



# CITY COUNCIL REGULAR MEETING AGENDA FEBRUARY 20, 2024 7:00 P.M.

**WE ENCOURAGE ALL MEMBERS OF THE PUBLIC TO PARTICIPATE IN THE MEETING VIA TELECONFERENCE BY CALLING (520) 525-8911. ANY MEMBER OF THE PUBLIC PARTICIPATING VIA TELECONFERENCE WILL BE GIVEN THE OPPORTUNITY TO PROVIDE PUBLIC COMMENT.**

**ADDITIONALLY, THE REGULAR MEETING WILL BE STREAMED ON YOUTUBE LIVE**  
[https://www.youtube.com/channel/UCB\\_ZmQZIHlH-ECEPZ2VwZg](https://www.youtube.com/channel/UCB_ZmQZIHlH-ECEPZ2VwZg)

Notice is hereby given that the City Council will hold a Regular Meeting on February 20, 2024, at the City Council Chambers, 663 Main Street, Livingston, California. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Persons requesting accommodation should contact the Deputy City Clerk at least 24 hours prior to this meeting at (209) 394-8041, Ext. 121. Any writings or documents pertaining to an Open Session item provided to a majority of the members of the legislative body less than 72 hours prior to the meeting shall be made available for public inspection by email if requested. Public comments can be submitted via emailed at [citycouncil@livingstoncity.com](mailto:citycouncil@livingstoncity.com). Comments must be received by 2:00 p.m. on the day of the City Council meeting in order for them to be distributed to the Council prior to consideration of the matter. You will need to provide: Meeting date, item number, name, email and comment (please limit to 300 words or 3 minutes). Please include: PUBLIC COMMENT in the subject for the email. Written comments will not be read aloud at the meeting, but will be reported as received for the record. If you do not receive an acknowledgement of receipt by 4:00 p.m., please call the City Clerk's Office at (209) 394-8041, Ext. 121 (Note: This technology is not a guaranteed method).

## CALL TO ORDER

Pledge of Allegiance.

Moment of Silence – First Responders and Military Members.

Roll Call.

Next Resolution No.: 2024-09  
Next Ordinance No.: 653

Closed Session Announcements.

Changes to the Agenda.

## CITIZEN COMMENTS

*This section of the agenda allows members of the public to address the City Council on any item NOT on the agenda. Members of the public, when recognized by the Mayor, should come forward to the lectern, and identify themselves. Comments are normally limited to three (3) minutes. In accordance with State Open Meeting Laws, no action will be taken by the City Council this evening.*

## ANNOUNCEMENTS AND REPORTS

Supervisor Rodrigo Espinoza Announcements and Reports.

City Staff Announcements and Reports.

- Anthony Chavarria, Public Works Director – Public Works Department Update.

City Manager Announcements and Reports.

City Council Members' Announcements and Reports.

Mayor's Announcements and Reports.

### **Jatinder Mann**

- City Council Alternate Liaison - Parks, Recreation and Arts Commission – **Jatinder Mann**
- Merced Integrated Regional Water Management Plan (MIRWMA) – **Jatinder Mann, Representative and Jason Roth, Alternate Representative.**
- Central Valley Division League of California Cities – **Maria Soto, Representative and Jatinder Mann, Alternate.**

### **Jason Roth**

- City Council Liaison - Livingston Planning Commission – **Jason Roth**
- Special City Selection Committee of the San Joaquin Valley Air Pollution Control Board – **Jason Roth, Representative and Gurpal Samra, Alternative.**
- Merced Integrated Regional Water Management Plan (MIRWMA) – **Jatinder Mann, Representative and Jason Roth, Alternate Representative.**

### **Maria Soto**

- Merced County Local Agency Formation Commission (LAFCO) – **Maria Soto, Representative.**
- Central Valley Division League of California Cities – **Maria Soto, Representative and Jason Roth, Alternate.**

### **Gurpal Samra**

- Merced County Mosquito Abatement District Board of Directors – **Gurpal Samra, Representative and Jason Roth, Alternate.**

**Jose Moran**

- Merced County Association of Governments (MCAG) Governing Board – **Jose Moran, Representative and Gurpal Samra, Alternate.**
- City Council Liaison - Parks, Recreation and Arts Commission – **Jose Moran.**
- Utility Stakeholders Committee – **Jose Moran and Gurpal Samra.**

**CONSENT AGENDA**

*Items on the Consent Calendar are considered routine or non-controversial and will be enacted by one vote, unless separate action is requested by a member of the public, the City Manager or City Council Member. There will be no separate discussion of these items unless members of the public, City Council or City Manager request that specific items be removed. Public comment on consent agenda items shall be limited to three (3) minutes per-person regardless of the number of items contained within the consent agenda.*

1. **RATIFY CHECK WARRANTS**  
Ratify Warrant Register Dated February 15, 2024.
2. **APPROVE MINUTES OF MEETING**  
Approval of Minutes of Meeting Held on February 28, 2023.
3. **APPROVE MINUTES OF MEETING**  
Approval of Minutes of Meeting Held on March 21, 2023 (Special Meeting).
4. **APPROVE MINUTES OF MEETING**  
Approval of Minutes of Meeting Held on March 21, 2023.
5. **Consideration of a Resolution Formalizing the Sister City Partnership Between the City of Churintzio, Michoacan, Mexico and the City of Livingston, California, United States of America.**  
Staff Recommendation: Approve Resolution.

**DISCUSSION AND POTENTIAL ACTION ITEMS**

6. **Consideration of a Resolution Approving a Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Waste Collection Services Between the City of Livingston and Gilton Solid Waste Management, Inc.** Staff Recommendation: Approve Resolution.
7. **Consideration of a Resolution Approving Appropriations and Amending the Fiscal Year 2023/2024 Budget and Budgeted Positions List.** Staff Recommendation: Approve Resolution.

**COUNCIL DIRECTION ON FUTURE AGENDA ITEMS**

**ADJOURNMENT**



The background of the slide is a light blue gradient with several realistic water droplets of various sizes scattered across it. The droplets have highlights and shadows, giving them a three-dimensional appearance.

# PUBLIC WORKS UPDATE

FEBRUARY 20, 2024

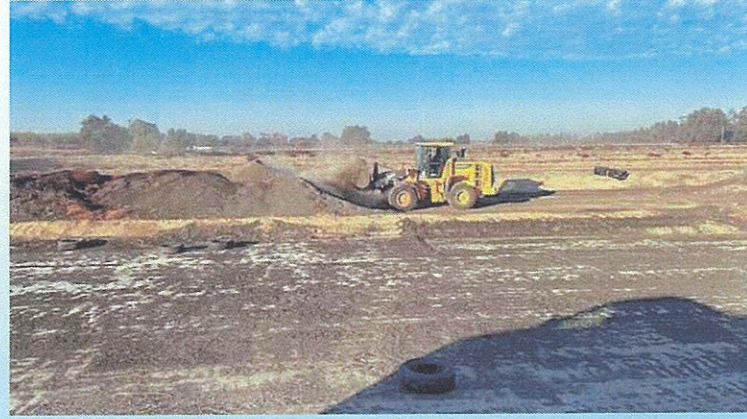


# CITY WIDE RED CURB PAINTING





# WWTP BIOSOLIDS REMOVAL



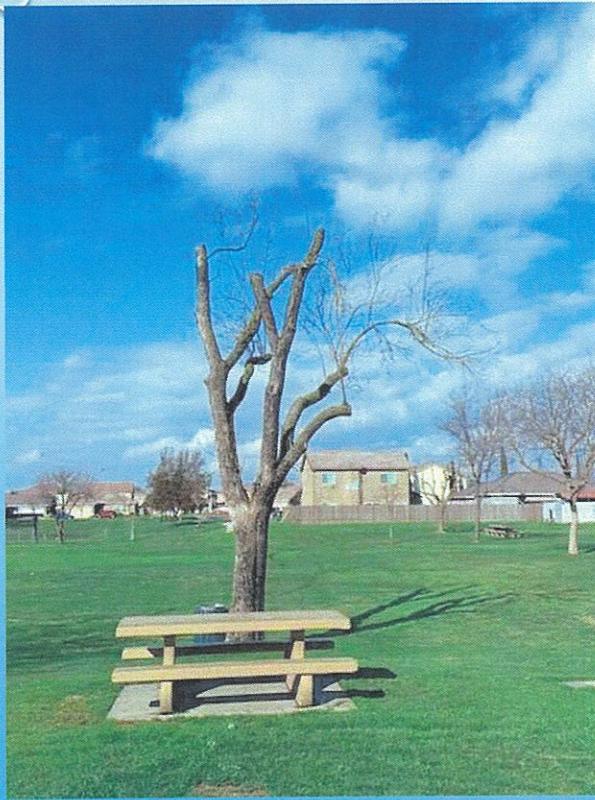


# PARKS TREE TRIMMING



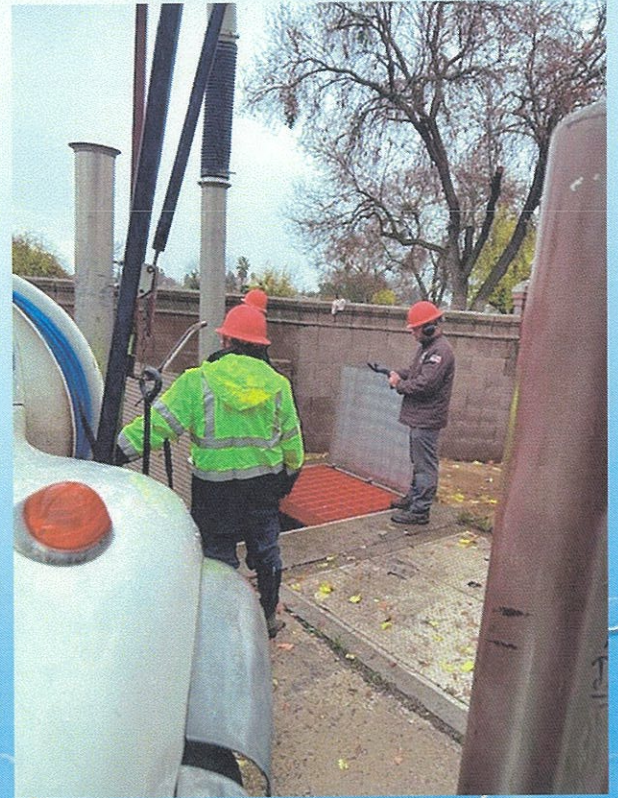


# PARKS TREE TRIMMING





# STORM DRAIN LIFT STATION CLEAN UP



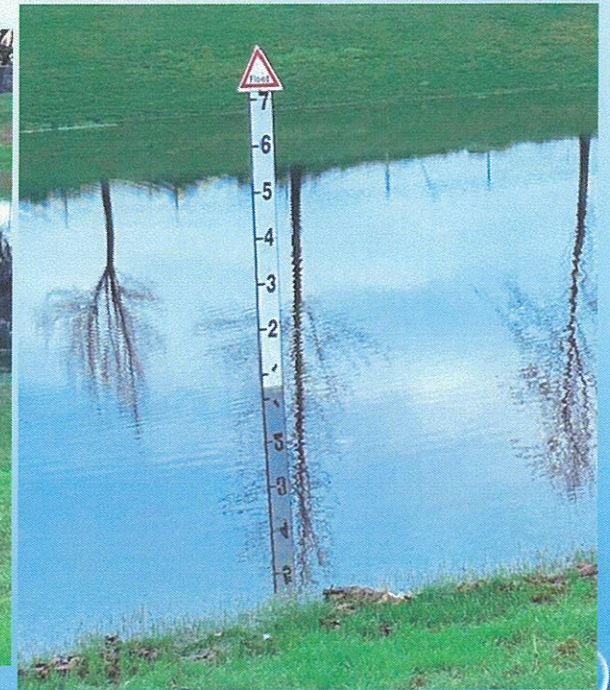


# STORM DRAIN LIFT STATION CLEAN UP



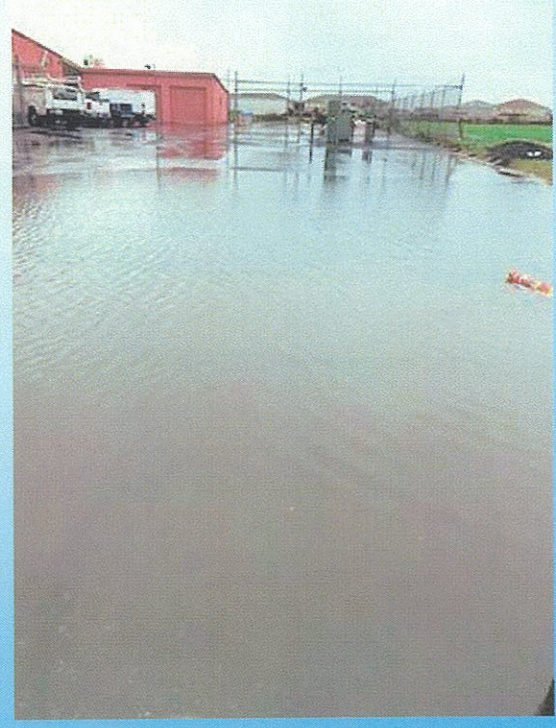
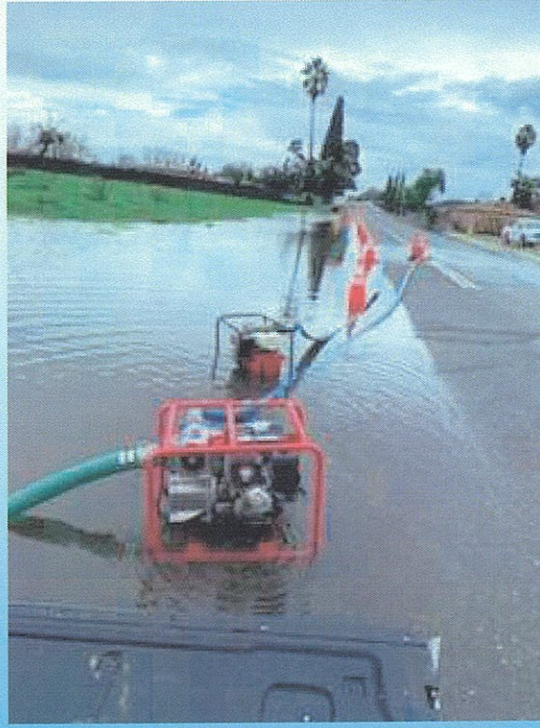
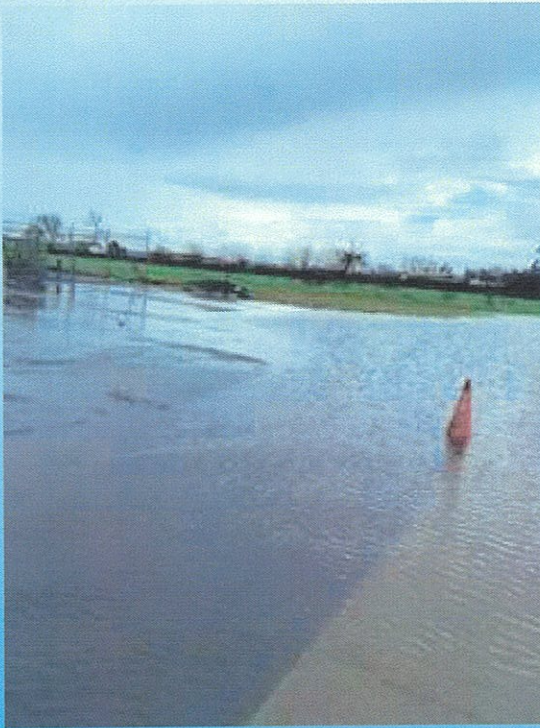


# CITY STORM BASINS



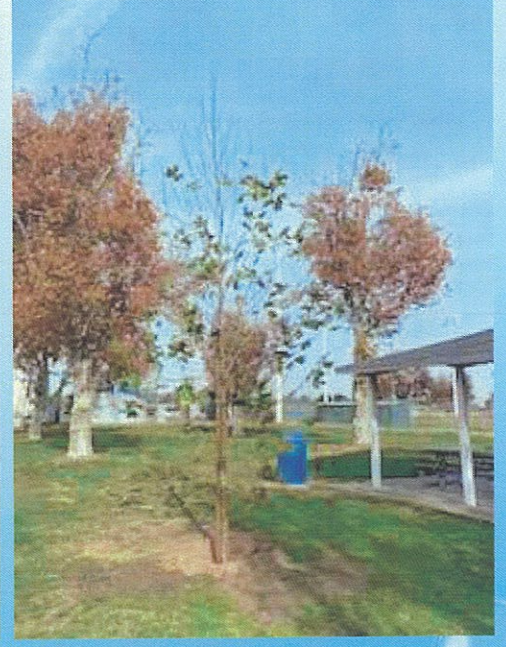
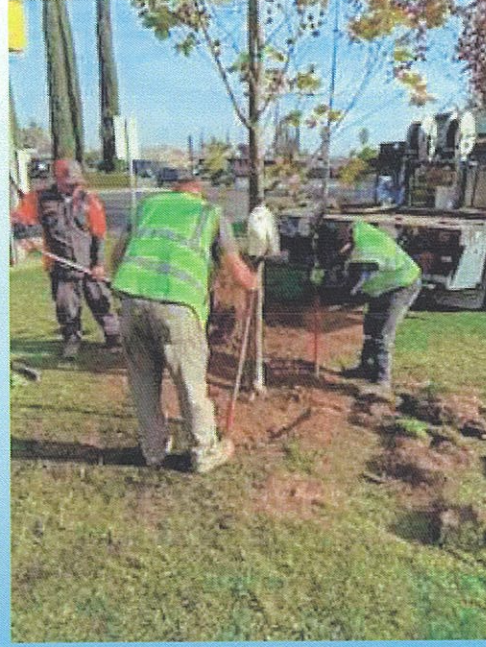
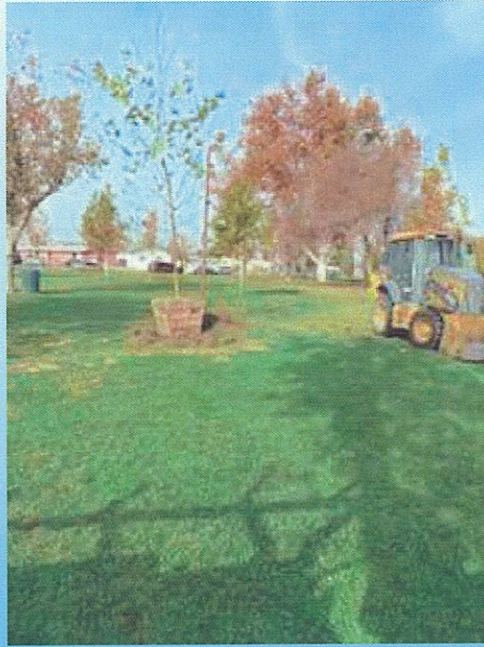
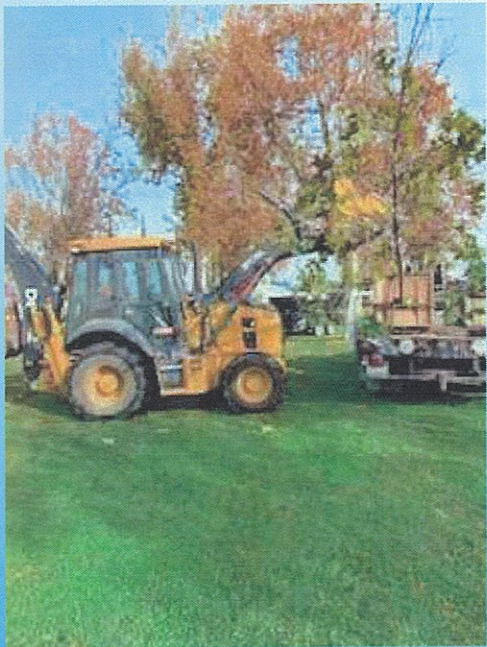


# RECENT STORM IMPACTS





# MEMORIAL PARK TREE PLANTING





# GRAFFITI UPDATE



# ONE YEAR C.I.P LIST

- WATER – NEW WELL 8A (REPLACEMENT FOR WELL 8)
  - CURRENTLY IN CONSTRUCTION, ANTICIPATED COMPLETION IS FALL OF 2024
- WASTEWATER – SLUDGE DRYING EQUIPMENT PURCHASE & INSTALLATION
  - CURRENTLY IN ELECTRICAL ENGINEERING REVIEW, ANTICIPATED COMPLETION WINTER OF 2024
- PARKS – CMAQ MULTI-USE PATHWAY PROJECTS PHASE 1 & 2 (MAX FOSTER SPORTS COMPLEX)
  - WILL GO OUT TO BID SOON, CONSTRUCTION TO START 2024
- STREETS – SLURRY SEAL PROJECT
  - 2023 SLURRY SEAL PROJECT HAS BEEN COMPLETED
- STORM – EAST AVENUE STORM PUMP STATION
  - CURRENTLY ENGINEERING IS IN DESIGN



**ANY QUESTIONS**







# STAFF REPORT

**AGENDA ITEM:** Warrant Register February 15, 2024  
**MEETING DATE:** February 20, 2024  
**PREPARED BY:** Nancy Fuentes, Accounting Technician  
**REVIEWED BY:** Christopher Lopez, Interim City Manager

**RECOMMENDATION:**

Ratify the warrant register dated February 15, 2024

**DISCUSSION:**

Government Code sections 37208(b) and 37209 provide that accounts payable warrants or checks drawn in payment of demands certified or approved by the finance director as conforming to a budget approved by ordinance or resolution of the legislative body need not be audited by the legislative body prior to payment.

