solutions that lead to the implementation of great public and private spaces. Informed by our local and national experience and expertise, we continue to push the envelope in our urban designs in ways that call upon innovation in sustainability, design, and communication.

Our urban design practice is different than most. We believe a community’s network of streets, trails, and open space creates a structure and forms the basis of a resident’s or visitor’s experience. Because of our focus on streets—arguably the largest portion of a community’s public space—we engage engineers early in our planning and design process. Our like-minded urban design partners at Opticos Design bring a built form and land use perspective to the process. Approaching downtown master planning efforts with multiple disciplines allows our team to address transportation and the built form simultaneously and in ways that are as implementable as they are visionary.



Toole Design is experienced in designing beautiful, multimodal streets that are accessible for all users.

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The following summarizes our relevant skills and qualifications:

Proven Partnership

Toole Design and Opticos partner often, and our results speak for themselves. In 2019, we delivered the Modesto Downtown Master Plan, where our team specifically focused on design and policy recommendations to improve transit connectivity, encourage the right scale of infill redevelopment, and create better multimodal environments. The City is already implementing our recommendations on streets within the community.

Charrette Expertise

Toole Design has extensive experience leading visioning workshops—also known as charrettes—that are specifically focused on urban redevelopment. We pride ourselves on our ability to couple public and stakeholder input with our urban design, public realm, and transportation expertise to develop concepts that the communities embrace. Our workshop tools include hosting interactive activities during charrette workshops, conducting walking or bicycling audits with engaged participants, and facilitating meaningful discussions. We will use compelling and clear graphic materials, interactive multimedia, and a variety of engagement tools such as live polling and roundtable discussions to provide the opportunity for everyone in the community can be fully engaged planning for the future of Downtown Fowler.



Toole Design has extensive experience leading charrettes that are specifically focused on urban redevelopment.

Inclusive Engagement

In all of our placemaking and transportation system work, we recognize that how well a project actually serves the public depends on the degree to which the design and decision-making processes account for equity and environmental justice. We recognize that groups such as people of color, low-income people, and immigrants have historically been excluded both from and by the transportation planning process. Their input has not helped shape the built environment, and the built environment has in turn blocked their access to opportunity.

In each step of the project, the Toole Design Team will work to keep those who have been underserved by previous advances in our transportation system to provide an opportunity for their voices to be heard.

Successful Plan Implementation

Plans are of no use if all they amount to is beautiful graphics and a set of lines on a map that sits on a shelf. Our plans equip communities with what they need to implement high-priority projects out of the gate. We give clear direction on how projects will be implemented, which enables us to provide accurate planning-level cost estimates and the information necessary to pursue funding. We have especially deep knowledge of regional transportation and sustainability funding sources and processes in California, and we can provide detailed guidance on how to best position a project for funding and how to prioritize improvements so that they get built.

OPTICOS

Opticos is a team of urban designers, architects, and strategists that partners with clients who want to lead the way in providing vibrant, diverse, walkable urban places. Because they approach each project with innovation and creative problem-solving in mind, they function just as much as a think tank as a consulting firm.

To them, architecture and planning must play a role in defining more sustainable, equitable, healthy, compact patterns of development that improve the quality of life for everyone. This starts with revitalizing existing urban places, but also must include the transformation of suburban places into more urban ones and the creation of thoughtful, new walkable urban communities.

YAMABE HORN

Yamabe & Horn Engineering delivers a comprehensive range of engineering services in the preliminary, design, and construction phases of municipal, private land development, institutional, industrial and traffic related projects. With their history of more than 40 years in the civil engineering and land surveying industry, and specifically over 30 years serving municipal clients, Yamabe & Horn Engineering has achieved invaluable experience serving cities primarily in the Central Valley.

They have established strong relationships as consulting engineers for the cities of Biola, Dinuba, Kerman, Sanger, and Soledad. They credit their success with their municipal clients for having special insight on their needs and providing a reliable, qualified consultant that is proactive and able to perform critical tasks that typically exceed expectations.

Yamabe & Horn Engineering has grown from a two-person office to a staff of 49 employees, which includes ten licensed civil engineers, two licensed land surveyors, project engineers, CAD operators, public works inspectors, field survey crew member and clerical support staff.

Their firm's expertise in design and construction management of public infrastructure improvements serves new developments in a wide variety of geographic locations and site conditions throughout Central and Northern California. Their extensive background and experience combined with our established reputation, will make for an excellent partnership with Toole Design and the City of Fowler.

PROJECT EXPERIENCE

The following includes project examples and references for projects of similar size, scale, and scope. Each of these projects demonstrate our professional skills and credentials especially in the realm of active transportation and transit connectivity, urban design and infill redevelopment, and experience working collaboratively in multi-disciplinary, highly participatory charrette processes in underserved communities.

RUSSELL BOULEVARD CORRIDOR PLAN DAVIS, CA

The Russell Boulevard Corridor Vision Plan is a joint City of Davis, UC Davis, and Yolo County long-range transportation planning effort focused on improving the experience, safety, and multimodal aspects of Russell Boulevard. Three miles in length, Russell Boulevard is a critical east-west connector that establishes the northern edge of the main UC Davis campus and provides access to downtown Davis and numerous campus destinations.

Toole Design is providing overall conceptual design direction to turn Russell Boulevard into an inviting, safe, multimodal corridor that will serve as a distinctive gateway into the City. Throughout the process the team has developed conceptual alternatives for the corridor as it passes through many contexts, from downtown Davis, along the UD Davis campus, and through the more agricultural character at the edge of the City. With the clients' goals for sustainability and accessibility in mind, Toole Design has re-envisioned the corridor to include fully separated walkways, bikeways, transit improvements, and key locations for green infrastructure and placemaking interventions.

As a community-based visioning process, engaging with multiple stakeholders and translating the feedback into design concepts was an integral part of the process. Due to the pandemic, all engagement was held virtually with over 1,000 community members attending meetings and responding to surveys. Community feedback informed the bikeway provisions, and was integral to helping the team locate critical safety measures such as better pedestrian crossings and right-sizing placemaking opportunities throughout the

EXHIBIT D -- Page 9

corridor. The result is a Corridor Vision Plan that sets the stage for Russell Boulevard to advance from just moving cars and people, to a contributing experiential part of the City, County and UC Davis experience.

DOWNTOWN MASTER PLAN MODESTO, CA

The Master Plan for Downtown Modesto is set to transform the auto-oriented, under-performing center into a memorable, pedestrian-oriented destination and attract new investment. A community-led, equity-focused vision celebrates Modesto's distinct identity and agricultural roots, and includes a series of catalyst

projects to spur downtown revitalization and incremental mixed-use infill for sustained, balanced growth.

Keys to the transformation are improving multimodal connectivity and transit-oriented, mixed-use development at nodes to promote housing access and choice. The economic development strategy focuses on retaining local businesses and quick-build, low-cost transformations to catalyze reinvestment.

Opticos Design and **Toole Design** collaborated to create urban design solutions that address both land use and multimodal transportation options concurrently. Through a multi-day charrette and continued engagement with the



Top: Toole Design is providing overall conceptual design direction to turn Russell Boulevard into a distinctive gateway into the City
Bottom: A flush street concept for J Street in Modesto that better addresses connectivity and connection from downtown to the City's transit center.

community and stakeholders throughout the process, or team developed and refined design concepts, proposed policy recommendations, and provided guidance on future implementation for this project.

DESIGNING DOWNTOWN DENISON PHASE ONE DENISON, TX

The City of Denison is proud of its history and heritage as the first rail town in Texas but needed help attracting new economic investment. The City asked **Toole Design** to develop a plan to transform downtown into an attractive, vibrant place that works for people of all ages and abilities.

Our work in Denison began in 2016 when we conducted a two-week design charrette, designing side-by-side with members of the community and distilling their input into a cohesive urban design strategy. Our work was focused on two key streets within the community—Main Street and Barrett Street. Both streets are envisioned to be flush streets that re-purpose more than half of the right-of-way into pedestrian space, café seating, and outdoor retail space. The design team also worked on the development of two parks, including turning a vacant lot into a town park that will become the civic heart of the community with flexible pavilions, a community center, and areas for large festival events.

Phase One of this project has involved advancing some of the original, concept-level designs to construction. Toole Design has provided full construction documents (including plans, specifications, and estimates) for two blocks of Main Street and its adjacent alleyways and parking lots. This portion of downtown is currently under construction.

CONNECT BEVERLY HILLS: MEET ME AT WILSHIRE AND LA CIENEGA BEVERLY HILLS, CA

As part of a streetscape plan for the Wilshire Boulevard and La Cienega Boulevard corridors, **Toole Design** led a team of experts to develop designs for a mobility hub at a future Metro Purple Line (or “D” Line) station. The project was conceived to ensure that transit riders emerge from the new subway station to a cohesive, well-designed public realm with easy access to a diverse range of transportation options.

