



**CITY COUNCIL SPECIAL AND REGULAR MEETING
AGENDA
April 16, 2024**

**SPECIAL MEETING: 6:00 P.M. – 7:00 P.M
REGULAR MEETING: 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

Notice is hereby given that the City Council will hold a Special and Regular Meeting on April 16, 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 email at 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).

SPECIAL MEETING

1. Call to Order
2. Roll Call
3. Pledge of Allegiance.
4. Moment of Silence – First Responders and Military Members.
5. Citizen Comments

CLOSED SESSION

*A “Closed” or “Executive” Session of the City Council or the Successor Agency to the Redevelopment Agency of the City of Livingston may be held in accordance with state law which may include, but is not limited to, the following types of items: personnel matters, labor negotiations, security matters, providing instructions to real property negotiators, conference with legal counsel regarding pending litigation. The Closed Session will be held in the City Council Chambers located at 663 Main Street, Livingston, California. **Any public comment on Closed Session items will be taken before the Closed Session.** Any required announcements or discussion of Closed Session items or actions following the Closed Session will be made in the City Council Chambers, 633 Main Street, Livingston, California.*

6. Threat to public services or facilities, pursuant to Government Code section 54957.
Consultation with: City Attorney

REGULAR MEETING

CALL TO ORDER

Next Resolution No.: 2024-16
Next Ordinance No.: 653

Pledge of Allegiance.

Moment of Silence – First Responders and Military Members.

Roll Call.

Closed Session Announcement.

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.

AWARD, PRESENTATIONS, PROCLAMATIONS

1. Presentation by Council Member Soto: Recognition of Livingston High School Varsity Girls Wrestling Team.
2. Presentation of Council Member Soto: Recognition of Livingston Boys Wrestling Team.
3. Presentation by Council Member Soto: Recognition of Livingston Youth Football (LYF) Varsity Team.
4. Presentation by Mayor Moran: Sister Cities: Bridging Cultures Across Borders.

ANNOUNCEMENTS AND REPORTS

Supervisor Rodrigo Espinoza Announcements and Reports.

City Staff Announcements and Reports.

- Robert Wynne, Fire Apparatus Engineer – Fire 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.

5. RATIFY CHECK WARRANTS
Ratify Warrant Register Dated April 11, 2024.
6. Consideration of a Resolution Authorizing the Interim City Manager to Enter into a Contract with Turbodata Systems for Citation Processing Services. Staff Recommendation: Approve Resolution.
7. Consideration of a Resolution Approving the City of Livingston’s Purchase of a New Code Enforcement/Animal Control Vehicle. Staff Recommendation: Approve Resolution.
8. Consideration of a Resolution Authorizing Approval of Purchase of Six (6) Solar Light Poles from Fonroche Lighting America, in the Amount of \$31,107 and Authorizing the Interim City Manager to Execute All Required Documents. Staff Recommendation: Approve Resolution.
9. Consideration of a Resolution Authorizing and Approving the Interim City Manager to Execute a Services Agreement with NeoGov for the Purchase of Applicant Tracking System Recruit Module. Staff Recommendation: Approve Resolution.
10. Consideration of an Ordinance of the City Council of the City of Livingston Repealing Chapter 3, Underground Utility Districts, of Title 9 and Replacing it with Chapter 3, Underground, Utilities, of Title 9 of the City of Livingston Municipal Code. Staff Recommendation: Waive the Second Reading of the Ordinance by Title Only, Open the Public Hearing, Close the Public Hearing and Adopt the Ordinance as Presented.

DISCUSSION AND POTENTIAL ACTION ITEMS

11. Consideration of a Resolution Appointing Alan Cadiente, Darmeen Randhawa, Cristy Pineda, and Anabel Perez to the Parks Recreation and Arts Commission. Staff Recommendation: Approve Resolution.
12. Mayor Moran will administer the Oath of Office to the New Recreation Commissioners.
13. Discussion and Direction on City of Livingston Fire Services.

14. Consideration of a Resolution Establishing an Administrative Fee for Solid Waste, Recycling and Organics Collection Services Processing Maintenance and Enforcement. Staff Recommendation: Approve Resolution.
15. Consideration of a Resolution Establishing a Fifteen (15%) Percent Franchise Fee for Exclusive Access to City Solid Waste, Recycling and Organics Collection Services and Exclusive Access to City Streets and Right-of-Way. Staff Recommendation: Approve Resolution.
16. Consideration of a Resolution Authorizing Interim City Manager to Execute Agreement with HR Green, Inc. to Perform Engineering Services to Include Water Modelling, Development of a Water Comprehensive Capital Improvement Program (CIP), and Other Water Related Engineering Services as Needed. Staff Recommendation: Approve Resolution.
17. Discussion and Direction Regarding Community Facilities District (CFD) 2005-1 and the Respective Expenditure Against This Fund.

COUNCIL DIRECTION ON FUTURE AGENDA ITEMS

ADJOURNMENT

CITY OF LIVINGSTON

Merced County Fire Department Station 96

Staff Report



Emergency Activity Report

01/01/2024-03/27/2024

Total
Incidents
YTD: 438

Incidents in
the City:
283

Incidents
outside of
City: 155

PCF
response
to
incidents
60%

PCF for
station
coverage
3%

Incidents
within
initial area
88%



City Equipment Updates

- All City Fire Engines are up to date with there 90-day safety inspections.
- Engine 96-E1 is in shop for repair and upgrades. (Pump testing, New LED code 3 light bar).
- New hand tools coming for all 3 fire engines.
- New 1 ¾ Fire Hose ordered for Engine 96-E1 and Truck 96.
- New LED scene lighting for Engine 96-E1.



Fire Prevention and Education

- Appliance and Electrical Fire Safety
- Garage Fire Safety
- Battery Fire Safety
- Candle Fire Safety
- Cooking Fire Safety
- Fire Safety for Children
- Fire Safety for People with Disabilities
- Fire Safety for Older Adults
- Hoarding and Fire Safety



Appliance, Electrical and Garage Fire Safety

- Always plug major appliances — refrigerators, stoves, washers and dryers — directly into a wall outlet.
- Install tamper-resistant electrical outlets if you have young children.
- Use power strips that have internal overload protection.
- Store oil, gasoline, paints, propane and varnishes in a shed away from your home.
- A 20-minute fire-rated door that is self-closing and self-latching from the garage into the house.



Battery, Candle, and Cooking Fire Safety

- Stop using lithium-ion batteries if you notice an odor, change in color, too much heat, change in shape, leaking or odd noises.
- Don't put lithium-ion batteries in direct sunlight or keep them in hot cars. This is a fire risk.
- Blow out candles when you leave a room or home, or when you go to bed.
- Keep candles at least 12 inches away from anything that burns.
- Turn pot handles toward the back of the stove so that no one can bump them or pull them over.
- Watch what you are cooking. Fires start when the heat is too high. If you see any smoke or the grease starts to boil, turn the burner off.
- Stand by your pan. If you leave the kitchen, turn the burner off.



Fire Safety for Children

- Have a plan for young children who cannot get outside by themselves. You will need to wake babies and very young children and help them get out. In your plan, talk about who will help each child get out safely.
- It is important to find 2 ways out of every room in your home in case the first exit is blocked or dangerous to use.
- Stay low and get to your exit if you smell or see smoke or if your smoke alarm sounds.
- Stay outside. Don't go back inside for anything.



Fire Safety for People with Disabilities

- Physical disability was the second leading human factor contributing to fatalities in residential buildings (30%).
- If possible, live near an exit.
- If you are deaf or hard of hearing, use smoke alarms with a vibrating pad, flashing light or strobe light. These accessories start when your alarm sounds.
- Have smoke alarms on every level of your home, inside bedrooms and outside sleeping areas.
- If you live in a multistory home, sleep on the first floor.



Fire Safety for Older Adults

- In 2020, older adults (65+) in the United States had a 2.5 times greater risk of dying in a fire than the total population.
- Discuss your fire escape plan with family and neighbors. Contact your building manager or fire department to discuss your plan if you need extra help escaping.
- Caregivers should check the smoke alarms of those who are unable to do it themselves.
- Use a timer to remind you that you are cooking.
- If you use a walker or wheelchair, check all exits to be sure that you can go through the doorways.



Hoarding and Fire Safety

- Personal items can crowd cooking equipment, making it unsafe to cook.
- Personal items can crowd heating equipment, putting you at risk of having a fire.
- Blocked windows and doors make it difficult for firefighters to get into your home to fight the fire and search for occupants.
- Keep doorways and windows clear for escape in case there is a fire. This will also prevent injuries from falling over excessive personal items.



Merced County Fire PCF Recognition

- DaVern Koehn
- Marcus Koehn
- Maynard Koehn
- Waylen Koehn
- Michael Koehn

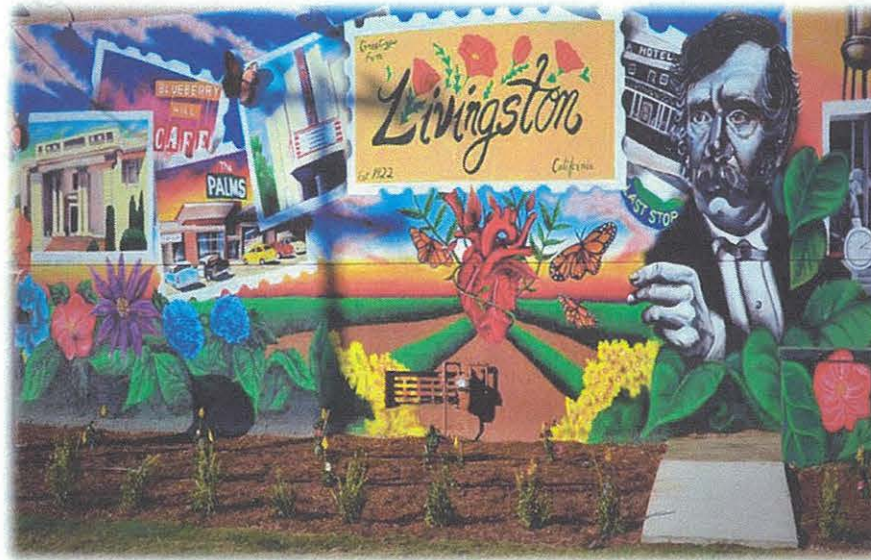


Pancake Breakfast

- Merced County Fire Department and the City of Livingston is hosting Livingston Volunteer Fire Company (United Way Non-Profit) to their Annual Pancake Breakfast.
- The Pancake breakfast will be on Saturday May 4, 2024 from 7 Am to 11 Am.
- Please reach out to Fire Department Staff or any member of the Livingston Volunteer Fire Company.



Feedback/Comments



United We Stand-Divided We Fall





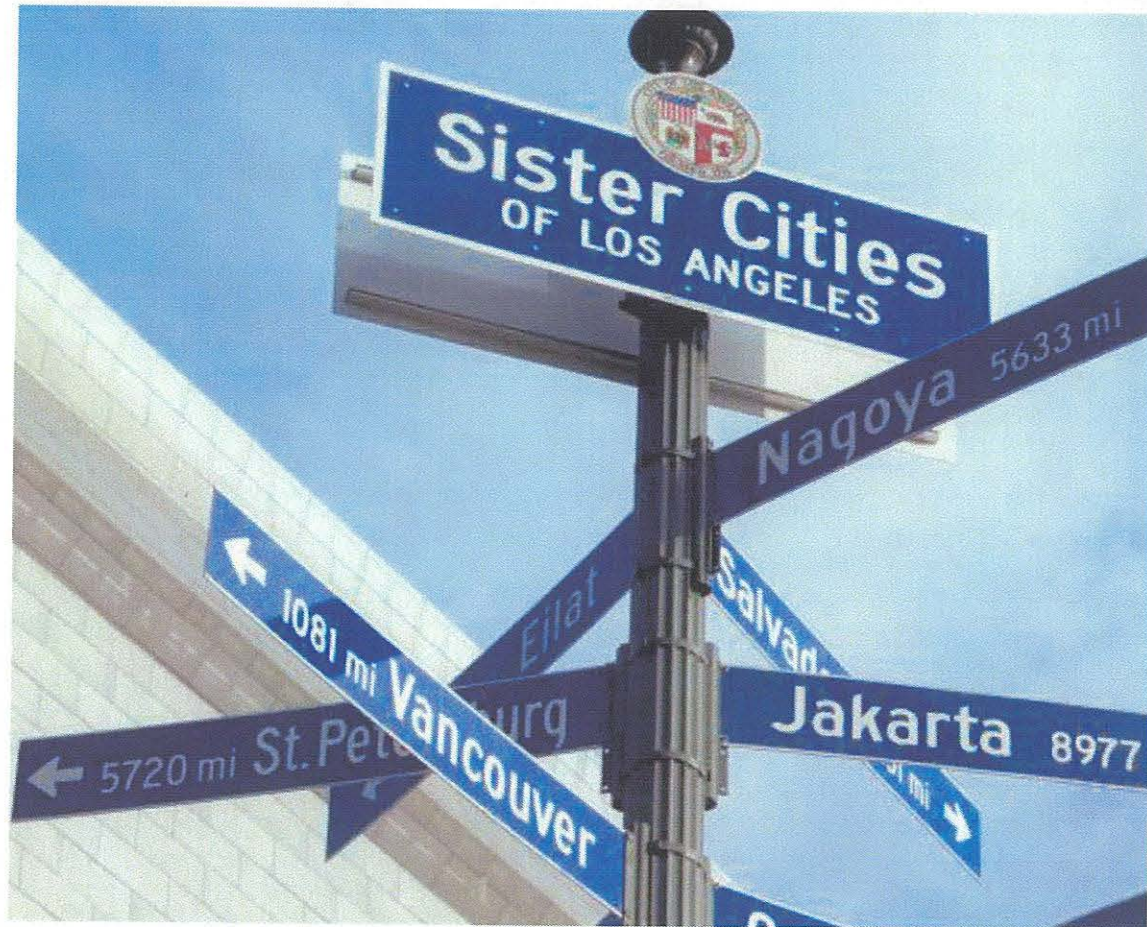
Sister Cities: Bridging Cultures Across Borders

Mayor José A. Morán



A sister city, county, or state relationship is a broad-based, long-term partnership between two communities in two countries. A relationship is officially recognized after the highest elected or appointed official from both communities sign off on an agreement to become sister cities.

Each sister city organization is independent and pursues the activities and thematic areas that are important to them and their community including municipal, business, trade, educational, and cultural exchanges and projects with their sister city.



Sister cities programs foster **cultural exchange** and **diplomacy** through city-to-city partnerships, promoting **understanding** and **friendship** between different cultures.



The concept of sister cities originated after World War II to promote **peace** and **reconciliation** between former enemies. Over time, it has evolved into a platform for **cultural exchange** and **economic cooperation**.



Sister cities provide opportunities for **cultural immersion, educational exchanges, and economic partnerships**. They also contribute to **global understanding and peacebuilding**.





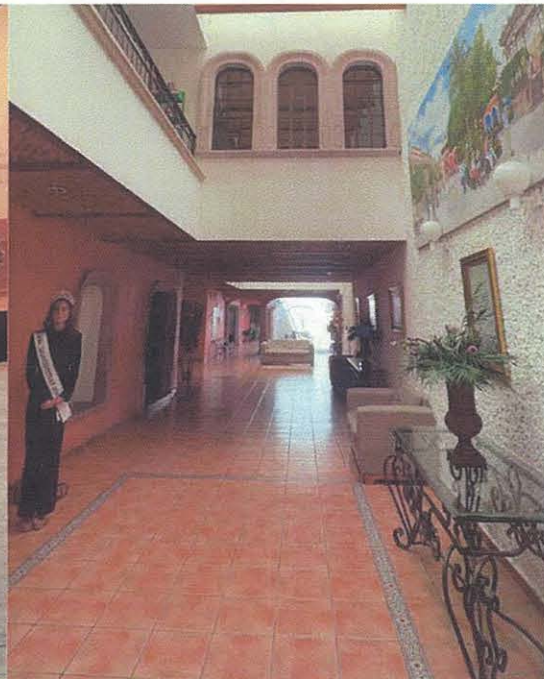
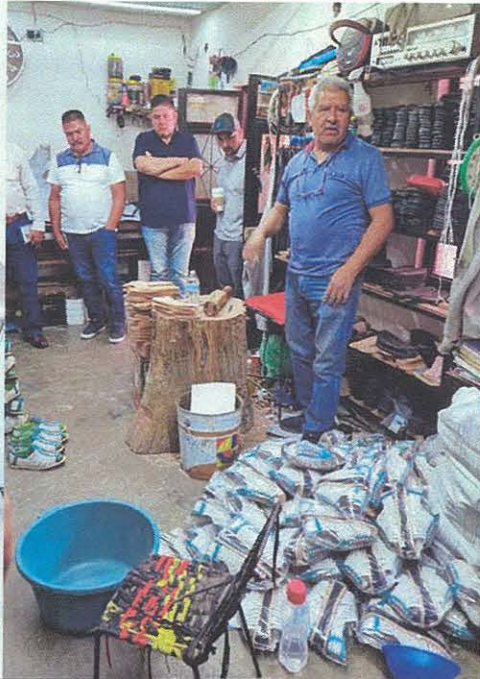
Many sister city partnerships have led to successful collaborations in areas such as **education, arts and culture, and sustainable development**. These success stories demonstrate the power of **cross-border cooperation**.



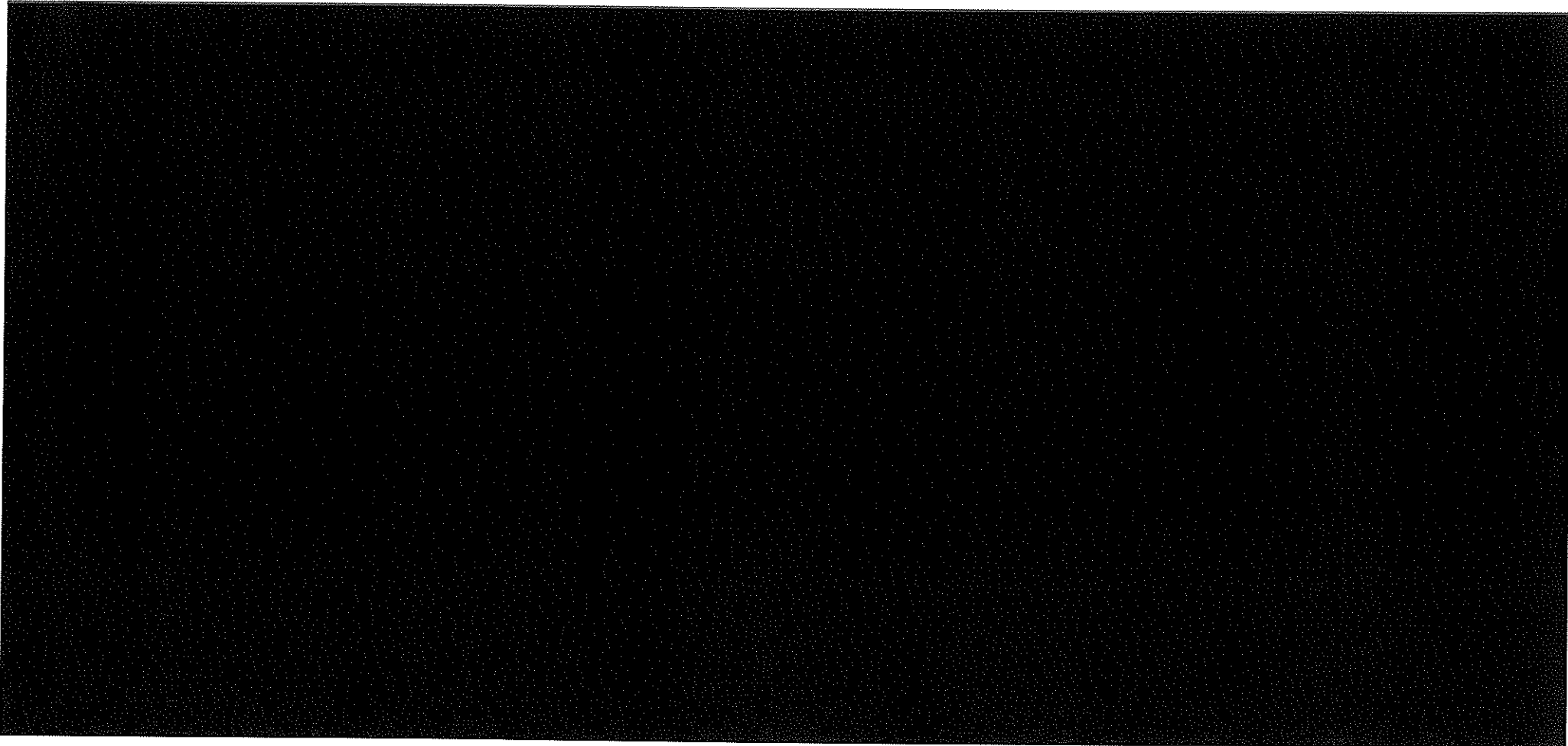
Conclusion

Sister cities play a vital role in **connecting** and **bridging** cultures across borders. By fostering **mutual understanding** and **collaboration**, these partnerships contribute to a more **peaceful** and **inclusive** world.





