



## **CITY COUNCIL MEETING**

**TUESDAY, NOVEMBER 07, 2023 at 6:00 PM**

**CITY COUNCIL CHAMBER – 128 SOUTH 5TH STREET, FOWLER, CA 93625**

### **AGENDA**

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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](mailto: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.

<https://us06web.zoom.us/j/81708143107?pwd=RNvkix6SPYwKDrot1yT7Wv14U-WnBw.TYecwC8TRNpBZe2v>

**Telephone Number:** (253) 215-8782  
**Meeting ID:** 817 0814 3107  
**Passcode:** 547135

**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 <https://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. APPROVAL OF AGENDA**

**4. INVOCATION BY PASTOR MARK GRICE OF THE WORSHIP CENTRE**

**5. PLEDGE OF ALLEGIANCE**

**6. CEREMONIAL PRESENTATIONS**

A. Veterans Day Proclamation

**7. 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.*

**8. 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.*

A. RATIFY Warrants for November 7, 2023

B. APPROVE Amended Minutes of the October 3, 2023 City Council Meeting

C. APPROVE Minutes of the October 17, 2023 City Council Meeting

D. APPROVE a professional services agreement with Segal in the amount of \$29,000.00 for a Health Benefit Study

E. APPROVE a two-year agreement with Xobee Networks (BCT) in an amount not-to-exceed \$90,000 for managed support services.

- F. Actions pertaining to the Fiscal Year 2023-24 first quarter budget report and budget amendments:
  - i. ACCEPT the fiscal year 2023-24 first quarter budget report.
  - ii. ADOPT Resolution No. 2685 approving Fiscal Year 2023-24 proposed budget amendments.
- G. APPROVE Resolution No. 2687 approving the budget amendment for additional Local Transportation Fund (LTF) Article 8 surplus funding in the amount of \$113,069.
- H. APPROVE a Franchise Agreement with USA Waste of California, Inc., for solid waste collection and related services to be effective January 1, 2024, through December 31, 2033.
- I. APPROVE Position Authorization Resolution No. 2689 converting one Water Operator I to Water Operator in Training

## **9. CONTESTED CONSENT CALENDAR**

*Items pulled from the Consent Calendar will be heard individually immediately after action is taken on the Consent Calendar.*

## **10. GENERAL ADMINISTRATION**

### **Finance**

- 10A. APPROVE Resolution No. 2686 amending the Master Fee Schedule to modify and add fees related to the police department and on-street parking enforcement

### **Planning**

- 10B. APPROVE Resolution No. 2688 finding that Vesting Tentative Subdivision Map No. 6409 is consistent with the City of Fowler General Plan and General Plan Environmental Impact Report, absolving it of further environmental analysis pursuant to California Environmental Quality Act Section 15183, and approving the map, subject to the conditions of approval.

### **Public Works**

- 10C. WORKSHOP on water rates

## **11. STAFF COMMUNICATIONS**

- 11A. Quarterly update from Fresno County Fire Protection District

## **12. COUNCILMEMBER REPORTS AND COMMENTS**

## **13. CLOSED SESSION**

Government Code Section 54956.9(d)(4)

Conference with legal counsel - Anticipated Litigation

Deciding whether to initiate litigation

One potential case

Government Code Section 54956.9

Conference with legal counsel - Anticipated litigation

Significant exposure to litigation pursuant to paragraph (2) or (3) of subd. (d) of Gov. Code section 54956.9

Two potential cases

**14. ADJOURN**

*Next Ordinance No. 2023-10*

*Next Resolution No. 2690*

*CERTIFICATION: I, Angela Vasquez, City Clerk of the City of Fowler, California, hereby certify that the foregoing agenda was posted for public review on Friday, November 3, 2023.*

*Angela Vasquez, CPMC*

*City Clerk*

CITY OF FOWLER  
WARRANTS LIST  
November 7, 2023

<u>ACCOUNTS PAYABLE CHECKS</u>	<u>CHECK NUMBERS</u>	<u>CHECK DATES</u>	<u>AMOUNT</u>
Regular checks	41969 - 42061	October 16 thru November 1	\$ 254,312.34
TOTAL ACCOUNTS PAYABLE CHECKS			<u>\$ 254,312.34</u>
<u>PAYROLL COSTS</u>			
Second October Bi-Monthly Payroll		October 31, 2023	\$ 115,177.59
TOTAL PAYROLL COSTS			<u>\$ 115,177.59</u>
TOTAL CASH DISBURSEMENTS			<u>\$ 369,489.93</u>

NOTE:

Section 8, ItemA.

PAGE NUMBER: 1  
ACCTPAZ1

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

SUPERION  
DATE: 11/01/2023  
TIME: 14:39:32

SELECTION CRITERIA: transact.check\_no between '41969' and '42061'  
ACCOUNTING PERIOD: 5/24

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	41969	10/13/23	14491 MARGARITA MORENO	6030	PER DIEM - CSMFO PLAN	0.00	95.00
1001	41970	10/18/23	13597 ADVENTIST HEALTH	6120	SPECIMEN COLLECTION	0.00	45.00
1001	41970	10/18/23	13597 ADVENTIST HEALTH	6120	ALCOHOL BLOOD TOX	0.00	55.00
TOTAL CHECK						0.00	100.00
1001	41971	10/18/23	10007 ALERT-O-LITE, INC	6200	SUPPLIES - STREETS	0.00	42.24
1001	41971	10/18/23	10007 ALERT-O-LITE, INC	5000	SUPPLIES - WATER	0.00	99.43
1001	41971	10/18/23	10007 ALERT-O-LITE, INC	6200	SUPPLIES - STREETS	0.00	106.59
1001	41971	10/18/23	10007 ALERT-O-LITE, INC	6200	SUPPLIES - STREETS	0.00	155.33
TOTAL CHECK						0.00	403.59
1001	41972	10/18/23	14519 AMAZON CAPITAL SERVICES	6020	HALLOWEEN TREATS	0.00	9.99
1001	41972	10/18/23	14519 AMAZON CAPITAL SERVICES	6020	HALLOWEEN TREATS	0.00	23.85
1001	41972	10/18/23	14519 AMAZON CAPITAL SERVICES	6020	HALLOWEEN TREATS	0.00	25.91
1001	41972	10/18/23	14519 AMAZON CAPITAL SERVICES	6030	SUPPLIES - FINANCE	0.00	28.53
1001	41972	10/18/23	14519 AMAZON CAPITAL SERVICES	6260	SUPPLIES - PARKS	0.00	47.94
1001	41972	10/18/23	14519 AMAZON CAPITAL SERVICES	6260	SUPPLIES - PARKS	0.00	716.66
TOTAL CHECK						0.00	852.88
1001	41973	10/18/23	12285 ATT	6170	AT&T INTERSTATE OCT23	0.00	1,150.70
1001	41974	10/18/23	10026 BCT CONSULTING	6170	SOPHOS 10/1/22	0.00	69.95
1001	41974	10/18/23	10026 BCT CONSULTING	6170	TRIPP LITE RACK	0.00	156.46
1001	41974	10/18/23	10026 BCT CONSULTING	6170	ADOBE ACROBAT PRO	0.00	599.95
1001	41974	10/18/23	10026 BCT CONSULTING	6170	ADOBE ACROBAT PRO	0.00	599.95
1001	41974	10/18/23	10026 BCT CONSULTING	6170	NETWORK SVC JUL23	0.00	1,500.00
TOTAL CHECK						0.00	2,926.31
1001	41975	10/18/23	11291 THE BUSINESS JOURNAL	6150	SUMMARY ORD 2023-09	0.00	120.00
1001	41975	10/18/23	11291 THE BUSINESS JOURNAL	6150	ADOPT ORD 2023-08	0.00	180.00
TOTAL CHECK						0.00	300.00
1001	41976	10/18/23	14512 CSG CONSULTANTS	6160	PLAN CHECK	0.00	2,558.02
1001	41977	10/18/23	10084 DEPARTMENT OF JUSTICE	6120	FINGERPRINTING	0.00	66.00
1001	41978	10/18/23	13275 FERGUSON WATERWORKS #142	5000	SUPPLIES - WATER	0.00	12,489.00
1001	41979	10/18/23	14659 FIRE SAFETY SOLUTIONS	6130	INSP & PLAN CHECK	0.00	1,740.00
1001	41980	10/18/23	10306 FOWLER FLORAL SHOP, THE	6120	FLORAL ARRANGEMENTS	0.00	82.83
1001	41980	10/18/23	10306 FOWLER FLORAL SHOP, THE	6120	FLORAL ARRANGEMENTS	0.00	84.99
TOTAL CHECK						0.00	167.82
1001	41981	10/18/23	12608 FOWLER HIGH SCHOOL	6020	FHS YEARBOOK AD	0.00	250.00
1001	41982	10/18/23	10104 FPOA	100	EMP DED 10/13/23	0.00	200.00
1001	41983	10/18/23	14641 KINGS MEDICAL CENTER, IN	6120	MEDICAL EXAM	0.00	613.52
1001	41984	10/18/23	10194 LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	90.00

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

SUPERION  
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SELECTION CRITERIA: transact.check\_no between '41969' and '42061'  
ACCOUNTING PERIOD: 5/24

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	112.50
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	135.00
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	292.50
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	385.50
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	855.00
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	1,524.30
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	1,604.90
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	2,182.50
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	3,968.60
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	4,574.90
1001	41984	10/18/23	10194	LOZANO SMITH	6060	LEGAL SERVICES AUG23	0.00	6,197.12
TOTAL	CHECK						0.00	21,922.82
1001	41985	10/18/23	10201	METRO UNIFORM & ACCESSOR	6150	UNIFORM - VASQUEZ	0.00	195.99
1001	41986	10/18/23	10215	NELSON HARDWARE & GIFTS	6260	SUPPLIES - PARKS	0.00	74.82
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	MERCED/6TH 10/3/23	0.00	-28.53
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	MERCED/7TH 10/3/23	0.00	-28.53
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	127 S 6TH 10/3/23	0.00	-28.53
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	7TH/TULARE 10/3/23	0.00	-13.75
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6080	128 S 5TH 10/3/23	0.00	2.42
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	5TH/FRESNO 10/3/23	0.00	8.07
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	5TH/FRESNO 10/3/23	0.00	12.06
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6080	128 S 5TH 10/3/23	0.00	15.63
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6700	420 E MERCED 10/3/23	0.00	36.67
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	420 E MERCED 10/3/23	0.00	43.43
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	5000	ADAMS/5TH 10/3/23	0.00	55.13
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	212 E MERCED 10/3/23	0.00	60.51
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	2831 E MANN 10/3/23	0.00	90.98
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	GLDNST B 10/3/23	0.00	94.28
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	4218 GLDNSTAT 10/3/23	0.00	121.93
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	5000	95 E ADAMS 10/3/23	0.00	151.76
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6260	9TH/MERCED 10/3/23	0.00	254.66
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6260	500 E MERCED 10/3/23	0.00	289.38
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	5000	TEMP/GOLDN 10/3/23	0.00	509.38
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	5TH/FRESNO 10/3/23	0.00	813.07
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6200	LOAN PROG 10/3/23	0.00	941.28
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6700	420 E MERCED 10/3/23	0.00	1,427.49
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	6080	MAIN/5TH 10/3/23	0.00	2,363.18
1001	41987	10/18/23	10237	P G & E - SACRAMENTO	5000	SESMNW231521 10/3/23	0.00	13,329.73
TOTAL	CHECK						0.00	20,521.70
1001	41988	10/18/23	10237	P G & E - SACRAMENTO	2250	KB HOME 6/22/23	0.00	439.36
1001	41989	10/18/23	14102	PICK EM UP TRUCK STORE -	6200	RAM 1500 TRUCK	0.00	140.85
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN SPR 23-10	0.00	29.60
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN LLA	0.00	59.20
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	SPR 22-08 PHX	0.00	149.00
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN SPR 23-24	0.00	180.00
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	SPR 22-32	0.00	206.00

SUPERION  
DATE: 11/01/2023  
TIME: 14:39:32

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ACCTPA21

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

SELECTION CRITERIA: transact.check\_no between '41969' and '42061'  
ACCOUNTING PERIOD: 5/24

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	CUP 23-15	0.00	210.20
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN LLA 22-18	0.00	219.80
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	GP IMPLEMENTATION	0.00	328.40
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	ONCALL PLANNING AUG23	0.00	356.32
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN TSM 6409	0.00	693.50
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	SUSTAINABLE COM GRANT	0.00	708.40
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN TPM 2023-16	0.00	1,019.00
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	PLN SPR 23-13	0.00	4,107.35
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	2560	WELL #9 GRANT	0.00	10,190.20
1001	41990	10/18/23	13655	PROVOST & PRITCHARD	6150	ONCALL PLANNING AUG23	0.00	21,628.38
TOTAL	CHECK							40,085.35
1001	41991	10/18/23	10249	QUILL	6020	SUPPLIES - ADMIN	0.00	28.98
1001	41991	10/18/23	10249	QUILL	6150	SUPPLIES - PLANNING	0.00	32.66
TOTAL	CHECK							61.64
1001	41992	10/18/23	14676	RUBEN SAUCEDA	6400	WNAP BAND	0.00	800.00
1001	41993	10/18/23	14535	THOMAS GAFFERY	6150	TRAVEL REIMB - LOCC	0.00	616.39
1001	41994	10/18/23	13543	UNIFIRST CORPORATION	6700	JANITORIAL SVC OCT23	0.00	60.07
1001	41994	10/18/23	13543	UNIFIRST CORPORATION	6200	UNIFORMS - PW	0.00	77.08
1001	41994	10/18/23	13543	UNIFIRST CORPORATION	5000	UNIFORMS - PW	0.00	77.09
1001	41994	10/18/23	13543	UNIFIRST CORPORATION	6020	MATS/MOPS	0.00	79.90
TOTAL	CHECK							294.14
1001	41995	10/18/23	13521	UNITY IT	6170	SERVICE CALLS AUG23	0.00	133.74
1001	41996	10/18/23	10001	WASTE MANAGEMENT CA	6120	WASTE DISPOSAL FEE	0.00	6.25
1001	42000	10/25/23	14936	ALEJO DELGADO	6400	BAND - TRUNK OR TREAT	0.00	1,600.00
1001	42001	10/25/23	10007	ALERT-O-LITE, INC	6200	UNIFORM - PW	0.00	37.91
1001	42001	10/25/23	10007	ALERT-O-LITE, INC	6200	SUPPLIES - STREETS	0.00	481.08
1001	42001	10/25/23	10007	ALERT-O-LITE, INC	6200	SUPPLIES - STREETS	0.00	1,161.51
TOTAL	CHECK							1,680.50
1001	42002	10/25/23	14330	B&P PEST PROS	6020	PEST CONTROL 10/24/23	0.00	90.00
1001	42002	10/25/23	14330	B&P PEST PROS	6130	PEST CONTROL 10/24/23	0.00	95.00
1001	42002	10/25/23	14330	B&P PEST PROS	6700	PEST CONTROL 10/24/23	0.00	95.00
TOTAL	CHECK							280.00
1001	42003	10/25/23	10026	BCT CONSULTING	6170	NETWORK SVC 10/24/23	0.00	1,500.00
1001	42004	10/25/23	10024	BSK ASSOCIATES	5000	WATER TESTING	0.00	199.00
1001	42005	10/25/23	10358	CITY OF FRESNO STREET MA	6200	TRAF SIGNAL 4/23-6/23	0.00	4,624.06
1001	42006	10/25/23	14162	CHELADA	6400	LIVE MUSIC 10/25/23	0.00	500.00
1001	42007	10/25/23	14931	DAVIS, KENNETH B.	500	UB REFUND	0.00	76.32

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

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DATE: 11/01/2023  
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ACCOUNTING PERIOD: 5/24

FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	42008	10/25/23	13275	FERGUSON WATERWORKS #142	6260	SUPPLIES - PARKS	0.00	795.67
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	6160	SEP 23 FUEL-BUILD	0.00	54.92
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	6260	SEP 23 FUEL-PARKS	0.00	283.82
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	6260	AUG 23 FUEL-PARKS	0.00	631.46
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	5000	SEP 23 FUEL-WATER	0.00	1,288.39
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	5000	AUG 23 FUEL-WATER	0.00	1,298.12
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	6200	AUG 23 FUEL-STREETS	0.00	1,445.92
1001	42009	10/25/23	10488	FOWLER UNIFIED SCHOOL DI	6200	SEP 23 FUEL-STREETS	0.00	1,533.81
TOTAL	CHECK						0.00	6,536.44
1001	42010	10/25/23	14934	GONZALEZ, FELICITY	500	UB REFUND	0.00	87.88
1001	42011	10/25/23	11116	GRAINGER	6200	SUPPLIES STREETS	0.00	104.10
1001	42011	10/25/23	11116	GRAINGER	6200	SUPPLIES STREETS	0.00	142.98
TOTAL	CHECK						0.00	247.08
1001	42012	10/25/23	11018	HOME DEPOT CREDIT SERVICE	6200	SUPPLIES STREETS	0.00	113.83
1001	42012	10/25/23	11018	HOME DEPOT CREDIT SERVICE	6200	SUPPLIES STREETS	0.00	179.13
1001	42012	10/25/23	11018	HOME DEPOT CREDIT SERVICE	6260	SUPPLIES PARKS	0.00	201.85
1001	42012	10/25/23	11018	HOME DEPOT CREDIT SERVICE	6700	SUPPLIES SNR CTR	0.00	443.11
TOTAL	CHECK						0.00	937.92
1001	42013	10/25/23	14238	INFOSEND, INC	5000	UB MAINT SEP23	0.00	565.78
1001	42014	10/25/23	14930	ISAIAS GOVEA	500	UB REFUND	0.00	100.00
1001	42015	10/25/23	12076	KEY DESIGN LOCKSMITHING	6200	PUBLIC WORKS KEY	0.00	104.36
1001	42016	10/25/23	14111	KIMBALL MIDWEST	6200	STREET SUPPLIES	0.00	346.40
1001	42017	10/25/23	10203	MID VALLEY PACKAGING & S	6020	COPY PAPER ADMIN	0.00	205.97
1001	42017	10/25/23	10203	MID VALLEY PACKAGING & S	6260	JANITORIAL SUPPLIES	0.00	881.50
TOTAL	CHECK						0.00	1,087.47
1001	42018	10/25/23	14884	MOLINA, REBECCA	6025	MILEAGE REIMB 10/18	0.00	13.10
1001	42019	10/25/23	14932	NASHMI ALRAHIMI	500	UB REFUND	0.00	47.66
1001	42020	10/25/23	14933	OGAWA, MICHELLE	500	UB REFUND	0.00	109.70
1001	42021	10/25/23	10237	P G & E - SACRAMENTO	6200	WALTER/FRES 10/16/23	0.00	14.23
1001	42021	10/25/23	10237	P G & E - SACRAMENTO	6200	TRACT 5834 10/16/23	0.00	53.98
1001	42021	10/25/23	10237	P G & E - SACRAMENTO	6200	TRACT 5212 10/16/23	0.00	113.37
1001	42021	10/25/23	10237	P G & E - SACRAMENTO	6200	ADAMS/TEMP 10/16/23	0.00	177.25
1001	42021	10/25/23	10237	P G & E - SACRAMENTO	6200	SOUTH &SUNNY 10/16/23	0.00	185.54
TOTAL	CHECK						0.00	544.37
1001	42022	10/25/23	13655	PROVOST & PRITCHARD	2380	CYCLE IX BIKEWAY	0.00	2,259.60
1001	42022	10/25/23	13655	PROVOST & PRITCHARD	2390	ZONING CODE UPDATE	0.00	13,383.00
TOTAL	CHECK						0.00	15,642.60

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

SUPERION  
DATE: 11/01/2023  
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SELECTION CRITERIA: transact.check\_no between '41969' and '42061'  
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FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	42023	10/25/23	10254 REDCAT TOWING	6260	TOWING-DUMP TRUCK	0.00	150.00
1001	42024	10/25/23	14479 RG POWER	6200	EQUIP MAINT STREETS	0.00	21.45
1001	42025	10/25/23	11489 SHOP N GO, INC.	6160	CARWASH	0.00	11.00
1001	42025	10/25/23	11489 SHOP N GO, INC.	6160	CARWASH	0.00	11.00
TOTAL CHECK						0.00	22.00
1001	42026	10/25/23	13355 SITE ONE LANDSCAPE SUPPL	6260	SUPPLIES PARKS	0.00	865.61
1001	42027	10/25/23	10763 SUNBELT RENTALS	6260	RENTAL PARKS	0.00	462.10
1001	42028	10/25/23	14935 SWEET BEEZUS	6150	BEEHIVE REMOVAL	0.00	200.00
1001	42029	10/25/23	13543 UNIFIRST CORPORATION	6700	JANITORIAL	0.00	67.20
1001	42029	10/25/23	13543 UNIFIRST CORPORATION	6200	UNIFORMS PW	0.00	85.46
1001	42029	10/25/23	13543 UNIFIRST CORPORATION	5000	UNIFORMS PW	0.00	85.46
TOTAL CHECK						0.00	238.12
1001	42030	10/25/23	14830 WILLDAN GROUP INC	6160	INSPECTIONS SEPT 23	0.00	2,185.00
1001	42033	11/01/23	10007 ALERT-O-LITE, INC	6200	SUPPLIES - STREETS	0.00	31.41
1001	42034	11/01/23	14519 AMAZON CAPITAL SERVICES	6030	SUPPLIES - FINANCE	0.00	39.42
1001	42034	11/01/23	14519 AMAZON CAPITAL SERVICES	6200	SUPPLIES - STREETS	0.00	183.06
TOTAL CHECK						0.00	222.48
1001	42035	11/01/23	10549 AT&T MOBILITY	6170	FIRSTNET SEP23	0.00	888.90
1001	42036	11/01/23	10064 COLONIAL LIFE INSURANCE	100	EMP DED NOV23	0.00	47.42
1001	42037	11/01/23	14938 DEE A HOLGUIN	6400	FOOD FOR VOLUNTEERS	0.00	300.00
1001	42038	11/01/23	10084 DEPARTMENT OF JUSTICE	6120	BLOOD ALC ANALYSIS	0.00	70.00
1001	42038	11/01/23	10084 DEPARTMENT OF JUSTICE	6120	BLOOD ALC ANALYSIS	0.00	105.00
1001	42038	11/01/23	10084 DEPARTMENT OF JUSTICE	6120	BLOOD ALC ANALYSIS	0.00	105.00
TOTAL CHECK						0.00	280.00
1001	42039	11/01/23	10488 FOWLER UNIFIED SCHOOL DI	6120	FUEL SEP23	0.00	719.28
1001	42039	11/01/23	10488 FOWLER UNIFIED SCHOOL DI	6120	FUEL AUG23	0.00	1,118.65
TOTAL CHECK						0.00	1,837.93
1001	42040	11/01/23	10104 FPOA	100	EMP DED 10/31/23	0.00	200.00
1001	42041	11/01/23	10854 FRESNO CITY COLLEGE	6120	BASIC ACADEMY TUITION	0.00	820.00
1001	42042	11/01/23	10122 FRESNO COUNTY FIRE PROTE	6200	GRAPHIC INSTALL - PW	0.00	382.00
1001	42043	11/01/23	10124 FRESNO SHERIFF BUS OFFIC	6120	PRISONER PROCESSING	0.00	1,845.25
1001	42044	11/01/23	14939 HERO ALLIANCE	6400	TRUNK OR TREAT	0.00	500.00

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FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6030	HEALTH BENEFITS NOV23	0.00	791.05
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6700	HEALTH BENEFITS NOV23	0.00	808.97
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6025	HEALTH BENEFITS NOV23	0.00	918.95
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6150	HEALTH BENEFITS NOV23	0.00	948.94
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6400	HEALTH BENEFITS NOV23	0.00	1,019.75
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6160	HEALTH BENEFITS NOV23	0.00	1,028.07
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6020	HEALTH BENEFITS NOV23	0.00	1,521.28
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	100	HEALTH BENEFITS NOV23	0.00	2,161.47
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6200	HEALTH BENEFITS NOV23	0.00	3,101.76
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	5000	HEALTH BENEFITS NOV23	0.00	5,146.68
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6260	HEALTH BENEFITS NOV23	0.00	6,474.27
1001	42045	11/01/23	13496	KEENAN & ASSOCIATES	6120	HEALTH BENEFITS NOV23	0.00	8,223.02
TOTAL	CHECK						0.00	32,144.21
1001	42046	11/01/23	10416	LAW & ASSOCIATES INVESTI	6120	BACKGROUND CHECK	0.00	700.00
1001	42047	11/01/23	10201	METRO UNIFORM & ACCESSOR	6120	UNIFORM - PD	0.00	221.52
1001	42047	11/01/23	10201	METRO UNIFORM & ACCESSOR	6120	UNIFORM - PD	0.00	247.09
1001	42047	11/01/23	10201	METRO UNIFORM & ACCESSOR	6120	UNIFORM - PD	0.00	799.35
TOTAL	CHECK						0.00	1,267.96
1001	42048	11/01/23	14884	MOLINA, REBECCA	6025	TRAVEL ADVANCE	0.00	9.69
1001	42049	11/01/23	10885	NELSONS POWER CENTER	6260	SUPPLIES - PARKS	0.00	18.83
1001	42049	11/01/23	10885	NELSONS POWER CENTER	6200	SUPPLIES - STREETS	0.00	86.45
TOTAL	CHECK						0.00	105.28
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	SUMER&MOGNOLA 10/16/2	0.00	5.32
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	429 E MERCED 10/24/23	0.00	7.89
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	SUMNER/HW99 10/16/23	0.00	10.63
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-F HWY LT 10/16/23	0.00	10.76
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	TSFR 3LTS 10/16/23	0.00	11.38
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-E HWY LT 10/16/23	0.00	12.38
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	8TH/VINE 10/16/23	0.00	15.43
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	2250	MANN&GLDN ST 10/25/23	0.00	15.77
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	ADAMS/DEAN 10/16/23	0.00	17.35
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-A HWY LT 10/16/23	0.00	19.65
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	TR5090 10/16/23	0.00	25.47
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS2-A HWY LT 10/16/23	0.00	37.22
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	TEMP/PARL 10/16/23	0.00	37.22
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-F HWY LT 10/16/23	0.00	42.47
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	3079 MANN 10/20/23	0.00	51.17
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS2-A HWY LT 10/16/23	0.00	55.47
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	TR5041 10/16/23	0.00	97.42
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	5000	LANDSCAPE 10/23/23	0.00	107.00
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	T5088 10/16/23	0.00	120.83
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	GLDST/VLY DR 10/16/23	0.00	175.03
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	CLAYTON/ARMS 10/16/23	0.00	220.75
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-C HWY 10/16/23	0.00	314.73
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	630 W FRESNO 10/23/23	0.00	349.52
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6130	220 E MAIN 10/24/23	0.00	349.71
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-F HWY LT 10/16/23	0.00	388.70

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FUND - 100 - GENERAL FUND

CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS1-A 10/16/23	0.00	749.88
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS2-A HWY LT 10/16/23	0.00	838.91
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LSI-E HWY LT 10/16/23	0.00	1,060.80
1001	42050	11/01/23	10237	P G & E - SACRAMENTO	6200	LS2-A HWY LT 10/16/23	0.00	1,295.05
TOTAL	CHECK						0.00	6,443.91
1001	42051	11/01/23	13354	QUINN CAT	6200	TRUCK SERVICE STREETS	0.00	2,556.89
1001	42052	11/01/23	14479	RG POWER	6260	TOOLS - PARKS	0.00	94.98
1001	42052	11/01/23	14479	RG POWER	6260	TOOLS - PARKS	0.00	485.39
TOTAL	CHECK						0.00	580.37
1001	42053	11/01/23	10518	SIGNMAX!	6200	SUPPLIES - STREETS	0.00	65.02
1001	42054	11/01/23	13355	SITE ONE LANDSCAPE SUPPL	6200	SUPPLIES - STREETS	0.00	293.73
1001	42055	11/01/23	14358	SPARKLETT'S	6120	WATER SERVICE SEP23	0.00	138.12
1001	42055	11/01/23	14358	SPARKLETT'S	6020	WATER SERVICE SEP23	0.00	138.13
TOTAL	CHECK						0.00	276.25
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	8500	DENTAL BENEFIT NOV23	0.00	6.57
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6700	DENTAL BENEFIT NOV23	0.00	33.18
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6400	DENTAL BENEFIT NOV23	0.00	39.82
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6150	DENTAL BENEFIT NOV23	0.00	49.09
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6025	DENTAL BENEFIT NOV23	0.00	63.50
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6030	DENTAL BENEFIT NOV23	0.00	79.68
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6160	DENTAL BENEFIT NOV23	0.00	122.75
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6020	DENTAL BENEFIT NOV23	0.00	142.94
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6200	DENTAL BENEFIT NOV23	0.00	238.88
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6260	DENTAL BENEFIT NOV23	0.00	342.42
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	5000	DENTAL BENEFIT NOV23	0.00	369.96
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	6120	DENTAL BENEFIT NOV23	0.00	732.41
1001	42056	11/01/23	13647	SUN LIFE FINANCIAL	100	DENTAL BENEFIT NOV23	0.00	990.12
TOTAL	CHECK						0.00	3,211.32
1001	42057	11/01/23	13543	UNIFIRST CORPORATION	6020	MATS/MOPS	0.00	79.90
1001	42057	11/01/23	13543	UNIFIRST CORPORATION	6200	UNIFORMS - PW	0.00	85.09
1001	42057	11/01/23	13543	UNIFIRST CORPORATION	5000	UNIFORMS - PW	0.00	85.10
TOTAL	CHECK						0.00	250.09
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 8500	(C 8500	VISION BENEFIT NOV23	0.00	1.77
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6700	(C 6700	VISION BENEFIT NOV23	0.00	9.85
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6400	(C 6400	VISION BENEFIT NOV23	0.00	11.82
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6150	(C 6150	VISION BENEFIT NOV23	0.00	13.78
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6025	(C 6025	VISION BENEFIT NOV23	0.00	17.73
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6030	(C 6030	VISION BENEFIT NOV23	0.00	22.83
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6160	(C 6160	VISION BENEFIT NOV23	0.00	35.43
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6020	(C 6020	VISION BENEFIT NOV23	0.00	41.34
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6200	(C 6200	VISION BENEFIT NOV23	0.00	50.41
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 5000	(C 5000	VISION BENEFIT NOV23	0.00	106.94
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6260	(C 6260	VISION BENEFIT NOV23	0.00	121.26
1001	42058	11/01/23	11335	VISION SERVICE PLAN - (C 6120	(C 6120	VISION BENEFIT NOV23	0.00	236.28

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CITY OF FOWLER  
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ACCTPA21

FUND - 100 - GENERAL FUND			
CASH ACCT	CHECK NO	ISSUE DT	VENDOR
1001	42058	11/01/23	11335
TOTAL CHECK			
1001	42059	11/01/23	14290
TOTAL CASH ACCOUNT			
TOTAL FUND			

NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT
VISION SERVICE PLAN - (C 100		VISION BENEFIT NOV23	0.00	264.70
			0.00	934.14
XEROX FINANCIAL SERVICES 6170		LEASE 09/01-09/30	0.00	1,515.43
			0.00	208,686.16
			0.00	208,686.16

CITY OF FOWLER  
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FUND - 201 - DISTRICT SALES TAX									
CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT	
1001	41997	10/18/23	14928	THE RANGE PISTOL CLUB	2010	RANGE TRAINING	0.00	5,750.00	
1001	41998	10/18/23	14929	ULTIMATE TRAINING MUNITI	2010	SIMUNITIONS	0.00	5,379.60	
1001	42060	11/01/23	14937	FLOCK SAFETY	2010	FLOCK ALPR	0.00	18,250.00	
1001	42061	11/01/23	10122	FRESNO COUNTY FIRE PROTE	2010	DODGE GRAPHICS	0.00	1,189.48	
TOTAL CASH ACCOUNT								30,569.08	
TOTAL FUND								30,569.08	

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ACCTPA21

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

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FUND - 212 - ARPA FUNDING					-----DESCRIPTION-----	SALES TAX	AMOUNT
CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT		
1001	42031	10/25/23	14433	PRICE PAIGE & COMPANY CP 2120		0.00	3,931.00
TOTAL CASH ACCOUNT					AUDIT SUPPORT 22-23	0.00	3,931.00
TOTAL FUND						0.00	3,931.00

CITY OF FOWLER  
CHECK REGISTER - DISBURSEMENT FUND

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SELECTION CRITERIA: transact.check\_no between '41969' and '42061'  
ACCOUNTING PERIOD: 5/24

FUND - 503 - TCP FUND									
CASH ACCT	CHECK NO	ISSUE DT	VENDOR	NAME	DEPT	-----DESCRIPTION-----	SALES TAX	AMOUNT	
1001	41999	10/18/23	13655	PROVOST & PRITCHARD	5030	TCP WELL 7	0.00	10,346.10	
1001	42032	10/25/23	13655	PROVOST & PRITCHARD	5030	TCP WELL 7 PM	0.00	780.00	
TOTAL CASH ACCOUNT								11,126.10	
TOTAL FUND								11,126.10	
TOTAL REPORT								254,312.34	



## CITY COUNCIL MEETING

TUESDAY, OCTOBER 03, 2023 at 6:00 PM

CITY COUNCIL CHAMBER – 128 SOUTH 5TH STREET, FOWLER, CA 93625

### MINUTES

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#### 1. MEETING CALLED TO ORDER

Mayor Pro-Tem Mejia called meeting to order at 6:02 p.m.