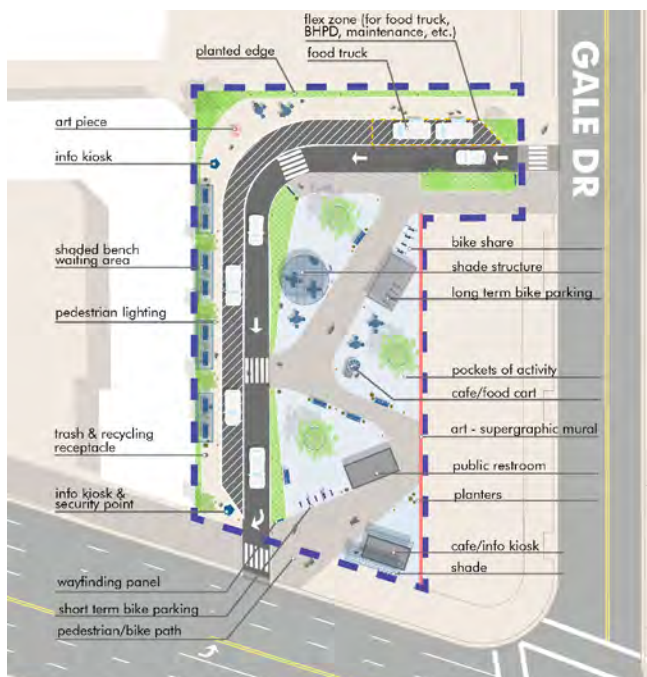
The mobility hub concept design included architectural massing, site programming, and a recommended plan for first- and last-mile connections to the site for an interim mobility hub and a long-term mobility hub that would be integrated into the future development of the current subway staging yard property.



Toole Design created concept designs for two blocks of Main Street and its adjacent alleyways and parking lots in Denison, TX.

The pilot mobility hub, shown in the graphic below, will incorporate transportation, placemaking, and information elements and opportunities for semi-permanent and pop-up commercial activity. The hub will allow the City to test the process and design aspects of implementation in a low-risk setting using semi-permanent materials, which can then be refined as part of a broader mobility hub implementation citywide. As part of this project, Toole Design developed design guidance and standards for mobility hubs and other transportation and urban design improvements that the City of Beverly Hills can adopt and scale citywide.

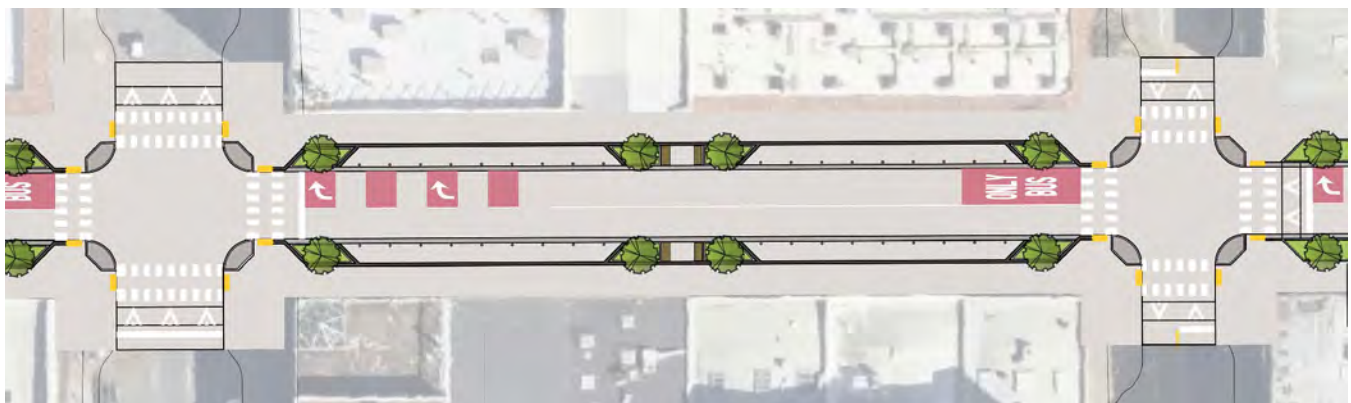
The mobility hub concept design takes into account the future development of the current subway staging yard property in Beverly Hills, CA (top). For Telegraph Avenue, Toole Design is developing a flush street configuration which provides flexible space to accommodate street vendors and festivals in Berkeley, CA (bottom).



BERKELEY SOUTHSIDE COMPLETE STREETS BERKELEY, CA

Toole Design is leading the alternative analysis, public engagement, and final design of the Berkeley Southside Complete Streets project to meet the City's goals of ensuring safety, improving transit reliability, and supporting the economic and cultural vitality of the Southside neighborhood. The project area includes Telegraph Avenue, Bancroft Way, Fulton Street, and Dana Street. The project must develop different complete street configurations solutions for each corridor due to changes in land use, transit service, and connectivity to the City's bicycle network. The designs for all four corridors will culminate in a cohesive \$7.3 million federally funded construction package.

Each segment has multiple modes competing for space within the confined urban right-of-way. This Complete Streets project aims to reallocate space to the modes that transport the highest numbers of people throughout the Southside: buses, bicycles, and pedestrians. The project includes a stretch of Telegraph Avenue, a commercial street with a colorful history. To refresh Telegraph Avenue as a street for people, Toole Design is developing a flush street configuration which provides flexible space that supports access to businesses and seamlessly transforms to accommodate street vendors and festivals. The reconstruction of Telegraph Avenue requires strategic investments on the other corridors to meet the allocated construction funding. The project team is utilizing landscaping, concrete medians, and quick-build materials to create accessible bus boarding islands, two-way bike facilities on one-way streets, and flexible curbside space.



The project is subject to an accelerated schedule due to pandemic related delays and a hard funding deadline. Toole Design presented a preferred alternative to Berkeley's City Council in February 2022 and will complete final construction plans by the end of the year. Construction is planned for 2023 and 2024.

SANTA FE MIDTOWN DEVELOPMENT PROJECT SANTA FE, NM

Opticos Design and **Toole Design** are developing a comprehensive mobility vision for the Midtown Development site with a specific emphasis on intertwining green infrastructure within streetscape design and significantly increasing points of access into the development site where few opportunities exist today. Our work will create a network of multimodal green streets, trails, pedestrian paseos, and urban plaza/open spaces at the 64-acre Santa Fe Midtown Development site.

The Midtown Santa Fe district will transform over time from an existing higher education campus site into a vibrant mixed-use, urban district in the heart of Santa Fe. This project required several site visits and remote design work. The design team attended an in-person "Listening Session" to gain a strong understanding of site conditions, concerns, and opportunities from various project stakeholders. From this, the design team prepared an overall phased connectivity framework and developed the principal goals of sustainable mobility to be used throughout Midtown.

Our team developed a multi-phased connectivity network including initial an initial phase that identifies immediate bike and pedestrian connections and intersection improvements surrounding the project site. We also developed a series of illustrative cross sections that represent the spectrum of streets planned for both public and private build out phases. All streets within the Midtown Development project site incorporate green infrastructure elements.

CENTRAL FOWLER REVITALIZATION PLAN FOWLER, CA

Fowler has suffered from the decline of its historic downtown, the loss of passenger railroad service, and the introduction of both a regional highway (the Golden State Boulevard) and State Highway 99 into its compact urban fabric over the years. **Opticos Design** collaborated with the Local Government Commission and a multi-disciplinary team in 2007 to create a revitalization strategy for the downtown area.

The design team engaged the community and key stakeholders during a six-day community charrette held at Fowler High School that provided multiple opportunities for community members to engage and discuss design visions and alternatives. The design team looked at strategies to maintain and reinforce downtown's centrality and vitality and to support a well-connected network to make it easy for pedestrians and bicyclists to travel in and around the downtown area.

Key to the project were design considerations to connect Merced Street, Fowler's downtown Main Street, to Highway 99 to the west. Merced Street crosses several barriers, including the Union Pacific rail right-of-way and old Highway 99/Golden State Boulevard making for a challenging experience for pedestrians and bicyclists. The design team proposed to reroute the Golden State Highway one block to the west at



Opticos Design worked with the City of Fowler to support an ongoing façade improvement program.

8th Street, creating a new downtown center oriented around a proposed plaza, giving both downtown the visibility it needs to capture highway travelers and strengthening connectivity to the historic main street and adjacent neighborhoods.

The plan also includes streetscape improvements and infill building prototypes for Fowler's traditional Main Street in support of an ongoing façade improvement program, the creation of a citywide pedestrian and bicycle network, and recommendations for how long-term growth in the City can maintain its centrality and connectivity.

The 2007 plan has become an important part of the City's planning library and guided the implementation of façade improvements in and around downtown and the implementation of key pedestrian infrastructure. The plan has served as the foundation for subsequent plans, including the current General Plan update.

BLACKSTONE-SHAW ACTIVITY CENTER DESIGN PRINCIPLES FRESNO, CA

Toole Design and **Opticos Design** worked collaboratively to envision a new, walkable pattern of development around Fresno's busiest intersection.

Building on the momentum of Fresno's recently adopted mixed-use zoning, and complementing the redesign of the auto-dominated Blackstone Avenue as a Complete Street, Opticos created design principles for new development along the corridor to guide property owners and developers in creating walkable urbanism along Blackstone, in a city with virtually no recent examples of walkable development.

The design principles were taken up by a local non-profit in their visioning effort for the future architecture and urban design of the corridor.

DAVIS SPECIFIC PLAN + CODE DAVIS, CA

The Downtown Plan establishes a forward-thinking yet realistic vision for the commercial core of Davis, a small town next door to the University of California, Davis. Working closely with city staff, the community, and a renowned team of nationwide and local experts,



Opticos created a forward thinking vision for the commercial core of Davis, CA.

Opticos Design led a dynamic process with two week-long design charrettes, to bring together a concordant public dialogue and a coherent vision that celebrates Davis' unique identity as a leader in sustainability and the "bicycling capital" of the Western U.S.

