

## **AGENDA**

**TEHACHAPI CITY COUNCIL REGULAR MEETING,  
TEHACHAPI REDEVELOPMENT SUCCESSOR AGENCY REGULAR MEETING,  
TEHACHAPI PUBLIC FINANCING AUTHORITY REGULAR MEETING, AND  
TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING  
Monday, May 4, 2015 - 6:00 P.M.**

Persons desiring disability-related accommodations should contact the City Clerk no later than ten days prior to the need for the accommodation. A copy of any writing that is a public record relating to an open session item of this meeting is available at City Hall, 115 South Robinson Street, Tehachapi, California, 93561.

### **CALL TO ORDER**

### **ROLL CALL**

### **INVOCATION**

Participation in the invocation is strictly voluntary. Each City Councilmember, city employee, and each person in attendance may participate or not participate as he or she chooses.

### **PLEDGE TO FLAG**

### **CONSENT AGENDA/OPPORTUNITY FOR PUBLIC COMMENT**

All items listed with an asterisk (\*) are considered to be routine and non-controversial by city staff. Consent items will be considered first and may be approved by one motion if no member of the council or audience wishes to comment or ask questions. If comment or discussion is desired by anyone, the item will be removed from the consent agenda and will be considered in listed sequence with an opportunity for any member of the public to address the city council concerning the item before action is taken. Staff recommendations are shown in caps. Please turn all cellular phones off during the meeting.

### **AUDIENCE ORAL AND WRITTEN COMMUNICATIONS**

The City Council welcomes public comments on any items within the subject matter jurisdiction of the Council. We respectfully request that this public forum be utilized in a positive and constructive manner. Persons addressing the Council should first state their name and area of residence, the matter of City business to be discussed, and the organization or persons represented, if any. To ensure accuracy in the minutes, please fill out a speaker's card at the podium. Comments directed to an item on the agenda should be made at the time the item is called for discussion by the Mayor. Questions on non-agenda items directed to the Council or staff should be first submitted to the City Clerk in written form no later than 12:00 p.m. on the Wednesday preceding the Council meeting; otherwise response to the question may be carried over to the next City Council meeting. No action can be taken by the Council on matters not listed on the agenda except in certain specified circumstances. The Council reserves the right to limit the speaking time of individual speakers and the time allotted for public presentations.

1. General public comments regarding matters not listed as an agenda item.

**TEHACHAPI CITY COUNCIL REGULAR MEETING,  
TEHACHAPI REDEVELOPMENT SUCCESSOR AGENCY REGULAR MEETING,  
TEHACHAPI PUBLIC FINANCING AUTHORITY REGULAR MEETING, AND  
TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING**

**Monday, May 4, 2015- 6:00 P.M. - PG. 2**

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2. Mayor to present a Certificate of Recognition to World Wind Services for being awarded the 2015 Outstanding Business Award from America's Small Business Development Center Regional Network
3. Mayor to present a Proclamation supporting Kern Citizens for Energy
4. Presentation by the High Speed Rail Authority on the upcoming High Speed Rail Project

**CITY CLERK REPORTS**

Tehachapi City Council Unassigned Res. No. 22-15

Tehachapi City Council Unassigned Ord. No. 15-07-726

Tehachapi Redevelopment Successor Agency Unassigned Res. No. 02-15

Tehachapi Public Financing Authority Unassigned Res. No. 01-15

- \*5. **ALL ORDINANCES SCHEDULED FOR INTRODUCTION OR ADOPTION AT THIS MEETING SHALL BE READ BY TITLE ONLY**
- \*6. Minutes for the Tehachapi City Council, Tehachapi Redevelopment Successor Agency, Tehachapi Public Financing Authority, and the Tehachapi City Financing Corporation regular meeting on April 20, 2015 – **APPROVE AND FILE**

**FINANCE DIRECTOR REPORTS**

- \*7. Disbursements, bills, and claims for April 21, 2015 through April 29, 2015 – **AUTHORIZE PAYMENTS**

**AIRPORT MANAGER REPORTS**

- \*8. Non-commercial hangar ground lease agreement – **APPROVE THE NON-COMMERCIAL HANGAR GROUND LEASE AGREEMENT BETWEEN THE CITY OF TEHACHAPI AND MICHAEL LERNER FOR HANGAR 16E AND AUTHORIZE THE MAYOR TO SIGN**

**CITY ENGINEER REPORTS**

9. Certificate of Acceptance for Irrevocable offers of dedication for ingress, egress, and road purposes located in capital hills adjacent to the proposed hospital project and agreement allowing the deferred completion of roadway improvements – **ACCEPT THE IRREVOCABLE OFFERS OF DEDICATION FOR THE EXTENSION OF MAGELLAN DRIVE AND FOR THE EXTENSION OF CHALLENGER DRIVE, AUTHORIZE THE MAYOR TO SIGN A CERTIFICATE OF ACCEPTANCE FOR EACH, AND REQUEST STAFF TO RECORD SAME; APPROVE AND AUTHORIZE THE MAYOR TO SIGN AN AGREEMENT WITH THE TEHACHAPI VALLEY HEALTHCARE DISTRICT ALLOWING THE DEFERRED COMPLETION OF ROADWAY IMPROVEMENTS ITEMIZED IN EXHIBIT A OF THE SUBJECT AGREEMENT**
10. Agreement for Community Development Activity – Tehachapi Freedom Plaza parking improvements CD#20.13.1 – **APPROVE THE AGREEMENT BETWEEN THE CITY OF TEHACHAPI AND THE COUNTY OF KERN FOR COMMUNITY DEVELOPMENT ACTIVITY FOR THE TEHACHAPI FREEDOM PLAZA PARKING IMPROVEMENTS PROJECT CD#20.13.1 AND AUTHORIZE THE MAYOR TO SIGN**

**TEHACHAPI CITY COUNCIL REGULAR MEETING,  
TEHACHAPI REDEVELOPMENT SUCCESSOR AGENCY REGULAR MEETING,  
TEHACHAPI PUBLIC FINANCING AUTHORITY REGULAR MEETING, AND  
TEHACHAPI CITY FINANCING CORPORATION REGULAR MEETING**

**Monday, May 4, 2015- 6:00 P.M. - PG. 3**

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**POLICE CHIEF REPORTS**

11. Coplogic Deskofficer Online Reporting System (DORS) Agreement – **APPROVE THE AGREEMENT BETWEEN THE CITY OF TEHACHAPI AND COPLOGIC AND AUTHORIZE THE MAYOR TO SIGN SUBJECT TO CITY ATTORNEY APPROVAL**

**CITY MANAGER REPORTS**

12. Report to Council regarding current activities and programs – **VERBAL REPORT**

**COUNCILMEMBER ANNOUNCEMENTS OR REPORTS**

On their own initiative, a Councilmember may ask a question for clarification, make a brief announcement, provide a reference to staff or other resources for factual information, take action to have staff place a matter of business on a future agenda, request staff to report back at a subsequent meeting concerning any matter, or make a brief report on his or her own activities. (Per Gov't. Code §54954.2(a))

**CLOSED SESSION**

1. Conference with legal counsel regarding potential litigation per Government Code Section 54956.9(d) 2,(e)(1).

**ADJOURNMENT**



<p><b>WHITMORE, ADMINISTERED THE OATH OF OFFICE; CITY CLERK, VICTORIA MARSH, TOOK HER SEAT AT 6:05 PM</b></p> <p>2. General public comments regarding matters not listed as an agenda item were received from:              a. No comments received</p> <p>3. Mayor presented a Proclamation for National Volunteer Week</p> <p>4. Mayor presented a Certificate of Recognition to Andres Atencio, Volunteer in Policing (VIP)</p>	
<p><b><u>CITY CLERK REPORTS</u></b></p>	
<p><b>*5. ALL ORDINANCES SCHEDULED FOR INTRODUCTION OR ADOPTION AT THIS MEETING SHALL BE READ BY TITLE ONLY.</b></p>	<p>All Ord. Read By Title Only Sm/Ni Ayes All</p>
<p><b>*6. Minutes for the Tehachapi City Council, Tehachapi Redevelopment Successor Agency, Tehachapi Public Financing Authority, and the Tehachapi City Financing Corporation regular meeting on April 6, 2015 - APPROVED AND FILED.</b></p>	<p>Approved &amp; Filed Sm/Ni Ayes All</p>
<p><b><u>FINANCE DIRECTOR REPORTS</u></b></p>	
<p><b>*7. Disbursements, bills and claims for April 2, 2015 – April 15, 2015 – AUTHORIZED PAYMENTS</b></p>	<p>Authorized Payments Sm/Ni Ayes All</p>
<p><b>*8. City of Tehachapi Treasurer’s Report through March, 2015 – RECEIVED REPORT</b></p>	<p>Received Report Sm/Ni Ayes All</p>
<p><b>*9. Formal commitment of an amount of fund balance to be set aside specifically for emergency contingencies as required by the Governmental Accounting Standards Board Statement No. 54 (GASB54) – ADOPTED RESOLUTION NO. 21-15 APPROVING THE CITY OF TEHACHAPI’S EMERGENCY CONTINGENCY COMMITMENT OF FUND BALANCE FOR THE GENERAL FUND AND REPEALING RESOLUTION NO. 04-14</b></p>	<p>Adopted Resolution No. 21-15 Approving The City Of Tehachapi’s Emergency Contingency Commitment Of Fund Balance For The General Fund And Repealing Resolution No. 04-14 Sm/Ni Ayes All</p>
<p><b><u>PUBLIC WORKS DIRECTOR REPORTS</u></b></p>	
<p><b>10. Ordinance establishing a Water Shortage Contingency Plan – PUBLIC WORKS DIRECTOR JON CURRY GAVE REPORT; ADOPTED ORDINANCE NO. 15-05-724 ADDING CHAPTER 13.22 TO THE TEHACHAPI MUNICIPAL CODE ESTABLISHING A WATER SHORTAGE CONTINGENCY PLAN</b></p>	<p>Adopted Ordinance No. 15-05-724 Adding Chapter 13.22 To The Tehachapi Municipal Code Establishing A Water Shortage Contingency Plan Ni/Sm Ayes All</p>
<p><b><u>COMMUNITY DEVELOPMENT DIRECTOR REPORTS</u></b></p>	
<p><b>11. Introduction of an ordinance relating to recreational vehicle parking in residential neighborhoods – INTRODUCTION ONLY</b></p>	<p>Removed From Agenda By Mayor Wiggins</p>

**ACTION TAKEN**

**CITY ENGINEER REPORTS**

- \*12. Agreement with Tehachapi Unified School District to perform some minor rehabilitation work on TUSD property during the Tehachapi Boulevard Improvements Project Phase III – **APPROVED THE AGREEMENT BETWEEN THE CITY OF TEHACHAPI AND THE TEHACHAPI UNIFIED SCHOOL DISTRICT FOR THE TEHACHAPI BOULEVARD IMPROVEMENTS PROJECT – PHASE III AND AUTHORIZED THE MAYOR TO SIGN**
  
- 13. Curry & Valley Intersection Improvements Project Bid Award – **ASSISTANT CITY MANAGER CHRIS KIRK GAVE REPORT; RECEIVED COMMENTS FROM DAVID BUTLER, CITY RESIDENT; AWARDED THE CURRY & VALLEY INTERSECTION IMPROVEMENTS PROJECT TO CEN-CAL CONSTRUCTION IN THE AMOUNT OF \$330,854.00 AND AUTHORIZED THE CITY MANAGER TO APPROVE ANY NECESSARY CHANGE ORDERS UP TO A MAXIMUM OF 5% OF THE ORIGINAL CONTRACT (OR \$16,542.70)**

Approved The Agreement Between The City Of Tehachapi And The Tehachapi Unified School District For The Tehachapi Boulevard Improvements Project – Phase Iii And Authorized The Mayor To Sign  
 Sm/Ni Ayes All

Awarded The Curry & Valley Intersection Improvements Project To Cen-Cal Construction In The Amount Of \$330,854.00 And Authorized The City Manager To Approve Any Necessary Change Orders Up To A Maximum Of 5% Of The Original Contract (Or \$16,542.70)  
 Gr/Wa Ayes All

**POLICE CHIEF REPORTS**

- 14. Ordinance pertaining to appeals of administrative citations – **CODE ENFORCEMENT OFFICER AARON PRICE GAVE REPORT; RECEIVED COMMENTS FROM CARL GEHRICKE, CITY RESIDENT; ADOPTED ORDINANCE NO. 15-06-725 AMENDING ORDINANCE NUMBER 701 AND TEHACHAPI MUNICIPAL CODE SECTIONS 1.16.065.E AND F PERTAINING TO APPEALS OF ADMINISTRATIVE CITATIONS**
  
- 15. Emergency abatement at 905 Beech Street – **CODE ENFORCEMENT OFFICER AARON PRICE GAVE REPORT; APPROVED THE EMERGENCY ABATEMENT ACTIONS CONDUCTED BY CODE ENFORCEMENT AT 905 BEECH STREET**

Adopted Ordinance No. 15-06-725 Amending Ordinance Number 701 And Tehachapi Municipal Code Sections 1.16.065.E And F Pertaining To Appeals Of Administrative Citations  
 Ni/Sm Ayes All

Approved The Emergency Abatement Actions Conducted By Code Enforcement At 905 Beech Street  
 Gr/Sm Ayes All

**CITY MANAGER REPORTS**

- 16. Local budget and service priorities research – **AUTHORIZE THE CITY TO ENTER INTO AN AGREEMENT WITH THE LEW EDWARDS GROUP FOR COMMUNITY ENGAGEMENT AND OPINION RESEARCH FOR A TOTAL OF \$34,850, SUBJECT TO APPROVAL BY THE CITY ATTORNEY AND AUTHORIZE THE CITY MANAGER TO APPROVE SUBSEQUENT INCREASES IN PROJECT SCOPE AND FEE TO ALLOW FOR PARTNER AGENCIES TO PARTICIPATE IN THE RESEARCH, PROVIDED THAT SAID AGENCIES AGREE TO PAY FOR THE RESULTING INCREASE IN COST**
  
- 17. Report to Council regarding current activities and programs – **VERBAL REPORT.**

Removed From Agenda By Mayor Wiggins

**COUNCIL MEMBER ANNOUNCEMENTS OR REPORTS**

1. Mayor Pro Tem Nixon commented on the Non-profit Showcase and invited the community to the upcoming Tehachapi Collaborative Meeting
2. Mayor Wiggins spoke in regards to the benefit of non-profit service.

**CLOSED SESSION**

1. Approved closed session minutes of April 6, 2015

Approved Closed Session  
Minutes Of April 6, 2015  
Ni/Si Ayes All

**ADJOURNMENT**

The City Council/Boards adjourned at 6:45 pm to a Tehachapi City Council, Tehachapi Redevelopment Successor Agency, Tehachapi Public Financing Authority and Tehachapi City Financing Corporation Regular Meeting to be held on Monday, May 4, 2015, at 6:00p.m.

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Tori Marsh City Clerk  
City of Tehachapi

Approved this 4th day  
of May, 2015.

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SUSAN WIGGINS  
Mayor, City of Tehachapi

# Accounts Payable

## Checks by Date - Detail By Vendor Number

User: Hthomas  
 Printed: 4/29/2015 - 2:28 PM



Vendor	Invoice No	Line Description	Check Amount
0017	American Business Machines		
Check No:	0	Check Date:	
	232590	GG/#2-Blk GPR-30 Toner	8.00
		Check Total:	8.00
		Vendor Total:	8.00
0035	BC Laboratories Inc.		
Check No:	0	Check Date:	
	B199234-1	Wtr/Samples/Curry Well & Curry Resv 1 & 2	75.00
	B199234-2	Wtr/Samples/Fig/Hickory	36.00
	B199816-1	Wtr/Samples/Mojave & Pinon Wells	50.00
	B199816-2	Wtr/Samples/Oakwood/Brentwood/Tanglewood	36.00
	B200101	Swr/Samples/Influent/Effluent	325.00
	B200181	Wtr/Samples/Dennison & Mojave	30.00
	B200476-1	Wtr/Samples/Dennison & Wahlstrom Wells	50.00
	B200476-2	Wtr/Samples/Hayes/Fairoak/Alder	36.00
	B200485	Wtr/Samples/Dennison & Mojave	30.00
	B200488	Wtr/Samples/Curry Resv	15.00
	B200696	Swr/Samples/Influent/Effluent	325.00
	B200697	Wtr/Samples/Curry Resv	15.00
		Check Total:	1,023.00
		Vendor Total:	1,023.00
0093	Coles Environmental		
Check No:	0	Check Date:	
	65277	Air/pick up-140G Used Oil-Non-RCRA Hazardc	75.00
		Check Total:	75.00
		Vendor Total:	75.00
0260	Liebert Cassidy Whitmore		
Check No:	0	Check Date:	
	1402525	GG/General Prof Svcs through 3/31/15	7,177.40
	1402526	PD/Graff & Disney Litigation/Prof Svcs through	1,440.00
	1402527-1	PD/Negotiations 2014 Prof Svcs through 3/31/15	2,690.75
	1402527-2	PW/Negotiations 2014 Prof Svcs through 3/31/15	2,173.75
		Check Total:	13,481.90
		Vendor Total:	13,481.90
0300	Mission Linen & Uniform Service		
Check No:	0	Check Date:	
	140102911	PW/#2-3x4 mats/Linen Maintenance	134.82
	140102912	Swr/dust mop/#2-3x4 mats/#3-3x10 mats	44.46
	140104211	PW/#2-3x4 mats/Linen Maintenance	99.10

Vendor	Invoice No	Line Description	Check Amount
	140104212	Swr/dust mop/#2-3x4 mats/#3-3x10 mats	44.46
		Check Total:	322.84
		Vendor Total:	322.84
0304	Mojave Sanitation	Check Date:	
Check No:	0		
	2483255	Swr/Acct#965528800/800 Enterprise/3YD bin/ft	132.23
	2507482	Swr/Acct#965528800/800 Enterprise/3YD bin/ft	132.23
	2510179	Strts/Acct#975570700/Valley Blvd/rolloff rental	1,862.83
		Check Total:	2,127.29
		Vendor Total:	2,127.29
0362	RSI Petroleum Products	Check Date:	
Check No:	0		
	0282268	PW/unleaded gas	521.77
		Check Total:	521.77
		Vendor Total:	521.77
0372	Southern California Edison	Check Date:	
Check No:	0		
	04222015-	Air/West End Teh Airport 3/19-4/20/14	58.62
	04222015-1	Air/314 N Hayes St 3/19-4/20/14	142.73
	04222015-10	Air/314 N Hayes St G3 3/19-4/20/14	41.21
	04222015-11	Air/Dennison S/O Hwy 58 3/19-4/20/14	153.46
	04222015-12	Air/314 N Hayes St 3/19-4/20/14	124.53
	04222015-2	Air/9999 1/2 Hayes 3/19-4/20/14	99.16
	04222015-3	Air/316 S Mojave St 3/19-4/20/14	50.62
	04222015-4	Air/314 N Hayes St PAPI 2/18-3/19/14	29.50
	04222015-5	Air/314 N Hayes St PAPI 3/19-4/20/14	28.75
	04222015-6	Air/409 Bryan Ct 3/19-4/20/14	116.90
	04222015-8	Air/314 N Hayes St #B 3/19-4/20/14	329.16
	04222015-9	Air/NE Cor Teh Airport 3/19-4/20/14	233.20
	04242015-1	GG/311 E D St	75.43
	04242015-2	Land/114 S Green	137.83
	04242015-3	CC/104 S Robinson St	88.42
	04242015-4	Strts/113 S Mojave St	160.85
	04242015-5	LLD/318 E E St	95.83
	04252015-1	GG/200 W Tehachapi Blvd	28.25
	04252015-2	PD/220 W C	1,553.91
	04252015-3	Strts/213 S Curry St A	20.06
	04252015-4	LLD/329 1/2 D St	102.08
		Check Total:	3,670.50
		Vendor Total:	3,670.50
0373	Thomas F. Schroeter Attorney @ Law	Check Date:	
Check No:	0		
	04282015-1	GG/Legal Services 03/30/15-04/27/15	3,666.00
	04282015-2	Air/Legal Services 03/30/15-04/27/15	760.50
	04282015-3	Wtr/Legal Services 03/30/15-04/27/15	403.00
	04282015-4	PERS M1 Contribution	-241.48
		Check Total:	4,588.02

Vendor	Invoice No	Line Description	Check Amount
		Vendor Total:	4,588.02
0445	Tehachapi Senior Center Inc.		
Check No:	0	Check Date:	
	05012015	Sr Nutrition Program-Space Rent May 2015	400.00
		Check Total:	400.00
		Vendor Total:	400.00
0476	WITTS Everything for the Office		
Check No:	0	Check Date:	
	136892-0	PD/towels/covers/tissue/toner/labels/fasteners/2 .	366.16
	137026-0	GG/1 box letter straight file folders	8.05
	137030-0-1	GG/mailer/bind comb/disc-Loop Ranch Neg Dec	32.08
	137030-0-2	CD/mailer/bind comb/disc-Loop Ranch Neg Dec	48.10
	137076-0	GG/#1-str file folders/AA batteries/#1-Ct paper/s	74.82
		Check Total:	529.21
		Vendor Total:	529.21
0493	Kieffe & Sons Ford		
Check No:	0	Check Date:	
	16451A	PD/Replace rotor asy/brake pads/oil change/11 F	599.02
		Check Total:	599.02
		Vendor Total:	599.02
0610	Abate-A-Weed Inc.		
Check No:	0	Check Date:	
	650245	PW/2.5G Pendulum 3.3EC	123.61
		Check Total:	123.61
		Vendor Total:	123.61
0689	Pioneer True Value Home Center		
Check No:	0	Check Date:	
	66031	Swr/#2-1 1/4 PVC THRD union/#2-1" PVC THI	21.16
		Check Total:	21.16
		Vendor Total:	21.16
1071	Main Street Tehachapi Inc.		
Check No:	0	Check Date:	
	04272015	Refund Special Evnt Security Deposit	200.00
		Check Total:	200.00
		Vendor Total:	200.00
1286	M&M's Sports Uniforms & Embroider		
Check No:	0	Check Date:	
	33567	Eng/Plastic engraved plate	17.09
		Check Total:	17.09
		Vendor Total:	17.09
1505	Benz Construction Services		
Check No:	0	Check Date:	

Vendor	Invoice No	Line Description	Check Amount
	2421270 RI	PW/Acct#300421000/800 Enterprise-replace Ck	361.94
	2510242	PW/Acct#300421000/800 Enterprise/rolloff svc	447.85
		Check Total:	809.79
		Vendor Total:	809.79
1658	Springbrook Software Inc.		
Check No:	0	Check Date:	
	CM999	GG/Credit-ACH processing issues/Web Payment	-236.10
	INV30541 RI	GG/Monthly Web Payments March 2015	293.10
		Check Total:	57.00
		Vendor Total:	57.00
1724	Banks Pest Control Inc.		
Check No:	0	Check Date:	
	445753	GG/115 S Robinson St	72.00
		Check Total:	72.00
		Vendor Total:	72.00
1801	HD Supply Waterworks LTD		
Check No:	0	Check Date:	
	D766543	Strts/#500-1 1/2x100'CTS PE Tubing 200 PSI	435.38
	D790087	Swr/#2-3x5 STL CPLG Epoxy Alloy B&N	156.30
		Check Total:	591.68
		Vendor Total:	591.68
1866	Bear Valley CSD		
Check No:	0	Check Date:	
	04212015	PD/dispatch services March 2015	35,381.95
		Check Total:	35,381.95
		Vendor Total:	35,381.95
1982	SSD Systems		
Check No:	0	Check Date:	
	1094201-A-1	Air/314 Hayes St/Pilots Lounge/burglar alarm se	36.75
	1094201-A-10	GG/115 S Robinson/burglar alarm services	34.65
	1094201-A-11	Air/314 Hayes St-Pilots Lounge/radio backup se	23.10
	1094201-A-2	Air/100 Commercial Way/burglar alarm services	17.33
	1094201-A-3	Constr/100 Commercial Way/burglar alarm servi	17.32
	1094201-A-4	PW/800 Enterprise/burglar alarm services	46.50
	1094201-A-5	Swr/750 Enterprise/water treatment/burglar alarr	30.98
	1094201-A-6	Wtr/750 Enterprise/water treatment/burglar alarm	30.97
	1094201-A-7	Swr/750 Enterprise/water storage/burglar alarm s	25.73
	1094201-A-8	Wtr/750 Enterprise/water storage/burglar alarm s	25.72
	1094201-A-9	Depot/101 Tehachapi Blvd/fire alarm services	79.00
		Check Total:	368.05
		Vendor Total:	368.05
2111	Swift Napa Auto Parts		
Check No:	0	Check Date:	
	840349-1	PW/#8-oil filters/#4-air filters/#2-lucas oil stabl	77.96
	840349-2	Wtr/#8-oil filters/#4-air filters/#2-lucas oil stabl	77.95

Vendor	Invoice No	Line Description	Check Amount
	840349-3	Swr/#8-oil filters/#4-air filters/#2-lucas oil stabl	77.95
	840493	Constr/gas cap-2008 Ford F250	15.04
	840916	PW/#3-Gold-Oil filters/#4-V Power spark plugs	36.75
		Check Total:	285.65
		Vendor Total:	285.65
2147	Coffee Break Service Inc.		
Check No:	0	Check Date:	
	APR4220	GG/Water cooler rental April 2015	26.95
		Check Total:	26.95
		Vendor Total:	26.95
2676	USPS-Hasler		
Check No:	0	Check Date:	
	04272015	GG/Postage Acct #216528/Agr #400086982	1,000.00
		Check Total:	1,000.00
		Vendor Total:	1,000.00
2874	Department of Justice Accounting Offi		
Check No:	0	Check Date:	
	093643	Fingerprint Apps/FBI/Cust records/Child Abuse	288.00
		Check Total:	288.00
		Vendor Total:	288.00
2981	Burke Williams & Sorenson LLP		
Check No:	0	Check Date:	
	187763	GG/General Fees Prof svcs through 03/31/15	1,011.50
	187764	AD 89-2 Fees Prof svcs through 03/31/15	224.46
	187766	AD 89-3 Fees Prof svcs through 03/31/15	504.67
		Check Total:	1,740.63
		Vendor Total:	1,740.63
3004	Motor City Auto Center		
Check No:	0	Check Date:	
	721448	PW/lever control	296.83
		Check Total:	296.83
		Vendor Total:	296.83
3011	Verizon Wireless		
Check No:	0	Check Date:	
	9744174446-1	Eng/mobile broadband/R Montgomery	38.01
	9744174446-10	Wtr/mobile broadband/J Curry	15.01
	9744174446-11	Swr/mobile broadband/J Curry	15.01
	9744174446-2	Air/mobile broadband/G Patterson	38.01
	9744174446-3	Eng/mobile broadband/C Arbout	38.01
	9744174446-4	GG/mobile broadband/G Garrett	38.01
	9744174446-5	Air/mobile broadband/G Patterson Toughbook	38.01
	9744174446-6	Air/mobile broadband/T Glasgow	29.65
	9744174446-7	GG/mobile broadband/M Vance	29.65
	9744174446-8	Fng/mobile broadband/J Schlosser	29.65
	9744174446-9	CD/mobile broadband/D James	38.01

Vendor	Invoice No	Line Description	Check Amount
		Check Total:	347.03
		Vendor Total:	347.03
3018	CDW Government Inc.		
Check No:	0	Check Date:	
	TR65134	CH Anx/CISCO smartnet 8x5xNBD	245.00
		Check Total:	245.00
		Vendor Total:	245.00
3051	Tehachapi Transmissions Inc.		
Check No:	0	Check Date:	
	6751	PD/Head light bulb-TE-08/2003 Ford Cm Victor	6.99
		Check Total:	6.99
		Vendor Total:	6.99
3066	AECOM Technical Services Inc.		
Check No:	0	Check Date:	
	Draft-30-1	NPD/Agr#60272082/Tehachapi Police Dept TM	17,571.51
	Draft-30-2	NPD/Agr#60272082/Adj-Per COT letter dated 1	-9,710.45
		Check Total:	7,861.06
		Vendor Total:	7,861.06
3093	Kern County Animal Services		
Check No:	0	Check Date:	
	04082015	GG/Quarterly Billing Jan-Mar 2015	8,750.00
		Check Total:	8,750.00
		Vendor Total:	8,750.00
3503	Solenis LLC		
Check No:	0	Check Date:	
	130957445	Swr/Praestol K 148 L IBC 1000L	3,886.53
		Check Total:	3,886.53
		Vendor Total:	3,886.53
3674	Secure On-Site Shredding		
Check No:	0	Check Date:	
	2491495	GG/Acct#300421002/115 S Robinson-33 Boxes	165.00
	2507775	GG/Acct#300421002/115 S Robinson March 20	35.00
	2507776	Swr/Acct#300421004/750 Enterprise March 201	35.00
	2507777	PD/Acct#300421006/220 West C St March 2015	35.00
		Check Total:	270.00
		Vendor Total:	270.00
3725	Powerstride Battery Co. Inc.		
Check No:	0	Check Date:	
	84870	Swr/#1-PS78-775 Battery	95.17
		Check Total:	95.17
		Vendor Total:	95.17

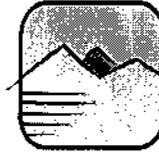
Vendor	Invoice No	Line Description	Check Amount
3782	SWRCB Accounting Office		
Check No:	0	Check Date:	
	LW-1000099	Wtr/Fees/FY 2014/15 Mid Year Billing 7/1/14-1:	1,725.44
		Check Total:	1,725.44
		Vendor Total:	1,725.44
3808	Sprint		
Check No:	0	Check Date:	
	LCI-229816	PD/Subpoena Compliance/L-Site GPS 3/9/15-3/	30.00
		Check Total:	30.00
		Vendor Total:	30.00
3837	CEMEX Construction Materials Pac L		
Check No:	0	Check Date:	
	9430689684	PW/Buckeye-Ultra 500/5SK 50/PM AE/fees	370.19
		Check Total:	370.19
		Vendor Total:	370.19
3848	O'Reilly Auto Parts		
Check No:	0	Check Date:	
	4447-112827	PW/#2-lights/T-104	13.74
		Check Total:	13.74
		Vendor Total:	13.74
3850	Rivera's Lath & Plaster		
Check No:	0	Check Date:	
	04152015	PW/Museum-removal & re-plaster flaking plaste	1,400.00
	G14011-D-2	CH Anx/Demo/drywall/Progress Pay Est #2	2,551.22
		Check Total:	3,951.22
		Vendor Total:	3,951.22
3852	GameTime C/O Great Western		
Check No:	0	Check Date:	
	78644	FP/Dcp-Play area-Log & Crate Steppers/Timber	5,300.00
		Check Total:	5,300.00
		Vendor Total:	5,300.00
3853	Guardian Tracking LLC		
Check No:	0	Check Date:	
	2015-0169	PD/Annual Subscription Internet Access/Softwa	765.00
		Check Total:	765.00
		Vendor Total:	765.00
3854	Mary Valenti PH.D.		
Check No:	0	Check Date:	
	04072015	PD/Critical Incident Interview	150.00
		Check Total:	150.00
		Vendor Total:	150.00

Vendor	Invoice No	Line Description	Check Amount
3855	Central Valley Occupational Med Grp		
Check No:	0	Check Date:	
	5717-0	PD/Preplacement Exam-D Brown	468.00
		Check Total:	468.00
		Vendor Total:	468.00
3856	ClaimFox Inc		
Check No:	0	Check Date:	
	24040430	PD/FSB Criminal Cert/research hours/#22- FED	42.80
		Check Total:	42.80
		Vendor Total:	42.80
3857	Coles Mechanical Systems Inc		
Check No:	0	Check Date:	
	G14011-H-1	CH Anx/HVAC Progress Pay Est #1	22,540.65
		Check Total:	22,540.65
		Vendor Total:	22,540.65
3858	Gregory Hahn		
Check No:	0	Check Date:	
	04272015	Refund for 20/% Discount Code CC15	20.00
		Check Total:	20.00
		Vendor Total:	20.00
		Report Total:	125,465.76

# Accounts Payable

## Checks by Date - Detail By Check Date

User: Hthomas  
Printed: 4/21/2015 - 9:43 AM



CITY OF  
**TEHACHAPI**  
CALIFORNIA

			Check Amount
Check No:	42423	Check Date: 04/20/2015	
Vendor:	3274	Bright House Networks	
064495401040415		GG/Internet Service 4/11-5/10/15	173.76
			<hr/>
			173.76
Check No:	42424	Check Date: 04/20/2015	
Vendor:	1285	CA Dept of Corrections and Rehabilitation	
1800284266-1		Strts/Maint CCI Crew- Dec 2014	2,505.15
1800284266-2		Land/CCI Crew-Dec 2014	2,505.15
1800284266-3		C H Anx/CCI Crew-Dec 2014	1,670.10
			<hr/>
			6,680.40
Check No:	42425	Check Date: 04/20/2015	
Vendor:	2111	Swift Napa Auto Parts	
83439		Strts/#2-Adjustable Torsion BA-for snowplow tr	572.95
			<hr/>
			572.95
Check No:	42426	Check Date: 04/20/2015	
Vendor:	0433	Tehachapi Recycling	
0232015		Recycling Contract Period 8	14,695.14
			<hr/>
			14,695.14
Check No:	42427	Check Date: 04/20/2015	
Vendor:	0434	Tehachapi Sanitation	
0202215		Kern County Gate Fees Period 8	14,521.13
0222015		Refuse Contract Period 8	69,505.21
			<hr/>
			84,026.34
			<hr/>
Date Totals:			106,148.59
			<hr/>
			<hr/>
Report Total:			106,148.59
			<hr/>
			<hr/>

# Accounts Payable

## Checks by Date - Detail By Check Date

User: Hthomas  
 Printed: 4/22/2015 - 2:34 PM



			Check Amount
Check No:	42499	Check Date: 04/22/2015	
Vendor:	2963	AT&T	
6216008		Air/BAN#9391006711/DSL Fax	52.12
6324943		Air/BAN#9391006711/DSL Fax	50.49
6373087		PD/BAN#9391006709/Subscriber Access line	161.01
6436891		Air/BAN#9391006711/DSL Fax	52.52
6436892		Swr/BAN#9391006714/Telemetry Sys	18.05
6449082		PD/BAN#9391040069/PD telephone	407.30
6449251		Swr/BAN#9391006710/Scada	98.04
6449252		GG/BAN#9391006712/CH Line 1	471.40
6449253		Swr/BAN#9391006713/WWTP Office	116.59
6449254		Depot/BAN#9391006715/Depot	50.49
6449255		Swr/BAN#9391006716/Lift Station	18.05
6449256		GG/BAN#9391006717/CH Fax	65.21
6449257		Air/BAN#9391006718/AWOS	18.05
6449258		PW/BAN#9391006719/DSL Fax	34.36
6449259		Air/BAN#9391006720/Fuel System	18.07
6449260		LLD/BAN#9391006721/Auto Dialer/1002 Appl	8.14
6449451		PD/BAN#9391006714/telephone	56.75
6460760		PD/BAN#9391006708/T1 Line	290.30
6483411		PD/BAN#9391006709/Subscriber Access line	157.25
			2,144.19
Check No:	42500	Check Date: 04/22/2015	
Vendor:	0027	Atco International	
I0429548		Swr/55G Marauder	2,231.97
I0429548 UT		Use Tax	-155.72
I0429956		Swr/#1-Foamacide	67.73
I0429956 UT		Use Tax	-4.73
			2,139.25
Check No:	42501	Check Date: 04/22/2015	
Vendor:	0395	The Gas Company	
04092015		GG/non-residential heat/115 S Robinson St	51.71
04142015-1		GG/non-residential heat/200 W Tehachapi Blvd	14.30
04142015-2		PD/non-residential heat/220 W C St	264.38
04142015-3		Air/non-residential heat/409 Bryan Ct	56.83
04142015-4		Air/non-residential heat/100 Commercial Way	67.23
			454.45
Check No:	42503	Check Date: 04/22/2015	
Vendor:	2155	City of McFarland	
04212015		GG/KCAC Dinner Meeting 7 @ \$30 per person-	210.00
			210.00
Check No:	42504	Check Date: 04/22/2015	
Vendor:	0573	Pyro Spectaculars Inc.	