Sister Cities Presentation between Churintzio & Livingston





SisterCities

INTERNATIONAL

Connect globally. Thrive locally.



www.SisterCities.org

The End



STAFF REPORT

AGENDA ITEM: Warrant Register April 11, 2024
MEETING DATE: April 16, 2024
PREPARED BY: Nancy Fuentes, Accounting Technician
REVIEWED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Ratify the warrant register dated April 11, 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:

March 15, 2024 – April 11, 2024

GENERAL WARRANTS.....	\$	702,327.72	10804-10915
PAYROLL/WIRE WARRANTS.....	\$	487,671.76	3085-3114
TOTAL WARRANTS.....	\$	1,189,999.48	

ATTACHMENTS:

Warrant Register (detailed by date and check number)

Accounts Payable

Checks by Date - Summary by Check Date

User: nfuentes
 Printed: 4/11/2024 10:10 AM



City of Livingston
 1416 C Street
 Livingston, CA 95334

Check No	Vendor No	Vendor Name	Check Date	Check Amount
10804	395	Administrative Solution, Inc.	03/21/2024	390.00
10805	396	American Fidelity Assurance	03/21/2024	3,167.68
10806	397	American Fidelity Assurance Company	03/21/2024	1,103.32
10807	393	California State Disbursement Unit	03/21/2024	893.06
10808	UB*02069	JOHN H. BASKETT & GLORIANA MAR	03/21/2024	101.59
10809	405	Premier Access Insurance Company	03/21/2024	905.60
10810	598	Standard Insurance Company RB	03/21/2024	2,923.77
10811	1284	State of California	03/21/2024	65.08
10812	564	Texas Life Insurance	03/21/2024	275.28
10813	UB*02070	GEORGE OR SALVINA VELLA	03/21/2024	298.17
10814	608	Vision Service Plan- CA	03/21/2024	425.39
Total for 3/21/2024:				10,548.94
10815	251	ABS Direct, Inc.	03/22/2024	135.65
10816	1414	Veronica Acosta	03/22/2024	150.00
10817	62	Daisy Aguilar	03/22/2024	150.00
10818	1309	Aleshire & Wynder LLP	03/22/2024	50,359.20
10819	162	Steve Bassi	03/22/2024	25.00
10820	447	Conco West, Inc	03/22/2024	65,742.85
10821	1308	CSG Consultants, Inc.	03/22/2024	22,299.50
10822	260	First Communications, LLC	03/22/2024	16.66
10823	1151	Jose Flores	03/22/2024	25.00
10824	686	JJC Security System Solutions	03/22/2024	6,000.00
10825	675	Lance, Soll & Lunghard, LLP	03/22/2024	7,086.00
10826	278	Merced Irrigation District	03/22/2024	45,941.93
10827	389	Mid Valley IT	03/22/2024	10,984.20
10828	302	Office Depot, Inc./ODP Business Solutions.	03/22/2024	161.47
10829	430	Quadient Finance USA, Inc.	03/22/2024	1,135.97
10830	1330	James D Sanders	03/22/2024	150.00
10831	739	Self- Help Enterprises	03/22/2024	6,748.44
10832	1405	Taylor Backhoe Service, Inc.	03/22/2024	32,339.35
10833	310	Totlcom, Inc.	03/22/2024	1,314.55
10834	296	Visual Edge IT, Inc	03/22/2024	1,635.81
10835	818	Renee Waite-Mendonca	03/22/2024	25.00
10836	536	Robert Wallis	03/22/2024	25.00
10837	287	West Coast Code Consultants, Inc.	03/22/2024	4,500.00
10838	409	Willdan Financial Services	03/22/2024	11,014.81
Total for 3/22/2024:				267,966.39
10839	1309	Aleshire & Wynder LLP	03/29/2024	41,128.64
10840	250	Alhambra	03/29/2024	276.90
10841	472	Aqua-Metric Sales Company	03/29/2024	3,337.31
10842	446	Belkorp Ag, LLC	03/29/2024	229.40
10843	546	Bogie's Pump Systems	03/29/2024	9,467.24
10844	193	BSK Associates	03/29/2024	2,107.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
10845	1100	CAL FIRE	03/29/2024	2,270.80
10846	909	Canon Financial Services, Inc.	03/29/2024	331.89
10847	1239	Clark Pest Control of Stockton, Inc.	03/29/2024	51.00
10848	1383	County of Merced	03/29/2024	104,163.00
10849	787	Custom Weed Control Inc.	03/29/2024	400.00
10850	548	Doras Fashion	03/29/2024	217.00
10851	455	Ernest Packaging Solutions	03/29/2024	2,655.50
10852	163	EZ Auto Supply	03/29/2024	172.51
10853	641	Ferguson Enterprises LCC #686	03/29/2024	216.73
10854	295	Ferguson Waterworks #1423	03/29/2024	201.73
10855	1410	FFP Fund VII TEI Partnership 1, LLC	03/29/2024	6,445.88
10856	420	Frantz Wholesale Nursery, LLC.	03/29/2024	896.05
10857	188	Frontier	03/29/2024	2,563.31
10858	164	Garza Tire & Wheel, Inc	03/29/2024	230.00
10859	262	Gilton Solid Waste	03/29/2024	9,600.15
10860	356	Gouveia Engineering, Inc.	03/29/2024	56,893.91
10861	1098	Granite Construction Company	03/29/2024	1,387.82
10862	642	Hilmar Rentals, LLC	03/29/2024	140.08
10863	267	Hoffman Security	03/29/2024	230.90
10864	501	Hunt & Sons, Inc.	03/29/2024	6,807.01
10865	388	Interstate Battery System of Fresno	03/29/2024	167.88
10866	520	Interstate Truck Center	03/29/2024	369.46
10867	165	J L Analytical Services, Inc.	03/29/2024	159.00
10868	167	Kimball Midwest	03/29/2024	1,724.60
10869	502	Merced Irrigation-Urban GSA	03/29/2024	1,958.34
10870	389	Mid Valley IT	03/29/2024	7,232.02
10871	180	Mission Linen Service	03/29/2024	628.77
10872	194	Modesto Welding Products	03/29/2024	24.00
10873	275	Municipal Emergency Services	03/29/2024	925.11
10874	199	Northstar Chemical	03/29/2024	4,273.94
10875	949	Nova Heating and Air Conditioning	03/29/2024	2,639.25
10876	302	Office Depot, Inc./ODP Business Solutions.	03/29/2024	425.14
10877	1147	PAC Machine Company, INC.	03/29/2024	16,442.50
10878	203	PG&E	03/29/2024	66,355.63
10879	948	Pump Pros Inc.	03/29/2024	1,737.56
10880	553	Rahn's Fire & Safety Services	03/29/2024	1,427.48
10881	605	Razzari Auto Centers	03/29/2024	38.41
10882	265	Resourceability	03/29/2024	2,427.36
10883	450	S & A Manufacturing	03/29/2024	1,392.43
10884	386	S & N Auto Services, INC.	03/29/2024	100.00
10885	208	Saenz Pest Control, Inc.	03/29/2024	127.00
10886	439	Sharpening Shop	03/29/2024	8,547.56
10887	307	Shred-It, C/O Stericycle, Inc.	03/29/2024	260.39
10888	309	St. Francis Electric	03/29/2024	676.00
10889	1433	State Water Resources Control Board	03/29/2024	110.00
10890	440	Target Specialty Products	03/29/2024	1,140.00
10891	1036	The Water Connection, Inc	03/29/2024	156.95
10892	1268	Totally Delicious Catering	03/29/2024	2,100.00
10893	310	Totlcom, Inc.	03/29/2024	382.72
10894	366	USABlueBook	03/29/2024	260.05
10895	1150	Valley 29 Electric, LLC	03/29/2024	3,191.38
10896	1204	Valley Sanitation & Rentals LLC	03/29/2024	672.47
10897	486	Sunil Verma DC	03/29/2024	100.00
10898	296	Visual Edge IT, Inc	03/29/2024	933.25
10899	409	Willdan Financial Services	03/29/2024	10,609.59
10900	597	Work Wellness	03/29/2024	444.00

Check No	Vendor No	Vendor Name	Check Date	Check Amount
			Total for 3/29/2024:	392,582.00
10901	395	Administrative Solution, Inc.	04/09/2024	120.00
10902	396	American Fidelity Assurance	04/09/2024	3,282.18
10903	397	American Fidelity Assurance Company	04/09/2024	1,103.32
10904	393	California State Disbursement Unit	04/09/2024	893.06
10905	UB*02073	VANESSA FIGUEROA	04/09/2024	182.38
10906	UB*01929	ROBERTO JAUREGUI	04/09/2024	200.00
10907	437	Operating Engineers Local 3	04/09/2024	424.00
10908	438	Operating Engineers Local Union No.3	04/09/2024	655.50
10909	UB*02071	AURELIO ROBLES	04/09/2024	25.00
10910	UB*02072	RICARDO ROBLES	04/09/2024	216.26
10911	598	Standard Insurance Company RB	04/09/2024	2,946.61
10912	1284	State of California	04/09/2024	65.08
10913	564	Texas Life Insurance	04/09/2024	275.28
10914	608	Vision Service Plan- CA	04/09/2024	681.99
			Total for 4/9/2024:	11,070.66
10915	422	U.S. Bank Corporate Payment Systems	04/11/2024	20,159.73
			Total for 4/11/2024:	20,159.73
			Report Total (112 checks):	702,327.72



STAFF REPORT

AGENDA ITEM: Adopt Resolution Approving Contract with TurboData systems to Process Parking and Administrative Citations

MEETING DATE: April 16, 2024

PREPARED BY: John Ramirez, Acting Chief of Police

APPROVED By: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Adopt Resolution No. 2024- ____, City Council direct the Interim City Manager to enter into an agreement with TURBODATA Systems for citation processing services.

BACKGROUND:

The City of Livingston currently contracts with Duncan Solutions for the processing of all parking citations, while city staff processes administrative citations. Duncan Solutions has announced they will no longer process citations for the City of Livingston after April 19, 2024 as the company is being 'decommissioned.' If needed, the City does have the ability to issue administrative citations in lieu of parking citations, however it is labor intensive for each citation for staff to manually process the citations. Once the department received notification from Duncan Solutions, staff began reaching out to other citation processing agencies. On April 1st, 2024, staff was directed not to issue parking citations until we are able to get a new contract in place.

Over the last year, the department has issued 446 parking citations and 21 administrative citations for a total of 467 citations for the year. The department has reached out to various police agencies to solicit information on companies that they use for the processing of their parking citations. Staff was able to contact two companies and receive information. The companies were TurboData systems and Data Ticket Inc. Data ticket is used by the City of Merced and TurboData systems is used by many bay area agencies. Both companies were very similar in history and services provided. Both have been in business for about 30 years with hundreds of clients across the state. Both provide services for the processing of parking citations, administrative citations, and permits.

In conducting reference checks, the Fresno State Police Department was very happy with the company TurboData systems. According to the parking and transportation manager Derrick Brantley, the product is very user friendly with great customer service. Derrick also advised they have been with TurboData systems for over twenty years and the company is well known with better prices than the competitors. The department has many dedicated Parking Enforcement Officers which utilize electronic and paper citations.

The fees and services all vary with a standard monthly minimum charge of \$400 for Data Ticket and \$400 for TurboData systems. Given the number of both parking and administrative citations issued by the department annually, we would likely not be charged the extra to achieve the minimum of \$400. One important feature that both companies have is the ability to coordinate with the Department of Motor Vehicles for reporting of delinquent or defaulted fines. The city



does not currently have that ability. Another important service that TurboData systems provides is ensuring the State Controller's Office receives the surcharges from the County generated from each citation. The Department was recently notified that a county audit was performed, and it was discovered the surcharges have not be paid by several municipalities in Merced County. TurboData systems offers a Joint / Escrow Banking Service for \$150 per month for this service.

DISCUSSION:

Two separate quotes were obtained from parking cite companies.

	Monthly minimum	Manual Process	Electronic	Revenue collected	Admin Manual Process	Admin Electronic
TurboData	\$400.00	\$0.70	\$0.50	25%	\$5 00	\$3.00
Data Ticket	\$400.00	\$0.70	\$0.60	28%	\$7 to \$13	\$5 to \$11
Handheld	\$145.00					

FISCAL IMPACT

Depending on the number of citations issued and equipment if any, the costs to achieve the minimum could range from \$4,800 to \$6,540 per year. These costs can be offset by any revenues generated. The service would also save staff time processing administrative citations.

ATTACHMENTS:

1. Resolution
2. Two (2) quotes from parking ticket companies
3. Agreement for Processing of Parking and Administrative Citations

RESOLUTION NO. 2024-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON AUTHORIZING
THE INTERIM CITY MANAGER TO ENTER INTO A CONTRACT WITH TURBODATA
SYSTEMS FOR CITATION PROCESSING SERVICES**

WHEREAS, the City of Livingston Police Department currently contracts with Duncan Solutions for the processing of parking citations; and

WHEREAS, the department was notified that the services for Duncan Solutions will be decommissioned for the City of Livingston on April 19,2024; and

WHEREAS, the City of Livingston is in need of a company to process parking citations as well as administrative citations; and

WHEREAS, staff researched several companies that provide citation processing services and determined that TurboData systems provides the best fit for the City;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Livingston that it does hereby authorize the Interim City Manager to execute an agreement with TurboData systems.

I hereby certify that the forgoing 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 16th day of April 2024, by the vote recorded as follows:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

Jose A. Moran Mayor
Of City of Livingston

ATTEST

Monica Cisneros, Deputy City Clerk
Of the City of Livingston

APPROVED AS TO LEGAL FORM

Roy C. Santos, City Attorney



2603 Main Street, Suite 300
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EXECUTIVE SUMMARY

Data Ticket, Inc. is a California Corporation that provides administrative citation processing and collection services, administrative hearing coordination, accounting services, customer service and a web-based solution that manages the entire process. Data Ticket has been providing these services for California Agencies for over 18 years. Data Ticket was incorporated in California in 1989. We provide expertise to ensure that citations get processed and collected in a timely manner for over 350 Agencies, nationwide.

Data Ticket is located in Irvine, California and employs 52 full time individuals. Our offices are always open to our clients and we encourage in-person communication on a regular basis. Data Ticket, Inc. is a California certified Small Business Enterprise and a California certified Woman-Owned Business Enterprise.

Data Ticket fully understands we are in a service industry that we consider our Client's acceptance of our software and services paramount to our success. When we partner with each Client, the goal is to ensure that each Client is treated as a unique entity, that our Client's Patrons are treated with respect and care, and that our Clients gain compliance and realize increased revenue collection through our comprehensive administrative citation management program.

We attribute much of our success to the fact that our Clients and their Patrons are always treated politely and professionally. Providing easy, clear access for our Clients and their Patrons is of primary importance because it encourages communication between all interested parties, transparency in the data processing for our Clients and prompt payment by Patrons.

Our web-based Solution provides patrons with access to lookup their citation(s), pay for their citation(s), get specific information about their citation(s), appeal their citations and attach supporting documentation and print a receipt; all online, all via real-time data. In addition, the Agency's Patrons will have access to a toll-free, bi-lingual customer service department who will answer general and specific questions about each citation and will accept payment over the phone via a real-time interface. Finally, patrons will also be able to submit payment and appeals to the Agency or to Data Ticket via mail or in person at the Agency's preferred location. All of the types of access we allow are intended to make the process simple for the Agency's patrons so they pay their citations in a timely manner.

Access to the data for Agency Staff is equally as important as is access for the Agency's Patrons. Our Solution provides online access to our Clients to lookup citations, enter notes on citations, process voids, dismissals, reductions, refunds, refund requests, view online reports, print receipts and process and review the adjudication process. Each capability is provided based on the level of access each person is granted.

Data Ticket allows for real-time processing of payments via VISA, MasterCard, Discover, and American Express. Credit/debit card payments are accepted online, via phone with a customer service representative or using our state of the art IVR system or via paper. Website payments are updated in the system real-time, as soon as they are authorized



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EXECUTIVE SUMMARY

and accepted by the bank. Payments are immediately updated to the citation records and receipts can be printed verifying payment for the payer.

Data Ticket's Solution is Payment Card Industry (PCI) certified and our Solution is subjected to both quarterly, scheduled scans of our database as well as unscheduled scans, thus providing the ultimate security for our Clients as well as their patrons.

Our Solution offers all adjudication services via our online appeals website. This sets us apart from other vendors as we actually allow patrons to place their citations on hold and submit their full explanation and attach backup documentation via the web. This allows patrons to appeal their citation(s) online only if they are eligible to appeal based on the rules set forth by each Agency and the State of California. Once the appeal is submitted, either online or via U.S. Mail, our Solution processes the request and makes it immediately available for an Administrative Hearing with a certified, independent hearing officer. These individuals review or hear the cases and enter judgments that automatically mark the citation and generate written notification of the results. This notification informs the appellant of the decision and provides additional information if the individual wishes to continue his/her appeal and/or refund information and/or court filing instructions, depending on the appeal decision.

Our Solution provides an Online Reporting capability that allows our Clients to generate and print real-time and month-end reports via the web. These reports can be saved to a network, PC or external drive, copied into Excel for additional manipulation as the Agency wishes or they can simply be viewed. These reports are available to the Agency as long as the Agency is a Client. In addition, when the Agency needs ad hoc reports or additional data, Data Ticket will provide those at no cost.

Data Ticket is experienced at working backlog and delinquent citations, which all agencies seem to have. We have years of experience collecting from "old databases and citations", and we do it carefully and professionally, with the utmost care given to the agency image and collection attitude. Since 2002, Data Ticket, Inc. has been offering additional collections through the Franchise Tax Board's Interagency Intercept Program on behalf of our Clients in order to provide an additional opportunity for collection of delinquent California debts. Many of our agencies have been participating in this program since we began offering this interface and they have all been impressed with the return-rate on collections from this submission.

And finally, we offer Advanced Collections by partnering with a local Los Angeles collections agency. For those hard-to-collect debts that have not responded or are not eligible for DMV holds, Delinquent Collections or FTB Collections, Advanced Collections provides a final effort to collect on behalf of our Agencies, while our Solution remains the system of record and provides a full audit trail from issue date to final collection effort!



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PROPOSAL FOR THE CITY OF LIVINGSTON

Data Ticket offers two Cost Models for our Administrative Citation Processing Clients that allow our Clients to select the Cost Model that best suits their individual situation. Model 1 represents an all-inclusive option that has a higher upfront citation processing fee than Model 2 and includes full-service from Data Ticket’s staff. This option is typically selected by Agencies whose Patrons pay their citations on an inconsistent basis. Model 2 is often selected by Clients who has a thorough understanding of their collection rates or collections occur within the first 30 days of a citation being issued.

Regardless of the Model selected, you have the option to change Models at any point during a contract period. This provides our Clients with the maximum amount of flexibility so they may experience the maximum return on citations issued.