In addition, Government Code section 37208(a) provides that payroll warrants or checks need not be audited by the legislative body prior to payment. Payrolls shall be presented to the legislative body for ratification and approval at the first meeting after delivery of the payroll warrants or checks. The sum total of any payroll checks issued within the week prior to the date of the check register is also noted on the accompanying check register.

The following checks have been certified to be in accordance with the City's approved budget. The checks have been issued and the check register is presented to the City Council for ratification:

**January 18, 2024 – February 15, 2024**

<b>GENERAL WARRANTS.....</b>	<b>\$</b>	<b>788,646.54</b>	<b>10474-10627</b>
<b>PAYROLL/WIRE WARRANTS.....</b>	<b>\$</b>	<b>487,740.07</b>	<b>3005-3046</b>
<b>TOTAL WARRANTS.....</b>	<b>\$</b>	<b>1,276,386.61</b>	

**ATTACHMENTS:**

Warrant Register (detailed by date and check number)



# Accounts Payable

## Checks by Date - Summary by Check Date

User: nfuentes  
 Printed: 2/15/2024 10:40 AM



**City of Livingston**  
 1416 C Street  
 Livingston, CA 95334

Check No	Vendor No	Vendor Name	Check Date	Check Amount
10474	251	ABS Direct, Inc.	01/29/2024	978.66
10475	705	Agserv Western Sales Inc.	01/29/2024	129.10
10476	493	David Aguilar	01/29/2024	45.00
10477	250	Alhambra	01/29/2024	477.11
10478	1307	Amazon Capital Services	01/29/2024	1,928.82
10479	282	AT&T Mobility	01/29/2024	2,118.52
10480	1338	Baker Tilly US, LLP	01/29/2024	5,000.00
10481	1153	Benchmark Roofing, Inc.	01/29/2024	150.00
10482	1381	Brink's Incorporated	01/29/2024	779.30
10483	193	BSK Associates	01/29/2024	6,434.75
10484	909	Canon Financial Services, Inc.	01/29/2024	331.89
10485	914	Cintas Corporation No. 2	01/29/2024	151.32
10486	291	City of Livingston c/o L & L District Irrigati	01/29/2024	6,268.10
10487	1239	Clark Pest Control of Stockton, Inc.	01/29/2024	92.00
10488	293	Department of Justice Accounting Office	01/29/2024	565.00
10489	491	Dutchman Drains & Plumbing Inc.	01/29/2024	875.00
10490	163	EZ Auto Supply	01/29/2024	124.32
10491	641	Ferguson Enterprises LCC #686	01/29/2024	21.61
10492	188	Frontier	01/29/2024	2,518.70
10493	387	Frontier Communications Corp Frontier Co	01/29/2024	664.01
10494	727	Garton Tractor, Inc	01/29/2024	233.32
10495	164	Garza Tire & Wheel, Inc	01/29/2024	218.98
10496	262	Gilton Solid Waste	01/29/2024	11,900.35
10497	356	Gouveia Engineering, Inc.	01/29/2024	52,820.59
10498	501	Hunt & Sons, Inc.	01/29/2024	9,439.52
10499	165	J L Analytical Services, Inc.	01/29/2024	31.00
10500	464	Johnson Controls Fire Protection LP	01/29/2024	802.91
10501	1404	Lozano Smith	01/29/2024	552.50
10502	269	Merced Pest Control	01/29/2024	80.00
10503	389	Mid Valley IT	01/29/2024	6,075.00
10504	180	Mission Linen Service	01/29/2024	1,112.87
10505	270	Modern Air Mechanical	01/29/2024	1,079.00
10506	194	Modesto Welding Products	01/29/2024	24.00
10507	507	Muniquip,LLC	01/29/2024	662.88
10508	199	Northstar Chemical	01/29/2024	2,828.10
10509	302	Office Depot, Inc./ODP Business Solutions.	01/29/2024	1,010.22
10510	1147	PAC Machine Company, INC.	01/29/2024	28,036.80
10511	203	PG&E	01/29/2024	511.49
10512	430	Quadient Finance USA, Inc.	01/29/2024	1,549.41
10513	433	Razzari Ford	01/29/2024	351.71
10514	265	Resourceability	01/29/2024	891.69
10515	208	Saenz Pest Control, Inc.	01/29/2024	127.00
10516	407	San Joaquin Valley Air Pollution Control D	01/29/2024	290.00
10517	439	Sharpening Shop	01/29/2024	21.00
10518	307	Shred-It, C/O Stericycle, Inc.	01/29/2024	337.85
10519	309	St. Francis Electric	01/29/2024	475.00
10520	875	Taylor ER Veterinary Emergency Hospital	01/29/2024	334.00



Check No	Vendor No	Vendor Name	Check Date	Check Amount
10521	692	Tesco Controls, Inc.	01/29/2024	1,960.50
10522	1117	The Sherwin Williams Co. Store 708616	01/29/2024	249.32
10523	313	U.S. Bank Equipment Finance	01/29/2024	633.02
10524	366	USABlueBook	01/29/2024	514.94
10525	314	Valley Coffee & Water	01/29/2024	8.00
10526	367	Verizon Wireless	01/29/2024	1,710.82
10527	486	Sunil Verma DC	01/29/2024	100.00
Total for 1/29/2024:				156,627.00
10528	434	AFSCME District Council 57	01/30/2024	534.38
10529	320	California Building Standards Commission	01/30/2024	199.80
10530	393	California State Disbursement Unit	01/30/2024	893.06
10531	UB*02060	CATAMOUNT PROPERTIES 2018, LLC	01/30/2024	301.00
10532	UB*02059	MA DE LOURDES COLIN PALOMINOS	01/30/2024	3.76
10533	321	Department of Conservation Division of Ad	01/30/2024	632.17
10534	319	Division of The State Architect	01/30/2024	9.20
10535	612	Livingston Peace Officers Association	01/30/2024	1,854.50
10536	437	Operating Engineers Local 3	01/30/2024	371.00
10537	438	Operating Engineers Local Union No.3	01/30/2024	621.00
10538	405	Premier Access Insurance Company	01/30/2024	2,909.70
10539	UB*02058	NANCY ROMERO	01/30/2024	287.12
10540	598	Standard Insurance Company RB	01/30/2024	2,784.69
10541	1284	State of California	01/30/2024	65.08
10542	UB*02061	J. TREADWELL	01/30/2024	25.00
Total for 1/30/2024:				11,491.46
10543	1414	Veronica Acosta	02/09/2024	345.00
10544	747	All Star Elite Sports	02/09/2024	3,561.13
10545	252	Allways Towing	02/09/2024	600.00
10546	1307	Amazon Capital Services	02/09/2024	1,972.80
10547	472	Aqua-Metric Sales Company	02/09/2024	7,571.83
10548	193	BSK Associates	02/09/2024	4,828.00
10549	1100	CAL FIRE	02/09/2024	2,952.04
10550	1412	Gregory Castro	02/09/2024	150.00
10551	272	Charter Communications Holdings, LLC	02/09/2024	207.41
10552	291	City of Livingston c/o L & L District Irrigati	02/09/2024	5,243.82
10553	1239	Clark Pest Control of Stockton, Inc.	02/09/2024	163.00
10554	1308	CSG Consultants, Inc.	02/09/2024	23,296.78
10555	1089	DAHLIN GROUP	02/09/2024	3,260.00
10556	1076	Julissa Del Toro	02/09/2024	150.00
10557	455	Ernest Packaging Solutions	02/09/2024	3,001.24
10558	1413	Melisa Espindola	02/09/2024	425.00
10559	295	Ferguson Waterworks #1423	02/09/2024	1,749.00
10560	260	First Communications, LLC	02/09/2024	13.70
10561	481	Four Star Body And Frame	02/09/2024	1,669.92
10562	758	Raymond Freitas	02/09/2024	150.00
10563	188	Frontier	02/09/2024	1,990.94
10564	164	Garza Tire & Wheel, Inc	02/09/2024	160.00
10565	1409	Humberto Gonzales	02/09/2024	150.00
10566	356	Gouveia Engineering, Inc.	02/09/2024	37,052.13
10567	505	GovInvest, Inc.	02/09/2024	2,000.00
10568	1098	Granite Construction Company	02/09/2024	2,775.64
10569	425	HdL Coren & Cone	02/09/2024	1,500.00
10570	1384	HF&H Consultants, LLC	02/09/2024	15,477.50
10571	811	Pete Hulse, DVM, Pa Hilmar Animal Hospi	02/09/2024	446.00



Check No	Vendor No	Vendor Name	Check Date	Check Amount
10572	267	Hoffman Security	02/09/2024	36.95
10573	501	Hunt & Sons, Inc.	02/09/2024	5,991.82
10574	165	J L Analytical Services, Inc.	02/09/2024	35.00
10575	786	J.B, Anderson Land Use Planning	02/09/2024	543.00
10576	570	Jocelyn E. Roland, Ph.D., ABPP	02/09/2024	475.00
10577	1130	Kellogg Supply	02/09/2024	2,462.54
10578	318	La Rue Communications	02/09/2024	1,941.00
10579	268	Language Line Services, Inc.	02/09/2024	266.96
10580	228	League of California Cities	02/09/2024	6,884.57
10581	1227	James Linan Jr	02/09/2024	150.00
10582	1404	Lozano Smith	02/09/2024	758.75
10583	615	McClatchy Company LLC	02/09/2024	237.28
10584	389	Mid Valley IT	02/09/2024	12,536.73
10585	180	Mission Linen Service	02/09/2024	443.25
10586	431	Monte Vista Small Animal Hospital	02/09/2024	1,866.88
10587	197	N & S Tractor	02/09/2024	604.45
10588	199	Northstar Chemical	02/09/2024	5,667.39
10589	949	Nova Heating and Air Conditioning	02/09/2024	879.75
10590	302	Office Depot, Inc./ODP Business Solutions.	02/09/2024	39.67
10591	1147	PAC Machine Company, INC.	02/09/2024	4,968.33
10592	203	PG&E	02/09/2024	482.77
10593	433	Razzari Ford	02/09/2024	208.58
10594	265	Resourceability	02/09/2024	2,929.02
10595	1407	Lalo Rosquites	02/09/2024	150.00
10596	450	S & A Manufacturing	02/09/2024	148.57
10597	386	S & N Auto Services, INC.	02/09/2024	100.00
10598	499	Safety-Kleen Systems, Inc.	02/09/2024	840.94
10599	691	Seegers Printing	02/09/2024	124.49
10600	739	Self- Help Enterprises	02/09/2024	22,025.15
10601	589	Shannon Pump Co.	02/09/2024	10,851.00
10602	307	Shred-It, C/O Stericycle, Inc.	02/09/2024	582.77
10603	624	Smith Chevrolet Cadillac, Inc.	02/09/2024	269.42
10604	323	Springbrook Holding Company LLC	02/09/2024	1,999.00
10605	309	St. Francis Electric	02/09/2024	594.00
10606	526	State Water Resources Control Board	02/09/2024	60.00
10607	1068	Steele Public Safety Systems	02/09/2024	2,591.82
10608	1388	Straight Edge Roofing Inc.	02/09/2024	5,490.00
10609	527	SWRCB Accounting Office	02/09/2024	25,208.08
10610	383	The Bank of New York Mellon Trust Comp	02/09/2024	334,725.00
10611	249	United Site Services	02/09/2024	566.02
10612	1411	Jessica Valadez	02/09/2024	345.00
10613	1150	Jack Berry Valley 29 Electric, LLC	02/09/2024	1,201.19
10614	314	Valley Coffee & Water	02/09/2024	72.50
10615	315	Valley Entry Systems, Inc.	02/09/2024	427.33
10616	1204	Valley Sanitation & Rentals LLC	02/09/2024	545.67
10617	1159	Maria Villegas	02/09/2024	150.00
10618	296	Visual Edge IT, Inc	02/09/2024	1,068.19
10619	210	WGR Southwest, Inc.	02/09/2024	1,171.79
10620	409	Willdan Financial Services	02/09/2024	20,000.00
Total for 2/9/2024:				604,580.50
10621	393	California State Disbursement Unit	02/12/2024	893.06
10622	UB*02064	DYLAN & SALEM GARCIA	02/12/2024	3.76
10623	UB*02062	MANUEL MORENO	02/12/2024	78.51
10624	UB*02065	SALVADOR & RUTH SOLORIO	02/12/2024	0.06
10625	UB*02063	LUIS & ANA SOTO	02/12/2024	62.22



Check No	Vendor No	Vendor Name	Check Date	Check Amount
10626	1284	State of California	02/12/2024	65.08
Total for 2/12/2024:				1,102.69
10627	422	U.S. Bank Corporate Payment Systems	02/15/2024	14,844.89
Total for 2/15/2024:				14,844.89
Report Total (154 checks):				788,646.54





## MEETING MINUTES

### **SPECIAL MEETING LIVINGSTON CITY COUNCIL FEBRUARY 28, 2023**

A Special Meeting of the Livingston City Council was held on February 28, 2023, in the Council of Chambers, with Mayor Moran presiding.

#### **CALL TO ORDER**

Mayor Moran called the meeting to order at 5:34 p.m.

#### **ROLL CALL**

- Mayor Jose A. Moran
- Mayor Pro Tem Gurpal Samra
- Council Member Maria Baptista-Soto
- Council Member Jason Roth
- Council Member Jatinder Mann

#### **PLEDGE OF ALLEGIANCE**

The pledge of allegiance to the flag was recited.

#### **CHANGES TO THE AGENDA**

None.

#### **CITIZEN COMMENTS**

Mayor Moran opened and closed Citizen Comments at 5:37 p.m. as there were no comments from the public.

#### **EDUCATIONAL WORKSHOP**

1. Status of Current and Future Water Projects.



City Engineer Mario Gouveia and Senior Engineer Nick Fontaine introduced this item. Mr. Gouveia gave a PowerPoint presentation on water supply update, Integrated Regional Water Management Project-Merced Irrigation District Partnership, 1,2,3- Trichloropropane Progress, new wells, water line replacements, and project summary.

There was a brief discussion between the Council and staff on the status of current and future water projects.

Mayor Moran opened and closed public comments at 6:39 p.m. as there were no comments from the public.

Mayor Moran re-opened public comments at 6:46 p.m.

Public Comment:

Attendee (did not state name)

City Engineer Gouveia responded to public comment.

Mayor Moran closed public comments at 6:47 p.m. as there were no further comments from the public.

**ADJOURNMENT**

The special meeting was adjourned by consensus at 6:48 p.m.

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City Clerk of the City of Livingston

APPROVED:

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Mayor or Mayor ProTempore

*The written meeting minutes reflect a summary of specific actions taken by the City Council. They do not necessarily reflect all of the comments or dialogue leading up to the action. All meetings are digitally recorded and are an official record of the meeting's proceedings. Digitally recorded verbatim minutes are available, upon request, and may be obtained at Livingston City Hall.*





## MEETING MINUTES

### **SPECIAL MEETING LIVINGSTON CITY COUNCIL MARCH 21, 2023**

A Special Meeting of the Livingston City Council was held on March 21, 2023, in the Council of Chambers, with Mayor Moran presiding.

#### **CALL TO ORDER**

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

#### **ROLL CALL**

- Mayor Jose A. Moran
- Mayor Pro Tem Gurpal Samra (Absent)
- Council Member Maria Baptista-Soto
- Council Member Jason Roth
- Council Member Jatinder Mann

#### **PLEDGE OF ALLEGIANCE**

The pledge of allegiance to the flag was recited.

#### **CHANGES TO THE AGENDA**

None.

#### **CITIZEN COMMENTS**

Mayor Moran opened and closed Citizen Comments at 6:02 p.m. as there were no comments from the public.

#### **CLOSED SESSION**

1. Conference with Labor Negotiators (Gov. Code, section 54957.6)  
City Negotiators: Christopher Lopez, Arcelia Cruz, Christina Pritchard  
Employee Organizations:



OE3 Police Supervisory Employees Association  
OE3 Livingston Police Officer Association  
OE3 Management/Confidential Bargaining Unit  
OE3 Clerical Bargaining Unit  
AFSCME Public Works and Park Unit

2. Public Employment (Gov. Code, section 54957)  
Title: City Attorney
3. THREAT TO PUBLIC SERVICES OR FACILITIES (Gov. Code section 54957) Consultation  
with: City Attorney

The Council went into closed session at 6:03 p.m.

#### **CLOSED SESSION ANNOUNCEMENTS**

Direction was given to staff.

#### **ADJOURNMENT**

The special meeting was adjourned by consensus at 7:19 p.m.

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City Clerk of the City of Livingston

APPROVED:

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Mayor or Mayor ProTempore

*The written meeting minutes reflect a summary of specific actions taken by the City Council. They do not necessarily reflect all of the comments or dialogue leading up to the action. All meetings are digitally recorded and are an official record of the meeting's proceedings. Digitally recorded verbatim minutes are available, upon request, and may be obtained at Livingston City Hall.*





## MEETING MINUTES

### REGULAR MEETING LIVINGSTON CITY COUNCIL March 21, 2023

A Regular Meeting of the Livingston City Council was held on March 21, 2023, in the City Council Chambers with Mayor Moran presiding.

#### REGULAR MEETING

Mayor Moran called the meeting to order at 7:24 pm.

#### PLEDGE OF ALLEGIANCE

The pledge of allegiance to the flag was recited.