#### 2. ROLL CALL

##### PRESENT:

Daniel Parra (Via Teleconference)  
Juan Mejia  
Amarjeet Gill  
Leonard Hammer  
Karnig Kazarian

##### CITY STAFF PRESENT:

City Manager Tucker, City Attorney Cross, Assistant City Manager Gaffery, Recreation Supervisor Hernandez, City Planner Marple, Finance Director Moreno, Public Works Director Rocha, City Engineer Park, and City Clerk Vasquez.

#### 3. APPROVAL OF AGENDA

In Item 8H staff report, the Conflict of Interest Statement should read, "Staff is not aware of any conflicts of interest." The statement regarding Mayor Pro-Tem Mejia should have been removed from the staff report.

#### 6. CEREMONIAL PRESENTATIONS

6A. Police Commendations

#### 7. PUBLIC COMMENT

Three members of the public spoke.

#### 8. CONSENT CALENDAR

Items 8A-8F and 8H-8I were approved.

Motion made by Kazarian, Seconded by Hammer.  
Voting Yea: Gill, Mejia, Parra

## 9. CONTESTED CONSENT CALENDAR

*Three members of the public spoke.*

**Item 8G was pulled from the consent calendar by Mayor Pro-Tem Mejia.**

**Motion made by Kazarian, Seconded by Gill.**

**Voting Yea: Hammer, Mejia, Parra**

## 10. GENERAL ADMINISTRATION

### Finance

10A. INTRODUCTION of Ordinance No. 2023-09 to amend Section 2-1.302 of Article 3, of Chapter 1, of Title 2 regarding authorizations to sign warrants; and adding Chapter 10 to Title 3 of the Fowler Municipal Code regarding the adoption of policies relating to fiscal administration

**Motion made by Kazarian, Seconded by Gill.**

**Voting Yea: Hammer, Mejia, Parra,**

### Police Department

10B. Items pertaining to Automated License Plate Readers:

1) APPROVE Resolution No. 2682 to adopt a Class 1 Categorical Exemption from CEQA and to approve the City of Fowler Police Department's implementation of Policy No. 207 regarding Automated License Plate Readers (ALPRs) and receive public comment regarding same in accordance with Civil Code section 1798.90.55, subdivision (a).

2) APPROVE an agreement with Flock Group, Inc., (Flock) to purchase Automated License Plate Readers (ALPRs) in the amount of \$33,250.00.

**Motion made by Gill, Seconded by Hammer.**

**Voting Yea: Kazarian, Mejia, Parra**

10C. APPROVE a five year agreement with AXON Enterprises Inc. (AXON) to purchase Body Worn Cameras (BWC) and Taser conducted energy devices in the amount of \$165,623.94.

**Motion made by Hammer, Seconded by Gill.**

**Voting Yea: Kazarian, Mejia, Parra**

## 11. STAFF COMMUNICATIONS

*Updates were provided by City Manager Tucker, Recreation Supervisor Hernandez, Assistant City Manager Gaffery, Police Chief Reid, Public Works Director Rocha, and City Clerk Vasquez.*

**12. COUNCILMEMBER REPORTS AND COMMENTS**

*Updates were given by Mayor Parra, Councilmember Hammer, Councilmember Gill, Mayor Pro-Tem Mejia, and Councilmember Kazarian.*

**13. CLOSED SESSION**

*A. Additional Case #: 22CECG01769*

*No reportable action was taken on any of the three items.*

**Reconvened into Open Session at 8:09 p.m.**

**14. ADJOURN**

**Having no further business, the meeting adjourned at 8:10 p.m.**



## CITY COUNCIL MEETING

TUESDAY, OCTOBER 17, 2023 at 6:00 PM

CITY COUNCIL CHAMBER – 128 SOUTH 5TH STREET, FOWLER, CA 93625

### MINUTES

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#### 1. MEETING CALLED TO ORDER

Mayor Parra called the meeting to order at 6:00 p.m.

#### 2. ROLL CALL

**PRESENT:**

Daniel Parra  
Juan Mejia  
Amarjeet Gill  
Karnig Kazarian

**ABSENT:**

Leonard Hammer

**CITY STAFF PRESENT:**

City Manager Tucker, City Attorney Cross, Battalion Chief Dominguez, Assistant City Manager Gaffery, Recreation Supervisor Hernandez, City Planner Marple, City Engineer Park, Police Chief Reid, Public Works Director Rocha, and City Clerk Vasquez.

#### 6. CEREMONIAL PRESENTATIONS

A. Swearing in of Police Officer Felix Tobar

#### 7. PUBLIC COMMENT

*Five members of the public spoke.*

#### 8. CONSENT CALENDAR

**Motion made by Kazarian, Seconded by Gill.**  
**Voting Yea: Parra, Mejia**

#### 9. CONTESTED CONSENT CALENDAR

*No items were pulled from the consent calendar.*

## 10. GENERAL ADMINISTRATION

### Planning

- A. PROVIDE STAFF DIRECTION on economic development incentives

*One member of the public spoke.*

**Council gave direction for staff to work on economic development incentive packages for the industrial corridor and downtown business core (form based code zone district).**

- B. WORKSHOP and provide staff direction on visual identity and branding concepts prepared by Toole Design

*One member of the public spoke.*

*Staff indicated that they would reach out to Councilmembers for individual meetings and Council can also provide written comments.*

## 11. STAFF COMMUNICATIONS

- A. Fire Station Phase 2 update - City Manager Wilma Tucker

- B. Golden State Boulevard update - City Engineer Soo Ho Park

*Updates were also provided by Police Chief Reid and City Planner Marple.*

### City Attorney

- C. DISCUSSION of SB 1439 and the new disclosure/disqualification requirements relating to receipt of campaign contributions in excess of \$250.00.

## 12. COUNCILMEMBER REPORTS AND COMMENTS

*Updates were provided by Councilmember Gill, Mayor Parra, Councilmember Kazarian, and Mayor Pro-Tem Mejia.*

*Two members of the public spoke.*

## 13. ADJOURN

**Having no further business, the meeting adjourned at 7:58 p.m.**



## CITY COUNCIL MEETING

### **REPORT TO THE CITY COUNCIL**

**DATE:** November 7, 2023

**FROM:** ANGELA VASQUEZ, City Clerk / Human Resource Officer

**SUBJECT:** APPROVE a professional services agreement with Segal in the amount of \$29,000.00 for a Health Benefit Study

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### **EXECUTIVE SUMMARY**

Segal will review the City's current health benefits program to evaluate the effectiveness, value, and competitiveness of the current plan.

### **BACKGROUND**

The City has contracted with the Public Agency Coalition Enterprise (PACE) since July 1, 2015 to provide employee health and welfare benefits. Staff would like Segal to provide the City with insights regarding the competitiveness of the current health and welfare benefit programs offered to full-time employees. Segal will collect data for up to ten comparable peer cities. Based on Segal's analysis, staff may bring forward a recommendation in the future to modify the City's plan or change plan administrators.

### **PUBLIC NOTICE**

This item does not require a public hearing and was noticed as a part of the City Council Agenda.

### **ENVIRONMENTAL REVIEW**

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

### **GENERAL PLAN CONSISTENCY**

This action is not associated with a General Plan goal, policy, or action item.

### **FISCAL IMPACT**

The cost of the benefit study will be allocated from the Administration budget.

### **CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

### **Attachments**

- Agreement & 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 The Segal Group, Inc., for itself and on behalf of itself and its operating subsidiaries ("Vendor") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on the last date signed below. ("Effective Date").

### RECITALS

- A. City desires to engage the services of a qualified vendor to provide consulting services ("Services") 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 warrants and 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, 2024, 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 on a fixed fee basis. The total amount paid by City to Vendor pursuant to this Agreement shall not exceed Twenty-Nine Thousand Dollars (\$29,000.00).

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 copies of a working draft of all reports upon reasonable request by City and of all final reports prepared by Vendor under this Agreement.

11. Information and Ownership

(a) City Information. City agrees to supply to Vendor (either directly or through City's agents and representatives) on a timely basis all of the data, documentation and information (e.g., current plan design and plan documents, information concerning all plan participants and beneficiaries) reasonably needed by Vendor to perform the Services ("City Information"), in a usable format. If City Information is not provided in a usable format, Vendor may charge City for actual costs incurred in converting it to a usable format. Vendor will have the right to reasonably rely on the accuracy and completeness of City Information and will have no responsibility for independently verifying or checking City Information for accuracy or completeness. City will notify Vendor promptly upon gaining knowledge of any material change to City Information. City acknowledges and agrees that Vendor shall have no liability for errors resulting from latent defects in City Information or City's failure to notify Vendor of changes to City Information.

(b) Ownership of City Information. City Information is and will remain the sole and exclusive property of City. In addition to the Services, Vendor is authorized to use City Information for internal purposes and may aggregate City Information with other data collected by Vendor and distribute such data, or analysis

of such data, to third parties, provided such distributed data does not identify City or any City participants or beneficiaries. For the avoidance of doubt, Vendor will not sell or otherwise receive remuneration for City Information or materials derived from City Information.

(c) **Ownership of Deliverables.** City acknowledges that, in providing the Services, Vendor will distribute or make available certain proprietary materials ("Vendor's Proprietary Information"), including, but not limited to, publications, software, know-how, techniques, methodologies and report formats. Except to the extent that they are or incorporate Vendor's Proprietary Information, all documents, data, and other tangible materials authored or prepared and delivered by Vendor to City under the terms of this Agreement (collectively, the "Deliverables"), are the sole and exclusive property of City, once paid for by City. To the extent that Vendor's Proprietary Information is incorporated into such Deliverables, City will have a perpetual, fully paid, non-exclusive, non-transferable and non-sublicensable right to use, copy, and modify Vendor's Proprietary Information as part of the Deliverables internally and for their intended purpose. Vendor will not have any responsibility or liability for use of any Deliverable in any manner other than for the intended purpose.

12. **Public Disclosure Laws.** Client is permitted to release copies of any Deliverables in response to a request under any applicable public disclosure law. If Client receives a request pursuant to such law, to disclose any information provided by Segal other than the Deliverables, Client will notify Segal with sufficient time for Segal to seek any legally permissible exemption from disclosure. Segal shall be solely responsible for all costs related to seeking such exemption.

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. Notwithstanding the foregoing, Vendor is expressly authorized to include City's name in a list of representative clients for marketing and/or sales purposes, as long as the inclusion of City's name is not done in a way that states, implies, or suggests that City approves, endorses, certifies, or recommends Vendor or its services.

14. **Conflicts of Interest.** Vendor warrants that neither Vendor nor, to the best of its knowledge, upon due inquiry, 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, to the best of its knowledge, upon due inquiry 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 knowingly 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, 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 to the extent resulting from the negligence, willful misconduct or fraud 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 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. 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, except that Vendor may assign its rights or delegate its performance this Agreement to any of its wholly-owned subsidiaries doing business as "Segal," provided there is no change in the primary personnel performing services or to Vendor's ultimate ownership structure. 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, at the address(es) listed below the signature line of this Agreement 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 in ink or electronic signatures 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.

**THE SEGAL GROUP, INC.**

**CITY OF FOWLER**

\_\_\_\_\_  
Richard Ward  
Senior Vice President

\_\_\_\_\_  
Wilma Tucker  
City Manager

Date: \_\_\_\_\_

Date: \_\_\_\_\_

500 North Brand Blvd, Suite 1400  
Glendale, CA 91203  
(818) 956-6714  
rward@segalco.com

128 South 5th Street  
Fowler, CA 93625  
(559) 834-3113  
wtucker@ci.fowler.ca.us

Copy to:  
General Counsel  
The Segal Group  
333 West 34th Street  
New York, NY 10001-2402  
Contract\_Notice@segalco.com

# **EXHIBIT A**

## **SCOPE OF SERVICES**

August 25, 2023

Angela Vasquez, CPMC  
City Clerk  
City of Fowler  
128 S. 5th Street  
Fowler, CA 93625

**Re: Health Benefit Study – *UPDATED PROPOSAL***

Dear Ms. Vasquez:

Segal understands that the City of Fowler requires a review of the current benefits program and participation in CalPERS. The City needs to evaluate the effectiveness and value of the current arrangement against other options in the market, which may include participating in other trusts or establishing its own group health benefits programs.

The analysis will be informed by the benefits provided by other public employers determined to be comparable peers by the City. This will be supplemented by industry survey data which will include data from both public and private employers.

Segal has extensive experience with public employers in California and has the technical and strategic expertise to provide the City with the necessary data and guidance.

## Our Approach

In order to provide the City with insights regarding the competitiveness of the health and welfare benefit programs offered to active employees, Segal proposes collecting publicly available data for up to 10 peer employers and trusts including:

- Benefit design prevalence and actuarial value
- Premium rates and employee contributions
- Additional published materials associated with benefit program design trends.

These trusts and employers would be determined by the City, with consultation from Segal. We anticipate holding a kick-off and planning meeting where overall approach and timing can be discussed as well.

We will compare the overall net value of your current CalPERS provided benefits with those provided by selected employers and available from selected trusts.

Additional context will be provided by including published market data from the Kaiser Family Foundation, Society for Human resource Management, the Bureau of Labor and Statistics and the International Foundation of Employee Benefit Plans. All of these sources provide data specific by geography, employer size and employer type (public sector/non-profit for example).

Segal has extensive experience and expertise in valuing health care benefit plans. We utilize a market-leading actuarial valuation model that enables us to determine the actuarial value of a plan's benefits in aggregate. This model incorporates the combined value of deductibles, copays, coinsurance, annual maximums and other features of medical, pharmacy, dental and vision benefits and enables us to determine the overall actuarial value for these coverages on both an individual and aggregate basis.

Comparing actuarial values between two plans is generally the best way to measure the difference in value provided by two, or more, plans. Comparisons based on costs, while more straightforward, can be affected by differences in each plan's covered group, such as age, gender mix, geography, etc. The ratio of two plans' actuarial values will provide a relative value factor. These relative values adjust for the average difference in plan payments between one plan design and another plan given the same participant demographics. The goal of the analysis is to evaluate what the plan payments for City employees would be, if the plan of a comparison group was adopted.

The result is each plan having a single benefit value, which facilitates a direct comparison of aggregate benefit value and can be coupled with compensation to determine the combined total remuneration value.

Our report will include data from the selected peer organizations and provide a total net value assessment of each organization and show how the City's current program compares. We will include commentary and suggested considerations and options.

Our services include providing a draft report for your comment and review. The final report will consider your input and we would be pleased to meet with you to discuss.

County of Santa Barbara Enrollee Distribution by Tiers of Coverage		% of Total
EE Only	79%	
EE + Spouse	7%	
EE + Child	3%	
Family	11%	

Market Average ANNUAL Weighted Employer Contribution	County of Santa Barbara ANNUAL Weighted Employer Contribution
\$13,392	\$10,304

Peer	TOTAL MONTHLY HEALTH BENEFITS					Monthly Medical/RX				Monthly Dental				Monthly Vision			
	EE Only	EE + Spouse	EE + Child	Family	Weighted Average	EE Only	EE + Spouse	EE + Child	Family	EE Only	EE + Spouse	EE + Child	Family	EE Only	EE + Spouse	EE + Child	Family
County of Marin, CA	\$941	\$1,250	\$1,678	\$1,678	\$1,068	\$941	\$1,250	\$1,678	\$1,678	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
County of Monterey, CA	\$1,411	\$2,033	\$2,055	\$2,441	\$1,590	\$1,361	\$1,983	\$2,005	\$2,391	\$38	\$38	\$38	\$38	\$12	\$12	\$12	\$12
County of San Diego, CA	\$850	\$1,168	\$1,691	\$1,691	\$992	\$790	\$1,168	\$1,691	\$1,691	\$50	\$0	\$0	\$0	\$9	\$0	\$0	\$0
County of Orange, CA	\$705	\$1,107	\$1,488	\$1,488	\$845	\$705	\$1,107	\$1,488	\$1,488	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
County of San Luis Obispo, CA	\$757	\$1,100	\$1,340	\$1,340	\$864	\$738	\$1,100	\$1,340	\$1,340	\$19	\$0	\$0	\$0	\$0	\$0	\$0	\$0
County of Santa Cruz, CA	\$878	\$1,666	\$2,166	\$2,166	\$1,117	\$878	\$1,666	\$2,166	\$2,166	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
County of Sonoma, CA	\$1,019	\$1,618	\$2,287	\$2,287	\$1,242	\$914	\$1,618	\$2,287	\$2,287	\$90	N/A	N/A	N/A	\$15	N/A	N/A	N/A
County of Ventura, CA	\$1,126	\$1,348	\$1,597	\$1,597	\$1,209	\$1,077	\$1,348	\$1,597	\$1,597	\$45	\$0	\$0	\$0	\$4	\$0	\$0	\$0
Market Average	\$961	\$1,411	\$1,788	\$1,836	\$1,116	\$926	\$1,405	\$1,782	\$1,830	\$34	\$6	\$6	\$6	\$6	\$2	\$2	\$2
County of Santa Barbara, CA	\$859	\$859	\$859	\$859	\$859	\$833	\$833	\$833	\$833	\$26	\$26	\$26	\$26	\$0	\$0	\$0	\$0

Data Effective Date:  
07/01/2022

Plan Provision	Comparison Group								Client		
	1 <sup>st</sup> Quartile		Median		3 <sup>rd</sup> Quartile		Mean		Low Deductible PPO Plan		
	In-Network	Out-Network	In-Network	Out-Network	In-Network	Out-Network	In-Network	Out-Network	Endorsed Encircle Network	Other In-Network	Out-Network
Primary Care Physician (PCP) Copay	\$25	N/A	<b>\$20</b>	<b>N/A</b>	\$15	N/A	\$26	N/A	N/A	N/A	N/A
Specialist Copay	\$40	N/A	<b>\$35</b>	<b>N/A</b>	\$25	N/A	\$40	N/A	N/A	N/A	N/A
Per-confinement Copay	Included for 38% of In-Network copayment, 32% of Out-of-Network copayment								None		Yes
Outpatient Services Copay	Included for 25% of In-Network copayment, 15% of Out-of-Network copayment								None		None
Individual Deductible	\$500	\$750	<b>\$500</b>	<b>\$500</b>	\$300	\$500	\$494	\$768		\$600	
Individual Out-of-Pocket Max (excluding deductible)	\$3,000	\$5,000	<b>\$2,000</b>	<b>\$3,000</b>	\$1,200	\$2,000	\$2,043	\$3,572	\$2,000	<b>\$3,500</b>	\$5,000
<b>Institution Subsidized Coinsurance %</b>											
Physician Visits Non-Specialist	85%	60%	<b>100%</b>	<b>60%</b>	100%	70%	94%	65%	<b>80%</b>	<b>70%</b>	60%
Physician Visits Specialist	85%	60%	<b>100%</b>	<b>65%</b>	100%	70%	93%	66%	<b>80%</b>	<b>70%</b>	60%
In-Patient Hospital	80%	60%	<b>80%</b>	<b>60%</b>	90%	70%	84%	65%	80%	<b>70%</b>	60%
Out-Patient Hospital	80%	60%	<b>80%</b>	<b>60%</b>	90%	70%	83%	64%	80%	<b>70%</b>	60%
In-Patient Surgery	80%	60%	<b>80%</b>	<b>60%</b>	90%	70%	84%	65%	80%	<b>70%</b>	60%
Out-Patient Surgery	80%	60%	<b>80%</b>	<b>60%</b>	90%	70%	83%	64%	80%	<b>70%</b>	60%
<b>Emergency Room</b>											
Copay	\$200	\$200	<b>\$100</b>	<b>\$100</b>	\$50	\$50	\$134	\$126	\$100	\$100	\$100
Coinsurance	100%	100%	<b>100%</b>	<b>100%</b>	100%	90%	87%	82%	<b>80%</b>	<b>80%</b>	80%

## Proposed Timeline

We are prepared to begin work immediately, but can likely accommodate a timeframe later in the year if that is your preference. We anticipate the entire project requiring 8-12 weeks, depending on the specific peers selected and how soon that group is finalized.

## Our Consulting Approach

Our consulting approach is client focused, timely, pragmatic and forward thinking. The solutions for the challenges facing public sector entities today are not rooted in the past; nor can they be based on applying benchmarks to what “everyone else” is doing.

As a leading national benefits and actuarial consulting firm, we believe that there are some key and distinct characteristics that make us different. In deciding whether to select our team to serve your needs, we would request that you consider our firm’s service philosophy in that we:

- **Consult in a different way:** We will consult with you on how your benefit programs contribute to your organization’s strategic direction and competitive advantage.

- **Give you an unbiased opinion:** We are an independent, privately owned firm — we exclusively serve the interests of our clients. We do not participate in service provider incentive programs, sit on their boards or committees, or participate in other activities that might be perceived as having some bias towards a service provider. You can trust our analyses, recommendations and opinions to be completely unbiased.
- **Deliver impact:** We are committed to assessing the impact and effectiveness of the services we provide to our clients:
  - Collect input on our consulting performance so we can serve you better
  - Demonstrate our commitment to quality and the impact our work has on the the City's programs
  - Continue to better understand how you want to do business so that we can further customize the way in which we work with you
- **Negotiate for “best in class”:** We have a track record for working through the bureaucracy of service vendors to obtain “better-than-market” competitive services, financial terms and contract provisions. We use the analytical knowledge we internally build on your plans and our market leverage to negotiate the “best in class” standards that you desire.
- **Offer a team with deep technical expertise:** Our client team for the City will be led by Richard Ward and will be comprised of technical experts: actuaries, analysts, consultants, clinicians and attorneys. You will get the right answers to the questions that need to be addressed.
- **Have the expertise, resources, tools, analytical processes and vendor auditing capabilities:** We have the cutting-edge capabilities that will enable us to help the City to accomplish its strategies and manage and mitigate the dynamics of increasing healthcare costs.

## Proposed Team

Our team consists of seasoned, senior-level professionals, and brings together a wealth of knowledge and experience in serving public entities.

**Richard Ward, FSA, FCA, MAAA** will serve as Lead Consultant and Actuary Richard is our West Region Public Sector Market Leader and has 30 years of experience in providing strategic and technical services to public plans and employers. He has extensive experience in California, including the City of Los Angeles, Kern County, City of Bakersfield, California Schools Employee Benefits Organization, Self-Insured Schools of California and Contra Costa County. The team will include the following benefits consultants with substantial public employer experience:

**Johnny Wu, ASA, MAAA** will serve as the overall Project Manager and Actuary . He has over a decade of experience in Public Sector healthcare consulting. Mr. Wu provides expertise in developing strategic solutions for employee benefits programs. He currently works with San Joaquin County, City of Benicia, Kern County, City of Bakersfield, California Schools Employee Benefits Organization, and the Los Angeles Unified School District.

Technical analysis will be provided by our Los Angeles health practice. This team of highly skilled and experienced analysts, consultants and actuaries serves all of our California public sector clients.

## Why Segal

Segal is uniquely positioned to partner with the City on this engagement for the following reasons:

**Objectivity.** Specifically, as the City considers available options it is imperative that they work with a partner who brings an impartial and unbiased mindset. As an independent firm, we are free from the burdens and pressure of outside influences. We believe strongly that this allows us to work only in the best interest of our clients. If we are chosen to work with the City on this engagement, we would be unbiased in our consultation on all issues.

**Client-focused.** We operate solely to provide the best and most appropriate services to our clients that are designed to solve their unique challenges.

**Commitment to Quality** We follow a rigorous peer review process of actuarial work, consulting advice and recommendations. Our internal quality control standards require a three-stage review process for actuarial and technical work.

**Experience.** With over 1,000 clients, we are constantly examining strategic alternatives from both a design and provider perspective. We have been serving public employers up and down California for over 60 years, and have a deep understanding of the California health benefits market.

While the initial project is focused on reviewing the competitiveness of the City's benefits, your Segal team is also well positioned to consider how your current benefits may fit within a broader overall rewards strategy. Drawing upon our expertise and perspective, we will be able to quickly assist with any additional subsequent considerations or analysis to effectively evaluate how the City's total compensation and rewards can become more competitive in talent recruitment and retention.



## Fee Quote

Segal is proposing a project fee of \$29,000 to benchmark the City's benefits and evaluate other competitive options. This arrangement is all-inclusive (including administrative and travel expenses).

The following table shows the primary phases of the project with estimated timing and staff hours.

Phase	Estimated Timing	Estimated Staff Hours	Estimated Costs (@ \$325/hour)
Project Initiation and determine peer groups	Week 1	2-4	\$650 - \$1,300
Data Collection	Weeks 2-3	10-20	\$3,250 - \$6,500
Analysis to compare City's current program with peer groups and other trust options	Weeks 3-8	40-60	\$13,000 - \$19,500
Discuss initial results with City	Weeks 8-9	2-4	\$650 - \$1,300
Draft report and develop recommendations	Weeks 9-11	20-30	\$6,500 - \$9,750
Meet to discuss final report, findings and recommendations	Week 12	2-4	\$650 - \$1,300
<b>Total</b>		<b>76-122</b>	<b>\$24,700 - \$39,650</b>

The hours and associated costs are estimated for each component and not necessarily exclusive to each phase. For example, it is often necessary to research and collect additional data during the analysis phase. Additionally, effort and knowledge from one phase will be leveraged for other phases. For example, drafting the report and developing recommendations is dependent upon having collected the data and performed the analysis. Some phases may require effort at the higher end of the estimated range and others may be on the lower end.

## In Closing

Thank you again for the opportunity to present this proposal. We believe that Segal is uniquely qualified to conduct this review, and we look forward to providing our unbiased views and recommendations regarding the best approach to designing and establishing a truly competitive benefits package.

We look forward to further discussing how Segal can help the City achieve its goals.

If the terms are agreeable, please sign, date, and return to my attention (a pdf is acceptable).  
However, if it would be helpful, we would be happy to discuss any aspect of this proposal.

Best regards,



(August 25, 2023)

Richard Ward, FSA, FCA, MAAA  
Senior Vice President  
West Public Sector Market Leader

\_\_\_\_\_  
Signature and Date (City of Fowler)

\_\_\_\_\_  
Name and Title (City of Fowler)

## 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 B**. 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.

(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 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, or material modification of the coverages required herein.

(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 are the sole responsibility of Vendor. Vendor represents and warrants that it has sufficient assets to cover any deductibles or self-insured retentions.

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, upon reasonable notice to the Vendor.

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**



## CITY COUNCIL MEETING

### **REPORT TO THE CITY COUNCIL**

**DATE:** November 7, 2023

**FROM:** THOMAS W. GAFFERY IV, Assistant City Manager

**SUBJECT:** APPROVE a two-year agreement with Xobee Networks (BCT) in an amount not-to-exceed \$90,000 for managed support services.

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### **EXECUTIVE SUMMARY**

This two-year agreement will transition the City from reactive “help desk” services to a “managed support” services.

### **BACKGROUND**

#### BCT's Portfolio

BCT currently provides the City with landline telephone, network support (internet, email, software, servers, backup systems, and similar), and help desk services. BCT has been the City's IT provider since at least 2004.

#### Help Desk to Managed Support

The City's current BCT help desk services are entirely reactive in nature and include an allocation of twenty labor hours per month which can “rollover” to the next month. Today's action does not include BCT's existing landline telephone or network support services. Transitioning from reactive help desk services to managed support includes an unlimited number of help desk hours. In addition, managed support also includes proactive software updates, security management and enhanced cybersecurity support services.

#### Process

BCT's longstanding relationship with the City makes them uniquely qualified to provide these services. As Staff work to centralize technology functions, develop processes, create documentation, and implement a hardware refresh cycle, BCT's institutional knowledge and consistency have been critical. In the future, staff plan to competitively solicit an RFQ for all of the City's technology support services to ensure the City is obtaining the best value.

### **PUBLIC NOTICE**

This item does not require a public hearing and was noticed as a part of the City Council Agenda.

**ENVIRONMENTAL REVIEW**

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

**GENERAL PLAN CONSISTENCY**Goal ED-3

Fowler invests in necessary infrastructure, resources, and beautification to ensure the success of economic development strategies.

Goal PF-1

Fowler provides reliable public facilities, utilities, and community services that meet the needs of the existing community and planned growth.

Policy CH-21

Maximize the use of technology to provide remote access to public meetings and hearings.

Policy SAF-6

Annually review City Information Technology (IT) systems and security protocols and update as necessary to protect against cyber threats.

**FISCAL IMPACT**

The monthly cost for these services will be roughly \$3,470. This amount may vary slightly depending on the number of users or devices currently deployed. The current monthly cost of the help desk services this agreement will replace is \$1,500 per month. A mid-year budget amendment will be presented to address this additional expense of approximately \$2,000 per month allocated proportionally between the general fund and the water fund.

**CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

## Attachments:

- Agreement & 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 BCT Consulting, Inc. ("Vendor") with respect to the following recitals, which are a substantive part of this Agreement. This Agreement shall be effective on November 7, 2023 ("Effective Date").

RECITALS

- A. City desires to engage the services of a qualified vendor to provide information technology services and equipment ("Services") 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 warrants and 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 October 16, 2025, 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**. The total amount paid by City to Vendor pursuant to this Agreement shall not exceed Ninety Thousand Dollars (\$90,000).

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.

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, 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 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 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. 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. Notwithstanding anything to the contrary in the Vendor's master agreement attached as **Exhibit A**, in the event of conflicting or contradictory provisions in this Agreement or **Exhibit A**, the provisions of this Agreement shall prevail and control.

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.

**Xobee Networks**

  
Eric Rawn  
CEO

Date: 10/16/2023

7910 North Ingram Avenue #101  
Fresno, CA 93711  
559-579-1400

**CITY OF FOWLER**

\_\_\_\_\_  
Wilma Tucker  
City Manager

Date: \_\_\_\_\_

128 South 5th Street  
Fowler, CA 93625  
(559) 834-3113

# **EXHIBIT A**

## **SCOPE OF SERVICES**



**Project Proposal** : Managed Support (Platinum Edition)

**Prepared for** : City of Fowler

**Delivered on** : January 27, 2023

**Prepared by** : Eric Rawn

SCOPE OF WORK

This Full Unlimited Managed Support Agreement includes all proactive, reactive and maintenance support for your organization’s technology during business hours (included) minus any projects that fall outside the scope of maintaining the current environment and would be quoted separately as needed / when needed.

Our Managed IT Support Services are designed to support growing companies by offering a One Stop Shop IT Support Service at an affordable cost while maintaining a reliable, stable IT environment. We also recommend Monthly, Quarterly or Bi-Annually Technology Meetings to ensure we are all on the same page with technology services with your organization.

All current services that the City of Fowler is subscribed to will continue as normal. This quote/proposal only modifies the "Support" billing from the current "hourly" model to a "Monthly Managed Support"

New Projects are quoted and billed separately as requested or needed, after business hours support requested by the client are billed separately as emergency support. New Projects are classified as anything new that has not been accounted for during this proposal creation and identified and documented below.