Description of Service	Cost Model 1	Cost Model 2
Manual Administrative Citation Processing Services for the above-mentioned items include: <ul style="list-style-type: none"> • On-site data entry of manually written citations performed within 48 hours of receipt • On-site quality assurance verification of manually entered citations • Scanning of all manually written citations onto our network for storage and ease of retrieval • Bi-monthly shredding of manually written citations 	**\$13.00 per citation	\$7.00 per citation
Electronic Administrative Citation Processing: Services for the above-mentioned items include: <ul style="list-style-type: none"> • Automated citation transmission into Data Ticket’s Citation Management Solution 24/7 • Automated confirmation email detailing successfully transmitted citations • Automated transmission of photos attached to citations 	\$11.00 per citation	\$5.00 per citation
Semi-Custom Noticing: Services for the above-mentioned items include: <ul style="list-style-type: none"> • A single Courtesy Notice printed on an 8 ½ x 11” piece of paper and provided in a window envelope will be sent to the responsible party • All notices are attached to the citation online and are viewable via the web • All notices sent via 1st Class Mail • All notices include a return envelope in which the responsible party may submit payment • This cost will increase as the US Postal Service increases the 1st Class postage rate • Notices will be sent daily, Monday - Friday 	Included	\$0.80 per notice



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PROPOSAL FOR THE CITY OF LIVINGSTON

Description of Service	Cost Model 1	Cost Model 2
Additional Correspondence Services for the above-mentioned items include: <ul style="list-style-type: none"> • Courtesy Notice per the City's requirements 	\$1.50 per letter	\$1.50 per letter
Delinquent Collections Services for the above-mentioned items include: <ul style="list-style-type: none"> • In addition to the 1st Courtesy Notice, two additional notices will be sent to the responsible party, at a time frame to be defined by the Agency • Notices will include a return envelope in which the responsible party may submit payment • Notices will be sent via 1st Class Mail, for which Data Ticket will be responsible • A citation is considered delinquent at Cite Date plus 31 days • All notices are sent via First Class mail and all notices are printed on an 8 ½ x 11" sheet of paper and folded into a window envelope; in addition, a window envelope is provided for the recipient to return payment • All notices are attached to the citation online and are viewable via the web • Notices will be sent via 1st Class Mail, and Data Ticket will be responsible for the cost incurred • Notices will be sent daily, Monday - Friday • If Data Ticket does not collect on a citation that is delinquent, the Agency does not owe this fee 	Included	25% of revenue collected
Adjudication Holds and Scanning Services for the above-mentioned item include: <ul style="list-style-type: none"> • Data Ticket will accept Hearing Requests on behalf of the Agency • Dependent on the Agency's choice, Data Ticket will either review and approve the Hearing Request or provide the documentation received to the Agency for its decision • If the Request is accepted, Data Ticket's Adjudication Department will place the citation on an Administrative Hearing Request Hold and scan all received documentation into the Solution so it is displayed on the web for the Agency's Staff and the Hearing Officer 	Included	\$.50 per hold



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Description of Service	Cost Model 1	Cost Model 2
<p>Adjudication Letters Services for the above-mentioned item include:</p> <ul style="list-style-type: none"> • For each request received, Data Ticket will send a semi-custom Hearing Approval Letter and a Schedule letter or it will send a Semi-Custom Denial Letter • Once the Hearing has been held, Data Ticket will send a semi-custom disposition letter to the Appellant detailing the Hearing Officer's findings • All Letters are sent via First Class mail and all Letters are printed on an 8 ½ x 11" sheet of paper and folded into a window envelope; in addition, a window envelope is provided for the recipient to return payment • All Letters are attached to the citation online and are viewable via the web • Letters will be sent via 1st Class Mail, and Data Ticket will be responsible for the cost incurred • Should the Agency request Letters to be sent via Certified Mail, Data Ticket will arrange this at a cost of \$5.00 per Letter • Letters will be sent daily, Monday - Friday 	Included	\$1.25 per letter
<p>Certified Letter Fee- Optional</p>	\$5.00 per letter	\$5.00 per letter
<p>Administrative Hearings Services for the above-mentioned item include:</p> <ul style="list-style-type: none"> • Data Ticket's independent, certified, insured hearing officers will be provided to perform in-person, phone, and written hearings, as required by the Agency • Each hearing request will be reviewed, heard or read, and all required research will be performed • The Hearing Officer will enter a judgment into the Citation Processing System for viewing by the Agency, Appellant and Data Ticket • The City will incur costs associated with mileage • Data Ticket will work with the Agency to arrange for the use of a conference room at a Agency location or the Agency may elect to have citations heard at a centralized location within the County 	\$85.00 per hour	\$85.00 per hour
<p>Franchise Tax Board SSN Look-up Services for the above-mentioned item include:</p> <ul style="list-style-type: none"> • This fee will be assessed to lookup a social security number associated with a particular registered owner and address • This charge is charged per unique SSN, not per citation 	\$3.00 per unique SSN	\$3.00 per unique SSN



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Description of Service	Cost Model 1	Cost Model 2
<p>FTB Collections Services for the above-mentioned item include:</p> <ul style="list-style-type: none"> • This fee is charged if a citation is paid at the Franchise Tax Board • This charge is not combined with any other charge; for example if a citation is rolled to delinquent status and paid at FTB, only the 15% of revenue collected will be charged • Data Ticket will send a custom FTB Notice to the Patron as required by the Interagency Intercept Program; this notice will be sent via 1st Class Mail • All notices are attached to the citation online and are viewable via the web • Data Ticket will pay for the Agency's cost to participate in the FTB program; annually, FTB will send an invoice to the Agency for the number of debts placed at FTB; the Agency will simply provide this invoice to Data Ticket and Data Ticket will pay it in full • If Data Ticket does not collect on a citation that is at FTB, the Agency does not owe the collection fee • Data Ticket will send an FTB Notice to the Patron as required by the Interagency Intercept Program; this notice will be sent via 1st Class Mail 	<p>15% of revenue collected</p>	<p>15% of revenue collected</p>
<p>Advanced Collections Legal Action Not Required Services for the above-mentioned item include:</p> <ul style="list-style-type: none"> • This fee is charged if a citation is paid at Advanced Reporting Collections • This charge is not combined with any other charge; for example if a citation is rolled to delinquent status and paid at Collections, only the 30% of revenue collected will be charged 	<p>30% of revenue collected</p>	<p>30% of revenue collected</p>
<p>Joint / In Trust Banking Services Services for the above-mentioned item include:</p> <ul style="list-style-type: none"> • Daily deposits of funds to the Agency's escrow account • Online, real-time reconciliation reports that tie directly to the bank statement • Processing of all credit card charge-backs and Insufficient Funds • Month-end reconciliation of all funds collected • Payment of Data Ticket's invoice • Disbursement of the net remittance to the Agency • Scanning of all payments directly to joint bank account daily using remote check deposit • The Agency will be responsible for the purchase of banking supplies, including checks and endorsement stamps; these fees typically run \$200.00 per year 	<p>\$150.00 per month</p>	<p>\$150.00 per month</p>



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Description of Service	Cost Model 1	Cost Model 2
Charge-backs and NSF's – Joint Escrow Only Services for the above-mentioned item include: <ul style="list-style-type: none"> • Data Ticket will process credit card charge-backs and NSF's when notified of each occurrence • Once processed, Data Ticket will send a custom letter to the individual detailing the returned item and the amount due on the citation 	Included	Included
Refunds – Joint Escrow Only Services for the above-mentioned item include: <ul style="list-style-type: none"> • Data Ticket will process refunds when notified of each need • In the event the utilizes Joint Banking Data Ticket will verify, generate and send each refund due • Refunds will be issued weekly • Refunds will be sent weekly via 1st Class Mail 	Included	Included
Monthly Minimum <ul style="list-style-type: none"> • A minimum fee of \$200.00 will be charged on a monthly basis if services do not reach this level 	\$200.00	\$200.00



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PROPOSAL FOR THE CITY OF LIVINGSTON

SERVICES INCLUDED AT NO ADDITIONAL COST

Online Access for the Agency's Patrons: **Included**

The Agency's Patrons will have the ability to perform the following functions online:

- View real-time citation(s) data
- Pay for a single or many citation(s)
- Request an Administrative Hearing and attach up to three documents supporting their position (optional)
- Print a receipt
- View pictures of the citation taken by the issuing officer (if the Agency allows)

Online Access for the Agency's Staff: **Included**

Access to the Agency's data is based on unique usernames and passwords assigned to each individual who requires access to the system. Data Ticket does not limit the number of individuals who have access to the system and the number and types of access can change at any point with a simple email request to Data Ticket.

Our Solution is setup to maintain a complete audit trail for each and every transaction in the system so that the username is displayed next to every transaction in the system, indicating who performed the transaction and when.

Dependent on the access rights provided to each Agency Staff member, the following capabilities are available:

- View real-time citation(s) data, including pictures taken by the Issuing Officer
- Accept payment via VISA, MasterCard, Discover and American Express credit/debit cards
- Accept payment via Cash, Check or Money Order
- Process NSF's and Refunds
- Reduce or increase violation amounts, dismiss citations, void citations and place a citation on hold
- Change citation data, including violations, date, time, location, comments, and others
- View the complete reason for a Hearing Request and supporting documentation provided by the Appellant directly online
- Edit Appellant information
- Upload disposition documents sent to the Agency via US Mail
- Add a note to a citation and see all comments added to the citation
- Print a receipt

Conversion: **Included**

- Data Ticket will convert the citations currently with the Agency's existing vendor at no cost to the Agency



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PROPOSAL FOR THE CITY OF LIVINGSTON

SERVICES INCLUDED AT NO ADDITIONAL COST

Reporting:

Included

- Data Ticket offers 23 reports online for our Clients to generate, print and re-print 24/7. We provide real-time reports that can be generated for any timeframe required and we provide pre-processed/month-end reports that reflect the month-end view of data.
- All reports are available online and because we do not purge data unless specifically requested to do so by a Client, the data is available as long as the Agency is a Client.
- All reports are generated in HTML so our Clients can copy and paste the data into Excel for data manipulation purposes.
- If the Agency were to request a report that was not already available, Data Ticket would work with the Agency to design the report and provide it to the Agency at no cost.

Manual Payment Processing:

Included

- Manually received payments (checks, cash, money orders and credit card payments sent via US Mail) are received at our PO Box in Newport Beach where a bonded and insured courier picks up the mail daily and delivers it to our Newport Beach office
- On-site Mail Department opens, sorts and batches the payments before providing them to our on-site Data Entry Department
- After double-blind entry of each payment, the citations are updated by our Quality Assurance team
- Payments are then provided to our Accounting Department where daily deposit slips are completed and provided to a bonded, insured courier who takes them to the bank

Customer Service:

Included

- Data Ticket provides a live, bi-lingual, on-site Customer Service Department that is fully trained to answer questions related to citation issuance, payment, adjudication, fix-it tickets, sign-offs, FTB, advanced credit reporting collections and more
- All calls are recorded to quality assurance and recordings can be sent to the Agency at any time for review.
- Data Ticket's IVR is bi-lingual and accessible via several toll-free numbers; the IVR provides real-time information to the caller regarding current status, including the amount due
- The IVR accepts VISA, MasterCard, Discover, and American Express

Web Presence:

Included

- Data Ticket's Solution is 100% web-based and Section 508 Compliant and is provided at: www.CitationProcessingCenter.com; this is a generic website in the sense that it is not Agency branded. This website allows for the Agency and the Agency's Patrons to access citations online
- If the Agency prefers to have an Agency branded website, one in which the look and feel mimics that of the Agency's website, Data Ticket can and will provide this feature to the Agency.



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PROPOSAL FOR THE CITY OF LIVINGSTON

FEES ASSESSED TO THE PATRON

Credit / Debit Card Processing **\$3.50 per transaction**

- Data Ticket is PCI Compliant and provides for the ability to pay via Visa, MasterCard, Discover, and American Express on our website, www.CitationProcessingCenter.com, via our toll-free, bi-lingual Customer Service Representatives, and via our toll-free, bi-lingual IVR Solution
- There is no charge to the Agency for credit / debit card processing; however, the Patron is charged \$3.50 per transaction; this means the Patron can pay for a single or many citations at once and incur a single \$3.50 fee

Payment Plan Processing **variable cost**

- An administrative fee will be assessed to Patrons or the City (if they wish to pay in lieu of the Patron paying) who wish to participate in a payment plan
- This fee will cover the cost of the payment plan initiation, and the cost of a confirmation letter that is sent to the Patron confirming the details of the payment plan
- The Agency will have the ability to determine whether Payment Plans are accepted and, if so, what the parameters for payment will be

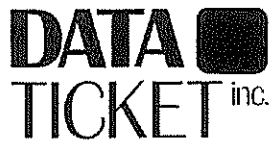
Credit Card Chargeback Processing **\$33.50 per transaction**

- If a chargeback occurs, a fee will be charged to the Patron for the processing of the chargeback
- No fee will be charged to the Agency

Cost Increases:

Postal Rate Increase Offset – If postal rates increase during the term of the agreement, fees to DTI shall be raised immediately to offset the effect of the actual postal rate increase.

CPI Increases – *There will be NO CPI increases for the duration of the agreement*



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EXECUTIVE SUMMARY

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Data Ticket is located in Irvine, California and employs 52 full time individuals. Our offices are always open to our clients and we encourage in-person communication on a regular basis. Data Ticket, Inc. is a California certified Small Business Enterprise and a California certified Woman-Owned Business Enterprise.

Data Ticket fully understands we are in a service industry that we consider our Client's acceptance of our software and services paramount to our success. When we partner with each Client, the goal is to ensure that each Client is treated as a unique entity, that our Client's Patrons are treated with respect and care, and that our Clients gain compliance and realize increased revenue collection through our comprehensive parking management program.

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Data Ticket allows for real-time processing of payments via VISA, MasterCard, Discover, and American Express. Credit/debit card payments are accepted online, via phone with a customer service representative or using our state of the art IVR system or via paper.



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EXECUTIVE SUMMARY

Website payments are updated in the system real-time, as soon as they are authorized and accepted by the bank. Payments are immediately updated to the citation records and receipts can be printed verifying payment for the payer.

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Our Solution offers all adjudication services via our online appeals website. We allow patrons to place their citations on hold and submit their full explanation and attach backup documentation via the web. This allows patrons to appeal their citation(s) online only if they are eligible to appeal based on the rules set forth by each Agency and the State of California. Once the appeal is submitted, either online or via U.S. Mail, our Solution processes the request and makes it immediately available for an Administrative Review Disposition or it is immediately available to be scheduled for an Administrative Hearing with a certified, independent hearing officer. These individuals review or hear the cases and enter judgments that automatically mark the citation and generate written notification of the results. This notification informs the appellant of the decision and provides additional information if the individual wishes to continue his/her appeal and/or refund information and/or court filing instructions, depending on the appeal decision.

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On behalf of Data Ticket, thank you for the opportunity to provide Parking Citation Processing Collections, Services and Technology as well we excellent Client and Customer Service!



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PROPOSAL FOR THE CITY OF LIVINGSTON

✓ **Manual Parking Citation Processing:** **\$0.70**

Services for the above-mentioned items include:

- On-site data entry of manually written citations performed within 48 hours of receipt
- On-site quality assurance verification of manually entered citations
- Scanning of all manually written citations onto our network for storage and ease of retrieval
- Bi-monthly shredding of manually written citations

✓ **Electronic Parking Citation Processing:** **\$0.60**

Services for the above-mentioned items include:

- Automated citation transmission into Data Ticket's Citation Management Solution 24/7
- Automated confirmation email detailing successfully transmitted citations
- Automated transmission of photos attached to citations

Courtesy Notice: **\$0.75**

Services for the above-mentioned item include:

- Semi-custom Courtesy Notice that is printed on an 8 ½ x 11" piece of paper and provided in a window envelope sent to the registered owner of a vehicle
- All notices are attached to the citation online and are viewable via the web
- All notices sent via 1st Class Mail
- All notices include a return envelope in which the responsible party may submit payment
- This cost will increase as the US Postal Service increases the 1st Class postage rate
- This charge is only incurred if the individual does not pay off the windshield and a notice is sent to the individual.

✓ **Out-of-State Collections:** **28% of revenue collected**

- This fee will cover all expenses associated with obtaining out-of-state registered owner information and will be due when a citation is paid
- Data Ticket is a recognized Strategic Partner with NLETs; should the Agency have an assigned ORI, Data Ticket will request usage of the ORI for reference/audit purposes only. Data Ticket utilizes its own ORI for transactional purposes
- This fee is not combined with any other contingency fee. For example, if a citation is rolled to a delinquent status, only 28% of revenue collected will be charged
- If Data Ticket does not collect on a citation that is issued to an out of state plate, the Agency does not owe this fee.



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949 428-7241 - Phone
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PROPOSAL FOR THE CITY OF LIVINGSTON

✓ Delinquent Collections:

28% of revenue collected

- This fee will be assessed when a citation is ninety (90) days past the citation issue date, or when a second (2nd) notice is sent if sooner than ninety (90) days, assuming a first notice has been sent to the registered owner and the citation is not on hold for any reason
- In addition to the Courtesy Notice, three Delinquent Notices will be sent to the registered owner
- All notices are sent via First Class mail and all notices are printed on an 8 ½ x 11" sheet of paper and folded into a window envelope; in addition, a window envelope is provided for the recipient to return payment
- All notices are attached to the citation online and are viewable via the web
- If Data Ticket does not collect on a citation that is delinquent, the Agency does not owe this fee
- Notices will be sent via 1st Class Mail, and Data Ticket will be responsible for the cost incurred

✓ Franchise Tax Board Processing - Optional

SSN Look-up

\$3.00 per SSN

- This fee will be assessed to lookup a social security number associated with a particular registered owner and address
- This charge is charged per unique SSN, not per citation

✓ FTB Collections

15% of revenue collected

- This fee is charged if a citation is paid at the Franchise Tax Board
- This charge is not combined with any other charge; for example, if a citation is rolled to delinquent status and paid at FTB, only the 15% of revenue collected will be charged
- Data Ticket will send an FTB Notice to the Patron as required by the Interagency Intercept Program; this notice will be sent via 1st Class Mail
- All notices are attached to the citation online and are viewable via the web
- Data Ticket will pay for the Agency's cost to participate in the FTB program; annually, FTB will send an invoice to the Agency for the number of debts placed at FTB; the Agency will simply provide this invoice to Data Ticket and Data Ticket will pay it in full
- If Data Ticket does not collect on a citation that is at FTB, the Agency does not owe the collection fee
- Data Ticket will send an FTB Notice to the Patron as required by the Interagency Intercept Program; this notice will be sent via 1st Class Mail

PROPOSAL FOR THE CITY OF LIVINGSTON

Adjudication:

1st Level Review Hold & Scanning of Review Request \$0.50 per citation

- Data Ticket will review all documentation received by the Appellant and determine whether the request received within the required timeframe
- If the request was received within the required timeframe, Data Ticket's Adjudication Department will place the citation on an Administrative Review Request Hold and scan all received documentation into the Citation Management Solution so it is displayed on the web for the Agency's Staff
- If the request is received outside the required timeframe, the Agency will have the option to proceed as though the request was received within the timeframe or it may elect to have Data Ticket send a "time expired letter" rejecting the appeal

1st Level Review Disposition Letters \$0.85 per letter

- Data Ticket will send a custom disposition letter to the Appellant via 1st Class Mail
- All letters are attached to the citation online and are viewable via the web
- Disposition letters will be sent Monday - Friday

2nd Level Hearing Hold, Scanning and Scheduling of Hearing \$0.50 per citation

- Data Ticket will review all documentation received by the Appellant and determine whether the request received within the required timeframe
- If the request was received within the required timeframe, Data Ticket's Adjudication Department will place the citation on an Administrative Hearing Request Hold and scan all received documentation into the Solution so that it is displayed on the web for the Agency's Staff and the Hearing Officer
- If the request is received outside the required timeframe, the Agency will have the option to proceed as though the request was received within the timeframe or it may elect to have Data Ticket send a "time expired letter" rejecting the appeal
- Data Ticket will work with the designated Hearing Officer to schedule the Hearing based on either a pre-determined schedule or an ad hoc basis, depending on the Agency's schedule

2nd Level Hearing Officer - Optional ~~\$85.00 per hour~~

- ~~Data Ticket's independent, certified, insured hearing officers will be provided to the to perform in-person, phone and written hearings~~
- ~~Each hearing request will be reviewed, heard or read, and all required research will be performed~~
- ~~The Hearing Officer will enter a judgment into the Citation Processing System for viewing by the Agency, Appellant and Data Ticket~~
- ~~Hearings will be scheduled~~
- ~~The Agency will incur costs associated with mileage as defined by Federal guidelines~~
- ~~Data Ticket will work with the Agency to arrange for the use of a conference room at a Agency location or the Agency may elect to have citations heard at a centralized location within the County~~

2nd Level Hearing Schedule & Disposition Letters \$0.85 per letter

- Data Ticket will send a custom disposition letter to the Appellant via 1st Class Mail
- All letters are attached to the citation online and are viewable via the web
- Disposition letters will be sent Monday - Friday



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PROPOSAL FOR THE CITY OF LIVINGSTON

- **Acceptance and Scanning of Indigent Payment Plan Requests (Approval/Denial by Data Ticket) \$5.00 per request**

OR

- **Accepting and Scanning of Indigent Payment Plan Requests (Approval/Denial by City) \$2.00 per request**

AND

- **Indigent Payment Plan/Denial Letters \$0.85 per letter**

Additional Correspondence \$0.85 per letter

- Printing & Sending daily
- Electronic attachment to the citation
- Windowed #10 envelope and return #9 envelope

Joint / Escrow Banking Services - Optional \$150.00 per month

Services for the above-mentioned item include:

- Daily deposits of funds to the Agency's escrow account
- Online, real-time reconciliation reports that tie directly to the bank statement
- Processing of all credit card charge-backs and Insufficient Funds
- Month-end reconciliation of all funds collected
- Disbursement of County / State Surcharges at month-end
- Payment of Data Ticket's invoice
- Disbursement of the net remittance to the Agency
- Scanning of all payments directly to joint bank account daily using remote check deposit
- The Agency will be responsible for the purchase of banking supplies, including checks and endorsement stamps; these fees typically run \$200.00 per year

Charge-backs and NSF's - Optional \$5.00 per issued instance

- Data Ticket will process credit card charge-backs and NSFs when notified of each occurrence
- Once processed, Data Ticket will send a custom letter to the individual detailing the returned item and the amount due on the citation

Refunds - Optional \$8.00 per issued instance

- Data Ticket will process refunds when notified of each need
- In the event the Agency utilizes Joint Banking Data Ticket will verify, generate and send each refund due
- Refunds will be issued weekly
- Refunds will be sent via 1st Class Mail

Monthly Minimum \$200.00

- A minimum fee of \$200.00 will be charged on a monthly basis if services do not reach this level (not inclusive of the Joint/Escrow Banking Services fee)



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PROPOSAL FOR THE CITY OF LIVINGSTON

Cost Increases:

Postal Rate Increase Offset – If postal rates increase during the term of the agreement, fees to DTI shall be raised immediately to offset the effect of the actual postal rate increase.

CPI Increases – *There will be NO CPI increases for the duration of the agreement.*



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PROPOSAL FOR THE CITY OF LIVINGSTON - SERVICES INCLUDED AT NO ADDITIONAL COST

Online Access for the Agency's Patrons: **Included**

The Agency's Patrons will have the ability to perform the following functions online:

- View real-time citation(s) data
- Pay for a single or many citation(s).
- Request a 1st Level Administrative Review and attach up to three documents supporting their position
- Request a 2nd Level Administrative Hearing Request and attach up to three documents supporting their position
- Print a receipt
- View pictures of the citation taken by the issuing officer (if the Agency allows)

Online Access for the Agency's Staff: **Included**

Access to the Agency's data is based on unique usernames and passwords assigned to each individual who requires access to the system. Data Ticket does not limit the number of individuals who have access to the system and the number and types of access can change at any point with a simple email request to Data Ticket.

Our Solution is setup to maintain a complete audit trail for each and every transaction in the system so that the username is displayed next to every transaction in the system, indicating who performed the transaction and when.