Project Highlights

1. Robust public engagement including two week-long design charrettes, six pop-ups and an online workshop.
2. Built support from a challenging, engaged community for larger-scale infill and a focus on sustainability.
3. Increased housing affordability and choice with Missing Middle Housing.
4. A layered multimodal street network, prioritizing cycling, pedestrian, and no off-street parking.
5. Sensitive infill balanced with historic preservation, guided by contextual form-based standards.

TRANSPORTATION CENTER + ACTIVE TRANSPORTATION FEASIBILITY STUDY MARIPOSA, CA

Opticos Design led an interdisciplinary consultant team to work with the community, Mariposa County, the National Park Service, the Yosemite Area Regional Transit System, and local foundations to craft a plan that would deliver near-term improvements for residents and visitors in Mariposa while establishing a framework for strengthening the community's



The concepts and recommendations for Mariposa, CA will make walking, parking, transit riding, and tour bus circulation safer and more convenient.

connection to Yosemite National Park. The unique natural and built environment in Mariposa informed a variety of context-sensitive street cross section designs, a wayfinding vision, and an architectural vocabulary for a new transportation center facility that provides a unique and forward-looking identity for Mariposa while honoring its connection to Yosemite National Park.

Toole Design developed Complete Streets-based solutions including active transportation planning and facility design, ADA accessibility recommendations, wayfinding and branding systems, preliminary cost estimates, urban design, parking, and downtown multimodal circulation planning. The concepts and recommendations developed by Toole Design will strengthen Mariposa's Main Street and make walking, parking, transit riding, and tour bus circulation safer and more convenient. The completed feasibility study includes strategies for capital improvement project phasing and funding.

14-272 ACADEMY AVENUE RECONSTRUCTION SANGER, CA

This **Yamabe & Horn Engineering** project covered over a mile long stretch, reconstructing Academy Avenue from 11th Street to North Avenue. The work generally consisted of the following: The south 3100 feet of the project consisted of a 2-inch grind of the existing roadway with a 3-inch HMA overlay. North of the overlay, the remaining street was excavated to the grading plane as needed. The structural section was installed, and the street paved. Concrete flatwork

consisting of access ramps were installed, as well as some curb and gutter and sidewalk work. The project included storm drain, landscape, and irrigation work, as well as the installation of streetlights and the modification of two traffic signals, with one being an add-alternate bid.

17-138 BETHEL AVENUE WIDENING OVERLAY SANGER, CA

This project rehabilitated the pavement on Bethel Avenue between Annadale Avenue and Jensen Avenue as well as widening a portion of the roadway south of Jensen Avenue. **Yamabe & Horn Engineering's** work generally consisted of the following: A 2-inch grind of the existing roadway followed by crack-fill, asphalt dig out and replacement, pavement reinforcement mat and a 2.25-inch HMA overlay. A section of the roadway was widened with full structural section and paving. Concrete flatwork primarily consisted of access ramps were constructed as well as some curb and gutter and sidewalk work. Storm drain pipeline and structure construction was included in this project as well as the installation of streetlights and associated electrical facilities.

KEY STAFF

Toole Design has selected a group of highly experienced urban designers, planners, and engineers who have demonstrated expertise on similar projects. Their resumes, including availability for this project, are on the following pages.



CINDY ZERGER, ASLA

PRINCIPAL-IN-CHARGE

TOOLE DESIGN | AVAILABILITY: 10%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 16

Toole Design: 2014-Present

Humphrey School of Public
Affairs: 2012-2014

Center for Channing Landscapes:
2009-2012

Coen+Partners: 2007-2009

Humphrey Institute of Public
Affairs: 2006-2007

EDUCATION/ CERTIFICATION

Master of Urban and Regional
Planning and Master of
Landscape Architecture,
University of Minnesota: 2008

Bachelor of Arts, Sociology,
St. Lawrence University: 1998

American Institute of
Certified Planners

APPOINTMENTS/ AFFILIATIONS

Association of Pedestrian and
Bicycle Professionals

American Society of
Landscape Architects

American Planning Association

Cindy is Toole Design's Director of Urban Design for California and has a wealth of experience in multimodal transportation planning including corridor redesigns and urban designs for the public realm. Cindy has led some of the company's most complex and largest streetscape and master planning projects across the country and in California. Cindy coined the phrase "path as place" which has been influential in the company's approach to designing streets to be as enjoyable as the destinations to which they lead. As Principal-in-Charge, takes her role seriously and is committed to supporting the entire project team and ensuring client satisfaction.

SELECTED PROJECT EXPERIENCE

Reimagine Russell Boulevard, Davis, CA

Cindy is Project Manager and Lead Designer working with the City of Davis and University of California at Davis (UCD) in a joint effort to reimagine Russell Boulevard. Russell Boulevard is a key east west street, serving as the gateway to the City and UCD. Cindy is leading a team of designers to work with the community to create a concept that functions for all modes and celebrates the City and UCDs rich agrarian history.

Modesto Downtown Master Plan, Modesto, CA

Cindy served as the Toole Design Project Manager for the Modesto Downtown Master Plan and guided her team to develop multimodal transportation options for streets in the project study area. She worked with the team to consider the broader community street network in its planning process, and specifically come up with concepts to encourage a better walking and cycling environment.

Berkeley Southside Complete Streets, Berkeley, CA

Cindy is serving as Project Manager and lead designer for the redesign of four major corridors in Berkeley's Southside Neighborhood. Cindy is leading the team from conceptual design through full PS&E and construction administration services. The goal of the project is to create better walking, biking, driving, and transit experience throughout the area. Telegraph Avenue is one of the streets within the project study area and the design team is currently developing flush street options for four blocks of this iconic corridor. As part of the process Cindy is working with the team to develop a cohesive corridor long strategy for Telegraph that integrates into perpendicular streets that are more traditional in nature.

Designing Downtown Denison, Denison, TX

Cindy served as the project manager and lead designer in this effort to create a cohesive urban design strategy for downtown Denison, TX. Toole Design initiated the process with an intensive two-week design workshop, developing streetscape, park, and plaza concepts to create a more enjoyable environment that celebrates Denison's rich history as the first rail town in the state of Texas. Cindy continued to work with the City through an on-call contract, providing cost estimates, feasibility studies, and additional design concepts for alleys and parking lots. Cindy has been an integral part helping Denison balance design services, construction phasing, and funding availability. Toole Design continues to work with the City of Denison, providing construction documentation and administration services on Phase 1 of the redesign of Main Street.



KEVIN ROBERT PERRY, FASLA, PLA

PROJECT MANAGER AND DESIGN LEAD

TOOLE DESIGN | AVAILABILITY: 25%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 26

Toole Design: 2021-Present

Urban Rain Design:
2012-Present

Nevue Ngan Associates:
2006-2012

City of Portland: 2002-2006

EDUCATION/ CERTIFICATION

Bachelor of Landscape
Architecture, University of
California, Davis: 1996

Professional Landscape: OR

APPOINTMENTS/ AFFILIATIONS

American Society of
Landscape Architects

California Student Leadership
in Green Infrastructure

AWARDS

ASLA CA Sierra Chapter
Merit Award: Tactical Green
Infrastructure: 2020

City of Davis Environmental
Recognition Award: 2019

As Project Manager, Kevin will be the day-to day main point of contact for the City. Kevin brings strong project management experience from projects of varying scales. His approach to project management combines strong leadership and design aptitude with an integrated team that leverages the strengths of its members and provides quality control for all deliverables. Kevin is recognized for his passion and ability to balance the needs and the context of a community with innovative transportation solutions that improve and address local needs. Kevin is also an internationally recognized leader in successfully integrating green infrastructure stormwater management with high-quality urban design.

SELECTED PROJECT EXPERIENCE

Russell Boulevard Corridor Plan, Davis, CA

Kevin is serving as the green infrastructure lead for a community-based vision for a three-mile stretch of the Russell Boulevard corridor. This plan will be based on a Complete Streets and context-sensitive approach that addresses all forms of transportation including bicycles, pedestrians, transit, and vehicles. The team is producing a streetscape master plan, including a conceptual design and streetscape standards for the corridor. The Plan envisions a lively, green boulevard that is comfortable for people of all ages and abilities and reflects the innovative spirit of Davis and seamlessly integrates multimodal transportation improvements, green infrastructure, and placemaking.

Santa Fe Midtown Development, Santa Fe, NM

Kevin is the Toole Design connectivity and streetscape design Project Manager for the 64-acre Midtown Santa Fe district that will be transform an existing campus site into a mixed-use, urban district in the heart of the City of Santa Fe. The goal is to create a dynamic place—an innovation hub that is enriched by arts and culture experience and anchored with higher education institutions, film and multimedia companies, technology and entrepreneurial businesses, community arts organizations, as well as civic buildings and public open spaces. Kevin is leading the effort to create a network of inter-neighborhood green streets, trails, pedestrian paseos, and urban plaza/open spaces that are beautifully designed and provides an opportunity for residents to prosper, grow, and continue the tradition of multi-generational families in Santa Fe.

20th Streetscape, Kansas City, MO

Prior to joining Toole Design, Kevin worked on planning of five blocks of the 20th Street corridor in the Crossroads Art District Neighborhood. Kevin helped create a beautiful downtown street that is equally accessible to pedestrians, cars, bicyclists, and buses. New public green space, street trees and plantings, and safe and efficient parking has drastically improved the street. The streetscape design helps foster a walkable downtown and promotes safe and authentic neighborhoods that exemplify sustainability. The 20th Street Streetscape was recognized as a 2016 Mid America Regional Council's "Sustainable Success Stories Honoree."