Managed Support (Platinum Edition)  
Product / Service List







Image	Qty/Hrs.	Description	Price	Total
	22	BCT   360 Managed Support (desktop) includes Support 8x5  - Unlimited Phone Support (unless specified) - Unlimited Onsite Support (unless specified) - Full IT Management - User Provisioning - Desktop Software Patches and Updates - Anti-Virus Management (*may not include all remediation) - Desktop / Laptop Patching - Office 365 Management	\$125.00 / Month	\$2,750.00 / Month
	2	BCT   360 Managed Support (Server) includes Support 8x5  - Unlimited Phone Support (unless specified) - Unlimited Onsite Support (unless specified) - Full IT Management - User Provisioning - Software Patches and Updates - Anti-Virus Management (*may not include all remediation)	\$250.00 / Month	\$500.00 / Month
	1	Hybrid Managed Support Update Services Review Monthly Windows Updates and Patches on All Devices; Review Security Logs including Anti-Virus and Firewall; Check Backups; Apply Windows Updates and Security Patches as needed; Verify Monitoring Software  Additional Multiple Devices for Users	\$12.50 / Month	\$12.50 / Month

Image	Qty/Hrs.	Description	Price	Total
	1	BCT   360 Cyber Security Monthly Fee - Breach and Threat Detection - Alerting & Monitoring - Vulnerability Testing - Monthly Reporting	\$150.00 / Month	\$150.00 / Month
	23	BCT   360 Cyber Security User Subscription	\$2.50 / Month	\$57.50 / Month
	1	24-month Agreement   This Agreement will be applicable for 24 months from the start of service and auto renew annually.	\$0.00 / Month	\$0.00 / Month

Total tax :\$0

Total one-time cost :\$0

Total monthly recurring cost :\$3,470.00

Total annual recurring cost :\$0

City of Fowler, Costs may not include shipping or taxes (local, state, federal). Any additional time and/or materials not defined in this proposal will be considered for billing. A 50% deposit may be due upon approval. I agree to the terms and conditions defined in this document and verify that I am an authorized representative of City of Fowler.

☐

 I have read and understand the [Client Master Agreement \(click here to view\)](#).

Clear

City of Fowler

Client Name

09/09/2023

Signature

Name

Title

Approve

\* By signing this quote/contract, you attest and consent that you are duly authorized to enter into a contract on behalf of City of Fowler, hereinafter referred to as "Client" with Xobee Networks, Inc., a California Corporation, hereinafter referred to as "Xobee". By signing this quote/contract, you attest that have read and agree to any and all terms and conditions specified on the "General Terms and Conditions" document contained at <https://www.xobee.com/general-terms-and-conditions> including but not limited to the "Privacy Policy" specified at <https://www.xobee.com/privacy-policy/> and the "Acceptable Use Policy" at <https://www.xobee.com/AUP>. Client will utilize Xobee's Service Desk during the hours outlined herein, for remote administration, support and problem resolution on Services covered under this quote/contract. Unless stated, costs do not included shipping or taxes (local, state, federal or otherwise). Additional goods or services not specified in this quote/contract will be formally agreed upon by Xobee and the Client before any supplemental services or goods are rendered. Any additional services that are billed on a recurring basis not specified in this quote/contract added shall result in an adjustment to the Client's recurring charges.

Mutual Cooperation

We agree to use our best efforts to fulfill and exceed your expectations on the deliverables listed above. You agree to aid us in doing so by making available to us necessary information, assets and access pertaining to your project and to cooperate with us in expediting the work. Excessive delays in communication and/or deliverables caused by you void our requirement to meet our projected timeline defined in this contract.

Client Master Agreement

All communications necessary for the work defined in this project are covered by the budget you're agreeing to. We understand that our clients often have quick questions – we typically don't charge to answer those if they require less than fifteen (15) minutes in length. However, we're experts in our industry and you're paying us for that expert knowledge, so any communication that requires us to provide consultation or perform research, whether it be for actual requests or for hypothetical changes, will incur our hourly labor

rate billed in fifteen (15) minute increments with no minimum. A more detailed breakdown of our billing policies can be found in our Client Master Agreement. Projects that go dormant for longer than forty-five (45) days will incur a fee to resume work at the discretion of BCT Consulting, Inc.

Terms of Payment

BILLING SCHEDULE

It’s important for us to ensure a positive working relationship and to keep the project moving forward. For us to guarantee this, you agree to the following payment schedule.

BCT Consulting, Inc. will invoice City of Fowler for fifty per cent (50%) of the initial fees at point of this signed contract agreement which will act as the deposit. The remaining 50% will be billed at the end of the project timeline prior to deployment.

Cancellation of Plans

You have the right to modify, reject, cancel or stop any and all plans or work in process. However, you agree to reimburse us for all costs and expenses we incurred prior to your change in instructions, and which relate to non-cancelable commitments, and to defend, indemnify and hold us harmless for any liability related to such action. We agree to use our best efforts to minimize such costs and expenses.

Responsibility of BCT Consulting, Inc. and City of Fowler

BCT Consulting, Inc.’s RESPONSIBILITY FOR RELEASES

We shall obtain releases, licenses, permits or other authorization to use testimonials, copyrighted materials, photographs, art work or any other property or rights belonging to third parties obtained by us for use in performing services for you (if applicable).

CITY OF FOWLER’S RESPONSIBILITIES FOR RELEASES

You guarantee that all elements of text, images, or other artwork you provide are either owned by you, or that you have permission to use them.

Then when your final payment has cleared, copyright will be automatically assigned as follows:

You’ll own the visual elements that we create for this project. We’ll give you source files and finished files and you should keep them somewhere safe as we’re not required to keep a copy. You own all elements of text, images and data you provided, unless someone else owns them.

We’ll own the unique combination of these elements that constitutes a complete design and we’ll license that to you, exclusively and in perpetuity for this project only, unless we agree otherwise. We can provide a separate estimate for that.

CITY OF FOWLER’S RESPONSIBILITY FOR ACCURACY

You shall be responsible for the accuracy, completeness and propriety of information concerning your products and services which you furnish to us verbally or in writing regarding the performance of this Agreement.

Confidentiality

BCT Consulting, Inc. acknowledges its responsibility, both during and after the term of its appointment, to use all reasonable efforts to preserve the confidentiality of any proprietary or confidential information or data developed by BCT Consulting, Inc. on behalf of City of Fowler or disclosed by City of Fowler to BCT Consulting, Inc.

Terms of Termination

PERIOD OF AGREEMENT AND NOTICE OF TERMINATION

This Agreement shall become effective as of and shall continue until terminated by either party upon not less than 60 days’ notice in writing given by either party to the other.

Any hardware, equipment, licenses, software or other items which are included as part of a recurring service, must be returned upon termination of service, including items which are loaned as part of the service, including but not limited to, VoIP telephone handsets, replacement desktops under a virtual desktop service, cloud service licenses or other items which have not actually been paid for besides the service fee.

Termination for Cause

Either party to this Agreement may terminate the Agreement if the other party defaults in the performance of any of its material duties and obligations and the default is not cured within thirty (30) days of the receipt of notice of said default, or if the default is not reasonably curable within said period of time, unless the defaulting party commences cure within said period of time and diligently proceeds to cure the default.

In addition, either party may immediately terminate this Agreement by giving written notice to the other party if the other party is insolvent or has a petition brought by or against it under the insolvency laws of any jurisdiction, if the other party makes an assignment for the benefit of creditors, if a trustee, or similar agent is appointed with respect to any property or business of the other party, or in the case of the Client, if the Client materially breaches its obligations to make payment pursuant to this Agreement.

Payment for Non-Cancelable Materials

Any non-cancelable materials, services, etc., we have properly committed ourselves to purchase for your account, (either specifically or as part of a plan such as modules, photography and/or external services) shall be paid for by you, in accordance with the provisions of this Agreement. We agree to use our best efforts to minimize such liabilities immediately upon written notification from you. We will provide written proof, upon request of City of Fowler, that any such materials and services, are non-cancelable.

Materials Unpaid For

If upon termination there exist any materials furnished by us or any services performed by us for which you have not paid us in full, until such time as you have paid us in full you agree not to use any such materials, in whole or in part, or the product of such services.

Transfer of Materials

Upon termination of this agreement, provided that there is no outstanding indebtedness then owing by City of Fowler to BCT Consulting, Inc., BCT Consulting, Inc. shall transfer, assign and make available to City of Fowler all property and materials in its possession or control belonging to City of Fowler. City of Fowler agrees to pay for all costs associated with the transfer of materials.



## Client Master Agreement

City of Fowler

City of Fowler

Enter Last Name

Enter Title

128 South Fifth Street

Fowler

CA

93625

Enter Phone Number

Enter Email Address

### BCT Consulting, Inc.

7910 N. Ingram, Suite 101  
Fresno, CA 93711  
(844) 490-2800  
[info@xobee.com](mailto:info@xobee.com)  
[www.xobee.com](http://www.xobee.com)

## Client Master Agreement

This Master Services Agreement ("Agreement") is made as of **10-08-2023**, by and between BCT Consulting, Inc., a California corporation ("BCT"), and **City of Fowler**.

**This Agreement will confirm the terms and conditions described herein.**

### ***Services and Support***

BCT is in the business of providing technology consulting, onsite and/or remote repair, troubleshooting, installation and configuration of hardware and software, application programming and development, network and computer management and operations, remote offsite backup, internet connectivity, e-mail and website hosting, and other services (herein collectively called "Services"). Client wishes to retain BCT for the purpose of providing one or more of the Services as requested by Client from time to time.

BCT agrees to provide the Services as requested by Client from time to time by verbal or written instruction. The parties may enter into executed Statements of Work (each a "Statement of Work") to further specify the terms of a project or to modify the terms of this Agreement for purposes of a specific project. Each Statement of Work entered into by the parties shall reference this Agreement and shall be deemed to be part of this Agreement. Provided, however, the contents of any Statement of Work shall take precedence over any conflicting provision in this Agreement to the extent necessary to resolve any such conflict.

### ***Fees and Payments***

Client agrees to pay the fees for Services in accordance with the fee schedule attached hereto, or, if different, in accordance with any applicable Statement of Work. Unless otherwise specified in the applicable Statement of Work, Client shall reimburse BCT for all actual expenses incurred by BCT in the course of performing the Services hereunder and evidenced by receipts provided to Client ("Expenses"). BCT may modify its fee schedule from time to time. Any such modified fee schedule shall be effective thirty (30) days following written or email notice from BCT to Client.

From time to time in the performance of Services, it may be necessary for BCT to replace existing hardware, provide software, and/or provide new hardware for installation and/or use by Client. Client agrees to pay the purchase price for all such hardware to BCT as such purchase price has been specified in an applicable Statement of Work or other writing such as a purchase order.

Unless otherwise specified in the applicable Statement of Work, BCT will invoice Client on a monthly basis ("Invoice Period") for the Services furnished, expenses incurred, and hardware furnished during the immediately preceding Invoice Period. Invoices for Services rendered on a time-and-materials basis will indicate a breakdown and distribution of charges. Statements of Work for Services rendered on a fixed-fee basis will indicate the basis upon which the fees are due and payable (e.g., milestones achieved or date passing). All invoices shall be due and payable to BCT in U.S. dollars within thirty (30) calendar days after the invoice date. All amounts not paid within thirty (30) days of the invoice date shall thereafter accrue interest, until paid, at the lesser of 1.5% per month or the maximum interest rate permitted under applicable law. Once any invoice has not been paid within the thirty (30) day period specified above, then thereafter BCT may condition provision of any Services under this Agreement to COD or other payment terms acceptable to BCT.

Except as may be otherwise provided in a Statement of Work, professional services shall be on time and materials basis and Client will be charged for all time spent on Client's behalf. This includes time spent in conferences and meetings with Client and internal meetings of BCT personnel, preparation and research, preparing and updating documentation, project management, telephone support, and any other activity BCT deems necessary or appropriate to accomplish the work requested by the client.

Furthermore, the parties agree as follows:

- Client will be billed for travel time to have BCT technical resources physically go to the client's site to provide services.
- Phone and remote support to be tracked in fifteen (15) minute increments, rounded to the nearest fifteen (15) minute mark with a fifteen (15) minute minimum time per support request.
- Service requested by the Client to be provided on an emergency basis and/or outside of normal business hours will be billed at the lesser of one and one-half (1.5) times the normal business hours hourly rate, or \$175 per hour. For purposes of this agreement, normal business hours shall mean 8a.m.to 5p.m., Monday through Friday, excluding normal holidays.
- On-site service to be tracked in thirty (30) minute increments, rounded to the nearest thirty (30) minute mark with a one (1) hour minimum charge per visit.

Notwithstanding the foregoing, BCT may from time to time offer Client the opportunity to purchase blocks of prepaid hours at a reduced hourly rate (see Fee Schedule). Service can be charged against any prepaid hours under this Agreement until the total number of hours has been used for services. For services outside normal business hours and emergency services, prepaid hours shall be applied at 1.5 times the number of hours of service.

#### ***General Client Responsibilities***

Client is solely responsible for all required software licenses and ensuring that all software is properly registered and licensed with the manufacturer or other applicable third parties, and otherwise complies with all applicable laws. BCT takes no responsibility for and will not track, verify or otherwise independently determine if any software used by the Client complies with licensing, registration or other legal requirements.

Client represents that it is the owner of any equipment for which Client requests service. Client acknowledges and agrees that only the president of BCT, Eric G. Rawn, is authorized on behalf of BCT to enter into any amendments, modifications or additional agreements on behalf of BCT.

Client shall indemnify, defend and hold BCT harmless from any and all claims, losses, liabilities, costs and expenses (including, but not limited to, attorneys' fees and costs) which arise from or relate to any breach of this Agreement by Client.

#### ***Representations and Warranties***

Client hereby represents and warrants that it has and for the duration of this Agreement shall have all rights, titles, and interests in the pre-existing Client properties required for the performance of its obligations hereunder and has and for the duration of this Agreement shall have the authority and the legal right to enter into this Agreement.

BCT hereby warrants that the Services provided under this Agreement will be of commercially reasonable quality in accordance with any specifications or requirements set forth in a Statement of Work and will be performed in a good and workmanlike manner and in accordance with industry standards. Without prejudice to any other right or remedy available by law to Client, any claim for breach of BCT's warranties must be made, by written notice to BCT, within sixty (60) days following the date of completion of the Services for which the claim is made (or, with respect to any deliverables that were subject to acceptance testing specified in the applicable Statement of Work, within sixty (60) days following the date of acceptance). BCT shall have a thirty (30) day period following receipt of any such notice in which to cure a breach. Provided, however, if any such breach cannot reasonably be cured within the thirty (30) day period, it shall be deemed to be cured so long as BCT commences the cure within the thirty (30) day period and diligently proceeds to completion.

#### ***Warranties, Remedies, and Limitation of Liability***

CLIENT’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE REPRESENTATIONS AND WARRANTIES PROVIDED HEREIN WILL BE, AT BCT’S OPTION, RE-PERFORMANCE OF THE DEFICIENT SERVICES OR TERMINATION OF THE APPLICABLE STATEMENT OF WORK AND RETURN OF THE PORTION OF THE FEES AND CHARGES PAID TO BCT BY CLIENT FOR THE NON-CONFORMING PORTION OF THE SERVICES AND/OR GOODS (AS DEFINED BELOW), IF ANY. ANY REPRESENTATIONS OR WARRANTIES PROVIDED IN THIS AGREEMENT ARE FOR THE SOLE BENEFIT OF CLIENT ONLY.

To the extent BCT provides any materials, goods, or products (“Goods”) to Client, they are provided on an “AS IS” basis, without warranty, express or implied, with the exception of any manufacturer warranty, to the extent transferrable to Client

**EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BCT EXPRESSLY DISCLAIMS TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW ALL OTHER REPRESENTATIONS AND WARRANTIES REGARDING THE SERVICES AND/OR GOODS, IF ANY, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-SATISFACTORY QUALITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS AND TITLE, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, AND ALL SUCH REPRESENTATIONS AND WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW. BCT MAKES NO GUARANTEES WITH REGARD TO THE RESULTS OBTAINED FROM THE OPERATION OR USE OF THE CLIENT PROPERTIES OR BCT PROPERTIES. THIS DISCLAIMER AND EXCLUSION WILL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.**

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS AGREEMENT, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, PUNITIVE OR OTHER SIMILAR DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST SALES OR BUSINESS, BUSINESS INTERRUPTION OR ANY OTHER LOSS INCURRED BY THE OTHER PARTY OR SUCH THIRD PARTY IN CONNECTION WITH THIS AGREEMENT, THE SERVICES, OR GOODS, REGARDLESS OF WHETHER A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

IN NO EVENT WILL BCT BE LIABLE FOR ANY DATA LOSS. BACKUP AND DISASTER RECOVERY ARE THE RESPONSIBILITY OF THE CLIENT. BCT’S SERVICES UNDER THIS CONTRACT MAY BE AVAILABLE TO HELP CLIENT DESIGN AND SET UP DISASTER RECOVERY SCHEMES. HOWEVER, THE PERFORMANCE OF ACTUAL BACKUPS AND THE CONFIRMATION OF THE APPROPRIATENESS AND EFFICIENCY OF SUCH SCHEMES SHALL REMAIN THE TOTAL AND UNIQUE RESPONSIBILITY OF THE CLIENT.

BCT’S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT OR OTHERWISE IN CONNECTION WITH ANY SERVICES OR GOODS, SHALL IN NO EVENT EXCEED THE FEES ACTUALLY PAID BY CLIENT TO BCT DURING THE PRECEDING TWELVE MONTHS.

EACH PARTY ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE FEES UNDER THIS AGREEMENT WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF BCT WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS EXPRESSLY SET FORTH HEREIN. BCT HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CLIENT THE SERVICES PROVIDED FOR IN THIS AGREEMENT.

Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply. IN THESE JURISDICTIONS, EACH PARTY’S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW UNDER THE TERMS OF THIS AGREEMENT.

***Employee Solicitation***

During the period beginning with the date of this Agreement and ending six (6) months after termination of this Agreement, Client and any individuals, corporations, partnerships, limited liability companies, trusts, or legal entities which control, are controlled by, or are under common control of Client, agree not to solicit for employment, any BCT employee, including but not limited to technical, sales, or managerial employees of BCT. For purposes of the preceding sentence, the term "employment" shall include any form of employment, consulting, contract relationship, or other arrangement pursuant to which such individual will, directly or indirectly, perform services for the new employer.

***Confidentiality***

In connection with the Services provided by BCT hereunder, Client may disclose to BCT and BCT may disclose to Client, certain confidential and proprietary written and oral business and technical information and other proprietary data including, without limitation, all technical and non-technical information provided by either party to the other, including but not limited to, trade secrets, business processes, manufacturing processes, business plans, inventions, patents, patent applications, copyrighted information, proprietary information of any kind, including but not limited to, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details, specifications, engineering and proprietary business information of any sort, including but not limited to, pricing and cost data, pricing schedules and fee amounts, pricing and billing

policies, quoting procedures, invoices of any kind, service agreements, internal personnel, vendor names, and other vendor information (including vendor characteristics, services, and agreements), purchasing and internal cost information, internal services and operational manuals, timesheets, computer files (including, but not limited to, emails, Microsoft Word files, and Excel files), and the manner and methods of conducting company business (including, but not limited to, all company-generated forms and manuals), product descriptions, requests for proposals and supporting documentation, estimates, security documentation, disaster recovery plans, SAS-70 and audit documentation, financial information and statements, tax returns and the type, procurement requirements, purchasing, manufacturing, names of customers and their representatives, the type, quantity, specifications, and history of products and services purchased, leased, licensed, or received by customers, customer services, customer billing records, customer work-in-progress reports, data provided by customers, customer work papers, customer lists, investors, employees, business and contractual relationships, business forecasts, future plans and potential strategies which have been or are being discussed, sales and merchandising, marketing and development plans, sales data, research or development projects or results, tests, and any non-public information which concerns the business, operations, ideas or plans of a party to this Agreement conveyed to the other party by any format or means including, but not limited to written, typed, magnetic, or oral transmission (collectively "Confidential Information").

- a. which is generally known to the trade or the public at the time of such disclosure;
- b. which becomes generally known to the trade or the public subsequent to the time of such disclosure, but not as a result of disclosure by the receiving party;
- c. which is legally received from a third party without restriction;
- d. which is independently developed by the receiving party, without reference to or in connection with the Services contemplated in this Agreement;
- e. which is approved for release in writing by the disclosing party prior to any release by the recipient party; or,
- f. demanded by a lawful order from any court or governmental body empowered to issue a legally binding order. The receiving party shall provide the disclosing party with a copy of such order promptly following receipt. If either party is required to disclose Confidential Information in response to a valid order by a court or other governmental body, as required by law, said party may disclose such Confidential Information only to the extent legally compelled. The disclosing party will be given an opportunity to oppose any such order or to seek a protective order that protects the Confidential Information at issue before the recipient party complies with any such court or governmental order provided, however, that both parties will stipulate to any orders necessary to protect said information from public disclosure.

Neither party shall share or disclose Confidential Information with any individual(s) or entities except as expressly provided for under the terms of this Agreement, or as necessary to perform the Services contemplated under the terms of this Agreement. The parties and their affiliates shall not disclose Confidential Information to their respective employees, officers, directors, consultants, subcontractors, vendors, advisors or any other agent, except on a need-to-know basis. In no case may Confidential Information be shared with or disclosed to any third party not a party to this Agreement in such a manner as to violate the Gramm Leach Bliley Act, the California Financial Information Privacy Act, the Fair Credit Reporting Act and its amendments, NCUA Regulation 716, NCUA Regulation 748, Appendix A, Safeguarding Member Information, or any other state or federal protection for personal and financial information privacy and confidentiality.

All documentation and other information shall remain the disclosing party's property and shall be immediately returned to the disclosing party or destroyed upon request. Neither party shall make copies of Confidential Information supplied by the other party except as required for back-up or redundancy and shall erase, destroy, return, or otherwise render useless, any information that is no longer necessary to fulfill its obligations hereunder. Data destruction shall conform to the FTC's Final Regulation on Consumer Information and Records Disposal 16 CFR 682.

BCT shall take adequate steps necessary to maintain the confidentiality of Client's Confidential Information through implementation of a comprehensive information security program, written in one or more readily accessible parts, containing administrative, technical and physical safeguards designed to (a) ensure security and confidentiality of Client's Confidential Information, (b) protect against any anticipated threats or hazards to the security or integrity of such information, and (c) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to Client or any Client member. Such safeguards are appropriate to BCT's size and complexity, the nature and scope of its activities, and the sensitivity of the information it handles. They include, but are not limited to, VPN technology, minimum 256 bit encryption, video surveillance, electronic badge entry/exit systems, attack and intrusion detection monitoring systems and the elements set forth in California Civil Code Section 1798.81.5, 16 C.F.R. Section 14, the Gramm Leach Bliley Act and other applicable state and federal laws

Client shall take adequate steps necessary to prevent disclosure of BCT's Confidential Information (including, but not limited to, pricing schedules, invoicing, BCT policies and procedures, SAS-70 documentation and security related documentation) to third parties including, but not limited to, Client's consultants and independent contractors, without the express written consent of a BCT officer.

The parties agree that breach of these confidentiality provisions will cause immediate irreparable harm to the other party for which money damages would be inadequate and extremely difficult to measure and for which there is no adequate remedy at law. Accordingly, either party shall be entitled to seek immediate and permanent injunctive relief, without bond, from a court of competent jurisdiction in the event of any such breach or threatened breach.

### ***Binding Dispute Resolution***

**The parties shall submit all disputes, claims or demands of any kind relating to or arising out of this Agreement (“Controversy”) to a three-step dispute resolution process. The three-step process shall (i) begin with informal negotiation conducted in good faith, (ii) be followed, if necessary, by mediation, initiated by written demand of one party served on the other, and if the mediator determines that the Controversy cannot be resolved by mediation, then (iii) the Controversy shall be submitted to binding arbitration in accordance with the rules and regulations of the American Arbitration Association, except that the provisions of Section 1283.05 of the California Code of Civil Procedure shall be adopted and used with respect to the conduct of discovery prior to any such arbitration. The arbitration award shall include attorney’s fees and costs as provided in this Agreement and be supported by written conclusions of law and fact. Application may be had by any party to any court of general jurisdiction for entry and enforcement of judgment based on the arbitration award. The foregoing notwithstanding, either party may maintain, for the purpose of obtaining a provisional remedy or provisional relief, any underlying action or claim on which such affirmative relief may be based. The court, pending mediation or arbitration of claims, shall stay the prosecution of such party’s underlying claims on which any provisional remedies or relief are based.**

### ***General***

Complete Agreement. This Agreement, including any Statements of Work hereunder, is the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior proposals, understandings, and agreements (including confidentiality agreements), whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument executed by authorized representatives of the parties.

No Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right, power or privilege hereunder will operate as a waiver thereof, nor will any party's exercise of any right, power or privilege hereunder preclude further exercise of the same right or the exercise of any other right hereunder.

Enforceability. If any part of this Agreement shall be adjudged by any court of competent jurisdiction to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby and shall be enforced to the maximum extent permitted by applicable Law.

Force Majeure. Either party shall be excused from performance and shall not be liable for any delay in whole or in part, to the extent caused by the occurrence of any Force Majeure Event beyond the reasonable control either of the excused party or its subcontractors or suppliers, for as long as the Force Majeure Event continues and the excused party continues to use its best efforts to recommence performance whenever and to whatever extent possible without delay, including through the use of alternate sources, workaround plans or other means. "Force Majeure Events" shall be limited to the following: fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, or any other similar cause beyond the reasonable control of the excused party.

Notices. Any notice required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing to the address of the receiving party as set forth on the initial page hereof or such other address as may be specified by such party in a notice delivered to the other party in accordance with this Section and delivered by: (i) certified U.S. mail, return receipt requested, postage prepaid; (ii) nationally recognized overnight courier, delivery charges prepaid; or (iii) by hand delivery with signed receipt. Any notice shall be deemed delivered: (a) on the fifth (5th) business day following deposit of such notice with the U.S. Postal Service if notice is given in accordance with (i), above; (b) on the second (2nd) business day following deposit of such notice with the courier if notice is given in accordance with (ii), above; or (c) on the date of actual delivery if notice is given in accordance with (iii), above.

Governing Law, Jurisdiction and Venue. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of, the State of California, excluding its choice of law principles. Any legal action between Client and BCT shall be conducted in the appropriate state or federal court located in Fresno County, California.

Headings; Subsections; Interpretation. Section headings are provided for convenience of reference and do not constitute part of this Agreement. Any references to a particular section of this Agreement shall be deemed to include reference to any and all subsections thereof. References to the words "including," "includes" or "include" or the abbreviation "e.g." in this Agreement (including any Statement of Work) shall mean "including, without limitation."

References to Client. For purposes of clarity, to the extent an Affiliate of Client is receiving Services hereunder, references in this Agreement (including a Statement of Work) to Client as the recipient of Services shall include such entity, and references to Services being performed

for or received by Client shall include the performance of such Services for and receipt of such Services by such entity

Assignment. Neither party may assign or delegate any or all of its rights (other than the right to receive payments) or its duties or obligations hereunder without the consent of the other party, which consent shall not be unreasonably withheld; provided, however, that either party may assign this Agreement, without the need to obtain consent of the other party, to an Affiliate of such party or to a successor in interest to substantially all of the business of that party to which this Agreement relates. For purposes of clarity, and without limitation, a non-assigning party's refusal to consent to an assignment proposed by the other party shall be deemed reasonable if based on grounds that the proposed assignee is not financially stable or is a competitor of the non-assigning party. An assignee of either party authorized hereunder shall be bound by the terms of this Agreement and shall have all of the rights and obligations of the assigning party set forth in this Agreement. If any assignee shall fail to agree to be bound by all of the terms and obligations of this Agreement, then such assignment shall be deemed null and void and of no force or effect.

Attorneys' Fees. In the event any action, suit, proceeding, or arbitration is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, reasonable attorneys' and consultants' fees and costs to be fixed by the court or arbitrator.

No Third-Party Benefit. The provisions of this Agreement are for the sole benefit of the parties hereto. This Agreement confers no rights, benefits, or claims upon any person or entity not a party hereto.

Counterparts. This Agreement may be executed in any number of counterparts (including facsimile counterparts), each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the parties.

Fee Schedule

Consulting


Hourly Rate (normal business hours)	-	\$165.00 per hour.
Block Rate (50 pre-paid hours)	-	\$140.00 per hour (\$7,000).
(Emergency service / non-business hours are 1.5 x standard block rate amount)		

Acceptance and Agreement

IN WITNESS WHEREOF, the parties below hereby execute this agreement.

For: BCT Consulting, Inc.

For: City of Fowler

	<div>Draw Signature<div></div><div>Clear</div></div>
Signature	Signature
Eric G. Rawn	City of Fowler
Full Name	Full Name
President	Client
Title	Title

Submit Agreement

Cancel

## 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.

(v) Professional Liability. Contractor shall maintain professional liability insurance that insures against professional errors and omissions that may be made in performing the Services to be rendered in connection with this Agreement, in the minimum amount of two million dollars (\$2,000,000) per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement, and Contractor agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

(vi) Cyber Liability Insurance.

(1) Cyber Liability Insurance with limits not less than \$1,000,000 per claim.

(2) Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security.

(3) The policy shall provide coverage for breach response costs as well as regulatory fines and penalties, and credit monitoring expenses with limits sufficient to respond to these obligations.

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, or material modification of the coverages required herein.

(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**



## CITY COUNCIL MEETING

### **REPORT TO THE CITY COUNCIL**

**DATE:** November 7, 2023

**FROM:** MARGARITA MORENO, Finance Director

**SUBJECT:** Actions pertaining to the Fiscal Year 2023-24 first quarter budget report and budget amendments:

- i. ACCEPT the fiscal year 2023-24 first quarter budget report.
- ii. ADOPT Resolution No. 2685 approving Fiscal Year 2023-24 proposed budget amendments.

---

### **EXECUTIVE SUMMARY**

Staff recommend City Council accept the Fiscal Year 2023-24 first quarter budget report and adopt Resolution No. 2685 approving Fiscal Year 2023-24 budget amendments.

### **BACKGROUND**

The quarterly report summarizes the City's revenue and expenditure activity for the first quarter of the fiscal year from July 1, 2023 through September 30, 2023. The first quarter budget reports provide the data to inform any necessary budget amendments to ensure that the budget is balanced at the end of the fiscal year. As such, staff recommend budget amendments based on one-time revenues and expenses in the first quarter of the fiscal year. Below is a summary of revenues received and expenditures made for each fund type through September 30, 2023.

### **GENERAL FUND**

The General Fund covers core services such as police, fire, public works, community development, parks, recreation, and the senior center. Sales and property taxes are the two largest sources of revenue in the General Fund. Revenues in the General Fund are at 6% and expenditures are at 32% for the first quarter, as follows:

### **REVENUES**

As summarized in Attachment A, the General Fund revenues received in the first quarter ending September 30, 2023 total 6% of the annual budget estimates while expenditures are on target at 32%. It is important to note that certain revenues are collected at various times throughout the year and, therefore, not reflected in the first quarter report. For example, the first installment of property tax revenues are collected in December/January. Staff is confident that projected revenues and expenditures will be consistent with what was budgeted.

**PROPERTY TAX**

*Revenues are at 1% of budget*

The major portion of property tax revenue is not scheduled to be distributed to cities until the end of December or early January and therefore not reflected in this report. The mid-year or second quarter report will better reflect actual revenues compared to projections.

**PERMITS/LICENSES**

*Revenues are at 11% of budget*

The City received 11% of permits/licenses fees through September 30, 2023. Building permits are at \$81,931 and plan check fees at \$3,760 which make up a large portion of these estimated revenues.

**FINES & FEES**

*Revenues are at 0% of budget*

The first quarter reflects revenues at 0%.

**USE OF MONEY & PROPERTY RENTAL INCOME**

*Revenues are at 13% of budget*

Revenues from rental and interest income are on target. The majority of rental income are received from Unwired broadband for the water tower.

**MOTOR VEHICLE IN LIEU**

*Revenues are at 0% of budget*

The motor vehicle in lieu revenues are property tax shares allocated to cities and counties by the State. The first payment is made each year in the month of December.

**SALES TAX**

*Revenues are at 10% of budget*

The City has received 10% of sales tax revenues representing one month for July 2023. Sales tax revenues are the largest revenue source in the General Fund.

**TRANSIENT OCCUPANCY TAX**

*Revenues are at 0% of budget*

The TOT taxes are received on a quarterly basis, the first payment will be received in October for the 2<sup>nd</sup> quarter.

**FRANCHISE FEES**

*Revenues are at 0% of budget*

Franchise fees are received in a quarterly basis, the first payment will be received in October for the 2<sup>nd</sup> quarter.