#### ROLL CALL

- Mayor Jose A. Moran
- Mayor Pro Tem Gurpal Samra (Absent)
- Council Member Maria Baptista-Soto
- Council Member Jason Roth
- Council Member Jatinder Mann

#### CHANGES TO THE AGENDA

Council Member Roth requested that item 19 be tabled for the next meeting so that all Council Members could be present.

Mayor Moran noted that public comment would be taken for item number 19.

Motion: M/S Roth/Mann to table item 19 to the next meeting. The motion carried 4-0-1 by the following roll call vote:

AYES: Council Members: Roth, Mann, Soto, and Moran  
NOES: Council Members: None  
ABSENT: Council Members: Samra



## **CITIZEN COMMENTS**

Mayor Moran opened Citizen Comments at 7:27 p.m.

### Citizen Comments by Teleconference:

Tillie Fennessey

Mayor Moran responded to citizen comments.

Mayor Moran closed Citizen Comments at 7:30 p.m. as there were no further comments from the public.

## **AWARD, PRESENTATIONS, PROCLAMATIONS**

1. Presentation by Mayor Moran: Recognition of LHS Boys Soccer Team.  
Mayor Moran introduced this item.

### Public Comments:

Attendee (did not state name)

Principal Charles Jolly

Merced County Supervisor Rodrigo Espinoza

Attendee (did not state name)

Mayor Moran presented a certificate of recognition to the Livingston Wolves Boys Varsity Soccer Team Head Coach Francisco Hernandez, Assistant Coach Jorge Carmona, Salvador Salazar, Marco Sobrevilla, and Luis Ruiz. Mr. Moran also presented a certificate of recognition to Kevin Valazquez, Luis Sandoval, Oliver Sanchez, Ricardo Partida, Jose Valencia, Eden Sandoval, Damian Mireles, Jose Valencia, Eden Sandoval, Damian Mireles, Jose Mendoza, Anthony Maldonado, Juan Reynoso, Luis Salazar, David Lozano, Alexander Moreno, Heath Edwards, Alberto Altamirano, Alejandro Avila, Alan Millan, Gerardo Torres, Jerry Fierro, Yonatan Cervantes, Diego Millan, Gabriel Montes, Julian Barajas, Phrabshan Mahal, Fernando Garcia, and Israel Mujica.

Alejandro Carrillo, Representative of Assemblywomen Esmeralda Soria, presented a certificate of recognition to the Livingston High School Boys Varsity Soccer Team.

Council Member Soto presented a certificate of recognition to the Livingston High School Varsity Boys Soccer Team on behalf of Senator Ana Caballero.

At 7:48 p.m., Mayor Moran called for a brief recess.

At 8:02 p.m., the meeting was reconvened.

## **ANNOUNCEMENTS AND REPORTS**

Supervisor Rodrigo Espinoza Announcements and Reports.

Merced County Supervisor Rodrigo Espinoza gave a report.

City Staff Announcements and Reports.

- Public Works, Director Anthony Chavarria –Spring Collection Event
- City Planner, Miguel Galvez –Reporting of March 14, 2023, Planning Commission Actions
- Recreation Superintendent Jacquie Benoit – Swimming Pool Update and Color Run Update



City staff responded to Council questions.

City Manager Announcements and Reports.

No Report.

City Council Members' Announcements and Reports.

- Council Member Mann
- Council Member Roth
- Council Member Soto

Mayor's Announcements and Reports.

- Mayor Moran

City Attorney Announcements and Reports

- City Attorney-MCAG MOU

### **Jatinder Mann**

#### **Jason Roth**

- City Council Liaison - Livingston Planning Commission – **Jason Roth**
- Special City Selection Committee of the San Joaquin Valley Air Pollution Control Board – **Jason Roth, Representative and Gurpal Samra, Alternative.**

#### **Maria Soto**

- Merced County Local Agency Formation Commission (LAFCO) – **Maria Soto, Representative.**
- Central Valley Division League of California Cities – **Maria Soto, Representative and Jason Roth, Alternate.**

#### **Gurpal Samra**

- Merced County Mosquito Abatement District Board of Directors – **Gurpal Samra, Representative and Jason Roth, Alternate.**

#### **Jose Moran**

- Merced County Association of Governments (MCAG) Governing Board – **Jose Moran, Representative and Gurpal Samra, Alternate.**
- City Council Liaison - Parks, Recreation and Arts Commission – **Jose Moran**
- Utility Stakeholders Committee – **Jose Moran and Gurpal Samra**

## **CONSENT AGENDA**

1. WAIVING OF READING OF ORDINANCE AND RESOLUTIONS  
City Council Waive the Reading in Full of Ordinances and Resolutions on Agenda and Adopt by Reading the Title only, Unless Otherwise Requested by the Mayor or a Council Member
3. RATIFY CHECK WARRANTS  
Ratify Warrant Register Dated February 27, 2023.
4. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on September 6, 2022



5. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on September 20, 2022
6. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on October 18, 2022
7. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on November 15, 2022
8. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on November 29, 2022
9. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on December 6, 2022 (regular meeting)
10. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on December 6, 2022 (special meeting)
11. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on January 17, 2023
12. APPROVAL OF MEETING MINUTES  
Approval of Minutes of Meeting Held on January 24, 2023
13. Resolution Awarding a Contract to TBS Contractors for Main Street Sidewalk Repair and Authorizing the Interim City Manager to Execute an Agreement
14. Resolution Awarding the City of Livingston, I Street Water Main and Asphalt Repair Project to Rolfe Construction and Authorizing the Interim City Manager to Execute an Agreement
15. Approve an Extension to the Contract with Gouveia Engineering, Inc. for On-Call Engineering Services for Federally Funded Transportation Projects for the City of Livingston and Authorizing the Interim City Manager to Execute the Extension Amendment.

Motion: M/S Mann/Roth to approve the consent agenda. The motion carried 4-0-1 by the following roll call vote:

AYES: Council Members: Roth, Mann, Soto, and Moran.

NOES: Council Members: None

ABSENT: Council Members: Samra

Mayor Moran opened and closed Public Comments at 8:35 p.m. as there were no comments from the public.

## **PUBLIC HEARINGS**

16. First Reading and Introduction of Ordinance Amending Livingston Municipal Code, Title 7, Chapter 4, Section 16, Titled Administrative Penalties in Regards to Illegal Aerial Fireworks, By Ordinance Adopt a Policy for the Issuance of Administrative Fines for Violations.  
CONTINUED TO APRIL 4, 2023 REGULAR CITY COUNCIL MEETING.



Mayor Moran opened and closed Public Hearing at 8:36 p.m. as there were no public comments from the public.

## DISCUSSION AND POTENTIAL ACTION ITEMS

17. First Reading and Introduction of Ordinance Amending Title 4, Chapter 1 of the Livingston Municipal Code, Repealing Ordinance No. 642 and Replacing Livingston Municipal Code Title 4, Chapter 1, "Building Administration Codes" to Adopt the 2022 California Building Code, 2022 Mechanical Code, 2021 International Property Maintenance Code, 2022 California Mechanical Code, 2021 International Property Maintenance Code, 2022 California Plumbing Code, 2022 California Electrical Code, 2022 California Historical Building Code, 2022 Energy Code, 2022 California Green Building Code, 2022 California Fire Code, and 2022 California Residential Building Code and All Appendices attached and to Set a Public Hearing for April 18, 2023, at 7:00 p.m. To Waive the Second Reading and Adopt the Ordinance

Contract City Planner Miguel Galvez introduced this item.

Motion: M/S Roth/Mann to approve the introduction of First Reading and set a Public Hearing for April 18, 2023 at 7:00 p.m. The motion carried 4-0-1 by the following roll call vote:

AYES: Council Members: Roth, Mann, Soto, and Moran.

NOES: Council Members: None

ABSENT: Council Members: Samra

18. Discussion and Direction on the Fourth of July Event

Recreation Superintendent Benoit introduced this item and responded to Council questions.

Public Comments:

Attendee (did not state name)

There was a lengthy discussion between the Council, staff, and attendee Julio Valadez regarding the 4th of July event.

The Council directed staff to bring back the item with two contracts for regular fireworks and drone fireworks and provide information on the cost, revenue, and donations received for the event.

Mayor Moran opened and closed public comment at 9:03 p.m. as there were no comments from the public.

19. Discussion and Possibly Make City Council Appointments to City Boards, Commissions and Committees:
  - a. Member/Alternate – Merced County Association of Governments (MCAG) Governing Board. (Currently: Mayor Moran, Representative, Mayor Pro-Tem Samra, Alternate).
  - b. Member- Merced County Local Agency Formation Commission (LAFCO). (Currently: Council Member Soto).
  - c. Representative/Alternate – Central Valley Division League of California Cities.



- (Currently: Council Member Soto, Representative, Council Member Roth, Alternate).
- d. Member/Alternate – Merced County Mosquito Abatement District Board of Directors. (Currently: Mayor Pro-Tem Samra, Representative, Council Member Roth, Alternate).
- e. Representative/Alternate – Special City Selection Committee of the San Joaquin Valley Air Pollution Control Board. (Currently: Council Member Roth, representative, Mayor Pro-Tem Samra, Alternate).
- f. Representative/Alternate – Merced Integrated Regional Water Management Plan (MIRWMA). (Currently: Mayor Pro-Tem Samra, Representative, Juan Aguilar Alternate).
- g. City Council Liaison – Livingston Planning Commission. (Currently: Council Member Roth).
- h. City Council Liaison – Parks, Recreation and Arts Commission (Currently: Mayor Moran).
- i. Two City Council Representatives – Utility Rate Stakeholders Committee (Currently: Council Member Moran and Mayor Pro-Tem Samra).

Agenda item 19 was tabled for the next City Council meeting.

Mayor Moran opened and closed Public Comments at 9:22 p.m. as there were no comments from the public.

**COUNCIL DIRECTION ON FUTURE AGENDA ITEMS**

None.

**ADJOURNMENT**

The meeting was adjourned by consensus at approximately 9:26 p.m.

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City Clerk of the City of Livingston

APPROVED:

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Mayor or Mayor Pro Tempore

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## STAFF REPORT

**AGENDA ITEM:** Churintzio, Michoacan, Mexico Sister Cities Agreement and Partnership

**MEETING DATE:** February 20, 2024

**PREPARED BY:** Christopher Lopez, Interim City Manager

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### **RECOMMENDATION:**

Staff recommends council adopt the resolution formalizing the Sister City partnership with Churintzio, Michoacan, Mexico.

### **BACKGROUND:**

The Sister City concept originated in 1956 shortly after the end of the World War II and during Eisenhower's presidential administration. Shortly thereafter, a worldwide network of Sister Cities began to take shape to help rebuild, create, and foster nation to nation relationships aimed at fostering worldwide harmony. Out of this initial concept the Sister Cities International organization was formed, which helped in organizing and establishing Sister Cities across the globe. Sister Cities International is a nonpartisan 501(c)(3) nonprofit which serves as the national membership organization for individual sister cities, counties, and states across the United States. The network unites tens of thousands of citizen diplomats and volunteers in nearly 500 member communities with over 2,000 partnerships in more than 140 countries.

As a hub for institutional knowledge and best practices in the field of citizen diplomacy, the organization works to strengthen the network across sister cities by providing essential services programs, and resources to help members find partners as well as expand and improve activities.

Within the last ten years, previous Mayors and Councilmembers have participated in sister city visits with Churintzio, Michoacan, Mexico, and staff is recommending that the Mayor and City Council adopt a resolution formally recognizing the relationship with Churintzio, Michoacan, Mexico.

### **DISCUSSION:**

Prior to 2023, the City of Livingston has participated in a sister city relationship with Zapotlanejo, Jalisco, Mexico, Jalostotitlan, Jalisco, Mexico, and Churintzio, Michoacan, Mexico to varying degrees. In the spring of 2023, the City of Livingston received word that Zapotlanejo was interested in restarting the sister city partnership and to learn more about the community of Livingston since it had been many years since the partnership had been initially formed. After restarting this partnership, the City received word that Jalostotitlan was also interested in reviving and reestablishing the relationship with the City of Livingston. During this same time, the City received word that Churintzio, Michoacan, Mexico was also interested in formalizing the agreement with Livingston.



In September 2023, the Mayor and City Council formally adopted a resolution approving the formal sister city relationship with Zapotlanejo, Jalisco, Mexico. The city also renewed its membership in the Sister Cities International organization. In December of 2023, the Mayor and City Council formalized its partnership with Jalostitlan, Jalisco, Mexico. This item seeks to formally adopt the sister city partnership with Churintzio, Michoacan, Mexico since a review of previous council action does not show any formal agreement with Churintzio.

Staff is recommending that the City Council formally adopt the attached resolution to solidify the sister city relationship with Churintzio, Michoacan, Mexico.

The core areas in which each community will serve to enhance its understanding of one another will be rooted in the following areas:

- Promoting the agricultural importance in both cities, building on the recent information exchange involving new produce and operations in the Central Valley
- Working together to promote opportunities to exchange information related to public safety improvements including training opportunities for personnel
- Raising awareness of business opportunities available to companies in both cities including opportunities related to business expansion in both countries
- Exchanging knowledge and sharing best practices in sustainability
- To collaborate and support one another by enabling growth and attracting investment

**FISCAL IMPACT:**

There is no cost associated with the adoption of the resolution. Travel for future visits will be included in the respective budget for Council approval.

**ATTACHMENTS:**

1. Resolution



**RESOLUTION NO. 2024-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON  
FORMALIZING THE SISTER CITY PARTNERSHIP BETWEEN THE CITY OF  
CHURINTZIO, MICHOACAN, MEXICO AND THE CITY OF LIVINGSTON,  
CALIFORNIA, UNITED STATES OF AMERICA**

**WHEREAS**, American cities have established several hundreds of sister-city relationships with cities and towns throughout the world as evidence of the goodwill and friendly intentions of the United States of America; and

**WHEREAS**, the City of Livingston has already begun to establish sister-city understandings with foreign communities with which it enjoys mutual respect; and

**WHEREAS**, the City of Livingston has a prominent and rich history of diverse and cultural ties to the Mexican country and has widespread affection in the hearts of many residents of this city; and

**WHEREAS**, the City of Livingston and Churintzio are eager to see closer friendship and understanding between our communities; and

**WHEREAS**, the City Council desires to seek a deeper understanding of one another in promoting the agricultural importance in both cities, working together to promote opportunities to exchange information related to public safety improvements including training opportunities for personnel, raising awareness of business opportunities available to companies in both cities including opportunities related to business expansion in both countries, exchanging knowledge and sharing best practices in sustainability, and to collaborate and support one another by enabling growth and attracting investment.

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

Section 1. The City Council does hereby approve the sister city relationship with the City of Churintzio, Michoacan, Mexico.

Section 2. This Resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 20<sup>th</sup> day of February, 2024, by the vote recorded as follows:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
of City of Livingston

ATTEST

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Roy C. Santos, City Attorney





## STAFF REPORT

**AGENDA ITEM:** Consideration of a Resolution Approving a Franchise Agreement for Solid Waste, Recyclable Materials, and Organic Waste Collection Services between the City of Livingston and Gilton Solid Waste Management, Inc.

**MEETING DATE:** February 20, 2024

**PREPARED BY:** Anthony Chavarria, Director of Public Works

**REVIEWED BY:** Christopher Lopez, Interim City Manager

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### **RECOMMENDATION:**

Staff recommends that the City Council:

- (1) Adopt a Resolution of the City Council of the City of Livingston Approving a Franchise Agreement to Gilton Solid Waste Management, Inc. for Solid Waste, Recyclables Materials and Organic Waste Collection Services.
- (2) Authorize the Interim City Manager to execute said agreement.

### **BACKGROUND:**

The current Solid Waste Collection Agreement between the City of Livingston and Gilton Solid Waste Management, Inc. (Gilton) will terminate on March 1, 2024. To adequately update the current Franchise Agreement to comply with State laws, City Staff released a Request for Proposals for an Agreement for Solid Waste, Recyclable Materials, and Organic Waste Collection Services (New Franchise Agreement). A significant focus of the scope of the RFP was how the hauler would assist the City in complying with the state mandates and CalRecycle regulations governing management of recyclable materials and organic waste. Assembly Bill 341 (AB 341) mandates that all commercial customers participate in a recyclable diversion program. Senate Bill 1383 (SB 1383) mandates that all customers must actively participate in an organic waste diversion program to substantially reduce organic waste being sent to landfills. Non-participation in organic waste or recyclable materials diversion programs may result in fines for the City and/or residents and businesses. The new recycling and organic recycling programs, included in the New Franchise Agreement, are both key aspects of meeting state regulatory compliance mandates and are not negotiable.

The City released an RFP for Collection Services on December 2, 2022. The following three service providers submitted proposals:

1. Gilton Solid Waste Management, Inc (Gilton)
2. Mid Valley Disposal (Mid Valley)
3. Modesto Garbage Company, Inc (WM)

The City subsequently contracted with HF&H Consultants, LLC (HF&H) to assist the City as technical advisors in evaluating the proposals received, providing their thoughts on the proposals and items for negotiation, requesting additional information to assist the evaluation, and ultimately evaluating the proposals. An evaluation team made up of City Staff and HF&H evaluated the three proposals. The evaluation team performed reviews of the technical and rate proposals received from the three proposers. Additionally, HF&H performed reference checks of all three proposers and requested clarifying responses





from each proposer based on their submitted proposals. The service providers were evaluated based off of their technical and rate proposals, references, and responses to the clarifying questions. Based on the proposals, references, clarifying responses, and overall experience as the incumbent service provider, the evaluation committee ranked Gilton as the top-ranked company.

As the incumbent collection and processing service provider for the City of Livingston for the last thirty-eight (38) years, Gilton Solid Waste Management, Inc. stated that they will take full responsibility for meeting all performance requirements in the New Franchise Agreement and will continue to keep the City in compliance with CalRecycle regulations, including SB 1383 and AB 341. Furthermore, Gilton provided the most cost competitive proposal of the three companies to mitigate the fiscal impact of the new services for Livingston's residential and commercial ratepayers. Therefore, Gilton demonstrated that they have the staffing, management tools, technology, financial ability, and local knowledge to provide a high level of customer service and good value to the City's residents and businesses.

The highlights of the agreement are as follows:

- 10 year initial term with option of two 5 year extensions.
- City will receive a 15% Franchise Fee from Collectors gross revenues from residential, commercial, and industrial accounts.
- City will adjust the maximum rates under this agreement to reflect annual changes in the consumer price index for all urban consumers (CPI).
- Collector will provide for two (2) curbside bulky item collection events per calendar year from residential customers.
- Collector shall collect, recycle, or dispose of specified E-Waste (as defined in Exhibit F) from residential customers up to four (4) times per calendar year.
- Collector will provide a residential Christmas tree collection and recycling program. Each year, during the first two full weeks of January, Collector will pick up Christmas trees from the front of residential properties in the City.
- Collector shall provide Solid Waste, Recyclables, and Organic Waste collection services to all City owned and operated facilities and parks at no additional charge to the City.
- At the City's request, Collector will provide waste containers, plus Solid Waste, Organic Waste and Recyclables removal and disposal services for three community events per year.
- No less than twice per year, if requested by City, Collector will distribute informational flyers or brochures to City Customers regarding the importance of recycling and separating wastes in order to achieve greater waste diversion, as well as the applicable commercial recycling requirements set forth in AB 341, AB 1826, and SB 1383. In addition, Collector will provide technical support and assistance to City Staff in preparation of articles or newsletters related to organic waste reduction, reuse, and recycling.
- Collector agrees to assist the City in meeting SB 1383 mandates by performing the additional services as detailed in Exhibit G.