Dependent on the access rights provided to each Agency Staff member, the following capabilities are available:

- View real-time citation(s) data, including pictures taken by the Issuing Officer
- Accept payment via VISA, MasterCard, Discover and American Express credit/debit cards
- Accept payment via Cash, Check or Money Order
- Process NSF's and Refunds
- Reduce or increase violation amounts, dismiss citations, void citations and place a citation on hold
- Change citation data, including violations, date, time, plate, location, comments, make, model, color, registration expiration date and others
- Perform Administrative Reviews online by entering the disposition directly online
- Generate a time expired or letter of non responsibility for a citation in the adjudication process
- View the complete reason for the Review Request and supporting documentation provided by the Appellant directly online
- Edit Appellant information
- Upload disposition documents sent to the Agency via US Mail
- Add a note to a citation and see all comments added to the citation
- View the reason for the 2nd Level Administrative Hearing Request online and view the supporting documentation provided by the Appellant, directly online
- Print a receipt with or without registered owner information



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PROPOSAL FOR THE CITY OF LIVINGSTON - SERVICES INCLUDED AT NO ADDITIONAL COST

Reporting: **Included**

- Data Ticket offers 36 reports online as well as a Customized reporting application for our Clients to generate, print and re-print 24/7. We provide real-time reports that can be generated for any timeframe required and we provide pre-processed/month-end reports that reflect the month-end view of data.
- All reports are available online and because we do not purge data unless specifically requested to do so by a Client, the data is available as long as the Agency is a Client.
- All reports are generated in HTML so our Clients can copy and paste the data into Excel for data manipulation purposes.
- If the Agency were to request a report that was not already available, Data Ticket would work with the Agency to design the report and provide it to the Agency at no cost.

Manual Payment Processing: **Included**

- Manually received payments (checks, cash, money orders and credit card payments sent via US Mail) are received at our PO Box in Newport Beach where a bonded and insured courier picks up the mail daily and delivers it to our Newport Beach office
- On-site Mail Department opens, sorts and batches the payments before providing them to our on-site Data Entry Department
- After double-blind entry of each payment, the citations are updated by our Quality Assurance team
- Payments are then provided to our Accounting Department where daily deposit slips are completed and provided to a bonded, insured courier who takes them to the bank

Registered Owner Information: **Included**

- Registered owner information for all citations issued on California license plates
- Turnaround time for acquisition of California registered owner information is same day
- Registered owner information for all citations issued on out of state license plates
- Data Ticket is a recognized Strategic Partner with NLETs and has access to registered owner information nationwide through the NLETs service
- Access to this system requires the use of the County's ORI for tracking purposes only; Data Ticket will utilize its own ORI for actually acquiring the out of state data
- Turnaround time for acquisition of out of state registered owner information using NLETs is same day

CA DMV Holds and Releases: **Included**

- California DMV Holds and Release performed daily via an online connection
- Holds and releases can also be performed real-time, upon request
- Citation amounts placed on hold are updated daily in the event a partial payment is made



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949 428-7241 - Phone
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**PROPOSAL FOR THE CITY OF LIVINGSTON - SERVICES INCLUDED AT NO
ADDITIONAL COST**

Customer Service: **Included**

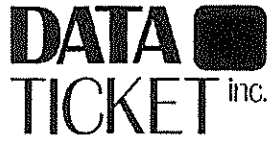
- Data Ticket provides a live, bi-lingual, on-site Customer Service Department that is fully trained to answer questions related to citation issuance, payment, adjudication, fix-it tickets, sign-offs, FTB, advanced credit reporting collections and more
- All calls are recorded to quality assurance and recordings can be sent to the Agency at any time for review.
- Data Ticket's IVR is bi-lingual and accessible via several toll-free numbers; the IVR provides real-time information to the caller regarding current status, including the amount due
- The IVR accepts VISA, MasterCard, Discover, and American Express

Web Presence: **Included**

- Data Ticket's Solution is 100% web-based and Section 508 Compliant and is provided at: www.CitationProcessingCenter.com; this is a generic website in the sense that it is not Agency branded. This website allows for the Agency and the Agency's Patrons to access citations online
- If the Agency prefers to have an Agency branded website, one in which the look and feel mimics that of the Agency's website, Data Ticket can and will provide this feature to the Agency.

Conversion: **Included**

- Data Ticket will convert the citations currently with the Agency's existing vendor at no cost to the Agency
- Citations that have not had a payment and do not have a registered owner will immediately be sent to the appropriate DMV so as to obtain a registered owner



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PROPOSAL FOR THE CITY OF LIVINGSTON – FEES ASSESSED TO THE PATRON

Credit / Debit Card Processing **\$3.50 per transaction**

- Data Ticket is PCI Compliant and provides for the ability to pay via Visa, MasterCard, Discover, and American Express on our website, www.CitationProcessingCenter.com, via our toll-free, bi-lingual Customer Service Representatives, and via our toll-free, bi-lingual IVR Solution
- There is no charge to the Agency for credit / debit card processing; however, the Patron is charged \$3.50 per transaction; this means the Patron can pay for a single or many citations at once and incur a single \$3.50 fee

Payment Plan Processing **\$15.00 per transaction**

- An administrative fee will be assessed to Patrons who wish to participate in a payment plan
- This fee will cover the cost of the payment plan initiation, and the cost of a confirmation letter that is sent to the Patron confirming the details of the payment plan
- The Agency will have the ability to determine whether Payment Plans are accepted and, if so, what the parameters for payment will be

Credit Card Chargeback Processing **\$33.50 per transaction**

- If a chargeback occurs, a fee will be charged to the Patron for the processing of the chargeback
- No fee will be charged to the Agency

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

This Agreement is entered into by and between **Turbo Data Systems, Inc. (TDS)**, a California Corporation, and the **City of Livingston**, (hereinafter collectively referred to as "**Customer**").

Whereas, TDS and the Customer desire to enter into an agreement whereby TDS will process parking and administrative citations and provide mobile ticketwriters for the Customer pursuant to the terms and conditions set forth herein.

In consideration of the mutual covenants, conditions, representations and warranties contained herein the parties hereby agree as follows:

1. **PURPOSE.** The purpose of this Agreement is for TDS to process parking and administrative citations and provide mobile ticketwriters for the Customer in a timely manner.
2. **SCOPE OF SERVICES.** When and as directed by the Customer, TDS shall perform the following services in processing all parking citations:

See Attached EXHIBIT A – SCOPE OF SERVICES

3. **TERM.** This agreement shall become effective for a period of five years, starting April 1, 2024 and ending March 31, 2029. This agreement may be renewed after that with written amendments signed by both parties.
4. **CONSIDERATION.** In consideration for services performed by TDS as provided in this agreement, Customer shall pay TDS pursuant to the terms set forth in the Proposals for Parking Citation Processing, Administrative Citation Processing & Mobile Enforcement Services submitted to the City of Livingston on February 29, 2024 and March 7, 2024 respectively, which are attached hereto and incorporated herein by this reference.
5. **PAYMENT OF FEES.** Charges determined on the basis set forth in the Proposals shall be billed on a monthly basis in arrears and payment therefore shall be made within fifteen (15) days after submission of each separate invoice.
6. **ACCOUNTING RECORDS.** Records of the citations processed by TDS shall be available for examination by the Customer or its authorized representative(s) at a time agreeable to the Customer and TDS within one week following a request by the Customer.
7. **TIME OF PERFORMANCE.** Time is of the essence, and TDS shall perform the services required by this agreement in an expeditious and timely manner so as not to unreasonably delay the purpose of this agreement as set forth in Sections 1 and 2.
8. **INDEPENDENT CONTRACTOR.** At all times during the term of this agreement, TDS shall be an independent contractor and shall not be an employee of the Customer. The Customer shall have

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

the right to control TDS only insofar as the results of TDS's services rendered pursuant to this agreement; however, Customer shall not have the right to control the means by which TDS accomplishes the services rendered pursuant to this agreement.

9. **FACILITIES AND EQUIPMENT.** TDS shall, at its own cost and expense, provide all facilities and equipment that may be required for performance of the services required by this agreement.

10. **INDEMNIFICATION BY TDS.** TDS agrees to defend, indemnify, hold free and harmless the Customer, its elected officials, officers, agents and employees, at contractor's sole expense, from and against any and all claims, actions, suits or other legal proceedings brought against the Customer, its elected officials, officers, agents and employees arising out of the performance of the contractor, its employees, and/or authorized subcontractors, of the work undertaken pursuant to this Agreement. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the contractor, its employees, and/or authorized subcontractors, but shall be required whenever any claim, action, complaint, or suit asserts as its basis the negligence, errors, omissions or misconduct of the contractor, its employees, and/or authorized subcontractors, and/or whenever any claim, action, complaint or suit asserts liability against the Customer, its elected officials, officers, agents and employees based upon the work performed by the contractor, its employees, and/or authorized subcontractors under this Agreement, whether or not the contractor, its employees, and/or authorized subcontractors are specifically named or otherwise asserted to be liable. Notwithstanding the foregoing, the contractor shall not be liable for the defense or indemnification of the Customer for claims, actions, complaints or suits arising out of the sole active negligence or willful misconduct of the Customer. This provision shall supersede and replace all other indemnity provisions contained either in the Customer's specifications or contractor's proposal, which shall be of no force and effect.

11. **INDEMNIFICATION BY CUSTOMER.** TDS shall use due care in processing work of the Customer. Any errors shall be corrected by TDS at no additional charge to the Customer. TDS shall be entitled to reimbursement from the Customer for any expenses incurred by TDS for the correction of any erroneous information provided by the Customer and TDS shall not be responsible for Customers' losses and expenses resulting from erroneous source materials provided by the Customer. Neither party shall be liable to the other for any indirect or consequential losses or damages resulting from any errors within the scope of this Section 11.

12. **FAIR EMPLOYMENT PRACTICES/EQUAL OPPORTUNITY ACTS.** In the performance of this agreement, TDS shall comply with all applicable provisions of the California Fair Employment Practices Act (California Labor Code Sections (410 et seq.) and the applicable equal employment provisions of the Civil Rights Act of 1964 (42 U.S.C. 200e 217), whichever is more restrictive.

13. **AGENCY.** Except as Customer may specify in writing TDS shall have no authority, expressed or implied, to act on behalf of the Customer in any capacity whatsoever as an agent. TDS shall

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

have no authority, expressed or implied, pursuant to this agreement to bind Customer to any obligation whatsoever.

14. **CHANGES IN LAW.** Should there be any changes in the law applicable to the processing of parking or administrative citations which would require material changes in the method of the processing as contemplated in this agreement, or materially reduce or eliminate the amount of revenue received by the Customer from citations, this agreement shall terminate on the date such law becomes effective, provided either party gives sixty (60) days' notice of termination. Any changes in the processing of parking violations as a result of changes in the law or DMV regulations affecting such violations, which do not materially add to the cost of processing such citations by TDS shall be implemented by TDS at the request of the Customer, provided however, that the cost of such implementation does not exceed the fee paid to TDS for performing such services. If any such change results in the cost of processing citations exceeding the amounts provided for in Section 4 and the Customer declines to amend this agreement to provide for the payment of such increased costs, the agreement shall terminate as of the effective date of the change in the law or regulations.

15. **OWNERSHIP OF SOFTWARE.** Customer acknowledges that the software and software programs used by the Customer or used for the Customer's benefit which were developed by TDS are the sole property of TDS and the Customer obtains no right or interest in the software by virtue of this agreement.

16. **OWNERSHIP OF DOCUMENTS.** All citations, electronic and handwritten; reports; electronic storage media; and other documents, including copies and reproductions assembled or prepared by TDS or TDS' agents, officers, or employees in connection with this Agreement, shall be the property of the Customer and shall be delivered to the Customer upon either the completion or termination of this Agreement.

17. **FORCE MAJEURE.** Neither party shall be responsible for delays or failure in performance resulting from acts beyond the control of such parties. Such acts shall include, but are not limited to, Acts of God, strikes, riots, acts of war, epidemics, fire, communication line failure, earthquakes or other disasters.

18. **TERMINATION.** This agreement may be terminated by either party upon ninety (90) days written notice. At such time, TDS agrees to provide Customer, in computer readable form, a copy of all data files to service its citations.

19. **NOTICE.** Whenever it shall be necessary for either party to serve notice on the other respecting this agreement, such notice shall be served by certified mail addressed to:

TDS: Turbo Data Systems, Inc.
1551 N Tustin Avenue Suite 950

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

Santa Ana CA 92705
Roberta J. Rosen, President

CUSTOMER: City of Livingston
1416 C Street
Livingston CA 95334
John Ramirez, Acting Chief of Police

unless and until different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in the United States Post Office by certified mail. This shall be valid and sufficient service of notice for all purposes.

20. EXTENT OF AGREEMENT. This agreement represents the entire and integrated agreement between Customer and TDS and supersedes any and all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both Customer and TDS. This agreement may only be assigned with the express written consent of each of the parties hereto. In the event that any provision hereof is deemed to be illegal or unenforceable, such a determination shall not affect the validity or enforceability of the remaining provisions hereof, all of which remain in full force and effect.

21. LITIGATION COSTS. If any legal action or any other proceeding is brought to enforce the terms of this agreement, or because of an alleged dispute, breach, or misrepresentation in the connection with any of the provisions of this agreement, the successful or prevailing party or parties shall be entitled to recover their reasonable attorneys' fees and other costs incurred in that action or proceeding, including the costs of appeal in addition to any other relief to which it or they may be entitled.

22. INSURANCE. TDS, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to Customer, the insurance specified in this Agreement is satisfactory in all respects to Customer. TDS shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by TDS, its agents, representatives, employees, or subcontractors. The limits of liability specified in this Section may be provided by any combination of primary and umbrella/excess liability insurance policies.

Minimum Limits of Insurance

TDS shall maintain limits no less than: General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

occurrence limit. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to Customer.

Verification of Coverage

TDS shall furnish certificates of insurance evidencing all the coverage required above, naming the Customer as additional insured. All required information is to be mailed to the address shown in the NOTICE section of the Agreement.

23. EFFECTIVE DATE OF THIS AGREEMENT. This agreement, made in duplicate, shall be effective from and after April 1, 2024.

Executed on this ____ day of _____, 2024.

CITY OF LIVINGSTON

By: _____

Name/Title: _____

Date: _____

TURBO DATA SYSTEMS, INC.

By: _____

Roberta J. Rosen
President

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

**EXHIBIT "A"
SCOPE OF SERVICES**

TDS shall perform the following services in processing all Parking Citations:

- A. **Basic Processing** – TDS will enter manual citations and citation dispositions into Customer’s database within 2 business days. The basic service includes database maintenance, daily system backups, toll-free phone number for the public, Interactive Voice Response System (IVRS) with customized recorded information and citation lookup capability, **pticket.com** web-based Inquiry System for the public with customized content, Customer Service Representatives (8:00 am – 5:00 pm, Monday through Friday, excluding holidays) to speak with the public regarding parking citation issues, ongoing Client support, and documentation and training for use of the TDS-provided online system.
- B. **Handheld Ticket writer Interface** - TDS will provide for automated import of electronic citations into Customers database within 1 business day. TDS will maintain and update the hot sheet or scofflaw files on a daily basis for Customer to upload into their handheld ticket writers. TDS will work with Customer to implement any changes required for handheld ticket writer equipment.
- C. **System and Document Storage** - Citations paid or dismissed will be retained on the computer system for 3 years and then removed. Unpaid citations will be retained on the computer system for 5 years and then removed. Citation documents will be stored for 2 years from date of issue and then returned to Customer or shredded. Payment documents will be stored for 2 years from the date of payment and then returned to Customer or shredded.
- D. **Online Reporting** - Provide monthly reports online indicating the status of all citations, such reports to be available for Customer access no later than the thirtieth (30th) day of the following month.
- E. **DMV Interface for Registered Owner Name Retrieval** - Attempt to obtain names and addresses of registered owners of cited vehicles for those citations that have not been cleared prior to their notice generation date.
- F. **Notice Processing** - Print the required Notice and mail to each registered owner whose name has been retrieved within 10 to 21 days after the citation has been issued. Includes second notices mailed for bounced checks, partial payments, and name or address changes. The notice date shall be extended whenever there is an unusual delay in delivery of information or citations to TDS. All postage, notice forms and envelopes will be provided by TDS.

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

- G. **DMV Interface for Placing Registration Holds** - Transmit a Notice of Delinquency to the California DMV for vehicles with California license plates after a Notice of Violation has been mailed to the registered owner and TDS has not received notification that the citation has been cleared. This Notice of Delinquency will be transmitted to the California DMV within 2 business days after the date specified by the Customer to be the DMV Date.
- H. **DMV Interface for Releasing Registration Holds** - Transmit a Notice to the California DMV that a Notice of Delinquency has been cleared within 2 business days after TDS has received notification of clearance.
- I. **DMV Interface for Monthly Payment File** – Receive payment file from DMV as available (currently monthly) and update DMV transactions into Customers database, providing reporting for reconciliation purposes.
- J. **Delivery Service** – Manual citations will be mailed or scanned to TDS by Customer at their own expense. TDS reports will be provided online. TDS will return any required documents via UPS and/or US Mail.
- K. **Collection and Payment Processing** - TDS will provide the following collection and payment processing services for Customer:
- Provide P. O. Box where payments are mailed
 - Courier pickup from P. O. Box daily
 - Open all mail
 - Verify payment amounts and record on computer system within 2 business days (48 hours)
 - Respond to reasonable non-judicial public inquiries by phone and mail
 - Return questionable mail to Customer for decision
 - Make bank deposits to Customer bank account using check scanning
 - Verify amounts deposited, by citation number
 - Provide toll-free number for citizen inquiries
 - Provide weekly reports for bank statement reconciliation
 - Provide monthly Paid Citation Distribution Report for Customer to make surcharge payments to the County
 - Scan checks and deposit parking funds (remote deposits) into Customer's bank account. Checks never leave our facility. Check scanning hardware and software is provided by Customer for its specific banking requirements.
 - Contractor does not charge for remote deposits; however, the financial institution may charge a fee, which is the responsibility of the Customer.
 - Customers not set up for bank check scanning will incur additional courier fees of **\$200 per month**.

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

- L. **Out of State Citations** - TDS shall process citations for non-California license plates by entering the citation information into the system database and reporting them along with all other citations on the database with the standard reports. If they become delinquent, requests for registered owner information will be sent to the appropriate out-of-state DMV. The Notice of Intent will be generated to the registered owner and the fine amount requested. TDS will incur all costs for out of state name retrieval, including out-of-state DMV fees and charges. TDS will receive payment from Customer based on the amount of revenues collected from out-of-state citations after the Notice of Intent has been issued. This amount will be billed monthly for the prior months' receipts (as determined from our database and/or reports). Payments collected via credit card will also incur credit card fees.
- M. **IVR and Web Payment Systems - Payment by Credit Card** - Through the Interactive Voice Response (IVR) System, and through the pticket.com web site, we accept credit card payments via Visa, MasterCard and Discover. The systems authorize each transaction while the caller is on the phone or online. Customers are given an authorization number or email confirmation to confirm their charge. The IVR system and the pticket.com web payment system both automatically update the citation database with the payment immediately. Credit Card monies are paid to a Turbo Data Systems bank account and are reconciled monthly. Each customer receives their own credit card postlog which shows in detail which citations were paid and for what amount, along with the deposit slip from the bank or the ACH deposit email showing that these funds have been deposited into the customer's account. Should there be any charge backs to a merchant account, the funds are pulled directly from the Turbo Data master account and the citation will be reactivated, much like a bounced check. The violator will be sent a notice and will then proceed to DMV hold. TDS will provide all services regarding reconciliation, reactivation of charge backs, etc. Customer will not be involved in the daily processing.
- N. **Administrative Adjudication Processing** - TDS will provide for the processing of requests for contesting citations, allowing for Customer processing of administrative reviews, tracking and monitoring all relevant dates on an automated system, mailing timely notification to respondents regarding the status of their claims, and scheduling of administrative hearings. All Administrative Adjudication information entered into the system is done in real time and is linked to existing database information to ensure proper tracking of relevant dates, mailing names and addresses and other pertinent information. Administrative Review requests will be entered within 2 business days of receipt. Adjudication documents will be stored for 2 years from their activity date and then shredded.

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

- O. **Paperless Appeals (eAppealsPRO & Scanning)** – TDS will provide online appeal capability for the public to appeal their citations online. TDS will provide the scanning of all mailed-in appeal documents and electronic storage of those documents. TDS will provide an online application to access the appeals, which will be searchable and sortable. TDS will keep an electronic history of processed appeals for at least two years.
- P. **Online Inquiry Access for Customers' Staff** - Access includes online access 24 hours a day, 7 days a week for Agency personnel to inquire on Customer's database. This access includes citation inquiry (includes citation status, history status, administrative adjudication status, notes, etc.), the ability to enter and view notes, post dismissals/payments, view daily deposits made at TDS' facility and view daily file transfers sent from the handheld ticket writer software and received at TDS' facility. TDS' technical staff will provide support. TDS will provide a real-time secured high-speed connection to the citation database through the Customers' Internet connection.
- Q. **Additional Notices**— TDS will mail **Other Correspondence** as required for processing.
- R. **ICS Collection Service – Special Collections** - Outstanding citations (DMV No-Holds or DMV Transfer of Ownership Releases or Non-California plates) and any other citations deemed as delinquent citations by Customer are transferred into the ICS system on a weekly basis. Up to two collection letters will be mailed for each ICS account requesting payment. Payments are processed daily and deposited to the Customer's regular citation processing bank account. The TDS Customer Service Center will handle all ICS related calls through a special toll-free number dedicated to ICS accounts. Monthly reporting shows all accounts moved to the ICS system and all payments received due to ICS efforts.
- S. **Franchise Tax Board Offset Program** – TDS will combine citations by license number for total amount due, eliminate corporate names, retrieve SSN's by name from a 3rd party, combine accounts by SSN, mail required FTB letters in advance of placing accounts at FTB, process payments generated by the FTB process, receive phone calls generated by the FTB process, provide all systems and operational procedures required for the FTB process, and provide complete reporting and reconciliation for the FTB process. Customer will be required to complete required FTB paperwork and forms (with TDS' assistance), establish a SWIFT account with the FTB, and provide whatever assistance may be required to work with the FTB regarding the FTB process.