		Check Amount
04162015	GG/Deposit-Special Fireworks Display July 4 20	10,795.00
		<hr/>
		10,795.00
Check No:	42505 Check Date: 04/22/2015	
Vendor:	0372 Southern California Edison	
04072015-1	Wtr/Curry	6,846.05
04072015-2	Wtr/Pinon	2,488.70
04072015-3	Wtr/1299 S Curry St	1,999.31
04072015-4	LLD/1347 Clasico Dr PED	37.49
04072015-5	LLD/1115 Alder Ave PED	27.22
04072015-6	LLD/1415 Alder Ave PED	27.08
04072015-7	LLD/1002 Applewood St	37.97
04082015-1	Strts/Tucker Rd/Hwy 202	174.30
04082015-10	Strts/710 W Tehachapi Blvd	159.10
04082015-11	Strts/Tehachapi Blvd/Dennison	12.00
04082015-12	Strts/800 S Curry St	30.41
04082015-13	Strts/Dennison/Brett Ave	43.93
04082015-14	Strts/Goodrick Dr E/O Dennison	200.77
04082015-15	Strts/Valley BL W/O Dennison	401.54
04082015-16	Strts/100 W Tehachapi BLVD #B	197.59
04082015-17	Strts/101 W F St	299.71
04082015-18	LLD/TR 2995 Oakwood/VAL	273.11
04082015-19	LLD/TR 2995 Oakwood/VAL	288.61
04082015-2	Strts/Mill & J St	73.20
04082015-20	Strts/TR 2995 Oakwood/VAL	7,332.66
04082015-21	Wtr/129 Brentwood Dr	1,873.25
04082015-22	Swr/000000 Tehachapi Blvd	149.18
04082015-23	Strts/Tehachapi/Tucker	49.65
04082015-24	LLD/180 Valley	25.40
04082015-25	LLD/311 Sutter St	25.69
04082015-26	LLD/501 1/2 Pinon	25.40
04082015-27	LLD/115 Manzanita Ln	25.27
04082015-28	LLD/Pinon St/East/Orchard/Curry St	320.82
04082015-29	LLD/Industrial Pkwy/Curry St	66.61
04082015-3	Strts/TR 45361 Mulberry AP	55.49
04082015-4	Strts/Mill & J St	109.52
04082015-5	Strts/F St E/O Mulberry	260.85
04082015-6	Strts/213 W I St	11.13
04082015-7	Strts/Highline & Curry	16.54
04082015-8	Strts/Mill St S/O E St	11.13
04082015-9	Strts/Tucker/Valley	171.45
04092015-1	Strts/1300 Goodrick Dr #Z	25.10
04092015-10	LLD/Mill St/D St	67.44
04092015-11	Drain/409 Bailey Ct	39.26
04092015-2	Strts/Mulberry/Brentwood	72.21
04092015-3	Swr/755 Steuber Well	607.99
04092015-4	LLD/Manzanite/Green	267.54
04092015-5	LLD/1199 Canyon Dr East	25.54
04092015-6	LLD/1200 S Dennison	25.54
04092015-7	LLD/1202 S Dennison	26.57
04092015-8	LLD/1000 Canyon Dr W	25.69
04092015-9	LLD/Dennison/Pinon St	1,203.49
04102015-1	LLD/115 Manzanita St	25.69
04102015-2	Strts/209 E Highline Rd PED	25.40
04142015-1	Wtr/126 S Snyder Ave	605.43
04142015-2	Wtr/NW Cor Anita/Dennison	2,633.29
04142015-3	Wtr/Whit Oak Extnd-E-Curry	1,009.13
04182015	Strts/800 S Curry St #A	47.14

30,880.58

Check No:	42506	Check Date:	04/22/2015	
Vendor:	2695	Home Depot Credit Services		
0011470-1		Constr/#5-4.5" mil C/O wheel/Mil DC grind/bea		39.78
0011470-2		Constr/gloves		13.95
0012470		CH Anx/#9-2x6-14 & #4-2x4-12 d fir/#15-joist f		131.95
0012500		CH Anx/#2-2x6-14ft premium doug fir		15.57
0102358		Swr/#2-Glad odorshield 13G bags		34.34
0311482		Constr/#3-GE clear silicone /#1-12" & #1-14" m		37.44
0570302		PD/adjustable chrome doorstop		4.81
1020251		Depot/#2-66 kwikset keys		4.02
1580833		Wtr/10" plier/#3-firm grip glovesXL &XXL/gre		61.12
2012885		Wtr/speed out 4pc screw extractor		20.93
3024458		CH Anx/#6-2x4-10ft pr doug fir/chisel spade bit		36.29
3103328		Swr/5/16x2-3/4 wire lock pins SQ HD		3.20
3103348		Constr/BEDDG fork/AAA batteries		49.21
3580393		Srts/#4-50G XL black bags 50ct		62.76
4024369		CH Anx/#3-2x4-10ft pr doug fir/1.5x3.5x96 PT1		17.13
4590457		Depot/#2-tapcon 3/8x3 HWH 2ct/hammer drill b		31.27
5011712		Wtr/Lg grease monkey grip glv/size 11 Blk PVC		24.08
5012660		Swr/#2-1" PVC union		10.71
5012675		Swr/ PVC CHCK valve		12.13
5012699		Wtr/depthfinder 65' steel fish tape		33.07
5020054		Constr/Scotch storage tape/#3-1-5/8 panel clamp		18.67
5133400		Constr/6 CU wheelbarrow		89.06
6011665		Constr/#3-2 cycle oil/squeegee pushbroom		31.84
6011689		Constr/#2-stops rust clr spray/premium 6X chalk		24.62
6024904		Wtr/Ortho home defense max/hot water hose		48.31
6120069		Constr/22" steel leaf rake w/grip		16.09
8012024		Constr/3pk 3M N95 Respirator		5.21
8012059		Land/PVC cement/8oz primer/#4-1" PVC 90D/#		21.54
9011999		PW/1/2 flex screw-in connectors/coupling/steel c		25.78
9012525		CH Anx/#2-2x4-10ft & 2x4-16 pr dg fir/1.5x3.5		30.76
9570865		Constr/12/3 9" twist lock adapter cord		11.50
9571282		Wtr/1/2 x 260 Fastape PTFE Thread		4.17
9580530		PW/XXL gloves/ toggle cover & switch/#2-work		28.96

1,000.27

Date Totals: 47,623.74

Report Total: 47,623.74

# Accounts Payable

## Checks by Date - Detail By Check Date

User: Hthomas  
Printed: 4/28/2015 - 11:14 AM



			Check Amount
Check No:	42507	Check Date: 04/23/2015	
Vendor:	0155	FedEx	
602096150264		Eng/standard overnight tube-S Underwood	35.12
865946636139		Priority overnight envelope-Kern County Treasu	21.47
			<hr/>
			56.59
Check No:	42508	Check Date: 04/23/2015	
Vendor:	3615	Michelle Vance	
04232015		GG/mileage/SLO Marathon Tourism Booth 4/24	149.50
			<hr/>
			149.50
			<hr/>
Date Totals:			206.09
			<hr/>
			<hr/>
Report Total:			206.09
			<hr/>
			<hr/>



APPROVED  
DEPARTMENT HEAD: *[Signature]*  
CITY MANAGER: *[Signature]*

# COUNCIL REPORTS

MEETING DATE: May 4<sup>th</sup>, 2015      AGENDA SECTION: AIRPORT MANAGER

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**TO:**                    HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

**FROM:**                TOM GLASGOW, AIRPORT MANAGER

**DATE:**                APRIL 28<sup>th</sup>, 2015

**SUBJECT:**            NON-COMMERCIAL HANGAR GROUND LEASE AGREEMENT – HANGAR 16E

---

## BACKGROUND

Michael Lerner currently owns hangar 16E located at the Tehachapi Municipal Airport. Mr. Lerner's current lease will expire on May 31<sup>st</sup>, 2015. Mr. Lerner is requesting a new Non-Commercial Hangar Ground Lease Agreement with a term to start on June 1<sup>st</sup>, 2015.

## FISCAL IMPACT

Rental Payment:

\$100.00/month

\$1,200.00/year

## RECOMMENDATION

Approve the Non-Commercial Hangar Ground Lease Agreement for Hangar 16E, between the City of Tehachapi and Michael Lerner.

**NONCOMMERCIAL HANGAR GROUND LEASE AGREEMENT**

**(Tehachapi Airport) Hangar 16E 2,000sq.ft.**

**THIS LEASE AGREEMENT**, hereinafter referred to as this "Lease", is made and entered into this 4<sup>th</sup> day of **May, 2015**, by and between the CITY OF TEHACHAPI, hereinafter referred to as "LESSOR", and **Michael Lerner**, hereinafter referred to as "LESSEE".

IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, THE PARTIES HERETO AGREE AS FOLLOWS:

**1. PREMISES:**

LESSOR does hereby demise and lease to LESSEE, and LESSEE hereby hires from LESSOR, those certain premises situated in the City of Tehachapi, County of Kern, State of California, hereinafter referred to as the "premises" or "demised premises", and more particularly delineated on Exhibit A, attached hereto and by this reference made a part hereof.

**2. TERM:**

The term of this Lease shall be for 20 years, commencing on **June 1<sup>st</sup>, 2015**, and terminating on **June 1<sup>st</sup>, 2035** (the "Initial Term"). LESSEE is hereby granted option to renew the LEASE for an additional term of five years from the expiration of the Initial Term, and for a second additional term of five years, provided LESSEE gives LESSOR written notice of LESSEE'S exercise of its option to do so no more than 180 days and no less than 30 days prior to the expiration of the Initial Term or the first additional term, whichever applies. In the event LESSEE exercises its option to renew the Lease, the

renewal shall be on the same terms and conditions as described in this Lease except for rental and as to the rental to be charged, same shall be calculated based on the rental rate or rental formula then in effect by the LESSOR for new noncommercial hangar ground leases. In addition, the rental terms for the renewal period shall include requirements for such increases as is then required by the LESSOR for new noncommercial hangar ground leases.

**3. HOLDING OVER:**

In the event LESSEE shall hold over after the term herein granted with the expressed or implied consent of LESSOR, such holding over shall be a tenancy only from month to month at twice the rental rate then charged for noncommercial hangar ground leases; provided, however, that if LESSEE is otherwise in default under this Lease at the time of holding over, nothing herein shall expressly or impliedly cure the default and LESSOR shall have all rights to remedy the default in addition to all rights to the increased monthly rental provided for herein.

**4. RENTAL CONSIDERATION:**

As and for rental, LESSEE agrees to pay to LESSOR, the sum of **\$100.00** per month payable in advance on the first day of each month commencing **June 1<sup>st</sup>, 2015**. On February 1 of each calendar year thereafter, the monthly rental shall increase or decrease for said calendar year by the percentage increase or decrease between the Consumer Price Index (All Urban Consumers) (Base Years 1982-1984=100) for Los Angeles-Riverside-Orange County, CA CMSA published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is published immediately preceding the commencement of the prior calendar year and the Index published immediately preceding the commencement of the new calendar year.

LESSOR shall notify LESSEE in writing of said rental increase/decrease prior to March 1. LESSOR shall bill LESSEE monthly for the rental and rental shall be due on the date set forth on the billing and shall be deemed delinquent if not received by that date. Notwithstanding the foregoing, rental may also be increased as described in Paragraphs 15 and 24.

5. **INTEREST:**

If the payments required herein are not paid within fifteen (15) days after they become due, then, in addition to such sums are due, LESSEE shall also pay interest at the rate of ten percent (10%) per month on the unpaid balance or portion thereof, until paid in full.

6. **PURPOSE; NUISANCE:**

(a) The demised premises shall be used by the LESSEE for one or more of the following purposes: aircraft storage, maintenance, repair, restoration, and for the construction of aircraft to be certified in the experimental category; provided that such aircraft are owned or leased by LESSEE or partnership or other business association approved by the City Manager or designated representative in which LESSEE is a member, except for such aircraft permitted on the premises pursuant to an assignment or sublease approved by LESSOR pursuant to Paragraph 24; and provided further, that LESSEE shall conduct no activity for profit or commercial purpose under this lease.

(b) LESSEE shall not do or permit any act or thing to be done upon the premises which constitutes a nuisance or which may disturb the quiet enjoyment of LESSOR or any tenant of LESSOR on adjacent or neighboring property. LESSEE shall abate or cure any nuisance on the demised premises or for which LESSEE is responsible within ten (10) days after written notice thereof from LESSOR. In the event LESSEE has not taken corrective action within ten (10) days, LESSOR may take any

action necessary to abate or cure such condition at LESSEE'S sole cost and expense, without further written notice and LESSOR shall have no liability to LESSEE therefore nor for any damages to the premises or to the hangar or to property therein or thereon. Notwithstanding the foregoing, if any such nuisance creates, in LESSOR'S reasonable determination, a condition immediately hazardous to health or safety, LESSOR may immediately, without written notice to LESSEE, enter the premises to abate or cure the condition at LESSEE'S sole cost and expense and LESSOR shall have no liability to LESSEE therefore nor for any damage to the premises or to the hangar or to property therein or thereon.

(c) The use of combustible chemicals or cleaning solvents, stripping or painting, or welding or repair to any aircraft on the demised premises are allowed only to the extent permitted under all applicable federal, state and local regulation governing the use of hazardous materials and equipment, and only in a manner consistent with such regulation.

**7. CONDITION OF PREMISES:**

LESSEE has inspected the demised premises and knows the extent and condition thereto and accepts same in its present condition, as is, subject to and including all defects, latent and/or patent.

**8. SAFETY:**

Any area that is within the control of the LESSEE at the airport shall be kept clear of accumulation of oil, grease, fuel, trash and debris which are potential fire, environmental, or safety hazards, and LESSEE shall comply with all local, state and federal laws, statutes, rules and regulations with regard thereto.

**9. ALTERATIONS:**

LESSEE shall not construct any improvements or make any alterations of any

kind (whether permanent or otherwise) on the demised premises without the written consent of the City Manager or designated representative first being obtained..

10. **SIGNS:**

LESSEE shall not construct or place or permit to be constructed or placed, signs, awnings, marquees, or other structures projecting from the exterior of the premises without LESSOR'S prior written consent thereof. LESSEE further agrees to remove signs, displays, advertisements, or decorations it has placed or permitted to be placed on the premises, which, in LESSOR'S opinion are offensive or otherwise objectionable. If LESSEE fails to remove such signs, displays, advertisements or decorations within ten (10) days after having received written notice to remove same from LESSOR, LESSOR reserves the right to re-enter the premises and remove them at LESSEE'S expense.

11. **UTILITY EXTENSION OR MODIFICATION:**

LESSEE shall pay any and all expenses that may be incurred in obtaining the extension of public utility services to the demised premises from existing facilities or any modification of same.

12. **UTILITIES:**

LESSEE agrees to pay during the term of this Lease, or any holding over, all utilities used by LESSEE. The term "utilities" as used herein shall include, but is not limited to, gas, electricity, water, sewer, telephone, and trash and refuse disposal service.

13. **MAINTENANCE:**

LESSEE agrees to provide maintenance, repair, and upkeep on any structures situated on the demised premises and any grounds around the structures in a good, clean, sanitary, and safe condition.

14. **FAILURE TO REPAIR:**

In the event LESSEE shall fail, neglect, or refuse to commence the repair or maintenance work required herein within ten (10) days after receipt of a written notice service by LESSOR, or in the event that LESSEE fails, neglects or refuses to pursue said repair or maintenance work with reasonable diligence to completion, LESSOR may perform or cause to be performed such repair or maintenance work and add the cost thereof to the installments of rent due for this Lease as a charge to LESSEE.

15. **SALE OR REMOVAL OF IMPROVEMENTS:**

(a) Unless otherwise agreed upon by the parties hereto, if LESSEE desires to sell or otherwise transfer any or all buildings, hangars and other improvements (the "Improvements") made to or constructed and placed on the premises during or prior to the term of this Lease, or any extensions thereof, LESSOR shall have a right of first refusal (the "Right of First Refusal") to purchase the improvements and the LESSEE shall give LESSOR a notice in writing at least thirty (30) days before such sale or transfer of the terms of same (the "Lessee Notice"). Any sale or transfer or agreement to sell or transfer the Improvements without LESSEE first complying with the requirements of LESSOR'S Right of First Refusal shall be void and, in addition thereto, shall constitute a breach and material default of this Lease. If LESSEE has received an offer to purchase the Improvements that LESSEE is prepared to accept, the Lessee Notice shall contain a complete copy of the offer (the "Offer"), or if LESSEE does not have any such Offer but nevertheless wishes to sell or transfer the Improvements to a third party, the Lessee Notice shall include all of LESSEE'S terms and conditions for such sale or transfer. Lessor's Right of First Refusal to purchase the Improvements shall be under the same terms and conditions as described in the Lessee Notice. The Lessee Notice shall be personally delivered or mailed to LESSOR by registered mail, return receipt requested. LESSOR shall have thirty (30) days from receipt of the Lessee Notice in

which to exercise its Right of First Refusal (the "Exercise Period"). If LESSOR wishes to exercise its Right of First Refusal, LESSOR shall do so in writing to LESSEE prior to expiration of the Exercise Period, provided however that if the Exercise Period terminates on a weekend or holiday, the Exercise Period shall be extended to 11:59 p.m. (California time) on the next business day thereafter. In the event LESSOR exercises its Right of First Refusal, LESSOR shall complete the purchase of the Improvements within a reasonable time thereafter. If LESSOR does not exercise its Right of First Refusal, LESSEE shall have the right, only for the next sixty (60) days, to complete the sale or transfer of the improvements to the offer or of the offer, or, if none, to any other third party under the same terms and conditions as described in the Lessee Notice, provided however that if the sale or transfer is not completed within sixty (60) days of the expiration of the Exercise Period or if the terms and conditions of the sale or transfer are modified, then LESSOR'S Right of First Refusal shall be revived and LESSEE shall once again give LESSOR the Lessee Notice containing the terms and conditions or, if applicable, the revised terms and conditions of the sale or transfer and LESSOR shall have all rights with regard thereto previously described herein. LESSEE shall not place a lien or otherwise encumber the Improvements as part of any sale or transfer without LESSOR'S prior written consent, which consent may be denied or conditioned in LESSOR'S sole and absolute discretion. If a sale is completed during the term of this Lease, no assignment or subletting of this Lease or of the premises shall occur without compliance with Paragraph 24 and, additionally, LESSOR shall have the right to increase the rental to the rental then being charged by LESSOR for new noncommercial hangar ground leases as then determined by LESSOR. Notwithstanding the foregoing, if the purchaser of the Improvements requests a new Lease, LESSOR may, in LESSOR'S sole and absolute discretion, enter into a new

Lease with the purchaser.

(b) If at the termination of this Lease a new Lease has not been entered into by the parties or their successors, then LESSEE shall remove the Improvements and all fixtures and contents therein no later than 30 days after the expiration of the Lease Term without unnecessary damage to the premises and during the 30 day period after expiration of the Lease Term LESSEE shall pay rental to Lessor as a holdover tenant pursuant to Paragraph 3 of this Lease. If LESSEE does not effect such removal, LESSOR shall have the right to do so and LESSEE shall be obligated to LESSOR for the costs thereof; provided, however, that all right, title and interest in and to the Improvements without their removal may be acquired by LESSOR upon terms and conditions mutually agreeable to both LESSOR and LESSEE. Notwithstanding the foregoing, if LESSEE has failed to effect the removal as required herein and LESSOR and LESSEE have not agreed upon the terms by which LESSOR would acquire the Improvements, LESSEE shall be in breach of this Agreement and LESSOR shall have all rights described in Paragraph 28 of this Lease with regard thereto.

16. **COMPLIANCE WITH LAW:**

LESSEE shall, at its expense, promptly comply with any and all laws, ordinances, rules, regulations, requirements and orders whatsoever, present or future, of the national, state, county, or city governments which may in any way apply to the use, maintenance, or occupation of, or operations on the demised property.

17. **RIGHT OF INSPECTION:**

LESSOR shall have the right to enter upon the demised premises at all reasonable times to inspect the premises and LESSEE'S operations thereon. LESSOR reserves all rights in and with respect to the premises, not inconsistent with LESSEE'S use of the premises as in the Lease provided, including (without limiting the generality of

the foregoing) the right of LESSOR to enter upon the premises for the purpose of installing, using, maintaining, renewing, and replacing such underground oil, gas, water, sewer, and other pipelines, and such underground or aboveground telephone, telegraph, and electric power conduits or lines as LESSOR may deem desirable in connection with the development or use of the demised premises or any other property on the airport or in the neighborhood of the premises. LESSOR shall compensate LESSEE for any and all damage to LESSEE'S improvements and personal property caused by the exercise of the rights reserved in this paragraph.

**18. INDEMNIFICATION:**

LESSEE agrees to indemnify, defend (upon request by the LESSOR) and save harmless the LESSOR, its Council persons, agents, officers and employees, and each of them, from any and all losses, costs, expenses, claims, liabilities, actions, and damages, including liability for injuries to person or persons, or damage to property of third persons arising out of or in any way connected with (a) the LESSEE'S use, occupancy and/or operation of the demised premises during the term of this Lease or any holding over, and (b) the construction or the removal of any facilities or improvements on the demised premises during the term of this Lease or any holding over.

**19. WORKERS COMPENSATION:**

LESSEE agrees to observe and obey the Workers' Compensation Act of the State of California as from time to time amended, and will indemnify and save and hold harmless LESSOR from any and all liability hereunder.

**20. LIABILITY INSURANCE:**

LESSEE, in order to protect LESSOR, its agents, officers and employees, against all claims and liability for death, injury, loss, and damage as a result of

LESSEE'S use, occupancy and/or operation of the demised premises or in a connection therewith, shall secure and maintain in force during the entire term of this Lease and covering all LESSEE'S operations and activities on the airport, a Comprehensive General Liability insurance policy in the amount of \$ 500,000 with a reliable insurance carrier approved by the City and authorized to do such public liability and property damage insurance business in the State of California. Said policies of insurance:

(a) shall expressly name LESSOR, Council persons, agents, officers, and employees as additional insured; and

(b) shall be primary insurance as regards any other valid and collectible insurance LESSOR possesses, and any other insurance that LESSOR may possess shall be considered excess insurance only; and

(c) shall contain a Severability of Interest or cross liability clause, which is to say, such policy shall act as though a separate policy were written for each insured and additional named insured in the policy; and

(d) shall not be subject to cancellation and/or coverage reduction without thirty (30) day's prior written notice to LESSOR.

Within ten (10) days from the date of the Lease, LESSEE shall file with the City Manager a duly certified Certificate of Insurance evidencing that the hereinabove mentioned public liability and property damage (and hangar-keeper liability, where applicable) provisions have been complied with, and setting forth that LESSOR, its councilpersons, agents, officers, and employees are named as additional insured. In the event that LESSEE shall fail to obtain or thereafter maintain such policies or to furnish evidence thereof to LESSOR, LESSOR may, in LESSOR'S sole discretion, (1) procure the same, pay the premium therefore, and collect same with the next payment of rental due from LESSEE, or (2) terminate this Lease pursuant to Paragraph 28 hereof.

**21. TAXES AND ASSESSMENTS:**

LESSEE agrees to pay all taxes and/or assessments levied by any governmental agency upon any interest acquired by LESSEE under the terms of this Lease. Providing further, that LESSEE is aware that certain possessory interests may be created by entering into this Lease and that LESSEE will be subject to the payment of property taxes levied on such interests.

**22. LEASE SUBORDINATE TO AGREEMENTS WITH UNITED STATES GOVERNMENT:**

This Lease shall be subordinate to the provisions and requirements of any existing or future agreements between the LESSOR and the United States relative to the development, operation or maintenance of the Airport.

**23. AERONAUTICAL RESTRICTIONS:**

(a) There is hereby reserved to LESSOR for the use and benefit of the public a right of flight for the passage of aircraft in the air space above the surface of the demised premises. This public right of flight shall include the right to cause in said air space any noise inherent in the lawful operation of any aircraft used for navigation or flight through the said air space or landing at, taking off from, or operation on the Tehachapi Airport.

(b) LESSEE shall not erect or permit the erection of any structure, building, or object of natural growth or other obstructions on the demised premises above the maximum elevation permitted by the Federal Aviation Administration. In the event the aforesaid covenant is breached, same shall be deemed a nuisance and a material breach of this Agreement and City shall have all rights described under Paragraph 6 (b) to abate the nuisance and City shall have all other rights and remedies available at law

or in equity.

(c) LESSEE shall not make use of the demised premises in any manner, which might interfere with lawful air navigation and communication, the landing or taking off of aircraft from Tehachapi Airport, or otherwise constitute an airport hazard. In the event the aforesaid covenant is breached, LESSOR reserves the right to enter on the demised premises and cause the abatement of such interference at the expense of LESSEE.

(d) LESSOR reserves the right to further develop or improve the landing area at the Tehachapi Airport as it sees fit regardless of the desires or views of LESSEE, and without interference or hindrance.

(e) LESSOR reserves the right, but shall not be obligated to LESSEE, to maintain and keep in repair the landing area at the Tehachapi Airport and all publicly owned facilities at the airport, together with the right to direct and control all activities of the LESSEE in this regard. Provided, however, that in the event of the taxiways or runways at the airport are determined to be unfit for aeronautical use by the Federal Aviation Administration or by LESSOR or by the Aeronautical Division of the California Department of Transportation, or the airport ceases to be operated as an airport, then this Lease may be terminated by LESSEE, at its option, by its giving of at least thirty (30) days written notice thereof LESSOR.

(f) Nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of Section 308 of the Federal Aviation Act.

24. **SUBLETTING:**

(a) LESSEE shall not assign this Lease or sublet the premises, or any part thereof, without the prior written consent of the LESSOR, which consent shall not be

unreasonably withheld but may be reasonably conditioned to include but not be limited to the following:

- (i) Any assignment or sublease shall be in writing and shall provide that the assignee or sublessee shall agree to and be bound by all of the terms and conditions of the Lease;
- (ii) The assignee or sublessee shall secure and maintain in force during the entire term of such sublease or assignment a liability insurance policy or policies in conformity with the requirements of Paragraph 20, Liability Insurance, with respect to any aircraft hangared on the premises that are owned by sublessee or assignee or other third party; and
- (iii) A rental adjustment, which shall be, based on the rental then in effect by LESSOR for new noncommercial hangar ground leases.

(b) In the event of an attempted assignment or subletting in violation of the foregoing provisions, then in addition to any and all other rights and remedies available to it, the LESSOR may, at its option, by written notice to the LESSEE, either (1) declare such sublease, assignment, transfer, mortgage, or other conveyance void, or (2) terminate this Lease and all rights and interest of LESSEE and all other persons hereunder pursuant to Paragraph 28. Any consent by the LESSOR to any assignment or sublease, shall not be deemed, or construed as a consent to any different or subsequent assignment or sublease. The remedies available herein are cumulative with all other remedies available under this Lease or at law or in equity and the exercise of any remedy herein or under this Lease or at law or in equity shall not prevent the exercise of any other remedy provided herein or in this Lease or at law or in equity.

**25. RIGHT OF INGRESS AND EGRESS:**

LESSEE shall have the reasonable right-of-way over property owned and controlled by LESSOR for ingress thereto and egress there from for pedestrian, vehicular, and air travel, together with the right to use in common with other LESSEE'S or licenses or LESSOR the airplane landing field adjacent to the demised premises. None of these rights are exclusive but shall be exercised in common with and subject to possible similar rights of other users of the airport. All the forgoing is subject to such reasonable rules and regulations as the LESSOR or its authorized agents may make from time to time. Such rules and regulations, however, shall be reasonable and shall not conflict in any way with similar rules and regulations adopted from time to time by the Federal Aviation Administration or its successor.

26. **BANKRUPTCY:**

In the event that (a) LESSEE shall file a voluntary petition in bankruptcy or shall be adjudged a bankrupt in any voluntary bankruptcy proceeding; (b) any voluntary or involuntary proceeding for the reorganization of LESSEE shall be instituted by anyone other than LESSEE under any of the provisions of the bankruptcy laws of the United States; or (c) a receiver or judicial trustee or custodian shall be appointed for LESSEE, or any lien or any writ of attachment, garnishment, execution or distraint shall be levied upon any LESSEE'S rights or interest under this Lease; or (d) there shall be any other assignment of any LESSEE'S rights or interests under this Lease by operation of law, then in addition to any and all other rights and remedies available to it, LESSOR may, at its option by written notice to LESSEE, terminate this Lease and all rights and interest of LESSEE and all other persons under this Lease. The term "LESSEE", as used in this paragraph, includes any individual, partnership, or corporation who is a LESSEE hereunder, even though several individuals, partnership, or corporations are such, and includes each partner of any partnership, which is LESSEE hereunder.

27. **WAIVER OF BREACH:**

The waiver by LESSOR of any breach by LESSEE of any provision contained herein shall not be deemed to be a continuing waiver of such provision, or a waiver of any other prior or subsequent breach thereof, or a waiver of any breach of any other provisions contained herein.

28. **BREACH:**

(a) In the event of a breach by LESSEE of any term, condition, or agreement herein contained, LESSEE shall have 30 days to cure the breach after written notice has been given to LESSEE by LESSOR, provided however that if any such breach cannot be reasonably cured within 30 days of such notice, then LESSEE shall have commenced reasonable efforts to cure same within said period. In the event of LESSEE'S failure to cure or commence the cure of any such breach within 30 days this Lease and all privileges herein granted shall be terminated and be of no further force or effect, and LESSEE shall immediately surrender to LESSOR possession of the premises, and in addition to all other remedies available to LESSOR hereunder or at law or equity, LESSOR shall have the remedies either to remove the Improvements on the premises at the expense of LESSEE or retain the Improvements and to thereafter be the sole and exclusive owner of same. Notwithstanding the foregoing, in the event LESSEE allows a nuisance to exist on the premises as described in Paragraph 6 of this Lease, LESSEE shall abate the nuisance as required therein, and nothing herein shall be deemed to waive or modify the requirements and remedies described in Paragraph 6. Providing further, that in the event LESSEE breaches this Lease and abandons the property before the end of the term, if LESSEE'S right to possession is terminated by LESSOR because of breach of this Lease, LESSOR shall have the right to recover damages from LESSEE as provided in the State of California Civil Code Section 1951.2.

(b) In the event of a breach by LESSOR of any term, condition, or agreement herein contained, that deprives LESSEE in any manner, in whole or part, of its quiet enjoyment of the demised premises or its right to utilize them fully as described in Paragraph 6 hereof, or of its rights of ingress and egress described in Paragraph 25 hereof, LESSEE shall not be obligated to LESSOR for any rental payments otherwise due and payable for the period of such breach.

**29. NEGATION OF PARTNERSHIP:**

LESSOR shall not become or be deemed a partner or joint venture with LESSEE or in any other relationship with LESSEE other than that of landlord and tenant by reason of the provisions of this Lease nor shall LESSEE for any purpose be considered an agent, officer, or employee of LESSOR.

**30. SURRENDER OF PREMISES:**

On the last day of the term, or extension thereof, or sooner termination of this Lease, and subject to the rights and remedies of LESSOR and LESSEE described in Paragraph 15 hereof, LESSEE shall peaceably and quietly leave, surrender and yield up to the LESSOR the demised premises in as good condition and repair as at the commencement of LESSEE'S occupancy, reasonable wear and tear thereof excepted.

**31. ENTIRE AGREEMENT:**

This Lease contains all agreements of the parties with respect to the subject matter described herein. No prior agreements or understandings whether oral or in writing pertaining to any such matter shall be effective or of any force or effect.

**32. VENUE AND GOVERNING LAW:**

This agreement is made, entered into and is to be performed in Kern County, California. This Lease shall be governed by and construed in accordance with the laws of the State of California.

**33. COVENANTS AND CONDITIONS:**

Each provision of this Lease performable by LESSEE shall be deemed both a covenant and a condition.

**34. TIME OF THE ESSENCE:**

Time is hereby expressly declared to be the essence of this Lease and of each and every provision thereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Lease.

**35. SEVERABILITY:**

If any provision of this Lease is determined by a Court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall in no way be affected thereby and same shall remain in full force and effect.

**36. AUTHORIZED AGENT OF LESSOR:**

The City Manager of the City of Tehachapi is the duly authorized agent of LESSOR for purposes of this Lease, and as to any obligations assumed herein by LESSEE, they shall be performed to the satisfaction of the City Manager.

**37. NOTICES:**

All notices required or permitted under this Agreement or at law shall be deemed to be given when personally served on the party to be noticed or when deposited in the United States mail, Registered or Certified, postage prepaid and addressed as follows:

TO LESSOR: City Manager  
City of Tehachapi  
115 South Robinson Street  
Tehachapi, Ca. 93561

TO LESSEE: **Michael Lerner**  
**P.O. Box 2178**  
**Tehachapi, CA 93581**  
**(661) 821-5230**

Any party may change its or their address by providing notice of same in the manner herein prescribed.

38. **BINDING:**

This Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

39. **CAPTIONS:**

The captions appearing in this Lease are for convenience only, are not part of this Lease, and shall not be considered in interpreting this Lease.

40. **AMENDMENTS:**

This Lease may not be altered, amended, or modified except by a writing executed by duly authorized representatives of all parties.

41. **ATTORNEY'S FEES:**

In the event any action or proceeding is instituted arising out of or relating to this Lease or for the purpose of enforcing this Lease, the prevailing party shall be entitled to its reasonable attorney's fees and actual costs.

42. **RECORDATION:**

LESSEE acknowledges its understanding that the law of the State of California authorizes LESSOR to record this Lease or a memorandum of same. In that regard, LESSEE agrees to execute a memorandum of this Lease for the purposes of recordation in such reasonable form and content as may be proposed by Lessor.