RYAN PARKS, PE

PROJECT ENGINEER

TOOLE DESIGN | AVAILABILITY: 40%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 9

Toole Design: 2021-Present

T.Y. Lin International: 2018-2020

Alfred Benesch & Co.: 2012-2018

EDUCATION / CERTIFICATION

Bachelor of Science,
Civil Engineering,
Northwestern University: 2012

Professional Engineer: IL

Ryan is a multimodal engineer with both public and private sector experience in transportation design. His background includes transportation network assessment, Complete Street design, and project implementation and phasing. Ryan is a specialist in bicycle and pedestrian infrastructure, taking projects from conceptual design through construction management.

SELECTED PROJECT EXPERIENCE

Russell Boulevard Corridor Plan, Davis, CA

Ryan is providing roadway design guidance to the Toole Design Team working with the City of Davis and University of California at Davis (UCD) in a joint effort to reimagine Russell Boulevard. Russell Boulevard is a key east west street, serving as the gateway to the City and UCD. Ryan designed a roundabout, on-street and off-street bikeways, and protected intersections. Special consideration is required for the interaction of modes due to the high volumes of pedestrians, bicyclists, transit users, and motorists traveling within Davis and UCD.

Berkeley Southside Complete Streets, Berkeley, CA

Ryan serves as Deputy Project Manager for the design of four corridors in Berkeley's Southside neighborhood. This Vision Zero project is prioritizing the safe movement of people through transit lanes, separated bikeways, and pedestrian improvements. He is responsible for coordinating with Toole Design staff and the project's five subconsultants to advance three concepts for each corridor through public engagement on a compressed, grant-driven timeline. Ryan and Toole Design will advance the preferred alternative through construction plans, specifications, and estimates.

Arden Way Complete Streets Master Plan, Arden-Arcade, CA

Ryan serves in a technical advisory role for the project, which has an emphasis on improving the corridor for pedestrians, bicyclists, and transit users in Sacramento County. The project intends to transform the corridor to improve the safety and comfort of all roadway users, with an emphasis on landscaping and placemaking. Ryan aided in the conceptual development and facilitated public engagement on the concepts.

Maple Avenue Complete Streets, Takoma Park, MD

Ryan is leading the design of the 30% conceptual plans. The City was awarded a Metropolitan Washington Council of Governments Grant to develop concept plans and cost estimates for Maple Avenue in order to pursue additional funding for design engineering and construction. Ryan participated in the public outreach and is drawing on the stakeholders' feedback to complete the design of the corridor.

Crystal Lake Safe Routes to School, Crystal Lake, IL

Ryan served as the lead engineer for the design of a shared use path along Country Club Road. The path connects an existing trail with South Elementary School within a constrained right-of-way. He led the project from NEPA processing to final plans, specifications, and cost estimates.



MALIA SCHILLING

PLANNER II

TOOLE DESIGN I AVAILABILITY: 60%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 9

Toole Design: 2020-Present

Populus: 2019-2020

Save The Bay: 2016-2017

Community Arts Resources:
2013-2015

EDUCATION / CERTIFICATION

Master of Urban and Regional
Planning, University of
California, Los Angeles: 2019

Bachelor of Arts,
Public Relations and
Graphic Design,
University of Southern
California: 2013

Malia is a planner with experience in emerging trends in shared mobility, bicycle and pedestrian projects, and community outreach and engagement. At Populus, she worked with public agencies across the Western United States to support mobility data analysis and visualization using Mobility Data Specification (MDS), helping public sector staff adopt data collection best practices and enforce shared mobility service permits. Malia has collaborated on case studies for mobility data analysis in Chicago, IL and Arlington, VA, and participated in nationwide shared mobility working groups with organizations like Safe Routes Partnership and the New Urban Mobility Alliance to create best practices for new mobility safety, market entry, and data use cases.

SELECTED PROJECT EXPERIENCE

Connect Beverly Hill: Meet Me at Wilshire Boulevard and La Cienega, Beverly Hills, CA
Malia was the Project Manager for this streetscape plan and the development of design standards. The project included a two-phased charrette process and a robust online and socially-distanced public engagement process. The design guidance and standards included recommended transportation and urban design improvements that the City can adopt and scale citywide. Malia is also supporting programmatic recommendations for a future mobility hub in the project area that serves a nearby rail station, including a site plan, phasing recommendations and first-/last-mile analysis.

Berkeley Southside Complete Streets, Berkeley, CA

Malia is serving as Outreach and Engagement Lead for the redesign of four corridors in Berkeley's Southside neighborhood to provide improved safety and connectivity for all modes. This multimodal design project is prioritizing the safe movement of people through transit lanes, separated bikeways, and pedestrian improvements. Malia is leading both virtual and low-tech outreach, including online open houses, mailers, a flyering campaign, and installation of environmental promotion like sidewalk decals.

Frisco Downtown Complete Streets Plan, Frisco, CO

Malia is supporting analysis and recommendations for the Frisco Downtown Complete Streets Plan, which seeks to reimagine the Town's core streets. She led the existing conditions analysis and is reviewing relevant local and regional plans and policies, conducting level of stress analyses for walking and biking, and analyzing traffic volumes. Malia is also supporting development of street typologies and final plan recommendations.

Avenue Q Complete Streets Project, Palmdale, CA

Malia is supporting engagement and plan recommendations for this multimodal corridor study that supports changing land uses in the area for the future High Speed Rail station. The conceptual design will incorporate protected bike lanes, wider sidewalk, streetscape improvements, and unique shade considerations to combat the harsh high desert environment.



STEFAN PELLEGRINI, RA, AICP, LEED AP®

PRINCIPAL-IN-CHARGE

OPTICOS I AVAILABILITY: 10%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 26

Opticos: 2002-Present

Urban Design Associates:
1996-2000

EDUCATION/ CERTIFICATION

Master of Urban Design,
University of California,
Berkeley: 2002

Bachelor of Architecture,
University of Notre Dame: 1996

American Institute of
Certified Planners

Professional Architect: CA

LEED Accredited Professional

APPOINTMENTS/ AFFILIATIONS

American Planning Association,
Small Town and Rural Division

Stefan's educational degrees and professional experience in both architecture and urban design make him an expert project leader at all building scales, from single-family homes to regional plans. He has extensive experience traveling and teaching workshops abroad, a roster of groundbreaking and award-winning projects to his credit, and he is uniquely skilled at bringing diverse people and opinions together at the table to resolve conflicts and turn disagreements into productive projects. Adept at analyzing a place and drawing his ideas on paper, with a passion for traditional architecture, Stefan meticulously considers every aspect and angle of a project to create beautiful places and spaces that thrive.

His strong interest in revitalizing places, especially rural small towns and inner-city areas, comes from a childhood spent in the rust belt town of Muncie, Indiana, seeing first-hand the impact of declining industry. Before joining Opticos in 2002, Stefan brought this understanding to his work at the nationally renowned firm Urban Design Associates in Pittsburgh, Pennsylvania, where he was a senior designer and project manager for over 50 urban design and architecture projects, including groundbreaking plans that redesigned public housing into mixed-income communities through the HOPE VI program in five states (one of which won an AIA Honor Award for Urban Design), and new housing developments in North Carolina and Alabama. He also played an instrumental role in UDA's resurrection of Architectural Pattern Books.

Stefan brings an international perspective to Opticos. The recipient of a number of fellowships, including the prestigious Skidmore, Owings, and Merrill Foundation Urban Design Traveling Fellowship, he has spent months studying architecture and planning all over the world, including Scandinavia, North Africa, and Southern Europe. He teaches a number of international design workshops in Mexico, China, and Japan, and he is a lecturer in the Urban Design program at the University of California, Berkeley—all of which gives global depth and understanding to his work.

SELECTED PROJECT EXPERIENCE

Modesto Downtown Master Plan, Modesto, CA

Blackstone Shaw Activity Center Design Principles, Fresno, CA

Davis Downtown Specific Plan and Code, Davis, CA

Re-Envisioning West Arden Arcade, Sacramento, CA

San Rafael Downtown Precise Plan and Code, San Rafael, CA



MITALI GANGULY, AICP, LEED ND®

ASSOCIATE

OPTICOS I AVAILABILITY: 25%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 26

Opticos: 2017-Present

Calthrope Associates:
2006-2017

Gensler: 2005-2006

HBO+EMTB: 2004

EDUCATION/ CERTIFICATION

Master of Design Studies, Urban
Development and Real Estate
Graduate School of Design,
Harvard University: 2005

Master of Urban Design, School
of Planning and Architecture,
New Delhi, India: 2001

Bachelor of Architecture School
of Planning and Architecture,
New Delhi, India: 1998

American Institute of
Certified Planners

USGBC, LEED-ND

CNU, SPUR, TransForm

With a background in architecture, urban design, and planning, Mitali has over 26 years of professional experience designing memorable, livable places that enhance urbanism and create a positive social impact. Her work has spanned regional, corridor, downtown and neighborhood plans, with a focus on sustainable infill and transit-oriented development.

As a Project Manager, the underlying thread across all her work is attention to detail and a thorough understanding of community and context. A strong proponent of participatory design, Mitali focuses on effective collaboration to resolve challenges and develop place-based design solutions that are authentic in character, equitable, and cherished by the local community.

Mitali has worked extensively with public sector clients, private developers, and non-profit entities worldwide. Her completed projects can be found in the United States, Canada, China, and the Middle East. Prior to joining Opticos, Mitali worked on transit-oriented and redevelopment projects in Berkeley and San Francisco.