### **FISCAL IMPACT:**

The projected fiscal year 24/25 cost to the city for garbage collection, disposal, green waste processing and recycling processing is approximately \$2.6 million.

### **ATTACHMENTS:**

1. Resolution
2. Exhibit "A" Franchise Agreement



**RESOLUTION NO. 2024-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON APPROVING  
A FRANCHISE AGREEMENT FOR SOLID WASTE, RECYCLABLE MATERIALS,  
AND ORGANIC WASTE COLLECTION SERVICES BETWEEN THE CITY OF  
LIVINGSTON AND GILTON SOLID WASTE MANagements, INC.**

**WHEREAS** the current Solid Waste Collection Agreement between the City of Livingston and Gilton Solid Waste Management, Inc. (Gilton) will terminate on March 1, 2024; and

**WHEREAS**, to adequately update the current Franchise Agreement to comply with State laws, City Staff released a Request for Proposals for an Agreement for Solid Waste, Recyclable Materials, and Organic Waste Collection Services (New Franchise Agreement) and a significant focus of the scope of the RFP was how the hauler would assist the City in complying with the state mandates and CalRecycle regulations governing management of recyclable materials and organic waste; and

**WHEREAS**, non-participation in organic waste or recyclable materials diversion programs may result in fines for the City and/or residents and businesses; and

**WHEREAS**, the new recycling and organic recycling programs, included in the New Franchise Agreement, are both key aspects of meeting state regulatory compliance mandates and are not negotiable; and

**WHEREAS**, the City released an RFP for Collection Services on December 2, 2022, and the following three service providers submitted proposals:

1. Gilton Solid Waste Management, Inc (Gilton)
2. Mid Valley Disposal (Mid Valley)
3. Modesto Garbage Company, Inc (WM)

**WHEREAS**, based on the proposals, references, clarifying responses, and overall experience as the incumbent service provider, the evaluation committee ranked Gilton as the top-ranked company; and

**WHEREAS**, the highlights of the agreement are as follows:

- 10 year initial term with option of two 5 year extensions.
- City will receive a 15% Franchise Fee from Collectors gross revenues from residential, commercial, and industrial accounts.
- City will adjust the maximum rates under this agreement to reflect annual changes in the consumer price index for all urban consumers (CPI).
- Collector will provide for two (2) curbside bulky item collection events per calendar year from residential customers.
- Collector shall collect, recycle, or dispose of specified E-Waste (as defined in Exhibit F) from residential customers up to four (4) times per calendar year.
- Collector will provide a residential Christmas tree collection and recycling program. Each year, during the first two full weeks of January, Collector will pick up Christmas trees from the front of residential properties in the City.

- Collector shall provide Solid Waste, Recyclables, and Organic Waste collection services to all City owned and operated facilities and parks at no additional charge to the City.
- At the City's request, Collector will provide waste containers, plus Solid Waste, Organic Waste and Recyclables removal and disposal services for three community events per year.
- No less than twice per year, if requested by City, Collector will distribute informational flyers or brochures to City Customers regarding the importance of recycling and separating wastes in order to achieve greater waste diversion, as well as the applicable commercial recycling requirements set forth in AB 341, AB 1826, and SB 1383. In addition, Collector will provide technical support and assistance to City Staff in preparation of articles or newsletters related to organic waste reduction, reuse, and recycling.
- Collector agrees to assist the City in meeting SB 1383 mandates by performing the additional services as detailed in Exhibit G.

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

Section 1. Adopt a Resolution of the City Council of the City of Livingston Approving a Franchise Agreement to Gilton Solid Waste Management, Inc. for Solid Waste, Recyclables Materials and Organic Waste Collection Services.

Section 2. Authorize the Interim City Manager to execute said agreement

Section 3. This Resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 20<sup>th</sup> day of February 2024, by the vote recorded as follows:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
Of City of Livingston

ATTEST

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk



**APPROVED AS TO LEGAL FORM**

---

Roy C. Santos, City Attorney

EXHIBIT "A"

**FRANCHISE AGREEMENT**

**THIS FRANCHISE AGREEMENT** ("Agreement") is made and entered into this 1<sup>st</sup> day of March 2024 (the "Effective Date") by and between the City of Livingston ("City"), a municipal corporation of the State of California, and Gilton Solid Waste Management, Inc., a California corporation ("Collector"). The parties to this Agreement may each be referred to individually as a "Party" or collectively as the "Parties". There are no other parties to this Agreement.

**RECITALS**

A. The California State Legislature enacted the California Integrated Waste Management Act of 1989 ("AB 939") which authorizes local jurisdictions to make adequate provisions for solid waste handling within their jurisdictions; and

B. On October 6, 2011, the Legislature passed Assembly Bill 341 ("AB 341"), amending the California Public Resources Code (the "Public Resources Code") therein requiring cities to encourage and document commercial solid waste recycling programs; and

C. On September 28, 2014, the Legislature passed Assembly Bill 1826 ("AB 1826"), approved by the Governor of the State of California which added Chapter 12.9 (commencing with Section 42649.8) therein requiring cities to require businesses to separate their organic waste from the municipal waste stream for composting.

D. On November 10, 2020, the Legislature passed Senate Bill 1383, Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions ("SB 1383"), establishing a statewide target to decrease methane emissions at landfills by reducing the disposal of organic waste by 50% below 2014 levels by 2022 and by 75% below 2014 levels by 2025. SB 1383 establishes regulatory requirements for jurisdictions, generators, haulers, solid waste facilities, and other entities to support achievement of State-wide Organic Waste Disposal reduction targets and requires Jurisdictions to implement collection programs, meet processing facility requirements, conduct contamination monitoring, provide education, maintain records, submit reports, monitor compliance, conduct enforcement, and fulfill other requirements.

E. The collection and disposition of garbage, refuse and waste is governed and regulated by applicable provisions set forth in Title 8; Chapter 2 Municipal Code (the "Code"), which may be amended from time to time and is incorporated herein by this reference; and

F. The City previously entered into a franchise agreement with Collector on April 2, 2013, wherein the City selected Collector to provide services for the collection, recycling, and disposal of solid waste within the City.

G. The existing Agreement provides that the term of the agreement may be extended by mutual agreement of the Parties; and

H. The City and Collector now desire to update and extend the term of the existing Agreement. The term of this Agreement shall commence on the Effective Date and shall be in



force for 10 calendar years.

I. It is the City's objective to continue to engage Collector to provide refuse collection and disposal services for residential and commercial collection. By entering into this Agreement Collector shall assist City in meeting its AB 939, AB 341, AB 1826, and SB 1383 requirements; and

J. The City's refuse program shall be consistent with the County Solid Waste and Integrated Waste Management Plan and comply with all regulations promulgated by the local Merced County enforcement agency and the Department of Resources Recycling and Recovery; and

K. The Parties desire to rescind the existing Agreement which shall be fully replaced and superseded by this Agreement as of the Effective Date.

**NOW THEREFORE**, in consideration of the mutual promises contained herein and other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

## **AGREEMENT**

**Section 1. Recitals.** The recitals set forth above (the "Recitals") are incorporated herein by this reference and made a part of this Agreement. In the event any inconsistencies arise as between the Recitals and Sections I through 34 of this Agreement, Sections I through 34 shall prevail.

**Section 2. Definitions.** Unless otherwise noted in this Agreement, capitalized terms herein shall have the meanings set forth in **Exhibit A**. Whenever any term used in this Agreement has been defined by Division 30, Part I, Chapter 2 of the Public Resources Code or the City's Code, those definitions shall apply unless the term is otherwise defined in **Exhibit A**. In the event there is a discrepancy between the definitions contained in the Public Resources Code and the City's Code, the definitions set forth in the Public Resources Code shall supersede all other definitions.

**Section 3. Termination of Existing Agreement.** This Agreement hereby supersedes and replaces any existing agreement(s), whether written or oral, by mutual agreement and consent of the Parties as of the Effective Date of this Agreement. Hereafter all previous agreements shall terminate and be of no further force and effect except with respect to covenants therein for acts and omissions occurring prior to the Effective Date.

### **Section 4. Franchise Area.**

**4.1. Franchise Area Defined.** The franchise area granted by this Agreement shall be all residential and commercial premises located within city limits of City, as more particularly shown on **Exhibit B** ("Franchise Area"). As provided below, the Franchise Area may be changed by annexation, de-annexation, or re-organization.

**4.2. Annexation Covered by Existing Franchise.** All territories annexed during the Term of this Agreement may be subject to this Agreement. However, properties served by another collector at the time of annexation, shall continue to be served by collector for 1 year. All new construction in the annexed area will be serviced by Gilton Solid Waste (Gilton).

## **Section 5. Waste Collection and Disposal.**

**5.1. Scope of Services.** Except as set in Section 5.4, the City hereby grants Collector the exclusive franchise, right and privilege to collect all Solid Waste, Organic Waste and Recyclables within the Franchise Area and to transport the same to a High Diversion Organic Waste Processing Facility, sanitary landfill, transfer station, compost/mulching site, or waste-to-energy facility outside the City, which has been approved by the governmental agency having jurisdiction of the territory in which said site is located (the "Services"). When transporting collected material out of Merced County, after processing, Collector will return an amount equal to the residual municipal solid waste portion to a Merced County Regional Waste Management Authority (RWA) facility as required by the RWA's flow control. Waiver requests for recyclables and organic materials must be submitted to the RWA for approval. City may designate alternative processing facilities if public health, safety, or fiscal interest is required, or compliance with applicable law necessitates the alternative and will be at cost to the Collector. Collector shall furnish all labor, supervision, materials, permits, licenses, and equipment necessary to provide residential and commercial refuse collection Services for Customers within the Franchise Area of City. Collector shall perform its obligations under this Agreement in accordance with all applicable local, state, or federal laws and in a manner that maximizes the City's Solid Waste diversion rate to the extent possible.

**5.2. Residential Service.** Collector shall provide Solid Waste and Organic Waste collection services to all residential premises within the City. Collector may provide Recyclables collection services to residential premises within the City. If the City elects to make residential Recyclables collection service mandatory, Collector shall provide such service to all residential premises and shall charge rates that will be amended for such services.

**5.3. Commercial Service.** Collector may provide Solid Waste collection services to all commercial premises within the City. In addition, pursuant to the requirements set forth in AB 341, AB 1826, and SB 1383, Collector shall provide recycling collection services and/or organic collection service to any business that meets the mandatory threshold of each legislation.

**5.4. Excepted Services.** Collector's exclusive franchise in this Agreement shall not include governmental entities if and to the extent the City has no legal power to require such entities to use Collector's Services. The provisions of this franchise shall not preclude or prohibit the City or any officer or employee thereof or any employee of the State, or any governmental subdivision thereat; from collecting, removing, and disposing of Solid Waste, Recyclables, or Organic Waste from the City or State facilities.

## **Section 6. Collection and Bins.**

**6.1. Provision of Receptacles.** Collector agrees to continue to provide and maintain all Carts, Bins and Roll-Off Boxes for the proper and secure storage of Solid Waste, Organic Waste



or Recyclables for all residential and commercial Customers. All residential Cart Customers shall be serviced once per week and commercial Bin Customers shall be serviced from one (1) to six (6) times per week as requested by the Customer. Roll-Off box Customers will be serviced as arranged between the Customer and Collector.

**6.2. Hours of Collection.** Collection service of all Carts, Bins, and Roll-Off Boxes in residential areas and from commercial premises adjacent to residential areas shall not start before 6:00 a.m. or continue after 6:00 p.m., subject to change by resolution of the Livingston City Council ("City Council"). However, the hours of collection may be extended temporarily as a result of extraordinary circumstances or conditions with the prior consent of the Livingston City Manager ("City Manager").

**6.3. Receptacle Replacement.** Collector, without expense to City or any Customer, will replace stolen carts when a police report has been filed within seventy-two (72) hours. Collector shall clean, paint over or replace, at its discretion, graffiti-tagged Carts as needed. Collector shall replace Carts damaged due to normal wear and tear within the time frame of one collection cycle. Collector shall maintain records of lost, stolen, damaged and graffiti-tagged Carts by specific address. Collector may charge for additional replacement Carts based on the actual cost of the Carts and their delivery.

#### **Section 7. Term of Agreement.**

The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect for ten (10) calendar years. This Agreement may be extended at the sole option of the City via two options for a five (5) -year extension each. The City may in its sole discretion advertise for competitive bids for solid waste franchise collection services with such services to commence after the expiration of the contract term of this Agreement. Nothing herein shall be deemed or construed to impair the rights of the City to immediately terminate this Agreement with Collector due to Collector's substantial failure to perform the services and responsibilities specified and agreed to in this Agreement.

**Section 8. Acceptance; Waiver.** Collector agrees to be bound by and comply with all the requirements of this Agreement. Collector waives any right or claim to serve the City or any part of the City under any prior grant of franchise, contract, license, or permit issued or granted by any governmental entity including any right under Section 49520 of the Public Resources Code.

#### **Section 9. Maximum Rates and Fees.**

**9.1. Rates.** The maximum rates to be charged by Collector are set forth in Exhibit C ("Rate" or "Rates") and the maximum rates may be adjusted by resolution of the City Council. For the first year of the Agreement, Collector shall charge rates that are no greater than the maximum rates as established by the City. The City will establish a separate administration fee for processing solid waste billing. In the remaining years of the Agreement Term, the City will adjust the maximum rates under this Agreement to reflect annual changes in the Consumer Price Index for All Urban Consumers ("CPI") published by the U.S. Department of Labor for the San Francisco-Oakland-San Jose, CA statistical area. The adjustment shall become effective on the anniversary of the Effective Date of this Agreement and be based on the previous twelve-month index analysis based on the Effective Date of this Agreement. In all subsequent years, the Collector may request, and the City Council shall consider, rate adjustments based

on other adjustments provided for under subsections 9.3. and 9.4.

**9.2 Tipping Fees.** The Parties acknowledge and agree that the maximum rates include compensation to Collector for tipping, gate or other disposal fees charged by any applicable disposal facilities. Notwithstanding any provision in this Agreement to the contrary, Collector, except in the case of Roll-Off Box Customers, shall not be entitled to receive from City, or any Customer, a separate or additional payment for tipping or gate fees. In addition to any other rate adjustments to which Collector may be entitled, Collector may request to increase its rates to the extent necessary to recover increased landfill, waste-to-energy facility, transfer station, and material recovery facility tipping or gate fees. Collector shall provide City with notice of the proposed new rates within thirty (30) days of such notice being received from Merced County or other applicable authority and shall provide the City with a copy of any notice regarding an increase in landfill or waste-to-energy facility tipping or gate fees. Collector shall not increase the Rates to recover increased tipping or gate fees, without prior written approval from City.

**9.3 Extraordinary Cost Increases.** Collector may petition City for an extraordinary rate adjustment or adjustments at any time during the Term of this Agreement, provided that such petition may be made based only upon increases in fuel costs or increased costs as a result of federal, state, county mandates, increased insurance costs or other documented impacts, which require changes in Collector's Services or operations under this Agreement. Collector shall include in its petition a financial presentation which demonstrates the extraordinary increase in operating costs. Any petition shall be considered by the City Council at a public hearing held after providing any required notices pursuant to this Section and applicable law. The City Council may grant or reject any such petition in its sole and complete discretion.



**Section 10. Additional Services.** In exercising the right and privilege to collect Solid Waste, Organic Waste or Recyclables within the boundaries of City as herein granted, Collector agrees to act in accordance with the following:

Collector agrees to provide without additional charge to the City or its customers:

**10.1. Curbside Bulky Item Collection Program.** Collector shall collect and dispose of bulky item wastes, as defined in **Exhibit D**, from residential Customers up to two (2) times per calendar year. Such collections will be made by appointment as arranged between Customer and Collector.

**10.2. Curbside E-Waste Collection Program:** Collector shall collect, recycle, or dispose of specified E-Wastes (as defined in **Exhibit F**) from residential Customers up to four (4) times per calendar year. Such collections will be made by appointment as arranged between the Customer and Collector.

**10.3. Christmas Tree Program.** Collector will provide a residential Christmas tree collection and recycling program. Each year, during the first two (2) full weeks of January, Collector will pick-up Christmas trees from the front of residential properties in the City. Collections will be scheduled to coincide with the normal waste collection days.

**10.4. City Facilities.** Collector shall provide Solid Waste, Recyclables, and Organic Waste collection services to all City owned and operated facilities and parks at no additional charge to the City. This does not include C&D Debris generated from City owned and operated facilities. In addition, Gilton will continue to provide recycling collection for city residents at city corporation yard.

**10.5. Community Events.** At the City's request, Collector will provide waste containers, plus Solid Waste, Organic Waste and Recyclables removal and disposal services for three community events per year.

**10.6. Promotional/Educational Support.** No less than twice per year, if requested by City, Collector will distribute informational flyers or brochures to City Customers regarding the importance of recycling and separating wastes in order to achieve greater waste diversion, as well as the applicable commercial recycling requirements set forth in AB 341, AB 1826, and SB 1383. In addition, Collector will provide technical support and assistance to City Staff in preparation of articles or newsletters related to organic waste reduction, reuse and recycling.

**10.7. Commercial Recycling Programs.** Collector will fully cooperate with and assist the City with the implementation of any State mandated commercial recycling programs.

**10.8. AB 939 Data.** Collector agrees to continue to assist City in data collection and reporting pertaining to compliance with the Integrated Waste Management Act (AB 939), including any State required waste composition studies.

**10.9. C&D Diversion Policy.** When properly notified, Collector will assist City customers in their compliance with the City's C&D Debris Diversion Policy, attached at **Exhibit E**, as it may be amended. Collector shall comply with the City's C&D Debris Diversion Policy as applicable.

**10.10 SB 1383 Services.** Collector agrees to assist the City in meeting SB 1383 mandates by performing the additional services as detailed in Exhibit G.

## **Section 11. Specific Service Requirements.**

**11.1 Collector Duty of Care and Diligence.** Collector and Collector's employees, contractors, sub-contractors, operators, officers, directors, supervisors, owners, board members, representatives, and agents ("Collector's Agents") shall exercise all reasonable care and diligence in performing their obligations under this Agreement. Every effort will be made to prevent spilling, scattering or dropping Refuse during the collection or transportation process. However, in the event that Refuse is spilled, scattered or dropped, the truck operator shall immediately clean up the material and place it in the truck. Every Cart, Bin and Roll-Off Box (collectively, "Container") must be replaced in an upright position. It shall be further noted that Refuse collection easements are frequently co-located with other utility easements. Particular attention must be given to the location of water meters, transformers, guy wires, utility poles and irrigation structures. Authorization to use the easement does not abrogate Collector's responsibility to exercise caution to not infringe upon, damage, or trespass the property rights of other authorized users or property owners. Collector shall be familiar with and operate within the guidelines set forth by the Occupational Safety Health Act (29 U.S.C. section 651 *et. seq.*). Collector is granted the right to use dedicated streets, alleys and refuse collection easements for the purpose of performing the Services, but this right is not exclusive. The Collector shall handle the Services in a manner that will cause the least inconvenience or annoyance to the general public and to property owners.