**SERVICES & OTHER FEES**

*Revenues are at 18% of budget*

Revenues from services & other fees are currently at 18% and are anticipated to meet budgeted expectations. These revenues are from fees from recreation, inspection, planning, park maintenance and special police.

GRANT

*Revenues are at 1% of budget*

Revenues from grant funding is at 1% for the first quarter. Local Public Safety Funds (LPSF) reflect one month worth of revenue.

OTHER MISC REVENUE

*Revenues are at 107% of budget*

Revenues from other sources at are currently at 107%. These miscellaneous revenues include donations, P.O.S.T reimbursements, restitution, and other refunds. It is typical for revenues in this category to reflect higher percentages than budgeted.

TRANSFER IN

*Revenues are at 0% of budget*

A general ledger entry will be done to allocate the transfer in and transfer out to the appropriate funds at year end.

EXPENDITURES

As summarized in Attachment A, the City has expended roughly 32% of its appropriations as of September 30, 2023. All departments are on target to their budgeted lines from actual to budget for the quarter.

As summarized in Attachment 'B' the summary of all funds reflect the revenues and expenditures for the first quarter ending September 30, 2023 by fund type.

ENTERPRISE FUNDS

WATER UTILITY FUNDS

*Revenues 26% | Expenses 32%*

Through September, expenses exceed revenues in the Water Utility Fund. While revenues were at 26% or less through September for the utility funds, expenses were slightly higher at 32%. At the end of this quarter the water revenues only reflect one month's worth of revenues; however at the end of the year the two months will be accrued.

SPECIAL REVENUES FUNDS

UTILITY USERS TAX

*Revenues 11% | Expenses 23%*

Utility User's Tax is paid to the City one month in arrears, for the first quarter the amount received is \$57,075 in revenues and 23% in expenses. Amounts vary because usage varies from one season (hot summer) to the next (mild fall) and the next (cold winter). A budget amendment is proposed to adjust to unbudgeted one-time tree maintenance expense.

DISTRICT SALES TAX (MEASURE N)

*Revenues 8% | Expenses 0%*

District Sales Tax Funds are received in a monthly basis. July revenues are reflecting in the first quarter at 8% and Expenses are at 0%. A budget amendment is proposed to adjust to actual increased expenses for Fire Protection Services to be offset by increased property tax revenues.

#### COPS GRANT

*Revenues 16% | Expenses 0%*

COPS grant reimbursements are processed once expenses are made. The expenses will be adjusted at year end.

#### RECYCLE GRANT

*Revenues 0% | Expenses 0%*

Recycle grant are received annually. The first quarter reflects revenues at 0% and expense are at 0%.

#### GAS TAX

*Revenues 20% | Expenses 0%*

Highway User Tax revenues are received monthly reflecting revenues for gas tax are at 20% for the first quarter and expense are at 0%.

#### ARPA

*Revenues 0% | Expenses 13%*

American Rescue Plan Act (ARPA) funds have been received at 100% in the prior fiscal year. The expenses are currently at 13% for the first quarter. Expenses budgeted for this fund include improvements for the water tower rehabilitation.

#### LTF ART 3 & 8

*Revenues 0% | Expenses 1%*

LTF revenues are generated from Fresno County. The LTF revenues are 0% in the first quarter. Revenues will be reflected in the second quarter for funding not received in prior years. Currently expense of 1% are for utilities, such as P G & E, and street sweeping.

#### MEASURE C

*Revenues 0% | Expenses 0%*

Measure C revenues currently reflects revenues at 0% and expense are at 0%.

#### SB1 RMRA

*Revenues 22% | Expenses 0%*

SB1 revenues are received from the State on a monthly basis and are at 22% showing one month of revenue for the first quarter.

#### ACTIVE TRANSPORT PLAN (ATP)

*Revenues 0% | Expenses 3%*

ATP revenues are at 0% for the first quarter. Reimbursements are processed once expenses are made. The expenses will be adjusted at year end.

#### SRFC TRNS BLCK GRANT (STBG)

*Revenues 0% | Expenses 0%*

STBG revenues are at 0% for the first quarter. Reimbursements are processed once expenses are made. The expenses will be adjusted at year end.

**CDBG***Revenues 1% | Expenses 0%*

CDBG grant funds are currently at 1% for revenues and 0% for expenses in the first quarter. A budget amendment is proposed to appropriate revenues from CDBG loans.

**STATE GRANT AB178***Revenues 0% | Expenses 0%*

AB178 STATE GRANT revenues are at 0%, revenues were received in full last fiscal year. The expenses are currently at 0% for the first quarter through September 2023.

**DWR STATE GRANT***Revenues 0% | Expenses 1%*

DWR STATE GRANT revenues are at 0% and expenses are currently at 1% for the first quarter through September 2023.

**BIKE PED TRAILS SUST TRAN***Revenues 0% | Expenses 1%*

BIKE PED TRAILS SUST TRAN revenues are at 0% and expenses are currently at 1% for the first quarter through September 2023. Reimbursements are processed once expenses are made. A budget amendment is proposed to adjust expenses to actual.

**AB1600 IMPACT FEES**

Due to increased development activity in the City for impact fees, the various AB1600 revenues are reflecting a range from 5% to 60% for the first quarter. A budget amendment is proposed to adjust expenses to actual for housing element expenditures in AB1600 General Services.

**DEBT SERVICE FUNDS**

The long-term debt service 88-1 reflects 0% for the first quarter. The remaining debt service of 100% reflects the final debt service payment made in September for the 2010 Refunding Bonds paid in full for the first quarter. A budget amendment is proposed to adjust revenues to actual for excess reserves funding received due to the closure of the 2010 Refunding Bonds.

**SUCCESSOR AGENCY FUNDS****RDA SUCCESSOR FUND***Revenues 0% | Expenses 88%*

The Successor RDA is responsible for the 2010 refunding bonds debt service. The 88% reflects the final debt service payment made in September for the 2010 Refunding Bonds paid in full for the first quarter.

**PUBLIC NOTICE**

This item does not require a public hearing and was noticed as a part of the City Council Agenda.

## **ENVIRONMENTAL REVIEW**

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

## **GENERAL PLAN CONSISTENCY**

### Policy MOB-28

Seek all available means to finance improvements, including State and Federal grants.

## **FISCAL IMPACT**

After the budget amendments, revenues and expenditures for all fund types are expected to be on target for the first quarter.

## **CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

### Attachments:

- A: General Fund Summary
- B: All Fund Summary
- Resolution 2685 Budget Amendment & Attachment C

## ATTACHMENT A

## GENERAL FUND SUMMARY

<b><u>REVENUES</u></b>	<b><u>BUDGET 2023-2024</u></b>	<b><u>REVENUES AS OF 9/30/2023</u></b>	<b><u>PERCENTAGE REVENUES 9/30/2023</u></b>
PROPERTY TAX	955,250	2,850	1%
PERMITS/LICENSES	858,100	97,519	11%
FINES & FEES	11,500	0	0%
USE OF MONEY & PROPERTY RENTAL	14,500	1,868	13%
VLF	839,700	0	0%
SALES TAX	1,730,000	166,853	10%
TRANSIENT OCCUPANCY TAX	153,000	0	0%
FRANCHISE FEES	428,200	0	0%
SERVICES FEES & OTHER	111,550	20,134	18%
GRANTS	337,650	3,238	1%
OTHER MISC REVENUE	64,666	69,345	107%
TRANSFER IN	745,325	0	0%
<b>TOTAL REVENUES</b>	<b>\$6,249,441</b>	<b>\$361,806</b>	<b>6%</b>

<b><u>EXPENDITURES</u></b>	<b><u>BUDGET 2023-2024</u></b>	<b><u>EXPENDITURES AS OF 9/30/2023</u></b>	<b><u>PERCENTAGE EXPENDITURES 9/30/2023</u></b>
CITY COUNCIL	44,320	18,326	41%
ADMINISTRATION	454,384	148,355	33%
CITY CLERK	147,500	30,037	20%
FINANCE	312,861	87,177	28%
CITY ATTORNEY	180,000	11,333	6%
GENERAL GOVERNMENT	253,962	167,659	66%
INFORMATION TECHNOLOGY	74,150	31,820	43%
POLICE	1,881,958	673,724	36%
FIRE	235,829	232,828	99%
ANIMAL CONTROL	7,000	381	5%
PUBLIC WORKS-STREET	754,531	146,738	19%
PLANNING	516,035	97,183	19%
BUILDING	419,353	105,994	25%
PUBLIC WORKS-PARK MAINT	639,055	107,665	17%
RECREATION	166,484	74,906	45%
SENIOR CENTER	161,643	41,021	25%
<b>TOTAL EXPENSES</b>	<b>\$6,249,065</b>	<b>\$1,975,148</b>	<b>32%</b>

## ATTACHMENT B

## ALL FUND SUMMARY

**GENERAL FUND**

	2023-2024 BUDGET	REVENUES AS OF 09/30/23	PERCENT REC'S YTD
General Fund	\$6,249,441	\$361,806	6%

**ENTERPRISE FUNDS**

Water Utility	1,586,600	418,577	26%
Water Well Maintenance	113,000	0	0%
Groundwater Recharge CID	50,000	0	0%
TCP	602,000	0	0%
Sub-total	\$2,351,600	\$418,577	18%

**SPECIAL REVENUE FUNDS**

Utility Users Tax	500,000	57,075	11%
District Sales Tax	1,800,000	146,117	8%
COPS Grant	125,000	20,000	16%
Recycle Grant	5,000	0	0%
Gas Tax	179,847	36,786	20%
ARPA Funding	0	0	0%
LTF Article 3	16,000	0	0%
LTF Article 8	596,000	0	0%
Measure C	250,338	0	0%
Road Maint & Rehab SB1	172,102	37,446	22%
Active Trnsport Pln (ATP)	600,000	0	0%
Srvc Trns Bldg Grnt -STBG	900,000	0	0%
CDBG	0	3,167	1%
State Grant AB178	0	0	0%
DWR State Grant	2,100,000	0	0%
Bike Ped Ped Trails Sust Tran	0	0	0%
AB1600 General Service	60,000	5,124	9%
AB1600 Law Enforcement	60,000	3,612	6%
AB1600 Fire	80,000	47,681	60%
AB1600 Streets	80,000	9,588	12%
AB1600 Parks	80,000	15,080	19%
AB1600 Water	140,000	10,260	7%
AB1600 Ground Wtr Rchrg	50,000	0	0%
AB1600 Sewer	80,000	15,564	19%
AB1600 Storm Drain	80,000	3,956	5%
Fire Station Project	0	0	0%
Caltrans SR 99/Manning	150	0	0%
Sub-total	\$7,954,437	\$411,456	0%

**DEBT SERVICE FUNDS**

Debt Service 88-1	39,285	0	0%
Assesmt Dist 1993-R Debt Svc	80,341	0	0%
Assesmt Dist 1993-1 Hospital Bdg Lease	15,600	0	0%
Assesmt Dist 1993-1 Merced Rehab	93,600	0	0%
Assesmt Dist 1994-R Debt Svc	154,340	15,293	1%
Sub-total	\$383,166	\$15,293	10%

**SUCCESSOR AGENCY FUNDS**

Successor Agency 2000 RDA Loan	111,260	89,431	80%
Sub-total	\$111,260	\$89,431	80%

**FINANCE AUTHORITY FUND**

Public Financing Authority (PFA)	365,821	0	0%
Sub-total	\$365,821	0	0%

## EXPENSES

2023-2024 BUDGET	EXPENSES AS OF 09/30/23	PERCENT USED YTD
\$6,249,065	\$1,975,148	32%

2,037,094	652,633	32%
0	0	0%
410,669	410,669	100%
2,800,000	3,638	0%
\$5,247,763	\$1,066,940	20%

1,101,000	257,710	23%
4,141,047	2,371	0%
125,000	0	0%
5,000	0	0%
93,600	0	0%
283,000	36,115	13%
30,000	0	0%
618,000	17,643	3%
194,663	0	0%
0	0	0%
600,000	20,779	3%
900,000	0	0%
0	0	0%
4,000,000	0	0%
2,100,000	15,035	1%
0	7,926	0%
125,000	18,563	15%
450,000	0	0%
475,000	30,115	6%
0	0	0%
1,030,000	0	0%
0	0	0%
50,000	0	0%
0	0	0%
125,000	0	0%
323,096	0	0%
0	0	0%
\$16,769,406	\$406,256	2%

0	0	0%
27,764	27,763	100%
15,600	15,600	100%
93,600	93,600	100%
133,207	134,879	101%
\$270,171	\$271,842	101%

111,260	98,120	88%
\$111,260	\$98,120	88%

364,396	0	0%
\$364,396	\$0	0%

**RESOLUTION NO. 2685**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF FOWLER  
APPROVING AND ADOPTING BUDGET AMENDMENTS FOR VARIOUS FUNDS FOR  
FISCAL YEAR 2023/2024**

**WHEREAS**, the FY 2023/2024 Annual Budget reflects the City of Fowler's ongoing commitment to providing core services; and

**WHEREAS**, the FY 2023/2024 Annual Budget was approved by the City Council on June 6, 2023, by Resolution 2645, and any subsequent amendments must be approved by Resolution; and

**WHEREAS**, a budget amendment is necessary to align the expected revenues and expected expenses.

**WHEREAS**, the budget amendment attached hereto as Attachment C specifies the various proposed budget amendments for various funds.

**NOW, THEREFORE, BE IT RESOLVED**, the Fowler City Council hereby resolves that the FY 2023/2024 budget be amended as described in Attachment C hereto to provide the necessary funding to various funds.

**PASSED, APPROVED AND ADOPTED** this 7th day of November 2023, at a regular meeting of the Fowler City Council by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

**APPROVED:**

\_\_\_\_\_  
Daniel T. Parra, Mayor

**ATTEST:**

\_\_\_\_\_  
Angela Vasquez, City Clerk

## ATTACHMENT C



## REQUEST FOR BUDGET AMENDMENT

### Resolution No. 2685

Requested by: Margarita Moreno		Budget Amounts	
Account Numbers:	Fund Name Description	Increase	Decrease
<b>Revenues</b>			
101	General Fund Balance		\$ 33,787
200	UUT Fund Balance		\$ 35,000
250-3650	Program Income-CDBG Loan	\$ 16,000	
258	Bike Ped Trails Sust Tran Grant Fund Balance		\$ 7,926
201	District Tax Fund Balance		\$ 35,000
330-3706	Assess Dist 94-1-Misc Revenue	\$ 15,293	
330	Assess Dist 94-1 Fund Balance		\$ 1,673
710	AB1600-General Services-Fund Balance		\$ 18,563
730-3700	AB1600-Fire-Other Revenue	\$ 43,406	
<b>Expenses</b>			
6130-5220	General Fund-Fire-Professional Services	\$ 33,787	
2020-5220	Utility Users Tax-Professional Services	\$ 35,000	
2010-5220	District Sales Tax-Professional Services	\$ 35,000	
2040-5203	UUT-Rec-Park Maintenance	\$ 33,960	
2580-5520	Bike Ped Trails Sust Tran-Professional Services	\$ 7,926	
3300-5804	Assess Dist 94-1-Bond Admin Fees	\$ 1,673	
7100-5220	AB1600-General Services-Prof Svcs	\$ 18,563	

**Reason(s) for Budget Amendment:**

To align expenses and revenues to first quarter FY 2023/24 budget, staff request budget amendments to the following funds:

**General Fund Expenses: First quarter adjustments for projected year-end to actual:**

- Professional Services-Fire, \$33,787: Adjust to actual increased expenses for Fire Protection Services to be offset by increased property tax revenues.

**Special Revenue Funds: First quarter adjustments for projected year-end to actual:**

- CDBG-Program Income, \$16,000: To Adjust to actual revenues for CDBG loans not appropriated.
- Assess Dist 94-1-Misc Revenues, \$15,293: Adjust to actual bond admin fees not appropriated on bond final closure to be offset by reserves.
- AB1600-Fire-Other Revenue, \$43,406: ERC Solar Reimbursement.

**Special Expenses Funds: First quarter adjustments for projected year-end to actual:**

- Bike Ped Trails Sust Tran-Planning Consultant, \$7,926: Adjust to actual grant expense.
- UUT-Park Maintenance, \$33,960: Adjust to actual park tree maintenance services.
- UUT-Professional Services, \$35,000: Adjust to actual increased expenses for Fire Protection Services to be offset by property taxes.
- District Tax-Professional Services, \$35,000: Adjust to actual increased expenses for Fire Protection Services to be offset by increased property tax revenues.
- Assess Dist 94-1, \$1,673: Adjust to actual bond admin fees not appropriated on bond final closure to be offset by reserves.
- AB1600-General Services, \$18,563: Adjust to actual one-time housing element expense.

Finance Director \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

City Manager \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

City Council: ☐ Approved ☐ Resolution # \_\_\_\_\_ ☐ Denied

Journal Entry No. \_\_\_\_\_ Date Posted \_\_\_\_\_ By: \_\_\_\_\_



CITY COUNCIL MEETING

REPORT TO THE CITY COUNCIL

**DATE:** November 7, 2023

**FROM:** MARGARITA MORENO, Finance Director

**SUBJECT:** APPROVE Resolution No. 2687 approving the budget amendment for additional Local Transportation Fund (LTF) Article 8 surplus funding in the amount of \$113,069.

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EXECUTIVE SUMMARY

Staff recommend City Council approve Resolution No. 2687 appropriating additional funds to LTF Article 8.

BACKGROUND

Due to incomplete audits prior to Fiscal Year (FY) 2021-2022 the City was not able to timely collect \$596,527 of Transportation Development Act (TDA) Article 8 streets and roads funds from the Fresno County Council of Governments (FCOG). With the assistance of Price Paige & Company, Accountancy Corporation, staff is currently up to date with the City’s audited financial statements. On June 6, 2023, City Council accepted the FY 2021-2022 audited financials and as such City received \$709,596 from FCOG, which included the \$596,527 and an additional \$113,069 of surplus funding for Article 8 claims from FY 2021-2022.

Staff appropriated the FY 2021-2022 LTF Article 8 funding in the amount of \$596,527 as part of the FY 2023 – 2024 budget for various eligible projects within the City’s Capital Improvement Plan (CIP). If the budget amendment is approved for the additional \$113,069 surplus LTF Article 8 funding, staff proposes to allocate the additional funding to supplement the construction costs of the LTF Article 8 funded road projects: 5<sup>th</sup> Street from Tuolumne Street to Main Street Improvements and 4<sup>th</sup> Street from Main Street to Vine Street Improvements.

If approved, staff will bring forward an amended CIP at midyear.

PUBLIC NOTICE

This item does not require a public hearing and was noticed as a part of the City Council Agenda.

ENVIRONMENTAL REVIEW

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

GENERAL PLAN CONSISTENCY

Goal MOB-4

The circulation system is adequately maintained.

Policy MOB-28

Seek all available means to finance improvements, including State and Federal grants.

**FISCAL IMPACT**

If the budget amendment is approved, the additional \$113,069 will help offset the costs of various LTF Article 8 funded road projects.

**CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

Attachments:

- Resolution 2687 Budget Amendment

**RESOLUTION NO. 2687**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF FOWLER  
APPROVING AND ADOPTING THE BUDGET AMENDMENT FOR LOCAL  
TRANSPORTATION FUND (LTF) ARTICLE 8 SURPLUS FUNDS**

**WHEREAS**, the FY 2023/2024 Annual Budget reflects the City of Fowler’s ongoing commitment to providing core services; and

**WHEREAS**, the FY 2023/2024 Annual Budget was approved by the City Council on June 06, 2023 by Resolution 2645, and any subsequent amendments must be approved by Resolution; and

**WHEREAS**, the budget amendment request attached hereto specifies the details of the LTF Article 8 surplus funds received.

**NOW, THEREFORE, BE IT RESOLVED**, the Fowler City Council hereby resolves that the FY 2023/2024 budget be amended to reflect the LTF Article 8 allocation as described in the attachment hereto.

**PASSED, APPROVED AND ADOPTED** this 7<sup>th</sup> of November 2023, at a regular meeting of the Fowler City Council by the following vote:

AYES:  
NOES:  
ABSTAIN:  
ABSENT:

**APPROVED:**

\_\_\_\_\_  
Daniel T. Parra, Mayor

**ATTEST:**

\_\_\_\_\_  
Angela Vasquez, City Clerk



**REQUEST FOR BUDGET AMENDMENT**  
**Resolution 2687**

Requested by: Margarita Moreno		Budget Amounts	
Account Numbers:	Fund Name Description	Increase	Decrease
Revenues:			
225	Fund Balance		\$113,069
Appropriations:			
225-3606	LTF - Article 8	\$113,069	

**Reason(s) for Budget Amendment:**

To align the expenses and revenues to the 2023/2024 budget, staff is requesting a budget amendment to appropriate surplus funding for Article 8.

Department Director \_\_\_\_\_ Date \_\_\_\_\_

**Approval Required Budget Amendment:**

Finance Director \_\_\_\_\_ Date \_\_\_\_\_  
Signature

City Manager \_\_\_\_\_ Date \_\_\_\_\_  
Signature

City Council: ☐ Approved ☐ Resolution # \_\_\_\_\_ ☐ Denied Date \_\_\_\_\_



## CITY COUNCIL MEETING

### REPORT TO THE CITY COUNCIL

**DATE:** November 7, 2023

**FROM:** THOMAS W. GAFFERY IV, Assistant City Manager

**SUBJECT:** APPROVE a Franchise Agreement with USA Waste of California, Inc., for solid waste collection and related services to be effective January 1, 2024, through December 31, 2033.

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### **EXECUTIVE SUMMARY**

The current Franchise Agreement with USA Waste of California, Inc. (WM) expires on May 7, 2024. This proposed ten-year agreement includes a rate lock until July 1, 2028, and various other provisions beneficial to the residents of Fowler.

### **BACKGROUND**

Chapter 2 of Title 6 of the Fowler Municipal Code governs the Accumulation, Collection, and Disposal of Solid Waste. Pursuant to the current Franchise Agreement, WM provided the City a letter of interest to enter into a new Franchise Agreement between the City and WM.

Based on the quality of WM's current service, the timeframe needed to conduct a solicitation process, the cost to conduct a solicitation process, and the unknown staff time and switching costs associated with potentially changing solid waste providers, staff recommend entering into this new 10-year Franchise Agreement with WM.

The City's existing relationship with WM has provided the City the costs savings and convenience of WM handling all aspects of billing, accounts, and customer service. WM's transfer station is only 3 miles from the City's Public Works yard, resulting in a labor cost savings. The current administration has received no major complaints regarding WM during past two and a half years.

The ten-year Franchise Agreement consists of a rate lock until July 1, 2028, followed by a reasonable schedule of rate increases based on typical industry costs incurred by WM. The ten-year term is essential for the City to obtain the best value from WM by ensuring sufficient time to amortize and depreciate their fleet. The Franchise Agreement includes provisions to allow for future amendments and renewal based on mutual agreement. WM will continue to provide residential service via curbside carts. The current typical residential cart service is \$35.65 per month.

The Franchise Agreement also codifies other services WM will provide to the City including eight hours per month of illegal dumping cleanup, community cleanup events, support for City events, and discounted rates for community events.

**PUBLIC NOTICE**

This item does not require a public hearing and was noticed as a part of the City Council Agenda.

**ENVIRONMENTAL REVIEW**

Approval of the Franchise Agreement is not subject to further environmental review under the California Environmental Quality Act (“CEQA”) and is categorically exempt pursuant to CEQA Guidelines Section 15301, because approval of the Franchise Agreement would merely extend WM’s solid waste services involving negligible or no expansion of existing use. Furthermore, the approval of the Franchise Agreement would be exempt from CEQA pursuant to CEQA Guidelines section 15061, subdivision (b)(3), also known as the “common sense” exception, because the approval of the Franchise Agreement will not result in a significant effect on the environment.

**GENERAL PLAN CONSISTENCY**

Goal SAF-1

The community is resilient to the effects of a changing climate.

Goal PF-1

Fowler provides reliable public facilities, utilities, and community services that meet the needs of the existing community and planned growth.

Policy PF-25

Facilitate activities that reduce waste production and/or encourage recycling or reuse of waste when possible to reduce the amount of solid waste sent to landfill in order to meet State targets.

**FISCAL IMPACT**

This Franchise Agreement includes a monthly franchise fee consisting of ten percent (10%) of Gross Revenue collected by WM from Accounts and Customers. This is the same franchise fee as the previous franchise agreement. In the adopted Fiscal Year 2023-24 Budget, this amount is forecasted at \$170,000 per year.

There is also an indirect cost savings related to staff time savings to conduct a solicitation process, and staff time and switching costs should a provider other than WM then be selected. Additionally, this Franchise Agreement codifies services provided to the City by WM at no charge.

**CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

Attachments

- Franchise Agreement with Exhibits

## SOLID WASTE FRANCHISE AGREEMENT

This Solid Waste Franchise Agreement (“Agreement”) is made and entered into as of November 7, 2023, to be effective beginning on January 1, 2024 (“Effective Date”) by and between the City of Fowler (“City”), a municipal corporation, and USA Waste of California, Inc., a Delaware corporation registered to do business in California (“Contractor”) (each a “Party” and collectively the “Parties”).

### RECITALS

WHEREAS, the Legislature of the State of California, by enactment of the California Integrated Waste Management Act of 1989 (“AB939”), has declared that it is within the public interest to authorize and require local agencies to make adequate provisions for solid waste handling within their jurisdictions; and

WHEREAS, City and Contractor previously entered into that certain Amended and Restated Solid Waste Agreement, dated April 7, 2009 (the “Prior Agreement”); and

WHEREAS, Senate Bill (SB) 1383, the Short- lived Climate Pollutant Reduction Act of 2016, requires the California Department of Resources Recycling and Recovery (“CalRecycle”) to develop regulations to reduce organics in landfills as a source of methane; and

WHEREAS, SB 1383 requires the City to implement certain organic waste collection programs and other regulatory requirements; and

WHEREAS, the Parties wish to enter into this Agreement to replace and supersede the Prior Agreement beginning on January 1, 2024, and provide for, among other things, SB 1383 Organic Waste services;

NOW, THEREFORE, in consideration of the above recitals, which are a substantive part of this Agreement, and in consideration of the respective and mutual covenants and promises herein, the Parties hereby agree as follows:

1. DEFINITIONS. The following words and phrases used in this Agreement shall be defined in accordance with the definitions set forth herein. In the event of a conflict between these definitions and those set forth in the Fowler Municipal Code, the definitions set forth herein will prevail:

1.1 “AB939” means the California Integrated Waste Management Act of 1989, as amended (Public Resources Code §40000 et seq.), and implementing regulations of the California Integrated Waste Management Board.

1.2 “ACCOUNT” means premises located within the City receiving services pursuant to this Agreement, or the person arranging for services pursuant to this Agreement, as the case may be. The word “Account” is used interchangeably with the word “Customer” in this Agreement.

1.3 “AGREEMENT” means this Solid Waste Franchise Agreement between the City and Contractor, including all exhibits and attachments, and any amendments.

1.4 “APPLICABLE LAW” means any law, rule, regulation, requirement, guideline, permit, action, determination, or order of any governmental body having jurisdiction, applicable from time to time to the services provided pursuant to the Agreement; the operating assets of Contractor; the siting, design, acquisition, permitting, construction, equipping, financing, ownership, possession, shakedown, testing, operation, or maintenance of any of the operating assets of Contractor; or any other transaction or matter contemplated in this Agreement (including any of the foregoing which concern health, safety, fire, governmental protection, accommodation of the disabled, labor relations, mitigation monitoring plans, building codes, non-discrimination and the payment of minimum wages, the payment of per-ton charges on solid waste facilities imposed by a governmental entity other than the City, and further including the City Municipal Code and the County of Fresno Integrated Waste Management Plan.

1.5 “BIN” means a metal or rigid plastic container with a capacity of approximately one to six cubic yards, having a hinged lid and wheels, which is serviced by a front-end loading truck.

1.6 “BIN SERVICE” means collection services provided to accounts using bins provided by Contractor. Bin service may be provided to either Residential Premises, Industrial Premises or Commercial Premises on a permanent or temporary basis.

1.7 “BIOHAZARDOUS WASTE” means those materials defined as “biohazardous waste” in Health and Safety Code §117635, as that section may be amended from time to time.

1.8 “BULKY ITEMS” means household items that do not properly fit in the Customer’s Container, that do not exceed four feet by four feet by two feet (4’x4’x2’), and weigh no more than two hundred (200) pounds and is capable of being lifted safely by two (2) people without the use of special equipment, which are attributed to the normal activities of a Single-Family Premises. Bulky Items may include: discarded furniture (including but not limited to chairs, sofas, mattresses, and rugs); appliances (including but not limited to refrigerators, ranges, washers, dryers, water heaters, dishwashers, plumbing, small household appliances, and other similar items, commonly known as “white goods”); discarded stereos, televisions, computers, VCR’s, and other similar items (commonly known as “E-Waste”); wood waste, tree trunks, and large branches if more than six inches in diameter or four feet in length, scrap wood, rocks, sod and earth. Bulky items do not include C&D car bodies or automobile parts, or jacuzzi tubs or spas. In addition, Bulky Items do not include waste tires or Excluded Waste.

1.9 “CART” means a plastic container with a capacity of no less than approximately 64 gallons and no greater than approximately 96 gallons, having a hinged lid and wheels, which is serviced by an automated side-loading truck.

1.10 “CART SERVICE” means collection services provided to accounts using carts provided by Contractor. Cart service may be provided to either Residential Premises, Industrial Premises or Commercial Premises on a permanent basis.

1.11 “CHANGE IN LAW” means any of the following events or conditions which effects the performance by the Contractor of its obligations under this Agreement:

- The enactment, adoption, promulgation, issuance, modification, or written change in administrative or judicial interpretation of any Applicable Law; or
- The order, judicial interpretation, or judgment of any Governmental Body. to the extent such order or judgment is not the result of willful or negligent action, error or omission or lack of reasonable diligence of the City or of the Contractor, whichever is asserting the occurrence of a Change in Law provided, however, that the contesting in good faith or the failure in good faith to contest any such order or judgment shall not constitute or be construed as such a willful or negligent action, error or omission or lack of reasonable diligence.

1.12 “CITY” means the City of Fowler.

1.13 “COMMERCIAL PREMISES” means property upon which a business activity is conducted, including but not limited to retail sales, services, or wholesale operations, but excluding businesses conducted upon residential premises that are permitted under applicable zoning regulations and that do not constitute the primary use of the property. Commercial Premises may receive Bin Service, Roll-Off service, or Cart service. Commercial premises also include Multi-Family Premises, apartment houses, condominiums, mixed condominiums and rental housing, senior citizen housing complexes, and mobile home parks receiving permanent bin service or roll- off service. For purposes of this Agreement, “Commercial” refers to Commercial Premises.

1.14 “CONSTRUCTION AND DEMOLITION WASTE or C&D” means used or discarded construction materials removed from premises during the construction, renovation or demolition of a structure or premises, including rocks, soil, tree remains, and other green waste which normally results from land clearing or land development operations.

1.15 “CONTAINER” means a Cart, Bin, and/or Roll-Off.

1.16 “CONTRACTOR” means USA Waste of California, Inc., a Delaware corporation.

1.17 “CONTRACTOR’S TRANSFER STATION” means that Solid Waste, Recyclable Material, and Organic Waste transfer and processing facility owned and operated by Contractor, located at 4333 E. Jefferson Avenue, Fresno, CA 95370.

1.18 “DISCARDED MATERIALS” shall mean Recyclable Materials, Organic Waste, Solid Waste, or Construction and Demolition Debris properly placed by a Customer or Generator in or around a Container for the purposes of collection by Contractor. For the purpose of this Agreement, Discarded Materials does not include Excluded Waste.

1.19 “DWELLING UNIT” means any single family premises, or any individual living unit in a Multi-Family Premises that includes a full kitchen and bathroom, intended for, or capable of being utilized for, residential living.

1.20 “E-WASTE” means discarded stereos, televisions, computers, VCR’s, and other similar items, including but not limited to any “covered electronic device” as defined in Public Resources Code §42463(f), as that section may be amended from time to time.