She has participated in speaking engagements for the American Planning Association, Congress for the New Urbanism, AARP Livable Cities, the United Nations Framework Convention on Climate Change (UNFCC), and the SxSW Cities Summit. Mitali is a regular volunteer and board member of New Story, a Bay Area based non-profit organization committed to providing low-cost and disaster relief housing in South and Central America.

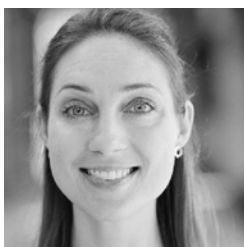
SELECTED PROJECT EXPERIENCE

Modesto Downtown Master Plan, Modesto, CA

Davis Downtown Specific Plan and Code, Davis, CA

Re-Envisioning West Arden Arcade, Sacramento, CA

San Rafael Downtown Precise Plan and Code, San Rafael, CA



CAROLINE COCHRAN, AICP, LEED AP®

SENIOR DESIGNER

OPTICOS I AVAILABILITY: 30%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 25

Opticos: Present

EDUCATION/ CERTIFICATION

Master of Architectural,
Design and Urbanism,
University of Notre Dame

Master of Architecture,
University of Notre Dame

Bachelor of Arts, Yale

Caroline is a valued contributor to a variety of urban design and planning projects. She seeks to shape a shared public realm that is equitable, beautiful, and environmentally responsible. She is committed to designing walkable places that provide for the needs of diverse user groups. She works on charrettes with residents to develop a shared vision for the future and implement that vision through design guidance, policy, and regulatory tools.

SELECTED PROJECT EXPERIENCE

Modesto Downtown Master Plan, Modesto, CA

Blackstone Shaw Activity Center Design Principles, Fresno, CA

Re-Envisioning West Arden Arcade, Sacramento, CA



MARTIN GALINDEZ

SENIOR DESIGNER

OPTICOS I AVAILABILITY: 35%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 9

Opticos: 2017-Present

Edelman Sultan Knox Wood/
Architects LLP: 2013-2016

OPUS Studio: 2012

EDUCATION

Master of Urban Design,
University of California,
Berkeley: 2017

Bachelor of Architecture,
Pratt Institute: 2013

Proudly born and raised in Ciudad Juarez, Chihuahua at the El Paso, TX border, Martin's work reflects his thinking process. He brings conceptual clearness to urban design and planning projects and seeks to inform design solutions through understanding the needs of a place and its community. Martin is often involved in projects that require an understanding of an area's regulations, where he can identify opportunities to help it transform and evolve.

SELECTED PROJECT EXPERIENCE

Davis Downtown Specific Plan and Code, Davis, CA

Hayward Downtown Specific Plan and Code, Hayward, CA

South District/New Arew Growth Form-Based Code, Iowa City, IA



DAVID C. HORN, PE, RLS

LEAD SURVEY ENGINEER

YAMABE & HORN ENGINEERING | AVAILABILITY: 20%

PROFESSIONAL HIGHLIGHTS

Years of Experience: 25

Yamabe & Horn Engineering:
2002-Present

Provost and Pritchard
Engineering Group: 1999-2002

Krazan and Associates:
1997-1999

EDUCATION / CERTIFICATION

Bachelor of Science, Civil
Engineering, California State
University, Fresno: 1999

Professional Engineer: CA, AZ,
ID, NV

Registered Land Surveyor: CA,
AZ, ID

Certified Access Specialist: CA

Qualified SWPPP Designer: CA

APPOINTMENTS / AFFILIATIONS

American Society of Civil
Engineers - 2016 Branch
President

California Land Surveyors
Association

California Access Specialist
Institute

David often serves as Principal-in-Charge, responsible for all phases of engineering design and land surveying for land development projects. He oversees the preparation of grading and drainage, sewer, water, storm drain, and street improvement plans and specifications for residential, commercial and education projects. David is also responsible for the preparation of subdivision maps, ALTA/ACSM survey and parcel maps and lot line adjustments. Under his direction, staff processes Record of Surveys and Corner Records through County municipalities.

David oversees multiple survey crews daily. He performs survey and earthwork calculations, and prepares legal descriptions for land title resolutions. He supervises office engineers, surveyors, designers, draftsmen and survey crews. He has experience representing clients before public governing bodies and processing design plans with public agency staff.

David is also a California Certified Access Specialist (CASP) and provides local municipalities, business owners and property owner's guidance with Accessibility Compliance. Services include field investigations, California SB1608 Reports and Certifications, plan checking, self-evaluations, and Title II Transition Plans.

David has served as an expert witness in the fields of civil engineering, land surveying, and accessibility compliance with the Americans with Disabilities Act. His duties in this capacity have included reviewing the scope of opinion needed, overseeing technical staff to prepare calculations, exhibits, or reports to support his opinion, meetings with counsel, depositions with opposing counsel, and expert testimony in arbitration and jury trials.

SELECTED PROJECT EXPERIENCE

Southeast Surface Water Treatment Facility, Fresno, CA

David served as Principal-in-Charge and Project Manager for the surveying and off-site street improvement plans for the 59-acre development of a \$180 million surface water treatment facility. His duties included coordination with the City Project Manager, Lead Project Engineer, and local jurisdictions requiring off-site improvements. The surveying included boundary resolutions, topographic surveys, control for aerial photogrammetry, and existing utility surveys. Under David's direction, staff designers and technicians prepared plan and profile street and utility designs for domestic utilities and large-diameter transmission pipelines that served the treatment facility. As Project Surveyor, his duties included overseeing the topographic and right-of-way determination for the 12-mile transmission pipeline to the plant.

California State University, Fresno, CA

David served as the Principal-in-Charge and Project Engineer designated as the Campus Consulting Civil Engineer for the Facilities Department. His duties included land surveying, planning, schematic design and civil engineering for a variety of campus related projects.



3

REFERENCES

REFERENCES

We invite you to contact our clients profiled in this proposal regarding the quality of Toole Design's work and our staff's experience and performance.



RUSSELL BOULEVARD CORRIDOR PLAN DAVIS, CA

City of Davis
Bob Clarke, Public Works Director
530.747.5846, bclarke@cityofdavis.org



DOWNTOWN MASTER PLAN MODESTO, CA

City of Modesto
Jaylen French, Director of Community and
Economic Development
209.341.2938, jfrench@modestogov.com



DESIGNING DOWNTOWN DENISON PHASE ONE DENISON, TX

City of Denison
Donna Dow, Main Street Director
903.465.2720, ddow@cityofdenison.com



BLACKSTONE-SHAW ACTIVITY CENTER DESIGN PRINCIPLES FRESNO, CA

Fresno Council of Governments
Peggy Arnest, Senior Regional Planner
559.724.9218, parnest@fresnocog.org



CONTRACT TERMINATIONS

CONTRACT TERMINATIONS

Neither Toole Design Group, LLC, nor its subconsultants, have had a contract terminated in the last five years.



PROJECT UNDERSTANDING AND SCOPE

UNDERSTANDING

As a beautiful small yet growing community in the heart of the San Joaquin Valley the City of Fowler is a desirable place to live, work, and do business. Fowler's prime location and rich agrarian history has made it an important center for the movement of goods throughout the Central Valley. We are excited that the City and its partners, have initiated this exciting planning process to re-envision downtown Fowler, centered on Merced Street.

The focus of the Fowler Downtown Streetscape Plan and Conceptual Design is to develop a bold but realistic and cost-in-mind vision for Merced Street that speaks to a community-oriented downtown district for the City of Fowler, its residents, business owners, and visitors. The livability and streetscape enhancement objectives for this project are clearly stated and will help guide every aspect of this process. We recognize the City of Fowler needs a results-oriented and experienced consultant partner to collaborate with and craft a downtown streetscape and concept plan that, when implemented, will achieve the City's objectives of:

- Preserving and highlighting Fowler's history and character.
- Providing vibrant, welcoming public spaces that encourage community building.
- Prioritizing walkability and a streetscape for all ages and abilities.
- Promoting and enhancing local businesses and economic activity.
- Planning for phased improvements as funds become available.

Toole Design and Opticos Design fundamentally believe it is our role to work with community members and craft design concepts, plans, and planning processes that are of, by, and for the communities we serve. We understand our role is primarily to focus on bringing our multimodal streetscape and urban design expertise to the table, and translating community input into creative design solutions that respond to the context, advance a more balanced transportation system, and set the stage for future downtown investment within the study area. We will be active and collaborative partners with the City and its partners through every step of the process.

The core of our work will focus on creating a strong downtown public realm plan emphasizing streetscape furnishing improvements, inclusion of active transportation planning and design recommendations, art installations/opportunities, outdoor dining/seating opportunities, and additional landscape options used for both aesthetic and functional purposes. The project area consists of Merced Street between the Union Pacific right-of-way and 3rd Street including adjacent side streets and alleyways that connect Downtown to surrounding neighborhoods and destinations.

Our team has had the opportunity to recently visit Fowler to observe the project area, talk with a few of the residents, and visit local shops. What we have found is that the Merced Street project area already has a lot of positive things going for it including:

- A wonderful mix of local retail shops, restaurants, residences, and community/faith-based services that are convenient for people to access.
- Buildings and sites with historical charm and cultural significance.
- The downtown is in close proximity to adjacent residences creating quick access by foot or bike.
- Ample parking available or those that want to park along Merced Street and adjacent side streets, including several accessible parking spaces.
- People feel comfortable, especially kids, walking down Merced Street as vehicle speeds are relative slow and drivers respect people needing to cross the street.
- Many street trees, predominantly the Chinese pistache varieties, appear to be doing well and help provide comfort for pedestrians walking down the street.
- The flush condition at many intersections makes crossings easier for kids, seniors, and those with mobility challenges.
- Alleyways are largely underutilized, but many already have strong potential to serve as public seating/parklets.
- The street is clean and well maintained.