**11.2. Hazardous Waste.** Under no circumstance shall Collector's employees knowingly collect Hazardous Waste or remove unsafe or poorly containerized Hazardous Waste from Customer premises. If Collector determines that material placed in a container for collection is Hazardous Waste, Excluded Waste, or other material that may not be legally accepted at an approved sanitary landfill, transfer station, compost/mulching site, waste-to-energy facility or other permitted disposal facility or that presents a hazard to Collector employees, Collector shall have the right to refuse to accept such material. Collector shall leave, at the time of non-collection,



a non-collection notice with Customers indicating the reason for refusing the material. Collector shall contact the generator and request that the generator arrange for proper disposal service. If the Hazardous Waste, Excluded Waste, or other objectionable material is identified at time of delivery to the approved sanitary landfill, transfer station, compost/mulching site, waste-to-energy facility or other permitted disposal facility and the generator cannot be identified, Collector shall be solely responsible for handling and arranging transport and disposition of the Hazardous Waste, Excluded Waste, or other objectionable material.

**11.3. Force Majeure.** Collector shall not be in default under this Agreement in the event that the collection transportation, recycling and disposal services of Collector are temporarily interrupted or discontinued due to a "Force Majeure" event which is defined as: riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods earthquakes, landslides and fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Collector. Force Majeure does not include: Collector's financial inability to perform; Collector's failure to obtain any necessary permits or licenses from other governmental agencies; or Collector's failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Collector.

**11.4. Independent Contractor.** Collector is an independent contractor and not an officer, agent, servant or employee of City. Collector is solely responsible for the acts and omissions of its officers, agents, employees, contractors, and sub-grantees. Nothing in this Agreement shall be construed as creating a partnership or joint venture between City and Collector. Neither Collector nor its officers, employees, agents or sub-grantees shall obtain any right to retirement or other benefits or right which accrue to City employees.

**11.5. Property Damage.** Collector shall be responsible for any damage to City's driving surfaces, whether or not paved, resulting from vehicles providing Services under this Agreement. Collector shall be responsible for repairing or replacing any private or public property which is damaged due to the acts or omissions of employees, contractors, or agents of Collector to private or public property shall be repaired or replaced.

**11.6 Right of Entry.** Collector shall have the right, to enter or drive on any private street, court, place, easement, or other private property for the purpose of collecting or transporting Refuse pursuant to this Agreement. This right of entry shall last until the sooner of the termination of this Agreement or receipt by Collector of a written notice from City revoking Collector's right of entry. This right of entry is limited to carrying out the Services required by this Agreement.

## **Section 12. Customer Service Requirements.**

**12.1 Availability of Representatives.** A responsible representative for the Collector who is qualified to respond to public inquiries shall be available at Collector's office during office hours, excluding lunchtime closure, for communication with City, Customers or the public.

**12.2. Employees.** Collector shall exercise reasonable care to hire responsible employees, to supervise the work of such employees, and to discipline and, if necessary, discharge an employee failing to meet reasonable standards for performance of work set forth in this Agreement.

Collector shall comply with applicable state and federal law pertaining to employment, including, but not limited to, applicable equal opportunity employment and affirmative action requirements.

**12.3. Manner of Collection.** Collector shall perform all collection services in a quiet and courteous manner and ensure that all Carts are placed on the premises from which they were removed in an upright position, with lids closed, and within five (5) feet of where they were originally placed before collection.

**12.4. Office Hours.** Collector's office hours shall be, at a minimum, from 8 a.m. to 5 p.m. daily, except for a lunch hour and closed on Saturdays, Sundays, and federal or State recognized holidays. A representative of Collector shall be available during office hours for communication with the public at Collector's principal place of business.

**12.5. Service Complaints.** All Service complaints shall be directed to Collector. Collector shall respond to all complaints, other than missed pickups, within twenty-four (24) hours if the twenty-four (24) hour period ends during the office hours specified in subsection 12.5, otherwise on the next business day. Collector shall be responsible for the prompt and courteous attention to, and prompt and reasonable resolution of, all complaints and shall use its best efforts to resolve any complaints within the two (2) business days following the date on which such complaint is received. Complaints that cannot be reasonably resolved may be appealed to the City Manager or designee for final resolution.

**12.6. Complaint Log.** Collector agrees to maintain a log of all oral and written service complaints registered with Collector from Customers or the public within the City ("Complaint Log"). Collector shall record in the log all written and oral complaints, noting the name and address of the complainant, date and time of complaint, nature of complaint, and method and date of resolution. Such log shall be kept so that representatives of the City, upon request, may conveniently inspect it. Collector shall deliver, along with the quarterly reports specified in Section 13 or otherwise upon request of the City, a summary of complaints by number and type and excerpts from the log reflecting action to date.

**12.7. Missed Pickups.** In the event of a missed pickup, Collector shall complete the pickup the same day if the complaint is received by 12:00 p.m. or by 12:00 p.m. the following business day if the complaint is received after 12:00 p.m.

### **Section 13. Reports.**

Collector shall provide the City with annual reports detailing Collector's operations within City during that time. Reports will contain the information required by the City for compliance with



AB 939, AB 341, AB 1826 and SB 1383 and for City to measure Collector's performance of items in this Agreement. Collector agrees to provide additional reports regarding its collection services as may be reasonably requested by the City to meet future reporting requirements of the City or the State. City or a consultant to City, on request, shall have the right to review the collection records of Collector at reasonable times and upon reasonable notice.

#### **Section 14. Vehicles.**

**14.1. Compliance with Applicable Regulations.** Collector shall at all times comply with all applicable rules, statutes, orders, and requirements adopted by any governmental agency with jurisdiction over air quality, including, but not limited to, the California Air Resources Board and the San Joaquin Valley Air Pollution Control District. In addition to any indemnification obligations set forth in this Agreement, Collector shall defend, indemnify, and hold harmless the City against any fines, penalties, losses, or claims arising out of Collector's failure to comply with this Section. All vehicles used by Collector under this Agreement shall be registered with the Department of Motor Vehicles of the State of California, be kept clean and in good repair, shall be uniformly painted, and shall be washed at least once every seven (7) calendar days. Collector's name, phone number, and vehicle number shall be prominently displayed on its vehicles.

**14.2. Fluids and Waste.** Collector shall immediately clean up any fluids or waste spilled from collection vehicles and shall deploy and remove absorbent materials to the extent necessary to absorb all fluids. Collector shall provide the City with a copy of any spill report that Collector is required to provide, and at the same time it is provided, to the State Office of Spill Prevention and Response. When necessary, Collector shall apply a suitable cleaning agent to the street surface or shall employ hydraulic steam cleaning to provide adequate cleaning. Collector shall comply at all times with all recommendations or limitations concerning laden weight of collection vehicles established by the State or any government agency, or the vehicle manufacturer.

#### **Section 15. Collector's Employees.**

**15.1. Prohibition of Drugs or Alcohol.** Collector will prohibit the use of intoxicating substances by Collector's Agents, including its drivers and crewmembers, while on duty or in the course of performing the Services. Upon request by City, Collector will demonstrate compliance with the federal alcohol and drug testing statutes and regulations.

**15.2. Employee Uniform.** Collector's employees shall be required to wear a clean uniform bearing Collector's name. Employees who normally and regularly come into direct contact with Customers, including drivers, shall bear some means of individual identification such as a name tag or identification card.

**15.3. Identification Required.** Collector shall provide every employee, contractor, grantees, or sub-grantees that are in contact with the public with identification cards and badges. Upon request of City, Collector shall notify all Customers of the form of identification that each employee shall be carrying or displaying so that all Customers may easily identify one of Collector's employees. Collector shall provide City with a list of current employees, contractors, grantees, and sub-contractors to City upon request.

**15.4. Valid Driver's License.** Employees driving Collector's vehicles shall at all times possess and carry a valid and appropriate vehicle operator's license issued by the State of California, including a commercial driver's license, if required.

**15.5. No Employment Relationship with City.** Collector's Agents are not and shall not identify themselves as being employees of the City at any time, for any reason.

**15.6. Employee Behavior.** All contact by Collector with Customers will be done with courtesy and respect. Any incident with a Customer must be reported immediately to the City.

**15.7. Employee Conduct.** All superintendents, foremen and workers, or contractors employed by the Collector shall be capable and safety conscious workers, skilled in their respective trades. Collector shall not employ any person who is incapable or negligent in the due and proper performance of his or her duties. Collector shall furnish such supervision, labor and equipment as is considered necessary for the fulfillment of the Services in an acceptable manner at a satisfactory rate of progress. City reserves the right to request for any worker of Collector to be prohibited from providing Services to City without cause for any reason.

**15.8. Supervision.** It is the Collector's responsibility to supervise the Services rendered and to provide direction to its employees and agents in the field. While City employees may suggest possible solutions to problems or unusual situations, Collector retains the responsibility for all Services and how the Services will be delivered and conducted to the City and the Customers.

## **Section 16. Franchise Fees, Billing and Reports.**

**16.1. Franchise Fees.** Collector and the City agree that for the exclusive rights herein granted to Collector, City shall retain a sum equal to fifteen percent (15%) of the gross revenues from residential, commercial, and industrial accounts. Further, the Parties hereby agree to the fifteen percent (15%) franchise fees is a reasonable estimate of the value of the City's franchise given the number of exclusive customers being provided to the Collector as the franchise hauler. The Collector shall also pay the City fifteen percent (15%) of the gross revenues from the Collector's Debris Box and/Roll-Off container services.

**16.2. Billing.** The City shall provide regular billing statements to residential, commercial and industrial customers that have cart and bin service. The Collector shall provide billing statements to Debris Box/Roll-off customers.

**16.3. City and Collector Billing.** As of the commencement of this Agreement, the Parties acknowledge that the City is responsible and will continue to bill residential, commercial and industrial customers that have cart and bin service. The Collector shall bill all customers that have Debris Box and/or Roll-Off Container service.



**Section 17. Collector's Books and Records: Audits.** The books and records of Collector shall be subject to audit and inspection for the purpose of reviewing billing operations, accounts receivable and customer service, by City, its auditors or agents. Collector shall maintain all records relating to the Services, including, but not limited to, Customer lists, billing records, maps, AB 939 compliance records, AB 341 compliance records, and Customer complaints (collectively, the "Records"), for no less than three (3) years after the termination or expiration of the Term, or as may or any longer period required by applicable law. City shall have the right, upon five (5) business days advance notice, to inspect all Records, and other like materials of Collector which reasonably relate to Collector's compliance with the provisions of this Agreement.

Collector's Records shall be made available to City at a City facility, if reasonably practicable, or at Collector's regular place of business during regular business hours. If such audit discloses an underpayment of the Franchise Fees or other sums due under this Agreement, Collector shall promptly tender to the City the amount of such underpayment.

**Section 18. Indemnification.**

**18.1. Indemnification of City.** Collector agrees that it shall protect, defend, indemnify and hold harmless City, its elected and appointed councils, commissions, directors, officers, employees, agents, and representatives ("City's Agents") from and against any claim, action or proceeding that arises from this Agreement or any Services performed pursuant to or in connection with this Agreement ("Claim"), including but not limited to all losses, liabilities, fines, penalties, claims, damages, liabilities, judgments, attorney's fees, costs incurred for staff time, court costs, other expenses of litigation, or expenses of litigation awarded to the prevailing Party or Parties. This indemnification does not include gross negligence or willful acts of the City, or City's Agents. At City's discretion, Collector shall satisfy the obligation of this Section by reimbursing City for tendering its own defense. If Collector undertakes the defense of a Claim by providing City-approved representation, City may, participate in the defense of any such Claim.

To the extent permitted by Public Resources Code Section 40059.1, and to the extent noncompliance is caused by Collector's breach of or noncompliance with a provision of this Agreement, Collector agrees to protect and defend City or City's Agents, with counsel selected by the City, and to indemnify and hold harmless City or City's Agents from and against all fines or penalties imposed by the State if the waste diversion goals specified in the Public Resources Code are not met by the City with respect to the Solid Waste collected by Collector under this Agreement. Collector shall indemnify, defend with counsel acceptable to the City, protect and hold harmless the City and City's Agents from and against all claims, damages (including but not limited to special, consequential, and natural resources damages), injuries, response mediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties, and attorney and expert fees for the adverse party and expenses (including but not limited to attorney's and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, the City or City's Agents arising from or attributable to the negligence or willful misconduct of Collector or its affiliates and their respective officers, directors, employee and shareholders in handling Hazardous Waste either knowingly or under circumstances in which a reasonable person would or should have known that Hazardous Waste was being handled. The foregoing indemnity is also intended to operate as an agreement pursuant to Section 107(e) of CERCLA, 42 U.S.C. Section 9607(c) and California Health and Safety Code Section 25364, to defend, insure, protect, hold harmless and indemnify the City from liability.

**18.2. Indemnification of Collector.** City shall indemnify, defend and hold Collector, its affiliates and their respective officers, directors, employees and shareholders harmless from and against any and all liabilities, losses, damages, claims, actions and causes of action, costs and expenses (including reasonable attorney's fees) arising from or in any manner arising out of the negligent acts of the City or the City's employees. Subject to this indemnification, and upon demand of Collector, made by and through Collector's counsel, City shall appear in defense of Collector, and its officers, employees and agents in any claims or actions, whether judicial, administrative, or otherwise arising out of the exercise of this Agreement. Nothing in this Agreement shall alter the requirements of the Government Tort Claims Act as established within the Government Code and/or any indemnities provided to the City pursuant to any state, federal or local law, statute, or ordinance.

**Section 19. Insurance.** Collector will continue to carry insurance, which shall be placed with insurers with a current AM Best's rating of no less than A VII, and which shall include all of the following:

**19.1. Required Insurance.**

**19.1.1 Worker's Compensation.** Collector shall obtain and maintain in full force and effect throughout the Term, worker's compensation insurance in accord with the provisions and requirements of the California Labor Code. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the Term. The policy providing coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. The policy shall also be amended to waive all rights of subrogation against the City, its



electd or appointed officials, employees, agents or representatives for losses which arise from the Services performed by the Collector pursuant to this Agreement.

**19.1.2. General Commercial Liability Insurance.** Collector shall carry commercial or comprehensive general liability insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence/ aggregate for bodily injury, personal injury and property damage. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form GG 00 01 11 88).

**19.1.3. Automobile Liability Insurance.** Collector shall carry automobile insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage, and which shall provide coverage for rented and non-owned vehicles. Coverage shall be at least as broad as Insurance Service form number CA 00 01 06 92 covering Automobile Liability, code I (any auto).

**19.1.4. Public Liability Insurance.** Collector shall carry public liability insurance with a combined single limit of Two Million Dollars (\$2,000,000.00) per occurrence for bodily injury, personal injury, and property damage.

**19.1.5. Pollution or Environmental Liability Insurance,** Collector shall carry Environmental or Pollution liability coverage appropriate for the waste activity contemplated in this Agreement, including sudden and accidental upset pollution liability for the amount of One Million Dollars (\$1,000,000.00) per claim or occurrence and One Million Dollars (\$1,000,000.00) in the aggregate.

**19.2. Additional Insurance Requirements.** Within five (5) days of the Effective Date, Collector shall provide City with certificates of insurance for all of the policies required under this Section 19 ("Certificates"), excluding the required worker's compensation insurance. With the exception of the worker's compensation insurance, all of the insurance policies required in this Section 19 shall: provide that the policy will not be cancelled, allowed to expire, or materially reduced in coverage without at least thirty (30) days' prior written notice, or ten (10) days' in the case of non-payment of premium by Collector (as per insurance industry standard), to City of such cancellation, expiration, or reduction and each policy shall be endorsed to state such; name City, and City's Agents as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Collector or operations performed by or on behalf of the Collector to perform the Services including materials, parts, or equipment furnished in connection with the Services or operations by endorsement; be primary, with respect to any insurance or self-insurance programs covering City or City's Agents and any insurance or self-insurance maintained by City or City's Agents shall be excess of Collector's insurance and shall not contribute to it; and contain standard separation of insured provisions.

**19.3. Deductibles and Self-Insured Retentions.** Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to City and City's Agents, or Collector shall provide a financial guarantee satisfactory to City guaranteeing payment of loss related investigations, claim administration and defense expenses.

**19.4. Verification of Coverage.** Before the Services commence, Collector shall furnish City with original Certificates and endorsements affecting coverage required by this Section 19. The endorsements shall be on forms approved by the City which contain all of the information required in Section 19.

**19.5. Subcontractors.** Collector shall include all subcontractors as additional insured under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all the requirements stated in this Section 19.

Said insurance shall protect Collector and City from any claim for damages for bodily injury, including accidental death, as well as from any claim for property damage which may arise from the Services, whether such operations be by Collector itself, or by its agents, employees, contractors or sub-grantees. Copies of the policies or endorsements evidencing the above insurance coverage shall be filed with the City Clerk. All of the following endorsements are required to be made a part of the insurance policies required by this Agreement.

**19.6. Increase in Coverage Requirements.** The limits for the insurance coverage required under this Section 19 and the ratings required for insurance companies shall be subject to review and approval by the City Attorney every year and may be increased at that time, at the City Attorney's discretion, to match the coverage provided by the City's own liability insurance policy.

## **Section 21. Title to Solid Waste.**

All Solid Waste, Recyclables, and Organic Waste collected pursuant to this Agreement shall remain the property of the Customer until such time as it is collected for disposal. It is expressly understood that all Solid Waste, Recyclables, and Organic Waste collected under this Agreement becomes the property of Collector upon collection, subject to the requirement of delivery to an appropriate disposal site. Collector is hereby granted the right to retain, dispose of, and otherwise use such Solid Waste, Recyclables, and Organic Waste, or any part thereof, in any fashion or for any lawful purpose desired by Collector, and to retain any benefit or profit resulting therefrom. Solid Waste which is disposed of at a disposal site shall become the property of the owner or operator of the disposal site once deposited there by Collector.

## **Section 22.**

**Rights of City to Perform During an Emergency.** Should Collector, for any reason whatsoever, excluding a Force Majeure as defined in Section 11.2, be unable to perform any of the Services required by this Agreement, for a period of more than seventy-two (72) hours, and the City



Manager reasonably finds that the resulting accumulation of Refuse in City endangers or menaces the public health, safety or welfare, then, City shall have the right to temporarily take possession of and use Collector's Equipment to carry out Collector's obligations under this Agreement, upon twenty-four (24) hour prior written notice to Collector. Collector agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use.

Collector agrees that, in such event, City may take temporary possession of and use all said Equipment and facilities without paying Collector any rental or other charge, provided that when City takes possession of Collector's Equipment and facilities under this Section 22, City shall assume complete responsibility for the proper and normal use of such Equipment and facilities. City agrees that it shall immediately relinquish possession of all of the above-mentioned property to Collector upon receipt of written notice from Collector stating it is able to resume its normal responsibility under this Agreement.

### **Section 23. Customer Confidentiality.**

Collector shall strictly observe and protect the right of privacy of the Customers. Information identifying individual Customers, or the composition or contents of a Customer's Refuse, shall not be revealed to any person, governmental unit, private agency or company, unless upon the authority of a court of law, by statute, or upon valid authorization of the Customer. This provision shall not be construed to preclude Collector from preparing, participating in, or assisting in the preparation of waste characterization studies or waste stream analyses which may be required by AB 939 or SB 1383.

Collector shall not market or distribute, without City's advance written consent, which City may withhold in its sole and absolute discretion, mailing lists with the names or addresses of Customers.

The rights accorded Customers pursuant to this Section shall be in addition to any other privacy right accorded Customers pursuant to federal or state law.