43. **COUNTERPARTS:**

This Lease may be executed in counterparts and the respective signature pages for each party may thereafter be attached to the body of this Lease to constitute one integrated agreement which is as fully effective and binding as if the entire Lease had been signed at one time.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

LESSOR:

LESSEE:

CITY OF TEHACHAPI

By: \_\_\_\_\_  
**SUSAN WIGGINS**  
Mayor of the City of Tehachapi, California

By: \_\_\_\_\_  
**Michael Lerner**

**Exhibit A**  
**Kern County GIS Map, Google Maps Overlay 2013**  
**Tehachapi Municipal Airport, South East**





APPROVED  
DEPARTMENT HEAD:   
CITY MANAGER: 

# COUNCIL REPORTS

MEETING DATE: MAY 4, 2015

AGENDA SECTION: CITY ENGINEER

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**TO:** HONORABLE MAYOR SMITH AND COUNCIL MEMBERS

**FROM:** JOHN (JAY) SCHLOSSER, P.E., CITY ENGINEER

**DATE:** APRIL 27, 2015

**SUBJECT:** CERTIFICATE OF ACCEPTANCE FOR IRREVOCABLE OFFERS OF DEDICATION FOR INGRESS, EGRESS, AND ROAD PURPOSES FROM APN'S 223-560-13, 223-560-14, 223-560-20, & 223-030-28 LOCATED IN CAPITAL HILLS ADJACENT TO THE PROPOSED HOSPITAL PROJECT

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## BACKGROUND

The Conditions of Approval for the Tehachapi Replacement Hospital Project located in Capital Hills included requirements to extend both Magellan Drive and Challenger Drive to the northwest in service to the proposed site. These Conditions provide detail as to the extent of the roadway work required. Further detailed engineered plans were produced in order to obtain a permit for construction. These plans provided detailed information, approved by City Staff, defining the roadway improvements. As conditioned, once complete, the Tehachapi Valley Healthcare District (TVHD) is required to dedicate these roadways to public use.

The TVHD has nearly completed the roadways in question. Specifically, these roads include the extension of Magellan Drive from Athens Street to the southern edge of the hospital site boundary and the extension of Challenger Drive from Athens Street to the northern most drive entrance to the hospital site. The TVHD Board of Directors irrevocably offered these road rights-of-way to the City of Tehachapi on April 21, 2015. They are asking the City of Tehachapi to accept these roadways as soon as possible in order to facilitate the extension of electrical power to the site. City Staff has identified a few, non-critical components of the roadway that are not yet complete and will likely not be completed for about one year. Unfortunately, Southern California Edison has refused to extend power to the site until the subject roadways are dedicated.

Given the above, City Staff asked the City Attorney to prepare an Improvement Agreement to be executed along with the Certificates of Acceptance for the new roadways. If approved by the City Council, this Agreement will bind the TVHD to complete the non-critical items prior to receiving an occupancy permit or within three years, whichever comes first. The goal is to provide the City with confidence that the missing items will be completed and allow the Replacement Hospital Project to stay on schedule.

## RECOMMENDATION

**ACCEPT THE IRREVOCABLE OFFERS OF DEDICATION FOR THE EXTENSION OF MAGELLAN DRIVE (PORTIONS OF APN NUMBERS 223-560-13 & 223-560-14) AND FOR THE EXTENSION OF CHALLENGER DRIVE (PORTIONS OF APN NUMBERS 223-560-20 & 223-030-28), AUTHORIZE THE MAYOR TO SIGN A CERTIFICATE OF ACCEPTANCE FOR EACH, AND REQUEST STAFF TO RECORD SAME. FURTHERMORE, APPROVE AND AUTHORIZE THE MAYOR TO SIGN THE PROPOSED IMPROVEMENT AGREEMENT ALLOWING THE DEFERRED COMPLETION OF ROADWAY IMPROVEMENTS ITEMIZED IN EXHIBIT "A" OF THE SUBJECT AGREEMENT.**

**IMPROVEMENT AGREEMENT  
FOR  
TEHACHAPI VALLEY HEALTH CARE DISTRICT**

THIS AGREEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2015, by and between the CITY OF TEHACHAPI, a municipal corporation of the State of California, hereinafter referred to as "CITY", and the TEHACHAPI VALLEY HEALTH CARE DISTRICT, a subdivision of the State of California hereinafter referred to as "DISTRICT",

**W I T N E S S E T H :**

WHEREAS, DISTRICT is constructing a hospital facility and has made certain road improvements required by the CITY which DISTRICT wishes to dedicate to the City pursuant to an irrevocable offer of dedication described in Government Code Section 7050 and more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (the "IOD"); and

WHEREAS, the roads to be dedicated to the CITY are more particular described in Exhibit "B" attached hereto and by this reference made a part hereof (the "Roads"); and

WHEREAS, certain landscaping and paving more particularly described in Exhibit "C" attached hereto and by this reference made a part hereof (the "Improvements") will still need to be completed after the dedication of the Roads to the CITY and CITY and DISTRICT wish to agree on the terms and conditions for completing the Improvements as more particularly described hereinafter.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, it is expressly agreed and understood as follows:

1. DISTRICT shall dedicate the Roads to the CITY by execution and delivery of the IOD and CITY's acceptance of same. DISTRICT agrees that, notwithstanding the dedication, DISTRICT shall construct, at its sole cost and expense, the Improvements which shall be constructed in accordance with the provisions of the Subdivision Ordinance and the City's Improvement Standards and in accordance with the Improvement Plans, Profiles, Standards, and Specifications (hereinafter sometimes "Plans and Profiles") as approved by the City Engineer all of which are on file with the City Engineer and are incorporated herein in full and made a part of this Agreement by this reference.

2. All of the work required herein shall be completed by certification of occupancy by California Office of Statewide Planning and Development of the District's new hospital facility, unless the period of completion is extended by formal action of the City Council. All requests for extensions shall be made in writing by DISTRICT prior to expiration of the term of this Agreement.

3. The Improvements shall be subject to inspection by the City Engineer or his designee, and shall be completed to the satisfaction of the City Engineer. DISTRICT shall give

the City Engineer at least twenty-four (24) hours' notice before commencing any part of the Improvements.

4. DISTRICT guarantees the Improvements for a period of one (1) year following execution by CITY of a Notice of Completion against defective work or labor done or defective material furnished in the performance of this Agreement, and DISTRICT agrees to correct, repair or replace promptly when demanded by CITY, all such defective work or labor done, or defective materials furnished, as may be discovered within such one (1) year period and reported to the City Engineer. If DISTRICT shall fail or neglect to proceed with the work diligently and in good faith in accordance with this Agreement after such notice has been given, CITY may thereafter, at its sole option and without prejudice to any other remedy, provide the necessary supervision, equipment, materials and labor as it may determine necessary to undertake and complete the improvements or any part thereof in the manner required by this Agreement, by independent contract or by CITY forces, all for the account and at the expense of DISTRICT, and DISTRICT shall be liable to CITY and shall pay CITY, on demand, all expenses incurred by CITY in the course thereof. In the event any of the work is done by CITY employees pursuant to this paragraph, DISTRICT shall be responsible for payment of the salaries of said employees during the time that they worked on the project.

5. Should either party institute any action or proceeding of any nature whatsoever in a court of law, equity, arbitration or otherwise to enforce any provision of this Agreement or for a declaration of such party's rights or obligations hereunder or for any other remedy, the prevailing party shall be entitled to reasonable attorney's fees and actual costs.

6. If any provision of this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall not be affected thereby and shall continue in full force and effect.

7. All notices herein provided to be given by either party to the other shall be deemed to have been fully given when made in writing where required in this Agreement and deposited in the United States Mail, registered, postage prepaid, and addressed as follows: to CITY: City Manager, 115 South Robinson Street, Tehachapi, California 93561, Fax (661) 822-2197; to DISTRICT: Attn: CEO, 115 West E Street, Tehachapi, CA 93561 Fax (661) 823-1594. Any party to this Agreement may change its address by notifying the other party in the manner described herein.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

9. This Agreement may only be amended by a writing executed by all parties.

10. This Agreement and the exhibits attached hereto or referenced herein, and all documents, maps, agreements, and writings referred to or otherwise described herein, and all ordinances, resolutions, rules, and regulations of the CITY specifically applicable to the District's new hospital project constitute the entire agreement between the parties with regard to the subject matter herein and supersede all prior oral and written agreements and understandings

between the parties with respect thereof.

IN WITNESS WHEREOF, the parties herein have hereunto set their hands the day and year first above written.

CITY of TEHACHAPI

By: \_\_\_\_\_  
SUSAN WIGGINS, Mayor of the  
City of Tehachapi, California

TEHACHAPI VALLEY HEALTH  
CARE DISTRICT, a subdivision of  
the State of California, "DISTRICT"

By: Michael Nixon  
Name: Michael Nixon  
Its: President

By: Sam Conklin, MD  
Name: Sam Conklin, MD  
Its: Vice President

APPROVED AS TO CONTENT:

[Signature]  
City Engineer of the City of Tehachapi,  
California

ORIGINAL WET SIGNATURE COPIES REQUIRED:

- 1 FOR CITY MANAGER
- 1 FOR DEVELOPER
- 1 FOR CITY ATTORNEY
- 1 FOR CITY ENGINEER

**EXHIBIT "A"**

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED  
RETURN TO:

City of Tehachapi  
115 S. Robinson Street  
Tehachapi, CA 93561

**IRREVOCABLE OFFER OF DEDICATION**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Tehachapi Valley Healthcare District, hereinafter called GRANTOR, hereby grants to the CITY OF TEHACHAPI, a political subdivision of the State of California, an Irrevocable Offer of Dedication of an easement for ingress, egress and road purposes, over and across the real property in the City of Tehachapi, County of Kern, State of California, described in Exhibit "1" attached hereto and incorporated herein by reference.

Said easement shall be kept open, clear and free from buildings and structures of any kind.

This Offer of Dedication is made pursuant to Section 7050 of the Government Code of the State of California and may be accepted at any time by the City Council of the City of Tehachapi.

This Offer of Dedication shall convey to the City of Tehachapi upon its acceptance a superior right of easement over any facility or facilities located within or under the aforementioned parcel of land.

This Offer of Dedication may be terminated and right to accept such offer abandoned in the same manner as is prescribed for the vacation of streets or highways by Part 3 of Division 9 of Streets and Highways Code of the State of California. Such termination and abandonment may be made by the City Council of the City of Tehachapi.

This Offer of Dedication shall be irrevocable and shall be binding on the GRANTOR, his heirs, executors, administrators, successors and assigns.

The term "GRANTOR," as used herein, shall include the plural as well as the singular number, and word "he" shall include the feminine and neuter gender, as the case may be.

IN WITNESS HEREOF, GRANTOR has executed this Irrevocable Offer of Dedication this 21<sup>ST</sup> day of April 2015.

GRANTOR: Tehachapi Valley Healthcare District

By   
Michael Nixon, President

Attest

By   
Sam Conklin, MD, Vice President

**EXHIBIT "A"**  
**APN'S 223-560-13 AND 14 / PUBLIC EASEMENT**  
**(PIERCE)**

BEING ALL THOSE PORTIONS OF PARCELS 13 AND 14 OF PARCEL MAP 9423, IN THE CITY OF TEHACHAPI, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED OCTOBER 23, 1992, IN BOOK 44, PAGE 137 OF PARCEL MAPS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL A (PTN OF APN 223-560-13 / MAGELLAN DRIVE)**

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 13;

THENCE 1) S 78° 31' 18" W, 50.04 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL 13 ALSO BEING THE NORTHERLY LINE OF ATHENS STREET;

THENCE 2) DEPARTING SAID SOUTHERLY AND NORTHERLY LINES, N 35° 00' 50" E, 29.01 FEET;

THENCE 3) N 08° 29' 40" W, 237.45 FEET, PARALLEL TO AND 30.00 FEET WEST OF THE EASTERLY LINE OF SAID PARCEL 13 TO THE NORTHERLY LINE THEREOF;

THENCE 4) S 89° 50' 56" E, 30.34 FEET, ALONG SAID NORTHERLY LINE TO THE NORTHEASTERLY CORNER OF SAID PARCEL 13;

THENCE 5) S 08° 29' 40" E, 251.33 FEET LONG SAID EASTERLY LINE OF PARCEL 13 TO THE POINT OF BEGINNING.

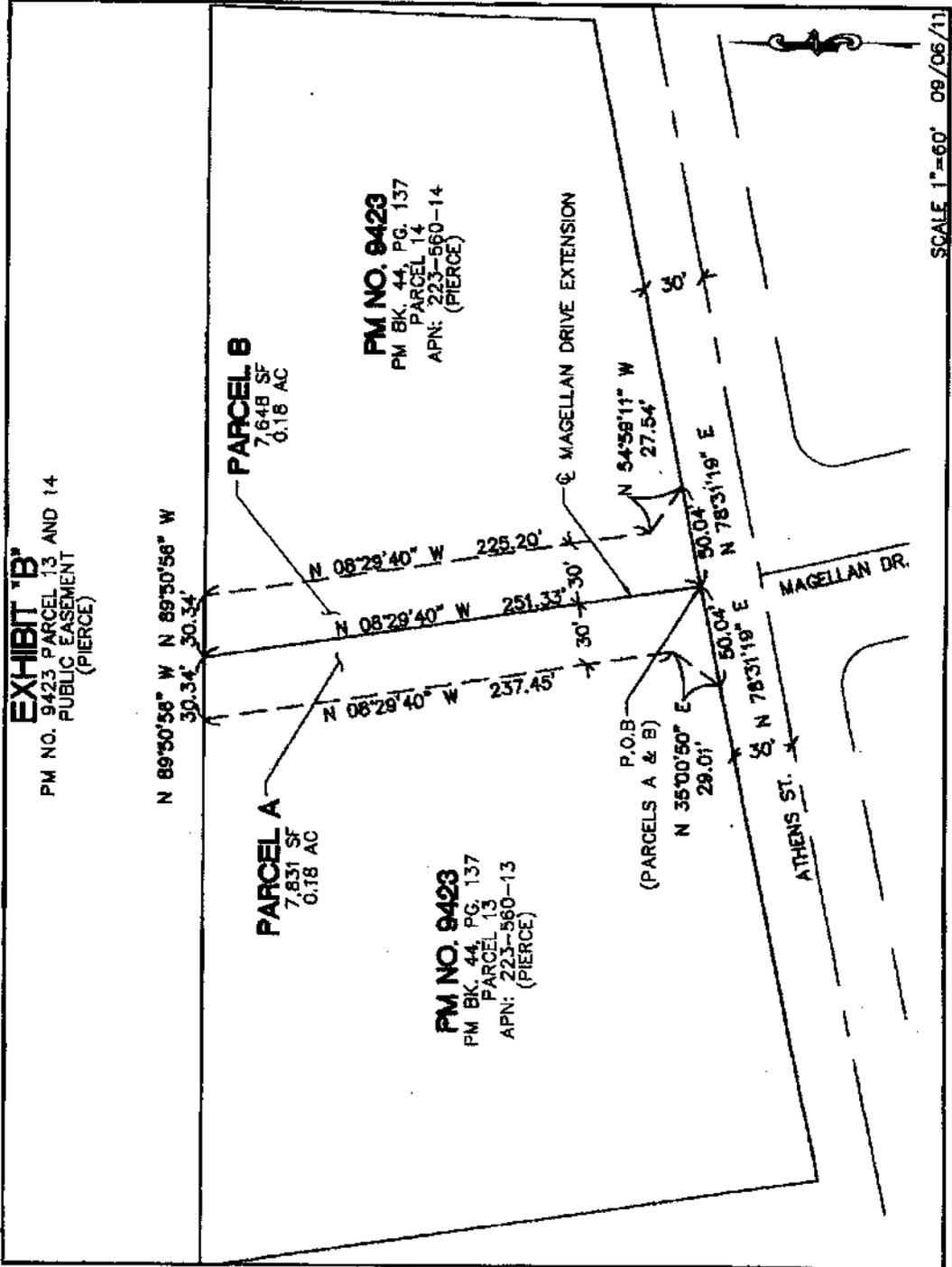
**PARCEL B (PTN OF APN 222-600-14 / MAGELLAN DRIVE) (CONTINUED)**  
**(PIERCE)**

THENCE 3) DEPARTING SAID NORTHERLY LINE, PARALLEL TO AND 30.00 FEET EAST OF SAID WESTERLY LINE OF PARCEL 14, S 08° 28' 40" E, 225.20 FEET;

THENCE 4) S 54° 59' 11" E, 27.54 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 14 ALSO BEING THE NORTHERLY LINE OF ATHENS STREET;

THENCE 5) S 78° 31' 19" W, 50.04 FEET ALONG SAID SOUTHERLY AND NORTHERLY LINES TO THE POINT OF BEGINNING.

CONTAINING 7,648 SQUARE FEET.



RECORDED AT THE REQUEST OF  
AND WHEN RECORDED  
RETURN TO:

City of Tehachapi  
115 S. Robinson Street  
Tehachapi, CA 93561

**IRREVOCABLE OFFER OF DEDICATION**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Tehachapi Valley Healthcare District, hereinafter called GRANTOR, hereby grants to the CITY OF TEHACHAPI, a political subdivision of the State of California, an Irrevocable Offer of Dedication of an easement for ingress, egress and road purposes, over and across the real property in the City of Tehachapi, County of Kern, State of California, described in Exhibit "1" attached hereto and incorporated herein by reference.

Said easement shall be kept open, clear and free from buildings and structures of any kind.

This Offer of Dedication is made pursuant to Section 7050 of the Government Code of the State of California and may be accepted at any time by the City Council of the City of Tehachapi.

This Offer of Dedication shall convey to the City of Tehachapi upon its acceptance a superior right of easement over any facility or facilities located within or under the aforementioned parcel of land.

This Offer of Dedication may be terminated and right to accept such offer abandoned in the same manner as is prescribed for the vacation of streets or highways by Part 3 of Division 9 of Streets and Highways Code of the State of California. Such termination and abandonment may be made by the City Council of the City of Tehachapi.

This Offer of Dedication shall be irrevocable and shall be binding on the GRANTOR, his heirs, executors, administrators, successors and assigns.

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GRANTOR: Tehachapi Valley Healthcare District

By   
Michael Nixon, President

Attest

By   
Sam Conklin, MD, Vice President

PARCEL A

BEING ALL THAT PORTION OF PARCEL 20 OF PARCEL MAP 9423, IN THE CITY OF TEHACHAPI, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED OCTOBER 23, 1992, IN BOOK 44, PAGE 137 OF PARCEL MAPS,

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 20;

THENCE 1) ALONG THE NORTH LINE OF SAID PARCEL 20, S 88° 23' 33" E, 90.00 FEET;

THENCE 2) DEPARTING SAID NORTH LINE, S 01° 36' 27" W, 4.59 FEET TO THE BEGINNING OF A 2155.00 FOOT RADIUS TANGENT CURVE EASTERLY;

THENCE 3) SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13° 05' 08", AN ARC DISTANCE OF 492.17 FEET;

THENCE 4) S 11° 28' 41" E, 35.94 FEET;

THENCE 5) S 56° 28' 41" E, 28.28 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF ATHENS STREET;

THENCE 6) ALONG SAID RIGHT-OF-WAY, S 78° 31' 19" W, 130.00 FEET;

THENCE 7) DEPARTING SAID RIGHT-OF-WAY, N 33° 31' 19" E, 28.28 FEET;

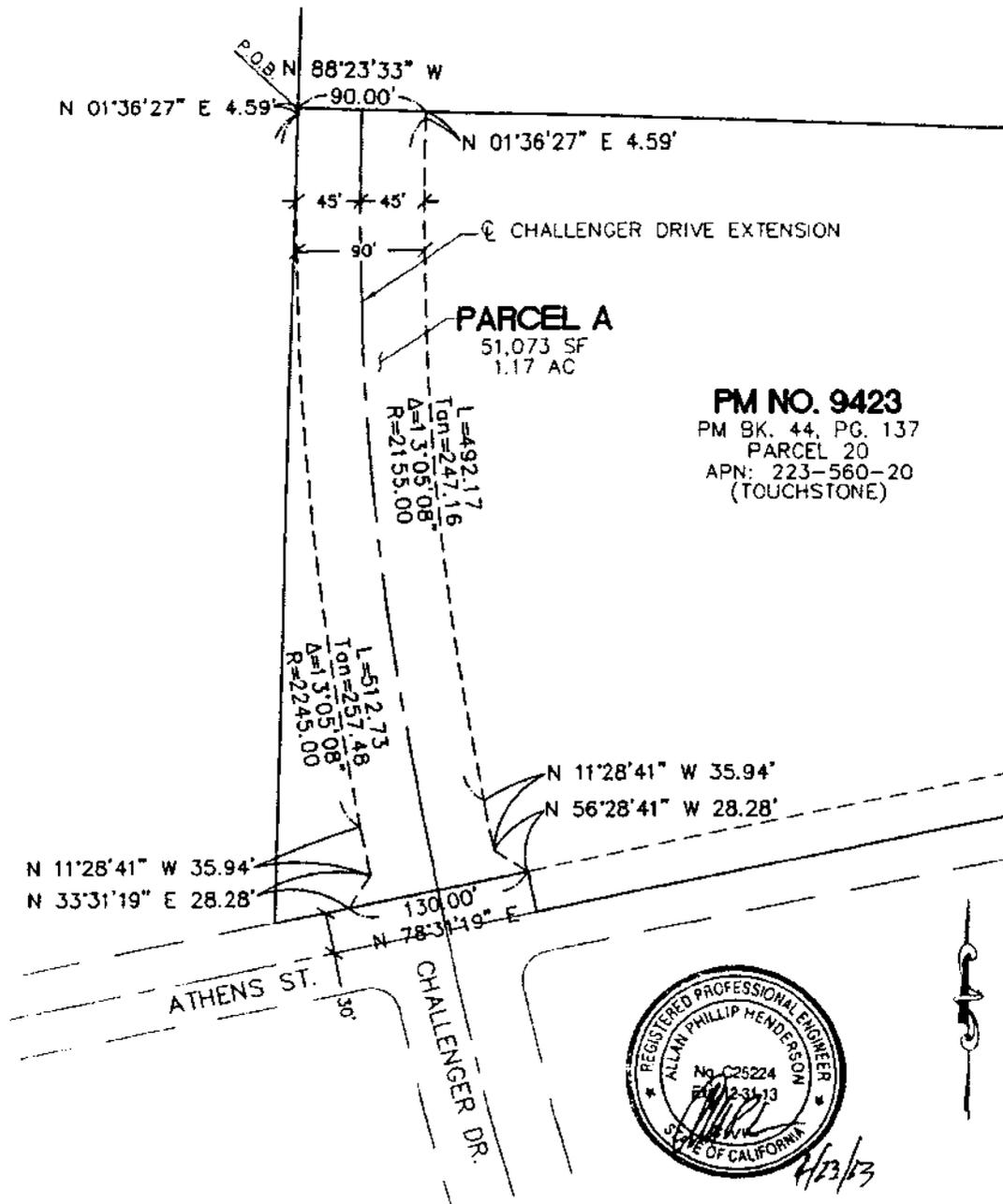
THENCE 8) N 11° 28' 41" W, 35.94 FEET TO THE BEGINNING OF A 2245.00 FOOT RADIUS TANGENT CURVE CONCAVE EASTERLY;

THENCE 9) NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13° 05' 08" AN ARC DISTANCE OF 512.73 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 20;

THENCE 10) N 01° 36' 27" E, ALONG SAID WEST LINE 4.59 FEET TO THE POINT OF BEGINNING.

CONTAINING 51,073 SQUARE FEET.

PM NO. 9423 PARCEL 20  
(TOUCHSTONE)



**PM NO. 9423**  
PM BK. 44, PG. 137  
PARCEL 20  
APN: 223-560-20  
(TOUCHSTONE)



REV 3 04/22/13  
REV 2 10/18/11  
REV 1 10/10/11

SCALE: 1"=100' 09/06/11

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED  
RETURN TO:

City of Tehachapi  
115 S. Robinson Street  
Tehachapi, CA 93561

**IRREVOCABLE OFFER OF DEDICATION**

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IN WITNESS HEREOF, GRANTOR has executed this Irrevocable Offer of Dedication this 21 day of April 2015.

GRANTOR: Tehachapi Valley Healthcare District

By   
Michael Nixon, President

Attest

By   
Sam Conklin, MD, Vice President

**EXHIBIT "A"**  
**APN 223-030-28 / PUBLIC EASEMENT**

**PARCEL A (90' WIDE PUBLIC ROAD / CHALLENGER DRIVE)**

BEING THE WEST 90.00 FEET OF THE SOUTH 323.10 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

ALL OF THAT PORTION OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 33 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING NORTH OF STATE HIGHWAY ROUTE 58.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID SECTION 16, THAT ARE INCLUDED WITHIN THE LAND DESCRIBED AS PARCELS 1B AND 1C IN THE FINAL ORDER OF CONDEMNATION HAD IN KERN COUNTY SUPERIOR COURT, CASE NO. 101028 A CERTIFIED COPY THEREOF WAS RECORDED JULY 23, 1970 IN BOOK 4420, PAGE 123 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THAT PORTION LYING WITHIN PARCEL MAP NO. 9423 AS PER MAP RECORDED IN BOOK 44, PAGES 137 AND 138 OF PARCEL MAPS KERN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION CONVEYED TO THE CITY OF TEHACHAPI BY DEED RECORDED SEPTEMBER 18, 1992 IN BOOK 8732, PAGE 1618 OF OFFICIAL RECORDS.

ALSO EXCEPT THAT PORTION LYING WITHIN PARCEL MAP NO. 9094 AS PER MAP RECORDED IN BOOK 44, PAGES 119 AND 120 OF PARCEL MAPS KERN COUNTY RECORDS.

ALSO EXCEPT THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 33 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 16, WHICH BEARS NORTH 01° 36' 27" EAST, A DISTANCE OF 2,695.85 FEET FROM THE SOUTHWEST CORNER OF SAID SECTION 16, AS SHOWN ON PARCEL MAP NO. 8896, RECORDED IN BOOK 38, PAGE 151, RECORDS OF SAID COUNTY; THENCE NORTH 83° 10' 18.8" EAST, A DISTANCE OF

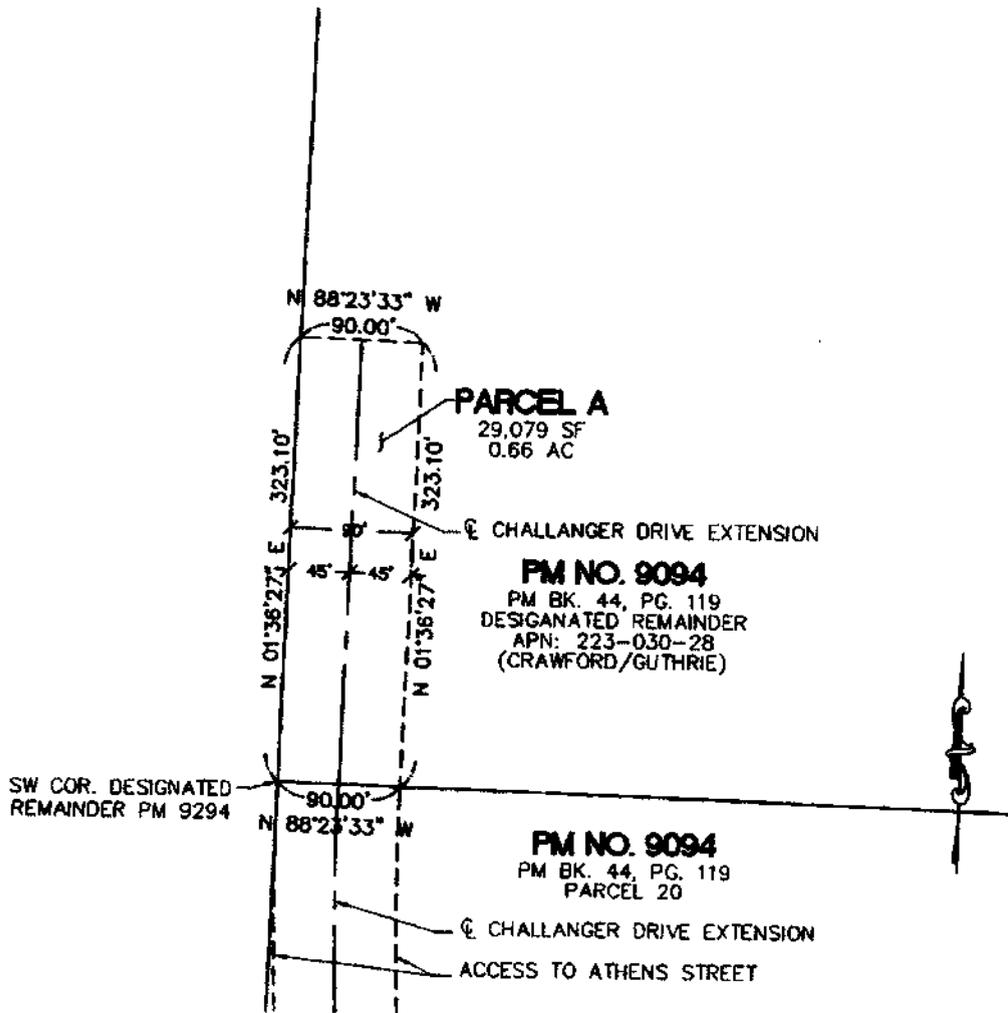
**PARCEL A (90' WIDE PUBLIC ROAD / CHALLENGER DRIVE) (CONTINUED)**

2,673.248 FEET TO A POINT, SAID POINT BEING THE RADIUS POINT OF THE BELOW MENTIONED LARGE RADIUS CURVES; THENCE SOUTH 62° 55' 30" WEST, ALONG A RADIAL LINE, 1,880.0 FEET TO A POINT WHICH LIES NORTH 62° 55' 30" EAST, ALONG THE NORTHWESTERLY PROLONGATION OF THE CENTER LINE OF CAPITOL HILLS PARKWAY, 710.00 FEET FROM THE INTERSECTION OF SAID CENTER LINE OF CAPITOL HILLS PARKWAY AND CHALLENGER DRIVE AS SAME ARE SHOWN ON SAID MAP OF PARCEL MAP NO. 8896, AND THE UNRECORDED PARCEL MAP NO. 9094; THENCE NORTH 62° 55' 30" EAST, ALONG SAID NORTHEASTERLY PROLONGATION 87.79 FEET; THENCE SOUTH 27° 04' 30" EAST, AT RIGHT ANGLES 80.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 62° 55' 30" EAST, 481.02 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, AND HAVING A RADIUS OF 20.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85° 38' 19", AN ARC DISTANCE OF 29.89 FEET TO THE BEGINNING OF A LARGE RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1,295.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14° 01' 57", AN ARC DISTANCE OF 317.17 FEET; THENCE SOUTH 44° 31' 52" WEST, ALONG A RADIAL LINE, 520.00 FEET TO THE BEGINNING OF A LARGE RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1,815.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 150° 12' 01", AN ARC DISTANCE OF 481.51 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 93° 11' 37", AN ARC DISTANCE OF 32.53 FEET TO THE POINT OF BEGINNING.

CONTAINING 28,710 SQUARE FEET.

**EXHIBIT B**

PM NO. 9094 DESIGNATED REMAINDER  
PUBLIC EASEMENT  
(CRAWFORD/GUTHRIE)



SCALE: 1"=100' 00/00 6

**EXHIBIT "B"**  
**[Legal Description of Roads]**

**EXHIBIT "A"**  
**APN'S 223-560-13 AND 14 / PUBLIC EASEMENT**  
**(PIERCE)**

BEING ALL THOSE PORTIONS OF PARCELS 13 AND 14 OF PARCEL MAP 9423, IN THE CITY OF TEHACHAPI, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED OCTOBER 23, 1992, IN BOOK 44, PAGE 137 OF PARCEL MAPS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**PARCEL A (PTN OF APN 223-560-13 / MAGELLAN DRIVE)**

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID PARCEL 13;

THENCE 1) S 78° 31' 19" W, 50.04 FEET ALONG THE SOUTHERLY LINE OF SAID PARCEL 13 ALSO BEING THE NORTHERLY LINE OF ATHENS STREET;

THENCE 2) DEPARTING SAID SOUTHERLY AND NORTHERLY LINES, N 35° 00' 50" E, 29.01 FEET;

THENCE 3) N 08° 29' 40" W, 237.45 FEET, PARALLEL TO AND 30.00 FEET WEST OF THE EASTERLY LINE OF SAID PARCEL 13 TO THE NORTHERLY LINE THEREOF;

THENCE 4) S 89° 50' 58" E, 30.34 FEET, ALONG SAID NORTHERLY LINE TO THE NORTHEASTERLY CORNER OF SAID PARCEL 13;

THENCE 5) S 08° 29' 40" E, 251.33 FEET LONG SAID EASTERLY LINE OF PARCEL 13 TO THE POINT OF BEGINNING.

**PARCEL B (PTN OF APN 223-560-14 / MAGELLAN DRIVE) (CONTINUED)**  
**(PIERCE)**

**THENCE 3) DEPARTING SAID NORTHERLY LINE, PARALLEL TO AND 30.00 FEET EAST OF SAID WESTERLY LINE OF PARCEL 14, S 08° 29' 40" E, 225.20 FEET;**

**THENCE 4) S 54° 59' 11" E, 27.54 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 14 ALSO BEING THE NORTHERLY LINE OF ATHENS STREET;**

**THENCE 5) S 78° 31' 19" W, 50.04 FEET ALONG SAID SOUTHERLY AND NORTHERLY LINES TO THE POINT OF BEGINNING.**

**CONTAINING 7,648 SQUARE FEET.**

APN 223-60-2020

PARCEL A

BEING ALL THAT PORTION OF PARCEL 20 OF PARCEL MAP 9423, IN THE CITY OF TEHACHAPI, COUNTY OF KERN, STATE OF CALIFORNIA, AS PER MAP FILED OCTOBER 23, 1992, IN BOOK 44, PAGE 137 OF PARCEL MAPS,

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL 20;

THENCE 1) ALONG THE NORTH LINE OF SAID PARCEL 20, S 88° 23' 33" E, 90.00 FEET;

THENCE 2) DEPARTING SAID NORTH LINE, S 01° 36' 27" W, 4.59 FEET TO THE BEGINNING OF A 2155.00 FOOT RADIUS TANGENT CURVE EASTERLY;

THENCE 3) SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13° 05' 08", AN ARC DISTANCE OF 492.17 FEET;

THENCE 4) S 11° 28' 41"E, 35.94 FEET;

THENCE 5) S 56° 28' 41" E, 28.28 FEET TO THE NORTHERLY RIGHT-OF- WAY LINE OF ATHENS STREET;

THENCE 6) ALONG SAID RIGHT-OF-WAY, S 78° 31' 19"W, 130.00 FEET;

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THENCE 9) NORTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 13° 05' 08" AN ARC DISTANCE OF 512.73 FEET TO A POINT ON THE WEST LINE OF SAID PARCEL 20;

THENCE 10) N 01° 36' 27" E, ALONG SAID WEST LINE 4.59 FEET TO THE POINT OF BEGINNING.

CONTAINING 51,073 SQUARE FEET.

**EXHIBIT "A"**  
**APN 223-030-28 / PUBLIC EASEMENT**

**PARCEL A (90' WIDE PUBLIC ROAD / CHALLENGER DRIVE)**

BEING THE WEST 90.00 FEET OF THE SOUTH 323.10 FEET OF THE FOLLOWING DESCRIBED PARCEL OF LAND:

ALL OF THAT PORTION OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 33 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING NORTH OF STATE HIGHWAY ROUTE 58.

EXCEPTING THEREFROM THOSE PORTIONS OF SAID SECTION 16, THAT ARE INCLUDED WITHIN THE LAND DESCRIBED AS PARCELS 1B AND 1C IN THE FINAL ORDER OF CONDEMNATION HAD IN KERN COUNTY SUPERIOR COURT, CASE NO. 101028 A CERTIFIED COPY THEREOF WAS RECORDED JULY 23, 1970 IN BOOK 4420, PAGE 123 OF OFFICIAL RECORDS.