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

T. Payment Plans - The Contractor will have a payment plan system in place to comply with all legislation. The plan will allow for waivers, when necessary, for indigent and non-indigent individuals. Plan requests will be submitted to the Customer for review/approval/denial. The Contractor will mail correspondence to let the applicant know the status of their payment plan application and other details. Payment Plans allow the agency to waive fees for indigent persons, adjust the length of the plan and set minimum payments due. If a plan defaults prior to full payment, the system automatically resumes the citation process (DMV, Collections, etc.). The Contractor will provide customized agency specific information for indigent payment plans on pticket.com.

U. Bank Account Management (optional)

TDS will open a trust account in the name of the Agency to receive parking deposits for all parking citation monies. TDS will handle any NSF checks from this account and reactivate the citations. TDS will process any required refund checks. TDS will send a monthly surcharge check to the county based on reporting. TDS will pay their own invoice monthly and write a check to the Agency monthly for the balance of the funds. TDS will reconcile the account monthly and provide documentation to Agency of reconciliation.

V. Handheld Ticketwriters – ticketPRO Magic

TDS will provide ticketPRO Magic Units and citations and envelopes as required at the pricing then in effect. TDS will provide maintenance and support for the Automated Citation Issuance System and the Field Units. RemoteConnect Support is provided for devices while in the field. TDS will provide a data plan with unlimited voice/text messaging for field units. Software upgrades are provided as newer versions become available. Support via email is provided for support requests and for reporting software/hardware issues.

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

TDS shall perform the following services in processing all **Administrative Citations**:

- A. **Basic Processing** – TDS will enter manual citations including the name and address of the responsible party from the citation and citation dispositions into Customer’s database within 2 business days. The basic service includes database maintenance, daily system backups, Interactive Voice Response System (IVRS) with customized recorded information and citation lookup capability, **pticket.com** web-based Inquiry System for the public with customized content, ongoing Client support, and documentation and training for use of the TDS-provided online system. Municipal Administrative citations are scanned to us and then entered manually. Images of the citations are available online for viewing.
- B. **Automated Entry of Administrative Citations** - TDS will provide for automated import of electronic citations into Customers database within 1 business day. TDS will work with Customer to implement any changes required for handheld ticket writer equipment.
- C. **System and Document Storage** - Citations paid or dismissed will be retained on the computer system for 3 years and then removed. Unpaid citations will be retained on the computer system for 5 years and then removed. Citation documents will be stored for 2 years from date of issue and then returned to Customer or shredded. Payment documents will be stored for 2 years from the date of payment and then returned to Customer or shredded.
- D. **Online Reporting** - Provide monthly reports online indicating the status of all citations, such reports to be available for Customer access no later than the thirtieth (30th) day of the following month.
- E. **Notice Processing** - Print the required Notice and mail to each responsible party within a City determined number of days after the citation has been issued. Includes second notices mailed for bounced checks, partial payments, and address changes. The notice date shall be delayed if there is an unusual delay in delivery of information or citations to TDS. All postage, notice forms and envelopes will be provided by TDS.
- F. **Delivery Service** – Manual citations will be mailed or scanned to TDS by Customer at their own expense. TDS reports will be provided online. TDS will return any required documents via US Mail.
- G. **Collection and Payment Processing** - TDS will provide the following collection and payment processing services for Customer:
 - Provide P. O. Box where payments are mailed
 - Courier pickup from P. O. Box daily
 - Open all mail
 - Verify payment amounts and record on computer system within 2 business days (48 hours)

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

- Respond to reasonable public inquiries by phone and/or mail
 - Return questionable mail to Customer for decision
 - Verify amounts deposited, by citation number
 - Scan all checks into remote deposit software of Agency's bank account – electronic deposits
 - Store and periodically destroy checks as required
 - Provide reports for bank statement reconciliation
 - TDS does not charge for remote deposits; however, the financial institution may charge a fee, which is the responsibility of the Customer.
 - Customers not set up for bank check scanning will incur additional courier fees of **\$200 per month**.
- H. **Web Payment System - Payment by Credit Card** - Through the pticket.com web site, we accept credit card payments via Visa, MasterCard and Discover. The system authorizes each transaction while the customer is online. Customers are given an email confirmation to confirm their charge. The pticket.com web payment system automatically updates the citation database with the payment immediately. Credit Card monies are paid to a Turbo Data Systems bank account and are reconciled monthly. Each customer receives their own credit card postlog which shows in detail which citations were paid and for what amount, along with the deposit slip from the bank or the ACH deposit email showing that these funds have been deposited into the customer's account. Should there be any charge backs to the merchant account, the funds are pulled directly from the Turbo Data master account and the citation will be reactivated, much like a bounced check. The violator will be sent a notice and will then proceed to further collections. TDS will provide all services regarding reconciliation, reactivation of charge backs, etc. Customer will not be involved in the daily processing.
- I. **Administrative Adjudication Processing Service** - TDS will provide for the processing of requests for contesting citations, and tracking and monitoring all relevant dates on an automated system. All Administrative Adjudication information entered into the system is done in real time and is linked to existing database information to ensure proper tracking of relevant dates, mailing names and addresses and other pertinent information. Hearing requests will be entered within 2 business days of receipt. Adjudication documents will be stored for 2 years from their activity date and then shredded.
- J. **Administrative Adjudication Hearings** – TDS will schedule the City's independent hearing examiner to conduct hearings in person, in writing and over the phone. City will provide in person hearing location.
- K. **Online Inquiry Access for Customers' Staff** - TicketPROWeb Access includes online access 24 hours a day, 7 days a week for Agency personnel to inquire on Customer's database. This access includes citation inquiry (includes citation status, history status, administrative adjudication status, notes,

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

etc.), the ability to enter and view notes, post dismissals/payments, and view daily deposits made by TDS. TDS' technical staff will provide support. TDS will provide access to the citation database through the Customers' Internet connection.

- L. **Additional Notices** - TDS will mail Other Correspondence as required for processing.
- M. **ICS Collection Service – Special Collections** - Citations remaining outstanding ninety days after becoming delinquent and any other citations deemed as delinquent citations by Customer are transferred into the ICS system on a weekly basis. Up to two collection letters will be mailed for each ICS account requesting payment. Payments are processed daily and deposited to the Customer's regular citation processing bank account. The TDS Customer Service Center will handle all ICS related calls through a special toll-free number dedicated to ICS accounts. Monthly reporting shows all accounts moved to the ICS system and all payments received due to ICS efforts.
- N. **Franchise Tax Board Offset Program** – TDS will combine citations by responsible party for total amount due, eliminate corporate names, retrieve SSN's by name from a 3rd party, combine accounts by SSN, mail required FTB letters in advance of placing accounts at FTB, process payments generated by the FTB process, receive phone calls generated by the FTB process, provide all systems and operational procedures required for the FTB process, and provide complete reporting and reconciliation for the FTB process. Customer will be required to complete required FTB paperwork and forms (with TDS' assistance), establish a SWIFT account with the FTB, and provide whatever assistance may be required to work with the FTB regarding the FTB process. Customer will pay the FTB directly for their offset services.
- O. **Bank Account Management – (optional)** TDS will open a trust account in the name of the Agency to receive parking deposits for all administrative citation monies. TDS will handle any NSF checks from this account and reactivate the citations. TDS will process any required refund checks. TDS will pay their own invoice monthly and write a check to the Agency monthly for the balance of the funds. TDS will reconcile the account monthly and provide documentation to Agency of reconciliation. This account may be joined with the parking citation trust account in the event that one exists.
- P. **Handheld Ticketwriters – ticketPRO Magic**
TDS will provide ticketPRO Magic Units and citations and envelopes as required at the pricing then in effect. TDS will provide maintenance and support for the Automated Citation Issuance System and the Field Units. RemoteConnect Support is provided for devices while in the field. TDS will provide a data plan with unlimited voice/text messaging for field units. Software upgrades are

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

provided as newer versions become available. Support via email is provided for support requests and for reporting software/hardware issues.

**AGREEMENT FOR PROCESSING
OF PARKING AND ADMINISTRATIVE CITATIONS**

**PROPOSAL FOR PARKING CITATION PROCESSING & MOBILE ENFORCEMENT SERVICES
AND
PROPOSAL FOR ADMINISTRATIVE CITATION PROCESSING,
COLLECTION & MOBILE ENFORCEMENT**

PROPOSAL FOR Parking Citation Processing & Mobile Enforcement Services

Submitted by:

Submitted to:

turboDATA
SYSTEMS



City of
Livingston
California

You enforce...
We'll take care of the rest.

turboDATA
SYSTEMS

CITATION PROCESSING **REVENUE COLLECTIONS** **MOBILE ENFORCEMENT**

Parking

Traffic

Permits

Code Enforcement

CONFIDENTIAL INFORMATION DISCLAIMER:

This proposal contains certain confidential and valuable information in the form of ideas, know-how, concepts, processes, plans and trade secrets that belong to Turbo Data Systems, Inc. In accordance with the California Public Records Act, this confidential information shall not be disclosed outside the agency and shall not be duplicated, used, or disclosed in whole or in part for any purpose except in the procurement process. Confidential information contained in this document is noted on each applicable page or image. Serious and irreparable competitive disadvantage in future procurements could result from the release of any confidential information contained in this proposal. Please notify us immediately, in writing, if there is a request for disclosure of any confidential information, so that we will have an opportunity to participate in any disclosure discussions.

Contents

- Parking Processing Management 2**
 - 1. Electronic and Manual Parking Citations..... 2
 - 2. ticketPRO Platform Hosting & Maintenance 2
 - 3. Reminder Notices (Notice of Violation)..... 2
 - 4. Other Correspondence, Notices and Letters..... 2
 - 5. Initial Review and Hearing Notices/Letters..... 2
 - 6. Paperless Appeals..... 2
 - 7. Payment Plan Processing..... 2
 - 8. Out-of-State Collections 3
 - 9. ICS Delinquent Collections..... 3
 - 10. Franchise Tax Board Collections..... 3
 - 11. Credit Card Payments (Internet and Phone/IVR) 3
 - 12. Banking Options - Agency may Choose from the following: 3
 - 13. Hearing Examiner Services – Parking Citations 3
 - 14. Postal Rate Increase Offset 4
- ticketPRO Mobile Enforcement..... 5**
- ticketPRO nFORCER-II ALL-IN-ONE (Option 2) 6**
- ticketPRO nFORCER-II Accessories and options..... 7**
- Parking Tickets Printed Media 7**

Parking Processing Management

1. Electronic and Manual Parking Citations	\$0.50 - Electronic \$0.70 - Manual
<ul style="list-style-type: none"> • Entry of all citations. • Citation dispositions (bounced checks, payments, extensions, etc.) • DMV interface (r/o retrieval and placing and releasing registration holds) • Toll-free telephone number (for public access) • Multi-lingual interactive voice response system (IVR) • Customer services representatives (8 am – 5 PM, Mon - Fri, excluding holidays) • Daily pick up of payments and other documents from a TDS provided P.O. box. • Scan and remote deposit checks into agency's bank account. • pticket.com web pages customized for the agency. • Database maintenance and daily system backups. • Secure, cloud access for agency staff to citation database. • Documentation and training for use of TDS provided online system. • Ongoing client support and training. 	
2. ticketPRO Platform Hosting & Maintenance	\$300/month
<ul style="list-style-type: none"> • Cloud Hosting. • Security and PCI Compliance. • Provides ongoing support and maintenance of hosting platforms. • Provide Testing/Staging environment for early software releases. • Online training for Mobile App and backend. • RMS system export - if available and supported by vendor. • Electronic storage and archival of captured images. • Scheduled shift-summary reporting and on-demand reports. • Access to ticketPRO WEB and TPMViewer backend Web interface. 	
3. Reminder Notices (Notice of Violation)	\$0.90 per notice
Includes all forms, envelopes, return envelopes and printing. Reminder notices are mailed 21 days after issuance or per agency timeline. Includes first class postage.	
4. Other Correspondence, Notices and Letters	\$0.90 per notice
Includes all forms, envelopes, and printing. NSF letters, partial payments, name, and address changes, drive away notice, etc. Includes first class postage. (Excludes FTB and ICS notices)	
5. Initial Review and Hearing Notices/Letters	\$0.90 per notice
TDS mails all initial review results letters, hearing notification letters and hearing result letters as required. All forms, envelopes and printing are included with the mailing. Includes first class postage.	
6. Paperless Appeals	\$1.25 per appeal
This service allows for online submitted appeals and a 100% PAPERLESS appeal system. All mailed-in appeals are scanned into the system and are reviewable by Agency staff using the eAppeals PRO online review system. All appeals are in the same place, and the documentation is saved electronically. A complete history of all appeals, results, and who made the decisions, etc., is always available online for the Agency. Includes Hearing services, scheduling, and coordination. Documents for Court provided to agency when required.	
7. Payment Plan Processing	\$5.00 per Plan
The payment plan supports AB503 legislation. All payment plan letters will be at the "Correspondence" rate.	

8. Out-of-State Collections	25% of amount collected
TDS absorbs costs to retrieve out of state registered owner information. NLETS electronic access for out-of-state license plates.	
9. ICS Delinquent Collections	25% of amount collected
Applies to citations that are past DMV registration hold. Additional penalties applied, and up to two letters mailed from Innovative at no cost to the Agency. Includes taking toll-free phone calls from ICS customers and other follow-up efforts. Payments collected at DMV will not be billed this fee. Cost recovery option available	
10. Franchise Tax Board Collections	\$2 Per Account Letter +15% of amount paid
TDS pursues otherwise uncollectible accounts by retrieving social security numbers from a third party, mailing required pre-intercept letters, and then sending the accounts to the FTB to intercept any state tax refunds or lottery winnings. *This fee is subject to change each new FTB year. Cost recovery option available	
11. Credit Card Payments (Internet and Phone/IVR)	No Charge to Agency
A \$3.95 convenience fee per citation paid will be charged to the public for this service. This fee covers the cost of ongoing maintenance, support, and enhancements of the web payment system, and includes daily and monthly reconciliation of all payments. (Fee subject to change).	
12. Banking Options - Agency may Choose from the following:	
<p><i>Option 1: Remote (Scan) Check Deposits</i></p> <ul style="list-style-type: none"> • Electronic deposits (scanning checks) into the Agency's existing bank account incur no monthly fee. • Same day funding credit for bank deposits. • Scanned check images available for investigations. 	No Charge to Agency
<p><i>Option 2: TDS Bank Management</i></p> <ul style="list-style-type: none"> • Process all parking deposits into a separate account set up for the Agency. • Scanned check images available for investigations. • \$3.50 fee per NSF/Chargeback and refund billed to Agency. • Write and send monthly surcharge check to the county based on reporting. • Write a check to TDS for services rendered. • Reconcile the account monthly and provide monthly reconciliation of all activities in the account. • Write a check to Agency monthly for the balance of the funds. 	\$150/month plus bank fees/supplies
13. Hearing Examiner Services – Parking Citations	Unavailable
<i>Each trip to the city for in-person hearings</i>	
TDS will provide an independent, fair, and impartial hearing examiner who will conduct phone, written, and in-person hearings. TDS agrees to perform the hearing examiner services at a date and time mutually agreed upon. Hearing examiners will comply with the training requirements for the position as outlined in California Vehicle Code Section 40215. TDS will ensure that hearings are completed in a timely manner, that decisions are rendered to uphold or deny each appeal and that all paperwork is completed.	

14. Postal Rate Increase Offset	
If postal rates increase during the term of this agreement, fees to TDS shall be raised immediately to offset the effect of the postal rate increase.	

ticketPRO Mobile Enforcement



ticketPRO Magic 2-piece (Option 1)

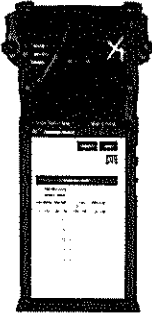
ticketPRO Mobile Solution Option-1	
This option is a complete solution that includes phone, printer, software, 4G data plan, support, and maintenance for a single monthly price per unit. Two printer options are available.	
Initial One-time Fees	Unit Cost
ticketPRO Mobile software setup and configuration: Initial setup and installation of software with agency specific information	\$100 per unit
60-Month Lease	
Monthly Lease Details - Rugged Smartphone/Printer Combo + Data Plan	Monthly Rate
<ul style="list-style-type: none"> • Rugged android smart phone • Bluetooth printer • USB C Power Adaptor • 4/5G data plan • ticketPRO Mobile parking software • Remote management software • ticketPRO Mobile and RM software licenses • Maintenance and support • Zebra Printer Option; Add \$15/month/unit. 	\$120 per month per unit
Monthly Lease Details	Rate
Smartphone: Rugged Samsung smartphone or equivalent High-Res Camera Military spec. MIL-810G rated Bluetooth USB Charging 4/5G LTE	Included
Bluetooth Printer: TSC or Zebra Printer Includes Lithium-Ion Battery AC Charger Belt Clip 2 years Parts & Labor Warranty (1year on printhead) Configured to Agency's ticketPRO Mobile system Additional accessories: spare battery, case with shoulder strap, charging dock (Zebra only) are available for purchase.	Included
Managed 4/5G Voice and Data Plan	Included
ticketPRO Mobile Software: Parking Software Real-Time citation & photo transfer Live Lookups for prior citations Built-in LPR ALPR interface Electronic Chalking GPS tracking Live shared data between all devices Interfacing with pay-stations, and payment by phone systems Scofflaw and hotlist vehicle alerts	Included
ticketPRO Mobile Software Annual License	Included
Remote Management Software Maintenance and Support: Remote servicing and updates Field support including remote-connect assistance email support for Agency requests	Included

- Sales tax will be applied to all items listed.
- At the end of the monthly lease, all equipment will be returned to TDS in good working order. If equipment is not returned, the lease will revert to a month-to-month lease with 30 days' notice required prior to turning the equipment in.
- Early Termination Fees will apply.
- Rugged Smartphone and printer hardware are subject to availability.

Disclaimer:

TDS may subscribe to various third-party software services for the purpose of automating input of information while writing the ticket. These services may include Google Maps, location services GPS, LPR services, and VIN lookups. TDS reserves the right, should these services terminate, to disable those services in the software. These services are integrated into the software for convenience and do not affect the issuance of citations.

ticketPRO nFORCER-II ALL-IN-ONE (Option 2)

ticketPRO Mobile Solution Option-2 (All-in-one nFORCER-II Print)	
This option is a complete solution that includes phone, printer, software, 4G data plan, support, and maintenance for a single monthly price per unit.	
Initial One-time Fees	Unit Cost
ticketPRO Mobile software setup and configuration: Initial setup and installation of software with agency specific information	\$100 per unit
60-Month Lease	
Monthly Lease Details - Rugged Smartphone/Printer Combo + Data Plan	Monthly Rate
<ul style="list-style-type: none"> • All included, all-in-one rugged nFORCER-II (smartphone + printer) • 4/5G data plan • Docking power stations • ticketPRO Mobile parking software • Remote management software • ticketPRO Mobile and RM software licenses • Maintenance and support 	\$145 per month per unit
	
Monthly Lease Details	Rate
Smartphone: Built-in rugged Samsung smartphone or equivalent High-Res Camera Bluetooth USB Charging 4/5G LTE	Included
Printer: Built-in 3" printer.	Included
Managed 4/5G Voice and Data Plan	Included
ticketPRO Mobile Software: Parking Software Real-Time citation & photo transfer Live Lookups for prior citations Built-in LPR ALPR interface Electronic Chalking GPS tracking Live shared data between all devices Interfacing with pay-stations, and payment by phone systems Scofflaw and hotlist vehicle alerts	Included
ticketPRO Mobile Software Annual License	Included
Remote Management Software Maintenance and Support: Remote servicing and updates Field support including remote-connect assistance email support for Agency requests	Included

- Sales tax will be applied to all items listed.
- At the end of the monthly lease, all equipment will be returned to TDS in good working order. If equipment is not returned, the lease will revert to a month-to-month lease with 30 days' notice required prior to turning the equipment in.
- Early Termination Fees will apply.
- Rugged Smartphone and printer hardware are subject to availability.