### **Section 24. Reports and Adverse Information.**

**24.1. Reports.** Within ninety (90) days after the close of Collector's fiscal year, Collector shall submit a written annual report, in a form approved by City, including, but not limited to, the following information:

**24.1.1.** A report on City's progress in meeting and maintaining its ability to meet its goals under AB 939 and SB 1383 as applied to the Franchise Area, along with any recommended changes. Collector shall also provide the City's Public Works Director with quarterly reports on the quantity (by weight) of all Commercial Solid Waste, Residential Solid Waste, Recyclables, and Organic Waste collected.

**24.1.2.** A list of Collector's officers and members of its board of directors.

**24.1.3.** A list of stockholders or other equity investors holding five percent (5%) or more of the voting interest in Collector and any subsidiaries.

**24.1.4.** The most current annual audited financial statement, upon request. To the extent permitted by the Public Records Act, this document shall remain confidential.

**24.1.5.** A current financial statement, upon request.

**24.2. Adverse Information.** Collector shall provide City two (2) copies of all reports, or other material adversely affecting this Agreement, which Collector submits to: the State or federal Environmental Protection Agency; the Department of Resources Recycling and Recovery; or any other federal, State, or local agency. Copies shall be submitted to City simultaneously with Collector's filing of such matters with said agencies. Collector's routing correspondence to said agencies need not be automatically submitted to City but shall be made available to City upon written request.

Collector shall submit to City copies of all pleadings, applications, notifications, communications and documents of any kind, submitted by Collector to any federal, state and local courts, regulatory agencies and other government bodies relating to Collector's performance of Services pursuant to this Agreement, as well as copies of all decisions, correspondence and actions by such agencies. Any confidential data exempt from public disclosure shall be retained in confidence by City or its authorized agents and shall only be made available for public inspections, as required by law.

Collector shall submit to City such other information or reports in such forms and at such times as City may reasonably request or require.

All reports and records required under this, or any other section herein shall be furnished to City at the sole expense of Collector.

**24.3. Failure to Report.** The refusal, failure, or neglect of Collector to file any report required may be deemed a material breach of this Agreement if not corrected by Collector within ninety (90) days, and may subject Collector to all remedies, legal or equitable, which are available to City under this Agreement or otherwise.

## **Section 25. Bonds and Security.**

**25.1 Performance Bonds.** Contemporaneously with the execution of this Agreement, Collector shall secure and execute a performance bond to be held by the City (the "Performance Bond") to ensure performance of Collector in an amount equal to twenty-five percent (25%) of the City's estimate of the Contractor's annual gross revenue under the Agreement. The Performance Bond shall be on terms and in a form acceptable to the City Attorney and shall be issued by a California admitted insurer. The Performance Bond shall serve as security for the faithful performance by Collector of all the provisions and obligations of this Agreement. Based off the City's projected estimate of the Collector's annual revenue, the performance bond shall be a minimum of \$509,260.00.



Thirty (30) days following Collector's failure to pay City an amount owed under this Agreement, if ever, the Performance Bond may be assessed by City upon five (5) days prior written notice to Collector for purposes including, but not limited to:

- A. Failure of Collector to pay City any sums due under the terms of the Agreement.
- B. Reimbursement of costs borne by City to correct violations of this Agreement, after five (5) days' advance written notice to Collector.
- C. Monetary remedies or damages assessed against Collector due to a breach of this Agreement.

## **Section 26. Breach of Agreement.**

**26.1. Determination of Breach.** If the City Manager reasonably determines that Collector's performance pursuant to this Agreement has not been in conformity with reasonable industry standards obtained in similar cities in Central California, the provisions of this Agreement, the requirements of the Department of Resources Recycling and Recovery, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to the laws governing transfer, storage or disposal of Hazardous Waste, the City Manager may advise Collector in writing of such deficiencies. If Collector commits a material breach of this Agreement ("Breach"), City may terminate this Agreement, impose Liquidated Damages, or avail itself of any and all remedies set forth in Section 27 of this Agreement, in addition to all other remedies available to the City in law or equity.

**26.2. Events that Constitute a Breach.** A Breach includes but is not limited to the following:

**26.2.1. Misrepresentation.** Collector commits, or attempts to commit, any fraud, intentional material misrepresentation or deceit upon the City in relation to this Agreement or in the statements or materials submitted to City by Collector in connection with this Agreement as of the time the representation or disclosure is made.

**26.2.2. Seizure or Attachment of Equipment.** There is a seizure or attachment (other than a prejudgment attachment) of, or levy affecting possession on, the operating Equipment of Collector, including without limit its vehicles, maintenance or office facilities, or any part thereof of such proportion as to impair Collector's ability to perform under this Agreement and which cannot be released, bonded, or otherwise lifted within forty-eight (48) hours excluding weekends and City-approved holidays.

**26.2.3. Collector Bankruptcy.** Collector files a voluntary petition for debt relief under any applicable bankruptcy, insolvency, debtor relief, or other similar law now or hereafter in effect, or consents to the appointment of or taking of possession by a receiver, liquidator, assignee (other than as a part of a transfer of equipment no longer useful to Collector or necessary for this Agreement), trustee (other than as security for an obligation under a deed of trust), custodian, sequestrator, or similar official of Collector for a part of Collector's operating assets or any substantial part of Collector's property, or shall make any general assignment for the benefit of Collector's creditors, or shall fail generally to pay Collector's debts as they become due.

**26.2.4. Court Order or Decree.** Any court having jurisdiction enters a decree or order for relief with respect to Collector, in any involuntary case brought under any bankruptcy, insolvency, debtor relief, or similar law now or hereafter in effect, or Collector consents to or fails to oppose any such proceeding, or any such court enters a decree or order appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator, or similar official of Collector or for any part of Collector's operating equipment or assets, or order the winding up or liquidation of the affairs of Collector.

**26.2.5. Failure to Notify City.** Collector fails to notify City in a timely manner of any receipt of notice of violation or official communication from those regulatory agencies regulating Solid Waste, Recyclables, and Organic Waste collection, transport, processing, or disposal activities.

**26.2.6. Lapse of Financial Requirement.** If Collector fails to provide or maintain in full force and in effect, the following: any of the insurance policies required pursuant to Section 16 herein; the full amount of the Performance Bond required under Section 25.1 herein; or the full amount of the Payment Bond required under Section 25.2 herein.

**26.2.7. Regulatory Violation.** Collector violates any orders or filings of any regulatory body having jurisdiction over Collector relative to this Agreement, provided Collector may contest any such orders or filings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

**26.2.8. Cessation of Services.** Collector ceases to provide collection, transportation, processing, or recycling services as required under this Agreement for a period of three (3) consecutive business days or more, for any reason within the control of Collector.

**26.2.9. Failure to Meet Payment or Reporting Requirements.** Collector fails to make any payment required under this Agreement or refuses to provide City with required information, reports, or records in a timely manner as provided for in the Agreement.

**26.2.10. Violation of AB 939 or SB 1383.** Any other act or omission by Collector, which materially violates the terms, conditions or requirements of AB 939 and SB 1383 as may be amended from time to time; or any other directive rule or regulation issued thereunder; unless the violation is corrected or remedied within the time set on the written notice of violation; or if Collector cannot reasonably correct or remedy the violation within the time set



forth in such notice, Collector commences to correct or remedy such violation within the time set forth in such notice and diligently and in good faith continues to cure, correct, or remedy such violation thereafter.

**26.2.11. Unremedied Acts or Omissions.** Collector commits any act or omission which violates the terms, conditions, or requirements of this Agreement, or any other applicable laws and which is not corrected or remedied within the time set in the written notice of the violation or, if Collector cannot reasonably correct or remedy the breach within the time set forth in such notice, Collector should fail to commence to correct or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

**26.2.12. Failure to Correct Breach.** Collector fails to correct any Breach within the applicable Cure Period.

**26.3. Cure Rights.** Notwithstanding any other provision of this Section 26 to the contrary, City shall provide Collector with reasonable notice of and a reasonable opportunity to cure any Breach of this Agreement during the time periods set forth below (the "Cure Period"). Collector shall begin cure of any Breach as soon as it becomes aware of the Breach, whether discovered by Collector or through notice from the City. Upon becoming cognizant of the Breach, Collector shall proceed to cure such Breach as follows:

**26.3.1.** Immediately, if the City determines the Breach endangers the health, safety, or welfare of the public; or

**26.3.2.** Within fifteen (15) days of giving or receiving notice of the Breach, provided that if the nature of the breach is such that it will reasonably require more than fifteen (15) days to cure, Collector shall have such additional time as is reasonably needed, no longer than thirty (30) days to expeditiously complete a cure. During any Cure Period, Collector shall provide City weekly written status updates informing City of Collector's progress curing the Breach.

**26.4 Right to Appeal.** Collector may submit a response to claims of Breach contained in any written notice from the City within ten (10) days of receipt of such notice. The City Manager shall review Collector's response and refer the matter to the City Council or decide the matter and notify Collector of that decision, in writing. A decision or order of City Manager shall be final and binding on Collector. Unless a governing ordinance or statute provides otherwise, if the Collector seeks further relief, the Collector shall file a petition for writ of mandate in superior court pursuant to Code of Civil Procedure Sections 1094.5 and 1094.6 within ninety (90) calendar days of the date of the decision or order.

## **Section 27. Termination, Liquidated Damages and other Remedies.**

**27.1. Termination.** In the event Collector commits a Breach of this Agreement, City shall have the right to terminate this Agreement ("Termination").

## **27.2. Liquidated Damages.**

**27.2.1.** City finds, and Collector agrees, that as of the Effective Date of this Agreement, it is impractical, if not impossible to reasonably ascertain the extent of damages which will be incurred by City as a result of a Breach by Collector of its obligations under this Agreement. Some reasons for the impracticability of ascertaining damages include but are not limited to: the difficulty in estimating the substantial damage that results to Customers who are denied Solid Waste disposal services or denied quality or reliable service; and the difficulty valuing the damage caused from the inconvenience, anxiety, frustrations and deprivation of the benefits provided under the Agreement to individual members of the general public for whose benefit this Agreement exists. The Parties agree that these damages manifest in subjective ways and in varying degrees of intensity and are incapable of measurement in precise monetary terms. The Parties agree that any remedy for such breaches, including the termination of this Agreement are, at best, a means of future correction and not remedies, which can adequately make the public whole for past breaches.

**27.2.2.** The City Council may, at its discretion, assess liquidated damages not to exceed the sum of Two Thousand Dollars (\$2,000) per day, for each calendar day that the Services are not provided by Collector in accordance with this Agreement for a period not to exceed forty-five (45) days ("Liquidated Damages"). In addition, the City Council may order assessment against the Performance Bond and Payment Bonds required by Section 25 as set forth herein, the termination of this Agreement, or both.

**27.2.3.** The City finds, and Collector acknowledges and agrees that the above-described liquidated damages provision represents a reasonable sum in light of all the circumstances. Said liquidated damage sums shall be applicable to each calendar day of delay during which Collector has been found by the City Council to be in Breach pursuant to Section 26. Collector shall pay any Liquidated Damages assessed by the City Council within thirty (30) days after they are assessed. If they are not paid within the thirty-day (30) period, City may withdraw said amount from the Performance Bond or Payment Bond, as appropriate, pursuant to Section 25, order the Termination of the Franchise granted by this Agreement, or both.

**27.3, Remedies Not Exclusive.** The right of Termination or to impose Liquidated Damages are in addition to all other rights of City upon a failure of Collector to perform its obligations under this Agreement, including but not limited to the rights provided in Section 28.

**Section 28. City's Additional Remedies.** In the event Collector commits a Breach of this Agreement, and the City has terminated this Agreement, in addition to the remedies set forth in Section 27, City shall have the following rights:

**28.1. Rental of Collector Equipment.** Notwithstanding the provisions set forth in Section 22 of this Agreement, City shall have the right to rent or lease Equipment from Collector for the purpose of collecting, transporting and disposing of Refuse which Collector is obligated to collect, transport and dispose of pursuant to this Agreement, for a period not to exceed six (6) months. If such Equipment is not owned by Collector, Collector shall assign to City, to the extent possible, the right to possess the Equipment. If City exercises its rights under this Section, City shall pay to Collector the reasonable rental value of the Equipment so taken for the period of City's possession thereof.

**28.2. Right to License others to Provide Disposal Services for the City.** City shall have the right to license others to perform the Services otherwise to be performed by Collector hereunder, or to perform such Services itself.

**28.3. Right to Other Damages.** City shall have the right to obtain damages or injunctive relief. The Parties recognize and agree that in the event of Breach by Collector, City may suffer irreparable injury and incalculable damages sufficient to support injunctive relief, to enforce the provisions of this Agreement by Collector and to enjoin the Breach thereof.

**Section 29. Compliance with Applicable Law.**

Collector agrees that it shall comply with all applicable federal, state, and local laws and regulations, expressly including the provisions set forth in the Code which are applicable to the work or business in which it is herein franchised, and with any and all amendments to such applicable provisions during the Term.

**Section 30. Assignment.**

The Franchise granted by this Agreement shall not be transferred, sold, hypothecated, sublet or assigned, nor shall any of the rights or privileges herein be hypothecated, leased, assigned, sold or transferred, either in whole or in part nor shall title thereto, either legal or equitable, or any right, interest or property therein, pass to or vest in any person, except Collector, either by act of the Collector or by operation of law, without the prior written consent of City expressed by a resolution or ordinance approved by the City Council, which may be withheld for any reason, conditioned or granted in the City's sole discretion. Any attempt by Collector to assign this Franchise without the consent of City shall be null and void.

If Collector attempts to transfer the Franchise prior to obtaining City consent, all of the profits or twenty-five percent (25%) of the gross revenues received pursuant to the Services



provided under this Agreement, from the date of attempted transfer until the date of City consent, whichever is greater, shall be returned to City.

**Section 31. Franchise Transfer: Fees.**

Any application for a Franchise transfer shall be made in a manner prescribed by the City Manager. The application shall include a transfer fee in an amount to be set by the City by resolution or ordinance of the City Council, to cover the cost of all direct and indirect administrative expenses, including consultants and attorneys, necessary to adequately analyze the application and to reimburse City for all direct and indirect expenses. In the event that City's actual costs exceed the amount of the transfer fee, Collector shall reimburse City for all additional costs which are not covered by the transfer fee, up to, but not exceeding Five Thousand Dollars (\$5,000.00). Bills shall be supported with evidence of the expense or cost incurred. The applicant, for any such transfer, shall pay such bills within thirty (30) days of receipt. The Franchise transfer fees detailed in this Section are over and above any franchise fees specified in the other portions of this Agreement.

**Section 32. City Must Approve Change in Control of Collector.**

City consent is required for any change in control of Collector. Collector is a corporation, and any acquisition of more than forty-five percent (45%) of Collector's voting stock by a person, or group of persons acting in concert shall be deemed a change in control. Any change in control of the Collector occurring without prior City approval shall constitute a material breach of this Agreement.

**Section 33. Amendment to Agreement.**

This Agreement is intended to carry out City's obligations to comply with the provisions of AB 939 and SB 1383 and implemented by regulations of the Department of Resources Recycling and Recovery ("Regulations"), as they may from time to time be amended. In the event that AB 939, SB 1383 or other state or federal laws or regulations enacted after the Effective Date, prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations. Except for Rate adjustments made pursuant to Section 9, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both the City and Collector.

**Section 34. General Provisions.**

**34.1. Governing Law and Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for all legal proceedings arising from this Agreement shall be in the Superior Court for the County of Stanislaus in the State of California. In the event of litigation in a U.S. District Court, exclusive venue shall lie in the Eastern District of the State of California.

**34.2. Notices.** Any notice or communication required hereunder between City and Collector must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

With courtesy copy to:

To Collector:

Gilton Solid Waste Management, Inc.  
755 S. Yosemite Ave.  
Oakdale CA 95361  
Attention: President

**34.3. Severability.** If this Agreement in its entirety is determined by a court to be invalid or unenforceable, this Agreement shall automatically terminate as of the date of final entry of judgment. If any provision of this Agreement shall be determined by a court to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any federal or state statute, which becomes effective after the Effective Date, the remaining provisions shall continue in full force and effect and shall be construed to give effect to the intent of this Agreement.

**34.4. Exhibits Incorporated.** The following "Exhibits" are attached hereto and incorporated herein by this reference:

<u>Exhibit Designation</u>	<u>Exhibit Title</u>
Exhibit A	Definitions
Exhibit B	Franchise Area
Exhibit C	Rates
Exhibit D	Bulky Item Collection Program
Exhibit E	C&D Debris Diversion Policy
Exhibit F	Specified E-Waste
Exhibit G	SB 1383 Additional Services

**34.5. Time of Essence.** Time is of the essence for the Agreement and each provision contained within and each provision is made and declared to be a material, necessary and essential part of the Agreement.

**34.6. Authority.** All Parties to the Agreement warrant and represent that they have the power and authority to enter into the Agreement and the names, titles and capacities herein stated on behalf of any entities, persons, states or firms represented or purported to be represented by such entities, persons, states or firms and that all former requirements necessary or required by the state or federal law in order to enter into the Agreement. By entering into this Agreement, neither Party hereto shall have breached the terms or conditions of any other contract or agreement to which such Party is obligated, which such breach would have a material effect hereon.

**34.7. Drafting and Ambiguities.** Each Party acknowledges that it has reviewed this Agreement with its own legal counsel, and based upon the advice of that counsel, freely entered into this Agreement. Each Party has participated fully in the review and revision of the Agreement.



Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting this Agreement.

**34.8. Entire Agreement.** This Agreement, together with its specific references, attachments and Exhibits, constitutes the entire agreement of the Parties with respect to the subject matters hereof, and supersedes any and all prior negotiations, understanding and agreements with respect hereto, whether oral or written.

**34.9. Supersedes Prior Agreement.** It is the intention of the Parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written, electronic or oral, between the Parties with respect to the subject matter of this Agreement.

**34.10. Captions.** The captions of this Agreement are for convenience and reference only and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**34.11. Mandatory and Permissive.** "Shall" and "will" and "agrees" are mandatory. "May" and "can" are permissive.

**34.12. Successors and Assigns.** All representations, covenants, and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of, any or all of the Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

**34.13. Counterparts.** This Agreement may be executed simultaneously and, in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**34.14. Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.

**34.15. Necessary Acts and Further Assurances.** The Parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of the Agreement.

**34.16. Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

*[SIGNATURES ON A FOLLOWING PAGE.]*

**EXHIBIT A**  
**Definitions**

Capitalized words in the Agreement shall have the following meanings:

1. "AB" shall mean an Assembly Bill of the California Legislature.
2. "AB 341" shall mean the amendments to the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), Chapter 476, as amended, supplemented, superseded, and replaced from time to time.
3. "AB 939" shall mean the California Integrated Waste Management Act of 1989 (Division 30 of the California Public Resources Code), as amended, supplemented, superseded, and replaced from time to time.
4. "AB 1826" shall mean the Assembly Bill approved by the Governor of the State of California on September 28, 2014, which added Chapter 12.9 (commencing with Section 42649.8) to Part 3 of Division 30 of the Public Resources Code, relating to Solid Waste, as amended, supplemented, superseded, and replaced from time to time.
5. "Agreement" shall mean this Franchise Agreement between the City and Collector, including all exhibits and future amendments.
6. "Bin" or "Bins" shall mean receptacles provided by Collector for customers which are picked up by Collection trucks by means of a front-loading apparatus.
7. "Bulky Items" shall mean large items of Solid Waste such as appliances, furniture, branches, and other oversize wastes whose large size precludes or complicates their placement in containers or handling by normal collection, processing, or disposal methods, but excluding Excluded Waste; items larger than five cubic yards or heavier than 500 pounds; and items of excessive size or density, such as engine blocks, spas, boats, and trailers. A list of acceptable and unacceptable Bulky Items is attached as **Exhibit D**.
8. "Breach" shall be as defined in Section 26.1 of this Agreement.
9. "Cart" or "Carts" shall mean industry standard receptacles for disposal of Solid Waste, Organic Waste, and Recyclables, in a range of sizes. A Cart has wheels, a handle for ease of movement, and a light-fitting, attached lid and is designed to be dumped manually or mechanically into a Solid Waste collection vehicle.
10. "Certificates" shall be as defined in Section 19.2 of this Agreement.
11. "City" shall mean the City of Livingston, Merced County, State of California.
12. "City's Agents" shall be as defined in Section 18.1 of this Agreement.