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**PARCEL A (90' WIDE PUBLIC ROAD / CHALLENGER DRIVE) (CONTINUED)**

2,673.248 FEET TO A POINT, SAID POINT BEING THE RADIUS POINT OF THE BELOW MENTIONED LARGE RADIUS CURVES; THENCE SOUTH 62° 55' 30" WEST, ALONG A RADIAL LINE, 1,880.0 FEET TO A POINT WHICH LIES NORTH 62° 55' 30" EAST, ALONG THE NORTHWESTERLY PROLONGATION OF THE CENTER LINE OF CAPITOL HILLS PARKWAY, 710.00 FEET FROM THE INTERSECTION OF SAID CENTER LINE OF CAPITOL HILLS PARKWAY AND CHALLENGER DRIVE AS SAME ARE SHOWN ON SAID MAP OF PARCEL MAP NO. 8896, AND THE UNRECORDED PARCEL MAP NO. 9094; THENCE NORTH 62° 55' 30" EAST, ALONG SAID NORTHEASTERLY PROLONGATION 87.79 FEET; THENCE SOUTH 27° 04' 30" EAST, AT RIGHT ANGLES 80.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 62° 55' 30" EAST, 481.02 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, AND HAVING A RADIUS OF 20.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85° 38' 19", AN ARC DISTANCE OF 29.89 FEET TO THE BEGINNING OF A LARGE RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1,295.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14° 01' 57", AN ARC DISTANCE OF 317.17 FEET; THENCE SOUTH 44° 31' 52" WEST, ALONG A RADIAL LINE, 520.00 FEET TO THE BEGINNING OF A LARGE RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1,815.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 150° 12' 01", AN ARC DISTANCE OF 481.51 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 93° 11' 37", AN ARC DISTANCE OF 32.53 FEET TO THE POINT OF BEGINNING.

CONTAINING 28,710 SQUARE FEET.

**EXHIBIT "C"**  
**[Description of Improvements]**

1. Magellan Drive
  - a. Parkway improvements (principally landscaping) on both the east and west sides of the street from Athens Drive to the entrance to the proposed hospital.
  - b. Completed roadway pavement for the northern most 50 linear feet approaching the entrance to the hospital site.
2. Challenger Drive
  - a. Parkway improvements (principally landscaping) on the west side of the street from Athens Drive to the end.
  - b. Completed drive approach pavement for both access roads linking the hospital site to Challenger Drive.

RECORDED AT THE REQUEST OF  
AND WHEN RECORDED  
RETURN TO:

City of Tehachapi  
115 S. Robinson Street  
Tehachapi, CA 93561

**IRREVOCABLE OFFER OF DEDICATION**

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GRANTOR: Tehachapi Valley Healthcare District

By   
Michael Nixon, President

Attest

By   
Sam Conklin, MD, Vice President

**EXHIBIT "A"**  
**APN 223-030-28 / PUBLIC EASEMENT**

**PARCEL A (90' WIDE PUBLIC ROAD / CHALLENGER DRIVE)**

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ALL OF THAT PORTION OF SECTION 16, TOWNSHIP 32 SOUTH, RANGE 33 EAST, MOUNT DIABLO MERIDIAN, IN THE COUNTY OF KERN, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, LYING NORTH OF STATE HIGHWAY ROUTE 58.

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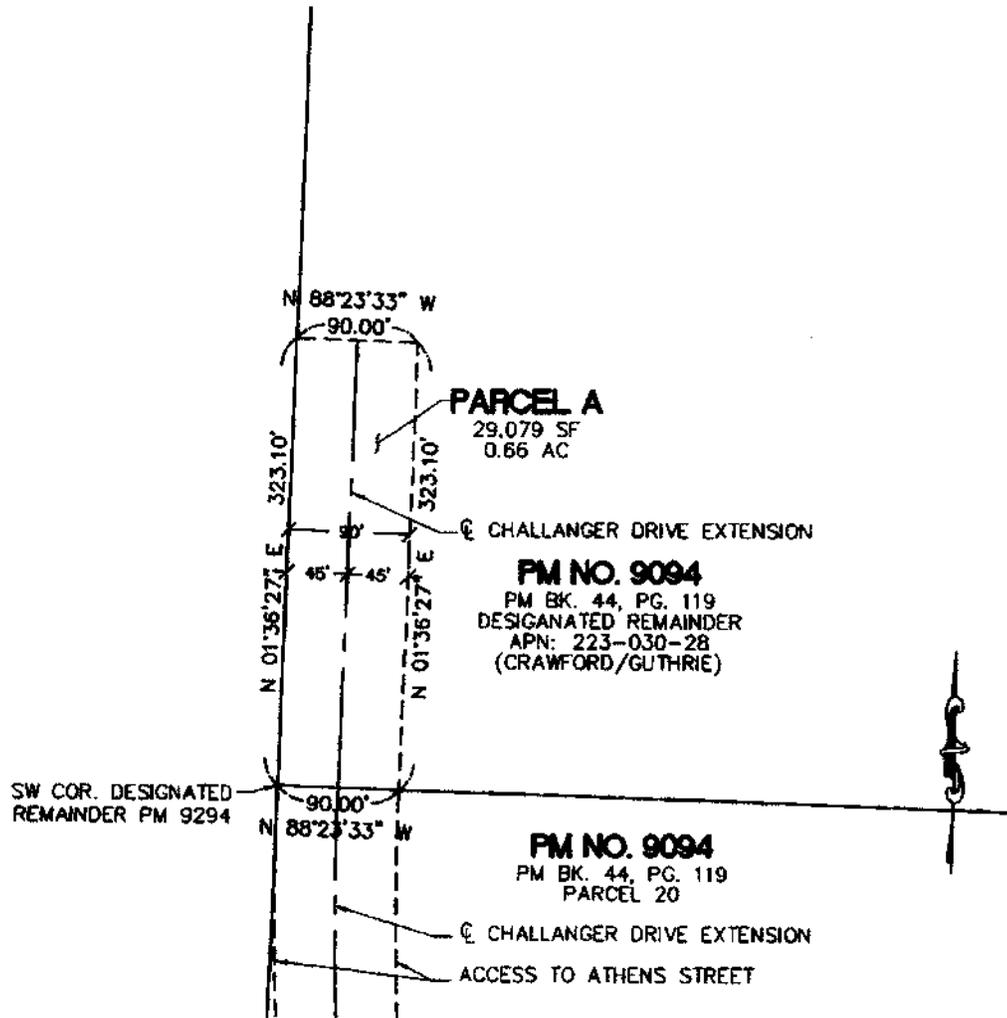
**PARCEL A (90' WIDE PUBLIC ROAD / CHALLENGER DRIVE) (CONTINUED)**

2,673.248 FEET TO A POINT, SAID POINT BEING THE RADIUS POINT OF THE BELOW MENTIONED LARGE RADIUS CURVES; THENCE SOUTH 62° 55' 30" WEST, ALONG A RADIAL LINE, 1,880.0 FEET TO A POINT WHICH LIES NORTH 62° 55' 30" EAST, ALONG THE NORTHWESTERLY PROLONGATION OF THE CENTER LINE OF CAPITOL HILLS PARKWAY, 710.00 FEET FROM THE INTERSECTION OF SAID CENTER LINE OF CAPITOL HILLS PARKWAY AND CHALLENGER DRIVE AS SAME ARE SHOWN ON SAID MAP OF PARCEL MAP NO. 8896, AND THE UNRECORDED PARCEL MAP NO. 9094; THENCE NORTH 62° 55' 30" EAST, ALONG SAID NORTHEASTERLY PROLONGATION 87.79 FEET; THENCE SOUTH 27° 04' 30" EAST, AT RIGHT ANGLES 80.00 FEET TO THE POINT OF BEGINNING; THENCE NORTH 62° 55' 30" EAST, 481.02 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY, AND HAVING A RADIUS OF 20.00 FEET; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 85° 38' 19", AN ARC DISTANCE OF 29.89 FEET TO THE BEGINNING OF A LARGE RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1,295.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14° 01' 57", AN ARC DISTANCE OF 317.17 FEET; THENCE SOUTH 44° 31' 52" WEST, ALONG A RADIAL LINE, 520.00 FEET TO THE BEGINNING OF A LARGE RADIUS CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 1,815.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 150° 12' 01", AN ARC DISTANCE OF 481.51 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 20.00 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 93° 11' 37", AN ARC DISTANCE OF 32.53 FEET TO THE POINT OF BEGINNING.

CONTAINING 28,710 SQUARE FEET.

**EXHIBIT B**

PM NO. 9094 DESIGNATED REMAINDER  
PUBLIC EASEMENT  
(CRAWFORD/GUTHRIE)



SCALE: 1"=100'

CITY OF TEHACHAPI

**CERTIFICATE OF ACCEPTANCE**

THIS IS TO CERTIFY that the interest in real property conveyed by Irrevocable Offer of Dedication, dated April 21, 2015, from the Tehachapi Valley Healthcare District, to the City of Tehachapi, a political subdivision of the State of California, is hereby accepted to the following conditions:

No conditions imposed  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By the order of the City Council of the City of Tehachapi on May 4, 2015, said City consents to the recordation thereof by his duly authorized officer.

DATED: \_\_\_\_\_

\_\_\_\_\_  
Susan Wiggins, Mayor  
City of Tehachapi

ATTEST:

\_\_\_\_\_  
City Clerk  
City of Tehachapi



APPROVED  
DEPARTMENT HEAD: JIS  
CITY MANAGER: \_\_\_\_\_

# COUNCIL REPORTS

MEETING DATE: MAY 4, 2015

AGENDA SECTION: CITY ENGINEER

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**TO:** HONORABLE MAYOR SMITH AND COUNCIL MEMBERS

**FROM:** JOHN (JAY) SCHLOSSER, P.E.

**DATE:** APRIL 27, 2015

**SUBJECT:** AGREEMENT FOR COMMUNITY DEVELOPMENT ACTIVITY – TEHACHAPI FREEDOM PLAZA PARKING IMPROVEMENTS CD#20.13.1

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## BACKGROUND

In December 2012, Tehachapi City Council allocated several years of Community Development Block Grant (CDBG) funds towards the Freedom Plaza project. Since that time, City Staff has been engaged in refining and designing the improvement project for the site located in the southwest corner of Tehachapi Boulevard and Curry Street. At this time, those design plans are complete and City Staff is completing several steps needed to integrate CDBG funding compliance requirements into the project.

The Kern County Community Development department requires the City of Tehachapi to enter into an agreement for the expenditure of CBDG funds on this project.

## RECOMMENDATION

The County of Kern prepared the agreement that has been reviewed and approved by the City Attorney.

**ENTER INTO AN AGREEMENT BETWEEN THE CITY OF TEHACHAPI AND THE COUNTY OF KERN FOR COMMUNITY DEVELOPMENT ACTIVITY FOR THE TEHACHAPI FREEDOM PLAZA PARKING IMPROVEMENTS PROJECT CD#20.13.1.**

**AGREEMENT  
COMMUNITY DEVELOPMENT ACTIVITY  
TEHACHAPI FREEDOM PLAZA PARKING IMPROVEMENTS  
CD#20.13.1  
(County - City of Tehachapi)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015, ("Agreement") by and between the COUNTY OF KERN, a political subdivision of the State of California ("COUNTY"), and CITY OF TEHACHAPI within the County of Kern ("CITY"),

**W I T N E S S E T H**

**WHEREAS:**

(a) The Congress of the United States has enacted Title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 et seq.), ("Act"), which provides for Community Development Block Grants for eligible activities;

(b) COUNTY has submitted the required documents to the Department of Housing and Urban Development ("HUD") for receipt of a Community Development Block Grant, Catalogue of Federal Domestic Assistance ("CFDA") Number 14.218, ("Grant") pursuant to the Act;

(c) COUNTY and CITY entered into a Community Development Block Grant Cooperative Agreement on July 5, 2011, wherein the parties thereto agreed to undertake activities eligible for Grant assistance within the corporate limits of CITY;

(d) COUNTY is empowered under the Act to administer Grant funds pursuant to the Act, and to enter into project/activity agreements with cities which have executed Community Development Block Grant Cooperative Agreements with COUNTY for Community Development projects/activities;

(e) CITY has requested the use of Grant funds for improvements to an existing parking facility that is city owned; and

(f) COUNTY desires to assist CITY by providing Grant funds for the improvements to the existing parking facility.

**NOW, THEREFORE IT IS MUTUALLY AGREED** between COUNTY and CITY as follows:

1. Definitions

a. Except to the extent modified or supplemented by the Grant Agreement between COUNTY and HUD dated August 23, 2013, ("HUD Grant to COUNTY") any term

defined in Title I of the Act, or the HUD Community Development Block Grant regulations at 24 CFR Part 570 shall have the same meaning when used herein.

b. "Program" means COUNTY's Community Development Program, including the administration thereof, with respect to the terms of the HUD Grant to COUNTY.

c. "Project" means the City of Tehachapi Freedom Plaza Parking Improvements, all as more fully described in **Schedule "A"**, attached hereto and incorporated herein by this reference as if set forth in full.

d. "Activity" means the construction of improvements to the Freedom Plaza Parking Facility, all as more fully described in **Schedule "A"**, attached hereto.

e. "Program Income" shall have, with respect to the Project/Activity undertaken pursuant to this Agreement, the same meaning as the definition found in the HUD Community Development Block Grant regulations at 24 CFR part 570.500(a)(1), as amended, at 24 CFR part 570.504, and as defined in HUD Training Bulletin CPD-90-1, dated April 1990, entitled "Program Income".

f. "Change in Use Restriction Period" means that period which starts upon filing of the Notice of Completion, in the case of construction work, or upon the close of escrow if Grant funding is solely for the acquisition of property, and ends five (5) years after HUD ceases to consider the CITY to be part of the COUNTY's entitlement jurisdiction.

CITY may cease to be part of COUNTY's entitlement jurisdiction by:

Expiration of, or CITY's failure to renew, the CITY/COUNTY Cooperative Agreement dated July 5, 2011; or

HUD's order to cancel the CITY/COUNTY Cooperative Agreement dated July 5, 2011; or

COUNTY ceasing to be a Grant entitlement jurisdiction; or

The federal government's termination of the Grant program.

g. "Expiration of Agreement" means the date of expiration of the Change in Use Restriction Period or the date of resolution of all monitoring findings as determined solely by COUNTY, whichever occurs last.

h. "Subgrantee" and "Subrecipient" as these terms are used in any of the attached exhibits, means CITY.

i. Whenever duties or obligations are performed jointly by CITY and COUNTY, CITY and COUNTY will be referred to as "PARTIES".

## 2. Maximum Amount Payable Under Agreement and Mode of Payment

a. COUNTY shall reimburse CITY, or its designee(s), through progress payments for Project/Activity costs incurred pursuant to this Agreement upon CITY making satisfactory progress, as determined solely by COUNTY, towards the completion of the Project/Activity detailed in the attached **Schedule "A"**; provided, however, that the total amount made available by COUNTY through this Agreement and payable to CITY, or its designee(s), shall not exceed ONE HUNDRED FIFTY EIGHT THOUSAND TWO HUNDRED FORTY THREE DOLLARS (\$158,243). Unless PARTIES otherwise expressly agree in writing, CITY agrees to accept sole financial responsibility for all costs related to this Project/Activity in excess of the ONE HUNDRED FIFTY EIGHT THOUSAND TWO HUNDRED FORTY THREE DOLLARS (\$158,243) made available by COUNTY pursuant to this Agreement.

b. COUNTY's duty to pay CITY is expressly contingent on COUNTY's receipt and continued use of Grant funds from the federal government allocated for this Project/Activity. In the event such funds are not received by COUNTY, or are reallocated by HUD after receipt and prior to completion of the Grant funded Project/Activity, this Agreement shall be immediately terminated or suspended as of the date the Grant funds are or become unavailable, and COUNTY shall have no further obligation to CITY under this Agreement until such time, if ever, that Grant funds are approved by HUD and allocated for the Project/Activity which is the subject of this Agreement. CITY agrees to indemnify and hold COUNTY harmless pursuant to the indemnification provisions of this Agreement from any costs, liabilities, losses, damages or expenses incurred as a result of termination of the Agreement due to unavailability of the Grant funds for this Project/Activity.

c. Payments shall be made to CITY, or its designee(s), upon CITY's submittal to COUNTY of a monthly certified claim executed by a properly designated official of CITY indicating the percentage of the Project/Activity that has been completed. Said certified claims shall be itemized and properly documented to clearly show the items, tasks or services for which reimbursement is being claimed and the basis for cost computation whether by cost per hour, cost per weight, cost per task or other measurement as agreed by and between PARTIES, as more fully described in the attached **Schedule "A"**.

d. After receipt and approval by COUNTY of a monthly certified claim for construction, COUNTY shall make a payment to CITY, or its designee(s), in the amount of ninety-five percent (95%) of COUNTY's pro rata portion of the project construction costs. The balance of the cumulative five percent (5%) retention from each claim shall be paid to CITY thirty-five (35) days after CITY files a Notice of Completion and after COUNTY has verified CITY's satisfactory compliance with Paragraphs 5 and 6 of this Agreement. The foregoing five percent (5%) retention is subject to the project construction contractor's right to substitute securities as explained in the document entitled "Withheld Contract Funds Certification", attached hereto as **Exhibit "A"** and incorporated herein by this reference as if set forth in full. The party entering into the construction contract with the prime contractor shall ensure compliance with the requirements set forth in the attached **Exhibit "A"**. CITY agrees that COUNTY is hereby empowered to make an independent determination of the percentage of the Project/Activity which has been satisfactorily completed and any such determination by COUNTY is conclusive. There will be no retention on monthly claims for architectural or design services.

### 3. CITY's Obligations

In addition to CITY's obligations as set forth in other sections of this Agreement, CITY agrees to perform the following specific duties:

a. CITY shall be responsible for implementation of this Project/Activity. Implementation shall include preparation of specification documents and plans if necessary; solicitation and hiring of contractors; construction engineering and inspection; contract administration; and HUD compliance monitoring services. CITY will provide COUNTY with all plans and specifications, including changes requested during construction, for COUNTY review and approval prior to their use.

b. CITY agrees that COUNTY may terminate, suspend and/or reduce the amount of Grant funding provided for in this Agreement if all work performed by CITY is not completed satisfactorily and within the budgetary limits and time schedule milestones provided for in this Agreement. The length of any suspension or the amount of the reduction of Grant funding shall be at COUNTY's sole option and will be principally based on compliance with Project/Activity specifications and plans, and on timely initiation of CITY's design and/or construction obligations under this Agreement. COUNTY agrees that delays in completion of the work subject to this Agreement may result for reasons outside the control of CITY, and agrees that COUNTY will extend the time for completion of the work for unavoidable delays for a reasonable period, as determined solely by COUNTY. However COUNTY shall not be obligated to pay or to otherwise reimburse CITY for work performed subject to this Agreement if Grant funding for the Project/Activity is revoked or suspended by HUD due in part or whole to the delay in the completion of the work contemplated by this Agreement.

c. CITY shall be responsible for complying with all applicable local, state, and federal regulations, including, but not limited to, the monitoring of construction for compliance with the federal labor standards contract requirements set forth in the "Preconstruction Checklist for Contractors" attached hereto as Exhibit "B" and incorporated herein by this reference as if set forth in full. If CITY hires a consultant to provide compliance monitoring required to ensure to the satisfaction of HUD and COUNTY, that all applicable regulations are met during the implementation of this Project/Activity, CITY shall monitor the consultant's compliance efforts and shall remain responsible to COUNTY for providing compliance monitoring records in a form acceptable to COUNTY. CITY agrees to become familiar with the applicable statutes, regulations and guidelines governing the Grant program. All applicable statutes, regulations, guidelines, codes, rules and executive orders referred to in this Agreement are as from time to time amended.

d. CITY or any contractors hired by CITY to perform work on the Project/Activity shall obtain any and all permits necessary to implement this Project/Activity from appropriate state, COUNTY and/or CITY agencies.

e. CITY (in collaboration with COUNTY) shall conduct a pre-bid and a preconstruction conference for the purposes stated within the document, "Material Covered at Preconstruction Conference" (Exhibit "C"), attached hereto and incorporated herein by this reference as if set forth in full.

f. CITY shall accept title to and be responsible for the maintenance and/or operation of the Freedom Plaza Parking Facility, according to the terms of this Agreement and all applicable local, federal and state laws and regulations.

g. CITY shall be responsible for the control and safety of CITY officers, employees, agents, and invitees during the implementation of this Project/Activity. CITY shall take all actions necessary to ensure the safety of its employees and invitees during the implementation of the project and during the subsequent maintenance and/or operation of the Freedom Plaza Parking Facility funded pursuant to this Agreement.

h. CITY shall cooperate fully with COUNTY in undertaking, monitoring and completing this Project/Activity.

i. CITY shall remain fully obligated under the provisions of this Agreement notwithstanding its designation of any third party or parties for the undertaking of all or any part of the Project/Activity to be completed under this Agreement.

j. Subsequent to bid opening, if the Director of COUNTY Planning and Community Development Department determines that funds budgeted herein are insufficient to satisfactorily accomplish or complete the work referenced in this Agreement, CITY will have thirty (30) calendar days from the date of such determination to obtain additional funding beyond COUNTY's maximum financial obligation or satisfactorily reduce the scope of the work, as provided for herein. If CITY does not obtain the necessary additional funding, or a reduction of scope is not successful in satisfactorily lowering overall Project/Activity costs, PARTIES hereby agree to mutually terminate this Agreement according to the requirements and standards of 24 CFR part 85.44, "Termination for Convenience". In the event of termination, the work contemplated herein shall be abandoned and COUNTY shall incur no liability whatsoever to CITY for expenses incurred after termination of this Agreement or for costs related to any subsequent completion of the work contemplated by this Agreement.

k. CITY shall, as part of its contract administration responsibility, publish in a newspaper of general circulation, in trade journal publications and in minority oriented publications, a notice soliciting small, and (as applicable) Section 3 business participation in this Grant funded Project/Activity. Prior to submitting a notice to a newspaper for publication, CITY shall obtain approval from COUNTY concerning the content of these required newspaper notices.

l. CITY shall be responsible, during the Change in Use Restriction Period, for the continued use (for the purpose described herein) of the Freedom Plaza Parking Facility funded pursuant to this Agreement and shall comply with federal property management regulations and standards in accordance with 24 CFR part 570.505 "Use of Real Property" (applicable to expenditure of Grant funds in excess of TWENTY FIVE THOUSAND DOLLARS [\$25,000.00]); 24 CFR part 570.501, "Responsibility for Grant Administration"; and with 24 CFR part 570.503(b)(7), "Reversion of Assets".

m. In the event that CITY cannot or fails to utilize the subject improvements for the purpose described herein throughout the Change in Use Restriction Period, CITY shall immediately notify COUNTY regarding CITY's proposed new use of the subject improvements. COUNTY shall review the Grant eligibility and national objective compliance

of the proposed new use of the subject improvements prior to CITY and COUNTY performing any of the following steps listed in this section. COUNTY will communicate in writing to CITY its determination in this matter. After COUNTY has made its determination, and if directed by COUNTY, CITY shall conduct a public hearing to provide affected citizens an opportunity to comment on CITY's proposed new use of the subject improvements. After these steps have been completed, COUNTY, at its option, may require that CITY comply with one of the following:

(1) Reimburse COUNTY in an amount equal to the Grant funds expended for this Project/Activity or its "proportionate share" of the current "Fair Market Value" (as defined by the California Code of Civil Procedure, Part 3, Title 7, Chapter 9, Article 4, Section 1263. 320) of all real property and/or improvements for which Grant assistance was provided pursuant to this Agreement, whichever is more. "Proportionate share" is that amount equivalent to COUNTY's percentage contribution toward the total acquisition, design, construction or other cost(s) of the Project/Activity, as described in **Schedule "A"** of this Agreement, or

(2) Offer the improvements for which Grant funds were expended pursuant to this Agreement for sale at "Fair Market Value" and, subsequent to sale, reimburse COUNTY for its "proportionate share" of the sales price.

PARTIES shall first use good faith efforts in an attempt to agree on the "Fair Market Value". If, however, PARTIES are unable to agree, they shall, within thirty (30) days from and after written request given by either party to the other, select an arbitrator mutually acceptable to both PARTIES. The arbitrator shall render an advisory decision as to the "Fair Market Value" of the real property and/or improvements referenced in this Agreement. The arbitrator's decision in this matter shall be nonbinding and advisory only; provided, however, that PARTIES shall, in good faith, give serious consideration to the arbitrator's decision.

If PARTIES are unable to agree with a single arbitrator within the above-referenced thirty (30) days, then each shall, within twenty (20) additional working days, appoint one (1) arbitrator and the two (2) arbitrators shall select a third arbitrator within ten (10) additional working days after both are selected. Any decision as to the "Fair Market Value" determined and jointly agreed upon by any two (2) of the three (3) arbitrators shall be nonbinding and advisory only; provided, however, that PARTIES shall each give good faith and serious consideration to the arbitrators' decision.

All arbitrators shall be real estate appraisers who have at least ten (10) years experience in appraising real estate in the State of California and must be either a member of the American Institute of Real Estate Appraisers, holding an M.A.I. (Member of Appraisal Institute) designation, or a member of the Society of Real Estate Appraisers, holding an S.R.P.A. (Senior Real Property Appraiser), or an S.R.E.A. (Society of Real Estate Analysts) designation. PARTIES shall each pay half of the fees and necessary expenses for the arbitrators.

In no event shall the amount reimbursed to COUNTY be less than COUNTY's total contribution toward the Project/Activity. The Change in Use Restriction, as stated herein, shall be in effect for that period defined in Paragraph 1.f. of this Agreement.

4. COUNTY's Obligations

a. Any regulation enacted by COUNTY to facilitate the administration of the Grant will be made available to CITY by County's Board of Supervisors or its designee.

b. COUNTY shall make available to CITY, at its written request, copies of the terms of the Grant.

c. COUNTY shall cooperate fully with CITY in undertaking this Project/Activity and process CITY invoices for payment under this Agreement with due diligence.

d. COUNTY shall make available to CITY a copy of the notice which CITY may use in soliciting small and Section 3 business participation in the Grant funded work contemplated by this Agreement.

e. COUNTY shall review plans and specifications submitted by CITY and shall provide comments and approval or disapproval.

5. Laws and Regulations

a. CITY agrees to comply with the provisions of the Act, any amendments thereto, the federal regulations and guidelines now or hereafter enacted pursuant to the Act, terms of the Grant to COUNTY now or hereafter in effect, and the regulations now or hereafter enacted by COUNTY to facilitate its administration of the Grant in Kern County, or any other statute, regulation or guideline applicable to the Program. CITY shall become familiar with the applicable statutes, regulations and guidelines governing the Grant program, each of which is made a part hereof and incorporated herein by this reference as if set forth in full.

b. It is agreed that all provisions of State of California law applicable to public contracts (except to the extent California law may be waived and is waived by the PARTIES) are a part of this Agreement to the same extent as if set forth herein in full and shall be complied with by CITY under this Agreement and any related agreements.

6. Records and Administration

a. In the event CITY expends at least FIVE HUNDRED THOUSAND DOLLARS (\$500,000) in federal financial assistance in any single fiscal year, from all sources combined, it shall arrange at its own expense for performance of a "Single Audit" of its entire operation by an independent auditor. Such audit shall comply with the requirements and standards of OMB Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations", including appendices; Pub. L. 98-502, "Single Audit Act of 1984", as amended; 24 CFR part 85.26, "Non-Federal Audit"; and OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments"; all of which are incorporated herein by this reference as if set forth in full.

The results of the audit must be submitted to COUNTY within thirty (30) days of completion. Acceptance of CITY's audit reports by COUNTY does not prohibit COUNTY from performing any additional audit work required to follow up on findings, as deemed necessary

by COUNTY, or as necessary for COUNTY to comply with any administrative or audit requirements imposed by the federal or state government.

b. As a condition of receiving federal financial assistance under this Agreement, CITY agrees to comply with 24 CFR part 91.105(h), "Access to Records". It is further agreed by CITY that any agreement between CITY and its independent auditor shall provide for access during normal business hours to the independent auditor's work papers by federal, state and COUNTY auditors, or their authorized agents, as may be deemed necessary to carry out their audit responsibilities. The audit agreement must also require CITY's independent auditor to retain for review purposes said audit work papers for a minimum of five (5) years from date of audit completion or until all related audit issues are resolved, whichever should occur later.

c. CITY agrees to maintain a financial management system which complies with 24 CFR part 85.20, "Standards for Financial Management Systems", except paragraph (a). Particular reports and records that may be applicable to this Project/Activity and require compliance by CITY are described in and attached hereto as Exhibit "D", and are incorporated herein by this reference as if set forth in full.

d. CITY agrees to comply with the methods and procedures for payment as outlined in 24 CFR part 85.21, "Payment", except as modified by 24 CFR part 570.513, "Lump Sum Drawdown for Financing of Property Rehabilitation Activities".

e. CITY agrees to comply with the standards and requirements of 24 CFR part 85.33, "Supplies", and 24 CFR part 85.32, "Equipment", with the exception that in all cases in which the equipment is sold, the proceeds shall be considered to be Program Income and be immediately refundable to COUNTY.

f. CITY agrees to comply with the requirements and standards of 24 CFR part 85.36, "Procurement", except paragraph (a), and 24 CFR part 85.22, "Allowable Costs".

g. CITY agrees to comply with the standards and requirements of 24 CFR part 85.35, "Subawards to Debarred and Suspended Parties", and 24 CFR part 85.40, "Monitoring and Reporting Program Performance", except paragraphs (b) through (d) and paragraph (f) thereof. CITY further agrees that COUNTY has the right to monitor and supervise the administration and/or implementation of the Project/Activity to be completed pursuant to this Agreement to help ensure compliance with the requirements of the Act as now or hereinafter amended, the federal regulations as now or hereinafter promulgated pursuant to the Act, or guidelines developed by the federal government for administering and/or implementing the Project/Activity, or any other statute, rule, regulation or guideline applicable to the administration and/or implementation of the Grant program.

h. CITY agrees to comply with the standards and requirements of 24 CFR part 85.43, "Enforcement", and 24 CFR part 85.44, "Termination for Convenience". CITY also agrees that COUNTY can, by unilateral action, terminate this Agreement, with cause, by giving ten (10) days prior written notice to CITY. In the event COUNTY determines that an intentionally false or fraudulent certified claim has or is being filed, COUNTY, in its sole discretion, may immediately terminate this Agreement and/or CITY shall reimburse COUNTY

for any and all funds found to be improperly paid, as well as those reasonable costs associated with the investigation and recovery of the contested claims and/or amounts.

i. CITY shall be accountable to COUNTY for any and all Grant funds expended by CITY or any officer, employee, agent or representative thereof, whether or not such officer, employee, agent or representative thereof was acting within the scope of his employment. CITY shall repay COUNTY the full amount of any improperly expended Grant funds upon demand and shall comply with the requirements of 24 CFR part 85.51, "Later Disallowances and Adjustments". COUNTY may retain any funds of CITY in COUNTY's possession as an offset against the debt resulting from such improper expenditure.

j. CITY agrees to comply with the standards and requirements of 24 CFR part 85.52, "Collection of Amounts Due".

k. CITY shall return to COUNTY, within forty-five (45) days of receipt, all Program Income which is directly generated by Grant funded activities during the Change in Use Restriction Period.

l. At COUNTY's sole option, COUNTY may either terminate this Agreement upon three (3) days written notice to CITY or withhold funds from the Project/Activity if CITY is not complying with provisions of the Act, federal regulations thereunder, terms of the Grant from the federal government to COUNTY, the regulations of COUNTY to facilitate the administration of the Grant, the terms of this Agreement, or any other statute or regulation applicable to the Program or administration thereof as determined solely by COUNTY. Should COUNTY become subject to any claims, causes of action, costs or sanctions due to any failure by CITY or CITY's agent to comply with all applicable federal, state, and local laws and regulations, CITY hereby agrees to be solely liable for any such expenses, costs, damages and sanctions and shall fully reimburse, hold harmless, and indemnify COUNTY for any payments made or funding lost by COUNTY and COUNTY's expenses related thereto, including COUNTY's costs.

#### 7. Use Restriction Monitoring

Beginning approximately one year after the date of the filing of the Notice of Completion and resolution of all monitoring findings, CITY shall provide COUNTY a Monitoring Letter regarding the physical condition and usage of the improvements constructed with Grant funds pursuant to this Agreement for the purpose of determining compliance with the change in use restriction during the period defined in Paragraph 1.f. herein. The purpose of the Monitoring Letter is to ensure that the Grant funded improvements continue to be properly maintained and utilized for their original eligible use or for another Grant use approved by COUNTY in accordance with applicable regulations found at 24 CFR part 570.201.

The Monitoring Letter shall consist of a written description of the physical condition of the improvements; any maintenance performed on the improvements during the past twelve (12) months; and any proposed changes in the future use of the improvements. Said Monitoring Letter shall be signed by the City Manager/Administrator or his/her designee. CITY shall submit the Monitoring Letter to COUNTY by no later than June 30 of each year. COUNTY may elect to conduct a visual inspection of the improvements and shall notify CITY at least two (2) weeks in advance of each monitoring visit.

A determination regarding continued compliance and/or any related findings, conditions or sanctions shall be made and communicated in writing to CITY by COUNTY following review of the annual monitoring letter or each monitoring visit.

8. Use of Debarred, Suspended or Ineligible Contractors or Subrecipients

Assistance provided under this Agreement shall not be used directly or indirectly to employ, award contracts, or otherwise engage the services of, or fund any contract or subrecipient during any period of debarment, suspension, or placement in ineligibility status under the provisions of 24 CFR part 24.

9. Political Activity

CITY agrees that no Grant funds shall be expended to finance any political activity in contravention of the Hatch Act of 1939, as amended, 5 U.S.C. 15 et seq.

10. Prohibited Use of Federal Funds for Lobbying

CITY certifies, to the best of its knowledge and belief, that no federally appropriated funds have been paid or will be paid, by or on behalf of CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds, other than federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, CITY shall complete and submit, in accordance with its instructions, Standard Form-LLL, "Disclosure of Lobbying Activities", attached hereto as **Exhibit "E"** and incorporated herein as if set forth in full.

CITY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under any federal grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

11. Use of Grant Funds for Religious Purpose

CITY agrees that no Grant funds shall be expended for the design, construction, operation, or maintenance of any facility used for inherently religious activities.

12. Prohibited Interest of Officials and Employees

No member of or delegate to the Congress of the United States, and no resident commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same. No member, officer or employee of CITY, or its designees or agents, no member of the Board of Supervisors of COUNTY or any other public official who exercises any functions or responsibilities with respect to the Program during his tenure, or for one (1) year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Agreement. CITY shall incorporate or cause to be incorporated, in all contracts or subcontracts, relating in any manner to this Agreement, a provision prohibiting such interest.

The PARTIES to this Agreement have read and are aware of the provisions of section 1090 et seq. and section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. All PARTIES hereto agree that they are unaware of any financial or economic interest of any public officer or employee of COUNTY relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, COUNTY may immediately terminate this Agreement by giving written notice thereof. CITY shall comply with the requirements of Government Code, section 87100 et seq., during the term of this Agreement.