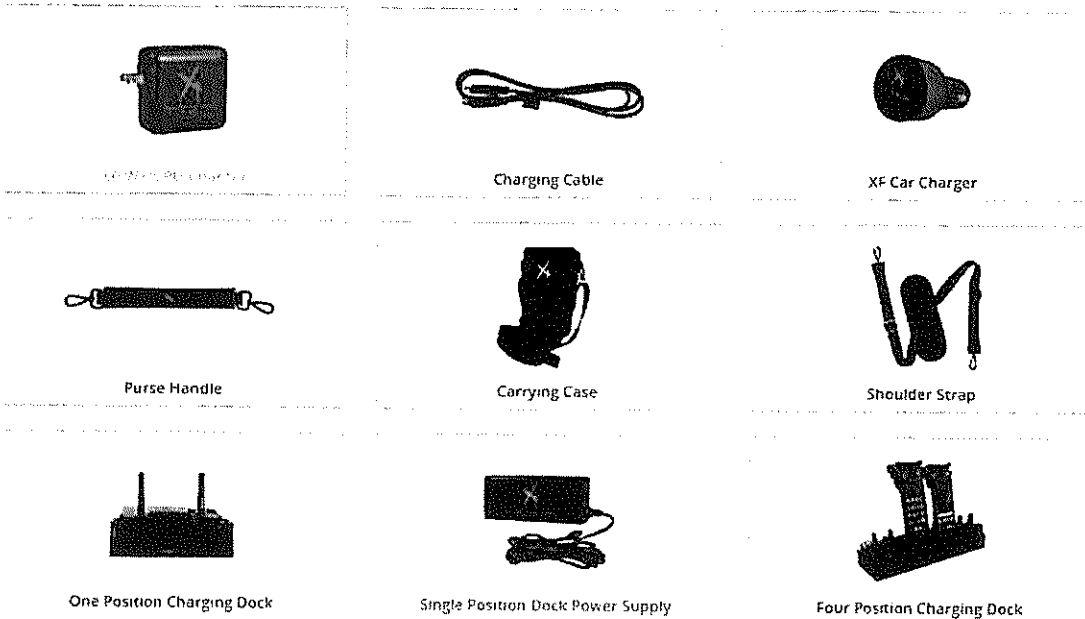
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ticketPRO nFORCER-II Accessories and options

Item	Description	Price
1	Single Dock with power supply	\$ 219.00
2	Single Dock without power supply(used with quad base)	\$ 195.00
3	Quad Dock base only	\$ 365.00
4	Quad Dock base with docks	\$ 1,147.00
5	Hot swap Battery	\$ 138.00
6	Carry case	\$ 39.00
7	USB Car charger	\$ 50.00
8	USB AC Adapter	\$ 65.00
9	Hand strap	\$ 24.00
10	Top Strap	\$ 24.00

Accessories



Parking Tickets Printed Media

Citations and Envelopes	
	Unit Cost
TDS provides Standard or Custom citations and envelopes that are compatible with our ticketPRO Mobile solution.	Varies with size and quantity ordered

All quoted prices are valid 60 days from the date submitted.

BUDGETARY PROPOSAL FOR Administrative Citation Processing Collection & Mobile Enforcement

Submitted by:



Submitted to:



City of
Livingston
California

You enforce...
We'll take care of the rest.

turboDATA SYSTEMS

CITATION PROCESSING **REVENUE COLLECTIONS** **MOBILE ENFORCEMENT**

Parking

Traffic

Permits

Code Enforcement

The image shows a hand pointing at a glowing screen. The screen displays the Turbo Data Systems logo and three main categories: CITATION PROCESSING, REVENUE COLLECTIONS, and MOBILE ENFORCEMENT. Under CITATION PROCESSING, there are sub-categories: Parking, Traffic, Permits, and Code Enforcement. On the right side of the screen, there are several logos, including a cloud, a shield, a license plate, and a truck.

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Contents

- Administrative Citation Processing Management..... 2
 - Basic Processing Fees: Electronic and Manual Parking Citations 2
 - Notices Mailing..... 2
 - Other Correspondence, Notices and Letters 2
 - Payment Plan Processing..... 2
 - ICS Delinquent Collections..... 2
 - Franchise Tax Board Collections..... 2
 - Credit Card Payments (Internet and Phone/IVR) 2
 - Banking Service: TDS Bank Management 3
 - Hearing Scheduling and Noticing– Administrative Citations (Optional) 3
 - Postal Rate Increase Offset 3
- ticketPRO Mobile Enforcement..... 4
 - ticketPRO nFORCER-II ALL-IN-ONE LEASE OPTION 4
- ticketPRO Mobile Enforcement..... 5
 - ticketPRO nFORCER-II Accessories and options 5
 - Tickets Printed Media..... 5

Administrative Citation Processing Management


Basic Processing Fees: Electronic and Manual Parking Citations	\$3.00/Electronic citation \$5.00/Manual citation
Monthly Hosting fees for Basic Processing Fees	\$300 Monthly Hosting
<p>Basic Processing includes:</p> <ul style="list-style-type: none"> • Entry of all citations. • Citation dispositions (bounced checks, payments, extensions, etc.) • Daily pick up of payments and other documents from a TDS provided P.O. box. • Scan and remote deposit checks into agency's bank account. • pticket.com web pages customized for the agency. • Database maintenance and daily system backups. • Secure, cloud access for agency staff to citation database. • Documentation and training for use of TDS provided online system. • Ongoing client support and training. 	
Additional Services	
Notices Mailing	\$0.95 per notice
Includes all forms, envelopes, return envelopes and printing. Up to two notices are mailed per agency timeline. Includes first class postage.	
Other Correspondence, Notices and Letters	\$0.95 per notice
Includes all forms, envelopes, and printing. NSF letters, partial payments, name, and address changes, etc. Includes first class postage. (Excludes FTB and ICS notices)	
Payment Plan Processing	\$5.00 per Plan
Standard payment plans are available. All payment plan letters will be at the "Correspondence" rate.	
ICS Delinquent Collections	25% of amount collected
Collection will start based on an agency timeline. Additional penalties applied, and up to two letters mailed from Innovative at no cost to the Agency. Includes taking toll-free phone calls from ICS customers and other follow-up efforts. Cost recovery option available	
Franchise Tax Board Collections	\$2 Per Account Letter +15% of amount paid
TDS pursues otherwise uncollectible accounts by retrieving social security numbers from a third party, mailing required pre-intercept letters, and then sending the accounts to the FTB to intercept any state tax refunds or lottery winnings. *This fee is subject to change each new FTB year. Cost recovery option available	
Credit Card Payments (Internet and Phone/IVR)	No Charge to Agency
A \$4 fee (minimum) or 4% of the amount paid (whichever is greater), convenience fee per citation paid by the public. This fee covers the cost of ongoing maintenance, support, and enhancements of the web payment system, and includes daily and monthly reconciliation of all payments. (Fee subject to change).	

Banking Service: TDS Bank Management	Reduced to \$75 + bank fees/supplies
<ul style="list-style-type: none"> • Process all parking deposits into a separate account set up for Agency. • Scanned check images available for investigations. • \$5.00 fee per NSF/Chargeback and refund billed to Agency. • Write a check to TDS for services rendered. • Reconcile the account monthly and provide monthly reconciliation of all activities in the account. • Write a check to Agency monthly for the balance of the funds. 	Reduction applies if bank management already set up for parking services.
Hearing Scheduling and Noticing– Administrative Citations (Optional)	\$1.55 per Letter
<ul style="list-style-type: none"> • Send hearing notification letters for in-person, phone and/or zoom hearings. • Coordinate with city and city provided hearing examiner on dates/times. • Track hearings and reschedules in the ticketPRO system. • Send hearing result letters and process refunds when required. 	
Postal Rate Increase Offset	
If postal rates increase during the term of this agreement, fees to TDS shall be raised immediately to offset the effect of the postal rate increase.	

ticketPRO Mobile Enforcement



ticketPRO nFORCER-II ALL-IN-ONE LEASE OPTION

ticketPRO Mobile Solution	
This option is a complete solution that includes phone, printer, software, 4G data plan, support, and maintenance for a single monthly price per unit.	
Initial One-time Fees	Unit Cost
ticketPRO Mobile software setup and configuration: Initial setup and installation of software with agency specific information	\$100 per unit
60-Month Lease	Monthly Rate
Monthly Lease Details - Rugged Smartphone/Printer Combo + Data Plan <ul style="list-style-type: none"> • All included, all-in-one rugged nFORCER-II (smartphone + printer) • 4/5G data plan • Docking power stations • ticketPRO Mobile software • Remote management software • ticketPRO Mobile and RM software licenses • Maintenance and support • nFORCER-II SCAN option includes built-in laser barcode scanner. 	 nFORCER-II PRINT \$145/month/unit nFORCER-II SCAN \$175/month/unit
Monthly Lease Details	Rate
Smartphone: Built-in rugged Samsung smartphone or equivalent High-Res Camera Bluetooth USB Charging 4/5G LTE	Included
Printer: Built-in 3" printer.	Included
Managed 4/5G Voice and Data Plan	Included
ticketPRO Mobile Software: Admin Software Real-Time citation & photo transfer Live Lookups for prior citations Built-in LPR Reinspection Lookup GPS tracking Live shared data between all devices	Included
ticketPRO Mobile Software Annual License	Included
Remote Management Software Maintenance and Support: Remote servicing and updates Remote-connect assistance email support for Agency requests	Included

- Sales tax will be applied to all items listed.
- At the end of the monthly lease, all equipment will be returned to TDS in good working order. If equipment is not returned, the lease will revert to a month-to-month lease with 30 days' notice required prior to turning the equipment in.
- Early Termination Fees will apply.
- Rugged Smartphone and printer hardware are subject to availability.
- Lost/stolen/full damaged devices will be replaced at \$3,800.
- Out of warranty repairs will be assessed at the time the incident is reported. Repair costs could vary depending on the parts needing replacement.

Disclaimer:

TDS may subscribe to various third-party software services for the purpose of automating input of information while writing the ticket. These services may include Google Maps, location services GPS, LPR services, and VIN lookups. TDS reserves the right, should these services terminate, to disable those services in the software. These services are integrated into the software for convenience and do not affect the issuance of citations.

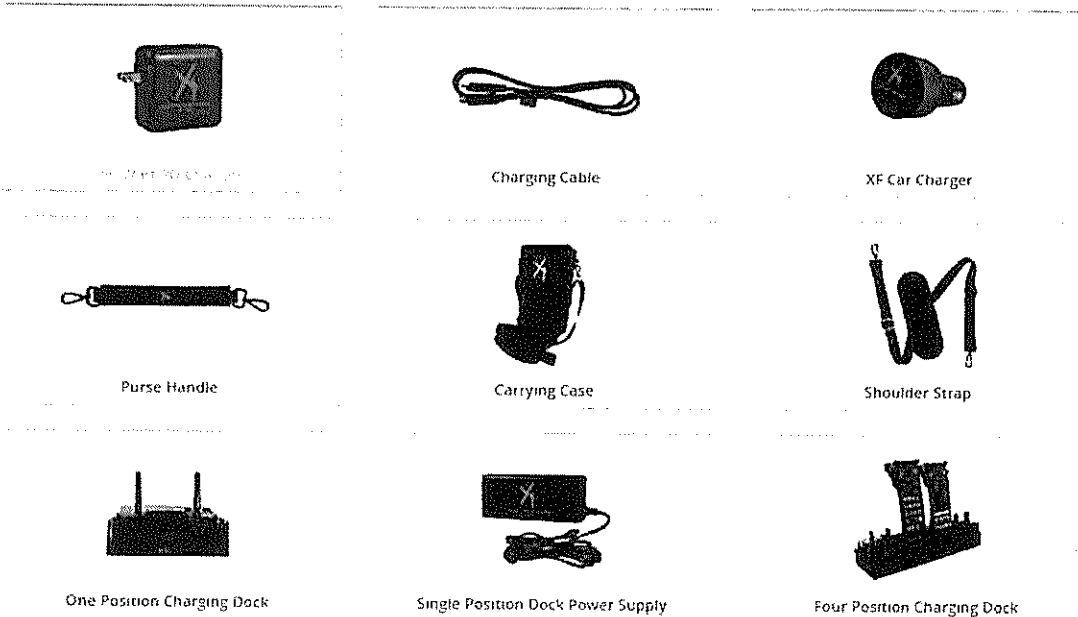
ticketPRO Mobile Enforcement



ticketPRO nFORCER-II Accessories and options

Item	Description	Price
1	Single Dock with power supply	\$ 219.00
2	Single Dock without power supply(used with quad base)	\$ 195.00
3	Quad Dock base only	\$ 365.00
4	Quad Dock base with docks	\$ 1,147.00
5	Hot swap Battery	\$ 138.00
6	Carry case	\$ 39.00
7	USB Car charger	\$ 50.00
8	USB AC Adapter	\$ 65.00
9	Hand strap	\$ 24.00
10	Top Strap	\$ 24.00

Accessories



Tickets Printed Media

Citations and Envelopes	
	Unit Cost
TDS provides Standard or Custom citations and envelopes that are compatible with our ticketPRO Mobile solution. For a single device use with multiple ticketPRO Apps, a plain paper option is available which allow printing of parking and admin citations on the same stock.	Varies with size and quantity ordered

All quoted prices are valid 60 days from the date submitted.



STAFF REPORT

AGENDA ITEM: CONSIDERATION OF A RESOLUTION APPROVING THE REPLACEMENT FOR LIVINGSTON POLICE DEPARTMENT CODE ENFORCEMENT/ANIMAL CONTROL VEHICLE

MEETING DATE: April 16, 2024

PREPARED BY: John Ramirez, Acting Chief of Police

APPROVED By: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Adopt Resolution No. 2024- ____, approving the purchase and replacement of City of Livingston Police Department Animal Control vehicle which is designed strictly for use as an Animal Control vehicle.

BACKGROUND:

The current Animal Control Vehicle is a 2006 Ford F-250 and has been in service for 18 years with approximately 114,000 “city” miles. The vehicle was designated specifically for Animal Control and is retrofitted with numerous cages for the purpose of transporting animals. The vehicle is an older model and recently has been experiencing many mechanical issues. The vehicle has become increasingly expensive to maintain and keep operational.

In March 2023 the City of Livingston created a full time Code Enforcement Officer position that also absorbed the existing duties of the Animal Control Officer. The current vehicle is exclusively set up for Animal Control. The current Code Enforcement/Animal Control Officer would be better outfitted with a vehicle that serves as a dual purpose.

The purchase of a new vehicle is requested to meet the dual-purpose need of the new position. The current set up does not allow for any other use than the transportation of animals. The new vehicle could also be used for additional police department functions and use if needed.

DISCUSSION:

Three separate quotes were obtained for a 2023/2024 Chevy Silverado.

	Base Price	Tax, License & Fees	Sub-Total	Equipment Install	Lights and Graphics	TOTAL
American Chevrolet	\$40,400.00	\$4,135.44	\$44,535.44	\$1,600.00	\$2987.15	\$49,122.59
Merced Chevrolet	\$42,250.00	\$3,730.48	\$45,857.23	\$1,600.00	\$2987.15	\$50,444.38
Chase Chevrolet	\$45,090.00	\$3,501.07	\$48,685.82	\$1,600.00	\$2987.15	\$53,272.97



FISCAL IMPACT

The money to purchase and retrofit the vehicle will come from current salary savings from the Police Department's General Fund Budget.

ATTACHMENTS:

1. Resolution
2. Emergency Equipment/Graphics Quote
3. Equipment installation quote
4. Three (3) quotes for 2023/2024 Chevy Silverado

RESOLUTION NO. 2024-

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON APPROVING THE CITY OF LIVINGSTON'S PURCHASE OF A NEW CODE ENFORCEMENT/ANIMAL CONTROL VEHICLE

WHEREAS, the City of Livingston Police Department is responsible for the function of the Code Enforcement Officer and Animal Control Officer for the City; and

WHEREAS, the City of Livingston Police Department maintains a fleet of vehicles that are necessary in the operation and function of the officer's duties; and

WHEREAS, the City of Livingston Police Department has determined a new truck must be purchased to replace an existing 2006 truck which has exceeded its useful life and purpose; and

WHEREAS, the City of Livingston could purchase a 2023/2024 Chevrolet Silverado 1500 Pick Up Truck not to exceed Forty Four Thousand Five Hundred Thirty Five Dollars and Forty Four Cents (\$44,535.44); and

WHEREAS, the Emergency Equipment (Safety Lighting/Communication/Graphics) for this vehicle must be purchased separately from LEHR and Sign works for an amount of Two Thousand Nine Hundred Eighty Seven Dollars and Fifteen Cents (\$2,987.15); and

WHEREAS, the equipment installation for this vehicle must be purchased separately from Steele Public Safety Systems for an amount of Sixteen Hundred Dollars and no cents (\$1,600.00); and

WHEREAS, the total cost for this vehicle, fully equipped will be an amount not to exceed Forty Nine Thousand One Hundred Twenty Two Dollars and Fifty Nine Cents (\$49,122.59); and

WHEREAS, the necessary fund for this purchase are available under the 2023/2024 Police Department Budget

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livingston hereby authorizes 1) the expenditure of \$49,122.59 from salary savings of the police department general fund budget for the purchase (\$44,535.44) and outfitting (\$4,587.15) of the additional vehicle proposed, and 2) authorize the Interim City Manager to purchase the following vehicle from American Chevrolet, in the total amount not to exceed \$44,535.44.

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 16th day of April 2024, by the vote recorded as follows:

AYES:

NOES:

ABSTAIN:

ABSENT:

By: _____
Jose A. Moran, Mayor
of City of Livingston

ATTEST

Monica Cisneros, Deputy City Clerk
Of the City of Livingston

APPROVED AS TO LEGAL FORM

Roy C. Santos, City Attorney

www.signs-tsw.com



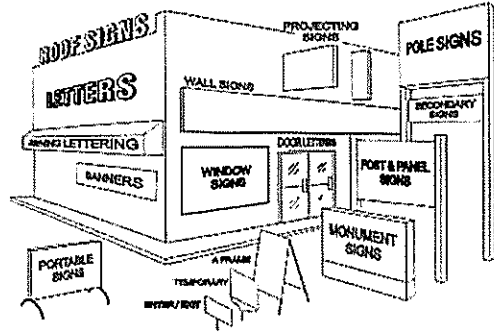
209-383-2727

4938 W. State Hwy 140 Atwater, CA 95301

Specializing in:

- Digital Printing
- Vehicle Lettering
- Vehicle Wraps
- Banners
- Window Graphics
- Vinyl Lettering
- Magnetic Signs
- Trade Show
- POP Displays
- Decals
- Real Estate
- A-Frames
- Plastic Letters
- Metal Letters
- Channel Letters
- Electric Signs ...

and More!



Estimate #1848

3/18/2024

Prepared for:

City of Livingston Police Dept.

Chief John Ramirez

1446 C St

Livingston, CA 95334

Phone: 209-3947-917

Fax:

Prepared by:

The Sign Works

Salesperson: dandugan@elite.net

4938 W. State Hwy 140

Atwater, CA 95301

Phone: 383-2727

Fax: Please email

Description:

Code Inforcement

Delivery:

Production time for the following item(s) will be approximately 5 working days.

Quantity	Description	Each	Amount	Tax
1	Code Inforcement Pick Up Graphics 3/Sides	\$525.00	\$525.00	Yes

TOTALS Subtotal: \$525.00

Sales Tax: \$43.31

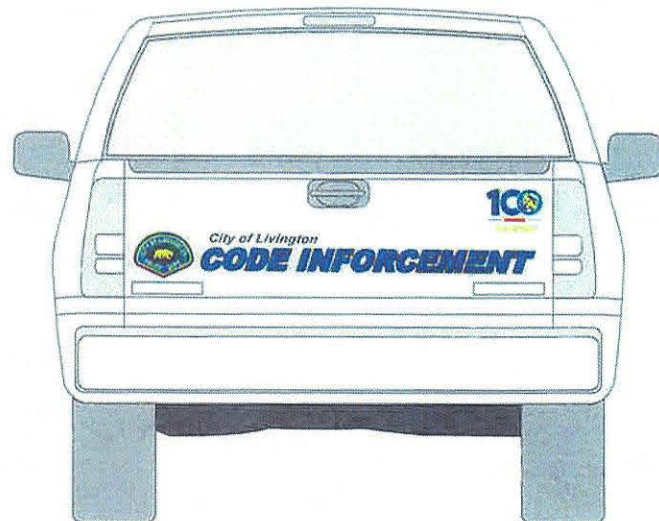
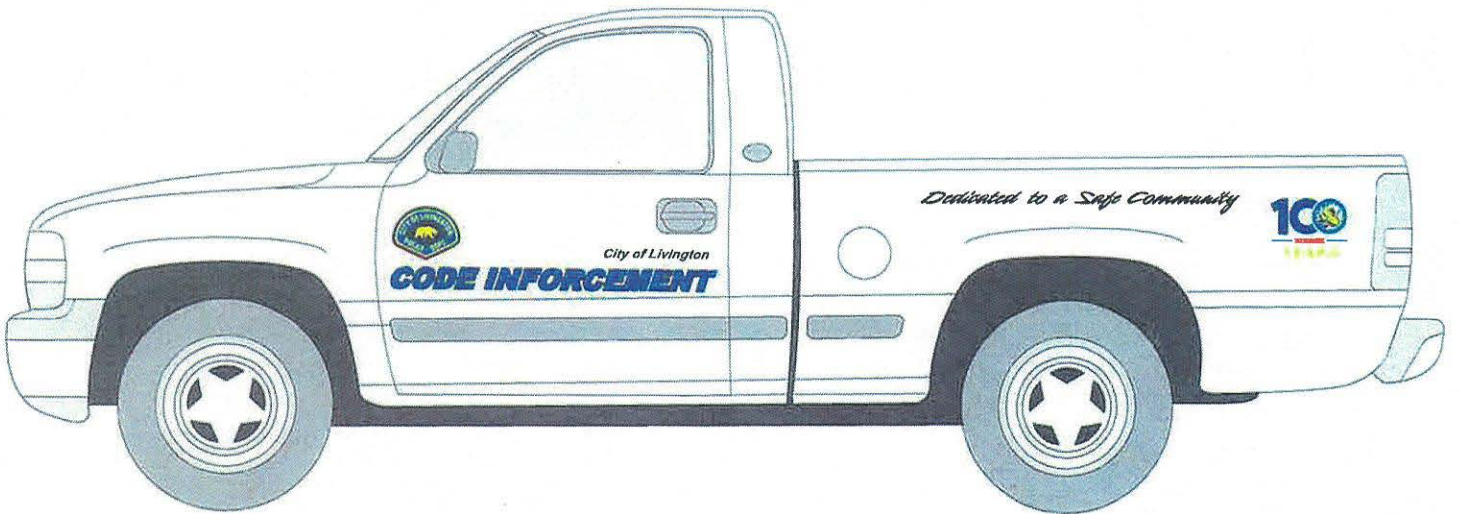
Total: \$568.31

Terms:

This estimate good for 30 days. Full payment net 10 days.