13. "City Attorney" shall mean the city attorney for the City of Livingston.
14. "City Council" shall mean the City Council of the City of Livingston.
15. "City Engineer" shall mean the city engineer for the City of Livingston.
16. "City Manager" shall mean the city manager for the City of Livingston.
17. "Claim" shall be as defined in Section 18.1 of this Agreement.
18. "Collector" shall be as defined in the Preamble to this Agreement.
19. "Construction and Demolition Debris" or "C&D Debris" shall mean waste building materials, packaging, and rubbish resulting from construction, remodeling, repair, and demolition operations on pavements and on houses, commercial buildings, and other structures, but not including any Excluded Waste.
20. "Container" or "Containers" shall be as defined in Section 11.1 of this Agreement.
21. Contamination Monitoring shall be monitoring for prohibited container contaminants and notifying generators if contamination is found.
22. "Cure Period" shall be as defined in Section 26.3. of this Agreement.
23. "Customer" or "Customers" shall mean an individual(s), entity or entities that receive any services provided by Collector pursuant to this Agreement. Customer shall also mean the person, organization, or corporation receiving services to which billing statements are sent.
24. "Effective Date" shall be as defined in the Preamble to the Agreement.
25. "Electronic Waste" or "E-Waste" shall mean waste containing or consisting of electronic devices and components, such as computers, monitors, terminals, computer cards and components, computer peripheral devices, main frame computers, keyboards, mice, printers and scanners, mini-systems, power supply units, servers, connectors/cables, storage discs, consumer electronics, printed circuit boards, televisions, chips and components, cellular and other phones, telecommunications equipment, and fax machines and copiers, but not including Excluded Waste.
26. "Equipment" shall mean Collector's vehicles, tools, and equipment for the Services for which it is responsible under this Agreement.
27. "Excluded Waste" shall mean Hazardous Waste; Medical and Infectious Waste; liquid wastes; volatile, corrosive, biomedical, infectious, biohazardous, and toxic substances or material; waste that Collector reasonably believes would, as a result of or upon disposal, be a violation of local, state, or federal law, regulation, or ordinance, including land use restrictions or conditions; waste that cannot be disposed of in Class III landfills; waste that in Collector's reasonable opinion would present a significant risk to human health or the

environment, cause a nuisance, or otherwise create or expose Collector or the City to potential liability. Excluded Waste does not include de minimis volumes or concentrations of waste of a type and amount normally found in residential Solid Waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Wastes in compliance with Sections 41500 and 41802 of the Public Resources Code.

28. "Exhibits" shall be as defined in Section 34.4. of this Agreement.
29. "Force Majeure" shall be as defined in Section 11.2. of this Agreement.
30. "Franchise Area" shall be as defined in Section 4.1. of this Agreement.
31. "Franchise Fees" shall mean both the fees retained by City and paid by Collector to City as defined in Section 16.1.
32. "Hazardous Waste" shall mean a waste, or combination of wastes, which, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may do either of the following:
  - a. Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness.
  - b. Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported, or disposed of, or otherwise managed. (Public Resources Code Section 40141.)
33. "HDPE (High Density Polyethylene)" shall mean a recyclable plastic that includes, but is not limited to, milk jugs.
34. High Diversion Organic Waste Processing Facility shall mean a facility that is in compliance with the reporting requirements of SB 1383 and meets or exceeds an annual average mixed waste organic content recovery rate of 50 percent (50%) between January 1, 2022, and December 31, 2024, and 75 percent (75%) after January 1, 2025, as calculated pursuant to SB 1383 for Organic Waste received from the Mixed Waste.
35. "Household Hazardous Waste" shall maintain the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.
36. "Liquidated Damages" shall be as defined in Section 27.2.1 of this Agreement.
37. "Medical and Infectious Waste" shall mean biomedical waste generated at residences in excess of legal limits or at hospitals, public or private medical clinics, dental offices,

research laboratories, pharmaceutical industries, blood banks, mortuaries, veterinary facilities, and other similar establishments.

38. "Notice or Appeal" shall be as defined in Section 26.4 of this Agreement.
39. "Organic Waste" shall be all tree and plant trimmings, grass cuttings, dead plants, weeds, leaves, branches, and similar plant materials, (but not including palm fronds or items longer than five (5) feet or with a diameter greater than six (6) inches), food, food scraps, food- soiled paper, wood waste, paper and cardboard.
40. "Party" or "Parties" shall be as defined in the Preamble to this Agreement.
41. "Payment Bond" shall be as defined in Section 25.2 of this Agreement.
42. "Performance Bond" shall be as defined in Section 25.1 of this Agreement.
43. "PET (Polyethylene Terephthalate)" PET means a recyclable plastic that includes, but is not limited to, 2-liter soda bottles.
44. "Rates" shall mean the rates charged by Collector or City to Customers within the City as set forth in Section 9.I.
45. "Recitals" shall be as defined- in Section 1 of this Agreement.
46. "Records" shall be as defined in Section 13 or this Agreement.
47. "Recyclable Materials" or "Recyclables" shall mean those materials that may be separated on a commercially reasonable basis from Solid Waste and returned to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. Subject to mutually agreed revision by the Parties, Recyclable Materials or Recyclables include, newspaper (including inserts, coupons, and store advertisements), corrugated cardboard, mixed waste paper (including office paper, computer paper, magazines, junk mail, catalogs, Kraft bags and Kraft paper, paperboard, egg containers, phone books, brown paper, grocery bags, colored paper, construction paper, envelopes, legal pad backings, shoe boxes, and cereal and other similar food boxes), glass containers (including colored glass bottles and jars), aluminum (including beverage containers, foil, food containers, and small scrap metal), plastic milk and juice containers, steel or tin cans, small scrap metal, PETE and HDPE plastic containers (natural and colored), used motor oil and oil filters, and any other commercially viable recyclable materials mutually agreed to by Collector and the City.
48. "Refuse" shall mean general term for waste, including Solid Waste,
49. "Regulations" shall be as defined- in Section 33 of this Agreement.

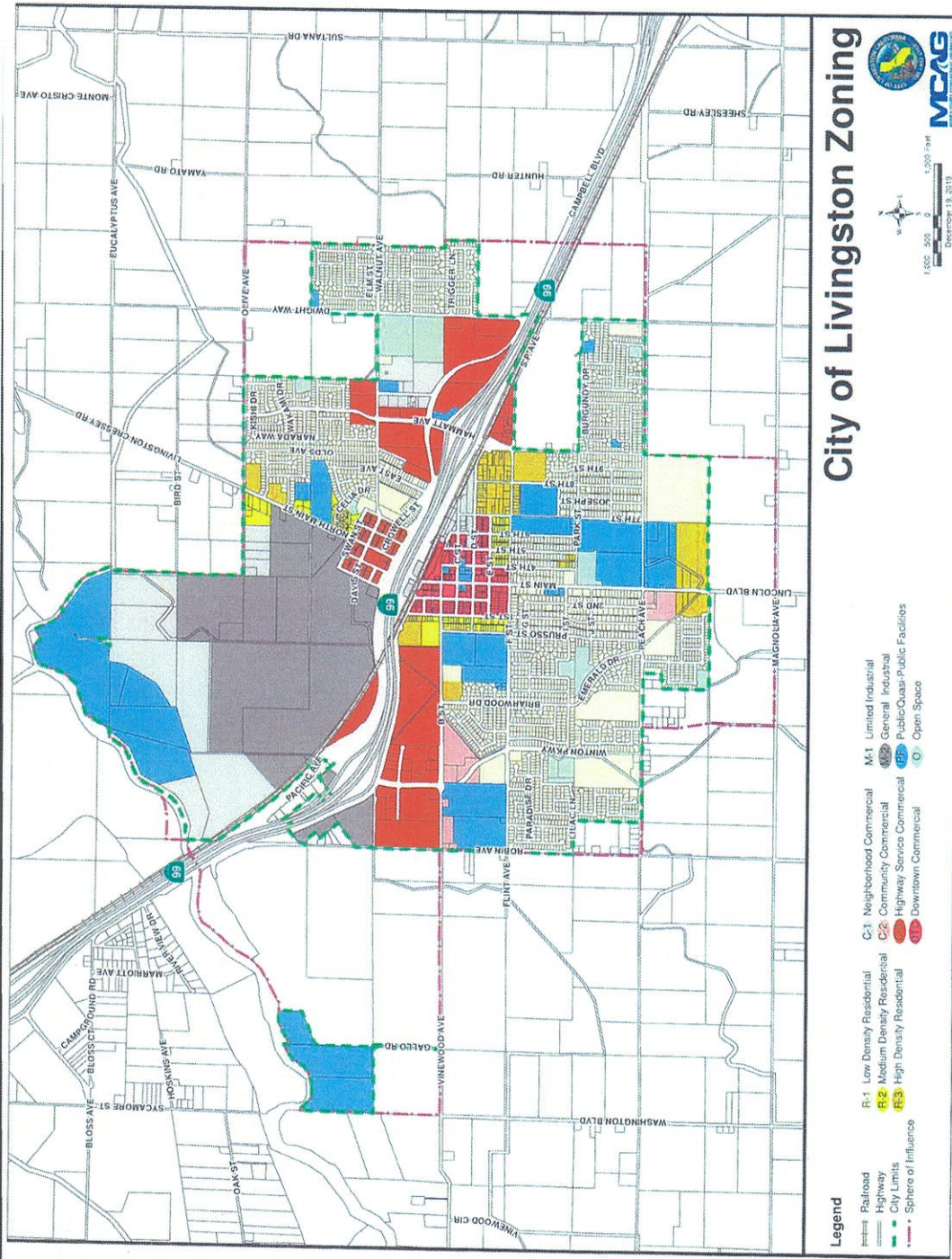


50. "Roll-Off Box" shall mean a container, with a minimum capacity of ten cubic yards, designed for mechanical emptying with a vehicle, and used for the storage and transportation of solid waste, Organic Waste, recyclables, and other commodities.
51. Route Review shall mean inspection and compliance review of a random sample to determine compliance and generate an electronic or written record for each inspection.
52. "SB 1383" shall mean Senate Bill 1383, Short-Lived Climate Pollutants (SLCP): Organic Waste Methane Emissions Reductions ("SB 1383"), establishing a statewide target to decrease methane emissions at landfills by reducing the disposal of organic waste by 50% below 2014 levels by 2022 and by 75% below 2014 levels by 2025.
53. "Services" shall be as defined in Section 5.1 of this Agreement.
54. "Solid Waste" shall mean and include all forms of residential and commercial waste generated within City limits and intended for disposal. Solid Waste as defined in Public Resources Code, Section 40191 and regulations promulgated thereunder and without limitation includes all putrescible and non-putrescible solid, semisolid, and liquid wastes, including garbage, trash, Refuse, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid or semisolid wastes, and other discarded solid and semisolid wastes. Notwithstanding any provision to the contrary, "Solid Waste" may include de minimis volumes or concentrations of waste of a type and amount normally found in residential solid waste after implementation of programs for the safe collection, recycling, treatment, and disposal of Household Hazardous Waste in compliance with Sections 41500 and 41802 of the Resources Code. For the purposes of this Agreement the Collector may, but is not required, to collect, haul, dispose or recycle any liquid wastes, abandoned vehicles, and parts thereof, industrial appliances; dewatered, treated or chemically fixed sewage sludge or manure.
55. "State" shall mean the State of California.
56. "Term" shall be as defined in Section 7 of this Agreement.
57. "Termination" shall be as defined in Section 27.1 of this Agreement.
58. "Universal Waste" shall mean any waste matter which the State of California classifies as 'universal waste,' including, but not limited to, items and materials listed in 22 CCR 6626 I.9, as it may be amended, as well as any items listed below not classified by the State of California as 'universal waste.' Universal Waste includes, but is not limited to, the following:
  - E-Waste;
  - Batteries (except automobile batteries);
  - Thermostats;

- Lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics;
- Cathode ray tubes;
- Aerosol cans;
- Mercury-containing items, including light switches, pressure gauges, and thermometers;
- Appliances, devices, and other objects containing electronic components, including (but not limited to) computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCRs, and televisions.

# EXHIBIT B

## Franchise Area





**EXHIBIT C  
Rates Schedule**

***Gilton Solid Waste Management, Inc.***

**Residential Rate Schedule**

**STANDARD SERVICE - WEEKLY COLLECTION ALL CONTAINERS**

	Monthly Rate			
	Three (3) Carts:	*Three (3) Carts w/Carts > 2 Yrs. Replaced:	Two (2) Carts:	*Two (2) Carts w/Carts > 2 Yrs. Replaced:
<u>Bundled Basic Service</u>	(1) MSW (1) Organics (1) Recycle	(1) MSW (1) Organics (1) Recycle	(1) MSW / Recycle (1) Organics	(1) MSW / Recycle (1) Organics
96 Gallon Carts	\$34.88	\$33.22	\$34.80	\$33.14
<i>Note: Rates include Franchise Fees at 15%</i> <i>*Reduced Pricing available if existing hauler only replaces cans older than 2 years old.</i>				

# Gilton Solid Waste Management, Inc.

## Commercial Rate Schedule

### Standard Service Per BIN

Bin Size	Collection Frequency	Monthly Rate	
		Three (3) Cart System	Two (2) Cart System
1 Cubic Yard	1	\$69.23	\$63.54
2 Cubic Yard	1	\$138.00	\$126.65
2 Cubic Yard	2	\$273.52	\$251.03
2 Cubic Yard	3	\$412.41	\$378.50
2 Cubic Yard	4	\$550.41	\$505.15
2 Cubic Yard	5	\$688.40	\$631.80
2 Cubic Yard	6	\$826.41	\$758.45
3 Cubic Yard	1	\$204.45	\$187.63
3 Cubic Yard	2	\$386.70	\$354.90
3 Cubic Yard	3	\$582.66	\$534.75
3 Cubic Yard	4	\$787.12	\$722.38
3 Cubic Yard	5	\$991.57	\$910.02
3 Cubic Yard	6	\$1,196.01	\$1,097.65
4 Cubic Yard	1	\$261.68	\$240.16
4 Cubic Yard	2	\$509.93	\$468.00
4 Cubic Yard	3	\$797.51	\$731.93
4 Cubic Yard	4	\$1,059.19	\$972.09
4 Cubic Yard	5	\$1,320.86	\$1,212.25
4 Cubic Yard	6	\$1,582.54	\$1,452.41
6 Cubic Yard	1	\$367.93	\$337.67
6 Cubic Yard	2	\$717.20	\$658.23
6 Cubic Yard	3	\$1,096.81	\$1,006.61
6 Cubic Yard	4	\$1,464.74	\$1,344.28
6 Cubic Yard	5	\$1,832.67	\$1,681.95
6 Cubic Yard	6	\$2,200.60	\$2,019.62

*Note: Proposed rates include Franchise Fees at 15%*

*With either the two or three cart system there is an additional 96-gallon container available to be used for either organics or recycle material.*

*The rate for this service is \$ 30 per container per month.*

## EXHIBIT D

### RESIDENTIAL BULKY ITEM COLLECTION PROGRAM

- Scheduled by appointment only. To arrange a pickup, please call our office at (209) 527-3781
- Program available to residents who currently subscribe to garbage service\*
- Qualifying residents can have bulky item picked up at their home two times per year
- Verify that items you want to set out for pick up are **Acceptable Items** (see lists below)
- Once appointment for pick up has been scheduled, items must be set out in front of home **after 6:00 p.m. the day before scheduled appointment**. Place items on the street one foot from curb. Do **NOT** block sidewalks, driveways or mailboxes. Items should be at least 3 feet away from garbage cart
- Do **NOT** place pile under low hanging wires or low hanging tree branches
- Items set out for collection should not exceed a dimension of 6 feet tall, 6 feet wide and 6 feet deep
- Items will be picked up after 6:00 a.m. on scheduled pick up day

#### ACCEPTABLE ITEMS

- ✓ Refrigerators & Freezers – Doors taped shut or doors removed – Limit 1
- ✓ Washers & Dryers – Limit 1 of each
- ✓ Water Heaters, Water Softener – drained – Limit 1 of each
- ✓ Air Conditioning Units – Limit 1
- ✓ Dishwashers – Limit 1
- ✓ Toilets, Sinks, Bathtubs
- ✓ Hot Tubs – Limit 1
- ✓ Couches, Sofas, Recliners
- ✓ Table and Chairs
- ✓ Dressers, Desks
- ✓ Mattress, Box Springs, Bed Frame – Limit 2
- ✓ Barbeques, Grills – remove propane tank
- ✓ Patio Furniture
- ✓ Doors
- ✓ Ladders
- ✓ Lawn Mowers – gas & oil removed
- ✓ Bicycles
- ✓ Exercise Equipment
- ✓ Plywood Sheets – limit 2
- ✓ Wood – limit 10 pieces no longer than 8 feet
- ✓ Carpet – rolled up
- ✓ Dry, flattened cardboard – Bundled

#### UNACCEPTABLE ITEMS

- ✓ Tires
- ✓ Automobile Parts
- ✓ Household Garbage-No bags, boxes or containers with small items inside
- ✓ Hazardous Waste, Chemicals, Toxic Materials
- ✓ Liquids, Paints, Solvents
- ✓ Plate Glass
- ✓ TVs
- ✓ Computer Monitors



- ✓ Concrete, Asphalt, Sheetrock
- ✓ Construction & Demolition Debris
- ✓ Fencing, Treated Wood
- ✓ Yard Waste
- ✓ Tree Stumps
- ✓ Items Associated with Business
- ✓ Dead Animals
- ✓ Fluorescent Light Tubes
- ✓ Sod, Dirt
- ✓ Glass, Mirrors
- ✓ Items Small Enough to Fit in Garbage Can

## **EXHIBIT E**

### **Construction & Demolition Debris Policy**

The 2013 California Green Building Standards Code (CALGreen) instructs local jurisdictions to require contractors to develop and maintain a waste management plan, among other things, to verify a minimum 50 percent waste diversion. CALGreen further specifies for the WMP to be updated as necessary and shall be available for examination during construction. Sample WMP is provided in the actual CALGreen code publication under the Compliance Forms and Worksheets section. The California Department of Housing and Development's website also provides sample WMP for residential C&D projects.