13. Federal Labor Standards and State Labor Code Provisions

Except with respect to the rehabilitation of residential property designed for residential use for less than eight families, CITY and all contractors engaged under contracts for the construction, alteration, and/or repair of any building or work financed in whole or in part with federal funds provided under this Agreement, shall comply with HUD requirements pertaining to such contracts and the applicable requirements of the regulations of the U. S. Department of Labor under 29 CFR parts 3 and 5, governing the payment of wages and the ratio of apprentices and trainees to journeymen; provided, that if wage rates higher than those required under such regulations are imposed by state or local law, nothing hereunder is intended to relieve CITY of its obligation to require payment of higher rates. Further, if the requirements of HUD and of the State of California are different in regards to matters including, but not limited to, hours of labor, payroll records, apprentices, workers' compensation, and suits to recover penalties and forfeitures, CITY shall comply with the more restrictive provision.

CITY shall cause or require to be inserted in full, in all such contracts subject to such regulations, the "Federal Labor Standards Provisions" clause, or any modification thereof, set out in **Exhibit "F"** attached hereto and incorporated herein by this reference as if set out in full. CITY shall comply with the procedures set out in HUD Handbook 1344.1, "Federal Labor Standards Compliance in Housing and Community Development Programs", as amended, which is incorporated herein by this reference as if set forth in full.

CITY shall also cause or require to be inserted in full, in all contracts subject to State Labor Code regulations, the "State of California Labor Code Requirements" clause, or any modification thereof, set out in **Exhibit "G"** attached hereto and incorporated herein by this reference as if set out in full.

No awards of contracts covered under this section of this Agreement shall be made to any contractor who is ineligible under the provisions of any applicable regulations of the U. S.

Department of Labor and/or the State of California Department of Industrial Relations –  
Division of Labor Standards Enforcement to receive an award of such contract.

14. Nondiscrimination Requirements

CITY is subject to all applicable requirements of the following Acts, promulgations and regulations with respect thereto:

a. Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352) and the regulations issued pursuant thereto (24 CFR part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives federal financial assistance and will immediately take any measures necessary to effectuate this assurance. Where the federal financial assistance is to provide or is in the form of personal property or real property interest therein or structures thereon, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, via the instrument effecting any disposition by the applicant or transferee, in the case of a subsequent transfer, of such real property, structures or improvements thereon, or interests therein, to require a covenant running with the land assuring nondiscrimination for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the applicant retains ownership or possession of the property, whichever is longer. Under this assurance the United States shall have the right to seek its judicial enforcement. CITY is required to take all measures necessary to effectuate this Title in the manner set forth in Section 1.5 of the above-mentioned regulation, a copy of which is attached hereto as Exhibit "H" and incorporated herein by this reference as if set forth in full.

b. Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284) as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and requiring action to affirmatively further fair housing in the sale, lease or rental of housing, the financing of housing, and the provision of brokerage services within COUNTY's jurisdiction.

c. Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR part 570.602), which provide that no person in the United States shall on the grounds of race, color, national origin, religion, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Title I funds.

d. Executive Order 11063, as amended, and the regulations issued pursuant thereto (24 CFR part 107) which require that all action necessary and appropriate be taken to prevent discrimination because of race, color, religion (creed), sex, or national origin in the sale, rental, leasing or other disposition of residential property and related facilities or in the use or occupancy thereof where such property or facilities are owned or operated by the federal government, or provided with federal assistance by HUD, and in the lending practices with respect to residential property and related facilities of lending institutions insofar as such practices relate to loans insured, guaranteed or purchased by HUD.

15. Equal Employment Opportunity

During the implementation of this Project/Activity and during subsequent operation of any facility assisted pursuant to this Agreement, CITY shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. CITY shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and the selection for training, including apprenticeship. CITY shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by COUNTY and/or HUD setting forth the provisions of this nondiscrimination clause. CITY shall state, through such nondiscrimination clause, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

Government contracts. Except as otherwise provided for in Parts II, III and IV of Executive Order 11246, dated September 24, 1965, as amended, and in attendant Code of Federal Regulation provisions, CITY shall require to be included in each U. S. Government contract entered into by CITY and modification thereof if not included in the original contract, the "Equal Opportunity" clause contained in Section 202 of Executive Order 11246 (48 CFR part 52.222 - 26), as amended, and set out in **Exhibit "I"**, attached hereto and incorporated herein by this reference as if set forth in full.

CITY agrees that it shall assist and cooperate actively with COUNTY, HUD, and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor; that it will furnish COUNTY, HUD and the Secretary of Labor such information as they may require for the supervision of such compliance; and that it will otherwise assist COUNTY and HUD in the discharge of their primary responsibilities for securing compliance.

CITY agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by HUD or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, CITY agrees that if it fails or refuses to comply with these undertakings, HUD may take any or all of the following actions: cancel, terminate, or suspend in whole or in part this Grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to CITY under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received from such; and refer the case to the Department of Justice for appropriate legal proceedings.

16. "Section 3" Compliance in the Provision of Training, Employment, and Business Opportunities for Lower-Income Persons

CITY is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 USC 1701u), as amended, the HUD regulations issued

pursuant thereto at 24 CFR part 135, and any applicable rules and orders of HUD issued thereunder. The purpose of Section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted Projects/Activities covered by Section 3, shall, to the greatest extent feasible, be directed to low and very low income persons, particularly persons who are recipients of HUD assistance for housing.

CITY shall cause or require to be inserted in full in all contracts and subcontracts for work financed, in whole or in part, with assistance provided under this Agreement, the Section 3 clause entitled, "Economic Opportunities for Low- and Very Low-Income Persons", and set forth in **Exhibit "J"**, attached hereto and incorporated herein by this reference as if set forth in full.

CITY itself, during its implementation of this Project/Activity shall, to the greatest extent feasible, seek out and attempt to award contracts to Section 3 business concerns for the business opportunities generated on this federally funded Project/Activity.

CITY shall provide such copies of 24 CFR part 135 as may be necessary for the information of the parties to contracts required to contain the Section 3 clause.

#### 17. Small Business Concerns

CITY is subject to the requirements of the Small Business Act (15 USC 631 et seq.), as amended, the HUD applicable regulations issued pursuant thereto at 48 CFR, part 19, and any applicable rules and orders of HUD issued thereunder requiring aid, counseling, assistance, and protection, insofar as possible, with, for, or of the interests of small business concerns in order to preserve free competitive enterprise; and placement with small business concerns of a fair proportion of the total federally funded purchases and contracts for property and services.

CITY shall implement the specific small business policies hereinbelow stated in order to further applicable requirements of the Small Business Act:

a. Small business concerns shall be afforded an equal opportunity to compete for prime contracts and subcontracts. The "Utilization of Small Business Concerns" clause (48 CFR part 52.219-8) set forth in **Exhibit "K"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included by CITY in all contracts in connection with this Project/Activity in amounts which may exceed the simplified acquisition threshold, currently set at ONE HUNDRED THOUSAND DOLLARS (\$100,000) except (i) contracts which, including all subcontracts thereunder, are to be performed entirely outside the United States, and (ii) contracts for services which are personal in nature. The "Small Business Subcontracting Plan" clause (48 CFR part 52.219-9) set forth in **Exhibit "L"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included by CITY in all contracts in connection with this Project/Activity which may exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) and which, in the opinion of COUNTY, offer substantial subcontracting possibilities.

b. Bidders' mailing lists shall include established and potential qualified small business concerns.

c. Invitations for bids or requests for proposals shall be sent to all firms on the appropriate mailing list except that where use of less than a complete list is appropriate a pro rata number of small business concerns shall be solicited.

d. Proposed procurements and contract awards shall be publicized in accordance with these policies.

e. Procurement of property and services shall be divided into reasonably small lots (not less than economic production runs) in order to permit bidding on quantities less than the total requirements.

f. The maximum amount of time practical shall be allowed for preparation and submission of bids and proposals.

g. Delivery schedules shall be established on a realistic basis which will encourage small business participation to the extent consistent with the actual requirements of the Small Business Act.

h. Applicable specifications, plans, and drawings either shall be furnished with invitations for bids and requests for proposals or, when not so furnished, information as to locations where they may be obtained or examined shall be furnished.

i. In the event of equal low bids, awards shall be in accordance with 48 CFR part 14.408-6, "Equal Low Bids".

j. Subcontracting to enroll small business concerns shall be encouraged.

k. Placement of small purchases (amounts under TWENTY FIVE THOUSAND DOLLARS [\$25,000]) with small business concerns shall be encouraged.

l. Small business concerns seeking Federal contracts, but found to lack qualifications as prime contractors, should be referred to COUNTY and the Small Business Administration for assistance as may be appropriate.

m. Offers from small business concerns otherwise qualified to perform specific federal contracts but ineligible under Walsh-Healey Public Contract Act, 41 USC 35 et seq., shall be referred to COUNTY and Small Business Administration for possible certification of eligibility to receive and perform the contract.

n. To the extent practicable, work to be performed which exceeds the maximum amount of any contract for which a surety may be guaranteed against loss shall be placed so that more than one small business concern may perform the work.

o. A small business concern otherwise qualified to receive and perform specific federal contracts but determined to be non-responsible may be certified to be competent by the Small Business Administration under the provisions of the Small Business Act.

To facilitate the participation of small businesses in CDBG funded contracts, CEDD has developed a Small Business Affirmative Action Plan designed to carry out the

procurement standards found at 24 CFR 85.36(e). A copy of the Plan is available upon request from COUNTY Planning and Community Development Department.

CITY agrees that the "Small Business Participation Requirements" clause set forth in **Exhibit "M"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included in all contracts in connection with this Project/Activity for goods, services, and construction involving CDBG funding of more than the simplified acquisition threshold fixed at 41 U.S.C. 403 (11) (currently set at \$100,000).

CITY further agrees that the "Small Business Subcontracting Program" clause set forth in **Exhibit "N"**, attached hereto and incorporated herein by this reference as if set forth in full, shall be included in all contracts in connection with this Project/Activity which may exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) and should be included in all contracts which may not exceed FIVE HUNDRED THOUSAND DOLLARS (\$500,000) but which, in the opinion of COUNTY and HUD, offer substantial subcontracting possibilities.

18. Nondiscrimination on the Basis of Age

CITY is subject to the Age Discrimination Act of 1975, as amended, (Title III, Pub. L. 94-135) and attendant regulations at 24 CFR part 146, which prohibits, except as otherwise provided, that any person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. CITY is also subject to the Age Discrimination in Employment Act of 1967 addressing age discrimination in employment for persons between the ages of forty (40) and seventy (70) years.

19. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

COUNTY and CITY will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as required under 24 CFR part 570.606(b) and Department of Transportation implementing regulations at 49 CFR part 24; the requirements in 24 CFR part 570.606(c) governing the residential anti-displacement and relocation assistance plan under Section 104(d) of the Housing and Community Development Act of 1974 (Act) and displacement under Section 104(k) of the Act, and HUD implementing regulations at 24 CFR Part 42; and COUNTY may, at COUNTY's option, comply with the relocation requirements of 24 CFR part 570.606(d) governing optional relocation assistance under Section 105(a)(11) of the Act.

20. Rehabilitation Act of 1973 and Nondiscrimination Based on Handicap

CITY is subject to the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112), as amended (29 USC 793 and 29 USC 794, respectively) and attendant regulation at 24 CFR 570.602, which provide that no otherwise qualified individual with handicaps shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to, discrimination under any program or activity receiving federal financial assistance. CITY shall cause or require to be inserted in full, in all such contracts subject to such regulations, the clauses, or any modifications thereof, set out in 48 CFR part 52.222-36, attached hereto as **Exhibit "O"** and incorporated herein by this reference as if set forth in full.

21. Americans with Disabilities Act of 1990

Grant subgrantees and subrecipients agree to abide by the requirements of the Americans with Disabilities Act of 1990 (ADA), Pub. L. 101-336, and any regulations issued pursuant thereto, which prohibits, at Title I thereof, discrimination by any employer, employment agency, or labor organization against any qualified individual with a disability in regard to any term, condition, or privilege of employment; makes applicable, at Title II thereof, the prohibition against discrimination on the basis of disability to all programs, activities and services provided or made available by state and local agencies or instrumentalities or agencies thereof, or by public entities that provide public transportation; prohibits, at Title III thereof, discrimination against disabled persons by privately operated public accommodations and in public transportation services provided by private entities; and which, at Titles IV and V thereof, makes further provisions against discrimination against disabled persons.

22. Architectural Barriers Act of 1968

CITY is subject to the requirements of the Architectural Barriers Act of 1968, 42 USC 4151 - 4157 (Uniform Federal Accessibility Standards (UFAS)), and the regulations issued pursuant thereto (41 CFR part 102-76.25(b)), which require, except as otherwise provided, that all new construction and major renovations, provide full access to and use of Federally-controlled facilities for physically impaired persons as required by the UFAS or the ADA Accessibility Guidelines, whichever is more stringent. Minor renovations in existing buildings shall meet minimum UFAS requirements. A more detailed explanation of these standards can be found in 36 CFR parts 1190 and 1191. CITY shall be responsible for compliance with the requirements of the Act during the design and construction and for the life of any improvements to be constructed as part of the Project/Activity, as defined herein. COUNTY shall have the right, at all reasonable times, to review construction plans and conduct inspections of the Project/Activity to determine if CITY is complying with these specifications.

23. Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era and Other Eligible Veterans

CITY shall comply with 48 CFR part 22.13 et seq., and shall take affirmative action to employ, advance in employment and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based on their disability or veteran's status. In all contracts or agreements of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) or more relating to this Agreement, CITY shall include or cause to be included the "Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" and the "Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans" clauses and the "Compliance with Veterans' Employment Reporting Requirements" provision set out in Exhibit "P", attached hereto and incorporated herein by this reference as if set forth in full.

24. Environmental Considerations

In order to assure that the policies of the National Environmental Policy Act of 1969 ("NEPA"), as amended, and the California Environmental Quality Act of 1970 ("CEQA"), as amended, are most effectively implemented, COUNTY shall comply with HUD Environmental Review Procedures (24 CFR part 58) leading to environmental clearance for particular projects/activities, and the CEQA review procedures (Title 14, Section 15000 et seq. of the California Code of Regulations) in connection with this Project/Activity. In order to assure that the policies of NEPA and CEQA are carried out, CITY shall be responsible for complying with all conditions/mitigation measures specified during the environmental review process, all as more fully described in **Schedule "A"** attached hereto.

25. Historic Preservation

CITY must take into account the effects of a project on any prehistoric or historic district, site, building, structure, or object listed in, or eligible for inclusion in, the National Register of Historic Places maintained by the National Park Service of the U. S. Department of the Interior. The National Register "Criteria for Evaluation" (36 CFR part 60.4) was established by the Secretary of the Interior, CITY shall make every effort to avoid, minimize, or mitigate any adverse effects on historic properties. Activities affecting such properties must comply with Section 106 of the National Historic Preservation Act of 1966, as amended, (16 USC 470f), Pub. L. 89-665; Executive Order 11593, Protection and Enhancement of the Cultural Environment (May 13, 1971); the Advisory Council on Historic Preservation (26 CFR part 800); and Section 3 of the Reservoir Salvage Act of 1960, (Pub. L. 86-523), as amended by the Archaeological and Historic Preservation Act of 1974, (Pub. L. 93-291), (16 USC 469a-1), and their attendant implementing regulations.

26. Compliance with Clean Air and Water Acts

CITY is subject to the requirements of the Clean Air Act, as amended, 42 USC 7401 et seq., including the regulations of the Environmental Protection Agency at 40 CFR parts 6, 51, and 93; the Federal Water Pollution Control Act, as amended by the Federal Water Pollution Control Act Amendments of 1972, 33 USC 1251 et seq., and later enactments; and Executive Order 11738 dated September 10, 1973. CITY, also, agrees to comply with Executive Order 12088, relating to the prevention, control, and abatement of water pollution.

In no event shall any amount of assistance provided under this Agreement be utilized with respect to a facility which has given rise to a conviction under Section 113(c)(1) of the Clean Air Act or Section 309(c) of the Federal Water Pollution Control Act.

27. Flood Disaster Protection

CITY is subject to the requirements of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) which prohibits Federal financial assistance for acquisition or construction purposes, as defined under Section 3(a) of said act, for Projects/Activities within special hazard areas previously identified, ("Identified Area"), by the Director of the Federal Emergency Management Agency ("FEMA"), unless the Identified Area is in a community participating in the national flood insurance program and subject to the mandatory purchase of flood insurance requirements of said act.

Any contract for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Agreement shall contain, if such land is located in an area identified by the Director of FEMA as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 USC 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of the Flood Disaster Protection Act of 1973. Such provisions shall be required notwithstanding the fact that the construction on such land is not itself funded with assistance provided under this Agreement.

In its compliance with the Flood Disaster Protection requirements of this Agreement, COUNTY hereby agrees to comply with the provisions of Executive Order 11988, relating to evaluation of flood hazards.

#### 28. Indemnification

CITY agrees to indemnify, defend, and hold harmless COUNTY and its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, expert fees, costs of staff time, and investigation costs) of whatever kind or nature, which arise out of or are in any way connected with any act or omission of CITY or CITY's officers, agents, employees, independent contractors, sub-contractors of any tier, or authorized representatives. Without limiting the generality of the foregoing, the same shall include bodily and personal injury or death to any person or persons; damage to any property, regardless of where located, including the property of COUNTY; and any workers' compensation claim or suit arising from or connected with any services performed pursuant to this Agreement on behalf of CITY by any person or entity.

CITY acknowledges that CITY, and all contractors hired by CITY to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). CITY is and shall remain in compliance with the IRCA and shall ensure that only contractors hired by CITY to perform services under this Agreement are in compliance with the IRCA. In addition, CITY agrees to indemnify, defend, and hold harmless the County, its agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives, from any liability, damages or causes of action arising out of or relating to any claims that CITY's employees or the employees of any contractor hired by CITY, are not authorized to work in the United States for CITY or its contractor and/or any other claims based upon alleged IRCA violations committed by CITY or its contractor(s).

#### 29. Insurance

CITY in order to protect COUNTY and its board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of CITY's actions in connection with the performance of CITY's obligations, as required in this Agreement, shall secure and maintain insurance as described below. CITY shall not perform any work under this Agreement until CITY has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been

filed with the COUNTY's authorized insurance representative, Insurance Tracking Services Inc. (ITS). Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, CITY shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon. The CITY shall promptly deliver to ITS a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to ITS prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. CITY shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by CITY or COUNTY as an additional insured.

a. Workers' Compensation and Employers' Liability Insurance Requirement - In the event CITY has employees who may perform any services pursuant to this Agreement, CITY shall submit written proof that CITY is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

CITY shall require any contractor or sub-contractor to provide workers' compensation for all of the contractor's or sub-contractor's employees, unless the contractor's or sub-contractor's employees are covered by the insurance afforded by CITY. If any class of employees engaged in work or services performed under this Agreement is not covered by Labor Code section 3700, CITY shall provide and/or require each contractor or sub-contractor to provide adequate insurance for the coverage of employees not otherwise covered.

CITY shall also maintain employers' liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

b. Liability Insurance Requirements:

1. CITY shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

(a) Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the County), Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of CITY's performance of work under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. CITY shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

- (b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles used in the performance of services pursuant to this Agreement with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.
- (2) The Commercial General Liability and Automobile liability Insurance required herein shall include an endorsement naming the COUNTY and COUNTY's board members, officials, officers, agents and employees as additional insureds for liability arising out of this Agreement and any operations related thereto. Said endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 11 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 11 85.
- (3) Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of Insurance or other documentation provided to COUNTY and must be approved by the COUNTY Risk Manager.
- (4) If any of the insurance coverages required under this Agreement is written on a claims-made basis, CITY at its option, shall either (i) maintain said coverage for at least three (3) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than three (3) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

c. Cancellation of Insurance — The above stated insurance coverages required to be maintained by CITY shall be maintained until the completion of all of CITY's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by the CITY must be endorsed to provide that the coverage shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. Such notice shall be by certified mail, return receipt requested. This notice requirement does not waive the insurance requirements stated herein. CITY shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

d. All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum of a "A-; VII" rating. Any exception to these requirements must be approved by the COUNTY Risk Manager.

e. If CITY is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, CITY shall provide coverage equivalent to the insurance coverages and endorsements required above. COUNTY will not accept such coverage

unless COUNTY determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by CITY is equivalent to the above-required coverages.

f. All insurance afforded by CITY pursuant to this Agreement shall be primary to and not contributing to all insurance or self-insurance maintained by COUNTY. An endorsement shall be provided on all policies, except professional liability/errors and omissions, which shall waive any right of recovery (waiver of subrogation) against the COUNTY.

g. Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve CITY for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude COUNTY from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

h. Failure by CITY to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by CITY. COUNTY, at its sole option, may terminate this Agreement and obtain damages from CITY resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CITY, COUNTY shall deduct from sums due to CITY any premiums and associated costs advanced or paid by COUNTY for such insurance. If the balance of monies obligated to CITY pursuant to this Agreement is insufficient to reimburse COUNTY for the premiums and any associated costs, CITY agrees to reimburse COUNTY for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by COUNTY to take this alternative action shall not relieve CITY of its obligation to obtain and maintain the insurance coverages required by this Agreement.

c. Subcontractor Requirements

- (1) If CITY hires a consultant to provide professional services, such as architectural or engineering services under this Agreement, CITY shall require its consultant to provide Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of all required services under this Agreement, with coverage equal to the policy limits which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (2) During the construction of the Activity, CITY shall require that all contractors hired by CITY to perform work on the Activity Premises maintain the following insurance coverages at all times during the performance of said work:
  - (a) Commercial General Liability Insurance including Products-Completed Operations Hazard, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Contractor's performance of work. The amount of said insurance coverage required

by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

- (b) Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering all owned, leased, hired, and non-owned vehicles, with combined limits for Bodily Injury and Property Damage liability of at least one million dollars (\$1,000,000) each occurrence.

30. Captions and Interpretation

Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

The Recitals listed at the beginning of this Agreement are hereby incorporated into this Agreement.

No provision of this Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

31. Successors and Assigns of COUNTY

This Agreement shall be binding upon and inure to the benefit of the successors to or assigns of COUNTY.

32. Liens and Encumbrances

Without the prior consent of COUNTY, CITY shall not transfer, pledge, hypothecate, or encumber the Project/Activity property during the Change in Use Restriction Period.

33. Assignment and Subletting

CITY shall not assign any right, title or interest it may acquire by reason of this Agreement nor sublet any Project/Activity premises except upon first obtaining the written consent of COUNTY.

34. Concurrent Remedy

No right or remedy herein conferred on or reserved to COUNTY is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time.

35. Non Waiver

No covenant or condition of this Agreement to be performed by CITY can be waived except by the written consent of COUNTY. Forbearance or indulgence by COUNTY in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by CITY. A waiver of one covenant or condition by COUNTY does not grant or imply a waiver of any other covenant or condition to be performed by CITY. COUNTY shall be entitled to invoke any remedy available to COUNTY under this Agreement or by law or in equity despite said forbearance or indulgence.

36. Incorporation of Prior Agreements and Amendments

This Agreement, including all attachments hereto and any reference to pertinent federal or State laws and regulations, contains the entire Agreement between the PARTIES, relating to the services, rights, obligations and covenants contained herein and assumed by the PARTIES respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect. This Agreement may be modified in writing only, signed by the PARTIES in interest at the time of modification.

37. Severability

Should any part, term, portion or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the PARTIES intended to enter into in the first instance.

38. Signatory Authority

Each individual executing this Agreement on behalf of each party represents and warrants that he/she is duly authorized to execute and deliver this Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. CITY shall, prior to Agreement execution by COUNTY's Board of Supervisors, deliver to COUNTY a copy of the resolution or minute order of CITY's governing body authorizing the execution of this Agreement.

39. Procedure to Modify and Limitation of Term of Agreement

a. Except as otherwise provided herein, the terms of this Agreement may only be modified by the written consent of the PARTIES hereto.

b. The expiration of this Agreement shall be determined as provided in Paragraph 1.g. of this Agreement.

40. Execution

This Agreement is effective upon the date indicated herein above. It is the product of negotiation and all PARTIES are equally responsible for authorship of this Agreement.

Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

#### 41 Notices

Notices shall be sufficiently given hereunder if personally served upon the Clerk of the Board of Supervisors of the COUNTY or the Clerk of the CITY, or if sent by United States mail, postage prepaid, as follows:

directed to COUNTY, addressed to:

Planning and Community Development Department  
Clerk of the Board of Supervisors  
County Administrative Center  
1115 Truxtun Avenue, Fifth Floor  
Bakersfield, California 93301

or directed to CITY, addressed to:

City Manager  
City of Tehachapi  
115 S. Robinson St.  
Tehachapi, CA 93561

#### 42. Construed According to California Law

The provisions of this Agreement shall be construed in accordance with the laws of the State of California.

#### 43. Venue

This Agreement has been entered into and is to be performed in the County of Kern, California. Accordingly, the PARTIES agree that the venue of any action relating to this Agreement shall be brought in the County of Kern.

#### 44. Opinions and Determinations

Where the terms of this Agreement provide for action to be based upon the opinion, judgment, approval, review, discretion, option, or determination of either COUNTY or CITY, such terms are not intended to be and shall not be construed as permitting such opinion, judgment, approval, review, discretion, option, or determination to be arbitrary, capricious, or unreasonable.

#### 45. No Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of these terms and conditions and all rights of action relating to such enforcement, shall be strictly reserved to COUNTY and CITY. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of COUNTY and CITY that any such person or entity, other than COUNTY and CITY, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their respective officers and agents hereunto duly authorized as of the day and year first above written.

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APPROVED AS TO CONTENT:  
Planning and Community Development Dept.

COUNTY OF KERN

BY \_\_\_\_\_  
Lorelei H. Oviatt, AICP, Director

BY \_\_\_\_\_  
Chairman, Board of Supervisors

\_\_\_\_\_  
Printed Name

"COUNTY"

APPROVED AS TO FORM:  
Office of County Counsel

CITY OF \_\_\_\_\_

BY \_\_\_\_\_  
Brian Van Wyk, Deputy

BY \_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Insert Title

"CITY"

I:\AFC\PROJECTS\20-Tehachapi\13.1 Tehachapi Freedom Plaza Pkg Improv\Agreement 20.13.1.doc

**Title**

CD Activity # 20.13.1 – City of Tehachapi Freedom Plaza Parking Improvements

**Project Purpose**

The activity will be located at 200 W. Tehachapi Road, a 7,466 sq. foot lot owned and maintained by the City of Tehachapi (“City” or “CITY”). Development of the lot is part of the continued implementation of City redevelopment plans to address blighted conditions pursuant to the *Redevelopment Plan for the City of Tehachapi Redevelopment Agency* approved in November of 1999 and its update, *Final Draft 2006-2010 Implementation Plan for the Tehachapi Redevelopment Project Area*, approved in August of 2007. The project is related to the parking and pedestrian improvements for the Downtown area, envisioned in the Downtown Master Plan. The pedestrian right-of-way along the west side of Curry Street is located within the Commercial Core of the Downtown Master Plan.

**Project Description**

The project includes the design and construction of site improvements to an existing parking facility. Planned improvements consist of resurfacing of vehicle parking; installation of a decorative walkway; installation of streetscape furniture (e.g., City-owned bollards and benches installed); installation of landscaping including lawn, trees, shrubs and an irrigation system; adjustment to finished grade all utility vaults, manholes, valve covers and lids, and other facilities and installation of an electrical system for planned improvements. The activity may include installation of water/fountain features and/or a flag pole; and other related improvements. In order to complete planned activities, commercial gas lines within or in the vicinity of the project may need to be abandoned, replaced and/or relocated. Although not directly related to the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) activity proposed, an additional activity phase may consist of the rehabilitation of an existing civic building located on-site. The City has indicated that this phase will not include any HUD funding and no specific cost or work detail has been provided for the follow-up activities. However, the work associated with project implementation is a contemplated activity.

**Activity Description**

The activity may include soil remediation; demolition; earthwork and installation of aggregate base; and construction/installation of curbs and gutters, colored/stained concrete and brickwork surfaces, asphalt concrete pavement, concrete driveway, curb ramp (ADA compliant), seating structures, seatwall, railroad-themed-pseudo-interpretive elements on a rubber protective surface, military monuments, lighting, wire mesh for vine planting, decorative parking screen, striping/signage/parking bumpers, landscaping, irrigation, electrical, temporary landscape maintenance, and other related improvements. The City will be responsible for design, construction inspection and management, geotechnical engineering, contract administration, HUD monitoring, advertising, and project contingency/escalation.

**Project Cost Estimate**

The total amount of GRANT funds committed by the County of Kern (“County” or “COUNTY”) to the Project is ONE HUNDRED FIFTY EIGHT THOUSAND TWO HUNDRED FORTY THREE DOLLARS (\$158,243). Individual line items and payment responsibilities within the following detailed cost estimate for GRANT funds may be modified under authority of the County’s Planning and Community Development (“PCD”) Director provided that the total amount of GRANT funds committed does not exceed ONE HUNDRED FIFTY EIGHT THOUSAND TWO HUNDRED FORTY THREE DOLLARS (\$158,243). In addition, the CITY shall be responsible for all other costs related to this Project in excess of the GRANT amount and pursuant to the Agreement.

Construction	COUNTY GRANT Funds CD Activity #20.13.1	CITY Funds	TOTAL
Mobilization/Demobilization	\$0	\$45,000	\$45,000
Soil Remediation	\$0	\$10,000	\$10,000
Temporary Traffic Control	\$0	\$1,500	\$1,500
Construction Surveying	\$0	\$2,500	\$2,500
Demolition	\$0	\$30,000	\$30,000
Earthwork	\$0	\$15,000	\$15,000
Furnish and install concrete curb including subgrade preparation and expansion joints in accordance with plans and specifications	\$9,000	\$0	\$9,000
Furnish and install concrete curb and gutter including subgrade preparation and expansion joints in accordance with plans and specifications	\$8,750	\$0	\$8,750
Furnish and install concrete cross-gutter including subgrade preparation, aggregate base, and steel reinforcement in accordance with plans and specifications	\$1,680	\$0	\$1,680
Furnish and install asphalt concrete pavement in accordance with plans and specifications	\$23,100	\$0	\$23,100
Furnish and install class II aggregate base (for Asphalt Paved Areas Only) in accordance with plans and specifications	\$13,200	\$0	\$13,200
Finish and install Colored Concrete Surface No. 1 including subgrade preparation, aggregate base, steel reinforcement, sawcuts, and expansion joints in accordance with plans and specifications	\$75,000	\$0	\$75,000
Finish and install Colored Concrete Surface No. 2 including subgrade preparation, aggregate base, steel reinforcement, sawcuts, and expansion joints in accordance with plans and specifications	\$4,875	\$0	\$4,875
Furnish and install brickwork pavement, including washed concrete sand, aggregate base, geotextile, and subgrade preparation in accordance with plans and specifications	\$22,638	\$5,562	\$28,200
Furnish and install crushed stone paving including subgrade preparation in accordance with plans and specifications	\$0	\$13,000	\$13,000
Furnish and install rubber protective surface including aggregate base and subgrade preparation in accordance with plans and specifications	\$0	\$8,750	\$8,750
Furnish and install concrete driveway including subgrade preparation, steel reinforcement, curbs and gutters in accordance with plans and specifications	\$0	\$5,600	\$5,600

<b>Construction</b>	<b>COUNTY GRANT Funds CD Activity #20.13.1</b>	<b>CITY Funds</b>	<b>TOTAL</b>
Furnish and install curb ramp, including retaining curb and detectable warning surface in accordance with plans and specifications	\$0	\$4,500	\$4,500
Furnish and install low-level natural seating structures in accordance with plans and specifications	\$0	\$15,000	\$15,000
Furnish and install acrylic military monuments, including subgrade preparation LED lights, footing, base, and anchors in accordance with plans and specifications	\$0	\$40,000	\$40,000
Furnish and install Light Poles, Light Strings, and Wire Mesh for Vine Planting, including foundations and subgrade preparation in accordance with plans and specifications	\$0	\$14,000	\$14,000
Furnish and install Steel Decorative Parking Screen including subgrade preparation and foundations in accordance with plans and specifications	\$0	\$24,000	\$24,000
Furnish and install concrete seatwall, including subgrade preparation and steel reinforcement in accordance with plans and specifications	\$0	\$6,000	\$6,000
Stain existing concrete surface, including preparation in accordance with plans and specifications	\$0	\$5,000	\$5,000
Striping and Signage (including light on stop sign) in accordance with plans and specifications	\$0	\$2,000	\$2,000
Furnish and install parking bumper in accordance with plans and specifications	\$0	\$4,200	\$4,200
Landscaping Planting in accordance with plans and specifications	\$0	\$35,000	\$35,000
Landscape Irrigation	\$0	\$40,000	\$40,000
Electrical	\$0	\$40,000	\$40,000
Record Drawings	\$0	\$500	\$500
Furnish and install mock-up of colored concrete surface, including disposal	\$0	\$2,000	\$2,000
Furnish personnel and equipment to perform work during landscape maintenance period and planting establishment after project completion in accordance with the plans and specifications	\$0	\$1,800	\$1,800
<b>Construction Cost Subtotal</b>	<b>\$158,243.00</b>	<b>\$370,912</b>	<b>\$529,155</b>
<b>Design/Other</b>			
Design, Construction Inspection and Management, Geotechnical Engineering and Contract Administration/HUD monitoring	\$0	\$48,630	\$48,630
Contingency/Escalation	\$0	\$56,473	\$56,473

Construction	COUNTY GRANT Funds CD Activity #20.13.1	CITY Funds	TOTAL
Advertising	\$0	\$10,000	\$10,000
<b>Design/Other Subtotal</b>	\$0	\$115,103	\$115,103
<b>TOTAL PROJECT COST</b>	<b>\$158,243.00</b>	<b>\$486,015</b>	<b>\$644,258</b>

**Beneficiaries**

This Project is eligible for Grant funding pursuant to 24 CFR Part 570, Subpart C, Section 570.201(c) - Parking Facilities. The activity is part of the continued implementation of CITY redevelopment plans to address blighted conditions pursuant to the *Redevelopment Plan for the City of Tehachapi Redevelopment Agency*, (November 1999) and its update, *Final Draft 2006-2010 Implementation Plan for the Tehachapi Redevelopment Project Area* (August 2007). The project will benefit 6,255 residents. The project meets a HUD National Objective pursuant to 24 CFR, Part 570, Subpart C, Section 570.208 (b) (1) – Activities to address slums or blight on an area basis.

**Anticipated Implementation Schedule**

It is agreed between the COUNTY and CITY that time is of the essence in the implementation of the Activity described in this Agreement. The CITY shall implement the Activity in an expeditious manner and otherwise conform to the following time schedule:

Cumulative time is from date of execution by the County Board of Supervisors:

- a. Board of Supervisors executes Agreement ..... Week 1
- b. CITY completes Plans/Specifications ..... Week 7
- c. CITY submits Plans/Specifications for County review ..... Week 8
- d. COUNTY completes review Plans/Specifications ..... Week 10
- e. CITY completes Bid Advertising ..... Week 14
- f. CITY conducts Bid Opening ..... Week 15
- g. COUNTY reviews Bids ..... Week 16
- h. CITY awards Contract..... Week 19
- i. Begin construction..... Week 21
- j. Complete construction..... Week 28
- k. CITY submits Notice of Completion..... Week 29

**Environmental Clearance:**

**National Environmental Policy Act (NEPA)** On May 20, 2014, the Board of Supervisors approved the Finding of No Significant Impact (FONSI), the Request for Release of Funds (RROF) and the Environmental Clearance Certification for the Project. The Environmental Review Record (ERR) for CD Activity #20.13.1 is maintained in the Planning and Community Development Department, it contains:

- 1. The Level of Environmental Review (2011);
- 2. The Statutory Worksheet (2011);
- 3. The Environmental Assessment;
- 4. Resolution from Board of Supervisors approving the Finding of No Significant Impact, Request for Release of Funds (RROF), and Environmental Certification for the Project.