By my signature below, I authorize work to begin and agree to pay above amount in full according to the terms on this agreement.

SIGNED: _____ DATE: _____ AMT. PAID TODAY: _____





Sales Quote

Page: 1

9240 Prototype Dr Reno, NV 89521
Phone: 775-507-2460 Fax:

Quote Number: 46009
Document Date: 3/14/2024
Terms: Net 30
Payment Method:

Sell City of Livingston
To: ramirez
1416 C Street
Livingston, CA 95334
Phone: 209-646-4270

Ship City Of Livingston
To: ramirez
2238 Walnut Ave
Livingston, CA 95334
Phone: 800-982-8468

Ship Via Customer ID 50873
Tax Ident. Type Legal Entity SalesPerson Tia Niles

Vehicle Information:

PRICES ARE VALID FOR 30 DAYS FROM DATE OF QUOTE UNLESS OTHERWISE SPECIFIED

Item No.	Description	Manufacturer Name	Quantity	Unit Price	Total Price
JY2AAAA-LEHR	Whelen 56" Justice Lightbar, WC, All Amber, TA, TD, AL	Whelen	1	1,339.00	1,339.00
WCCC9	Whelen WeCan Controller, Control Lights & Traffic Advisor for Justice Lightbars	Whelen	1	256.90	256.90
STPKT101	Whelen, Strap Kit, Fits Silverado 1500 2019-2020	Whelen	1	80.50	80.50
VTX609A	Whelen Vertex Super-LED Omni Directional Lighthouse Amber	Whelen	4	87.99	351.96
IONA	Whelen ION Series Super-LED Universal Light - Amber	Whelen	2	108.25	216.50
FREIGHT TO BE ADDED ACCORDINGLY 4-6 WEEK LEAD TIME					

Agency Approval

Name: _____

Auth. Signature: _____

Amount Subject to Sales Tax	Subtotal:	2,244.86
2244.86	Total Sales Tax:	173.98
Amount Exempt from Sales Tax	Total:	2,418.84
0.00		

PLEASE READ: No returns without approval and an RMA# will be accepted. All shortages, damage, or return claims must be made within 10 days of invoice date. NO EXCEPTIONS. A copy of the invoice and RMA paperwork must be shipped with returns. All return orders or cancellations are subject to a 25% restocking fee plus freight. Any change orders made 60 days prior to the installation date may be subject to a production delay and pricing changes. PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE.

Steele Public Safety Systems

INVOICE

8546 Carmellia Ave
Dos Palos Ca 93620
Phone: 559-301-3455
steeleupfit@gmail.com

INVOICE #	DATE
QUOTE	3/18/24

BILL TO

City Of Livingston:
Livingston Police Department
1446 C St
Livingston Ca 95334

DESCRIPTION	AMOUNT
<p>QUOTE: Silverado Code Enforcement</p> <p>Instalation of: Whelen 56' Light Bar, WC, All Amber TA, TD, AL Whelen WeCan-Controller , Control lights & Traffic Advisor Whelen Strap kit Fits Silverado 1500 2019-2020 Whelen Vertex Super- LED Omni Directional lighthouse Whelen Ion Series Super- LED Universal Light</p> <p>Labor: 10 hours @ \$160/hr</p>	
<p><i>Thank you for your business!</i></p>	<p>TOTAL \$ 1,600.00</p>

Payment Due upon Receipt



Date/Time: Jan 30, 2024 05:37 PM

Buyer: City of Livingston City of Living

Phone: H: (209) 394-8041

Address: Livingston, CA 95334

Salesperson:

Jonathon Quevedo

Salesperson: Zach Riedinger

2023 Chevrolet Silverado 1500, Body Type: Crew Cab Pickup T231012

Color: Summit White VIN:1GCPDAEK4PZ298495

Purchase	0 Months
\$ Down	Est. \$/Monthly
\$0	\$44,535

MSRP/Retail	\$47,900.00
Selling Price	\$47,900.00
Rebate	\$7,500.00
Total Savings + Rebate	\$7,500.00
Government Fee	\$41.75
Proc/Doc Fee	\$85.00
Ally Theft DNA	\$269.00
Total Taxes	\$3,739.69
Amount Financed	\$44,535.44

X

Customer Signature

X

Manager Signature

Date

Date

Please submit this worksheet to Management for its review. I understand that (i) this worksheet is neither an offer nor a contract and is not binding on the customer or the dealership, (ii) no offer to purchase any vehicle is binding until accepted in writing by an authorized American Chevrolet Sales manager on a California State Motor Vehicle Purchase Contract form and (iii) Sales Consultant can not obligate or bind the customer or the dealership.

Deal #

Deal Date

Deal Type

Financial Inst.

Program

Deal Status

Sales Price	
MSRP	46,250.00
Discount	4,000.00
Selling Price	42,250.00
Aftermarkets	299.00
Doc Fee	85.00
VSI Premium	0.00
ESC Premium	0.00
Maintenance	0.00
GAP Premium	0.00
LAH/TUI	0.00
Prior Lease Bal	0.00
License Fee	701.00
Dealer Fees	0.00
Total Fees	742.75
Total Taxes	3,730.48
Total Price	47,107.23
Trade Difference	42,549.00

Down Payment	
Cash Down	0.00
Deposit	0.00
Total Rebates	1,250.00
Total Trade Allow	0.00
Total Trade Payoff	0.00
Total Net Trade	0.00
Total Def Down	0.00
Total Down Payment	1,250.00

Payment	
Term	<input type="text"/>
Sell Rate	0
AOR	<input type="text"/>
# Days 1st Payment	1
Payments Per Year	12
1st Payment Date	01/31/2024
Prepaid Fin Charge	0.00
APR	
Amount Financed	45,857.23
Finance Charge	0.00
Total of Payments	45,857.23
Total Sales Price	47,107.23

Vehicle Rates Detach

New Used Demo Cert.

Stock #

Year

Make

Model

Style

Odometer

Buyer

Customer #

Last

First

Company

Reg State

County

Payment 45,857.23

2024
Chevy
Silverado
Custom 2wd double cab

3

CHASE CHEVROLET
Buy Into It.



6441 Holman Rd, Stockton, CA 95212
(209) 475-6600

ChaseChevrolet.com

Date/Time: 2/1/2024 11:23:53 AM
Buyer: City of Livingston
Address: 1416 C St
Livingston, CA 95334

Salesperson: Paul Correia

209 609-7772

2024 Chevrolet Silverado 1500 Custom 24T0369



VIN: 1GCRABE1XRZ222788
Odometer: 7
Color: Summit White
Body Type: Extended Cab Pickup

MSRP/Retail	\$47,290.00
Selling Price	\$45,090.00
Total Savings	\$2,200.00
Government Fee	\$9.75
Proc/Doc Fee	\$85.00
Subtotal	\$45,184.75
Total Taxes	\$3,501.07
Cash Down	0.00
Remaining	\$48,685.82

LET ME KNOW ASAP
TOUGA TRUCK TO FIND

X _____
Customer Signature Date

X _____
Manager Signature Date



STAFF REPORT

AGENDA ITEM: Resolution Approving the purchase of six (6) solar light poles from Fonroche Lighting America, in the amount of \$31,107 and Authorizing the Interim City Manager to execute all required documents.

MEETING DATE: April 16, 2024

PREPARED BY: Anthony Chavarria, Director of Public Works

REVIEWED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Staff recommends that the City Council adopt a Resolution of the City Council of the City of Livingston approving the purchase of six (6) solar light poles from Fonroche Lighting America, in the amount of \$31,107 and authorize the Interim City Manager to execute all required documents.

BACKGROUND:

On February 2024 Interim Chief of Police Ramirez conducted a safety assessment for City Hall. One of the areas of concern in the safety assessment report was the poor lighting towards the back end of City Hall and the employee parking lot. The poorly lit areas are frequently used by transients and most recently an employee vehicle was vandalized. The employee parking lot is used by city personnel, the Police Department and Fire Department. The inadequate lighting in the surrounding areas of City Hall poses a significant risk to the safety and security of employees.

DISCUSSION:

The Livingston Municipal Code requires formal bidding procedures for all purchases over \$10,000 unless the formal bidding process is undesirable, impossible, unavailing or incongruous as determined by the City Manager. Section 1-11-6 waiver of formal bid procedures of the Municipal Code states that formal bid procedure of items over \$10,000 can only be waived if the purchase is (A) Of urgent necessity for the preservation of life, health or property, (B) Waived by Council resolution passed by at least four affirmative votes; and/or (C) Available from only one source. Sole source must be adequately justified.

Fonroche Lighting America meets sole source criteria justification due to being the only manufacturer in the World who has developed extremely robust 10-12 year NiMH battery technology and can guarantee reliability performance every night of year through localized solar studies and system sizing. They are the only manufacturer with a large base of installed lights on tower control feedback, providing more than 7millions data points of monitoring feedback, all for continuous reliability improvements. They are also the only manufacturer in the world doing climate chamber testing confirming system reliability and robustness.

To address the safety concerns outlined in the safety assessment and mitigate the risks associated with poor lighting, it is recommended that the City Council approve the purchase of six (6) street light poles from Fonroche Lighting America. These light poles will be strategically installed in the areas identified as poorly lit, enhancing visibility and deterrence against criminal activities.



FISCAL IMPACT:

The street solar lights will be expended from Municipal Facilities and reimbursed by Merced County supervisor Espinoza's discretionary fund.

ATTACHMENTS:

1. Resolution
2. Exhibit "A" Cost Proposal from Fonroche Lighting America for the amount of \$31,107.00.
3. Exhibit "B" Sole Source Cover Letter
4. Exhibit "C" Application Design

RESOLUTION NO. 2024-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
AUTHORIZING APPROVAL OF PURCHASE OF SIX (6) SOLAR LIGHT POLES
FROM FONROCHE LIGHTING AMERICA, IN THE AMOUNT OF \$31,107 AND
AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE ALL REQUIRED
DOCUMENTS**

WHEREAS, on February 2024 Interim Chief of Police Ramirez conducted a safety assessment for City Hall; and

WHEREAS, one of the areas of concern in the safety assessment report was the poor lighting towards the back end of City Hall and the employee parking lot and the poorly lit areas are frequently used by transients and most recently an employee vehicle was vandalized; and

WHEREAS, the employee parking lot is used by city personnel, the Police Department and Fire Department; and

WHEREAS, the inadequate lighting in the surrounding areas of City Hall poses a significant risk to the safety and security of employees.

WHEREAS, Fonroche Lighting America meets sole source criteria justification due to being the only manufacturer in the World who has developed extremely robust 10-12 year NiMH battery technology and can guarantee reliability performance every night of year through localized solar studies and system sizing; and

WHEREAS, they are the only manufacturer with a large base of installed lights on tower control feedback, providing more than 7millions data points of monitoring feedback, all for continuous reliability improvements.

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 the purchase of six (6) solar light poles from Fonroche Lighting America, in the amount of \$31,107.

Section 2. Authorize the Interim City Manager to execute all required documents.

Section 3: Authorize the Interim City Manager to submit all documents, request reimbursement, and take any and all actions necessary for funding, submittal, and reimbursement from Merced County.

Section 4: Identify the City Hall and Council Chambers security improvement project as a priority project for the purposes of requesting Merced County Supervisorial District funding.

Section 5: 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 16th day of April 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

Opportunity Owner	Jacob Fox	Quote Number	00082886
Payment Terms	50% deposit, 50% Net 30 from Ship Date-contingent on credit approval	Quote Name	G7483-Livingston CA-City Hall Parking Lot-RevC
Shipping Terms	Prices are FOB Origin	Quote Date	3/19/2024
		Quote Expiration Date	6/19/2024
		Est. Lead Time	12-14 Weeks
		Ship To Name	City of Livingston CA
		Ship To	United States

Beware of Fraud: Any advance payment request will only be made on the basis of a proforma invoice sent by Fonroche Lighting America.
 Shipping estimated; final cost determined on day of shipping and added to invoice.

Fonroche Model Number	Fonroche Product Description	Price System	Quantity	Amount
2[T54-CK16B-4K-T4] [P270F-4P]HW-MC Fixture Color: BK POLE: 25Ft. Round Tapered Pole-Anchor Base-2-4FT Arm -Arm Color: Black -Pole Color: BK	SmartLight Assembly with 1248Wh-24V NiMH Battery , special extreme temperature (from -40 °F to +158 °F), 1 x 270W solar module with Top of Pole assembly and Intelligent management/control system. Provisioned for TWIN Fixture configuration. Twin Essential (Formerly CK16B) Fixture 4K Color Temp.-Type 4 Fixture Color: BK - . Power Assembly color is black. Mount: High wind and enhanced marine coating. 25Ft. Round Tapered Pole-Anchor Base-2-4FT Arm -Arm Color: Black -Pole Color is BK 5 Year Warranty All Night Lighting 365 Days a Year - Full Battery Replacement Assumes No Shading Assumes little or no snow 10 Degrees Tilt 100% =22 Watts worst case conditions.T-PM: 6 hrs. @100% T-N (Balance of night) @20% T-AM: 1 hrs. @100%	USD 5,394	2.00	USD 10,788
[T54-CK16B-4K-T2] [P160F-2P]HW-MC Fixture Color: BK POLE: 25Ft. Round Tapered Pole-Anchor Base-1-4FT Arm -Arm Color: Black -Pole Color: BK	SmartLight Assembly with 624Wh-24V NiMH Battery , special extreme temperature (from -40 °F to +158 °F), 1 x 160W solar module with Top of Pole assembly and Intelligent management/control system. Provisioned for Single Fixture configuration. Single Essential (Formerly CK16B) Fixture 4K Color Temp.-Type 2 Fixture Color: BK - . Power Assembly color is black. Mount: High wind and enhanced marine coating. 25Ft. Round Tapered Pole-Anchor Base-1-4FT Arm -Arm Color: Black -Pole Color is BK 5 Year Warranty All Night Lighting 365 Days a Year - Full Battery Replacement Assumes No Shading Assumes little or no snow 10 Degrees Tilt 100% =22 Watts worst case conditions.T-PM: 6 hrs. @100% T-N (Balance of night) @20% T-AM: 1 hrs. @100%	USD 3,939	1.00	USD 3,939
[T54-CK16B-4K-T4] [P160F-2P]HW-MC Fixture Color: BK POLE: 25Ft. Round Tapered Pole-Anchor Base-1-4FT Arm -Arm Color: Black -Pole Color: BK	SmartLight Assembly with 624Wh-24V NiMH Battery , special extreme temperature (from -40 °F to +158 °F), 1 x 160W solar module with Top of Pole assembly and Intelligent management/control system. Provisioned for Single Fixture configuration. Single Essential (Formerly CK16B) Fixture 4K Color Temp.-Type 4 Fixture Color: BK - . Power Assembly color is black. Mount: High wind and enhanced marine coating. 25Ft. Round Tapered Pole-Anchor Base-1-4FT Arm -Arm Color: Black -Pole Color is BK 5 Year Warranty All Night Lighting 365 Days a Year - Full Battery Replacement Assumes No Shading Assumes little or no snow 10 Degrees Tilt 100% =22 Watts worst case conditions.T-PM: 6 hrs. @100% T-N (Balance of night) @20% T-AM: 1 hrs. @100%	USD 3,939	2.00	USD 7,878



[T54-CK16B-4K-T4]
[P270F-4P]HW-MC
Fixture Color: BK
POLE: 25Ft. Round
Tapered Pole-Anchor
Base-1-4FT Arm -Arm
Color: Black -Pole
Color: BK

SmartLight Assembly with 1248Wh-24V NiMH Battery , special extreme temperature (from -40 °F to +158 °F), 1 x 270W solar module with Top of Pole assembly and Intelligent management/control system. Provisioned for Single Fixture configuration. Single Essential (Formerly CK16B) Fixture 4K Color Temp.-Type 4 Fixture Color: BK - . Power Assembly color is black. Mount: High wind and enhanced marine coating. 25Ft. Round Tapered Pole-Anchor Base-1-4FT Arm -Arm Color: Black -Pole Color is BK 5 Year Warranty All Night Lighting 365 Days a Year - Full Battery Replacement Assumes No Shading | Assumes little or no snow

10 Degrees Tilt
100% =44 Watts worst case conditions.T-PM: 6 hrs. @100% | T-N (Balance of night) @20% | T-AM: 1 hrs. @100%

USD	1.00	USD
5,027		5,027

Total Line Items	USD 27,632
Shipping and Handling	USD 3,475
Quote Total	USD 31,107

This quotation is subject to the following terms and conditions

Seller's Terms and Conditions of Sale in effect on the date of this order shall apply to this quote and are hereby incorporated by reference. Seller's Terms and Conditions of Sale may be viewed at <https://www.fonrochesolarlighting.com/about-us/terms/>.

Pricing is based on Fonroche Lighting America's Standard Terms & Conditions and any additional terms stipulated herein. It is the Representative's responsibility to convey these terms to the customer. Without prior written approval from Fonroche Lighting America's Sales Director, any deviation from these terms may constitute a change in this pricing at the time of order. In the event that Fonroche Lighting America is unable recuperate difference in pricing from end customer, it may deduct the difference from representative's commission.

January 30, 2024

To whom it may concern:

Please find attached with this cover letter, technical data supporting Fonroche Lighting manufacturing of solar street lighting products, which are completely unique form any other, Worldwide

This product is purchased directly by institutions from Fonroche Lighting America, at the address listed above.

There are many types of battery technologies. In the attached document, you will find supporting technical data supporting Nickel Metal Hydride (NiMH) as superior in durability, cycle life, storage, transportation, and safety to other battery types. The attached technical document outlines how NiMH requires advanced engineering into battery management systems, and technical knowledge, which no other company has invested the significant resources into bringing NiMH technology into the solar lighting marketplace.

Fonroche has built the largest, solar lighting specific test laboratory in the World. Fonoche is the only manufacturer doing in-depth solar lighting battery life duration tests, analyzing depth of discharge, current rate, and temperature. These extensive tests are necessary to quantify battery durability and longevity in different conditions.

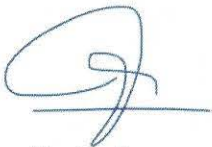
Fonroche is the only manufacturer completing in-depth validation on all the following sub-components: solar panel performance, mechanical design, transportation, telecommunication.

Fonroche is the only manufacturer using LoRa telecommunications in solar lighting, with 110,000 individual lights connected, all sending 7 million messages per day, allowing for continuous real time feedback and improvements in all climates, while having customer facing portal infrastructure monitoring.

Technical details supporting these topics and more are enclosed in the attached technical file.

If you desire additional information, please do not hesitate to contact me at 316-554-4180 at any time. Thank you for your interest in our systems.

Respectfully,



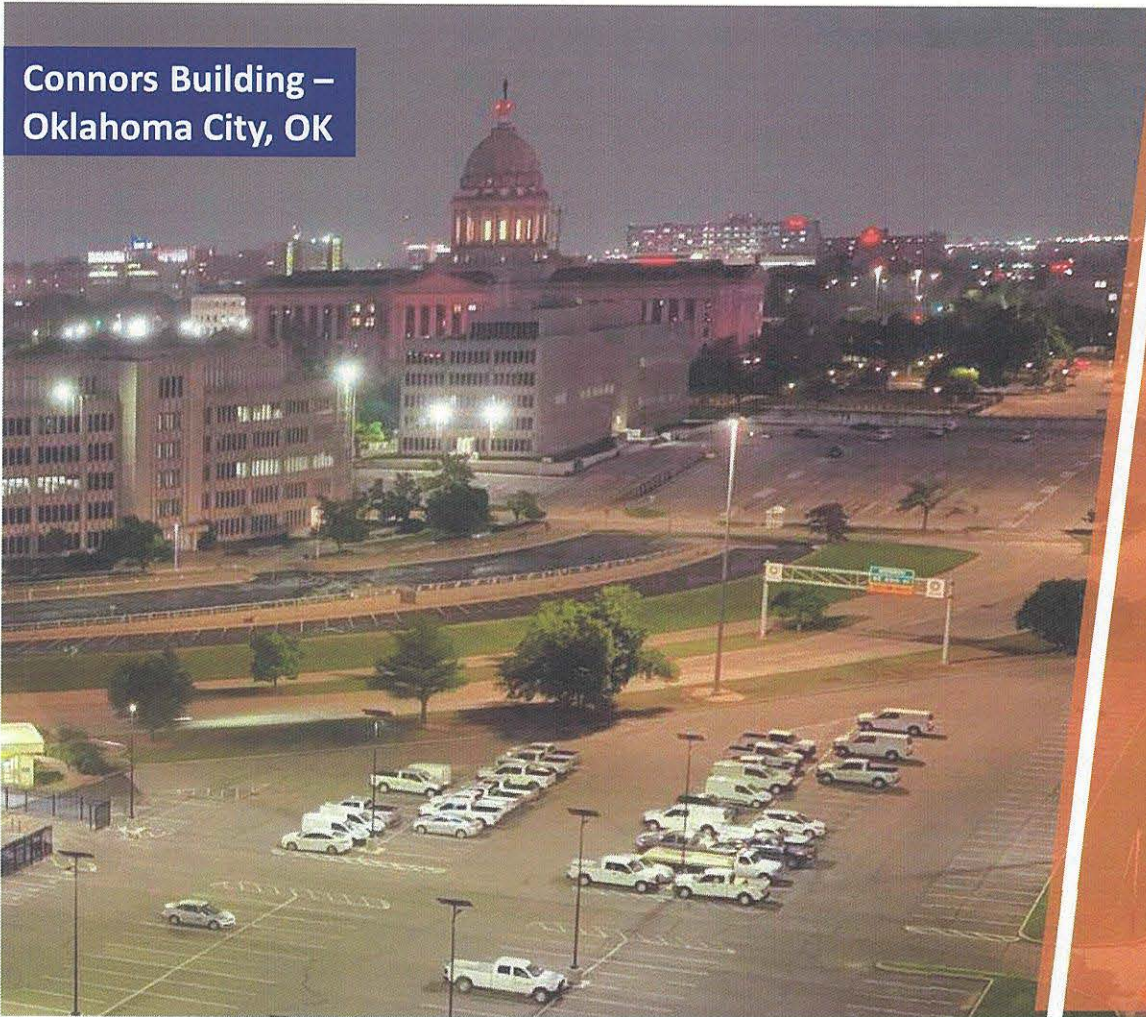
Hocine Benaoum

CEO, Fonroche Lighting America

APPLICATION DESIGN

City Hall Parking Lot Livingston - CA

Connors Building –
Oklahoma City, OK



Project Number:	G7483
Date:	3/19/2024
Written by:	Cuong VU
Version :	C



The global leader in solar lighting

Fonroche Lighting America is proud to be part of Fonroche Lighting, the global leader in off-grid solar street lighting. The deep resources and broader scope of an established market leader lets us take solar lighting even further, from the State Treasury in Salem, Oregon to the West African Republic of Senegal. Over 150,000 Fonroche SmartLight systems have been deployed worldwide.