1.21 “EXCLUDED WASTE” means Hazardous Waste, Medical Waste, Biohazardous Waste, U-Waste, volatile, corrosive, biomedical, infectious, and toxic substances or material, waste that Contractor reasonably believes would, as a result of or upon disposal, be a violation of local, State or Federal law, regulation or ordinance, including land use restrictions or conditions, waste that cannot be disposed of in Class III landfills, waste that in Contractor’s reasonable opinion would present a significant risk to human health or the environment, cause a nuisance or otherwise create or expose Contractor or City to potential liability; but not including de minimis volumes or concentrations of waste of a type and amount normally found in Residential Solid Waste after implementation of programs for the safe collection, recycling, treatment, and disposal of batteries and paint in compliance with Sections 41500 and 41802 of the California Public Resources Code.

1.22 “GENERATOR” means any person that generates, produces, or discards Discarded Materials or Excluded Waste.

1.23 “GREEN WASTE” means shrubbery, tree trimmings, leaves, grass, weeds, and wood materials from trees and shrubs that fit within a Cart, or tree trunks or limbs that are less than six inches in diameter or four feet in length. Materials not meeting these specifications are considered Bulky Items. Yucca leaves, palm fronds, tree stumps and tree roots are not considered Green Waste, and shall be treated as Solid Waste for the purposes of this Agreement. Green Waste is a subset of Organic Waste and shall not include Excluded Waste.

1.24 “GROSS REVENUE” means all monetary amounts actually collected or received by Contractor from Accounts or Customers for the service of collecting Solid Waste, Organic Waste, and Recyclable Material pursuant to this Agreement. The term Gross Revenue, for purposes of this Agreement, shall include all service fees Contractor charges all Accounts or customers, including without limitation fees for Extra Services as described in Sections 5.3.2 and 6.2.2 of this Agreement, including such fees collected by Contractor or under a separate

contract with a Customer or Account authorized when no rate is provided in Exhibit 1 for the requested Extra Service, but shall not include amounts received from Organic Waste disposal and processing charges, revenue from the sale of Organic Waste or Recyclable Materials, and Special Fees charged by Contractor intended to reimburse Contractor for costs arising from improper actions by Customers (e.g. fees issued for Prohibited Container Contaminants and Overage), fees paid by Contractor to the City, City administration and billing fees, or other revenues from state and local government accounts.

1.25 “HAZARDOUS WASTE” means waste defined as hazardous by Health and Safety Code Section 25117, including: (1) a waste or combination of wastes which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may either (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (b) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of, or otherwise managed; (2) a waste which meets any of the criteria for the identification of a hazardous waste adopted by the California Environmental Protection Agency’s Division of Toxic Substances Control pursuant to Health and Safety Code Section 25141; (3) any chemical, pollutant, contaminant, hazardous or toxic substance, constituent or material that under Applicable Law is considered to be hazardous or toxic or is or may be required to be remediated, including, without limitation, (a) any petroleum or petroleum products and their derivatives, radioactive materials, asbestos in any form that is or could become friable, transformers or other equipment that contain dielectric fluid containing polychlorinated biphenyls and processes and certain cooling systems that use chlorofluorocarbons, or (b) any chemicals, materials or substances which are now or hereafter become defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” or any words of similar import pursuant to Applicable Law.

1.26 “INDUSTRIAL PREMISES” means property upon which manufacturing and industrial operations are conducted. Industrial Premises may receive Bin Service, Roll-Off Service or Cart Service. For purposes of this Agreement, “Industrial” refers to Industrial Premises.

1.27 “Late Fee” means an amount charged by Contractor to reimburse it for administrative costs arising from payment delinquency, including the cost of notices and adjustments to its accounting records, and may include a fixed fee, interest on past due amounts, or Non-Sufficient Fund (“NSF”) fees.

1.28 “MEDICAL WASTE” means waste regulated pursuant to the State Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the State Health and Safety Code).

1.29 “MULTI-FAMILY PREMISES” means property which is used for residential purposes having five (5) or more Dwelling Units. For purposes of this Agreement, Multi-Family Premises are Commercial Premises.

1.30 “ORGANIC WASTE” means material originating from living organisms and their metabolic waste products, including but not limited to nonhazardous or untreated wood waste, paper, organic textiles, biosolids, digestate and sludges, food waste, and Green Waste that are accepted for processing by the Organic Waste processing facility utilized by Contractor under this Agreement. Organic Waste does not include Excluded Waste. For purposes of this Agreement, textiles shall be treated as Solid Waste, and Printing and Writing Paper and Paper Products (each as defined in 14 CCR Section 18982(a)) shall be treated as Recyclable Material.

1.31 “OVERAGE” means excess Solid Waste, Organic Waste, or Recyclable Materials placed in or around a Container, including: (i) Discarded Material that causes the lid on the Container to be open; (ii) material that is placed on top of the Container; (iii) material placed around the Container either in bags or uncontainerized; or (iv) the Container to exceed the weight limit for such Container.

1.32 “PROHIBITED CONTAINER CONTAMINANTS” means the following: (i) material placed in a Recyclable Material Container that is not identified as acceptable Recyclable Material; (ii) material placed in a Organic Waste Container that is not identified as acceptable Organic Waste; (iii) material placed in a Solid Waste Container that is not identified as acceptable Solid Waste or are acceptable Recyclable Material and/or Organic Waste; and (iv) Excluded Waste placed in any Container. For purposes of this Agreement, “Contamination” or a “Contaminated Container” refers to the presence of Prohibited Container Contaminants.

1.33 “PREMISES” means any land, building or structure in the City where Solid Waste, Recyclable Material or Organic Waste is generated or accumulated.

1.34 “PRIOR AGREEMENT” has the meaning set forth in the recitals to this Agreement.

1.35 “RECYCLABLE MATERIAL” means those materials identified on Exhibit 2 and that Customers set out in Containers for Collection for the purpose of recycling by Contractor. No Discarded Materials shall be considered Recyclable Materials unless such material is separated from other Discarded Materials by the Customer. For the purpose of collection of Recyclable Materials through Contractor’s collection services, Recyclable Materials shall be limited to those materials identified by Contractor as acceptable Recyclable Materials. Recyclable Materials do not include Excluded Waste.

1.36 “RESIDENTIAL PREMISES” means property which is used for residential purposes and which receive Cart Service, including single-family premises, and Premises with four (4) or fewer Dwelling Units.

1.37 “ROLL-OFF or ROLL-OFF BOX” means an open-top metal container or closed compactor box with a capacity of 10 to 40 cubic yards that may be provided by either the account or Contractor, which is serviced by a roll-off truck.

1.38 “ROLL-OFF SERVICE” means collection, transportation, recycling, processing and disposal services that are provided using a roll-off box. Roll-off service may be provided to either Residential Premises, Industrial Premises, or Commercial Premises on a permanent or temporary basis.

1.39 “SB 1383” means Senate Bill 1383 of 2016 approved by the Governor on September 19, 2016, which added Sections 39730.5, 39730.6, 39730.7, and 39730.8 to the Health and Safety Code, added Chapter 13.1 (commencing with Section 42652) to Part 3 of Division 30 of the Public Resources Code, created Chapter 12 of 14 CCR, Division 7 and amended portions of regulations of 14 CCR and 27 CCR, establishing methane emissions reduction targets in a statewide effort to reduce emissions of short-lived climate pollutants.

1.40 “SOLID WASTE” means “solid waste” as defined in Public Resources Code §40191, including putrescible and non-putrescible refuse, special waste, and construction and demolition waste. For purposes of this Agreement, Solid Waste does not include Excluded Waste.

1.41 “SPECIAL FEES” means a charge imposed by Contractor in response to improper actions by accounts, including fees for contamination, cleanup, Cart or Bin repair or replacement arising from damage caused by the Account, or Late Fees. Special Fees are detailed in Exhibit 1, but shall not include fees for Extra Services, as described in Sections 5.3.2 and 6.2.2 of this Agreement, whether a rate is listed in Exhibit 1 for such Extra Service or collected pursuant to a separate contract with a Customer or Account.

1.42 “TEMPORARY SERVICE” means bin service or roll-off service provided to premises on a temporary, as-needed basis, such that no container remains on the premises or a service location on a premises for more than thirty (30) days at a time, or for more than sixty (60) days of any ninety (90) day period.

1.43 “UNIVERSAL WASTE or U-WASTE” means waste materials that are conditionally exempt from classification as hazardous waste pursuant to Title 22 of the California Code of Regulations (22 CCR), Section 66261.9, including but not limited to: (i) batteries as described in 22 CCR section 66273.2; (ii) thermostats as described in 22 CCR Section 66273.4; (iii) lamps as described in 22 CCR Section 66273.5; and (iv) cathode ray tube materials as described in 22 CCR Section 66273.6.

## 2. GRANT OF EXCLUSIVE FRANCHISE.

2.1 In accordance with and subject to the provisions in Title 6, Chapter 2 of the City’s Municipal Code, Contractor is hereby granted the exclusive right and privilege to collect, transport, recycle and dispose of all Discarded Materials generated at Residential Premises, Industrial Premises and Commercial Premises, construction and demolition sites, and City facilities, now existing or hereafter constructed within the City during the term of this Agreement.

2.1.1 The Parties acknowledge and declare that this Agreement includes the exclusive rights to enter upon, over, and use the City's streets for the purpose of providing solid waste collection services for a fee in the City limits, including but not limited to the exclusive authorization to drive heavy vehicles on, over and across the City's streets and place waste Containers in the City's right-of-way; and the value of the franchise, this Agreement, and the franchise fee Contractor pays the City for the franchise has been determined and agreed upon based on bona fide negotiations between the City and Contractor in 2009 when the franchise fee was first established, and subsequent negotiations occurring with this Agreement, and City and Contractor acknowledge and declare that the franchise fee set forth herein bears a reasonable relationship to the value of the exclusive rights granted Contractor by this Agreement.

2.1.2 Notwithstanding the bona fide negotiations surrounding this Agreement and the franchise fee the Contractor pays the City for the franchise, to the extent the franchise fee is deemed imposed by the City, the City and Contractor acknowledge and agree the franchise fee is imposed for the specific benefit conferred or privilege granted directly to the Contractor - the exclusive rights to enter upon, over, and use the City's streets for the purpose of providing solid waste collection services for a fee in the City limits - that is not provided to those not charged the franchise fee, and the franchise fee does not exceed the reasonable costs to the City of conferring the benefit or granting the privilege, and bears a fair or reasonable relationship to the benefit Contractor receives from this Agreement and the franchise.

2.2 During the term of this Agreement, except as otherwise provided in Section 2.4, or as may otherwise be provided by Applicable Law, the rights granted to Contractor under this Agreement will be exclusive to Contractor. The City will, where reasonable, protect Contractor's exclusive rights by considering the adoption of appropriate ordinances. In addition, the City authorizes Contractor to take administrative or legal action against any person who infringes on Contractor's exclusive rights, at no cost to the City.

2.3 The City agrees not to enter into any contract with any other person, firm or organization for the performance of the services required to be performed by Contractor except, in the event Contractor fails or refuses to uphold the terms of this Agreement in material breach thereof, the City may cause fulfillment of this Agreement by other methods or contractors.

2.4 Limitations to Exclusivity. The franchise granted to Contractor is exclusive, except for the exceptions listed below and any exceptions provided in Title 6, Chapter 2 of the City's Municipal Code, including Sections 6-2.205-6-2.207, 6-2.310, and 6-2.506 of the City's Municipal Code. The granting of this franchise does not preclude the categories of waste listed below from being delivered to, collected, and transported by others, provided that no person is excused from obtaining from the City any authorization that is required by law.

2.4.1 Recyclable Material that an Account sells to, or otherwise receives compensation from, other persons so long as there is no payment or other compensation paid by the service recipient to such other Person.

2.4.2 Recyclable Material donated to youth, civic, or charitable organizations.

2.4.3 Containers delivered for recycling under the California Beverage Container Recycling Litter Reduction Act, Sections 14500, et seq., California Public Resources Code.

2.4.4 Green Waste removed from premises by a gardening, landscaping, or tree trimming company using its own equipment and employees as an incidental part of a total service offered by the company, as opposed to a hauling service or other contractor.

2.4.5 Construction and Demolition Waste that is incidentally removed by a duly licensed construction or demolition company, as part of a total service offered by such licensed company using its own equipment and employees.

2.4.6 Animal waste and remains from any slaughterhouse or butcher shop for use as tallow.

2.4.7 Grease and animal remains generated from food service providers.

2.4.8 Dead animals.

2.4.9 Agricultural waste, such as manure or bedding from poultry yards or stables.

2.4.10 Waste tires.

2.4.11 By-products of sewage treatment, including sludge, sludge ash, grit and screenings.

2.4.12 Excluded Waste, regardless of its source.

2.4.13 The casual or emergency collection, removal, disposal, or diversion of solid waste by the City through its officers or employees in the normal course of their employment.

2.4.14 A Commercial business owner or resident may dispose of Discarded Materials generated in or on their own Premises using their own vehicles and equipment, and, with respect to a Commercial business, its own employees.

2.4.15 Collection, transport and distribution of Edible Food, as defined in 14 CCR Section 18982(a)(18), by third-party persons or organizations.

2.5 City Directed Changes in Service; Change in Law.

2.5.1 City Directed Change. The City may direct Contractor to perform additional services or to modify the manner in which it performs existing services or bills for

services. Pilot programs and innovative services that may entail new collection methods, different kinds of services or new requirements for customers, and alternative rate structures are included among the kinds of changes that the City may direct. Contractor will be entitled to an adjustment to the rates set forth in Exhibit 1 to reimburse its increased costs if any for providing those additional or modified services, in accordance with Section 19.5.2 of this Agreement.

2.5.2 Change in Law. A Change in Law may require that Contractor provide new, modified, or additional services or obligations for the provision of services under this Agreement. In the event of a Change in Law, the Parties shall meet and confer in good faith to amend this Agreement to incorporate provisions and obligations necessary to comply with the Change in Law and Contractor will be entitled to an adjustment to the rates set forth in Exhibit 1 to reimburse its increased costs for providing those new, modified, or additional services or obligations for the provision of services under this Agreement, in accordance with Section 19.5.2 of this Agreement.

2.6 Delegation of Authority. The administration of this Agreement shall be under the supervision of the Fowler City Manager's office, and the actions specified herein shall be taken by the City Manager or his or her designee unless otherwise stated or specified.

2.7 Incorporation by Reference. The City Municipal Code, as it currently exists or may be amended, is hereby incorporated and made a part of this Agreement as though set forth in full herein. Except with respect to definitions in accordance with Section 1, in the event of any conflict between this Agreement and the City Municipal Code, the terms of the City's Municipal Code shall prevail.

2.8 Ownership of Waste. Except as otherwise provided in state law with respect to Recyclable Material, ownership and the right to possession of materials will transfer directly from the Account to Contractor at the time of collection. Contractor has the right to retain, recycle, process, sell, dispose of, or reuse, and otherwise use that Discarded Material, or any part thereof, in any lawful fashion or for any lawful purpose. Contractor has the right to retain any benefit resulting from its right to retain, recycle, process, sell, dispose of, or reuse the Discarded Material that it collects, including any funds received directly or indirectly from any state or local agency, such as the Department of Conservation recycling rebate.

2.9 Excluded Waste. The Parties acknowledge that this Agreement is granted only with respect to the collection of Discarded Material and does not include the collection, transportation, processing, or disposal of Excluded Waste. Nothing in this Agreement shall require or imply that Contractor shall take title to any Excluded Waste under any circumstances, regardless of its source.

### 3. REVENUE TO THE CITY.

3.1 Contractor agrees to and shall pay to the City a franchise fee of ten percent (10%) of Gross Revenue collected by Contractor from Accounts and Customers for services

provided pursuant to this Agreement, payable on the 30<sup>th</sup> day of the month succeeding the month in which payment is received.

3.2 Payment of the above franchise fees shall be made by the Contractor to City. City and Contractor agree to cooperate to develop a methodology to reconcile the amounts to be paid and to assure payment of all franchise fees owed.

#### 4. TERM.

4.1 This Agreement shall be effective for the period beginning as of the January 1, 2024 and ending on December 31, 2033. This Agreement may be amended or renewed upon terms and conditions mutually agreed upon in writing by the Parties.

#### 5. COMMERCIAL AND INDUSTRIAL COLLECTION SERVICES.

5.1 Commercial Bundled Collection Service. Contractor shall provide bundled three (3) Container Solid Waste, Recyclable Material, and Organic Waste collection service to Commercial Customers in accordance with applicable provisions of Title 6, Chapter 2 of the City's Municipal Code and this Section 5.

5.1.1 Solid Waste Service. Contractor shall provide Solid Waste collection services to Commercial Customers using Bins, Roll-Offs or Carts, depending upon the Account's needs. Contractor shall collect and remove all Solid Waste that is placed in Containers at least once every week or more frequently if required to handle the waste stream of the Commercial Account.

5.1.2 Recyclable Material Service. Contractor shall provide for collection of Recyclable Material from Commercial Accounts, using Bins, Roll-Offs or Carts, depending upon the Account's needs; provided however that as part of bundled service required under this Agreement all Commercial Accounts shall subscribe to and Contractor will provide a minimum of weekly one (1) 96-gallon Recyclable Material Cart service. Commercial Accounts may request additional Container(s) at the applicable rate(s) set forth in Exhibit 1. No discounts may be given for using a Cart smaller than 96-gallons. Contractor shall collect and remove all Recyclable Material placed in Containers from Commercial Accounts at least once every week or more frequently if required to handle the materials generated by the Commercial Account.

5.1.3 Organic Waste Service. Contractor shall provide Organic Waste collection services to Commercial Customers using Bins, Roll-Offs or Carts, depending upon the Account's needs; provided however that as part of bundled service required under this Agreement all Commercial Accounts shall subscribe to and Contractor shall provide a minimum of weekly one (1) 64-gallon Organic Waste Cart service. Commercial Accounts may request additional Container(s) at the applicable rate(s) set forth in Exhibit 1. No discounts may be given for using a Cart smaller than 64-gallons. Contractor shall collect and remove all Organic Waste placed in Containers from Commercial Accounts at least once every week or more frequently if required to handle the materials generated by the Commercial Account.

5.2 Industrial Roll-Off Collection Service. Contractor may provide Solid Waste, Recyclable Material, Organic Waste, and/or C&D collection services to Industrial Customers using Roll-Offs, serviced upon request or as scheduled with the Customer. Contractor shall collect and remove all Solid Waste that is placed in Containers at least once every week or more frequently if required to handle the waste stream of the Industrial Account.

### 5.3 Commercial and Industrial Service Requirements; Other Services.

5.3.1 Temporary Bin and Roll-off Service. Contractor may provide temporary Bin service or Roll-Off service to Commercial or Industrial Accounts that request these services at the rates set forth in Exhibit 1.

5.3.2 Extra Services. Extra services, including without limitation, Roll-Off weight above five (5) tons, extra pickups, relocation of Containers, trip charges where the Account refuses service, and Account-owned Roll-Off hauling and disposal services, will be provided and shall be charged at the applicable rate set forth in Exhibit 1. In addition, Contractor shall provide other services desired by Commercial and Industrial Accounts, including without limitation, walk-in/push-out service where the Container must be moved manually more than fifteen (15) feet to the collection point, use of Containers with castors, hasps or locks. These services will be charged at the applicable rate(s) set forth in Exhibit 1. In the event that an Account requests a service for which there is no rate provided in Exhibit 1, Contractor and the Account may enter into a separate contract for the provision of such services.

5.3.3 Access to Containers. If, at the time of collection at a Commercial or Industrial Account, the Container is not accessible to the collection vehicle, Contractor shall notify the Account by telephone of the situation and request that access be provided. If the Account is unavailable or unable to provide prompt access to the Container, Contractor shall provide pickup a later time, but may charge an extra pickup fee, which will be charged as a Special Fee.

5.3.4 Missed Pick-ups. In the event that Contractor fails to provide collection service to a Commercial or Industrial Account, where the Containers had been timely and properly set out for collection, Contractor shall complete the collection from the Commercial or Industrial Account no later than the next business day following notification of the missed pickup. A fee for such missed pick-up shall not be charged by Contractor.

5.3.5 Overfilling of Containers. Where Contractor identifies instances of Overage of containers, it will document the overfilling through the use of film or digital photography. Contractor may charge a cleanup fee for cleaning up the container area and placing overfilled material into the collection vehicle which will be charged as a Special Fee. In addition, Contractor will present documentation of the Overage to the Commercial or Industrial Account. Where such evidence was presented to the Account, and Contractor documents and presents such documentation of another instance of Overage within a twelve (12) month period to the same Account, Contractor is authorized to deliver the next larger-sized Container

to the Account or increase collection frequency of the Account, and to adjust the rate to the applicable rate then in effect.

5.3.6 Record of Non-Collection. When a Container is not collected by Contractor, Contractor shall notify the Customer, which may be mail or electronic means including e-mail or text message, indicating the reason for non-collection. Reasons for non-collection may include the presence of observable Excluded Waste or Overage resulting in a Container exceeding applicable weight restrictions. Contractor shall maintain a log containing the name and address of each Account that is notified of non-collection. The log shall be maintained for inspection by the City, upon request.

## 6. RESIDENTIAL COLLECTION SERVICES.

6.1 Residential Bundled Services. Contractor shall provide bundled three (3) Container Solid Waste, Recyclable Material, and Organic Waste collection service to Residential Customers in accordance with applicable provisions of the City's Municipal Code and this Section 6.

6.1.1 Solid Waste Service. Contractor shall collect Solid Waste disposed of for collection at the curbside by Residential Accounts not less than once each calendar week. Contractor shall supply each Residential Account with one (1) 96-gallon Solid Waste Cart. Accounts may obtain additional Solid Waste Carts from Contractor, which will be charged at the applicable rate set forth in Exhibit 1. No discounts may be given for using a Cart smaller than 96-gallons.

6.1.2 Recyclable Material Service. Contractor shall provide weekly service for collection of Recyclable Material to all Residential Accounts on the same day as Solid Waste collection. As part of bundled service required under this Agreement, all Residential Accounts shall subscribe to and Contractor shall provide a minimum of weekly one (1) 96-gallon Recyclable Material Cart service. Accounts may obtain additional Recyclable Material Carts from Contractor, which will be charged at the applicable rate set forth in Exhibit 1. No discounts may be given for using a Cart smaller than 96-gallons.

6.1.3 Organic Waste Service. Contractor shall provide weekly curbside Cart service for collection of Organic Waste to all Residential Accounts on the same day as Solid Waste collection. As part of bundled service required under this Agreement, all Residential Accounts shall subscribe to and Contractor shall provide a minimum of weekly one (1) 96-gallon Organic Waste Cart service. Accounts may obtain additional Organic Waste Carts from Contractor, which will be charged at the applicable rate set forth in Exhibit 1. No discounts may be given for using a Cart smaller than 96-gallons.

## 6.2 Residential Service Requirements; Other Residential Services.

6.2.1 Temporary Bin and Roll-off Service. Contractor may provide temporary Bin service or Roll-Off service to Residential Accounts that request these services at the applicable rates set forth in Exhibit 1.

6.2.2 Extra Services. Extra services, including without limitation Overage, extra pickups, relocation of Containers, or trip charges where the Account refuses service, will be provided and shall be charged at the applicable rate set forth in Exhibit 1. In the event that an Account requests a service for which there is no rate provided in Exhibit 1, Contractor and the Account may enter into a separate contract for the provision of such services.

6.2.3 Collection Location. All Carts will be serviced at curbside along a public street. Alley service will not be provided. Accounts will be responsible for placing the carts at the proper location for collection.

6.2.4 Record of Non-Collection. When a Container is not collected by Contractor, Contractor shall notify the Customer, which may be mail or electronic means including e-mail or text message indicating the reason for non-collection. Reasons for non-collection may include the presence of observable Excluded Waste or Overage resulting in a Container exceeding applicable weight restrictions. Contractor shall maintain a log containing the name and address of each Account that is notified of non-collection. The log shall be maintained for inspection by the City, upon request.

6.2.5 Missed Pick-ups. In the event that Contractor fails to provide collection service to a Residential Account, where the Containers had been timely and properly set out for collection, Contractor shall complete the collection from the Residential Account no later than the next business day following notification of the missed pickup. A fee for such missed pick-up shall not be charged by Contractor.

6.2.6 Holiday Tree Collection Program. Contractor shall collect holiday trees from Residential Premises which are cut up and placed into the Organic Waste Cart. In addition, Contractor shall accept holiday trees from residents of the City at Contractor's Transfer Station for two (2) weeks following December 25 of each year, at no charge to the resident. In addition, Contractor shall provide one Roll-Off at a location agreed upon by City and Contractor to permit residents of the City to dispose of holiday trees for two (2) weeks following December 25 of each year, at no charge to the City or any residents. Contractor shall service such Roll-Off as necessary. Contractor is not required to collect or accept artificial Christmas trees, trees containing decorations, ornaments, tinsel, debris, support stands or other foreign or non-organic matter.

6.2.7 Sharps Mail-In Program. Within sixty (60) days from the Effective Date of this Agreement, Contractor shall implement a mail-in sharps programs, available to all dwelling units, at no charge to the account. Contractor shall maintain the program throughout the Term of the Agreement.

6.2.8 Universal Waste. Within sixty (60) days from the Effective Date of this Agreement, Contractor will implement its Lamptacker program, which will provide a mail-in service for used batteries, fluorescent tubes, compact fluorescent bulbs to assist the City and the community to properly dispose of Universal Waste. The annual cost to Contractor to provide this program shall not exceed five hundred dollars (\$500.00), as adjusted annually in accordance with the annual rate adjustment in accordance with Section 19.5.1.

6.2.9 Bulky Items. On or before each July 1 during the term of this Agreement, each Residential Account shall receive two vouchers for disposal of Bulky Items, each of which will entitle the holder to a Bulky Items drop-off at Contractor's Transfer Station at no charge to the Account. Additional Bulky Items drop-offs will be accepted, and will be charged at the applicable rate(s) set forth in Exhibit 1. The City's Public Works Department may also dispose of Bulky Items at Contractor's Transfer Station at no charge to the City.

6.2.10 Disabled Service. Upon authorization from the City, Contractor shall provide back-yard service, at no additional cost, for disabled or physically challenged Customers who provide a doctor's statement to the City certifying their disabled status and expected duration, along with a signed affidavit in a form provided by Contractor stating that no able-bodied person is available on the premises to bring Carts to the curbside.

## 7. OTHER SERVICES.

### 7.1 SB 1383 Programs

7.1.1 Procurement of Recovered Organic Waste Products. As of the Effective Date, City is determining its "Recovered Organic Waste Product Procurement Target" (as defined in 14 CCR Section 18982(a)(59)) in accordance with 14 CCR Section 18993.1. Upon determining its Recovered Organic Waste Product Procurement Target, City shall notify Contractor and the Parties shall meet and confer to discuss the type(s) and quantity of "Recovered Organic Waste Products" (as defined in 14 CCR Section 18982(a)(60)) that Contractor may procure for City and Contractor shall be entitled to a rate adjustment in accordance with Section 19.5.2 of the Agreement to compensate Contractor for its costs in procuring the Recovered Organic Waste Products. Contractor and City shall meet and confer in good faith to discuss and develop a procurement agreement to assist the City in complying with its procurement obligations under 14 CCR §18993.1 at no cost to Contractor or City.

7.1.2 Compliance Reviews. Subject to Applicable Law governing data security and privacy rights, Contractor shall, upon City's request, assist City with its annual compliance review of Commercial and Industrial Accounts as set forth in 14 CCR Section 18995.1(a)(1)(A). Any such compliance review shall mean a "desk" review of records Contractor is required to maintain under this Agreement to determine the Account's compliance with 14 CCR Section 18984.9(a). Notwithstanding the foregoing, Contractor shall not have any obligation to inspect the premises of any Account or pursue any enforcement action related to, or arising out of, 14 CCR Sections 18995.1, 18995.3, and 18995.4, which remain the sole obligations of City pursuant to applicable law. Contractor is not required to perform any such "desk" review with respect to

Food Recovery Organizations, Food Recovery Services and other similar entities regulated by 14 CCR Division 7, Chapter 12.

7.1.3 SB 1383 Waiver Support. Upon request by the City, Contractor shall assist the City to verify or re-verify Customer requests for SB 1383 de minimis or space constraint waivers by performing a compliance review in accordance with Section 7.1.2.

7.1.4 Edible Food Recovery Support. Contractor shall assist the City with developing a list of food recovery organizations and food recovery services (as defined in 14 CCR Section 18982(a)(24) and (26), respectively) operating within the City by identifying tier 1 and tier 2 commercial edible food generators (as defined in 14 CCR Section 18982(a)(73) and (74), respectively) in the City. Contractor shall provide such list of tier 1 and tier 2 commercial edible food generators to City upon request.

7.1.5 Contamination Monitoring. Contractor shall meet Container contamination minimization requirements in accordance with this Section 7.1.5 and 14 CCR Section 18984.5. Contractor agrees to utilize the following procedures to assist in minimizing Container contamination. Nothing in this Section shall require Contractor to collect a Container containing an observable amount of Excluded Waste that Contractor identifies while performing the services contemplated under this Agreement under any circumstances. Further, Contractor shall not be required to collect or process any Organic Waste or Recyclable Materials that are not accepted for processing by any facility to which Contractor delivers such materials for processing under this Agreement.

7.1.5.1 Fee and Noticing Procedures for Residential Accounts. Contractor may use electronic, digital, or visual image technology to visualize the contents of Recyclable Materials Containers, Organic Waste Containers, and Solid Waste Containers to identify the presence of Prohibited Container Contaminants. Upon identifying Prohibited Container Contaminants in a Container, Contractor shall follow these contamination noticing procedures for Residential Accounts:

- First and Second Occurrence. For the first and second occurrence within a rolling twelve (12) month period of Contamination, Contractor may collect the contaminated Container and shall deliver to the Account a written contamination violation notice that contains instructions on the proper procedures for sorting of Recyclable Materials, Organic Waste, and Solid Waste and notify the Account that for third and subsequent incidents of contamination the Account may be charged a contamination fee for the contaminated Container and Contractor may increase the Account's Container size or collection frequency. Contractor shall provide such written notice to the Account by U.S. mail or e-mail, and send a copy to City.
- Third or Subsequent Occurrence. For the third or subsequent occurrence within a rolling twelve (12) month period of Contamination, Contractor may collect the Contaminated Container and shall charge the Account a Contamination fee in the amount set forth in Exhibit 1. Contractor shall provide a written contamination

violation notice to the Account by U.S. mail or e-mail notifying the Account of such contamination. Contractor may also increase the Container size or collection frequency and charge the Account the appropriate rate(s) set forth on Exhibit 1. City shall consult with Contractor and City may pursue appropriate legal action against the offending Account to prevent or address the contamination, and such separate legal action shall be in addition to any contamination fee or other remedy authorized in this Agreement against the Account.

7.1.5.2 Fee and Noticing Procedures for Commercial and Industrial Accounts. Contractor may use electronic, digital, or visual image technology to visualize the contents of Recyclable Materials Containers, Organic Waste Containers, and Solid Waste Containers to identify the presence of Prohibited Container Contaminants. For each occurrence of Contamination, Contractor shall charge a Contamination fee in an amount set forth in Exhibit 1 and shall deliver to the Account a written contamination violation notice that contains instructions on the proper procedures for sorting of Recyclable Materials, Organic Waste, and Solid Waste. Contractor shall deliver such notice to the Account by U.S. mail or e-mail, and send a copy to City. For repeated instances of Contamination, Contractor may also increase the Container size or collection frequency and charge the Account the appropriate rate(s) set forth on Exhibit 1. City shall consult with Contractor and City may pursue appropriate legal action against the offending Account to prevent or address the contamination, and such separate legal action shall be in addition to any contamination fee or other remedy authorized in this Agreement against the Account.

7.1.6 Route Reviews. Contractor shall conduct a sufficient number of route reviews to adequately determine overall compliance of all Accounts with 14 CCR Section 18984.5(b). The number of route reviews and timeframe of such reviews shall be decided by Contractor, provided that the route reviews comply with 14 CCR Section 18984.5(b). The City has approved Contractor's use of its Smart Truck<sup>SM</sup> system, including contamination monitoring via digital/video monitoring and the use of the internet to conduct such route reviews.

7.2 Annual Clean-Ups. Each year during the term of the Agreement, Contractor shall provide two (2) community clean-up events for residents of the City at a time and place as the Parties may reasonably agree. Each event shall be for a period of four (4) hours and Contractor shall provide Roll-Offs and service such Roll-Offs at no cost to the City. City shall provide staff and/or volunteers to manage entry and exit of residents from the events. Residents may bring a single load of up to two (2) cubic yards total of Solid Waste or E-Waste per event using their personal vehicle, and Contractor shall not charge a fee to any resident for such waste disposal. Residents shall provide proof of residency and any other documents, information, or identification reasonably requested by Contractor as proof of current residency in the City and provide such documentation to City staff prior to entry to an event.