These great features along Merced Street continue to allow Downtown Fowler to function as a great Central Valley small town, however, like many main streets,

EXHIBIT D -- Page 29

Merced Street also has several observed challenges and considerations that come to the forefront, such as:

- The sidewalks feel narrow with little opportunity for public seating, places to linger, or meaningful dining space.
- There is a clear “lack of arrival” or gateway element that announces that you have arrived into downtown Fowler.
- There is very little ground plane landscaping that provides visual interest or helps buffer people from moving traffic.
- Parking is important for people visiting downtown Fowler, especially parking spaces to accommodate larger vehicles/trucks.
- Merced Street also serves larger delivery trucks/ agricultural vehicles on a daily basis.
- There are vacant lots/underserved buildings that create gaps in the storefront facades.
- Many streetscape furnishings are lacking or look tired and are not aesthetically pleasing.
- The Union Pacific rail corridor acts as a visual and physical barrier.

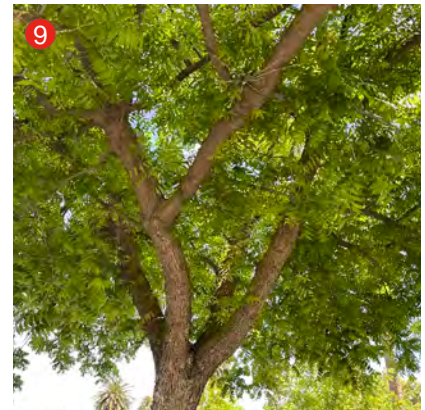
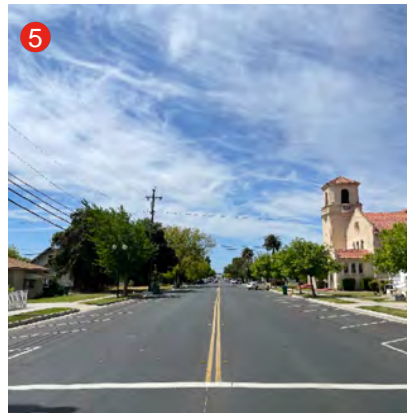
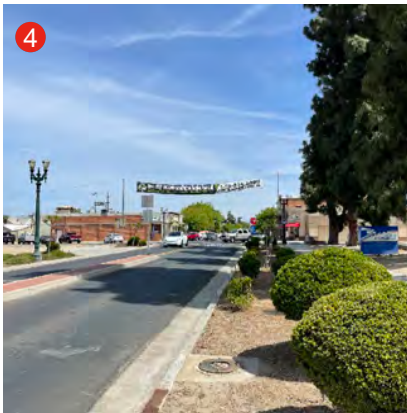
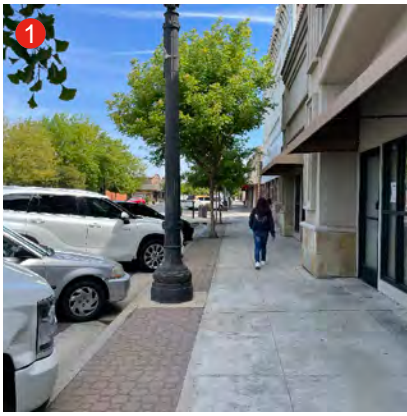
Most importantly, Merced Street, connecting side streets, and alleyways all currently feel auto-dominated and lack the ability for people to want to linger, sit, and comfortable enjoy the street as larger public space.

This is especially revealing given the ongoing COVID-19 pandemic where the need for additional outdoor space has been so critical. The overall street network leading into Merced Street is also an untapped resource to encourage people to take the short walk or ride bike into downtown Fowler.

The Toole Design Team intends to work with the City to create a comprehensive streetscape plan and conceptual design for the Merced Street project area that supports the evolution of this important public space as a mixed-use, walkable/bikeable destination that encourages further reinvestment into Downtown Fowler. In addition, we see this as an opportunity to elevate this project to also investigate realistic sustainability principles such as using green infrastructure for stormwater management and biodiversity, promoting water conservation and re-use, reducing energy consumption, and reducing greenhouse gas emissions. We feel that these principles represent next generation of streetscape design and our team of experts are on the cutting edge to incorporate sustainability into this project.



Downtown Fowler looking east down Merced Street from our team's recent site visit.



CORRIDOR OBSERVATIONS:

- 1 People feel comfortable traveling along sidewalks but there is little room for seating and other amenities.
- 2 Outdated street furnishings and a lack of landscaping exhibit a tired feel to Merced Street.
- 3 Street space is largely auto-dominated and there is significant impervious area stormwater runoff.
- 4 The eastbound entry into the Merced Street project area lacks any visual significance.
- 5 The westbound entry into downtown from residential land uses is weak and not perceived.
- 6 Existing alleyways currently used for makeshift dining can be designed with more permanent appeal.
- 7 Historical and cultural acknowledgments to Fowler are spread throughout the project site area.
- 8 Kids, seniors, and those with disabilities feel comfortable crossing existing flush intersections.
- 9 Street trees provide shade and increase the enjoyability of walking along Merced Street.

APPROACH

The following outlines the anticipated scope of work for the City of Fowler Downtown Streetscape Plan and Conceptual Design. Toole Design and Opticos will build from the work the City has developed to establish an environment for meaningful engagement and for the creation of an innovative and implementable conceptual streetscape design for Merced Street and its immediate surroundings. It is in projects like this, where there has been substantial initial thought on the process before the project is initiated, where we find that the most productive and cost-feasible solutions can be generated resulting in success for all partners. We have followed the scope of work outlined in the RFQ and noted areas where, how, and when we anticipate the Toole Design Team involvement.

We understand our role as your partner. We look forward to working with the City to fine tune this work plan as needed.

TASK 1: PROJECT PLANNING AND COORDINATION

TASK 1.1: PROJECT TEAM SITE VISIT AND ASSESSMENT

The first item of business for our team will be to prepare for and actively participate in a project kickoff with City staff and any key stakeholders the City identifies. At this time, we will review the project scope of work and schedule and discuss any revisions or updates deemed necessary for successful project delivery. We will also discuss the team's wishes on project management items including communication protocols, invoicing and progress reporting, file sharing, and data and information requests. We anticipate this to be an in-person meeting in Fowler after which we will tour the study area with the entire project team. The study area tour will be a great opportunity to create a shared understanding of the opportunities, constraints, and key concerns or aspirations the project team has for the project. Our staff has already spent time enjoying and exploring Fowler and will come prepared with some initial base maps and questions for the project team.

TASK 1 DELIVERABLES:

- Preparation and facilitation of project kickoff meeting
- Study Area Tour maps for participants, along with initial questions
- Project kickoff summary and study area tour notes

TASK 2: DATA COLLECTION/OPPORTUNITIES AND CONSTRAINTS ANALYSIS

For Task 2, the Toole Design Team will focus on collecting, analyzing, and summarizing relevant policy, infrastructure, existing conditions, demographic, and community data in effort to support development of the Downtown Streetscape Plan and Conceptual Design. The work of Task 2 will be collated in an existing conditions report (Task 2.3) and consist of a series of maps, accompanying narrative, and any supplemental graphics necessary to clearly describe existing conditions from a comprehensive transportation and built form perspective.

TASK 2.1: COLLECT DATA ON EXISTING CONDITIONS

The Toole Design Team will work with the City and other identified sources to collect, organize, and review readily available information on existing conditions. We will distill data and information that is directly relevant to both the design- and policy-focused work for this project. Key topic areas for existing conditions analysis and summary are: traffic and infrastructure, active transportation needs, policy and regulations, streetscape furnishings and pavement conditions, landscape conditions, and building use. Our work will be concentrated on the following:

Traffic and Infrastructure: Toole Design will acquire, compile, and review readily available traffic and behavior data for all modes (e.g., walking, cycling, driving, transit) as well as conduct a thorough review of existing and planned street infrastructure related projects within the study area. The traffic data review will be focused on better understanding safety, circulation patterns and desires, and operational issues within the study area. To do this, we will use any existing data from the City and city-identified sources, and we propose to conduct in-field bicycle and pedestrian observations to observe behavior as well as conduct counts at up to five locations within the study area. The review of existing and planned street infrastructure projects will be focused on assessing

the projects for how our team can integrate existing or planned projects as necessary, and/or to be able to potentially influence planned projects so they align with the recommendations resulting from this planning and engagement process.

Active Transportation Needs Assessment: Core to our team's approach will be looking at the entire transportation system, specifically focusing on how we can improve multimodal connectivity and making walking and bicycling truly viable and enjoyable transportation options to and from Downtown Fowler. To better understand some of the first-/last-mile multimodal opportunities, Toole Design will assess existing and planned Fowler Transit routes, readily available transit ridership data, as well as existing and planned bicycle and pedestrian routes.

Our team will also review any existing city, county, or regional transportation models to assess future needs, anticipated patterns, and any direct transportation infrastructure implications from potential future conditions. To supplement the more motor vehicle-oriented transportation models, our team will conduct fieldwork by bicycle and on foot. Toole Design firmly believes that any traffic analysis should consider "person throughput" that is fundamentally looking at a corridor from a more balanced multimodal perspective rather than one

rooted in a more conventional approach which is often focused on motor vehicle throughput.