**Mitigation Measures/Project Conditions**

The conditions associated with the environmental clearance for this Activity is summarized below and shall be incorporated into the design standards and specifications of the project, and the CITY and its construction contractor(s) shall be responsible for compliance:

1. The following shall be included as a note on all building and/or grading plans;

Prior to implementation of any building rehabilitation, all employees working at the site shall be properly trained in both the handling and disposal of asbestos containing materials and shall use the appropriate protective equipment while conducting asbestos related work. Any contractor or subcontractor hired for the purposes of conducting any alteration, renovation or demolition on the structure located at 200 W Tehachapi Boulevard shall ensure that all work conducted onsite; including but not limited to the handling, storage, encapsulation, removal and/or disposal of such materials shall conform to the minimum standards set under Section 1529 (Asbestos) of Subchapter 4, Article 4 of Title 8 of the California Code of Regulations.

During implementation of activities, all asbestos containing materials shall be handled and disposed of in accordance with all applicable local, State and or federal laws.

2. Prior to commencement of any project funded activities onsite, the following mitigation steps shall be completed to ensure that soils containing lead are remediated to the level of no more than 150 mg/kg or less. The grant recipient shall ensure that a record of the work and any laboratory results received is maintained and upon completion of that work, a copy shall be provided to the responsible entity for review and inclusion in the environmental review record (ERR).

- Soils in areas impacted by lead shall be excavated to a depth of approximately 2 feet bgs (below ground surface) to mitigate impacted soils.

- Confirmation soil samples should be collected from the base and side walls of the excavations and laboratory analyzed for lead levels in order to confirm that impacted soil has been mitigated, and;

- Excavated soil shall be removed and disposed of at an appropriate off-site facility with valid permits to accept lead contaminated soils.

3. The following shall be included as a note on all building and/or grading plans;

In order to reduce construction related noise experienced in the vicinity of the project, construction hours shall be limited to the hours between 8 a.m. and 5 p.m., to protect surrounding properties and occupants in the vicinity of the project.

4. The following shall be included as a note on all building and/or grading plans;

SoCal Gas has two existing natural gas distribution lines that run along the northern, eastern and southern boundaries of the proposed project site, along Tehachapi Boulevard, S. Curry Street and the southern property boundary, respectively, and requests that the project proponent call the Underground Service Alert at 811 at least two business days prior to performing an excavation work. Underground Service Alert will coordinate with SoCal Gas and other utility owners in the area to mark the locations of buried utility-owned lines.

5. Implementation of the project may require SoCal Gas to either abandon and/or relocate sections of its existing natural gas lines for up to a mile in length (actual distance not length of total pipe). Should it be determined that the proposed project will require SoCal Gas to abandon and/or

relocate sections of its existing natural gas lines, the City of Tehachapi shall coordinate all work related details with the SoCal Gas regarding the relocation of the company's gas lines.

6. In accordance with Tehachapi's Dark Skies protocol (Objective 4) of the Natural Resources Element of the Tehachapi General Plan, all light fixtures installed onsite shall be appropriately shielded. No up-lighting shall be installed onsite. Implementation of this requirement will have also indirect beneficial effect for all aircraft operating in or out of Tehachapi Municipal Airport by reducing glare and minimizing light pollution in the vicinity of the project.
7. In accordance with Objective No. 2 of Section 2.1 E of the Natural Resources Element of the Tehachapi General Plan, drought tolerant vegetation and landscaping shall be installed in landscaped areas. Design specifications shall be prepared by a licensed landscape architect or their equivalent professional.

In order to reduce onsite water consumption and limit use of municipal water, final plan specifications shall ensure a drip irrigation system is installed for any landscaped features that are susceptible to drought conditions. Prior to implementation of any planned improvements, a copy of the approved landscape plan shall be provided to Responsible Entity for review and inclusion in the Environmental Review Record (ERR).

8. If any archaeological, paleontological, historical, or cultural resources are discovered during construction, all work shall halt in the area of the discovery and a qualified cultural resources specialist shall evaluate the findings and make appropriate recommendations to address the find. The recommendations shall be incorporated into the project agreement, as project modifications, and shall be included in construction specifications and complied with at all times by the contractor.
9. The project shall comply with standard dust suppression methods. Dust generated onsite shall be controlled by watering all exposed areas at least twice daily during excavation, and especially during clearing and grading operations. Additional watering on windy or hot days is required to reduce dust emissions. Cover any stockpiles of sand, soil or similar materials with a tarp. Cover trucks hauling dirt or debris to avoid spillage. In areas where construction is delayed for an extended period of time, ground shall be re-vegetated to minimize the generation of dust.
10. Best management practices shall be incorporated into the final site design to mitigate potential storm water, drainage, and water quality impacts for the project site.

**California Environmental Quality Act (CEQA)** A Categorical Exemption (CE) for CD Activity #20.13.1 was approved by the PCD Director on May 1, 2014. This project is considered exempt under Section 15301 and Section 15302 of CEQA guidelines. The design and reconstruction of an existing parking lot is included in activities that qualify for a Class I exemption, since the project will involve the negligible expansion of an existing use. According to Section 15302 of CEQA guidelines, the rehabilitation of a small commercial structure and the abandonment, replacement and the relocation of gas lines are activities that qualify for exemption under Class II of Article 19 - Categorical Exemptions. The CE documentation has been entered into the ERR for the Project.

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**WITHHELD CONTRACT FUNDS CERTIFICATION**

Public Contract Code Section 22300 requires the inclusion in invitations for public agency bids and in public agency contracts a provision which will, at the expense of the contractor, permit the substitution of securities of equal value for any construction progress monies withheld to ensure performance under a contract. Therefore, as a contractor on Project No. \_\_\_\_\_, entitled: \_\_\_\_\_

I do not intend to substitute securities for monies withheld and thereby avail myself of the process and rights provided in Public Contract Code Section 22300.

I do intend to exercise my option as specified in Public Contract Code Section 22300 and hereby agree to the following:

1. I will establish an escrow agreement satisfactory to the County, with a state or federally chartered bank, which shall contain at a minimum provisions governing inter alia:
  - a. The amount of securities to be deposited;
  - b. The type of securities to be deposited, (eligible securities for deposit are described in Government Code Section 16430);
  - c. The providing of powers of attorney or other documents necessary for the transfer of the securities deposited;
  - d. The terms and conditions of conversion to cash to provide funds to meet defaults by the Contractor including, but not limited to, termination of the Contractor=s control over the work, stop notices filed pursuant to law, assessment of liquidated damages or other amounts to be kept or retained under the provisions of the contract;
  - e. The decrease in value of securities on deposit; and
  - f. The termination of the escrow agreement upon completion of the contract and acceptance by the COUNTY.
2. I will obtain written consent of the surety to any such agreement; and
3. I will attach to each progress payment submitted a notarized copy of escrow instructions executed by agents thereof and on bank letterhead as proof that such an account has been established. Such instructions will set forth that securities deposited shall not be withdrawn for any purpose (with contractor's complete and unreserved agreement) without prior written approval by the County of Kern with respect to the project herein above referenced.

_____ Contractor	_____
By _____ (Signature)	_____
_____	_____
(Title)	Place of Residence

MEETING LABOR STANDARDS CONTRACT REQUIREMENTS  
PRECONSTRUCTION CHECKLIST FOR CONTRACTORS

A. Introduction

The following checklist has been prepared to assist contractors and subcontractors in meeting their contractual labor standards responsibilities under federally assisted construction projects. All major administrative and procedural activities have been covered in the sequence they will occur as the construction project proceeds. **Careful attention to and use of the checklist should result in a minimum number of problems with respect to labor standards.**

B. Explanatory Notes

The word "County" can mean, as is appropriate to agreements between contracting entities; Kern County, or City, or District, or Local Development Corporation.

The word "employer" as used below refers to the project contractor, each subcontractor, or each lower-tier subcontractor. Payrolls and other documentary evidence of compliance are required to be delivered to the responsible County department for review. This delivery procedure is as follows:

1. Each lower-tier subcontractor, after careful review, delivers required documents to his/her respective subcontractor.
2. Each subcontractor, after checking his/her own and those of each lower-tier subcontractor, delivers required documents to the project prime contractor.
3. **The prime contractor, after reviewing all weekly payrolls and other required documentation, including his/her own, and correcting violations where necessary, delivers all documents to the County.**

**NOTE:** All employers should check each of the following statements as being true. If any statement is not true, the contractor should contact the County for special guidance.

C. Before construction begins, each employer has:

1. not been debarred or otherwise made ineligible to participate in any Federal or Federally assisted project. \_\_\_\_\_
2. received appropriate contract provisions covering labor standards requirements. \_\_\_\_\_
3. reviewed and understands all labor standards contract provisions. \_\_\_\_\_
4. received the Wage Decision which pertains to the contract. \_\_\_\_\_
5. requested through the County and received the minimum wage for each classification that will be working on the project and which was not included on the wage decision; has not allowed any such trade classification to work on the project before receiving the requested minimum wage. \_\_\_\_\_
6. requested and received certification on his/her apprentice program from the U. S. Department of Labor – Office of Apprenticeship and delivered a copy thereof to the County prior to employment of apprentices on the project. Likewise, "trainee" program certification from USDOL/OA, if applicable, must be so delivered. \_\_\_\_\_

D. At construction start, the employer has:

1. notified the County of the proposed construction start date in writing. \_\_\_\_\_

2. received written Notice to Proceed from the County. \_\_\_\_\_
  
3. placed each of the following on a bulletin board prominently located on the project site which can be easily seen by the workers (and replaced if lost or unreadable any time during construction): \_\_\_\_\_
  - Wage Decision \_\_\_\_\_
  - Notice to Employee (WH 1321) \_\_\_\_\_
  - Equal Employment Opportunity is the Law \_\_\_\_\_
  
4. obtained the worker's name, mailing address, and Social Security Number for payroll purposes, **before** assigning each project worker to work, \_\_\_\_\_
  
5. obtained proof of each apprentice's individual registration in an approved apprenticeship program from the USDOL/OA. \_\_\_\_\_
  
6. informed each worker of:
  - a. his/her work classification as it will appear on the weekly payroll and on the project Wage Decision. \_\_\_\_\_
  - b. his/her duties of work. \_\_\_\_\_
  - c. the U. S. Department of Labor's requirement on this project that the worker is either a journeyman, apprentice, or laborer – \_\_\_\_\_
    - If a journeyman, he/she is to be paid a journeyman's minimum project wage decision rate, or more; \_\_\_\_\_
    - If an apprentice, he/she is to be paid not less than the apprentice's rate for the trade based on his/her year of apprenticeship; or \_\_\_\_\_
    - If a laborer, he/she is to do a laborer's work only (not use any tool or tools of a trade) and not perform any part of a journeyman's work and is to be paid the laborer's minimum project wage decision rate or more. \_\_\_\_\_
  
7. understood the requirements that each laborer or mechanic who performs work on the project in more than one classification within the same work week shall be classified and paid at the highest wage rate applicable to any of the work which he/she performed unless the following requirements are met: \_\_\_\_\_
  - a. Accurate daily time records shall be maintained. These records must show the time worked in each classification, the rate of pay for each classification, and must be signed by the workman. \_\_\_\_\_
  - b. The payroll shall show the hours worked in each classification and the wage rate paid for each classification. \_\_\_\_\_
  - c. The payroll shall be signed by the workman or a signed copy of the daily time record shall be attached thereto. \_\_\_\_\_
  
8. informed each worker of his/her hourly wages (not less than the minimum wage rate for his/her work which is stated in the project Wage Decision), explaining provisions for: \_\_\_\_\_
  - a. time and a half for all hours worked in excess of 8 in a day or 40 in a calendar \_\_\_\_\_

week as provided for in the Contract Work Hours Safety Standards Act and in the State Labor Code,

- b. fringe benefits, if any (see project Wage Decision for any required), and
- c. deductions from his/her pay.

9. informed each worker that he/she is subject to being interviewed on the job by the responsible County department, HUD, Department of Labor, or other U. S. Government Inspector, to confirm that his/her employer is complying with all labor requirements.

10. informed each journeyman and each apprentice that a journeyman must be on the job at all times when an apprentice is working.

E. During Construction, each employer:

- 1. has not selected, assigned, paid different pay rates to, transferred, upgraded, demoted, laid off, nor dismissed any project worker because of race, color, religion, sex, or national origin.
- 2. has employed all registered apprentices referred to him/her through normal channels up to the applicable ratio of apprentices to journeymen in each trade used by the employer.
- 3. will maintain basic employment records accessible to inspection by the County or U. S. Government representative.
- 4. will comply with all health and safety standards.
- 5. has paid all workers weekly.
- 6. has submitted original weekly payrolls —
  - a. prepared on recommended Form WH-347: available from:

Superintendent of Documents  
Government Printing Office  
Washington, D. C. 20402

Contractors who wish to purchase these forms are urged to enter their orders promptly because the Superintendent of Documents takes six weeks to fill orders. It is permissible for contractors to reproduce the forms.

**NOTES:**

Any alternate payroll form used should be cleared with the County before the employer starts work on a project. A computer printout, for example, is acceptable **provided all data shown on the front and back of Payroll Form WH-347 is on, or included with, the payrolls delivered to the County.**

Some employers place all project workers on Payroll Form WH-347. The County does not review those project workers, listed on the payroll, who perform work that is descriptive of any of the following job titles which are exempt from labor requirements:

project superintendent  
project engineer

supervisory foreman (less than 20% of time as working foreman)  
messenger  
clerical worker (timekeeper, payroll clerk, bookkeeper)

b. Front page of payroll (Form WH-347)

1) Heading (6 "blocks" of information)

i) Name of Contractor or Subcontractor. Box is marked, whether contractor (prime) or subcontractor and name of employer is stated. \_\_\_\_\_

ii) Address. Street address or P. O. Box, City, State, and Zip Code of employer is stated. \_\_\_\_\_

iii) Payroll No. Each weekly payroll is numbered in sequential order starting with Payroll No. "1". \_\_\_\_\_

Payroll for final work week is marked "Final." \_\_\_\_\_

iv) For Week Ending. The last date of the work week is stated in this "block." \_\_\_\_\_

v) Project and Location. Name of project and community in which located. \_\_\_\_\_

vi) Project or Contract No. CD Project and/or Contract Number. \_\_\_\_\_

2) Internal Revenue Service (IRS) Employer Identification Number. The initial payroll submission from each contractor and subcontractor shall contain the applicable IRS-Employer's Identification Number written in the upper right corner of Form WH-347. \_\_\_\_\_

3) Body (9 Columns of information)

i) Column 1 – Name, Address, and Social Security Number of Employee (Worker). Name stated as it appears on pay check. \_\_\_\_\_

Worker's best mailing address and social security number is stated on Payroll No. 1 or the payroll on which the worker's name first appears. \_\_\_\_\_

If worker's address changes while working on the project, that worker's new address is stated on next applicable payroll. \_\_\_\_\_

If any two or more workers have the same name, their social security numbers are included on each weekly payroll to denote separate identification. \_\_\_\_\_

ii) Column 2 – No. of Withholding Exemptions. For employer's convenience – entry not required by County. \_\_\_\_\_

iii) Column 3 - Work Classification. Must be included as it appears on the project Wage Decision (with Group Number, if any), denotes the work which the worker actually performed. State Federal classification, even when a higher State wage is paid. \_\_\_\_\_

**NOTE:** If the applicable classification is not included in the Wage Decision, contractor should call the responsible County department immediately, and request classification by Additional Classification Process via HUD. \_\_\_\_\_

Apprentice. If worker is an apprentice, the type of apprentice (Electrical, Plumbing, Cement Mason, etc.) is included in this column each time the apprentice's name appears on a weekly payroll, \_\_\_\_\_

Split Classification. If worker has performed more than one class of work during the work week, such as carpenter and laborer, the division of work will be shown on separate lines of the payroll. An accurate daily time record must show the exact hours of work performed daily in each class of work, and must be signed by the affected workman, \_\_\_\_\_

Each class of work he/she performed is stated in Column 3 in separate "blocks." His/her name is repeated in corresponding "blocks" in Column 1, \_\_\_\_\_

The breakdown of hours worked daily under each work classification is stated in Column 4, and total for week in Column 5, \_\_\_\_\_  
The applicable wage rate for each classification of work is stated in Column 6, \_\_\_\_\_

The payroll is signed by the workman in the related "blocks" or a signed copy of the daily time records are attached to the payroll, \_\_\_\_\_

If the above is not done, the worker must be paid at least the highest minimum wage rate of all the classes of work performed for all hours worked. \_\_\_\_\_

**NOTES:**

Average Pay of Two Classes of Work is Not Acceptable. The employer shall not pay a "semi-journeyman" or semi-skilled laborer the average of journeyman's and laborer's rates. The actual hours each worker uses tools of trade (journeyman) and each hour he does not use tools of the trade (laborer) must be recorded in separate "blocks" in Column 3 of the payroll.

Helper. The work classification of "helper" is not accepted by the Department of HUD, unless included in the Wage Decision issued by the Secretary of Labor for the project. Any employee listed as "helper" in absence of such classification in the Wage Decision must be paid the journeyman's rate for hours he uses tools of the trade.

- iv) Column 4 - Day and Date. Label the columns within Column 4 with the days of the work week and the corresponding dates of the month. \_\_\_\_\_

Hours Worked Each Day:

Row O – Overtime Hours are stated for all time worked in excess of 8 hours in any day or 40 hours in any calendar week. \_\_\_\_\_

Row S – Straight Hours are stated for each day worked up to 8 hours in any day or 40 hours in any calendar week. \_\_\_\_\_

- v) Column 5 - Total Hours.

Row O – Total overtime hours worked during the work week (sum of 7 sub-columns in Column 4). \_\_\_\_\_

Row S – Total straight hours worked during the work week (sum of 7

sub-columns in Column 4), maximum of 40 hours. \_\_\_\_\_

vi) Column 6 - Rate of Pay.

Row O – Must not be less than 1-1/2 times the worker's basic hourly rate of pay (State Labor Code) stated in Column 6, Row S. \_\_\_\_\_

Row S – Actual wage paid, which must not be less than the minimum wage rate for the work classification stated in Column 3 (see Federal Wage Decision and State Prevailing Wage, use whichever is higher). \_\_\_\_\_

Apprentices. If a copy of the apprentice's registration certificate from the State BAT has not been submitted to County by employer (through the prime contractor), apprentice must be paid journeyman's rate. \_\_\_\_\_

Piece Worker. Piece work must be stated in Column 6 at an hourly rate computed as the gross pay for the work week (work on the project) divided by the total number of hours worked on the project during the work week. \_\_\_\_\_

vii) Column 7 - Gross Amount Earned.

Upper Left – Equals straight hours shown in Column 5, Row S times straight rate of pay shown in Column 6, Row S plus overtime hours (if any) shown in Column 5, Row O times overtime rate of pay shown in Column 6, Row O. \_\_\_\_\_

Lower Right – Equals gross amount earned on project shown in Column 7, Upper Left plus the gross amount earned for all worked performed by worker during the work week on other projects, jobs, contracts, etc. \_\_\_\_\_

viii) Column 8 - Deductions. Each deduction made (especially "Other Deductions") is required by law, or voluntarily authorized by the worker in writing before the work week began, or provided in a bargaining agreement to be deducted from the respective worker's pay. \_\_\_\_\_

Other – All deductions in this sub-column have been specifically identified in the space provided between item (1) and (2) on the back of Payroll Form WH-347(left side of form). \_\_\_\_\_

ix) Column 9 - Net Wages Paid for Week. Total gross amount earned shown in Column 7, Lower Right minus total deductions shown in Column 8. \_\_\_\_\_

c. Back of Payroll (Form WH-347), each employer has:

1) completed all blank spaces and understands the penalties for falsification, \_\_\_\_\_

identified all "Other" deductions shown in the sub-column of Column 8 on the front of the form, \_\_\_\_\_

checked Item 4 if fringe benefits are included in the Wage Decision for any of his/her workers - \_\_\_\_\_

4(a) - if fringe benefits are paid to approved fund(s), or \_\_\_\_\_

4(b) - paid directly to each affected worker - included in paycheck for \_\_\_\_\_

the work week - his/her paycheck representing at least the pay of the applicable minimum wage rate plus the amount of required fringe benefits.

provided detail of exceptions to section 4(a) or 4(b), such as a split in fringe benefits where vacation is paid in cash and all other fringes are paid to a plan,

remarked on rate of pay calculations, such as the calculation of an overtime rate when fringe benefits are paid in cash,

- 2) manually signed (with a "wet signature") the payroll in ink in the "block" marked signature, and stated his/her title.
- 3) verified the person who signed the payroll is the employer or an official of the employer who is legally authorized to act for the employer.

- d. Weekly Payroll Review. Each employer has promptly reviewed the weekly payroll for compliance with all labor requirements (using this checklist) and made necessary corrections.

Each Lower-tier Subcontractor has delivered his/her weekly payroll to the respective subcontractor within three (3) calendar days from the last date of the work week.

Each subcontractor has received a payroll from each of his/her lower-tier subcontractors; reviewed each and his/her own payroll; required necessary corrections; and delivered all of such payrolls to the prime contractor within five (5) calendar days from the last date of the work week.

Contractor has received a payroll from each subcontractor and each lower-tier subcontractor; monitored each including his/her own payroll; required necessary corrections; and collectively delivered them to the County within seven (7) work days of the last date of the respective work week.

- F. After Project Completion, each employer:

will keep all weekly payrolls related to the project for three (3) years after the contractor's project completion date or until all project audit issues are resolved, whichever is later.

**MATERIAL COVERED AT PROJECT  
PRECONSTRUCTION CONFERENCE**

**PURPOSE**

**AGENDA**

- I. Contractor/Subcontractor Information Sheet Form CDA-100
- II. Section 3 Compliance Instructions
- III. Executive Order No. 11246, amended by Executive Order No. 11375, Equal Employment Opportunity
- IV. Contractor's Ratio of Apprentices to Journeymen AND Proving Employee Apprentice Status
- V. Project Wage Determination
- VI. Fringe Benefit Statement
- VII. U.S. Department of Labor Form WH-347, Weekly Payroll Sheet
- VIII. U.S. Department of Labor Form WH-348, Statement of Compliance
- IX. Working Subcontractors
- X. Record of Employee Interview, Form HUD 11

## ***PRECONSTRUCTION CONFERENCE***

### ***PURPOSE***

HUD requires that CDBG recipients hold a conference with the principal project contractor and all available subcontractors prior to the actual start of project construction. Seven days lead notice of conference date is required by HUD. The purpose of the Conference is to inform project contractors of their responsibilities relating to Equal Employment Opportunity, Federal Labor Standards, and general contract compliance.

### ***AGENDA***

#### ***I. Contractor/Subcontractor Information Sheet, Form CDA-100***

- A. Required for completion of County's Contract and Subcontract Activity Report to HUD.
- B. This form is used to document whether the contractor/subcontractor is a:
  - 1. Minority Contractor
  - 2. Woman Contractor
  - 3. Contractor whose contract was procured by Competitive Bidding
- C. Submission is required prior to issuance of "NOTICE TO PROCEED."
- D. Construction cannot start until proper review and approval by County.

#### ***II. Section 3 Compliance Instructions***

- A. Purpose of this Program is to ensure that employment and other economic opportunities generated by the HUD financial assistance on this project shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low - and very low - income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low - and very low - income persons.
- B. Section 3 applies to HUD funded housing and community development projects which receive federal financial assistance exceeding \$200,000 and for which contract or subcontract amounts exceed \$100,000.
- C. Please consult the Section 3 Compliance Instructions contained in the project specification manual for more details regarding project Section 3 compliance.

III. **Executive Order No. 11246, amended by Executive Order No. 11375, Equal Employment Opportunity.**

- A. The purpose of Executive Order No. 11246, as amended by Executive Order No. 11375, is to assure that project contractors and subcontractors will not discriminate against project employees in regard to their race, color, religion, sex or national origin.
- B. For federally funded construction contracts in excess of \$10,000, contractors and subcontractors are required to make a good faith effort to ensure that 19.1% of all work hours are performed by minority workers and that 6.9% of all work hours are performed by women.
- C. Written Affirmative Action Plans are required for federally funded construction prime contracts of \$1,000,000 or more and for subcontracts of \$100,000 or more.
- D. All contractors and subcontractors working on federally-assisted construction projects are required, by the U.S. Department of Labor, Employment Standards Administration, Office of Federal Contract Compliance Programs (OFFCP) to collect race and gender information on construction employees, classified by trade. This information must be maintained not only for this project, but for all work your firm is performing, whether it is federally funded or not. The U. S. Department of Labor reserves the right to review this information in the future.
- E. HUD may impose sanctions such as contract suspension or termination and/or debarment in future federally funded construction projects in cases of noncompliance.

IV. **Contractor's Ratio of Apprentices to Journeymen AND Proving Employee Apprentice Status**

- A. The purpose of the Contractor's Ratio of Apprentices to Journeymen is to comply with the California Labor Code regarding employment of apprentices on public works projects.
- B. The contractor or subcontractor shall apply for a certificate from the local craft Joint Apprenticeship Council, approving the contractor's or subcontractor's participation in an apprenticeship program.

- C. The ratio of apprentices to journeymen in any craft or trade employed on a public works project is to be no less than one apprentice to each five Journeymen.
- D. Noncompliance requires withholding of fifty dollars (\$50.00) from progress payments for each day of noncompliance.
- E. For each apprentice listed on project payrolls, the contractor or subcontractor shall submit with the first payroll the apprentice is listed on, current registration information from the U. S. Department of Labor - Office of Apprenticeship. **Copies of Apprentice Agreements will no longer be accepted as proof of registration in an approved program.** ALSO, each apprentice who is listed on project payrolls must have listed for them what type of apprentice (Electrical, Plumbing, Cement Mason, etc.) they are.

V. **Project Wage Determination**

- A. The Wage Determination lists the minimum wages to be paid all non-supervisory employees.
- B. Listed are the different Hourly Rates of Pay for all employees depending upon each employee's Labor Classification and Group Number.
- C. All employees listed on any project payrolls are to be listed by their proper Labor Classification Title and Group Number as found in the project Wage Determination for the type of work they actually perform.

VI. **Fringe Benefit Statement**

- A. The purpose of the "Fringe Benefit Statement" is to have the contractor/subcontractor provide additional information regarding fringe benefits paid into an "...approved plan, fund, or program."
- B. Listed are the hourly rates for the various categories of fringe benefits, and the name & address of the fund to which the fringe benefits are being paid into, for each labor classification being used on the job-site.
- C. The information provided on this Statement is used to assist the project monitor in payroll reviews to verify that employees are receiving the required total wage package (the basic rate plus fringe benefit per hour).
- D. The "Fringe Benefit Statement" is to be submitted by the prime contractor and each sub-contractor (who has **not** already indicated that fringe benefits are being paid in cash to the employee) with the first weekly Certified Payroll for work performed.

VII. **U. S. Department of Labor Form WH-347, Weekly Payroll Sheet**

- A. The purpose of Form WH-347, Weekly Payroll Sheet, is to verify that all project employees are being paid weekly and correctly. The use of any other payroll form will be acceptable only if its format includes all the information needed to meet HUD requirements. All payrolls submitted must be originals, with "wet signatures" on the Statements of Compliance.
- B. The Weekly Payroll Sheet is to be submitted to the County/Owner/Architect or Engineer once a week, each week, that work was done on this project.
- C. Weekly Payroll Computations will be checked for both mathematical accuracy and for any non-permissible deductions.
- D. Untimely submittal or submittal with errors will require holding up of progress payments, until this form is received.
- E. Prime Contractors and subcontractors must retain their basic payroll records (payroll register, individual earning cards, check stubs, etc.) for a three year period after completion of the project.
- F. If requested, contractors shall make their Superintendent's log book available to the payroll reviewer for payroll compliance review purposes.

VIII. **U.S. Department of Labor Form WH-348, Statement of Compliance**

- A. The purpose of Form WH-348 is to certify that any payrolls submitted for this project are correct and complete. The use of any other compliance statement form will be acceptable only if its format substantially includes all the language and citations required by the U.S. Department of Labor WH-348 form.
- B. The Statement of Compliance is to be submitted to the County/Owner/Architect or Engineer with the Weekly Payroll once a week, each week, that work was done on this project.
- C. The Statement of Compliance is to be submitted no later than seven work days after the end of the week being reported, as is the case with Form WH-347, Weekly Payroll Sheet.
- D. If Statements of Compliance are signed by someone other than an owner or officer of the firm (such as President, Treasurer, or Payroll Administrator), a "Certificate of Authorization" that gives permission to the non-owner or the non-officer to sign the statements must be submitted with the first payroll.

- E. Untimely submittal or submittal with errors or omissions will require holding up progress payments until this form is received.
- F. Fringe benefit payments to plans, funds, or programs may be verified by the County/Owner/Architect or Engineer.

IX **Working Subcontractors**

- A. The payment of prevailing wage rates established by HUD provide that the wage protections afforded apply to laborers and mechanics employed on federally-assisted construction contracts regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Additionally, all laborers and mechanics must be paid unconditionally and not less often than once per week. There is **no** exception to this protection for self-employed laborers or mechanics, including owners of businesses, sole-proprietors, partners, corporate officers, or others.
- B. "Laborers and mechanics" may **not** certify to the payment of their **own** prevailing wages **EXCEPT** where the laborer or mechanic is the owner of a business working on the site of the work with his/her own crew.
- C. Payrolls submitted reporting single or multiple owners certifying that they have paid to themselves the prevailing wage for their craft are unacceptable; rather, such laborers or mechanics must instead be carried on the certified payroll of the contractor or subcontractor (the "responsible employer") for whom they are working and with whom they have executed a contract.
- D. Whatever method of compensation computation is utilized, the amount of weekly compensation divided by the actual hours of work performed for that week must result in an "effective" hourly wage rate for that week that is not less than the prevailing hourly rate for the type of work involved. The name, work classification, actual hours of work, effective hourly wage rate, and wage payment of each self-employed laborer and mechanic must be reported and certified on the responsible employer's weekly payroll.
- E. More extensive guidance for the Federal prevailing wage requirements and compliance standards for self-employed laborers and mechanics (also referred to as "working subcontractors") is detailed in Labor Relations Letter No. LR-96-01, dated December 2, 1996. Additional information is also provided regarding HUD's compliance and certification parameters for owner-operators of power equipment and truck drivers.

X. **Record of Employee Interview, Form HUD-11**

- A. Interviews will be conducted by County/Owner/Architect or Engineer staff or their designee.
- B. Required to document the confirmation that:
  - 1. Project Employees are working in the correct classification; and
  - 2. For the correct pay.
- C. Random samples of each contractor/subcontractor(s) workforce will be interviewed throughout the course of the project.
- D. Comparisons of interview forms with the Weekly Payroll Sheets and Prevailing Wage Decision will assure proper payment to project workforce.
- E. Failure to resolve discrepancies within a reasonable period of time will cause future progress payments to be held up.
- F. County/Owner/Architect or Engineer staff who administer the HUD-11 forms are hereby reminded that they are to indicate "None" in the Remarks sections of the form when there is nothing additional to report from the actual interview or the comparison of the HUD-11 form to the payroll and the project wage decision. The HUD-11 interviewer and payroll examiner are each to sign and date the form in the spaces provided when they have completed the interview and examination.

STANDARDS FOR FINANCIAL MANAGEMENT SYSTEMS FOR STATE, LOCAL AND  
FEDERALLY RECOGNIZED INDIAN TRIBAL GOVERNMENTS

(CDBG Fund Regulations at 24 CFR 85.20)  
(April 2004)

(b) The financial management systems of other grantees and subgrantees must meet the following standards:

(1) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of financially assisted activities must be made in accordance with the financial reporting requirements of the grant or subgrant.

(2) *Accounting records.* Grantees and subgrantees must maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records must contain information pertaining to grant or subgrant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) *Internal control.* Effective control and accountability must be maintained for all grant and subgrant cash, real and personal property, and other assets. Grantees and subgrantees must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

(4) *Budget control.* Actual expenditures or outlays must be compared with budgeted amounts for each grant or subgrant. Financial information must be related to performance or productivity data, including the development of unit cost information whenever appropriate or specifically required in the grant or subgrant agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) *Allowable cost.* Applicable OMB cost principles, agency program regulations, and the terms of grant and subgrant agreements will be followed in determining the reasonableness, allowability, and allocability of costs.

(6) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, contract and subgrant award documents, etc.

(7) *Cash management.* Procedures for minimizing the time elapsing between the transfer of funds from the U.S. Treasury and disbursement by grantees and subgrantees must be followed whenever advance payment procedures are used. Grantees must establish reasonable procedures to ensure the receipt of reports on subgrantees' cash balances and cash disbursements in sufficient time to enable them to prepare complete and accurate cash transactions reports to the awarding agency. When advances are made by letter-of-credit or electronic transfer of funds methods, the grantee must make drawdowns as close as possible to the time of making disbursements. Grantees must monitor cash drawdowns by their subgrantees to assure that they conform substantially to the same standards of timing and amount as apply to advances to the grantees.

(c) An awarding agency may review the adequacy of the financial management system of any applicant for financial assistance as part of a preaward review or at any time subsequent to award.

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose Lobbying activities pursuant to 31 U.S.C. 1352  
(See page 2 for public burden disclosure)

Approved by OMB  
0348-0046

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post award	<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change  <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:	<b>5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:	
<b>6. Federal Department/Agency:</b>	<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____	
<b>8. Federal Action Number:</b>	<b>9. Award Amount:</b>  \$	
<b>10a. Name and Address of Lobbying Registrant:</b> <i>(if individual, last name, first name, MI)</i>	<b>b. Individuals Performing Services:</b> <i>(including address if different from No. 10a.)</i> <i>(last name, first name, MI)</i>	
<b>11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.</b>	<b>Signature:</b> _____ <b>Print Name:</b> _____ <b>Title:</b> _____ <b>Telephone No.:</b> _____ <b>Date:</b> _____	
<b>Federal Use Only:</b>		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification on this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal [RFP] number, Invitation for Bid [IFB] number, grant announcement, number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

FEDERAL LABOR STANDARDS PROVISIONS  
(HUD DOCUMENT 4010)  
(JUNE 2009)

**Applicability**

The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

**A. 1. (i) Minimum Wages.** All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and

**(3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

**(b)** If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

**(c)** In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**(d)** The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1)(ii)(b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

**(iii)** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

**(iv)** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

**2. Withholding.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon

prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the contractor, disburse such amounts withheld for and on account of the contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

**3. (i) Payrolls and basic records.** Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

**(ii) (a)** The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i) except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full

social security number and current address of each covered worker, and shall provide them upon request to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this subparagraph for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to HUD or its designee. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

**(b)** Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

**(1)** That the payroll for the payroll period contains the information required to be provided under 29 CFR 5.5 (a)(3)(ii), the appropriate information is being maintained under 29 CFR 5.5(a)(3)(i), and that such information is correct and complete;

**(2)** That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

**(3)** That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

**(c)** The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

**(d)** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

**(iii)** The contractor or subcontractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon

request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

#### **4. Apprentices and Trainees.**

**(i) Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(ii) Trainees.** Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee

must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

**(iii) Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

**5. Compliance with Copeland Act requirements.** The contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract.

**6. Subcontracts.** The contractor or subcontractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 in this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this paragraph.