7.3 City Events. Contractor shall provide collection service and Containers in sufficient numbers to serve up to six (6) City-sponsored events each year, at no cost to the City. Contractor shall provide Solid Waste, Recyclable Material, and Organic Waste Containers, as

well as portable toilet service, for use at such events. Contractor shall provide the level and frequency of service for such events as detailed in Exhibit 3

7.4 City Approved Events. Contractor shall provide Solid Waste, Recyclable Material, and Organic Waste collection service and portable toilet service for no more than four (4) City-approved events each year as agreed upon by the Parties at a 50% discounted rate(s) from the applicable rate set forth in Exhibit 1.

7.5 Abandoned Waste. Upon request of the City, for up to eight (8) hours per month at no cost to the City, Contractor shall assist City with the retrieval of abandoned Bulky Items (except any appliances including freone), Green Waste, or other non-hazardous waste material as reasonably determined by Contractor. Abandoned vehicles, large items that do not qualify as Bulky Items, Excluded Waste, and other wastes requiring special handling by Contractor are exempt from the retrieval requirements in this Section. Contractor may provide additional abandoned waste services in accordance with this Section in excess of eight (8) hours per calendar year for a fee to be determined in writing by agreement of the parties.

## 8. CITY FACILITIES.

8.1 Contractor shall provide Discarded Material collection service to all City facilities at the level and frequency detailed in Exhibit 3 at no cost to the City. City personnel may deliver Green Waste collected through City operations at Contractor's Transfer Station at no cost to City.

8.2 Contractor shall provide up to two (2) Roll-Offs at a location determined by the City to collect Discarded Materials collected and disposed of by the City's Public Works Department. Contractor shall service these Roll-Offs as needed.

## 9. CUSTOMER SERVICE.

9.1 Office Hours. Contractor shall maintain a customer service office with assigned personnel accessible by a local phone number to receive Customer requests directed to City. Contractor's office hours shall be from 8:00 a.m. to 5:00 p.m. on Monday- Friday, and 8:00 a.m. to 12:00 p.m. on Saturdays.

9.2 Emergency Telephone Number. Contractor shall maintain an emergency telephone number, for use by City personnel only, outside office hours identified in Section 9.1. Contractor shall have a representative, or an answering or call-forwarding service to contact such representative, available at the emergency telephone number during all hours other than office hours.

9.3 Service Complaints. All Customer complaints shall be directed or referred to Contractor. During office hours, Contractor shall maintain a complaint service and a telephone answering system. Contractor shall record all complaints, including date, time, complainant's name and address if the complainant is willing to give this information, and date and manner of

resolution of complaint. Contractor shall maintain this information in a computerized daily service complaint log. Any such calls received via Contractor's answering service shall be recorded in the service complaint log the following working day. This service complaint log shall be available for review by the City during Contractor's office hours.

#### 10. EDUCATION AND PUBLIC AWARENESS.

10.1 General. Contractor acknowledges that education and public awareness are essential elements of efforts to achieve requirements under Applicable Law. Accordingly, Contractor shall implement the public education program detailed in Exhibit 4 attached to this Agreement to expand public and Customer awareness concerning the necessity for methods of reducing, reusing, and recycling Discarded Materials.

10.2 Waste Generation/Characterization Studies. Contractor acknowledges that the City may be required periodically to perform waste generation and disposal characterization studies to comply with AB 939 or other waste diversion requirements. Contractor agrees to participate in, and to cooperate with the City and its agents in the preparation of these studies by providing records and data Contractor is required to maintain in accordance with this Agreement at no additional cost to the City.

#### 11. OPERATIONS.

11.1 Collections. Collection of Solid Waste, Organic Waste and Recyclable Material will occur on Monday through Saturday. Residential collection shall not begin prior to 6:00 am. All Containers used for Residential service shall be collected on the same collection service day. Where the normal collection day falls on a holiday, collection service shall be provided on the next business day following the holiday, ending with Saturday of that week. Holidays are New Years Day, Thanksgiving Day, and Christmas Day.

##### 11.2 Vehicles.

11.2.1 General. Contractor must provide collection vehicles sufficient in number and capacity to efficiently perform the services required by this Agreement. Contractor must have available on collection days at least one (1) auxiliary vehicle to respond to any and all complaints and emergencies. All vehicles used to provide service must be registered in the State of California and comply with Applicable Law.

11.2.2 Vehicle Identification. Contractor's name, local telephone number, and a unique vehicle identification number selected by Contractor and approved by the City must be prominently displayed on all vehicles, in letters and numbers no less than three (3) inches high.

11.2.3 Vehicle Maintenance. Contractor must inspect each vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such a condition as to be unsafe or excessively noisy, must be removed from service until repaired and operating properly. Contractor must keep accurate records of all vehicle

maintenance, recorded according to date and mileage (or hours of operation), and must make those records available to the City upon request.

#### 11.2.4 Vehicle Operation.

11.2.4.1 Vehicles must be operated in compliance with the California Vehicle Code, and all applicable local ordinances. Contractor may not intentionally load vehicles in excess of limitations on vehicles imposed by state or local weight restrictions.

11.2.4.2 Discarded Materials in vehicles shall be covered at all times except when it is being loaded or unloaded or when a vehicle is moving along the collection route.

11.2.5 Minimization of Spills. Contractor must use due care to prevent Discarded Materials or fluids from leaking or being spilled or scattered during the collection or transportation process. If any Discarded Materials or fluids leak, or are spilled during collection or transportation, Contractor must promptly clean up those materials to the reasonable satisfaction of the City. Each collection vehicle must carry a broom and shovel at all times for this purpose.

#### 11.3 Containers.

11.3.1 Container Ownership. All Containers provided by Contractor under this Agreement shall remain the property of Contractor at all times.

11.3.2 Container Color and Labeling. All new Containers placed in service under this Agreement for Customers shall comply with color and labeling requirements specified in 14 CCR Section 18984.7 and 14 CCR Section 18984.8 respectively. Nothing in this Section shall require Contractor to replace any functional Containers, including Containers purchased and in use in the City prior to the Effective Date, that do not comply with the color requirements of this Section prior to the end of the useful life of those Containers, or prior to January 1, 2036, whichever comes first.

11.3.3 Cart Maintenance and Replacement Responsibilities. Contractor is responsible for Cart repair and maintenance, graffiti removal (within three (3) business days) and replacing lost, stolen or damaged Carts within seven (7) business days from receipt of a request at no additional charge to the City or the Account. Contractor may charge the Account a Special Fee for repairing or replacing a Cart if the damage is due to loss, negligence or abuse by the Account. In no event may this charge be greater than Contractor's actual cost for replacement parts or a new Cart, and delivery. Each Customer is entitled to one replacement of the Solid Waste, Recyclable Materials, or Organic Waste Carts during the term of this Agreement, without charge, upon request.

11.3.4 Bin Maintenance and Replacement Responsibilities. Contractor must maintain its Bins in a clean and sound condition. Repairs or graffiti removal requested by an

Account must be completed within five (5) business days of Contractor's receipt of the request at no additional charge to City or the Account. Contractor may charge the Account a Special Fee for repairing or replacing a Bin if the damage is due to loss, negligence or abuse by the Account, or for cleaning a Bin at the Customer's request.

11.3.5 Roll-off Boxes Specifications. Contractor will provide clean roll-off boxes, free from graffiti and equipped with reflectors. Contractor must properly cover all open roll-off boxes during transport to the disposal site.

#### 11.4 Personnel.

11.4.1 Contractor must furnish such qualified drivers, mechanical, supervisory, clerical, management and other personnel as may be necessary to provide the services required by this Agreement in a satisfactory, safe, economical, and efficient manner. All drivers must be trained and qualified in the operation of vehicles they operate and must possess a valid license of the appropriate class issued by the California Department of Motor Vehicles.

11.4.2 Contractor must establish and enforce an educational program to train Contractor's employees in the identification of Excluded Waste. Contractor's employees must not knowingly place any Excluded Waste in the collection vehicles, nor knowingly dispose of any Excluded Waste at a processing facility or disposal site.

11.4.3 Contractor must train its employees in customer courtesy, prohibit the use of loud or profane language, and instruct collection crews to perform all services and work reasonably quietly. Contractor must use its best efforts to require that all employees present a neat appearance and conduct themselves in a courteous manner.

11.4.4 Contractor may not discriminate in the provision of service or the employment of persons engaged in the performance of this Agreement on account of race, color, religion, sex, age, physical handicap, medical condition, or other basis in violation of any applicable federal or state law.

11.5 Transportation of Discarded Material. Contractor must transport all Discarded Material collected to a permitted transfer station, materials recovery facility, processing facility, or disposal site, as applicable. Contractor shall be responsible for payment of all disposal and processing fees or charges. Contractor will use reasonable efforts to divert Recyclable Material and Organic Waste from landfill disposal. Contractor shall maintain complete, accurate and up-to-date records of the quantities of Discarded Material transported to the transfer station, materials recovery facility, processing facility, or disposal site and must cooperate with the City in any audits or investigations of those quantities by providing records or data Contractor is required to maintain in accordance with this Agreement at no additional cost to the City.

#### 12. REPORTING.

12.1 General. Contractor shall report in writing, to the City each month the total tons of Solid Waste disposed of, total tons of each type of Recyclable Material collected, total tons of Organic Waste collected, and total tons of Construction and Demolition Waste collected and diverted. The monthly report shall be prepared to the best of Contractor's ability, in a format prescribed by the City. City is entitled to review Contractor's reporting records during Contractor's office hours upon reasonable advance notice to Contractor to the extent required to verify performance of Contractor's obligations under this Agreement, including the proper payment of franchise fees.

12.2 SB 1383 Reporting. Within ninety (90) days after the end of each calendar year, Contractor shall provide an annual written report to the City covering the most recently completed calendar year. Such report shall contain the following information:

12.2.1 Contamination Monitoring Report. Contractor's report shall include the following information regarding route reviews conducted by Contractor under this Agreement:

12.2.1.1 Documentation of route reviews conducted pursuant to 14 CCR Section 18984.5(b) and 14 CCR Section 18995.1, including a description of the process for determining the level of contamination and the number of route reviews conducted; and,

12.2.1.2 Documentation of "desk" compliance reviews conducted by Contractor under Section 7.1.2, in accordance with 14 CCR Section 18995.1, and the number of contamination notices, contamination fees issued to Customers, or targeted education materials issued to Customers for Prohibited Container Contaminants, as applicable; and,

12.2.1.3 Copies of all documentation related to route reviews, "desk" compliance reviews, and notices issued to Customers for Contamination; and

12.2.1.4 Documentation of the number of containers where the contents were disposed due to observation of Prohibited Container Contaminants.

12.2.2 Compliance Report. Contractor's report under this Section shall include:

12.2.2.1 The total number of Customers receiving each type of Organic Waste collection services; and,

12.2.2.2 The number of Customers that received information and the type of education and outreach used; and,

12.2.2.3 The number of complaints that were received and reviewed by Contractor under Section 9.3; and,

12.2.2.4 Copies of information provided to Customers related to the SB 1383 regulations, including the date that the information was distributed to Customers and the number of accounts receiving the information, if applicable, in accordance with 14 CCR Section 18985.3.

12.3 Implementation Record. Contractor shall provide information and documentation needed for the City's implementation record related to its performance of this Agreement with respect to waivers and exemptions as required under 14 CCR Section 18984.14 and procurement of recovered organic waste as required under 14 CC Section 18993.2, as applicable.

12.4 Confidential and Proprietary Information. Contractor acknowledges that City is legally obligated to comply with the California Public Records Act ("CPRA"). City acknowledges that Contractor may consider certain records, reports, or information contained therein, which Contractor is required to provide to City under this Agreement, to be of a proprietary or confidential nature or may include intellectual property of Contractor, including, without limitation, any confidential information, copyrighted material, proprietary information, trade secrets or trademark/service mark, as well as any and all such documents or reports containing such information (together, "Contractor's Intellectual Property"). In such instances, Contractor will inform City in writing of which records may contain Contractor's Intellectual Property. At such time as City receives a request for records under the CPRA or Federal Freedom of Information Act or a subpoena or other court order requesting disclosure of the records, City shall notify Contractor of the request, subpoena or order and of City's obligation and intent to provide a response within ten (10) days. Contractor shall within five (5) days either: (i) consent in writing to the disclosure of the records; or (ii) seek and obtain, at Contractor's sole cost and expense, the order of a court of competent jurisdiction staying or enjoining the disclosure of the records. Nothing in this Agreement shall require Contractor to provide any of Contractor's Intellectual Property to any third party under any circumstances. The City agrees to hold all documents and financial statements information delivered or reviewed by City pursuant to this Agreement as confidential and shall not disclose the same unless and to the extent disclosure is required pursuant to Applicable Law, including the CPRA, or court order.

13. INSURANCE. Contractor shall obtain and keep in force during the term of this Agreement, public liability and property damage insurance issued by a company to be approved by the City in an amount of not less than \$5,000,000.00 per occurrence for bodily injury and property damage. Said policy or policies shall: (1) provide that the City, its elected and appointed officials, officers, agents and employees are additional insureds with respect to the subject matter and performance of this Agreement, and (2) provide that the policy or policies shall not be cancelled unless and until after thirty (30) days written notice is given to the City (10-days notice for cancellation due to failure to pay premium). Sufficient Workers' Compensation Insurance, as required by State Law, and Employer's Liability Insurance in an amount of not less than \$1,000,000.00, shall be maintained by Contractor during the term of this Agreement. Contractor shall cause a certificate of insurance to be filed with the City evidencing such coverages.

14. INDEMNIFICATION.

14.1 General Liability. Contractor shall indemnify, defend, and save harmless the City, its elected and appointed officials, its officers, agents and employees (the "Indemnitees"), for

and from any and all loss, liability, claim, demand, action or suit, of any and every kind and description, arising or resulting from or in any way connected with any operations of Contractor in performing the obligations required by this Agreement, or arising or resulting from the failure of Contractor to comply in all respects with the provisions and requirements of this Agreement, or arising or resulting from the failure of Contractor to comply with Applicable Law, except to the extent of the negligence, willful misconduct, or violation of Applicable Law by the Indemnitees. Subject to the scope of this indemnification and upon demand of the City, Contractor shall appear in and defend the City and its officials, officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the above. The obligations of Contractor to the Indemnitees which arise under this Section shall not be restricted to any insurance proceeds, and shall survive the expiration or termination of this Agreement. With respect to any indemnity rights under this Agreement, City shall provide Contractor with reasonable notice of any claim, demand, action or suit, of any and every kind and description for which City seeks indemnification under this Agreement. City will provide Contractor with reasonable cooperation in connection with the defense of any claims and may participate in the defense at its own expense.

#### 14.2 CERCLA Liability.

14.2.1 Contractor shall indemnify, defend and hold harmless the Indemnitees for all claims, actual damages, natural resources damages, injuries, costs, response, remediation and removal costs, losses, liabilities, cause of action, interest and expenses (including but not limited to reasonable attorneys' and experts' fees) of any kind whatsoever paid, incurred, or suffered by or against the Indemnitees arising from or attributable to any repair, clean up, removal action or response action undertaken pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (CERCLA), the California Health and Safety Code ("H&S Code") or other similar federal, state or local law or regulations, with respect to Contractor's collection, handling, or transportation of Solid Waste collected by Contractor from accounts pursuant to this Agreement. The indemnity contained in this Section is intended to operate as an agreement of Contractor pursuant to Section 107(e) of CERCLA and the H&S Code Section 25364 to defend, protect, hold harmless and indemnify the Indemnitees. Subject to the scope of this indemnification and upon demand of any of the Indemnitees, Contractor shall appear in and defend the Indemnitees in any claims or actions, whether judicial, administrative or otherwise arising out of the above. The obligations of Contractor to the Indemnitees which arise under this Section shall not be restricted to any insurance proceeds, and shall survive the expiration or termination of this Agreement.

14.2.2 The foregoing indemnity and defense obligations shall apply irrespective of the negligence or willful misconduct of Contractor or any affiliate of Contractor. However, the foregoing indemnity shall not apply to the extent any claims arise or result from the negligence, willful misconduct, or violation of Applicable Law by any Indemnitee.

14.3 AB 939 Liability. Subject to the requirements of Public Resources Code §40059.1, Contractor shall indemnify, protect, defend and hold the City harmless against all fines and penalties imposed by administrative order of CalRecycle against the City for failure to meet waste diversion requirements under AB939. The obligation of Contractor to indemnify, protect and defend the City shall include paying all reasonable legal fees and costs incurred by legal counsel designated by the City to represent the City in connection with any such administrative proceedings or litigation by CalRecycle.

14.4 Road Surface Damage. Contractor shall be responsible for any extraordinary damage to City's driving surfaces, whether or not paved, resulting from and directly attributable to the illegally excessive weight of vehicles providing Discarded Material collection or the improper placement and removal of Containers on public or private property, but Contractor shall not be responsible for normal wear and tear.

## 15. BREACH AND TERMINATION.

15.1 In the event Contractor is in material breach of this Agreement under this Section, City shall provide to Contractor written notice of such material breach and Contractor shall have thirty (30) days after receipt of such written notice to cure any such material breach. In the event that such material breach cannot reasonably be cured within thirty (30) days, Contractor shall not be in breach of this Agreement provided that Contractor implements corrective actions within such thirty (30) day period and thereafter diligently pursues their completion. In the event that Contractor fails to cure, City may terminate this Agreement and Contractor shall have no further rights under or with respect to this Agreement. Such material breaches include:

15.1.1 submitting false or fraudulent information to the City at the time of franchise award or during the term of this Agreement; or

15.1.2 filing for bankruptcy, making an assignment of this Agreement for the benefit of any creditor(s), or the appointment of a receiver or other officer placed in charge of Contractor's office or equipment and Contractor's failure to cause the removal of such appointment within the 30-day cure period after City's written notice to cure, and such material breach is not cured within thirty (30) days after notice in writing by the City to do so.

15.2 Upon written notice from the City terminating this Agreement, Contractor shall have the right, upon written request made within thirty (30) days of such termination notice, to appeal such termination order to the City Council, to be heard at any regular or special Council meeting held within thirty (30) days after City's receipt of Contractor's appeal. The decision of the City Council shall be considered a final administrative order. Contractor may appeal any decision, order or action by the City Council under this Section by filing a legal action with a Court having jurisdictional authority.

16. EXCUSE FROM PERFORMANCE; FORCE MAJEURE.

16.1 If either party is prevented from or delayed in performing its duties under this Agreement by circumstances beyond its control, whether or not foreseeable, including, without limitation, acts of terrorism, acts of God, landslides, lightning, forest fires, storms, floods, severe weather, freezing, earthquakes, other natural disasters, the threat of such natural disasters, pandemics, epidemics, quarantines, civil disturbances, acts of the public enemy, wars, blockades, public riots, strikes, lockouts, or other labor disturbances, acts of government or governmental restraint, or other causes, whether of the kind enumerated or otherwise, that are not reasonably within the control of the affected party, then the affected party shall be excused from performance hereunder during the period of such disability.

16.2 The party claiming excuse from performance shall promptly (within 2 business days) notify the other party in writing when it learns of any circumstance beyond its control preventing performance, and promptly (within 2 business days) provide written notice when such circumstance has terminated and performance will resume.

16.3 The interruption or discontinuance of services by a party caused by circumstances outside of its control shall not constitute a default under this Agreement.

17. FAITHFUL PERFORMANCE BOND. Upon execution of this Agreement Contractor shall furnish to City and shall file with the City a surety bond executed by Contractor as principal and by a corporate surety as surety, in the sum of Two Hundred Thousand Dollars (\$200,000), conditioned upon the faithful performance of this Agreement by Contractor.

18. ASSIGNMENT. Contractor's rights and obligations under this Agreement may not be assigned without the prior written approval of the City, except that the City's consent to an assignment to an affiliate of Contractor shall not be required.

19. CUSTOMER BILLING. AND PAYMENT; SERVICE RATES.

19.1 Invoicing. Contractor shall invoice Residential Accounts, Industrial Accounts and Commercial Accounts on a monthly basis in advance for regularly-scheduled service provided under this Agreement, and monthly in arrears for any Special Fees. The initial rates for Residential Service, Industrial Service and Commercial Service are set forth in Exhibit 1. Contractor shall invoice Accounts for temporary services provided, in arrears upon the completion of service.

19.2 Senior Discount. Upon request from the City, Contractor shall grant qualifying senior citizen Customers (age 65 or older) receiving Cart service at Residential Premises a discount from the per month service rates otherwise applicable. The monthly senior discount shall be \$3.00, provided no other Customers or Accounts are charged a higher monthly service fee to account for any lost revenue from the senior discounts. The City and Contractor will cooperate to establish reasonable standards for qualification for this discount.

19.3 Account Delinquency. Contractor shall provide an Account with a notice of delinquency in the event of non-payment after forty-five (45) days from the date of a billing for Residential Accounts receiving Cart service, and after thirty (30) days from the date of a billing for all other Accounts. If payment is not received within thirty (30) days from the date of the notice of delinquency, Contractor may terminate collection service at the delinquent Account until payment in full has been received, including any accrued interest, and reimbursement of any NSF bank charges or other costs of collection. Contractor may charge interest on any delinquent account at the maximum annual rate allowed by law for such time as the bill remains unpaid after its due date, and a late fee of \$3.00 per delinquent billing per Account, which shall be charged as a Special Fee. Contractor will provide the City a list of delinquent accounts upon request.

19.4 Service and Rate Disputes. Any disputes between Contractor and an Account regarding the provision of services, including without limitation the size and location of Containers, frequency of collections, or the amount of any service fees or Special Fees charged by Contractor, shall be referred to the City Manager for determination. Thereafter, either Contractor or the Account may appeal the City Manager's determination to the City Council, whose decision shall be final.

#### 19.5 Rate Adjustments.

19.5.1 Annual Adjustment. Except for an Extraordinary Adjustment requested by Contractor and approved by the City Council in accordance with Section 19.5.2, the rates Contractor charges Accounts may not be adjusted under this Section 19.5.1 during the period beginning on the Effective Date through June 30, 2028, provided that any approval of a rate adjustment may occur during said period but the adjusted rate(s) shall not be effective during said period. Beginning July 1, 2028, and on each July 1 thereafter, the rates shall be adjusted in accordance with the rate adjustment methodology set forth below. Contractor shall submit to the City not less than sixty (60) days prior to the effective date of the proposed adjustment, information in support of the adjustment. The City Manager, or their designee, shall review the information submitted by Contractor for completeness and accuracy, and the parties agree to negotiate in good faith regarding any dispute. Notwithstanding the above, no annual rate adjustment pursuant to this Section 19.5.1 shall exceed four percent (4%) above the rate for the previous year for any rate category or fee except for the rate adjustment on July 1, 2028, which shall not exceed six percent (6%) from the previous year. To the extent that a rate adjustment otherwise allowable is not granted due to this limitation, any excess above four percent (4%) (or in the case of the July 1, 2028 adjustment, any excess above six percent (6%)) shall be rolled over and applied to subsequent annual rate adjustments (provided that no subsequent annual rate adjustment may exceed four percent (4%) or six percent (6%), as applicable). A sample rate adjustment is provided in Exhibit 5.

19.5.1.1 Service Component. The Service Component comprises seventy percent (70%) of the rate. The Service Component shall be adjusted by the percentage increase in Consumer Price Index Garbage and Trash Collection (U.S. City Average; Series ID:

CUUR0000SEHG02, CUUS0000SEHG02; Base Period – December 1983=100) as published by the United States Department of Labor, Bureau of Labor Statistics, not seasonally adjusted, for the March to March period immediately preceding the effective date of rate adjustment.

19.5.1.2 Disposal Component. The Disposal Component comprises thirty percent (30%) of the rate. The Disposal Component shall be adjusted annually based on the percentage increase or decrease in the per ton tipping fee actually charged at the transfer stations, disposal facilities, material recovery facilities, or Organic Waste processing facilities used by Contractor, proportionately to their usage, for the March to March period immediately preceding the effective date of rate adjustment. The per ton tipping fee used for this calculation shall be assumed to include all federal, state, and local taxes, fees, and assessments levied on or applicable to the processing, transportation, or disposal of Discarded Materials.

19.5.2 Extraordinary Adjustment. In addition to the annual rate adjustment provided in Section 19.5.1 and without regard to the limitation on annual adjustments contemplated therein, Contractor may request an adjustment to the rates at other times to provide for the reimbursement of material increased costs of providing service under this Agreement. Material increased costs may include, but are not limited to, changes in service mandated by the City, changes to the City Municipal Code materially affecting Contractor's operations, changes in the cost of disposal or processing of Discarded Materials changes in state or local government fees and charges, a Change in Law, material changes in fuel prices, or other material increases in operational costs outside of Contractor's reasonable control. Material increased costs warranting an extraordinary adjustment under this Section shall not include circumstances within the reasonable control of Contractor. For each request, Contractor must prepare a schedule documenting the material increased costs. The request shall be prepared in a form acceptable to the City with support for all assumptions made by Contractor in preparing the estimate. The City Council shall review Contractor's request and, in its reasonable judgment, make the final determination on the appropriate amount of the adjustment within sixty (60) days of receipt of Contractor's request. Except for a requested extraordinary adjustment based on a City directed change in service as described in Section 2.5.1 or a Change in Law as described in Section 2.5.2, which may not be denied provided Contractor provides sufficient documentation, any request for an extraordinary adjustment is within the sole and absolute discretion of the City Council to approve or deny, in whole or in part.

## 20. OTHER AGREEMENTS OF THE PARTIES.

20.1 Relationship of Parties. The parties intend that Contractor shall perform the services required by this Agreement as an independent contractor engaged by the City and not as an officer or employee of the City, nor as a partner or joint venturer with the City. No employee or agent of Contractor shall be deemed to be an employee or agent of the City. Except as otherwise expressly provided herein, Contractor shall have exclusive control over the manner and means of conducting the services performed under this Agreement, and over all persons performing those services. Contractor is solely responsible for the acts and omissions

of its officers, employees, subsidiaries, subcontractors, affiliates and agents. Neither Contractor nor its officers, employees, subsidiaries, subcontractors, affiliates and agents will obtain any rights to retirement benefits, workers’ compensation benefits, or any other benefits that accrue to City employees by virtue of their employment with the City.

20.2 Compliance with Law. In providing the services required under this Agreement, Contractor must, at its sole cost, comply with all Applicable Law. In connection with this Agreement, the City must, at its sole cost, comply with all Applicable Law.

20.3 Governing Law. This Agreement is governed by, and shall be construed and enforced in accordance with, the laws of the State of California without regard to its conflict of law principles.

20.4 Parties in Interest. Nothing in this Agreement, whether express or implied, is intended to confer any rights on any persons other than the Parties to this Agreement and their representatives, successors, and permitted assigns.

20.5 Waiver. The waiver by either Party of any breach or violation of any provisions of this Agreement shall not be deemed to be a waiver of any breach or violation of any other provision nor of any subsequent breach or violation of the same or any other provision. The subsequent acceptance by either Party of any moneys that become due hereunder shall not be deemed to be a waiver of any pre-existing or concurrent breach or violation by the other Party of any provision of this Agreement.

20.6 Notice. All notices required or provided for in this Agreement shall be provided to the Parties at the following addresses, by personal delivery or deposit in the U.S. Mail, postage prepaid, registered or certified mail, addressed as specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received five (5) days after deposit. A Party may change the address to which notice is given by giving notice as provided herein.:

City:  
  
City Manager  
City of Fowler  
128 South Fifth Street  
Fowler, CA 93625

Contractor:  
  
USA Waste of California, Inc.  
9081 Tujunga Avenue  
Sun Valley, California 91352

With a copy to:

USA Waste of California, Inc.  
Attn: Asst. General Counsel  
9081 Tujunga Avenue  
Sun Valley, California 91352  
akhajeto@wm.com

20.7 Entire Agreement. This Agreement, including the exhibits attached hereto and incorporated herein by this reference, constitutes the entire agreement between the Parties with respect to the matters covered. No verbal agreement or understanding with any officer, agent, or employee of the City, either before, during, or after the execution of this Agreement, will affect or modify any of the rights or obligations herein contained.

20.8 Further Assurances; Parties to Act in a Reasonable Manner. Each Party agrees to execute and deliver any instruments and to perform any acts as may be necessary or reasonably requested by the other in order to give full effect to this Agreement. The Parties agree to act reasonably in exercising any action, discretion, judgment, approval or extension of time that may be required to affect the purpose and intent of this Agreement.

20.9 Section Headings. The section headings in this Agreement are for the convenience of reference only and are not intended to be used in construing this Agreement, nor are they intended to alter or affect any of its provisions.

20.10 References to Laws. All references in this Agreement to laws shall be understood to include existing laws as they may be subsequently amended or recodified, unless otherwise specifically provided.

20.11 Interpretation. This Agreement, including the attached exhibits, shall be interpreted and construed reasonably, and neither for nor against either Party, regardless of the degree to which either Party participated in the drafting.

20.12 Amendments. This Agreement may not be amended in any respect except by a writing signed by the Parties.

20.13 Severability. If any provision of this Agreement is for any reason determined by a court of competent jurisdiction to be invalid or unenforceable for any reason, including but not limited to a change in applicable federal, state or local law, the invalidity or unenforceability of that provision will not affect any of the remaining provisions of this Agreement, which provisions will be enforced as if such invalid or unenforceable provision had not been included.

20.14 Non-Waiver Provision. Failure of either party to exercise any of the remedies set forth in this Agreement within the time periods specified will not constitute a waiver of any rights of that party with regard to an event of nonperformance, whether determined to be a breach, excused performance, or unexcused default by the other party.

TO EFFECTUATE THIS AGREEMENT, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth below the authorized signature.

*[Signatures on Following Page]*

**USA WASTE OF CALIFORNIA, INC.**



By: Michael Hammer  
Title: President-Southern California Area  
Date: 11/2/2023

**CITY OF FOWLER**

Wilma Tucker  
City Manager  
Date: \_\_\_\_\_

**ATTEST**

Angela Vasquez  
City Clerk  
Date: \_\_\_\_\_

**APPROVED AS TO FORM**

Scott G. Cross  
City Attorney  
Date: \_\_\_\_\_

**EXHIBIT 1**  
**Initial Rates**

<b>City of Fowler Rate Sheet</b>			
<b>Service Type</b>	<b>Rate as of July 1, 2023</b>		
Standard Service offering - 3 96-gallon carts (trash, recycling, greenwaste)	4.00%	\$35.65	
2010 Senior Discount		\$3.00	
Extra Trash Cart	4.00%	\$13.47	
Extra Green Waste Cart	4.00%	\$9.88	
Extra Pick Up per Cart	4.00%	\$18.23	
<b>Service Level</b>		<b>Monthly Fee</b>	<b>Extra Pick Up Charge per container</b>
1 YD 1X/WK	4.00%	\$90.85	\$54.52
1 YD 2X/WK	4.00%	\$169.19	
1 YD 3X/WK	4.00%	\$247.51	
1 YD 4X/WK	4.00%	\$325.83	
1 YD 5X/WK	4.00%	\$404.18	
1 YD 6X/WK	4.00%	\$482.52	
2 YD 1X/WK	4.00%	\$109.35	\$65.62
2 YD 2X/WK	4.00%	\$208.02	
2 YD 3X/WK	4.00%	\$303.90	
2 YD 4X/WK	4.00%	\$401.19	
2 YD 5X/WK	4.00%	\$498.45	
2 YD 6X/WK	4.00%	\$595.72	
3 YD 1X/WK	4.00%	\$180.86	\$108.52
3 YD 2X/WK	4.00%	\$301.42	
3 YD 3X/WK	4.00%	\$422.07	
3 YD 4X/WK	4.00%	\$542.67	
3 YD 5X/WK	4.00%	\$663.28	
3 YD 6X/WK	4.00%	\$783.88	
4 YD 1X/WK	4.00%	\$217.46	\$130.50
4 YD 2X/WK	4.00%	\$371.14	
4 YD 3X/WK	4.00%	\$519.60	
4 YD 4X/WK	4.00%	\$670.42	
4 YD 5X/WK	4.00%	\$821.29	
4 YD 6X/WK	4.00%	\$972.13	

		Monthly Fee	Extra Pick Up Charge per container
6 YD 1X/WK	4.00%	\$264.63	\$158.78
6 YD 2X/WK	4.00%	\$431.03	
6 YD 3X/WK	4.00%	\$597.34	
6 YD 4 X/WK	4.00%	\$763.64	
6 YD 5X/WK	4.00%	\$929.96	
6 YD 6X/WK	4.00%	\$1,096.28	
Roll-off Haul rate*	4.00%	\$207.58	
Roll-off box rental	4.00%	\$34.53	
Tilt loader rental per month	4.00%	\$64.63	

\*In addition, customer pays a 3 ton minimum disposal at a price per ton that equals the WM Jefferson Transfer Station plus City fee.