## **EXHIBIT F**

### **Acceptable E-Waste for Curbside Collection Program**

Computers  
Printers  
Copiers  
Scanners  
Fax Machines  
Telephones  
Cellular Telephones Stereos  
DVD Units  
Televisions (Cathode Ray Tubes)  
Computer Monitors  
Flat Screen Televisions  
Lap Top Computers  
Networking Equipment  
Printed Circuit Boards  
Computer Servers  
Computer Main Frame



## EXHIBIT G

### SB 1383 Additional Services

- Gilton staff to attend city public events providing outreach and education on SB 1383
- No less than twice per year, direct mail SB 1383 requirements to both residential and commercial customers. Fliers will be in English, Spanish and Punjabi.
- Annual route reviews for residential customers
- Cart and bin labels reinforcing proper separation of materials, by listing out which materials are accepted inside the container, and which are not accepted.
- Contamination Monitoring – contractor shall perform contamination inspections by utilizing on-board monitoring systems or physical container inspections.
- Cart contamination tags to inform customers of contamination issues and educate with solutions to resolve.
- Procurement – Contractor to provide Organic Waste Products (OWP, such as mulch and/or compost) to the City, to meet the annual Target Goal issued by CalRecycle to the City for that reporting year.
- Reporting – contractor will provide the data or prepare reports required to meet SB1383 requirements which include:
  - The number of generators that receive organic waste collection service.
  - The number of route reviews conducted for prohibited container contamination.
  - The number of times notices, violations or targeted education materials were issued to generators for prohibited container contaminants.

**IN WITNESS WHEREOF**, this Agreement has been entered into by and between City and Collector as of the Effective Date.

**City:**

**Signed:** \_\_\_\_\_

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

**Gilton Solid Waste Management, Inc.:**

**Signed:** \_\_\_\_\_

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



## STAFF REPORT

**AGENDA ITEM:** Consideration of a Resolution of the City Council of the City of Livingston Amending the Budget and Approving Appropriations for the Fiscal Year Commencing July 1, 2023, and Ending June 30, 2024

**MEETING DATES:** February 20, 2024

**PREPARED BY:** Christopher Lopez, Interim City Manager  
Happy Bains, Acting Finance Director

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### **RECOMMENDATION:**

City Council approve Resolution No. 2024- \_\_\_\_\_, Amending the Budget and Approving Appropriations for the Fiscal Year Commencing July 1, 2023, and Ending June 30, 2024.

### **BACKGROUND:**

Each year, the Mayor and City Council adopt an operating budget that commits resources for the fiscal year which is used to provide services to the public. The budget is a document that may be amended during the fiscal year for various reasons including allocating funds for unscheduled items, actions by third parties that may impact the budget, or changes in the economy that must be incorporated within the budget.

The current fiscal year began on July 1, 2023, and the Mayor and Council adopted the budget on June 6, 2023.

### **Economic Update**

In 2023, the US economy outperformed many expectations along the areas of growing economic output, labor market resilience, and slowing inflation. By many leading economists, the US appeared to have avoided a recession, which is good news considering the notable challenges over the last two years. Inflation is continuing to fall, but it is not at a level that may cause Fed officials to get it back to target. Additionally, long term interest rates have risen above the pre-COVID-19 levels, while the potential government shutdown at the national level continues to remain a possibility. Additionally, geopolitical forces continue to create challenges at the national level as US policymakers are grappling with requests of weapons, ammunition, and financing which all have an impact on the national budget process.

A number of long-term factors continue to remain relevant today:

1. The US population growth is slowing which is having a role in tighter labor markets and the need to pay for healthcare for an aging population.
2. The US budget trajectory is unsustainable.

On the state level, steady household spending, despite historically low unemployment, has shielded the economy from recession even as inflation exceeded Federal Reserve targets and interest rates on loans and credit cards rose. Sales tax performance for the second half of 2023 grew by 2.1% and lags behind the double-digit growth seen during the pandemic





## STAFF REPORT

recovery. Spending that generated sales taxes is expected to take a dip due to labor costs, inventory issues, and competition and there appears to be limited expansion.

City of Livingston property values grew by over 5% resulting in \$65 million in new value. Change of ownership added almost \$26 million. Industrial uses grew by \$11.8 million which was almost entirely due to Foster Farms, and as of the end of 2023, there were 3,762 parcels that were taxable.

Additionally, statewide home sales volume declined in 2023, due to high interest rates and low inventory. Towards the end of 2023, the median sale price for Livingston detached single family homes was \$350,000 which is a decrease of \$70,000 from 2022's median sale price.

### **DISCUSSION**

#### **FY 2023/2024 Year to Date Revenues and Expenditures**

The General Fund has collected 16% of revenues budgeted through the end of the second quarter. This is normal for the year as the majority of General Fund revenues from property taxes, property tax in-lieu of VLF, and Franchise Tax are received in the second half of the fiscal year and sales tax is generally received two months in arrears.

In Community Development, revenue projections and actual revenues received are on target. Notable projects included Arco AM & PM, Tierra Santa Apartments, and Moonglo truck stop and those developments have provided the necessary fees associated with the respective work performed.

Business license renewal revenues remain strong with an increase of business licenses in the City.

General fund expenditures are running on budget through the end of the second quarter at 53% of the approved budget.

In non-general fund areas, revenues are on track for this time of year. Gas Tax, Measure V, and Enterprise revenues are usually delayed by 1 month as Enterprise Revenues are billed in arrears.

Revenues from Lighting and Landscape Districts (LMD), Benefit Assessment Districts (BAD), and Community Facility Districts (CFD) are received after the January and May property tax payments are processed by the County of Merced.

#### **CIP Update**

The Mayor and City Council adopted its first One Year CIP. Several projects will go out to bid in the next few months, but it does appear as if capacity is limiting the ability to push these projects forward. The management team should look at various ways to increase capacity to ensure that staff are moving forward on highly critical projects.



# STAFF REPORT

The table below shows the One Year CIP and the status of these projects.

Project Description	FY23/24 Adopted Budget	FY 23/24 Actual Expenses as of Dec-23
Turf Conversion Behind City Hall	\$ 4,000.00	\$ -
Max Foster Phase 1	\$ 544,876.00	\$ 136.00
Max Foster Phase 2	\$ 530,388.00	\$ 625.00
Livingston Rec Plex	\$ 5,476,623.00	\$ -
Slurry Seal	\$ 403,700.00	\$ 394,332.00
Hammatt and Campbell	\$ 1,000,000.00	\$ -
Roof Replacement for Hammatt Hall, Max Foster Concessions, and Alvernaz Storage Unit	\$40,000.00	\$ -
Sludge Drying Equipment	\$1,000,000.00	\$ -
Lift Station	\$ 250,000.00	\$ -
Well #8a	\$ 4,000,000.00	\$ 477,632.00
<b>Grand Total</b>	<b>\$13,249,587.00</b>	<b>\$ 872,725.00</b>

## REVENUE ADJUSTMENTS

Overall, there is a proposed increase in General Fund revenues of \$192,000. Any revenues collected in excess of expenditures will be added to fund balance.

General Fund Revenue	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1100-000-3120	\$37,000.00	\$142,000.00	\$179,000.00	Property Transfer Tax Increase
1100-000-3352	\$0.00	\$20,000.00	\$20,000.00	Reimbursement for Grant G-80611-A1 : SJVAPCD Fire Dept Golf Cart
1100-000-3954	\$240,000.00	\$30,000.00	\$270,000.00	Reimbursement for 2021 Caldor Fire's

## EXPENDITURE ADJUSTMENTS

### Personnel Change in Police Department in General Fund

1. Police Department additional FTE due to resolution of a personnel matter
  - a. This will be paid out of salary savings and no additional funding is being requested.

On the expenditure side, the following departments are requesting increases:



# STAFF REPORT

Public Works - Admin	FY23/24	FY 23/24	FY 23/24	Description	Notes
General	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
1100-105-4345	\$18,000.00	\$13,000.00	\$31,000.00	Engineering Services	
1100-105-4606	\$2,500.00	\$2,500.00	\$5,000.00	Small Tools and Safety Equipment Shared by Mechanics/Streets	
Parks Department	FY23/24	FY 23/24	FY 23/24	Description	Notes
General	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
1100-104-4432	\$37,305.24	\$5,000.00	\$42,305.24	Facility O/M to cover expenses for the remainder of the FY	
1100-104-4431	\$8,000.00	\$5,000.00	\$13,000.00	Equipment O/M to cover expenses for the remainder of the FY	

## NON-GENERAL FUND

On the non-general fund side, staff is requesting to add the following items to the budget:

Sewer	FY23/24	FY 23/24	FY 23/24	Description	Notes
Enterprise	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
2101-815-4440	\$31,166.03	\$20,000.00	\$51,166.03	Generator and Pump Rentals	
2101-815-7410	\$190,000.00	\$50,000.00	\$240,000.00	Unexpected Pump Replacements	
2101-815-7445	\$1,250,000.00	\$25,000.00	\$1,275,000.00	Bio-Solids Removal	
Water	FY23/24	FY 23/24	FY 23/24	Description	Notes
Enterprise	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
2100-810-4392	\$394,447.16	\$200,000.00	\$594,447.16	Well # 12, # 13, # 14 Equipment Failures	
2100-810-4393	\$40,000.00	\$25,000.00	\$65,000.00	Water Main Repair at "I" Street	
Road Maint.	FY23/24	FY 23/24	FY 23/24	Description	Notes
Rehab	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
1223-105-4437	\$104,163.00	\$50,000.00	\$154,163.00	Signal Lights, Loop Control Repairs, Solar Stop Light Projects	
Measure V	FY23/24	FY 23/24	FY 23/24	Description	Notes
80%	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
1221-105-7530	\$403,700.00	\$150,000.00	\$553,700.00	Crack Sealing Project, Pot Hole Repairs, Sidewalk Repairs	
Measure V	FY23/24	FY 23/24	FY 23/24	Description	Notes
20%	Adopted	Adjustment	Adjusted		
Fund	Budget	Increase	Budget		
1222-105-7531	\$0.00	\$200,000.00	\$200,000.00	Potential Walk Path to be Constructed at Max Foster	
Sanitation	FY23/24	FY 23/24	FY 23/24	Description	Notes
Fund	Adopted	Adjustment	Adjusted		
2103-825-4310	\$49,369.21	\$10,000.00	\$59,369.21	Consultant Assistance with SB1383	
2103-825-4312	\$1,235,772.00	\$300,000.00	\$1,535,772.00	Increase in Solid Waste Contract with Gilton (not approved yet)	





# STAFF REPORT

## Areas to Discuss in FY 24/25 Budget

There are notable fund balances in various Community Facilities Districts (CFD) with at least one with over \$2,000,000 in fund balance. In years past, there has not been a comprehensive schedule for respective allocations for these funds. In at least two of these CFD's, there are required contributions to specific areas such as landscape maintenance, public safety uses, and other areas. This makes allocations to the various operations much more transparent and manageable. In other CFD's, this allocation is not broken out, so staff is preparing to identify how these allocations will be presented, which will provide a much more comprehensive and accurate manner.

Staff is developing upgrades to various areas in the community that may include the following:

1. Park restroom updates
2. Playground replacements
3. Park lighting improvements

Staff are also aware of notable fund balances in the Landscape and Lighting District with a cumulative total of \$1,200,000 available in the fund.

The District provides for maintenance, servicing and operation of landscaped improvements, park maintenance, graffiti removal, and associated appurtenances located within the public right-of-way and dedicated landscape easements in 26 areas or zones throughout the City.

Each zone has specific improvements that provide a special and direct benefit to the parcels within the zones. All parcels that are identified as being within the zone share in both the cost and the benefits of the improvements. The costs associated with improvements are equitably spread between all benefiting parcels within that zone. Improvements within the District are generally parks, landscaped medians, and parkways. These improvements also include turf, ground cover, shrubs and trees, and irrigation systems, graffiti removal and walkways.

There are many planned landscape renovations that have been identified by staff. These renovation projects will consist of irrigation enhancements to better conserve water, tree planting as well as shrubs and plants. To keep the renovation projects on track and to provide exceptional service, there will be a planned addition to that department in the form of equipment procurement and addition to the personnel.

In FY 23/24, the Road Maintenance and Rehabilitation account had nothing budgeted for street repair and maintenance.

State legislation created the Road Maintenance and Rehabilitation Program to address deferred maintenance on the State Highway system and the local street and road system, and the RMRA account for the deposit of various funds for the program. A percentage of this new RMRA funding will be apportioned by formula to eligible cities and counties for basic road maintenance, rehabilitation, and critical safety projects on the local streets and roads system.

Staff have identified street rehabilitation projects for FY 24/25, FY 25/26 and will start to expend funds from the RMRA account to rehabilitate local roads. The local roads have been identified through our Pavement Management Software Program.



# STAFF REPORT

## FISCAL IMPACT

If the Mid-Year Budget recommendations are approved as presented, the increase to General Fund expenditures will be \$25,500 and non-general fund expenditures will increase by \$1,030,000.

General fund revenues will increase by \$192,000, and there is no proposed change to the non-general fund revenues.

## ATTACHMENTS

1. Resolution
2. Exhibit "A" Mid-Year Budget Review
3. Fiscal Year 2023-2024 Mid-Year Analysis

**RESOLUTION NO. 2024-**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON AMENDING  
THE BUDGET AND APPROVING APPROPRIATIONS FOR THE FISCAL YEAR  
COMMENCING JULY 1, 2023, AND ENDING JUNE 30, 2024**

**WHEREAS**, on June 6, 2023, the City of Livingston City Council adopted the Fiscal Year 2023/2024 annual budget; and

**WHEREAS**, the City of Livingston conducts regular reviews of its budget as it is fiscally prudent to do so; and

**WHEREAS**, based upon the latest review the City desires to amend the budget as stated in Attachment A

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Livingston, the recommended adjustments to the budget as summarized in Exhibit A, attached hereto and incorporated herein by reference, and corresponding adjustments to the expenditure and revenue appropriations within the funds and hereby approved.

I hereby certify that the foregoing Resolution No. 2024-\_\_\_\_ is a full, true and correct copy of a resolution duly passed and adopted by the City Council of the City of Livingston at a regular meeting thereof duly held on the 20<sup>th</sup> day of February, 2024, by the vote recorded as follows:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

By: \_\_\_\_\_  
Jose A. Moran, Mayor  
of City of Livingston

ATTEST

\_\_\_\_\_  
Monica Cisneros, Deputy City Clerk

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Roy C. Santos, City Attorney

## EXHIBIT A: MID YEAR BUDGET REVIEW

Sewer Enterprise Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
2101-815-4440	\$31,166.03	\$20,000.00	\$51,166.03	Generator and Pump Rentals To Procure Pumps & Motors In The Event of a Failure Replenish Funds used to Remove Bio-Solids
2101-815-7410	\$190,000.00	\$50,000.00	\$240,000.00	
2101-815-7445	\$1,250,000.00	\$25,000.00	\$1,275,000.00	

Water Enterprise Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
2100-810-4392	\$394,447.16	\$200,000.00	\$594,447.16	Well # 12, # 13, # 14 Equipment Failures Water Main Repair at "I" Street Exceed Budgeted Amount
2100-810-4393	\$40,000.00	\$25,000.00	\$65,000.00	

Public Works - Admin General Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1100-105-4345	\$18,000.00	\$13,000.00	\$31,000.00	Engineering Services to complete Measure V Regional Application

Road Maint. Rehab Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1223-105-4437	\$104,163.00	\$50,000.00	\$154,163.00	Signal Loop Replacement at Joseph Gallo Parkway and Purchase Solar Lighted LED Stop Signs at Campbell and Dwight

Measure V 80% Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1221-105-7530	\$403,700.00	\$150,000.00	\$553,700.00	Crack Sealing Project, Pot Hole Repairs, Sidewalk Repairs

Measure V 20% Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1222-105-7531	\$0.00	\$200,000.00	\$200,000.00	Potential Walk Path to be Constructed at Max Foster

Parks Department General Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1100-104-4432	\$37,305.24	\$5,000.00	\$42,305.24	Facility O/M to cover expenses for the remainder of the FY Equipment O/M to cover expenses for the remainder of the FY
1100-104-4431	\$8,000.00	\$5,000.00	\$13,000.00	

Sanitation Fund	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
2103-825-4310	\$49,369.21	\$10,000.00	\$59,369.21	Consultant Assistance with SB1383 Increase in Solid Waste Contract with Gilton (not approved yet)
2103-825-4312	\$1,235,772.00	\$300,000.00	\$1,535,772.00	

General Fund Revenue	FY23/24 Adopted Budget	FY 23/24 Adjustment Increase	FY 23/24 Adjusted Budget	Description Notes
1100-000-3120	\$37,000.00	\$142,000.00	\$179,000.00	Property Transfer Tax Increase Reimbursement for Grant G-80611-A1 : SJVAPCD Fire Dept Golf Cart Reimbursement for 2021 Caldor Fire's
1100-000-3352	\$0.00	\$20,000.00	\$20,000.00	
1100-000-3954	\$240,000.00	\$30,000.00	\$270,000.00	



CITY OF LIVINGSTON  
 GENERAL, COMMUNITY DEVELOPMENT, AND RECREATION FUNDS REVENUE AND EXPENDITURE REPORT AS OF DECEMBER 31, 2023

	Initial Budget	Purchase Order Carryovers	Continuing Appropriations	Council Approved Amendments	Adjusted Budget	Year to Date Actual	% of Budget Rcvd / Used	% of Budget Remaining
<b>Revenue Summary</b>								
Taxes	4,653,672	-	-	-	4,653,672	846,027	18.18%	81.82%
License & Permits	302,090	-	-	-	302,090	235,624	78.00%	22.00%
Intergovernmental	2,504,172	-	-	-	2,504,172	20,148	0.80%	99.20%
Charges for Services	361,574	-	-	-	361,574	63,384	17.53%	82.47%
Fines & Forfeitures	24,200	-	-	-	24,200	9,473	39.15%	60.85%
Return on Use of Money	53,700	-	-	-	53,700	23,466	43.70%	56.30%
Miscellaneous Revenue	357,360	-	-	-	357,360	226,733	63.45%	36.55%
<b>Total Revenue Before Transfer In</b>	<b>8,256,768</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>8,256,768</b>	<b>1,424,857</b>	<b>17.26%</b>	<b>82.74%</b>
Transfers In	796,033	-	-	-	796,033	796,033	100.00%	0.00%
<b>Total Resources</b>	<b>9,052,801</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>9,052,801</b>	<b>2,220,890</b>	<b>24.53%</b>	<b>75.47%</b>
<b>Expenditure Summary</b>								
Elected Officials	156,156	10,844	-	-	167,000	93,436	55.95%	44.05%
Administrative Services	958,167	15,796	-	-	973,963	323,518	33.22%	66.78%
Police Department	4,758,527	9,149	-	-	4,767,676	2,268,725	47.59%	52.41%
Fire Department	117,460	3,697	-	-	121,156	38,676	31.92%	68.08%
Parks Department	387,234	200	-	-	387,433	246,235	63.56%	36.44%
Public Works/Streets Department	380,339	8,439	-	-	388,778	209,503	53.89%	46.11%
Recreation	655,501	993	-	-	656,493	311,451	47.44%	52.56%
Building	222,320	503	-	-	222,823	74,945	33.63%	66.37%
Planning	575,734	1,140	-	-	576,874	189,747	32.89%	67.11%
Engineering	122,762	-	-	-	122,762	63,195	51.48%	48.52%
<b>Total Expenditures Before Transfer Out</b>	<b>8,334,199</b>	<b>50,761</b>	<b>-</b>	<b>-</b>	<b>8,384,960</b>	<b>3,819,431</b>	<b>45.55%</b>	<b>54.45%</b>
Transfers Out	796,033	-	-	-	796,033	793,033	100%	0%
<b>Total Uses</b>	<b>9,130,232</b>	<b>50,761</b>	<b>-</b>	<b>-</b>	<b>9,180,993</b>	<b>4,612,464</b>	<b>50%</b>	<b>50%</b>