Building/Infill Assessment: As part of the Toole Design Team, Opticos will analyze and assess existing land use, built form and connectivity patterns in the study to identify the range of potential infill and public/private activation opportunities. The analysis will identify vacant and underutilized parcels and assess their potential for future transformation to mixed-use development. Existing neighborhood character and surrounding uses will be studied to inform design decisions. As part of the analysis, we will identify existing community assets and gaps if any in community infrastructure.

Streetscape Furnishings/Pavement and Landscape Assessment: Toole Design and Yamabe & Horn will document the existing streetscape furnishings, street infrastructure, and landscape conditions to identify shortcomings and/or gaps of related to the streetscape condition. These streetscape elements include, but are not limited to:

- Sidewalks, accessibility, and safety at intersections
- Wayfinding/interpretative signage
- Seating opportunities and materials
- Trash/recycling receptacles
- Street and pedestrian-scale lighting

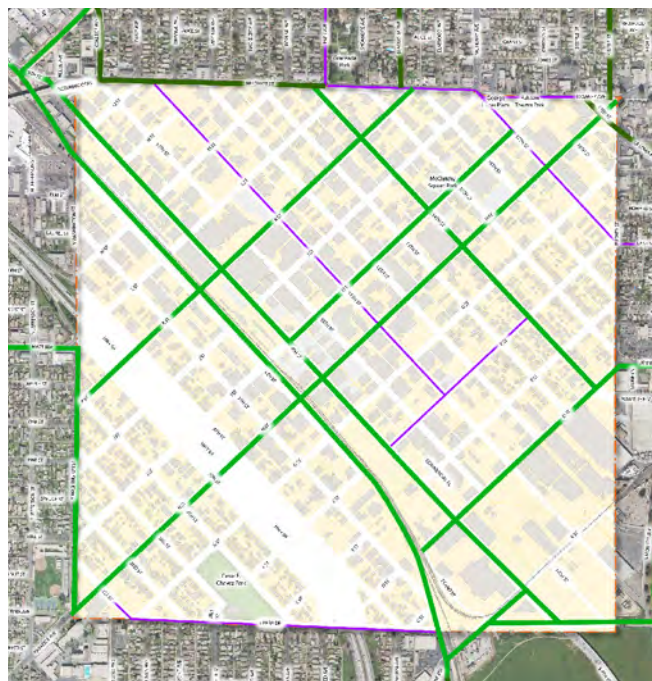


We bring experience working with advisory groups as part of our plan and design development.

- Inventory and understanding of historic assets
- Street trees/shaded conditions
- Ground landscaping/planters/tree grates
- Public art
- Street bollards
- Bike parking
- Seasonal banners
- Color palate and finishes for all street furnishings
- Façade recommendations for businesses
- Drinking fountains
- Outdoor dining, public/private parklets
- Alleyway activation for seating/dining
- Sustainability features (stormwater management, water/energy use)

TASK 2.2: PREPARE BASE MAPS

The Toole Design Team will prepare a series of base maps to be used throughout the project. Our team will work with the City and others to acquire readily available GIS data, CAD files, and aerial imagery. Our team will create a list of anticipated base maps and circulate the list with project partners for feedback and a shared understanding of the scale, size, and content



- Legend
- Existing Bikeways
 - Proposed Separated Bikeways and Multi-Use Paths
 - Proposed Minor Bikeways

Bikeway needs assessment with recommendations overlay for the Modesto Downtown Master Plan.

of the base maps to be used for project meetings and engagement opportunities (e.g., public meetings, charrette workshops).

TASK 2.3: EXISTING CONDITIONS REPORT

Toole Design will prepare an Existing Conditions Report that clearly communicates our assessment of opportunities and constraints related to the study area and the potential to achieve the desired outcomes of a more connected, beautiful, and vibrant downtown core. In all of our projects we approach interim deliverables like this Existing Conditions Report with a mind and eye for how it will be incorporated into the final draft plan. Doing so creates efficiencies and sets the stage for the recommendations and strategies.

TASK 2 DELIVERABLES:

- Existing conditions data acquisition request memo summarizing all data, information, and plans requested for the existing conditions analysis
- Existing conditions analysis
- List of base maps, base map digital files, plotted base maps
- Existing Conditions Report summarizing existing conditions, constraints and opportunities

TASK 3: COMMUNITY ENGAGEMENT/ DESIGN DEVELOPMENT

Community engagement will be centered throughout the entire project process as we know working with community members is critical aspect of creating a plan that considers and affirms community values, and garners wide project support. We have worked with communities throughout California, and the nation, on projects similar to this one where it is critical the feedback received throughout the engagement process is visibility reflected in design solutions and any policy or regulatory recommendations. The Toole Design Team will play a lead role in all aspects of community engagement, and specifically focus our work on translating engagement feedback into design directives.

TASK 3.1: PLAN AND COORDINATE EVENT LOGISTICS

Toole Design will work with the City and its partners to craft a public charrette agenda that details events and activities. We have done this on hundreds of projects and have a good sense of timing of events, how to maximize community participation, and ways

create meaningful opportunities for participant input. For planning purposes, we anticipate the charrette will be a hybrid engagement format, but we have also effectively organized and led well-attended, successful full-in person or fully virtual charrettes during the COVID-19 pandemic. We can quickly adapt to an in-person or virtual format as needed.

TASK 3.2: MULTI-DAY CHARRETTE

A four-day charrette, also known as a design workshop, will be the cornerstone of the engagement for this community-based planning and design project. Our team has organized and facilitated hundreds of charrettes across the country and have witnessed the power of a concentrated design and engagement effort to transform communities. The Fowler charrette will be focused on learning about desires, wants, needs from the community and translating this feedback into initial design ideas. Our charrette process builds upon the National Charrette Institute's standards as a foundation and will be tailored to the needs of this project, which is to focus on active transportation options, connectivity and safety, street beautification, historic preservation, economic development, and infill redevelopment opportunities within the study area and the greater community of Fowler. We pride ourselves on our ability to couple community and stakeholder input with our urban design, public realm, and transportation expertise to develop concepts that communities embrace.

The process we use is comprised of the **Four Ds: discovery, discussion, design, and documentation**. We have found this process to be effective for projects when there is a desire to craft a design solution for spaces that need to serve multiple stakeholders, interests, and functions.

Discovery is focused on analysis and learning about the community issues, opportunities, and constraints through meaningful **discussions** and shared experiences in the study area. What we learn in discovery leads us to a deeper dive with community members and staff about **design** ideas and concepts that can work well for the community.

Documentation of the concepts and supplementary materials become the foundation for communities to ultimately see the project through to implementation.

We will look to City staff to help secure a venue for the charrette in a conveniently located space in or near the project study area, and to help identify ways to publicize the event and encourage key stakeholders to attend listening sessions.

ONLINE AND PHYSICALLY-DISTANCED CHARRETTES

Our top priority is the health and safety of the Fowler community. We will work closely with the City and project partners to monitor ongoing public health regulations and best practices. We will follow any and all mandates from public authorities. Should it be necessary, the Toole Design Team is equipped to facilitate a fully-digital charrette, or a hybrid charrette with limited, physically-distanced in-person events.

Toole Design has been a leader in digital engagement long before COVID-19. Over the last two years, we conducted many successful week-long digital charrettes for communities large and small. Our digital charrettes included virtual walk audits, and multi-day online meetings using virtual collaboration tools such as Zoom, Miro (a digital white board collaboration tool), Mentimeter, and other tools. A virtual charrette can look quite similar to an in-person one, with a custom website providing an online portal to the design team's process throughout the intensive four-day design period. Attendees can join live as "virtual studio visitors," watch project videos, respond to image-based online surveys, participate in group discussions, take social media polls, and contribute to online mapping. If an online charrette is necessary coupling the charrette with concurrent remote engagement techniques such as prepaid postcards, self-guided walking tours, phone text surveys, or sidewalk stickers with QR codes will be important tactics to consider.

TASK 3 DELIVERABLES:

- Charrette coordination and logistics support, including draft agenda and event details
- Facilitation of two workshops, stakeholder listening sessions, and a study area tour/audit by bicycle or foot
- Charrette presentation materials, illustrative concepts and documentation of policy and design recommendations
- Summary of input from design charrette workshop sessions and initial conceptual design ideas
- Participant lists

TASK 4: STREETSCAPE PLAN AND CONCEPTUAL DESIGN DEVELOPMENT

Upon the conclusion of the engagement process (Task 3), our team will dive right into developing the Streetscape Plan and Conceptual Design to guide the City. The plan will be highly illustrative and focus on documenting the engagement process and outcomes, communicating design and policy recommendations such as, but not limited to: a coordinated transportation and land use plan, multimodal network recommendations, multiple street cross-sections for key streets and locations within the study area, potential safety spot treatments to improve crossings and connections to destinations, street furnishings and landscape enhancement examples, and sustainable design strategies and recommendations. The plan will include a series of illustrative maps, drawings, perspective sketches, and precedent photos, along with accompanying narrative to convey streetscape enhancements and private development improvements generated during the design process.