<b>Commercial Organics Rate</b>			
96 Gallon 1X/WK	4.00%	\$25.03	
<b>Resume Fee, Res</b>	4.00%	\$20.02	
<b>Resume Fee, FEL</b>	4.00%	\$32.50	
<b>Locked Bin Fee FEL</b>	4.00%	\$20.02	
<b>Bin Overage Service FEL</b>	4.00%	\$108.59	
<b>Bin Overage Service Recycle FEL</b>	4.00%	\$108.52	
<b>Bin Customer Reactivation FEL</b>	4.00%	\$32.50	
<b>RO Relocation Charge Per</b>	4.00%	\$129.46	
<b>Bin Roll-Out Service FEL</b>	4.00%	\$20.02	
<b>Bin Setup Charge FEL</b>	4.00%	\$20.02	
<b>Bin Trip Charge FEL</b>	4.00%	\$33.36	
<b>RO Trip Charge</b>	4.00%	\$129.46	
<b>Bin Valet Service FEL</b>	4.00%	\$27.26	
<b>Contamination Charge, 1 yd Bin</b>	4.00%	\$54.54	
<b>Contamination Charge, 2 yd Bin</b>	4.00%	\$65.64	
<b>Contamination Charge, 3 yd Bin</b>	4.00%	\$108.56	
<b>Contamination Charge, 4 yd Bin</b>	4.00%	\$130.54	
<b>Contamination Charge, 6 yd Bin</b>	4.00%	\$158.83	

<b>Commingled Recycling Rates</b>				
			<b>Monthly Fee</b>	<b>Extra Pick Up Charge per container</b>
2 YD 1X/WK		4.00%	\$86.03	\$51.65
2 YD 2X/WK		4.00%	\$160.20	
2 YD 3X/WK		4.00%	\$234.31	
2 YD 4X/WK		4.00%	\$308.43	
2 YD 5X/WK		4.00%	\$382.58	
2 YD 6X/WK		4.00%	\$456.72	
3 YD 1X/WK		4.00%	\$98.00	\$58.80
3 YD 2X/WK		4.00%	\$179.23	
3 YD 3X/WK		4.00%	\$260.48	
3 YD 4X/WK		4.00%	\$341.70	
3 YD 5X/WK		4.00%	\$422.96	
3 YD 6X/WK		4.00%	\$504.20	
4 YD 1X/WK		4.00%	\$107.10	\$64.27
4 YD 2X/WK		4.00%	\$195.41	
4 YD 3X/WK		4.00%	\$283.73	
4 YD 4X/WK		4.00%	\$372.04	
4 YD 5X/WK		4.00%	\$460.38	
4 YD 6X/WK		4.00%	\$548.66	
6 YD 1X/WK		4.00%	\$115.45	69.28
6 YD 2X/WK		4.00%	\$213.19	
6 YD 3X/WK		4.00%	\$310.95	
6 YD 4X/WK		4.00%	\$408.72	
6 YD 5X/WK		4.00%	\$506.49	
6 YD 6X/WK		4.00%	\$604.29	
96 Gallon 1X/WK		4.00%	\$17.42	
96 Gallon 2X/WK		4.00%	\$33.10	
96 Gallon 3X/WK		4.00%	\$48.80	
96 Gallon 4X/WK		4.00%	\$64.45	
96 Gallon 5X/WK		4.00%	\$80.19	

## EXHIBIT 2

### Recyclable Materials

Due to fluctuating Recyclables commodity markets, City and Contractor mutually agree that additional materials may be added or removed to the Recyclables Materials Collection program during the term of the Agreement without a formal amendment to this Agreement to reflect the Recyclable Materials that may be accepted by the appropriate Approved Facilities.

RECYCLABLES must be dry, loose (not bagged) and include the following:

Aluminum Cans – empty	Printing and Writing Paper
Plastics with the symbols #1 through #7 – empty	Uncoated paperboard (ex. Cereal boxes, food and snack boxes)
Scrap Metal including steel and tin cans – empty	Uncoated printing, writing and office paper
Glass food and beverage containers – brown, clear or green – empty	Old corrugated containers/cardboard – uncoated
Paper Products – clean, dry, - excluding food soiled paper	Magazines, glossy inserts and pamphlets

#### COMMON EXAMPLES OF RECYCLABLE MATERIALS BY COMMODITY

Paper	Cardboard	Glass	Plastic	Metal
• Office Paper	• Cardboard Boxes	• Juice Bottles	• Water Bottles	• Soda and Beer Cans
• Copy Paper	• Cereal Boxes	• Beer Bottles	• Soda Bottles	• Fruit and Vegetable Cans
• Junk Mail	• Tissue Boxes	• Wine Bottles	• Milk Jugs	• Soup and Sauce Cans
• Telephone Books	• Soda/Beer Cartons	• Liquor Bottles	• Condiment and Food Bottles	• Pet Food Cans
• Catalogs	• Egg Cartons	• Salad Dressing Bottles	• Cooking Oil Bottles	
• Computer Paper	• Paper Bags	• Condiment and Food Jars	• Laundry Detergent Bottles	
• Envelopes	• Gift Boxes		• Shampoo and Lotion Bottles	
• Brochures				
• Crayon Drawings				
• Wrapping Paper				

**EXHIBIT 3**  
**City Facilities and Events**

City Facilities

City Facility	Location	Frequency	Level of Service
<b>PANZAK PARK</b>	306 E Tuolumne	Weekly	1x 6y MSW
			1x 3y RCY
<b>FOWLER CITY HALL / PD</b>	128 S 5th	Weekly	1x 2y MSW
			1x 3y RCY
<b>SENIOR CITIZEN CENTER</b>	108 N 3rd	Weekly	1x 1y MSW
			1x 96g RCY
<b>CITY YARD</b>	225 S 5th	Weekly	1x 3y MSW
			1x 3y RCY
<b>DONNY WRIGHT PARK</b>	630 W Fresno	Weekly	3x 96g MSW
			3x 96g RCY
<b>FOWLER FIRE DEPARTMENT</b>	221 E Main	Weekly	1x 3y MSW
			1x 3y RCY
<b>CITY YARD - ROLL OFF</b>	225 S 5th	On-Call	1x 25y MSW
			1x 25y GW

As the City establishes new locations that require additional services this list may be amended to meet those needs.

City Events

City Facility	Location	Date/ Freq.	Level of Service
<b>Fowler Spring Fest</b>	Panzak Park	March	1x ADA POL + Hand Wash
			1x Regular POL + Hand Wash
			1x 3yd MSW
<b>4<sup>th</sup> of July Celebration</b>	FHS Stadium	July	20x 96g MSW carts
			20 96g RCY carts
<b>Farmers Market</b>	Panzak Park	August thru October, <i>Weekly</i>	15x 96g MSW carts
<b>Fowler Fall Festival</b>	Downtown Fowler / Panzak Park	October	4 Regular POL + 2 Hand Wash
			2x ADA POL
			15x 96g MSW Carts
<b>Fowler Jr. High Band Review</b>	Downtown Fowler / FMS	October	15x 96g RCY Carts
			4 Regular POL + 2 Hand Wash
			2x ADA POL
<b>Christmas Tree Lighging</b>	Downtown Fowler	December	15x 96g MSW Carts
			15x 96g RCY Carts
			1x ADA POL + Hand Wash
			1x Regular POL + Hand Wash
			10x 96g MSW Carts
			10x 96g RCY Carts

## EXHIBIT 4

### Public Education Program

#### Commercial Outreach

WM's Recycling Coach will commit to 75 site visits to Fowler's key commercial generators annually. Each visit will include:

- Documentation of the visit in accordance with SB1383
- A waste analysis to understand disposal patterns and trends
- An update on recycling programs and best practices
- Access to waivers and how to apply for one if eligible
- Offer a consultative approach to full compliance with SB 1383
- Refer non-compliant entities to the City for assistance in enforcement or facilitation of waivers

#### Multi-Family Outreach

WM's Recycling Coach will commit to 12 site visits to Fowler's multi-family communities annually. Each visit will include:

- Documentation of the visit in accordance with SB1383
- A waste analysis to understand disposal patterns and trends for these communities
- An update on recycling programs and best practices
- Offer a consultative approach to full compliance with SB 1383
- Provide opportunities for these communities to host educational events to help tenants understand proper recycling practices in their individual homes

#### Residential Outreach

WM will support the City at community events by providing informational booths and resources to help residents better understand proper recycling practices at home. An emphasis for these interactions will focus on how to successfully divert food scraps from going into their trash, how to access special services such as the WM Sharps Disposal Kits and help publicize key offerings such as community clean-ups.

**Technical Assistance:** will be provided to any customer who requests this service and/or upon request during regular site visits

- Direct learning opportunity on how to properly recycle and use organics services
- Assist with training staff/residents on the proper use of recycling and organics services
- Provide signage and other collateral to help identify the proper way to recycle and capture organic waste.

### Exhibit 5 Sample Rate Adjustment

#### Step 1: Change in Service Component

Calculate the March to March percentage change in Garbage and Trash CPI-U

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
2022	533.078	538.313	540.719	542.564	544.546	547.554	548.187	548.706	558.254	561.090	563.816	565.185
2023	570.412	575.697	576.773									

	March
New	576.773
Prior	540.719
Change	36.054
% Change	6.67%

Month over Month Change

#### Step 2: Change in Disposal Component

Calculate Current Measurement Period vs Prior Measurement Period percentage change in Diversion and Disposal cost per ton. Tonnage from Fowler Contract tonnage reports.

	Base Tipping Fee Mar 2023    Mar 2022					April 2022 to March 2023			
	A	B	C = A - B	D = ABS(B)	E = C/D	F	G = ABS(B X F)	H = G/Total G	I = E X H
	New Rate	Old Rate	Change	Absolute Value of Old Rate	Percent Chg	Tons	ABS Value of Old Rate X Tons	Weighting % of ABS Value	Weighted % Change
MSW - FT	\$ 73.43	\$ 69.65	\$ 3.78	\$ 69.65	5.43%	6,082.97	423,678.86	78.60%	4.27%
MSW - FT Mined	\$ 103.43	\$ 89.65	\$ 13.78	\$ 89.65	15.37%	162.15	14,536.75	2.70%	0.41%
Recycling - IWS	\$ 50.00	\$ 40.00	\$ 10.00	\$ 40.00	25.00%	556.00	22,240.00	4.13%	1.03%
OCC - Barrios	\$ (30.00)	\$ (80.00)	\$ 50.00	\$ 80.00	62.50%	25.26	2,020.80	0.37%	0.23%
GW - FT	\$ 49.53	\$ 39.51	\$ 10.02	\$ 39.51	25.36%	1,238.68	48,940.25	9.08%	2.30%
Wood - FT	\$ 34.47	\$ 32.70	\$ 1.77	\$ 32.70	5.41%	-	-	0.00%	0.00%
C&D - FT	\$ 63.21	\$ 59.95	\$ 3.26	\$ 59.95	5.44%	461.05	27,639.95	5.13%	0.28%
Clean Concrete - FT	\$ 29.28	\$ 27.14	\$ 2.14	\$ 27.14	7.89%	-	-	0.00%	0.00%
Total						8,526.11	539,056.60	100.00%	8.53%

Step 3: Summing the weighted Service and Disposal Component percentage changes to the rate adjustment percentage.

#### Rate Component Annual Change Assumptions (example):

CPI- Service Component		6.67%
Change in disposal rate March 2022 thru March 2023		8.53%

Rate Component	Adjustment due to change in indices/change in disposal fees	Relative Weight of Rate	Weighted Rate Adjustment Percentage
Service Component*	6.67%	70%	4.67%
Disposal Component	8.53%	30%	2.56%
Subtotal		100%	7.23%
Add Prior Years Carryover			0.00%
Potential Total			7.23%



## CITY COUNCIL MEETING

### **REPORT TO THE CITY COUNCIL**

**DATE:** November 7, 2023

**FROM:** ANGELA VASQUEZ, City Clerk / Human Resources Officer

**SUBJECT:** APPROVE Position Authorization Resolution No. 2689 converting one Water Operator I to Water Operator in Training

---

### **EXECUTIVE SUMMARY**

The above action will convert one Water Operator I position to a Water Operator in Training position.

### **BACKGROUND**

The Water Operator series is made up of the Water Operator in Training, Water Operator I, Water Operator II, and Lead Water Operator positions. There has been a Water Operator I vacancy in the Public Works department since September 15, 2023. Staff conducted a search and intend to fill the vacancy with a Water Operator in Training position.

### **PUBLIC NOTICE**

This item does not require a public hearing and was noticed as a part of the City Council Agenda.

### **ENVIRONMENTAL REVIEW**

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

### **GENERAL PLAN CONSISTENCY**

This action is consistent with:

#### Goal PF-1

Fowler provides reliable public facilities, utilities, and community services that meet the needs of the existing community and planned growth.

## **FISCAL IMPACT**

Approval will result in savings due to the replacement of the vacant Water Operator I position to a Water Operator in Training position and will be absorbed in the FY 2023/24 budget.

## **CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

### **Attachments**

- Resolution No. 2689 and Exhibit A – Position Authorization Resolution

**RESOLUTION NO. 2689****A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER  
ESTABLISHING THE NUMBER OF FULL-TIME POSITIONS AUTHORIZED IN THE  
CITY FOR FISCAL YEAR 2023/2024**

**WHEREAS**, maintaining a **Position Authorization Resolution** is an essential best practice in municipal budgeting and internal controls; and

**WHEREAS**, the number of full-time positions in which persons may be employed by the City during Fiscal Year 2023/2024 is set forth in **Exhibit A** of this Resolution; and

**WHEREAS**, that the number of persons employed in full-time positions shall not exceed the total number of authorized positions; and

**WHEREAS**, a change in the total number of full-time positions authorized in the City shall only be accomplished by Resolution of the Council; and

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Fowler that the number of full-time positions in which persons may be employed by the City during Fiscal Year 2023/2024 is hereby established by this **Position Authorization Resolution** and shall be as set forth in **Attachment A** of this Resolution.

**PASSED, APPROVED AND ADOPTED** this 7th day of November 2023, at a regular meeting of the Fowler City Council by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**APPROVED:**

\_\_\_\_\_  
Daniel T. Parra, Mayor

**ATTEST:**

\_\_\_\_\_  
Angela Vasquez, City Clerk

**City of Fowler**  
**Position Authorization Resolution\***  
**Exhibit A**

<b>Classification</b>	<b>FTE</b>	<b>Primary Dept</b>
City Manager	1.0	Administration
Assistant City Manager	1.0	Comm Dev
City Clerk	1.0	Clerk
Finance Director	1.0	Finance
Accountant	1.0	Finance
Accounting Technician	1.0	Finance
Administrative Assistant	2.0	Finance
Building Official	1.0	Comm Dev
Permit Technician	1.0	Comm Dev
Planning & Code Enforcement Technician I	1.0	Comm Dev
Police Chief	1.0	Police
Police Sergeant	2.0	Police
Police Corporal	2.0	Police
Police Officer	7.0	Police
Community Service Officer I	1.0	Police
Crime Analyst	1.0	Police
Public Works Director	1.0	PW
Public Works Supervisor	1.0	PW
Lead Maintenance Worker	1.0	PW
Maintenance Worker	2.0	PW
Maintenance Assistant	4.0	PW
Lead Water Operator	1.0	PW
Water Operator I	<del>1.0</del> 0.0	PW
Water Operator in Training	<del>1.0</del> 2.0	PW
Recreation and Senior Center Supervisor	1.0	Senior/Recreation

**\*Full time positions**

**38.0**



## CITY COUNCIL MEETING

### **REPORT TO THE CITY COUNCIL**

**DATE:** November 7, 2023

**FROM:** THOMAS W. GAFFERY IV, Assistant City Manager

**SUBJECT:** APPROVE Resolution No. 2686 amending the Master Fee Schedule to modify and add fees related to the police department and on-street parking enforcement

---

### **EXECUTIVE SUMMARY**

This action adjusts various parking penalties for consistency with the type of violation, codifies various penalty amounts for California Vehicle Code violations, and adds certain Police Department cost recovery fees.

### **BACKGROUND**

#### Police Department Costs

This action codifies the fees for police reports, vehicle releases, and fingerprinting. It creates new fees for DUI response costs, court order services, and firearms storage.

#### On-Street Parking Enforcement

This action increases penalties for disabled parking violations, parking in a crosswalk, blocking a driveway, and blocking a sidewalk. This action creates a penalty for a number of safety-related violations including blocking a fire hydrant, parking in a bike lane, and blocking an intersection.

### **PUBLIC NOTICE**

A Notice of Public Hearing was published in *The Business Journal* on October 27, 2023, which is at least ten (10) days prior to the public hearing.

### **ENVIRONMENTAL REVIEW**

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

### **GENERAL PLAN CONSISTENCY**

#### Goal MOB-1

Fowler's streets are a safe and enjoyable environment for pedestrians, cyclists, motorists, and people of all ages and abilities.

#### Goal PF-1

Fowler provides reliable public facilities, utilities, and community services that meet the needs of the existing community and planned growth.

**FISCAL IMPACT**

The action will increase general fund monies coming to the City to offset enforcement costs.

**CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

**Attachments**

- Resolution No. 2686
- Master Fee Schedule: On-Street Parking & Police

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER  
AMENDING THE MASTER FEE SCHEDULE RELATED TO  
PARKING FINES AND POLICE FEES**

**WHEREAS**, the Fowler Police Department provides a full range of public safety services to the community; and

**WHEREAS**, the Fowler Police Department enforces the California Vehicle Code as well as other state laws; and

**WHEREAS**, the rates set forth in **Exhibit A** reflect the reasonable cost for providing the services listed, and the fine amounts are reasonable and constituent with state law to recover Police Department costs and encourage responsible behavior in the community; and

**WHEREAS**, it is in the best interest of the City in order to promote the public safety of Fowler residents that the City Council adopt these fees.

**NOW THEREFORE, BE IT RESOLVED** by the City Council of the City of Fowler that the update to the City's Master Fees Schedule as shown in **Exhibit A** is hereby adopted.

**PASSED, APPROVED AND ADOPTED** this 7th day of November 2023, at a regular meeting of the Fowler City Council by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

\_\_\_\_\_  
Daniel T. Parra, Mayor

ATTEST:

\_\_\_\_\_  
Angela Vasquez, City Clerk

CITY OF FOWLER  
Master Fee Schedule

\* \* Police \* \*

Description	Rate	Proposed	Reso	Date
Police Report	\$15		2686	11/07/23
Livescan Fingerprinting	\$66		2686	11/07/23
Rolled Fingerprints	\$20		2686	11/07/23
Vehicle Release	\$40	\$10	2686	11/07/23
Records Letter	\$0		2686	11/07/23
DUI Emergency Response Costs		\$465	2686	11/07/23
Medical Standby DUI		\$200	2686	11/07/23
Court Order Services		\$25	2686	11/07/23
Firearm Storage Fee (per day)		\$5	2686	11/07/23

Green Indicates Additions

**CITY OF FOWLER**  
**Master Fee Schedule**

**\* \* On-Street Parking \* \***

Description	Rate	Proposed	Reso	Date
Red curb (FMC 4-4.201(a)(1))	\$100		2590	08/16/22
Loading zone overtime (FMC 4-4.202)	\$30		2590	08/16/22
Green curb overtime (FMC 4-4.201(a)(4))	\$30		2590	08/16/22
Parking for more than 72 hours (FMC 4-4.204)	\$50		2590	08/16/22
Parking in alleys (FMC 4-4.205)	\$100		2590	08/16/22
Prohibited truck parking (FMC 4-4.212)	\$50		2590	08/16/22
Not parked within 18" from curb (FMC 4-4.214)	\$50		2590	08/16/22
Parked wrong way on street (FMC 4-4.214)	\$50		2590	08/16/22
Unauthorized parking in City-owned facility (FMC 4-4.215)	\$30		2590	08/16/22
Not parked within marked space (FMC 4-4.216)	\$50		2590	08/16/22
Official vehicle zone (FMC 4-4.217)	\$30		2590	08/16/22
No stopping tow-away zone (FMC 4-4.218)	\$50		2590	08/16/22
Delinquent parking citation DMV registration hold fee ^	\$3		2590	08/16/22
Late fee	\$10		2590	08/16/22
<b>Parked in Bike lane (CVC 21211(a))</b>		<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
<b>Disabled parking violation (CVC 22507.8)</b>	\$305	<b>\$350</b>	<b>2686</b>	<b>11/07/23</b>
<b>Misuse of disabled placard (CVC 4461)</b>		<b>\$500</b>	<b>2686</b>	<b>11/07/23</b>
<b>Correction of CVC 22507.7 for Failure to Display Placard *</b>		<b>\$25</b>	<b>2686</b>	<b>11/07/23</b>
<b>Parked in Intersection (CVC 22500(a))</b>		<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
Parked in Crosswalk (CVC 22500(b))	\$43	<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
Parked Blocking Driveway (CVC 22500(e))	\$43	<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
Parked on Sidewalk (CVC 22500(f))	\$43	<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
<b>Parked Blocking Wheelchair Curb Cut (CVC 22500(l))</b>		<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
<b>Parked in Fire Hydrant Zone (CVC 22514)</b>		<b>\$100</b>	<b>2686</b>	<b>11/07/23</b>
<b>Expired Registration (CVC 4000(a)) %</b>	\$50		<b>2686</b>	<b>11/07/23</b>
<b>No Current Registration Sticker (CVC 5204) %</b>		<b>\$25</b>	<b>2686</b>	<b>11/07/23</b>
<b>No Front License Plate (CVC 5200) %</b>		<b>\$25</b>	<b>2686</b>	<b>11/07/23</b>
<b>Correction of CVC 4000(a), 5200, 5204 %</b>		<b>\$10</b>	<b>2686</b>	<b>11/07/23</b>

^ Adjusted automatically based on current fee charged by DMV

\* Adjusted automatically to maximum specified in CVC 40226

% Adjusted automatically to the "Base Fine/Fee" on the Judicial Council Uniform Bail Schedule per CVC 40225(c)

**Green Indicates Additions**



## CITY COUNCIL MEETING

### **REPORT TO THE CITY COUNCIL**

**DATE:** November 7, 2023

**FROM:** DAWN E. MARPLE, City Planner

**SUBJECT:** APPROVE Resolution No. 2688 finding that Vesting Tentative Subdivision Map No. 6409 is consistent with the City of Fowler General Plan and General Plan Environmental Impact Report, absolving it of further environmental analysis pursuant to California Environmental Quality Act Section 15183, and approving the map, subject to the conditions of approval.

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### **EXECUTIVE SUMMARY**

Approval of the Resolution would allow for the construction of 114 new single-family homes on the west side of Fowler, providing for increased diversity in the housing options within the City. The project is consistent with the goals and policies of the City's General Plan.

### **BACKGROUND**

Vesting Tentative Subdivision Map No. 6409 is a tentative subdivision map which proposes a new single-family residential subdivision located on a property northeast of the intersection of South Sunnyside Avenue and East Parlier Avenue (Assessor's Parcel Number [APN] 345-100-07) (the "Project"). The Project site is approximately 28.67 acres in size bounded by Sunnyside Avenue to the west, an existing residential subdivision to the north, and farmland to the east and south. The site is designated Medium Low Density Residential under the City of Fowler's General Plan and is zoned R-1-7 (One-Family Residential - minimum lot area of 7,000 square feet) on the City's official zoning map. The Project proposes to develop approximately 23.24 acres of the site into residential lots, while the additional 5.43 acres would be designated as a remainder on the southwest portion of the site. Design and layout of the lots contained on the map are reflective of this. In total, the proposed Project would result in 114 single-family home lots, with a lot reserved within the interior of the subdivision for a neighborhood park to be developed. The eventual development of homes on the newly created lots would be required to meet the objective standards of the R-1-7 zone district, including setbacks.

## Prior Action

A subdivision under common ownership (Vesting Tentative Subdivision Map No. 5952) with that of Vesting Tentative Subdivision Map No. 6409 was approved in 2019. At that time, the Project site was located outside of the City. Under the approvals associated with Vesting Tentative Subdivision Map No. 5952, the Project site was approved by the City for annexation. The site was also discussed within a CEQA document written for Vesting Tentative Subdivision Map No. 5952 at that time. In addition to the approval for annexation in 2019, the Project site was rezoned by the City to the R-1-7 (One-Family Residential – minimum 7,000 square foot lots) zone district at the request of the applicant.

On October 5, 2023, during a regularly scheduled meeting of the Planning Commission, the Planning Commission heard the item and added one additional condition of approval to the Project. Due to safety concerns, the Commission required that the proposed block wall along South Sunnyside Avenue and the Kirby Canal continue for the entire length of the Project site's southern boundary (See Conditions of Approval, No. 44.). The Commission then unanimously recommended that the City Council approve the Project.

## General Plan Conformity

As discussed above, the Project site has a Medium Low Density Residential land use designation, which is consistent with the site's R-1-7 zone designation. The proposed Project would result in the development of single-family homes on lot sizes starting at 5,000 square feet (sqft) in size, with lots also being provided at larger sizes. The R-1-7 zone district requires that minimum lot sizes be 7,000 sqft, creating a conflict with the City's zoning code.

This Project seeks to increase the density of the proposed subdivision by using smaller lots than what are allowed in the R-1-7 zone district. Due to the applicant's request to increase the density of this housing development project, California's Housing Accountability Act ("HAA") is triggered. In accordance with the HAA, should the City Council decide to deny or condition the Project in such a way to reduce its density, specific findings must be made supported by a preponderance of evidence on the record:

"When a proposed housing development project complies with applicable, objective general plan, zoning, and subdivision standards and criteria, including design review standards, in effect at the time that the application was deemed complete, but the local agency proposes to disapprove the project or to impose a condition that the project be developed at a lower density, the local agency shall base its decision regarding the proposed housing development project upon written findings supported by a preponderance of the evidence on the record that both of the following conditions exist:

- A. The housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved or approved upon the condition that the project be developed at a lower density...
- B. There is no feasible method to satisfactorily mitigate or avoid the adverse impact... other than the disapproval of the housing development project or

the approval of the project upon the condition that it be developed at a lower density.” (Gov. Code § 65589.5, subd. (j)(1).)

The HAA defines a “specific, adverse impact” to mean a significant, quantifiable, direct, and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete. (Gov. Code § 65589.5, subd. (j)(1)(A).) Furthermore, the HAA provides that a housing development project that is consistent with a local agency’s objective general plan standards and criteria, is not considered to be inconsistent with the zoning for the project site, and shall not require a rezone. (Gov. Code § 65589.5, subd. (j)(4).)

In reviewing the Project, Staff have found no evidence of any significant, quantifiable, direct, and/or unavoidable impacts based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date this application was deemed complete.

#### Public Infrastructure

The proposed Project would tie into both existing water and sewer lines previously constructed and existing within South Sunnyside Avenue and the northwest corner of the Project. Storm drainage from the proposed subdivision would be directed to the existing ponding basin abutting the site to the north. The Project includes landscaped areas, including a neighborhood park internal to the subdivision, which would be dedicated to the City.

#### Fowler Unified School District

Students from the Project would attend Marshall Elementary (K-2), Fremont Elementary (3-5), Sutter Middle School (6-8), and Fowler High School (9-12). The student generation factor within Fowler Unified has ranged between 0.5 and 0.6 students per household, indicating that the proposed Project would generate approximately 57 to 68 students.

In accordance with State Law, any new development will be subject to school development fees as a condition of building permit issuance to offset potential impacts to schools. The homes proposed on the 114 lots would be subject to school development fees on a per-square foot basis. These funds, in combination with bond financing authorized by District voters and State assistance, will provide facilities and reduce overcrowding in the long-term.

#### Grounds for Approval

The Subdivision Map Act (Government Code Section 66474) requires the City to deny approval of a tentative map if it makes any of the following findings:

- 1. *The proposed map is not consistent with applicable general and specific plans as specified in Section 65451.***

Development must provide between 3.7 and 5.5 du/ac in order to maintain consistency with the General Plan; the subdivision map proposes a density of approximately 4.9 du/ac and thus meets the density provisions of the General Plan. The proposed Project is consistent with the 2040 Fowler General Plan because it proposes development consistent with its designation and because it does not conflict the goals and policies of the General Plan.

**2. *The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.***

The City is empowered to regulate the design and improvement of subdivisions by the Subdivision Map Act and the City's Subdivision Ordinance. The Project meets the City's design requirements. Conditions of approval will ensure consistency with General Plan standards and policies.

**3. *The site is not physically suitable for the type of development.***

The Project site is generally flat and level and is capable of supporting single-family development.

**4. *The site is not physically suitable for the proposed density of development.***

Infrastructure needed to serve the development is located within adjacent public rights-of-way, or its installation will be required as conditions of approval. The flat, level nature of the site in conjunction with the proximity of infrastructure and Project conditions ensure that the site is physically suitable for the proposed density of development density of the project.

**5. *The design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure a fish or wildlife habitat.***

The Project is consistent with the previously certified City of Fowler General Plan Environmental Impact Report ("EIR"). The EIR considered impacts to fish and wildlife resources within the City's Planning Area. Buildout of the land uses analyzed under the General Plan EIR was found to not have a significant environmental effect on biological resources. As such, the proposed Project, which is being developed in accordance with the City's General Plan, would not result in substantial environmental damage or substantially and avoidably injure a fish or wildlife habitat.

**6. *The design of the subdivision or type of improvements is likely to cause serious public health problems.***

There is no evidence in the record that the design of the Project or any of its improvements are likely to cause any serious public health problems.

**7. *The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.***

The Project will not conflict with easements.

Based on the above, Staff doesn't believe there are grounds for the City to make any of the findings under Government Code section 66474 of the Subdivision Map Act and recommend approval of the Project.

**PUBLIC NOTICE**

A Notice of Public Hearing was published in *The Business Journal* on October 27, 2023, which

is at least ten (10) days prior to the public hearing. It was also sent via US Mail to all property owners within 300 feet of the proposed Project.

## ENVIRONMENTAL REVIEW

The proposed Project would be developed consistent with the City's General Plan. The General Plan EIR contemplates the development of the Project site and considered the potential impacts that could result from such development at the density proposed by the Project. Pursuant to CEQA Guidelines Section 15183, projects which are consistent with the City's General Plan and General Plan EIR are absolved from further environmental analysis. If the Project is approved, Staff will file a Notice of Determination with Fresno County under the previously certified General Plan EIR.

## GENERAL PLAN CONSISTENCY

The proposed project is consistent with the following General Plan goals and policies:

### General Plan Goal LU-1

Growth occurs logically and efficiently.

### General Plan Goal LU-2

A wide range of housing types are available to accommodate all housing needs in the community.

### General Plan Policy LU-1

Development shall occur in accordance with the planned land uses as shown on Figure 4-1: Land Use Diagram.

### General Plan Policy LU-23

Ensure that the location and design of all parks, recreation, and community centers are compatible with existing adjacent uses.

### General Plan Policy CDES-26

Single-family residential projects shall be designed in a way such that they enhance Fowler's character.

### General Plan Policy CDES-27

Discourage direct access to collector streets from single-family residential properties except where physical circumstances do not allow other design solutions.

### General Plan Goal CH-1

Opportunities for physical activity, such as walking and biking, are integrated into the built environment.

### General Plan Policy CH-26

New development shall be designed and operated in such a way that interior noise levels from both stationary and mobile noise sources do not exceed 45 dBA Ldn for adjacent residential uses or other uses where people normally sleep and 45 dBA Leq at peak hour for adjacent office, school, church, or similar use.

**General Plan Policy CH-30**

When sound walls are proposed, encourage a combination of berms and/or landscaping and walls to produce a more visually pleasing streetscape.