**7. Contract termination; debarment.** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

**8. Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

**9. Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the

meaning of this clause include disputes between the contractor (or any of its subcontractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

**10. (i) Certification of Eligibility.** By entering into this contract the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(ii)** No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

**(iii)** The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration . . . makes, utters or publishes any statement knowing the same to be false . . . shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

**11. Complaints, Proceedings, or Testimony by Employees.** No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any subcontractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

**B. Contract Work Hours and Safety Standards Act.** The provisions of this paragraph B are applicable where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

**1. Overtime requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which the individual is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

**2. Violation; liability for unpaid wages; liquidated damages.** In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and

guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1) of this paragraph.

**3. Withholding for unpaid wages and liquidated damages.** HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime contractor such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph 2. of this paragraph.

**4. Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

**C. Health and Safety.** The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.

1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.

3. The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

## STATE OF CALIFORNIA LABOR CODE REQUIREMENTS

Unless specified otherwise, any reference in this Section to subcontractor shall also include the prime construction contractor.

### Labor Code Requirements

Attention is directed to the following requirements of the Labor Code:

#### (a) Hours of Labor

Eight hours labor constitutes a legal day's work. CITY/DISTRICT/NONPROFIT or any subcontractor under CITY/DISTRICT/NONPROFIT shall forfeit, as a penalty to the Planning and Community Development Department, \$25 for each worker employed in the execution of the construction under the contract by CITY/DISTRICT/NONPROFIT or subcontractor for each calendar day during which that worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the requirements of the Labor Code, and in particular, Section 1810 to Section 1815, thereof, inclusive, except that work performed by employees of CITY/DISTRICT/NONPROFIT in excess of 8 hours per day, and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half times the basic rate of pay, as provided in Section 1815 thereof.

#### (b) Prevailing Wage

1. In respect to the Grant funded construction, CITY/DISTRICT/NONPROFIT and any subcontractor under CITY/DISTRICT/NONPROFIT shall comply with Labor Code Sections 1774 and 1775. Pursuant to Section 1775, CITY/DISTRICT/NONPROFIT and any subcontractor under CITY/DISTRICT/NONPROFIT shall forfeit to the Planning and Community Development Department a penalty of not more than fifty dollars (\$50) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the Director of Industrial Relations for the work or craft in which the worker is employed for any public work done under the contract by CITY/DISTRICT/NONPROFIT or by any subcontractor under CITY/DISTRICT/NONPROFIT in violation of the requirements of the Labor Code and in particular, Labor Code Sections 1770 to 1780, inclusive. The amount of this forfeiture shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of CITY/DISTRICT/NONPROFIT or subcontractor in failing to pay the correct rate of prevailing wages, or the previous record of CITY/DISTRICT/NONPROFIT or subcontractor in meeting their respective prevailing wage obligations, or the willful failure by CITY/DISTRICT/NONPROFIT or subcontractor to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if CITY/DISTRICT/NONPROFIT or subcontractor had knowledge of the obligations under the Labor Code. In addition to the penalty and pursuant to Labor Code Section 1775, the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by CITY/DISTRICT/NONPROFIT or subcontractor. If a worker employed by a subcontractor on a public works project is not paid the general prevailing per diem wages by the subcontractor, the prime contractor of the project or CITY/DISTRICT/NONPROFIT is not liable for the penalties described above unless the prime contractor or CITY/DISTRICT/NONPROFIT had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor or CITY/DISTRICT/NONPROFIT fails to comply with all of the following requirements:

- a. The contract executed between CITY/DISTRICT/NONPROFIT and the subcontractor for the performance of work on the public works project shall include a copy of the requirements in Sections 1771, 1775, 1776, 1777.5, 1813 and 1815 of the Labor Code.
- b. CITY/DISTRICT/NONPROFIT shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

- c. Upon becoming aware of the subcontractor's failure to pay the specified prevailing rate of wages to the subcontractor's workers, CITY/DISTRICT/NONPROFIT shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subcontractor for work performed on the public works project.
- d. Prior to making final payment to the subcontractor for work performed on the public works project, CITY/DISTRICT/NONPROFIT shall obtain an affidavit signed under penalty of perjury from the subcontractor that the subcontractor has paid the specified general prevailing rate of per diem wages to the subcontractor's employees on the public works project and any amounts due pursuant to Section 1813 of the Labor Code.

2. Pursuant to Section 1775 of the Labor Code, the Division of Labor Standards Enforcement shall notify CITY/DISTRICT/NONPROFIT on a public works project within 15 days of the receipt by the Division of Labor Standards Enforcement of a complaint of the failure of a subcontractor on that public works project to pay workers the general prevailing rate of per diem wages. If the Division of Labor Standards Enforcement determines that employees of a subcontractor were not paid the general prevailing rate of per diem wages and if CITY/DISTRICT/NONPROFIT did not retain sufficient money under the contract to pay those employees the balance of wages owed under the general prevailing rate of per diem wages, CITY/DISTRICT/NONPROFIT shall withhold an amount of moneys due the subcontractor sufficient to pay those employees the general prevailing rate of per diem wages if requested by the Division of Labor Standards Enforcement. CITY/DISTRICT/NONPROFIT shall pay any money retained from and owed to a subcontractor upon receipt of notification by the Division of Labor Standards Enforcement that the wage complaint has been resolved. If notice of the resolution of the wage complaint has not been received by CITY/DISTRICT/NONPROFIT within 180 days of the filing of a valid notice of completion or acceptance of the public works project, whichever occurs later, CITY/DISTRICT/NONPROFIT shall pay all moneys retained from the subcontractor to COUNTY. These moneys shall be retained by COUNTY pending the final decision of an enforcement action.

3. Pursuant to the requirements in Section 1773 of the Labor Code, CITY/DISTRICT/NONPROFIT has obtained the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation, travel time and subsistence pay as provided for in Section 1773.8 of the Labor Code, apprenticeship or other training programs authorized by Section 3093 of the Labor Code, and similar purposes) applicable to the work to be done, for straight time, overtime, Saturday, Sunday and holiday work. The holiday wage rate listed shall be applicable to all holidays recognized in the collective bargaining agreement of the particular craft, classification or type of workmen concerned.

4. The general prevailing wage rates and any applicable changes to these wage rates are available from the California Department of Industrial Relations' Internet Web Site at: <http://www.dir.ca.gov>.

5. The wage rates determined by the Director of Industrial Relations for the project refer to expiration dates. Prevailing wage determinations with a single asterisk after the expiration date are in effect on the date of advertisement for bids and are good for the life of the contract. Prevailing wage determinations with double asterisks after the expiration date indicate that the wage rate to be paid for work performed after this date has been determined. If work is to extend past this date, the new rate shall be paid and incorporated in the contract. CITY/DISTRICT/NONPROFIT shall contact the Department of Industrial Relations as indicated in the wage rate determinations to obtain predetermined wage changes.

6. Pursuant to Section 1773.2 of the Labor Code, general prevailing wage rates shall be posted by CITY/DISTRICT/NONPROFIT at a prominent place at the site of the work.

7. Changes in general prevailing wage determinations which conform to Labor Code Section 1773.6 and Title 8 California Code of Regulations Section 16204 shall apply to the project when issued by the Director of Industrial Relations at least 10 days prior to the date of the Notice to CITY/DISTRICT/NONPROFIT for the project.

8. COUNTY will not recognize any claim for additional compensation because of the payment by CITY/DISTRICT/NONPROFIT or its subcontractor of any wage rate in excess of the prevailing wage rate set forth in the contract.

(c) Payroll Records

1. Attention is directed to the requirements in Labor Code Section 1776, a portion of which is quoted below. Regulations implementing Labor Code Section 1776 are located in Sections 16016 through 16019 and Sections 16207.10 through 16207.19 of Title 8, California Code of Regulations.

"Each contractor and subcontractor shall keep accurate payroll records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by him or her in the connection with the public work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

- a. The information contained in the payroll record is true and correct.
- b. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any work performed by his or her employees on the public works project.

"The payroll records shall be certified and shall be available for inspection at all reasonable hours at the principal office of CITY/DISTRICT/NONPROFIT on the following basis:

- a. Certified copy of an employee's payroll record shall be made available for inspection or furnished to the employee or his or her authorized representative on request.
- b. A certified copy of all payroll records enumerated in subdivision (a) shall be made available for inspection or furnished upon request to a representative of the body awarding the contract, the Division of Labor Standards Enforcement, and the Division of Apprenticeship Standards of the Department of Industrial Relations.
- c. A certified copy of all payroll records shall be made available upon request by the public for inspection or for copies thereof. However, a request by the public shall be made through either the body awarding the contract, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested payroll records have not been provided pursuant to paragraph (2), the requesting party shall, prior to being provided the records, reimburse the costs of preparation by CITY/DISTRICT/NONPROFIT, subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of CITY/DISTRICT/NONPROFIT.

"The certified payroll records shall be on forms provided by the Division of Labor Standards Enforcement or shall contain the same information as the forms provided by the division.

"CITY/DISTRICT/NONPROFIT or subcontractor shall file a certified copy of the records with the entity that requested the records within 10 days after receipt of a written request.

"Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the awarding body, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement shall be marked or obliterated in a manner so as to prevent disclosure of an individual's name, address and social security number. The name and address of CITY/DISTRICT/NONPROFIT and the subcontractor performing the contract shall not be marked or obliterated.

"The subcontractor shall inform the body awarding the contract of the location of the records including the street address, city and county, and shall, within five working days, provide a notice of a change of location and address.

"CITY/DISTRICT/NONPROFIT or subcontractor shall have 10 days in which to comply subsequent to receipt of a written notice requesting the records. In the event that CITY/DISTRICT/NONPROFIT or subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then

due. CITY/DISTRICT/NONPROFIT is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.

2. The penalties specified in subdivision (g) of Labor Code Section 1776 for noncompliance with the requirements in Section 1776 may be deducted from any moneys due or which may become due to CITY/DISTRICT/NONPROFIT.

3. A copy of all payrolls shall be submitted weekly to CITY/DISTRICT/NONPROFIT. Payrolls shall contain the full name, address and social security number of each employee, the employee's correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which that name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or the employer's agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Department or on any form with identical wording. CITY/DISTRICT/NONPROFIT shall be responsible for the submission of copies of payrolls of all subcontractors. CITY/DISTRICT/NONPROFIT and each subcontractor shall preserve their payroll records for a period of 3 years from the date of completion of the contract.

(d) Apprentices

Attention is directed to Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code and Title 8, California Code of Regulations Section 200 et seq. To ensure compliance and complete understanding of the law regarding apprentices, and specifically the required ratio thereunder, CITY/DISTRICT/NONPROFIT or subcontractor should, where some question exists, contact the Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, CA 94102, or one of its branch offices prior to commencement of work on the public works contract. Responsibility for compliance with this section lies with CITY/DISTRICT/NONPROFIT.

(e) Workers' Compensation

Pursuant to the requirements in Section 1860 of the Labor Code, the subcontractor will be required to secure the payment of workers' compensation to the subcontractor's employees in conformance with the requirements in Section 3700 of the Labor Code. Prior to the commencement of work, the subcontractor shall sign and file with CITY/DISTRICT/NONPROFIT a certification in the following form:

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

This certification is included in the contract, and signature and return of the contract shall constitute signing and filing of the certificate.

(f) Suits to Recover Penalties and Forfeitures

1. Attention is directed to Sections 1730 to 1733, inclusive, of the Labor Code concerning suits to recover amounts withheld from payment for failure to comply with requirements of the Labor Code or contract provisions based on those laws.

2. Those sections provide that a suit on the contract for alleged breach thereof in not making the payment is the exclusive remedy of the subcontractor or the subcontractor's assignees with reference to amounts withheld for those penalties or forfeitures; and that the suit must be commenced and actual notice thereof received the amounts withheld from payment for those penalties and forfeitures is not a prerequisite for those suits, and these claims will not be considered.

NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
(24 CFR, Subtitle A, Part 1, Section 1.5 Assurances Required)

1.5 Assurances Required

(a) General

(1) Every contract for Federal financial assistance to carry out a program or activity to which this Part 1 applies, executed on or after January 3, 1965, and every application for such Federal financial assistance submitted on or after January 3, 1965, shall, as a condition to its approval and the extension of any Federal financial assistance pursuant to such contract or application, contain or be accompanied by an assurance that the program or activity will be conducted and the housing, accommodations, facilities, services, financial aid, or other benefits to be provided will be operated and administered in compliance with all requirements imposed by or pursuant to this Part 1. In the case of a contract or application where the Federal financial assistance is to provide or is in the form of personal property or real property or interest therein or structures thereon, the assurance shall obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits, or for as long as the recipient retains ownership or possession of the property, whichever is longer. In all other cases the assurance shall obligate the recipient for the period during which Federal financial assistance is extended pursuant to the contract or application. The responsible Department official shall specify the form of the foregoing assurance for such program or activity, and the extent to which like assurances will be required of subgrantees, contractors and subcontractors, transferees, successors in interest, and other participants in the program or activity. Any such assurance shall include provisions which give the United States a right to seek its judicial enforcement.

(2) In the case of real property, structures or improvements thereon, or interests therein, acquired through a program of Federal financial assistance, the instrument effecting any disposition by the recipient of such real property, structures or improvements thereon, or interests therein, shall contain a covenant running with the land assuring nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. In the case where Federal financial assistance is provided in the form of a transfer of real property or interests therein from the Federal Government, the instrument effecting or recording the transfer shall contain such a covenant.

(3) In a program receiving Federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, to the extent that rights to space on, over, or under any such property are included as part of the program receiving such assistance, the nondiscrimination requirements of this Part 1 shall extend to any facility located wholly or in part in such space.

(b) Pre-existing contracts - funds not disbursed. In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and the funds have not been fully disbursed by the Department, the responsible Department official shall, where necessary to effectuate the purposes of this Part 1, require an assurance similar to that provided in paragraph (a) of this section as a condition to the disbursement of further funds.

(c) Pre-existing contract - periodic payments. In any case where a contract for Federal financial assistance, to carry out a program or activity to which this Part 1 applies, has been executed prior to January 3, 1965, and provides for periodic payments for the continuation of the program or activity, the recipient shall, in connection with the first application for such periodic payments on or after January 3, 1965:

(1) Submit a statement that the program or activity is being conducted in compliance with all requirements imposed by or pursuant to this Part 1; and

(2) Provide such methods of administration for the program or activity as are found by the

responsible Department official to give reasonable assurance that the recipient will comply with all requirements imposed by or pursuant to this Part 1.

(d) Assurances from institutions.

(1) In the case of any application for Federal financial assistance to an institution of higher education, the assurance required by this section shall extend to admission practices and to all other practices relating to the treatment of students.

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of persons as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such persons, shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such program. If in any such case the assistance sought is for the construction of a facility or part of a facility, the assurance shall in any event extend to the entire facility and to facilities operated in connection therewith.

(e) Elementary and secondary schools. The requirements of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system (1) is subject to a final order of a court of the United States for the desegregation of such school or school system, and provides an assurance that it will comply with such order, including any future modification of such order, or (2) submits a plan for the desegregation of such school or school system which the responsible official of the Department of Health and Human Services determines is adequate to accomplish the purposes of the Act and this Part 1 within the earliest practicable time, and provides reasonable assurance that it will carry out such plan.

(Authority: Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

[38 FR 17949, July 5, 1973, as amended at 50 FR 9269, March 7, 1985

## EQUAL OPPORTUNITY

(48 CFR 52.222-26)  
(April 2002)

(a) Definition. United States, as used in this clause, means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

(b) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with paragraphs (b)(1) through (b)(11) of this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.

(4) The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

(8) The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance

evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.

(9) If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraphs (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

(11) The Contractor shall take such action with respect to any subcontract or purchase order as the contracting officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

## ECONOMIC OPPORTUNITIES FOR LOW- AND VERY LOW-INCOME PERSONS

A. The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.

B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

C. The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

D. The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

G. With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

## Utilization of Small Business Concerns

(48 CFR 52.219-8)  
(MAY 2004)

(a) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(c) Definitions. As used in this contract--

HUBZone small business concern means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

Service-disabled veteran-owned small business concern--

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) Service-disabled veteran means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

Small disadvantaged business concern means a small business concern that represents, as part of its offer that--

(1) It has received certification as a small disadvantaged business concern consistent with 13 CFR part 124, subpart B;

(2) No material change in disadvantaged ownership and control has occurred since its certification;

(3) Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(4) It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).

Veteran-owned small business concern means a small business concern--

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned small business concern means a small business concern--

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.

## SMALL BUSINESS SUBCONTRACTING PLAN

(48 CFR 52.219-9)  
(July 2005)

(a) This clause does not apply to small business concerns.

(b) Definitions. As used in this clause--

"Commercial item" means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

"Commercial plan" means a subcontracting plan (including goals) that covers the offeror's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line).

Individual contract plan means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror's planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

Master plan means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

Subcontract means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

(d) The offeror's subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

- (ii) Total dollars planned to be subcontracted to small business concerns;
- (iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;
- (iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- (v) Total dollars planned to be subcontracted to HUBZone small business concerns;
- (vi) Total dollars planned to be subcontracted to small disadvantaged business concerns; and
- (vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in PRO-Net as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of PRO-Net as its source list does not relieve a firm of its responsibilities (e.g., outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

- (i) Small business concerns;
- (ii) Veteran-owned small business concerns;
- (iii) Service-disabled veteran-owned small business concerns;
- (iv) HUBZone small business concerns;
- (v) Small disadvantaged business concerns; and
- (vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$500,000 (\$1,000,000 for construction of any public facility) to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

- (i) Cooperate in any studies or surveys as may be required;
- (ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- (iii) Submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with paragraph (j) of this clause. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with the instructions on the forms or as provided in agency regulations.
- (iv) Ensure that its subcontractors agree to submit SF 294 and SF 295.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- (i) Source lists (e.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- (ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- (iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating--
  - (A) Whether small business concerns were solicited and, if not, why not;
  - (B) Whether veteran-owned small business concerns were solicited and, if not, why not;

- (C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
- (D) Whether HUBZone small business concerns were solicited and, if not, why not;
- (E) Whether small disadvantaged business concerns were solicited and, if not, why not;
- (F) Whether women-owned small business concerns were solicited and, if not, why not; and
- (G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact--

- (A) Trade associations;
- (B) Business development organizations;
- (C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- (D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

- (A) Workshops, seminars, training, etc.; and
- (B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided--

(1) The master plan has been approved,

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer, and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Commercial plans are also preferred for subcontractors that provide commercial items under a prime contract, whether or not the prime contractor is supplying a commercial item.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the clause of this contract entitled "Utilization Of Small Business Concerns," or (2) an approved plan required by this clause, shall be a material breach of the contract.

(j) The Contractor shall submit the following reports:

(1) Standard Form 294, Subcontracting Report for Individual Contracts. This report shall be submitted to the Contracting Officer semiannually and at contract completion. The report covers subcontract award data related to this contract. This report is not required for commercial plans.

(2) Standard Form 295, Summary Subcontract Report. This report encompasses all of the contracts with the awarding agency. It must be submitted semi-annually for contracts with the Department of Defense and annually for contracts with civilian agencies. If the reporting activity is covered by a commercial plan, the reporting activity must report annually all subcontract awards under that plan. All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a breakout, in the Contractor's format, of subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

## **SMALL BUSINESS PARTICIPATION REQUIREMENTS**

(Applies only to projects where CDBG funding is more than \$100,000 and less than \$500,000)

- I. It is the policy of the HUD that small businesses and women business enterprises shall have the maximum practicable opportunity to participate in the performance of HUD funded contracts.
  - II. The Contractor agrees to use his best efforts to carry out this policy in the award of his subcontracts to the fullest extent consistent with the efficient performance of this contract. Contractors may rely on written representations by subcontractors regarding their status as small businesses in lieu of an independent investigation.
  - III. A Small Business (SB) is a business, including its affiliates, which is independently owned and operated, not dominant in its field of operation in which it is bidding for government contracts, and qualified as a small business under the criteria in 13 CFR part 121. The size criterion entitled "Small Business Size Standards" is within this bid specification or request for proposal package for reference.
  - IV. Bidding Contractors shall make the maximum attempt feasible to achieve the County's objective for SB participation in CDBG funded contracts by performing the contract administration and compliance steps as follows:
    - A. Contract Administration: The contractor shall insert this clause in any subcontract involving CDBG funding of more than the simplified acquisition threshold, fixed at 41 U.S.C. 403 (11) (currently set at \$100,000), monitor the subcontractor's compliance, and maintain records of such compliance.
    - B. Contract Compliance: The Contractor shall evidence his/her understanding of and intent to comply with the County's CEDD SB Plan by submitting, as an integral part of his/her bid, the following:
      1. To verify attainment of County's SB goals **submit, with bid**, Form SB-241 "SMALL BUSINESS AND WOMAN BUSINESS ENTERPRISE UTILIZATION BID SUBMISSION TO THE COUNTY OF KERN"; and
      2. When non-attainment occurs, **submit, with bid**, Form SB-242, "LIST OF NECESSARY AFFIRMATIVE STEPS TAKEN TO INVOLVE SMALL BUSINESSES (SBs)", including any additional documentation which provides evidence of the contractor's efforts to attain the County's SB goals, which is to include the following:
        - a. Statement of contractor's efforts to enter into direct contact with SBs.
        - b. Report of responses received from SBs, including proposals or bids and the contractor's response thereto.
        - c. Copies of correspondence sent to groups and individual SBs as notification of the contractor's intent to contract with SBs.
        - d. Report of specific contacts with small contractor's associations, small business development centers, or any other agency which may disseminate bid information to SBs.
        - e. Description of specific efforts undertaken by prime contractors to encourage subcontractors to obtain SB participation.
- The bid forms section within this bid specification or request for proposal package includes both SB Forms. Bidders are hereby notified that in the event they do not meet the County's SB goal, their firm can still receive a CDBG funded contract if they performed all of the listed steps.
- V. Bidders are hereby notified that the text of the entire SB Plan is available at P&CDD upon request.

## **SMALL BUSINESS SUBCONTRACTING PROGRAM**

(Applies only to projects where CDBG funding is more than \$500,000)

- I. The Contractor agrees to establish and conduct a program which will enable small businesses to be considered fairly as subcontractors under this contract. The term "small business", as used in this clause, is defined at III. of the "Small Business Participation Requirements" contract clause. In this connection, the Contractor shall:
  - A. Designate a liaison officer who will administer the Contractor's Small Business Subcontracting Program.
  - B. Provide adequate and timely consideration of the potentialities of known small businesses in all "make-or-buy" decisions.
  - C. Assure small businesses will have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation of small businesses.
  - D. Submit periodic reports of subcontracting to small businesses with respect to the records referred to in subparagraph (5), in such form and manner and at such time (not more often than quarterly) as CEDD's SB Liaison Officer may prescribe.
  - E. Maintain records showing (i) procedures adopted to comply with the policies set forth in this clause, including the establishment of a source list of small businesses, (ii) awards to small businesses on the source list, and (iii) specific efforts to identify and award contracts to small businesses.
  - F. Cooperate with CEDD's SB Liaison Officer in any studies and surveys; he/she may conduct, regarding small business procedures and practices of prime contractors.
- II. The Contractor further agrees to insert, in any subcontract hereunder which may exceed \$500,000, provisions which shall conform substantially to the language of this clause, including this paragraph II, and to notify the SB Liaison Officer of the names of such subcontractors.

AFFIRMATIVE ACTION FOR  
WORKERS WITH DISABILITIES

(48 CFR 52.222-36)  
(June 1998)

(a) General.

- (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental disability. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as -
  - (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
  - (iii) Rates of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor, including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.
- (2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) Postings.

- (1) The Contractor agrees to post employment notices stating -
  - (i) The Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified individuals with disabilities; and
  - (ii) The rights of applicants and employees.
- (2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. The Contractor shall ensure that applicants and employees with disabilities are informed of the contents of the notice (e.g., Contractor may have the notice read to a visually disabled individual, or may lower the posted notice so that it might be read by a person in a wheelchair). The notices shall be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance of the U.S. Department of Labor (Deputy Assistant Secretary) and shall be provided by or through the Contracting Officer.

- (3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified individuals with physical or mental disabilities.
- (c) Noncompliance. If the Contractor does not comply with the requirements of this clause, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.
- (d) Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$10,000 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS,  
VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS

(48 CFR 52.222-35)  
(December 2001)

(a) Definitions. As used in this clause—

All employment openings means all positions except executive and top management, those positions that will be filled from within the Contractor's organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

Executive and top management means any employee—

- (1) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
- (2) Who customarily and regularly directs the work of two or more other employees;
- (3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight;
- (4) Who customarily and regularly exercises discretionary powers; and
- (5) Who does not devote more than 20 percent or, in the case of an employee of a retail or service establishment, who does not devote more than 40 percent of total hours of work in the work week to activities that are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this definition. This paragraph (5) does not apply in the case of an employee who is in sole charge of an establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which the individual is employed.

Other eligible veteran means any other veteran who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized.

Positions that will be filled from within the Contractor's organization means employment openings for which the Contractor will give no consideration to persons outside the Contractor's organization (including any affiliates, subsidiaries, and parent companies) and includes any openings the Contractor proposes to fill from regularly established "recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

Qualified special disabled veteran means a special disabled veteran who satisfies the requisite skill, experience, education, and other job-related requirements of the employment position such veteran holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.

Special disabled veteran means—

- (1) A veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Department of Veterans Affairs for a disability--
  - (i) Rated at 30 percent or more; or
  - (ii) Rated at 10 or 20 percent in the case of a veteran who has been determined under 38 U.S.C. 3106 to have a serious employment handicap (i.e., a significant

impairment of the veteran's ability to prepare for, obtain, or retain employment consistent with the veteran's abilities, aptitudes, and interests); or

- (2) A person who was discharged or released from active duty because of a service-connected disability.

Veteran of the Vietnam era means a person who—

- (1) Served on active duty for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge, if any part of such active duty occurred—

- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases; or

- (2) Was discharged or released from active duty for a service-connected disability if any part of the active duty was performed—

- (i) In the Republic of Vietnam between February 28, 1961, and May 7, 1975; or
  - (ii) Between August 5, 1964, and May 7, 1975, in all other cases.

(b) General.

- (1) The Contractor shall not discriminate against the individual because the individual is a special disabled veteran, a veteran of the Vietnam era, or other eligible veteran, regarding any position for which the employee or applicant for employment is qualified. The Contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans without discrimination based upon their disability or veterans' status in all employment practices such as—

- (i) Recruitment, advertising, and job application procedures;
  - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;
  - (iii) Rate of pay or any other form of compensation and changes in compensation;
  - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
  - (v) Leaves of absence, sick leave, or any other leave;
  - (vi) Fringe benefits available by virtue of employment, whether or not administered by the Contractor;
  - (vii) Selection and financial support for training, including apprenticeship, and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
  - (viii) Activities sponsored by the Contractor including social or recreational programs; and
  - (ix) Any other term, condition, or privilege of employment.

- (2) The Contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).

(c) Listing openings.

- (1) The Contractor shall immediately list all employment openings that exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract, and including those occurring at an establishment of the Contractor other than the one where the contract is being performed, but excluding those of independently operated corporate affiliates, at an appropriate local public employment service office of the

State wherein the opening occurs. Listing employment openings with the U.S. Department of Labor's America's Job Bank shall satisfy the requirement to list jobs with the local employment service office.

- (2) The Contractor shall make the listing of employment openings with the local employment service office at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.
- (3) Whenever the Contractor becomes contractually bound to the listing terms of this clause, it shall advise the State public employment agency in each State where it has establishments of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The Contractor may advise the State agency when it is no longer bound by this contract clause.

(d) Applicability. This clause does not apply to the listing of employment openings that occur and are filled outside the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Virgin Islands of the United States, and Wake Island.

(e) Postings.

- (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
- (2) The employment notices shall—
  - (i) State the rights of applicants and employees as well as the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are special disabled veterans, veterans of the Vietnam era, and other eligible veterans; and
  - (ii) Be in a form prescribed by the Deputy Assistant Secretary for Federal Contract Compliance Programs, Department of Labor (Deputy Assistant Secretary of Labor), and provided by or through the Contracting Officer.
- (3) The Contractor shall ensure that applicants or employees who are special disabled veterans are informed of the contents of the notice (e.g., the Contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
- (4) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement, or other contract understanding, that the Contractor is bound by the terms of the Act and is committed to take affirmative action to employ, and advance in employment, qualified special disabled veterans, veterans of the Vietnam era, and other eligible veterans.

(f) Noncompliance. If the Contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(g) Subcontracts. The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Deputy Assistant Secretary of Labor to enforce the terms, including action for noncompliance.

Employment Reports on Special Disabled Veterans, Veterans  
of the Vietnam Era, and Other Eligible Veterans

(48 CFR 52.222-37)  
(DEC 2001)

(a) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on--

- (1) The number of special disabled veterans, the number of veterans of the Vietnam era, and other eligible veterans in the workforce of the Contractor by job category and hiring location; and
- (2) The total number of new employees hired during the period covered by the report, and of the total, the number of special disabled veterans, the number of veterans of the Vietnam era, and the number of other eligible veterans; and
- (3) The maximum number and the minimum number of employees of the Contractor during the period covered by the report.

(b) The Contractor shall report the above items by completing the Form VETS-100, entitled "Federal Contractor Veterans" Employment Report (VETS-100 Report)".

(c) The Contractor shall submit VETS-100 Reports no later than September 30 of each year beginning September 30, 1988.

(d) The employment activity report required by paragraph (a)(2) of this clause shall reflect total hires during the most recent 12-month period as of the ending date selected for the employment profile report required by paragraph (a)(1) of this clause. Contractors may select an ending date--

- (1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or
- (2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

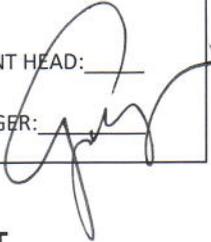
(e) The Contractor shall base the count of veterans reported according to paragraph (a) of this clause on voluntary disclosure. Each Contractor subject to the reporting requirements at 38 U.S.C. 4212 shall invite all special disabled veterans, veterans of the Vietnam era, and other eligible veterans who wish to benefit under the affirmative action program at 38 U.S.C. 4212 to identify themselves to the Contractor. The invitation shall state that--

- (1) The information is voluntarily provided;
- (2) The information will be kept confidential;
- (3) Disclosure or refusal to provide the information will not subject the applicant or employee to any adverse treatment; and
- (4) The information will be used only in accordance with the regulations promulgated under 38 U.S.C. 4212.

(f) The Contractor shall insert the terms of this clause in all subcontracts or purchase orders of \$25,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.



APPROVED
DEPARTMENT HEAD: _____
CITY MANAGER: _____



# COUNCIL REPORTS

MEETING DATE: MAY 4, 2015    AGENDA SECTION: POLICE DEPARTMENT

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**TO:**                    HONORABLE MAYOR WIGGINS AND COUNCIL MEMBERS

**FROM:**                KENT KROEGER, POLICE CHIEF

**DATE:**                APRIL 28, 2015

**SUBJECT:**            Coplogic DeskOfficer Online Reporting System (DORS) Agreement

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## BACKGROUND

As the Council will recall, the Coplogic DeskOfficer Online Reporting System (DORS) was approved for purchase by Council as part of the Supplemental Law Enforcement Fund (SLESF) spending plan. These funds are also commonly referred to as "COPS" funds with the City receiving \$100,000 from the State of California for fiscal year 2014-2015.

The DeskOfficer Online Reporting System (DORS) provides a beneficial service enhancement to the Department and also a tremendous benefit to our citizens. This system provides a convenient way for citizens to report minor incidents, crime tips, submit forms etc. through an online service available 24 hours a day, 7 days a week. The reports can be filed in various languages making reporting accessible to citizens in the community who may otherwise be reluctant to file a report. From an agency perspective, this system will generate incredible time savings and will allow our Department to better utilize our limited resources to proactively focus on crime trends and decrease our response time to priority calls.

## FISCAL IMPACT

There will be no fiscal impact as these funds are supplemental to the existing 2014-2015 budget.

## RECOMMENDATION

Approves the agreement with Coplogic and authorize the Mayor to sign subject to approval by the City Attorney.

## DeskOfficer Online Reporting System (DORS)

### SETUP AND SUBSCRIPTION LICENSE AGREEMENT

THIS SETUP AND SUBSCRIPTION LICENSE AGREEMENT ("**Agreement**") is made on this \_\_\_\_ day of \_\_\_\_\_, 2015, ("**Effective Date**") by and between the City of Tehachapi a municipal corporation under the laws of the State of California with an office at 115 South Robinson Street, Tehachapi, CA 93561 and hereafter referred to as "**Licensee**" and Coplogic Inc., on behalf of itself and its affiliates, a California corporation with an office at 231 Market Place, Suite #520, San Ramon, CA 94583 and hereafter referred to as "**Licensor**".

**NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:**

#### 1. **DEFINITIONS**

- (a) "**Documentation**" means technical manuals, training manuals, user guides, and workbooks, as updated and amended from time to time, provided by Licensor to assist Licensee with the use of Software.
- (b) "**Software**" means all or any portion of the global version of the binary computer software programs and updates and enhancements thereto, and Documentation hosted by Licensor on behalf of Licensee or delivered by Licensor to Licensee. Software includes any third-party software delivered by Licensor and modifications made to the Software. Software does not include source code to third party software. Unless specifically stated otherwise, all Software is delivered to Customer only if and when generally commercially available.
- (c) "**Install**" means placing the Software on a computer's hard disk.
- (d) "**Use**" means (i) executing or loading the Software into computer RAM or other primary memory, and (ii) copying the Software for archival or emergency restart purposes.

#### 2. **GRANT OF RIGHTS AND SCOPE OF SERVICES**

Licensor hereby grants to Licensee a nonexclusive, nontransferable license to use the Software on Licensee's servers for the term of this Agreement. The license to the Software granted herein remains in force until terminated in accordance with this Agreement. Licensor also agrees to provide the services listed in the Scope of Services attached hereto as Exhibit A and made a part hereof. All requests by the Licensee for additional features or functionality that fall outside of Exhibit A Scope of Services shall be addressed following the "go-live" date of the Software and shall be quoted separately.

#### 3. **COST AND FEES**

Licensee agrees to pay Licensor the following one time setup and implementation fee of \$7,000 plus license and maintenance fees for the first year of \$3,500 as outlined in the Support and Maintenance Agreement, for a total of \$10,500 upon execution of this agreement. The Support and Maintenance period shall commence at the earlier of 1) the "go-live" date of the Software or 2) January 31, 2015. All payments shall be made promptly upon receipt of Licensor's invoice, but in no

Proprietary and Confidential

case more than forty-five (45) days from Licensor's invoice date. Payment shall be made by electronic funds transfer to the Licensor's account specified in writing.