TASK 4.1: DEVELOP/REFINE DESIGN ALTERNATIVES

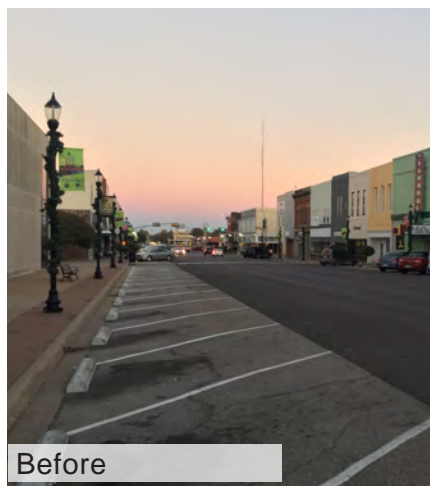
The Toole Design Team will start to work on the compilation and refinement of design ideas as soon as the charrette concludes. We will want to maintain momentum from the charrette process and make sure to make any necessary changes to the design or policy recommendations immediately after the charrette process, while the feedback is fresh in our minds. We will be in communication with the City on the progress our team is making in the subsequent weeks after the

charrette, and allow for any progress review sessions to happen as necessary to ensure our team continues to advance work to the City's satisfaction. Our team will review the public input, recommendations and plan concepts with the City and potential the advisory group. Feedback from this review session will guide any and all final design concepts and a coordinated transportation and transit-oriented land use strategy for the downtown. Opticos will take the preliminary design concepts from the charrette both for the overall urban design and land use framework for the study area as well as individual opportunity sites and develop those concepts further. Design development will include policy and zoning recommendations that could promote the design vision for the study area.

Our design team intends to develop at least two design concept options for the extent of the Merced Street project area based upon the feedback from the charrette process and City input. We will present these options to the City and its partners. Upon the City's direction, we can also present these options for public review and input with the intent of narrowing down design options into one preferred alternative to be included in the Draft Plan.

TASK 4.2: PREPARE AND DISTRIBUTE DRAFT PLAN

The Toole Design Team will prepare an administrative draft plan for review by the City and its partners. We anticipate City staff will collect, review, and provide a single set of comments to our team. Based on this consolidated feedback we will make one round of



Before



Design Charrette



Rendering

Redesigned flush streets in Denison, TX were the product of design workshops with the community.

revisions to the Draft Plan. Opticos & Yamabe and Horn will provide content for the Draft Plan, including narrative text, maps, and supporting graphics to explain and illustrate the design concepts and recommendations.

TASK 4.3: DRAFT PLAN REVIEW AND REVISION

After all revisions are made on the administrative plan, the Toole Design Team will provide an updated Draft Plan for review and comment. Toole Design Team will revise the Draft Plan based upon comments and feedback received. Recently our team has used an online PDF commenting tool to collect any public feedback. We have found this an effective tool to supplement any in-person engagement to review and provide feedback on a Draft Plan. Comments are consolidated into one spreadsheet to be able to track comments and potential changes to the Plan. Additionally, participants can see other participants comments which can be valuable for project transparency and community support. We recommend using this online PDF commenting tool to provide an additional mechanism for capturing feedback on the Draft Plan.

TASK 4.4: DEVELOP IMPLEMENTATION PLAN

An important part of the overall plan will be to craft an actionable implementation plan. The focus of this effort will be to collect in one location important recommendations and information that will help guide the City in the implementation process. Our entire team will focus on policy and regulatory changes that may be necessary to advance design concepts, phasing/timing of project implementation, planning level opinions of probable costs (cost estimates), a list of potential grant funding sources, and potential steps for securing additional funds for implementation. Opticos, and Yamabe & Horn will collaborate with Toole Design to identify implementation strategies and recommendations from the land use and urban design perspective, focusing on the opportunity sites with potential phasing and prioritization of recommended actions.

TASK 4.5: PREPARE FINAL PLAN AND PRESENTATIONS

Toole Design will incorporate relevant public comments received into the Draft Plan and will create the Final Plan document. The Toole Design Team will present the Final Plan for the Planning Commission and at the City Council Meeting for stand-alone adoption and/or amendment to other policy and regulatory documents and incorporation into work programs. Opticos and

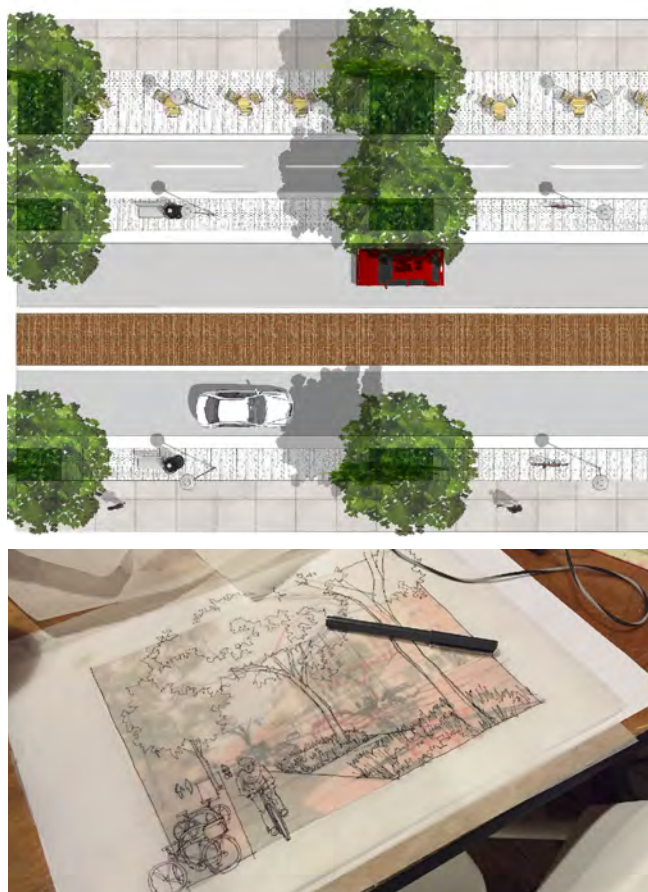
Yamabe & Horn will provide design support to Toole Design in preparing the Final Plan.

TASK 4.6: PLAN SUBMISSION

Toole Design will provide all Final Plan files (high resolution PDF and InDesign working files if desired) to the City for appropriate distribution.

TASK 4 DELIVERABLES:

- Refined illustrative design concepts and policy recommendations
- Draft Implementation Plan
- Full Draft Plan
- Digital presentation materials for Draft Plan meetings
- Online PDF commenting tool for public feedback on Draft Plan
- Final Plan (high resolution digital PDF and InDesign working files)



Toole Design staff translated streetscape elements identified during a design charrettes for Winter Garden, FL (top). Opticos staff created hand drawings for the Downtown Oakland Specific Plan (bottom).

TOOLE
DESIGN

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CITY COUNCIL OF THE CITY OF FOWLER

ITEM NO: 8-Bi

REPORT TO THE CITY COUNCIL

August 16, 2022

FROM DAVID PETERS, City Engineer

SUBJECT

INTRODUCE and receive direction regarding proposed park design standards.

RECOMMENDATION

Staff recommend the City Council consider proposed park amenity matrix and provide staff direction.

BACKGROUND

In July 2021, the City Council adopted Ordinance No. 2021-02 amending sections 3-8.01 through 3-8.11, of Chapter 8, of Title 3, of the Fowler Municipal Code to update the City's development impact fee ordinance for new development, adding new fee categories for public facilities, and amending Section 902 of the Fowler Subdivision Ordinance pertaining to park fees and dedication of land for parks.

This action determined that open space improvements would not be included in the City's development fee program nor would they be subject to reimbursement by the City. To ensure a minimum standard and consistency in park designs under this revised policy, staff has developed a park amenity matrix outlining facilities that are to be included in the park improvements based on the size of the open space development. As the park size increases, additional amenities are required.

Staff is requesting consideration and staff direction regarding the proposed park amenity matrix. Upon receiving Council direction, staff will develop standards for adoption that will outline the park design standards for open space development.

ENVIRONMENTAL REVIEW

This action does not constitute a “project” pursuant to the California Environmental Quality Act.

FISCAL IMPACT

Costs related to adoption of standards developments of park space will be included in the cost of the various proposed developments and will not have a direct impact on City finances.

CONFLICT OF INTEREST

Staff is not aware of any conflicts of interest.

Attachments

- Park Amenity Matrix

CITY OF FOWLER
PARK AMENITY MATRIX

Park Size (Acres)	Benches	BBQ	Drinking Fountain	Flatwork ¹	Turf ²	2-5 Playstructure
0-0.5	2	1	1	Yes	Yes	No
0.5-1.0	4	2	1	Yes	Yes	Yes
1.0-2.0	8	4	2	Yes	Yes	Yes
>2.0	10	6	2	Yes	Yes	Yes

Park Size (Acres)	5-12 Playstructure	Restroom	Trash Can	BB or Pickelball Court	Walking Path ³	Site Lighting ⁴
0-0.5	No	No	2	No	No	No
0.5-1.0	Yes	No	4	No	No	No
1.0-2.0	Yes	Yes	6	Yes	No	Yes
>2.0	Yes	Yes	8	Yes	Yes	Yes

Notes:

1. Flatwork to be installed to provide adequate access to amenities from adjacent sidewalk.
2. Turf to be installed over 50% of park area.
3. Walking path to be installed and traverse entire park area with connections to adjacent street sidewalks.
4. Site lighting to be installed to provide minimum 0.5 foot-candle and maximum 2.0 foot-candle over entire park area.
5. Numbers in the matrix above indicate number of units required by park size.
6. All parks shall include park monument sign and be named as directed by the City Council.