**General Plan Policy OS-3**

Within single-family residential projects, whether attached or detached, a minimum of 5% of the project site, not inclusive of existing or future major road rights-of-way, shall be developed with usable open space. Such open space shall be maintained by an assessment district, landscape/lighting district, homeowners' association, or other appropriate maintenance entity.

**General Plan Policy OS-4**

Usable open space areas, as required in Policy OS-3, may fulfill the requirements for parkland dedication, per the City's Quimby Ordinance. To qualify, such land shall be dedicated to the City and meet the minimum established requirements for usable open space.

**General Plan Policy OS-5**

Developers may elect to construct the usable open space as required in Policy OS-3, or the parkland required for dedication per the City's Quimby Ordinance. Upon construction, dedication, and acceptance of such improvements by the City, a credit of up to 50% against payment of the park development impact fee, as required by Policy OS-18, may be allowed and should be based on the actual cost of construction of the usable open space.

**General Plan Policy OS-7**

When siting park space within a subdivision project, it should be located with an emphasis on equitable distribution within the overall project site and consistent with the access standards identified in Table 8-1. When park space is not sited accordingly, neighborhood trails shall be integrated into the project design to ensure adequate access to the park space from areas beyond the limits of the project is provided.

**General Plan Policy OS-18**

All residential projects shall be subject to the payment of park development impact fees, as adopted by resolution of the City Council. Payment of these development impact fees shall be in addition to any parkland dedication or in-lieu fee payment requirements in accordance with Fowler's adopted Quimby Act Ordinance, as applicable, except as provided for in Policy OS-6.

**General Plan Goal MOB-2**

The circulation system is safe, connected, and well-integrated with public transit and neighboring jurisdictions.

**FISCAL IMPACT**

The Project would result in the collection of development impact fees for single-family residential projects in accordance with the most current development impact fee schedule at the time that the Project application was received by the City. Development of the site would also increase the assessed value of the property and therefore generate additional ongoing property tax revenue to the City.

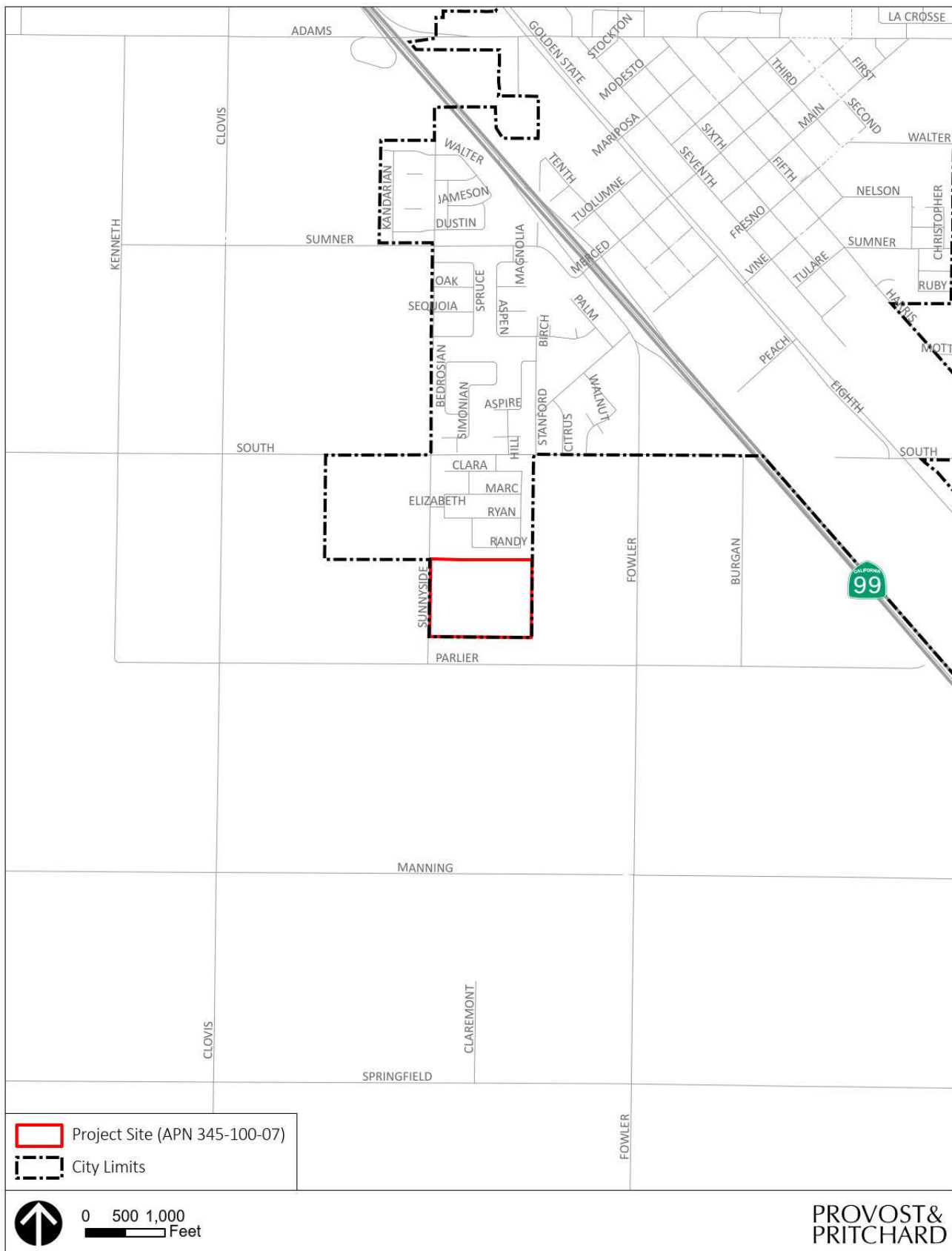
**CONFLICT OF INTEREST**

Staff is not aware of any conflicts of interest.

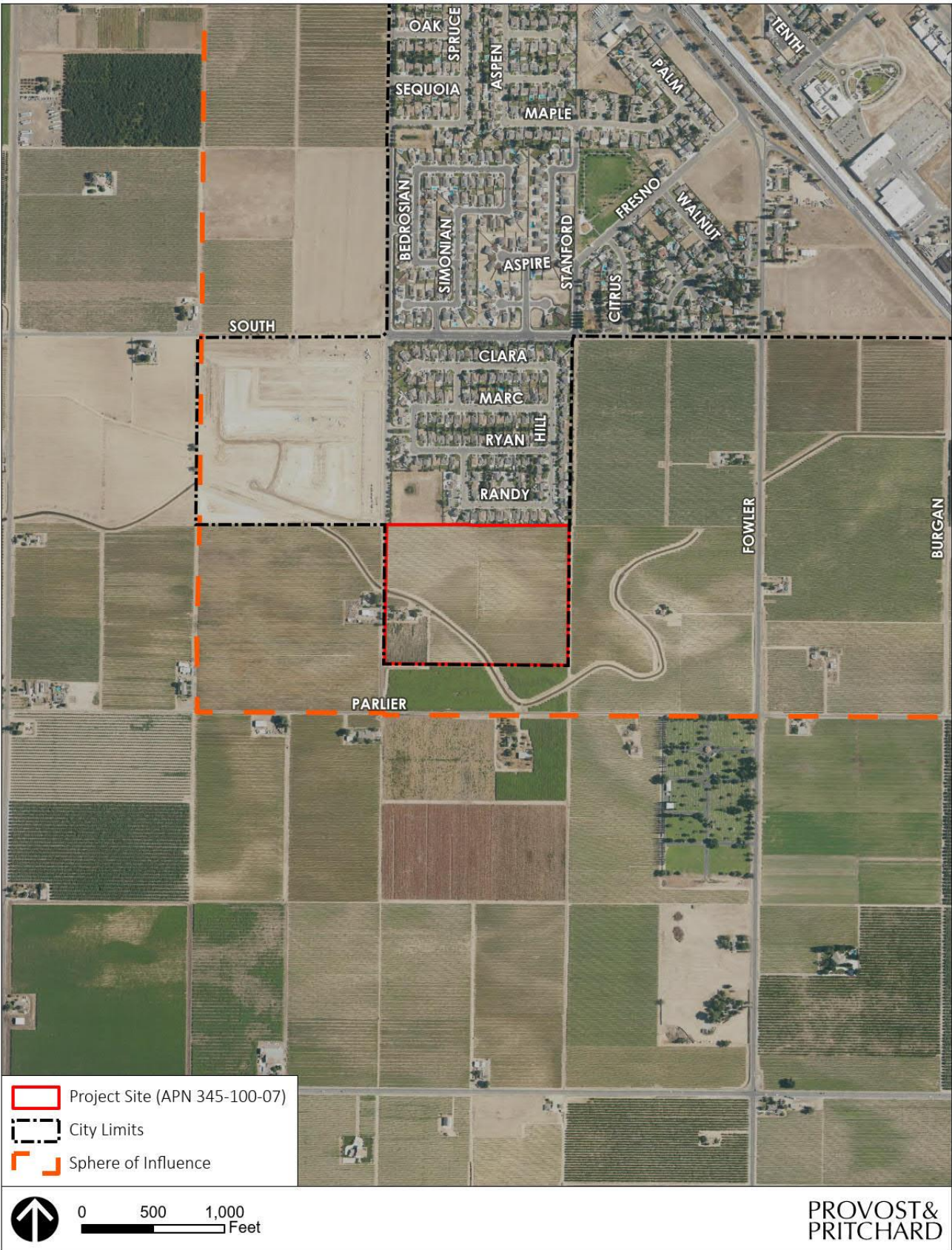
Attachments

- Attachment 1: Regional Vicinity Map
- Attachment 2: Aerial Map
- Attachment 3: Zoning Map
- Attachment 4: General Plan Land Use Map
- Attachment 5: Vesting Tentative Subdivision Map No. 6409
- Resolution No. 2688, and Attachment A (Conditions of Approval)

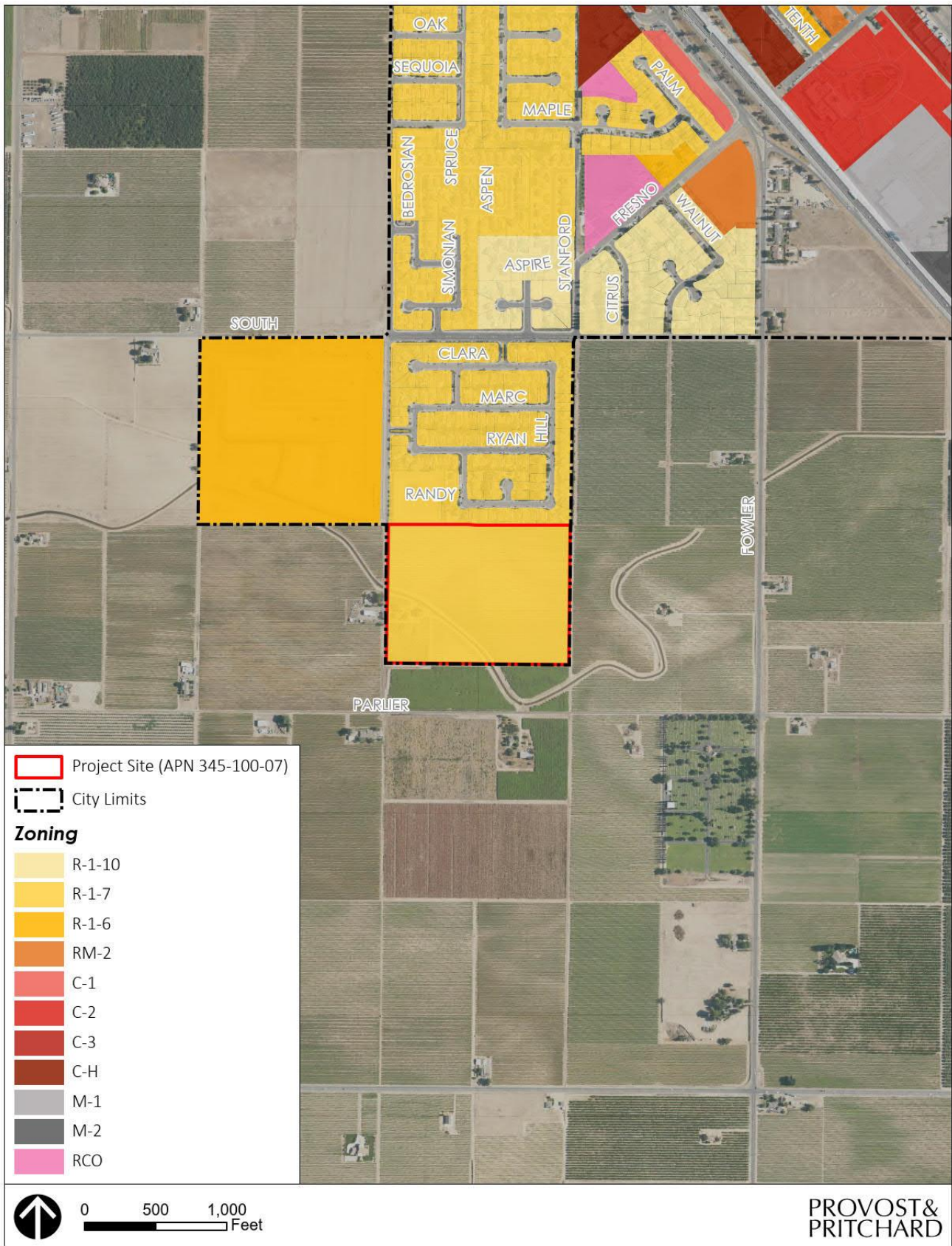
# Attachment 1: Regional Vicinity Map



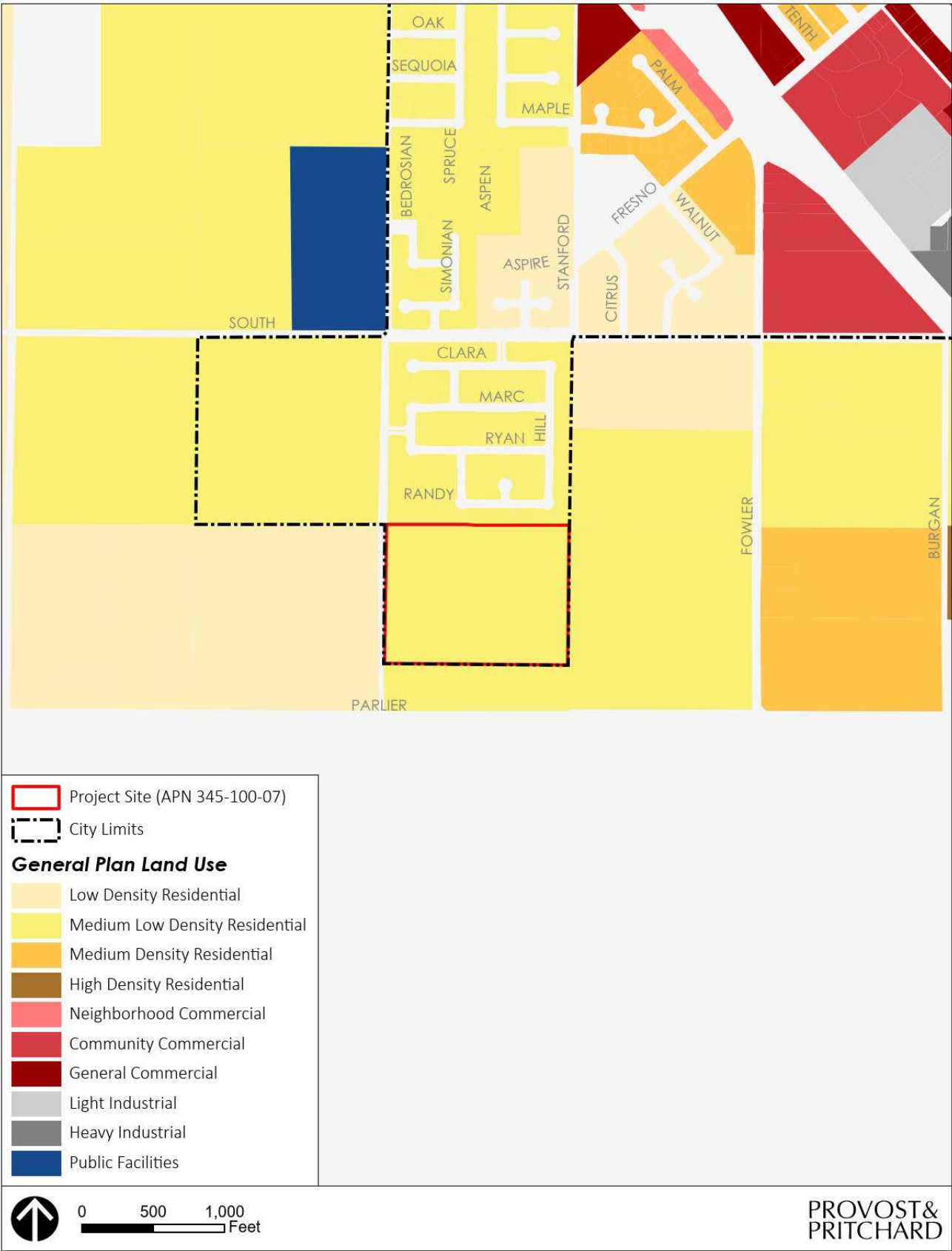
Attachment 2: Aerial Map



Attachment 3: Zoning Map



Attachment 4: General Plan Land Use Map



Attachment 5: Vesting Tentative Subdivision Map No. 6



**RESOLUTION NO. 2688**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOWLER, COUNTY OF  
FRESNO, STATE OF CALIFORNIA TO DETERMINE THAT THE PROJECT IS  
EXEMPT FROM FURTHER ENVIRONMENTAL REVIEW PURSUANT TO CEQA  
GUIDELINES SECTION 15183 AND TO APPROVE VESTING TENTATIVE  
SUBDIVISION MAP NO. 6409.**

**WHEREAS**, R.J. Hill Homes has submitted an application for Vesting Tentative Subdivision Map No. 6409, a 114-unit single-family residential subdivision, generally located northeast of the intersection of South Sunnyside Avenue and East Parlier Avenue, on an approximately 28.67-acre parcel (Assessor's Parcel Number 345-100-07) (the "Project"); and

**WHEREAS**, the Project site is located within the R-1-7 (One-Family Residential, 7,000 square foot minimum) zone district and is designated for Medium Low Density Residential (MLDR) land uses by the City's General Plan; and

**WHEREAS**, development of the Project is proposed on the 23.24 acres of the subject parcel north of the Kirby Canal; and

**WHEREAS**, the proposed Project would result in a density of 4.9 dwelling units per acre which is consistent with densities allowed by the Project site's MLDR land use designation under the General Plan; and

**WHEREAS**, the proposed Project would result in single-family residential lots that would be less than the minimum square footage required within the R-1-7 zone district; and

**WHEREAS**, under the Housing Accountability Act, when a housing development project is consistent with the City's General plan, the City is prohibited from disapproving or imposing conditions on a project to be developed at a lower-density unless the City can identify a specific adverse impact to the public health and safety of the residents of the City, supported by a preponderance of evidence on the record; and

**WHEREAS**, there is no evidence to support a finding that the Project would result in any specific adverse impacts; and

**WHEREAS**, local agencies may only apply objective and quantifiable standards, policies, and conditions to housing development projects under the Housing Accountability Act; and

**WHEREAS**, the Project, as conditioned, does not meet any of the findings set forth under Section 66474 of the Subdivision Map Act which would require denial of the Project, as contained below:

1. The proposed map is not consistent with applicable general and specific plans as specified in Government Code section 65451.

2. The design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
3. The site is not physically suitable for the type of development proposed.
4. The site is not physically suitable for the proposed density of development.
5. The design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure a fish or wildlife habitat.
6. The design of the subdivision or type of improvements is likely to cause serious public health problems.
7. The design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision; and

**WHEREAS**, the development of the proposed Project is consistent with what was contemplated under the City's General Plan and General Plan Environmental Impact Report, absolving it from further environmental analysis pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15183; and

**WHEREAS**, at a regular meeting on October 5, 2023, at 6:30pm, the Fowler Planning Commission conducted a public hearing to consider Vesting Tentative Subdivision Map No. 6409; and

**WHEREAS**, the Planning Commission adopted Resolution No. 694, unanimously approving a finding pursuant to CEQA Guidelines Section 15183, absolving the Project from further environmental analysis, and unanimously recommended that the Fowler City Council approve the Project; and

**WHEREAS**, notice of this public hearing was published in the October 27, 2023, edition of *The Business Journal*, mailed to property owners, posted at City Hall and the City's website, and sent to interested parties via email; and

**WHEREAS**, at a regular meeting on November 7, 2023, at 6:00pm, the Fowler City Council conducted a public hearing to consider Vesting Tentative Subdivision Map No. 6409; and

**WHEREAS**, the City Council, after reviewing and considering the staff report, and all evidence presented at the City Council's regular meeting on November 7, 2023, including oral and written public testimony on the Project, and which is herein incorporated by this reference, did make the findings described above for the for the approval of the Project.

**NOW THEREFORE, BE IT RESOLVED** that the City Council of the City of Fowler:

1. Finds that the Project is consistent with the City of Fowler General Plan and General Plan Environmental Impact Report, absolving it of further environmental analysis pursuant to CEQA Guidelines Section 15183.
2. Approves Vesting Tentative Subdivision Map No. 6409, subject to the conditions contained in Attachment "A".

**PASSED, APPROVED AND ADOPTED** this 7<sup>th</sup> day of November 2023, at a Regular Meeting of the City Council of the City of Fowler by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

**APPROVED:**

---

Daniel T. Parra, Mayor

**ATTEST:**

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Angela Vasquez, City Clerk

# ATTACHMENT “A”

## CONDITIONS OF APPROVAL

### VESTING TENTATIVE SUBDIVISION MAP NO. 6409

#### General Conditions

1. All conditions of approval shall be the sole financial responsibility of the Applicant/owner, except where specified in the conditions of approval listed herein or mandated by statutes.
2. The Applicant shall submit to the City of Fowler Community and Economic Development Department a check in the amount necessary to file a Notice of Determination at the Fresno County Clerk. This amount shall equal the Fresno County filing fee in effect at the time of filing. Such check shall be made payable to the Fresno County Clerk and submitted no later than three (3) days following action on Vesting Tentative Subdivision Map No. 6409.
3. Vesting Tentative Subdivision Map No. 6409 shall be valid for a period of 24 months from the date of its approval. Prior to expiration of the approved tentative map an extension or extensions to this period may be requested pursuant to Section 66453.3 of the Subdivision Map Act.
4. Approval of Vesting Tentative Subdivision Map No. 6409 shall be considered null and void in the event of failure by the Applicant and/or the authorized representative, engineer, or surveyor to disclose and delineate all facts and information relating to the subject property, the proposed use, and the proposed subdivision map.
5. It shall be the responsibility of the property owner, operator, and/or management to ensure that any required permits, inspections, and approvals from any regulatory agency be obtained from the applicable agency prior to issuance of a building permit and/or the issuance of a certificate of completion, as determined appropriate by the City of Fowler Community and Economic Development Department.
6. All conditions shall be satisfied prior to occupancy approval for any portion of the project. Failure to comply with all conditions of approval shall be grounds for the imposition of penalties, suspension of the permit, modification of the permit, or revocation of the permit.
7. The operator shall keep the exterior premises free of trash and debris. Graffiti shall be removed or covered within 48 hours of its discovery.
8. Approval of Vesting Tentative Subdivision Map No. 6409 is not an authorization to commence construction. On and off-site improvements, building construction, sign erection or occupancy shall not be permitted without prior approval of the City through issuance of any required grading or building permits.
9. No use shall be permitted, and no process, equipment or materials shall be used that are found by the City to be objectionable to persons living or working in the vicinity by reasons of odor, fumes, dust, smoke, cinders, dirt, refuse, water-carried waste, noise, vibration, illumination, glare, or unsightliness or to involve any hazard of fire or explosion.

10. Minor modifications to the approved tentative subdivision may be made subject to the approval of the City Planner and/or the City Engineer. Modifications deemed by either to be more than minor in nature shall require an amendment to the approval of Vesting Tentative Subdivision Map No. 6409.

### **Fire Department**

11. All homes in the subdivision shall be equipped with automatic fire sprinkler system as required by the California Fire Code and California Residential Code.
12. Fire hydrants shall be installed at 300-foot intervals at locations specified by the Fire Chief and City Engineer. Placement shall comply with the City of Fowler Standards as well Appendices B & C of the California Fire Code.
13. Roads shall comply with the California Fire Code Appendix D. It is unclear in the cul-de-sac areas if the 50-foot radius is inside or outside the paved area. Prior to recordation of the final map, the minimum standards shall be proven to the satisfaction of the Fire Department or City Engineer.

### **Engineering Conditions**

#### ***General:***

14. All conditions of the applicant shall be conditions of approval, except as further modified below, and subject to modifications to conform to applicable City Standards.
15. The design and improvement of the subdivision shall conform to Titles 1 through 15 of the City of Fowler Subdivision Ordinance and to the City of Fowler Standard Specifications ("Standard Specifications"), unless otherwise specified in these conditions.
16. The applicant shall enter into a subdivision agreement with the City if the final map is recorded prior to completion of the off-site improvements.
17. The applicant shall pay all fees as required by existing ordinances and schedules.
18. All water wells and septic systems that served the property shall be abandoned pursuant to City, County, and State standards.
19. The applicant shall relinquish all rights and privileges associated with all previously approved tentative tract maps on the subject properties.
20. Applicant shall consent to and facilitate annexation of the subject project into the City's Landscape and Storm Drainage Maintenance District or a Community Facilities District.

#### ***Final Map:***

21. A Right to Farm covenant shall be recorded prior to recordation of the final map.
22. The lots adjacent to Sunnyside Avenue shall have no direct access to said street.
23. Street right of way and pedestrian/utility easements shall be dedicated to the City of Fowler as indicated on the tentative map.
24. Street names shall be verified by City staff prior to finalizing the final map. Street names shall be consistent with streets along similar alignments throughout the City, pursuant to Fowler Municipal Code Section 7-5.04.

***Circulation:***

25. Developer shall construct frontage improvements along Sunnyside Avenue including curb, gutter, 5-foot sidewalk, LED street lighting and landscaping. A pavement overlay may be required beyond the centerline to provide for a smooth transition. Transition grade greater than 4 percent will not be allowed. The street section shall be striped for two-way traffic and approved by the City of Fowler.
26. Additional street right-of-way shall be dedicated such that an 80-foot right of way is provided along Sunnyside Avenue.
27. Local street pavement section shall be a minimum of 2.5 inches of hot mix asphalt over 5 inches of Class II aggregate and verified by a project soils report.
28. Traffic and street signs shall be installed by the developer per City standards.
29. Verify a minimum of 200 feet of stopping sight distance at intersections. Particular attention should be paid at the intersections of:
  - a. Munoz Avenue between Sunnyside Avenue and Bedrosian Avenue
  - b. "A" Avenue between Sunnyside Avenue and Bedrosian Avenue
  - c. "A" Avenue" between Bousian Avenue and "F" Avenue

***Grading and Drainage:***

30. A grading and drainage plan shall be submitted for review and approval by the City Engineer. The developer shall obtain a grading permit for all on-site grading work.
31. The developer's engineer shall provide drainage calculations for the subdivision. The proposed project shall connect to the existing storm drainage basin abutting the site to the northwest. If the basin is found to not be capable of retaining drainage directed towards it after construction of the full project during a 100-year storm event, the developer shall excavate the basin to a depth which would accommodate the additional drainage. If excavation of the existing basin would result in slopes deemed to be unsafe by the City Engineer, then the developer shall construct a new basin within the limits of the proposed subdivision.
32. The developer's engineer shall submit a storm drain plan and hydraulic calculations showing location of inlets, manholes, and pipelines (including sizing) to City Engineer for review and approval prior to preparation of improvement plans.
33. The developer shall obtain a Construction Stormwater General Permit from the Regional Water Quality Control Board. The plan shall provide for the mitigation of soil erosion from the project site during the construction and warranty periods and be submitted to the City prior to the start of construction. Developer shall supply City with the approved SWPPP and WDID number.
34. As a part of the mitigation measures for soil erosion, the developer shall be responsible for street sweeping during the one-year warranty period.

***Water:***

- 35. A looped water system shall be developed within the subdivision and be tested and accepted by the City of Fowler Public Works Department. Each parcel shall be equipped with a water meter/box approved by the Public Works Director.
- 36. All interior water mains shall be an 8-inch water main and loop within each phase of development. The completed interior water system shall be connected to 12-inch water mains in at each entrance on South Sunnyside Avenue.
- 37. Two water sample stations shall be installed within the subdivision at the locations specified by the Public Works Director.

***Sewer:***

- 38. The developer shall comply with the conditions set forth by Selma-Kingsburg-Fowler Sanitation District and pay all associated fees.
- 39. If not already located within the Selma-Kingsburg-Fowler County Sanitation District, the site shall be annexed to the District.
- 40. The developer shall complete and submit the attached subdivision connection application.
- 41. The developer shall complete a pre-design meeting for sanitary sewer improvements with the Selma-Kingsburg-Fowler County Sanitation District
- 42. The developer shall submit a full set of subdivision plans for this project for plan check (including landscaping, fencing etc.) to the Selma-Kingsburg-Fowler County Sanitation District.

***Aesthetics/Open Space:***

- 43. Fencing around lots shall be submitted to the Planning Department for approval. Block walls shall be treated with an approved anti-graffiti coating as approved by the City Engineer.
- 44. The block wall proposed along South Sunnyside Avenue and the Kirby Canal shall continue along the entire length of the site's southern boundary of the map.
- 45. Developer shall coordinate with existing property owners where new lots abut existing residences to repair or replace fences between the two properties.
- 46. A minimum of 5% of the total project site shall be reserved and developed as open space. Proposed improvements shall include benches, play structure w/ shade, concrete flatwork and landscaping as approved by the City Engineer.

***Utilities:***

- 47. All existing overhead utilities along the frontage of the subdivision shall be undergrounded, as confirmed by the City Engineer.
- 48. The developer shall provide a street light plan for review and approval by the City Engineer prior to approval of the improvement plans and prior to the start of construction. Streetlights shall be provided by the developer and maintained by the City pursuant to PG&E rate schedule LS2C.

49. Developer shall work with PG&E for the preparation of a utility plan, subject to the review and approval by the City Engineer prior to approval of the improvement plans and prior to the start of construction. All work shall be completed such that no street surface need be reopened for service.

***Irrigation:***

50. A landscape and irrigation plan shall be submitted for review and approval by the City Engineer for landscape areas in the public right of way.
51. Any irrigation pipelines maintained by Consolidated Irrigation District shall be relocated outside of the street right of way, except at street crossings. Any irrigation lines that must remain in service shall be reconstructed with rubber gasket reinforced concrete pipe.
52. All abandoned irrigation lines serving the property shall be removed.

**Fowler Unified School District**

53. The developer shall pay all required school impact fees to the Fowler Unified School District prior to obtaining building permits.

**San Joaquin Valley Air Pollution Control District**

54. The developer shall comply with all rules and regulations of the San Joaquin Valley Air Pollution Control District, including obtaining all necessary permits and paying all applicable fees.

**Other**

55. Approval of this Project is for the benefit of the Applicant. The submittal of applications by Applicant for this Project was a voluntary act on the part of the Applicant not required by the City. Therefore, as a condition of approval of this Project, the Applicant agrees to defend, indemnify and hold harmless the City of Fowler and its agents, officers, consultants, independent contractors and employees ("City") from any and all claims, actions or proceedings against the City to attack, set aside, void, or annul an approval by the City concerning the Project, including any challenges to associated environmental review, and for any and all costs, attorneys fees, and damages arising therefrom (collectively "Claim").

The City shall promptly notify the Applicant of any Claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the Applicant of any Claim or if the City fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City.

Nothing in this condition shall obligate the City to defend any Claim and the City shall not be required to pay or perform any settlement arising from any such Claim not defended by the City, unless the City approves the settlement in writing. Nor shall the City be prohibited from independently defending any Claim, and if the City does decide to independently defend a Claim, the Applicant shall be responsible for City's attorneys' fees, expenses of litigation and costs for that independent defense, including the costs of preparing any required administrative record. Should the City decide to independently defend any Claim,

the Applicant shall not be required to pay or perform any settlement arising from any such Claim unless the Applicant approves the settlement.

Signature of Applicant: \_\_\_\_\_

Date: \_\_\_\_\_