**Taxes.** In addition to other amounts payable under this Agreement, where applicable, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee's use of the Software or the payment of the License Fee to Licensor, other than taxes assessed against Licensor's net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Agreement, Licensee shall promptly reimburse Licensor any such amounts.

#### **4. TERMINATION**

Either party may terminate this Agreement at any time and for any reason upon thirty (30) days' prior written notice to the other party of such intent.

On termination, Licensee will promptly return all copies of the Software to Licensor or destroy all of Licensee's copies of the Software and so certify to Licensor in writing within fourteen (14) days of termination.

#### **5. RIGHTS UPON TERMINATION**

Licensor has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. Upon termination of this License, all rights granted to Licensee under this Agreement cease and Licensee will promptly cease all use and reproduction of the Software and Documentation, and Licensee shall return to Licensor or destroy the original and all copies of the Software and Documentation including partial copies and modifications.

Sections 9, 10, 11, 12, and 13 will survive termination or expiration of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

#### **6. TITLE TO SOFTWARE**

Licensor retains title to and ownership of the Software and Documentation and all enhancements, modifications and updates of the Software or Documentation. Licensee shall not distribute the Software to any persons or entities other than Licensee's employees as designated solely by Licensee. Licensee may not sell the Software to any person or make any other commercial use of the software. Licensee shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Licensor's intellectual property rights.

#### **7. MODIFICATION AND ENHANCEMENTS**

Licensee will make no efforts to reverse engineer the Software, or make any modifications or enhancements or derivative works based on the Software without Licensor's express written consent.

## **8. WARRANTY**

Licensor warrants that from the date of this License, the Software will function provided the original configuration is not replaced or changed by Licensee. Licensor warrants that to the best of its knowledge, information, and belief, the Software does not contain any known viruses, back-doors or time bombs, (or similar malicious code), or undocumented security codes that could prevent Licensee's use of the Software.

THE WARRANTY GRANTED HEREIN IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Licensor's entire liability and Licensee's sole and exclusive remedy for breach of the foregoing warranty shall be, at Licensor's option, to:

- (a) Return to Licensee the maintenance fee for the period in which the Software did not perform according to this warranty, or
- (b) Repair the defects, or
- (c) Replace the Software.

## **9. LIMITATION OF LIABILITY**

In no event shall Licensor be liable for any indirect, special, incidental, or consequential damages in connection with this Agreement or the performance or failure to perform under this Agreement, even if advised of the possibility of such damages. To the extent permitted by law, Licensor's total aggregate liability in connection with any cause of action, costs or damages relating to this Agreement shall not exceed \$25,000.00 or the annual fees received by Licensor from Licensee in the twenty-four (24) month period preceding the event giving rise to the claim, whichever is greater.

## **10. INDEMNITY**

Licensor shall indemnify, hold harmless, and defend, with counsel acceptable to Licensee, the Licensee (including its elected officials, officers, agents and employees) from and against any and all claims (including, without limitation, all litigation, demands, damages, liabilities, costs, expenses, court costs and attorney's fees) resulting or arising from Licensor's performance, or failure to perform its obligations, under this Agreement.

Claims which trigger Licensor's responsibility under this Section shall include any claims that the Software resulting from the provision of Services pursuant to the attached Exhibit A Scope of Services infringes any patent, trademark, service mark, copyright, or accidental or intentional violation of a trade secret or other intellectual property of a third party not included in this Agreement. Licensor shall, in its reasonable judgment and at its option and expense: (i) promptly obtain for the Licensee the right to continue using the Software; or (ii) promptly replace or modify the Software so that it becomes non-infringing while giving equivalent performance.

Licensor shall not have any liability for (i) claims arising out of Licensee's violation of laws in the performance of its obligations under this Agreement; (ii) claims arising out of Licensee's gross negligence or willful misconduct; (iii) claims arising out of Licensee's reproduction or misuse of the Software; or (iv) claims alleging that any Software infringes a patent or copyright if the alleged infringement was developed based on information furnished by the Licensee or if the alleged

infringement is the result of a modification made by the Licensor, at the direction of the Licensee or with Licensee approval. Licensee shall be responsible for maintaining appropriate licenses for software not provided by Licensor.

Should any claim subject to indemnity be made against Licensee, Licensee agrees to provide Licensor with prompt written notice of the claim. Licensor will control the defense unless otherwise mutually agreed to in writing by the parties. However, Licensee shall have the right to participate, at its own expense, in the defense of any such demand, claim or action through counsel or its choosing. Licensor may enter into a settlement, compromise, or otherwise resolve the dispute without consent of the Licensee so long as such settlement or resolution does not require the admission of liability with regard to Licensee. Licensee agrees to cooperate with Licensor and provide reasonable assistance in the defense and settlement of such claim.

#### **11. ATTORNEY FEES**

If any action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs and expenses in addition to any other relief to which it may be entitled.

#### **12. CONFIDENTIAL INFORMATION**

(a) Except as described in subparagraph (b) immediately below, the term "Confidential Information" shall mean any and all information, which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form, which either is identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Licensor's business, as Licensor has conducted it or as it may conduct itself in the future, confidential information concerning any of Licensor's past, current, or possible future products or manufacturing or operational methods, including information about Licensor's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Licensor. Licensor's Confidential Information shall be treated as strictly confidential by Licensee and shall not be disclosed by Licensee except to those third parties with a need to know and that are bound by a confidentiality agreement with terms and conditions comparable to the non-disclosure provisions herein. This Agreement imposes no obligation with respect to Confidential Information which: (i) was in the possession of, or was rightfully known by the Licensor without an obligation to maintain its confidentiality prior to receipt from other party; (ii) is or becomes generally known to the public without violation of this Agreement; (iii) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Licensee without the participation of individuals who have had access to the Confidential Information or (v) is required to be disclosed by court order or applicable law, provided that Licensee promptly notifies Licensor in order for the disclosing party to have an opportunity to seek an appropriate protective order. The Licensee shall not obtain, by virtue of this Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fourteen (14) days after termination of this Agreement, each party shall certify in writing to Licensor that all copies of Licensor's Confidential Information in any form, including partial copies, have been destroyed or returned to Licensor.

- (b) Licensor acknowledges that the Licensee is a governmental agency and may be required to disclose certain information under requests made according to provisions of the Public Records Act. Licensee shall take reasonable steps to limit any disclosure of Confidential Information to the specific information requested and continue to otherwise protect all Confidential Information.
- (c) Except as described in subparagraph (b) immediately above, Licensee shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's Confidential Information.
- (d) The terms of this Section shall survive termination of this Support and Maintenance Agreement. Licensor and Licensee acknowledge that any breach of this Section by Licensee will irreparably harm Licensor. Accordingly, in the event of a breach, Licensor is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.
- (e) The terms of this Section shall survive termination of this Agreement. Licensor and Licensee acknowledge that any breach of this Section by Licensee will irreparably harm Licensor. Accordingly, in the event of a breach, Licensor is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

### **13. RELATIONSHIP BETWEEN THE PARTIES**

Licensor is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or sub consultants, including any negligent acts or omissions. Licensor is not Licensee's agent, and shall have no authority to act on behalf of the Licensee, or to bind the Licensee to any obligation whatsoever, unless the Licensee provides prior written authorization to Licensor.

### **14. CONFLICTS OF INTEREST PROHIBITED**

Licensor (including its employees, agents, and sub Licensors) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement.

### **15. COMPLIANCE WITH LAW AND STANDARD OF CARE**

Licensor shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Licensor shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Licensor, performing under circumstances similar to those required by this Agreement. Licensor certifies that its employees have the training and experience to perform and complete all services mentioned herein and outlined in Exhibit A.

### **16. INSURANCE**

Licensor shall, throughout the duration of this Agreement, maintain insurance to cover Licensor (including its agents, representatives, sub-consultants, and employees) in connection with the performance of services under this Agreement. This Agreement identifies the minimum insurance levels with which Licensor shall comply; however, the minimum insurance levels shall not relieve Licensor of any other performance responsibilities under this Agreement (including the indemnity

requirements), and Licensor may carry, at its own expense, any additional insurance it deems necessary or prudent. Concurrently with the execution of this Agreement by the Licensor, and prior to the commencement of any services, the Licensor shall furnish written proof of insurance (certificates and endorsements), in a form acceptable to the Licensee. Licensor shall provide substitute written proof of insurance no later than thirty (30) days prior to the expiration date of any insurance policy required by this Agreement.

**16.1 Minimum Insurance Levels.** Licensor shall maintain insurance at the following minimum levels:

- (a) Commercial General Liability coverage in an amount not less than \$1,000,000 general aggregate and \$1,000,000 per occurrence for general liability, bodily injury, personal injury, and property damage.
- (b) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- (c) Errors and Omissions Liability Insurance appropriate to the Licensor's profession. Architects' and engineers' coverage is to be endorsed to include contractual liability.

**16.2 Endorsements.** The insurance policies shall be endorsed as follows:

- (a) For the commercial general liability insurance, the Licensee (including its elected officials, employees, and agents) shall be named as additional insured.
- (b) Licensor's insurance is primary to any other insurance available to the Licensee with respect to any claim arising out of this Agreement. Any insurance maintained by the Licensee shall be excess of the Licensor's insurance and shall not contribute with it.

**16.3 Qualifications of Insurers.** All insurance companies providing coverage to Licensor shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California, and shall have an A.M Best's rating of not less than "A:VII."

## **17. REPORTING DAMAGES**

If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Licensor shall immediately notify the Licensee and Licensor shall promptly submit to the Licensee a written report (in a form acceptable to the Licensee) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Licensor's insurance company, and (d) a detailed description of the damage and whether any Licensee property was involved.

## **18. GENERAL PROVISIONS**

- (a) **Complete Agreement.** This Agreement together with Exhibit A, which is incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter, except for the concurrently executed Software Support and Maintenance Agreement.
- (b) **Modifications to License.** Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.
- (c) **Applicable Law.** This Agreement will be governed by the laws of the State of California.

Proprietary and Confidential

(d) **Notices.** All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given as follows:

When delivered personally to the recipient's address as appearing below:

**If to LexisNexis:**

Coplogic, Inc.  
1000 Alderman Drive  
Alpharetta, Georgia 30005  
Attn: Manager, Contracts and Proposals  
Telephone: 678-694-2201

**with a copy to:**

Coplogic, Inc.  
1000 Alderman Drive  
Alpharetta, Georgia 30005  
Attn: General Counsel, Insurance Solutions  
Telephone: 678-694-5747

**If to Customer:**

City of Tehachapi  
115 South Robinson Street  
Tehachapi, CA 93561  
Fax: 661-822-2263  
Email: [kkroeger@tehachapipd.com](mailto:kkroeger@tehachapipd.com))

- Three (3) days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this License; or
- When sent by fax or telex to the last fax, telex number or E-Mail address of the recipient known to the party giving notice.

Any party may change its address appearing in the introductory paragraph to this Agreement by giving notice of the change in accordance with this paragraph.

- a. **No Agency.** Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- b. **Assignment.** A party may not assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed.
- c. **Waivers.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- d. **Headings.** The captions in this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.
- e. **Severability.** If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.
- f. This Agreement may be executed in counterparts.
- g. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, and their respective heirs, successors, and assigns.

Proprietary and Confidential

- h. The parties acknowledge that each party and their respective legal counsel have reviewed this Agreement and agree that this Agreement is the product of negotiations between the parties and shall be interpreted without reference to the rule of interpretation of documents that uncertainties or ambiguities therein shall be determined against the parties so drafting the Agreement.

**19. SIGNATURES**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Licensor and the Licensee. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

This Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument. Any such counterpart may comprise one or more duplicates or duplicate signature pages, any of which may be executed by less than all of the parties provided that each party executes at least one such duplicate or duplicate signature page. The parties stipulate that a photocopy of an executed original will be admissible in evidence for all purposes in any proceeding as between the parties

**IN WITNESS WHEREOF**, the Licensee and Licensor do hereby agree to the full performance of the terms set forth herein.

**Coplogic, Inc.  
(LICENSOR)**

**City of Tehachapi, a Municipal Corporation  
(LICENSEE)**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name and Title)

Susan Wiggins, Mayor  
\_\_\_\_\_  
(Typed or Printed Name and Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

## **Exhibit A: Scope of Services**

### **DORS**

Licensors has designed and built an Online Reporting System for Police Departments that provides data to a specified database structure. The Online Reporting System uses the J2EE standard. The system is designed to gather information on crimes from a member of the general public (user) via an SSL connection. The application will issue a temporary report number to the user and place the temporary report into an administrative holding area for review and modification by appropriate administrator. An email is generated to the user that the report has been submitted. The administrator logs in via an SSL connection and approves, rejects, edits or prints reports as appropriate. Rejecting a report deletes it from the system and sends an appropriate email to the user. Approving the report issues a number, places it in a queue to be exported, and sends an appropriate email to the user. The administrator can download the approved report or print the report out.

#### **A. SETUP AND CUSTOMIZATION**

##### **Licensee Responsibilities:**

1. Coordinate with Licensor to establish schedule for deployment.
2. Provide website header image and one small image for temporary citizen report and one small image for final printed PDF report, which is automatically emailed to citizen after report approval.
3. Load provided HTML pages onto City server which links to Licensor's servers for the application.
4. Provide Licensor with the schema for the desired file format and/or Database schema and account with read /write access and test environment with current configuration.
5. Provide Licensor with VPN access to the exporter and RMS application(s).
6. Provide timely responses to Licensor's questions, which may arise during the setup and customization process.

##### **Licensor's Responsibilities:**

1. Coordinate with Licensee to establish schedule for deployment.
2. Load provided images onto the Licensor's secure, redundant network and register Licensee within the network.
3. Provide Licensee with Administrator password and credentials for the program.
4. Provide sample operational directives, deployment strategies and sample press release.
  - a. Licensor will provide contact personnel at other cities currently using the system as well as provide suggestions for the deployment of the system.
  - b. Licensor will provide instructions on the easy setup of a kiosk for City Police Department Headquarters lobby, etc.

##### **Completion Criteria:**

This task is considered complete after Licensor has delivered listed materials and the software is active and accessible on the Licensee's website.

## **B. SOFTWARE CONFIGURATION**

### **Licensee's Responsibilities:**

1. Coordinate with Licensor for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
2. Using the administrator account, login in and configure the code tables, crime types, user account, and dynamic content for Licensee.
3. Test the optional interface with the RMS application.
4. Review resulting files with Licensor, document any problems, and collaborate with Licensor on a plan for corrective action(s).

### **Licensor's Responsibilities:**

1. Coordinate with Licensee for web training session on administering the program, using the dynamic creation tools, "Triple Lock" login features, user account including deploying the "Secure side filing feature".
2. Configure export routine for the optional RMS Interface.
3. Review resulting files with Licensee, document any problems, and collaborate with Licensee on a plan for corrective action(s).

### **Completion Criteria:**

This task is considered complete when the DeskOfficer Online Reporting System is accessible on the web server, reports can be filed and interfaced into the RMS.

## **C. CONTINUING MAINTENANCE.**

### **Licensee's Responsibilities:**

During the term of this Agreement and subject to approval by Licensee, Licensee agrees to serve as a reference for the Software. Such references may include activities such as (i) reference calls with mutually acceptable prospects; (ii) a published "success story" describing the partnership with Licensor; (iii) the use of Licensee's name in Licensor marketing activities; or (iv) a favorable reference of Licensor to an industry analyst or at an industry conference.

(Should Licensee Elect to Self-Host Software) Provide Licensor with VPN access or a comparable remote access method (e.g. LogMeIn, TeamViewer) to upgrade the Software.

### **Licensor's Responsibilities:**

Licensor will provide remote application support and updates in accordance with the Support and Maintenance Agreement.

**DeskOfficer Online Reporting System (DORS)  
SUPPORT AND MAINTENANCE AGREEMENT**

THIS SUPPORT AND MAINTENANCE AGREEMENT ("**Support and Maintenance Agreement**") is made on this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between the City of Tehachapi, a municipal corporation under the laws of the State of California with an office at 115 South Robinson Street, Tehachapi, CA 93561 ("**Licensee**") and Coplogic, Inc. on behalf of itself and its affiliates, a California corporation, with an office at 231 Market Place #520 San Ramon, CA 94583 ("**Licensor**").

**RECITALS**

Licensee has obtained a subscription license to use the DeskOfficer Online Reporting System ("**DORS**") ("**Software**") for the term of that agreement, more particularly described in the Setup and Subscription License Agreement of the same date. As a part of this Support and Maintenance Agreement, Licensor shall provide support and maintenance services for the Software.

**1. SUPPORT AND MAINTENANCE SERVICES**

- a. Generally. During the duration of this Support and Maintenance Agreement, Licensor shall provide to the Licensee a subscription license, as well as support and maintenance for the Software purchased in accordance with the terms of this Support and Maintenance Agreement and the response time described in Schedule A, attached hereto. Support includes an annual review of current outstanding questions and usage issues at Licensee request; the provision of new and upcoming releases of updates; and enhancements made to the Software that the Licensee is licensed to use that are made available without additional charge to other users of the Software with similar support and maintenance contracts. The parties shall amend Schedule B from time-to-time in the event that the Licensee requests customizations to the Software.
- b. Hours of Support. Licensor will provide the support services during the hours as described in Schedule A attached hereto.
- c. New Releases. Licensor will, from time-to-time issue new releases of the software (Schedule B), and when it does, it will provide a copy of the release documentation, and/or updated user or system documentation. If any part of the Licensee's custom code is not part of the general release delivered by Licensor, then Licensor will assist and provide guidance for integrating the custom code into the new release. Any time taken to modify or repair unauthorized changes that may require Licensor assistance to modify may be billed at Licensor's then current pricing schedule.
- d. Exceptions. Corrections for difficulties or defects traceable to the Licensee's errors or unauthorized changes, Licensee's hardware, or conflicts with other software not identified by Licensor as compatible or part of the recommended operating environment may be subject to billing at Licensor's current standard time and material charges.
- e. Exceptions (Should Licensee Elect to Self-Host Software). Licensor is not responsible for maintaining unauthorized Licensee modified portions of the Software, Licensee data files or for maintaining portions of the Software affected by unauthorized Licensee modified

portions of the Software. The Licensee agrees that the equipment on which the Software operates will be operating properly at all times and must have been and continue to be properly maintained by the manufacturer of the equipment or a properly qualified service organization.

The Licensee will be responsible for properly testing and applying routine virus updates and security patches without the need for additional Licensor's notification. Licensor will be responsible for testing Licensor's software updates prior to making them available to the Licensee. The Licensee acknowledges responsibility for testing Licensor's software updates before applying them to the Licensee's production systems. For servers running Licensor's software, the Licensee acknowledges responsibility for communicating with Licensor prior to installation of non- Licensor's software service packs, implementation of new releases or versions of non- Licensor's software, or installation of new non- Licensor's software products.

Except for emergency replacement of a failing server, the Licensee acknowledges responsibility for communicating with Licensor prior to replacing a server on which Licensor's software is being used. Licensor is not responsible for changes if related to or caused by software not provided by Licensor. For workstations running Licensor's software, the Licensee acknowledges responsibility to test new workstation configurations, software service packs, new releases or versions of software, and new software products prior to implementation.

The Licensee must upgrade the Software in its entirety to the most recent version within seven business days of the release of any updates or modifications of the Software unless otherwise mutually agreed. Licensee must provide Licensor with VPN access or a comparable remote access method (eg. LogMeIn, TeamViewer) to upgrade the Software. Licensor will not be obligated to provide support for release versions that are more than two release versions older than the current version unless specified in this Support and Maintenance Agreement.

The Licensee agrees that, subject to and in accordance with the Licensee's internal policies and guidelines, it will upgrade the computer operating software, hardware and underlying database engines of the Software as necessary to meet the changing requirements of the Software as specified by Licensor as part of a current release of the Software, or as the parties mutually agree. The Licensee agrees that, subject to and in accordance with the Licensee's internal policies and guidelines, it will maintain appropriate licenses for the computer operating software and underlying database engines required of the Software as necessary.

- f. **Limitations.** Licensor may, in its sole discretion, limit or suspend Licensee's access to support, pursuant to this Support and Maintenance Agreement, where (1) Licensee is in material default under the terms of this Support and Maintenance Agreement (non-payment is deemed to be a material default), or (2) Licensee fails to provide adequately trained staff to administer the Software. Prior to limiting or suspending support, Licensor will give the Licensee thirty (30) days written notice of its intention to do so and actively participate with the Licensee to remedy any such default or failure.

- g. **Term.** This Support and Maintenance Agreement commences at the later of 1) the “go-live” date of the Software or 2) January 31, 2015 and expires one year after its commencement date. Within thirty (30) days prior to its expiration, Licensor shall send to the Licensee an invoice for an annual license, support and maintenance fee (“Annual Fee”). The sending of any such invoice will constitute an irrevocable offer to extend this Support and Maintenance Agreement for the period and fees set forth in the invoice, which may be accepted by the Licensee in its sole discretion as hereinafter set forth. Termination of this Support and Maintenance Agreement prior to its expiration shall not result in the refund of partial service fees.

The Licensee’s payment of an Annual Fee in response to an invoice prior to the expiration date of this Support and Maintenance Agreement, or within thirty (30) days after the date of Licensor’s invoice, whichever is later, will extend the Support and Maintenance Period for the period of one (1) year from its previous expiration date, or for the period set forth in the invoice if different.

- h. **Adjustments to Terms and Conditions.** Licensor may change the Annual Fee and the terms and conditions of this Support and Maintenance Agreement provided that written notice is given to the Licensee thirty (30) days prior to the expiration of the current term.

## 2. COST

- a. **Annual Fee.** The Licensee shall pay Licensor an Annual Fee for which the Software license and support is being provided (see Schedule B for base Annual Fee). The Annual Fee for the first (1st) year is due upon execution of this Support and Maintenance Agreement and will then reoccur on the anniversary date of the execution of this Support and Maintenance Agreement for each year thereafter. For a period of three (3) years following execution of this Support and Maintenance Agreement, the Annual Fee shall not increase by more than 5% of the previous year’s Annual Fee. All requests by the Licensee for additional features or functionality that fall outside of Licensor’s ongoing policy of upgrading the Software will be quoted separately. All invoices will be sent at least thirty (30) days prior to their due date.

3. **TAXES.** In addition to other amounts payable under this Support and Maintenance Agreement, where applicable, Licensee shall pay any and all federal, state, municipal, or other taxes, duties, fees, or withholding currently or subsequently imposed on Licensee’s use of the Software or the payment of the Annual Fee to Licensor, other than taxes assessed against Licensor’s net income. Such taxes, duties, fees, withholding, or other charges shall be paid by Licensee or Licensee shall provide the appropriate authority with evidence of exemption from such tax, duty, fee, withholding, or charge. If Licensor is required to pay any such tax, duty, fee, or charge, or to withhold any amount from monies due to Licensor from Licensee pursuant to this Support and Maintenance Agreement, Licensee shall promptly reimburse Licensor any such amounts.

- a. **On Site Support.** The Licensee shall reimburse Licensor at the rate of \$2,500.00 per day for each Licensor employee or contractor required for any On-Site support incurred at the Licensee’s direct written request and authorization. This rate shall be paid for each day that Licensor personnel are required to be on the Licensee’s site. Licensee will not pay for

Licensor personnel travel time or travel expenses. In response to written Licensee requests for Licensor to provide on-site routine non-emergency support, Licensor shall produce a written estimate of the time required to provide the requested support and state any requirements, such as the presence of Licensee staff or other resources or materials. Any On-Site Support provided by Licensor shall only be invoiced by Licensor or paid by Licensee if the problem arose due to something other than a defect in the Software.

#### **4. LICENSEE'S OBLIGATION**

- a. The Licensee Agrees to:
  - i. Furnish descriptions of problem(s) in the form reasonably requested by Licensor Support representatives;
  - ii. Assist Licensor's efforts to reproduce the problem(s) in the applicable operating environment, and
  - iii. Make available qualified, trained staff on-site to carry out Licensor's instructions and/or provide remote access to system(s) as requested by Licensor.
- b. The Licensee shall designate a sole Support Contact to provide routine end user support for the Licensee personnel concerning the Product.
- c. The Licensee shall take appropriate steps to educate its end users about the need to contact the Support Contact (rather than Licensor directly) when support is needed. The Licensee shall appropriately publicize the name, telephone number, and/or fax number and/or electronic mail address if applicable, of the Support Contact.
- d. Access to Data and System. The Licensee agrees to provide Licensor with data dumps, as requested, remote access to the Software system, and with sufficient test time on the Licensee's computer system to duplicate the problem, to certify that the problem is with the Software, and to certify that the problem has been corrected.
- e. The Licensee shall install and maintain for the term of this Support and Maintenance Agreement, a reasonable and satisfactory method of direct remote computer access to the Software. The Licensee shall pay for the installation and maintenance of such access. Licensor shall use this access service in connection with error correction, software updating and user support only, and only upon prior written or email notice to the Licensee, and Licensee's acknowledgment of that notice.
- f. Licensor agrees that all release versions will be tested for installation in a computer environment substantially similar to the Licensee's and that all releases will be free of material defects that would affect the orderly continuation of Licensee's use of the Product.
- g. The parties agree that Licensor is not obligated to ensure that its new release of the Software is compatible with outdated (exceeding 4 years from date of initial release) hardware, computer operating software or database engines).

## 5. CONFIDENTIALITY

### a. Confidential Information.

- i. Except as described in subparagraph (ii) immediately below, the term "Confidential Information" shall mean any and all information, which is disclosed by either party to the other verbally, electronically, visually, or in a written or other tangible form, which either is identified or should be reasonably understood to be confidential or proprietary. Confidential Information includes, but is not limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, customer lists, employee information, financial information, confidential information concerning Licensor's business, as Licensor has conducted it or as it may conduct itself in the future, confidential information concerning any of Licensor's past, current, or possible future products or manufacturing or operational methods, including information about Licensor's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling or leasing, and any software (including third party software) provided by Licensor. Licensor's Confidential Information shall be treated as strictly confidential by Licensee and shall not be disclosed by Licensee except to those third parties with a need to know and that are bound by a confidentiality agreement with terms and conditions comparable to the non-disclosure provisions herein. This Support and Maintenance Agreement imposes no obligation with respect to Confidential Information which: (i) was in the possession of, or was rightfully known by the Licensor without an obligation to maintain its confidentiality prior to receipt from other party; (ii) is or becomes generally known to the public without violation of this Support and Maintenance Agreement; (iii) is obtained by Licensee in good faith from a third party having the right to disclose it without an obligation of confidentiality; (iv) is independently developed by Licensee without the participation of individuals who have had access to the Confidential Information or (v) is required to be disclosed by court order or applicable law, provided that Licensee promptly notifies Licensor in order for the disclosing party to have an opportunity to seek an appropriate protective order. The Licensee shall not obtain, by virtue of this Support and Maintenance Agreement, any rights title or interest in any Confidential Information of the Licensor. Within fourteen (14) days after termination of this Support and Maintenance Agreement, each party shall certify in writing to Licensor that all copies of Licensor's Confidential Information in any form, including partial copies, have been destroyed or returned to Licensor.
- ii. Licensor acknowledges that the Licensee is a governmental agency and may be required to disclose certain information under requests made according to provisions of the Public Records Act. Licensee shall take reasonable steps to limit any disclosure of Confidential Information to the specific information requested and continue to otherwise protect all Confidential Information.
- iii. Licensee shall protect the deliverables resulting from Services with at least the same degree of care and confidentiality, but not less than a reasonable standard of care, which Licensee utilizes for Licensee's Confidential Information.

- iv. The terms of this Section shall survive termination of this Support and Maintenance Agreement. Licensor and Licensee acknowledge that any breach of this Section by Licensee will irreparably harm Licensor. Accordingly, in the event of a breach, Licensor is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

## **6. TERMINATION**

Either party may terminate this Support and Maintenance Agreement at any time and for any reason upon thirty (30) days' prior written notice to the other party of such intent.

## **7. LIMITATION OF LIABILITY**

In no event shall Licensor be liable for any indirect, special, incidental, or consequential damages in connection with this Support and Maintenance Agreement or the performance or failure to perform under this Agreement, even if advised of the possibility of such damages. To the extent permitted by law, Licensor's total aggregate liability in connection with any cause of action, costs or damages relating to this Support and Maintenance Agreement shall not exceed \$25,000.00 or the annual fees received by Licensor from Licensee in the twenty-four (24) month period preceding the event giving rise to the claim, whichever is greater.

## **8. INDEMNITY**

Licensor shall indemnify, hold harmless, and defend, with counsel acceptable to Licensee, the Licensee (including its elected officials, officers, agents and employees) from and against any and all claims (including, without limitation, all litigation, demands, damages, liabilities, costs, expenses, and court costs and attorney's fees) resulting or arising from Licensor's performance, or failure to perform, under this Support and Maintenance Agreement. Licensor shall not have any liability for (i) claims arising out of Licensee's violation of laws in the performance of its obligations under this Agreement; (ii) claims arising out of Licensee's gross negligence or willful misconduct; (iii) claims arising out of Licensee's reproduction or misuse of the Software; or (iv) claims alleging that any Software infringes a patent or copyright if the alleged infringement was developed based on information furnished by the Licensee or if the alleged infringement is the result of a modification made by the Licensor, at the direction of the Licensee or with Licensee approval. Licensee shall be responsible for maintaining appropriate licenses for software not provided by Licensor.

Should any claim subject to indemnity be made against Licensee, Licensee agrees to provide Licensor with prompt written notice of the claim. Licensor will control the defense unless otherwise mutually agreed to in writing by the parties. However, Licensee shall have the right to participate, at its own expense, in the defense of any such demand, claim or action through counsel or its choosing. Licensor may enter into a settlement, compromise, or otherwise resolve the dispute without consent of the Licensee so long as such settlement or resolution does not require the admission of liability with regard to Licensee. Licensee agrees to cooperate with Licensor and provide reasonable assistance in the defense and settlement of such claim.

## 9. GENERAL

- a. A party may not assign its rights or obligations under this Support and Maintenance Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed.
- b. This Support and Maintenance Agreement, together with Schedule A and Schedule B, which are incorporated herein by reference, are the sole and entire agreement between the parties. This Support and Maintenance Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter, except for the concurrently executed Setup and License Agreement. No modification or amendment of this Support and Maintenance Agreement will be valid or binding unless reduced to writing and duly executed by the party or parties to be bound.
- c. Each party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause or effect of such delay or failure to the extent the party is able. In the event of such delays, the timetables shall be extended by as many calendar days as the delay caused by forces outside the reasonable control of the parties.
- d. This Support and Maintenance Agreement may be executed in separate counterparts, each of which so executed and delivered shall constitute an original, but all such counterparts shall together constitute one and the same instrument.
- e. Any provision of this Support and Maintenance Agreement or part thereof found to be illegal or unenforceable shall be deemed severed, and the balance of the Agreement shall remain in full force and effect.
- f. This Support and Maintenance Agreement shall be governed and construed in accordance with the laws of the State of California.
- g. The captions in this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or interpreting the Agreement.
- h. Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.
- i. Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- j. All notices and other communications given in connection with this Agreement shall be in writing and shall be deemed given when (i) personally delivered to the recipient's address or; (ii) when sent by fax or email or; (iii) three (3) days after being deposited in the United States mail, postage prepaid, to the recipient's address as appearing below:

**If to LexisNexis:**

Coplogic, Inc.  
1000 Alderman Drive  
Alpharetta, Georgia 30005  
Attn: Manager, Contracts and Proposals  
Telephone: 678-694-2201

**with a copy to:**

Coplogic, Inc.  
1000 Alderman Drive  
Alpharetta, Georgia 30005  
Attn: GC, Insurance Solutions  
Telephone: 678-694-5747

**If to Customer:**

City of Tehachapi  
115 South Robinson Street  
Tehachapi, CA 93561  
Fax: 661-822-2263  
Email: [kkroeger@tehachapipd.com](mailto:kkroeger@tehachapipd.com)

The undersigned represent and warrant that they are authorized as representatives of the party on whose behalf they are signing to sign this Support and Maintenance Agreement and to bind their respective party thereto.

**Coplogic, Inc.  
(LICENSOR)**

**City of Tehachapi  
a Municipal Corporation (LICENSEE)**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name and Title)

Susan Wiggins, Mayor  
\_\_\_\_\_  
(Typed or Printed Name and Title)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

## SCHEDULE A

Licensors Hours of Support and Maintenance Service are as follows:

Regular Hours of Service (Pacific Time):  
0900 to 1700 hours, Monday to Friday (excluding  
Holidays observed by the U.S. Federal Govt.)

After Hours Service (Pacific Time):  
1701 to 0859 hours, Monday to Friday  
Saturdays & Sundays  
Holidays

E-mail received by:  
Licensors staff at [support@coplogic.com](mailto:support@coplogic.com)

E-mail received by:  
Licensors staff at [support@coplogic.com](mailto:support@coplogic.com)

**Incident/Request for Service Priority.** All support and maintenance incidents/ requests for service will be prioritized on the following basis:

Priority	Definition
A	Work is stopped to the point that critical business activities cannot continue. e.g. Loss of use of major features, file system corruption, data loss, security issue, system outage.
B	Issues or features of the product are preventing normal operations.
C	Non-critical features, for which a convenient or reasonable work around exists, or a feature which functions unexpectedly.  Slight inconvenience.

**Response Time.** The following table outlines the response times for each priority:

Priority	Response Time During Regular Hours of Service	Response Time During After Hours of Service
A	2 hours	6 hours from time of notifying the vendor contact(s) through voice mail or e-mail
B	(2) business days of Licensors receipt of verbal, written or electronic notice thereof and to correct the Priority B Issue by the Licensee's reasonably requested date. If the Priority B Issue is not corrected within 2 business days of the original notification Licensors will provide the Licensee with reports of its efforts to correct the Priority B Issue as requested by Licensee.	Not available
C	As time permits basis or inclusion in the next scheduled update to the Licensed Product.	Not available

Proprietary and Confidential

Coplogic – DeskOfficer Online Reporting System (DORS) Support and Maintenance Agreement Q3.14.V1 [sp] [100114] (AST 4.28.14)

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**1. Incident/Request for Service Reporting Procedure**

All problems, queries or requests for assistance must be made to Licensor at support@coplogic.com, during regular business hours of service.

Licensee must be prepared to leave a contact name, phone number, workstations affected, screenshots, a description of the problem/service and the impact.

Licensor's resources will work with the Licensee to diagnose the problem. After investigating the issue, Licensor and the Licensee will jointly categorize the problem into:

<b>Type of Problem</b>	<b>Ownership</b>
Licensee Server Hardware Problem	Licensee
Desktop Hardware Problem	Licensee
Licensee Network Communication	Licensee
Isolated Workstation Issue	Licensee
Licensee Database Performance/storage	Licensee
Application or software related	Licensor

Licensor will deal with problem/incident according to the priority assigned. In the case that a problem cannot be readily resolved, Licensor will attempt to identify a work around.

As soon as Licensor corrects an Issue, Licensor shall notify the Licensee that the Issue has been corrected by sending an electronic mail.

## **SCHEDULE B**

Coplogic DeskOfficer Online Reporting System (DORS)

Base Annual Fee: USD \$3,500 (Year 1 License/Support)

On-site Support: USD\$2,500 per day per Licensor personnel (includes travel time and expenses)