With five offices in the USA and installations across the country, Fonroche is never far away. Some solution providers enter the solar lighting market—then move on. We're a reliable partner that sticks around. You get the responsive support and smart answers that you need now—and the confidence that we'll be here for you far in the future. And we can take on projects of any size, from local to national. That's why so many municipalities, military and federal facilities, tribes, commercial properties, and developers trust us to deliver the full promise of solar lighting.



Olton City Park – Olton, TX

The **3** key benefits for your project

- OFF-GRID

100% solar, not connected to the utility grid. No outages.

365 nights of light a year – guaranteed.

- POWERFUL

Powerful illumination, on a par with grid-connected systems.

- COST-EFFICIENT

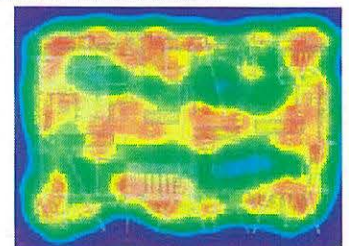
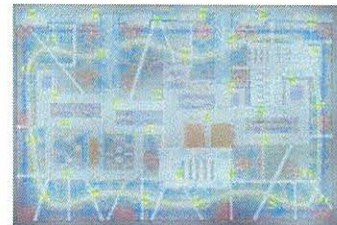
No maintenance for the first 10 years. Rapid installation. No operating costs.

Feasibility of your solar lighting project

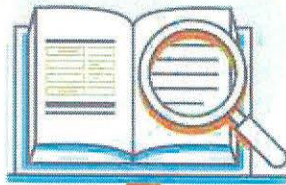
To guarantee powerful, cost-effective off-grid lighting, Fonroche operates its own **design offices**.

We assess the feasibility of each project in four stages:

- 1.** First, we define your **lighting requirements**.
- 2.** Next, we analyze the last 10 years of **local weather data** to determine how much energy our PV panels will generate.
- 3.** On this basis, we **calculate** what size and how many products we need to install.
- 4.** Finally, our sales team draws up a **cost estimate**.



1 Project = 1 Study



10-Year Analysis of local weather data

We use the **PVsys** software suite and **Meteonorm** historical time series irradiation data to calculate the real-world operating conditions — orientation and tilt angle of the panel, shadow, etc. — and external parameters, such as direct and diffuse irradiation, temperature and the solar calendar.



Simulation of product(s) over a typical year

Our teams have developed a solar sizing software application, which we use to determine which products will best meet your needs. We then simulate how these products operate over a typical year, based on the average conditions for the last decade.



Sizing the project to your needs

We use a set of key criteria to optimally specify your project:

- Average battery charge level over the year
- Minimum charge level
- Comparative analysis of energy generated by the panel vs. energy used by the system
- Worst-case scenario (lowest irradiation, longest night)



Results

Based on our experience, we propose the **optimal solution** in terms of lighting performance and cost effectiveness.

Autonomy of
365
nights of lighting /year

SMARTLIGHT SYSTEM CONFIGURATION



Non pro-rated

Project-Specific System Specifications

PHOTOVOLTAIC MODULE



PV panel power rating	160 Wp
PV panel tilt angle	10°

POWER 365: SMART STORAGE AND MANAGEMENT



Battery capacity (Must be NiMH)	624 Wh
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LED LIGHT UNIT



Lighting power	30 W nominal
LED light unit specification	4000K – 180-190 Lm/w

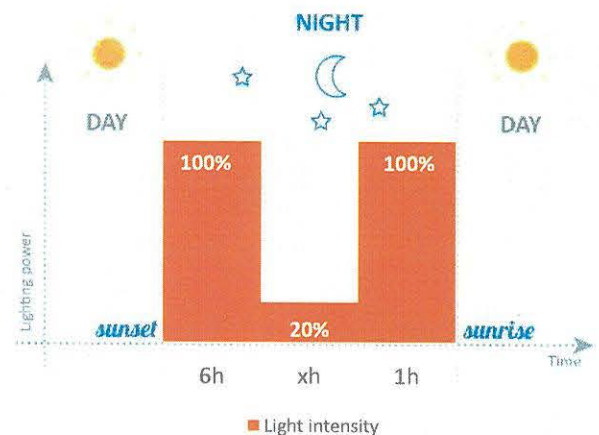
POLE & CROSSPIECE

Pole height	25'
Protective treatment	Powder Coated

POWER 365
Ultimate Solar Lighting Technology for Smart Cities



Chosen lighting profile for your project



SMARTLIGHT SYSTEM CONFIGURATION



Non pro-rated

Project-Specific System Specifications

PHOTOVOLTAIC MODULE

PV panel power rating	270 Wp
PV panel tilt angle	10°



POWER 365: SMART STORAGE AND MANAGEMENT

Battery capacity (Must be NiMH)	1248 Wh
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LED LIGHT UNIT

Lighting power	50 W nominal
LED light unit specification	4000K – 180 Lm/w



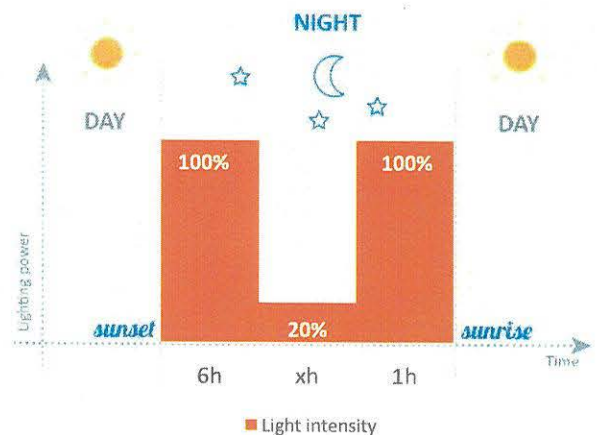
POLE & CROSSPIECE

Pole height	25'
Protective treatment	Powder Coated

POWER 365



Chosen lighting profile for your project



SMARTLIGHT SYSTEM CONFIGURATION



Project-Specific System Specifications

PHOTOVOLTAIC MODULE

PV panel power rating	270 Wp
PV panel tilt angle	10°



POWER 365: SMART STORAGE AND MANAGEMENT

Battery capacity (Must be NiMH)	1248 Wh
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LED LIGHT UNIT

Lighting power	2x30 W nominal
LED light unit specification	4000K - 180 Lm/w



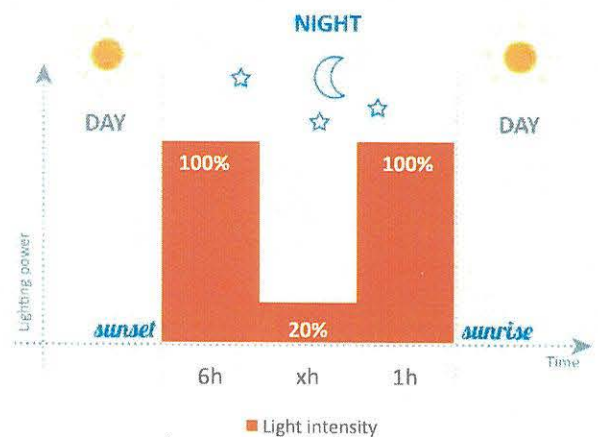
POLE & CROSSPIECE

Pole height	25'
Protective treatment	Powder Coated

POWER 365



Chosen lighting profile for your project



PHOTOMETRIC STUDY

**Note: these results are only valid if the Smartlight PV panel is at an azimuth angle of zero degrees and is completely free of shadow.*

***These results are subject to change due to technological or regulatory advances. This technical report is valid for 60 days from the date you receive it.*

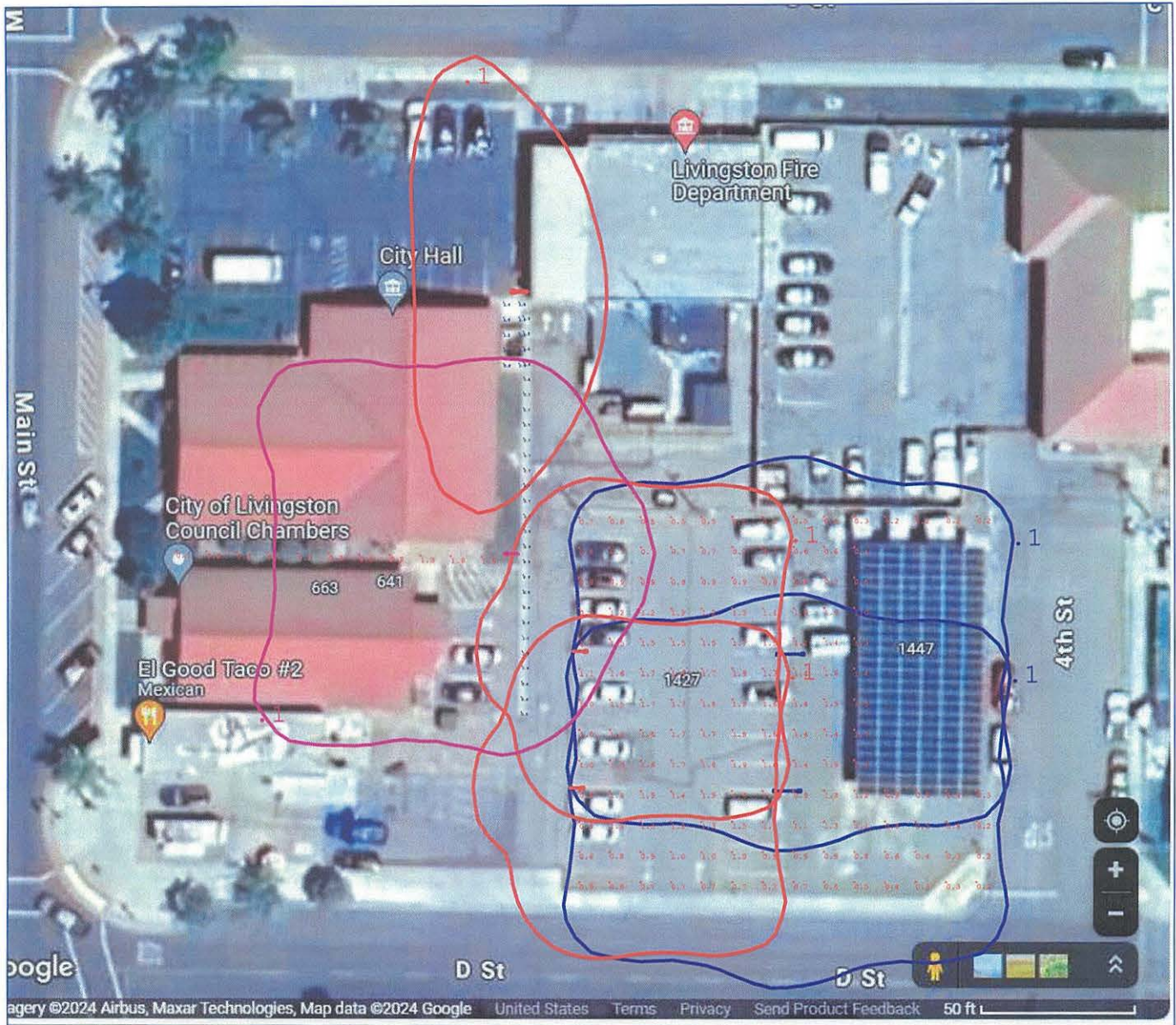
City Hall Parking Lot



Lighting Plan Rev C
Project Number: G7483

By: Cuong Vu
cuong.vu@fonroche.us
Date: 3/19/2024

4900 David Strickland Road
Forest Hill, TX 76119 | USA
Phone Number: (339) 225 4530
www.fonrochesolarlighting.com



Luminaire Schedule					
Symbol	Qty	Label	Arrangement	Total Lamp Lumens	LLF
	1	T4-CK16B-4K-Single-44W-25'	Single	7920	0.900
	1	T2-CK16B-4K-Single-22W-25'	Single	4180	0.900
	2	T4-CK16B-4K-Twin-22W-25'	BACK-BACK	3960	0.900
	2	T4-CK16B-4K-Single-22W-25'	Single	3960	0.900

Calculation Summary							
Label	CalcType	Units	Avg	Max	Min	Avg/Min	Max/Min
Gate & Trash area	Illuminance	Fc	1.17	1.4	0.9	1.30	1.56
Parking	Illuminance	Fc	1.03	1.9	0.2	5.15	9.50
Walkway between buildings	Illuminance	Fc	0.63	1.9	0.0	N.A.	N.A.
Walkway to parking	Illuminance	Fc	0.82	1.3	0.5	1.64	2.60

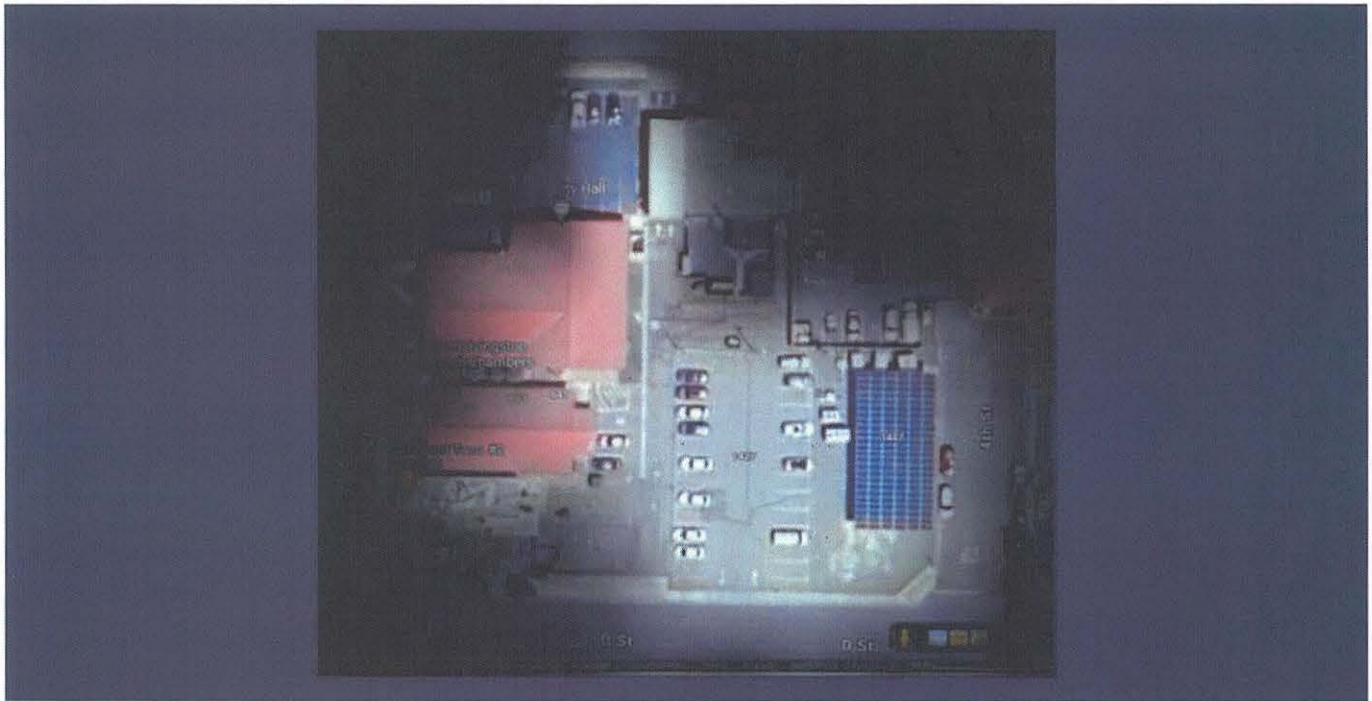
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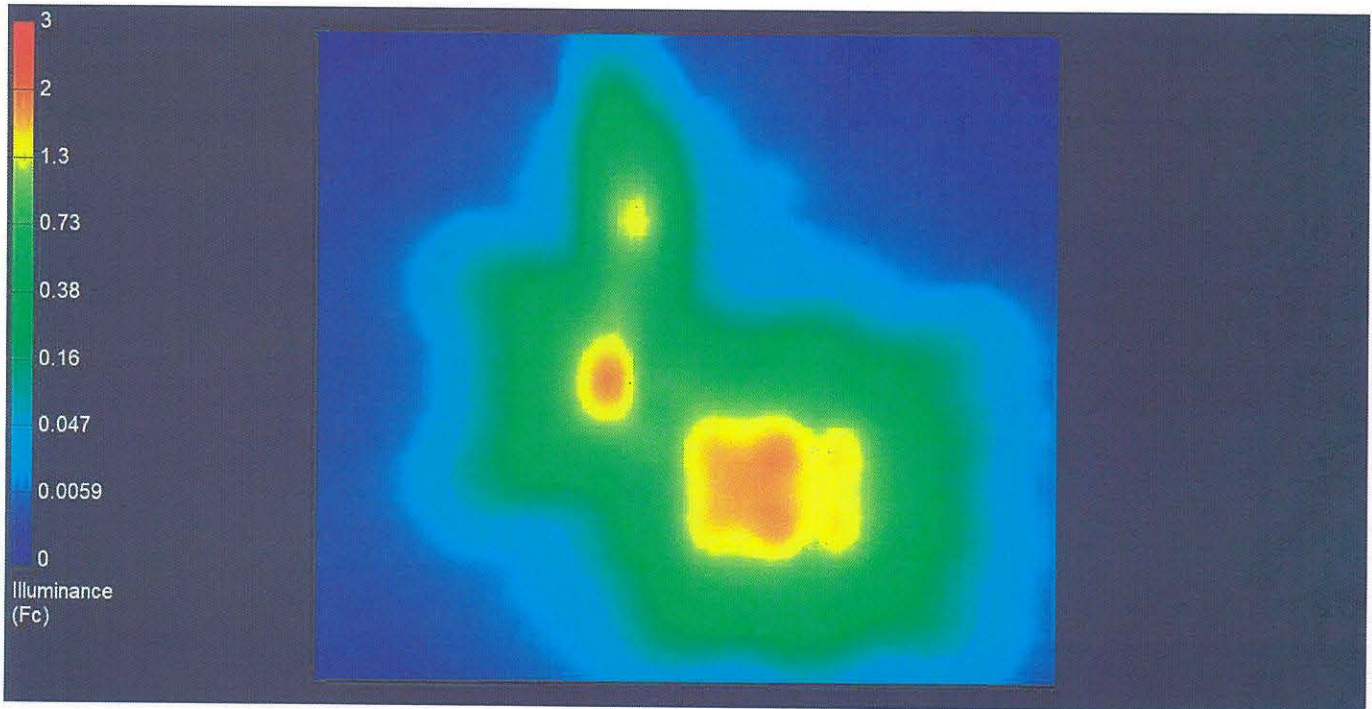
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A few examples



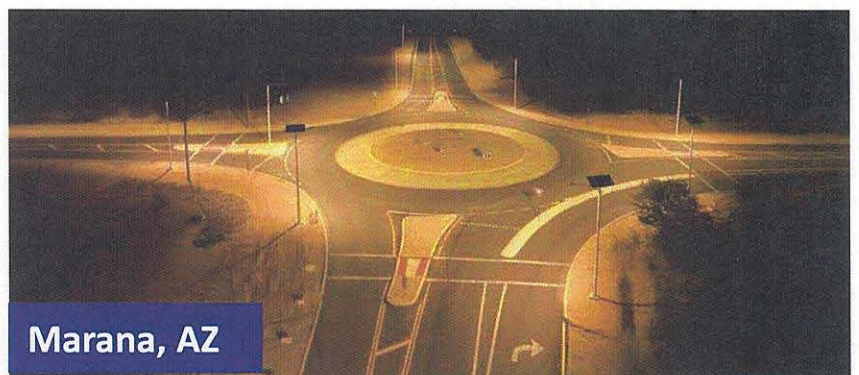
Melissa, TX - Country Ridge Park



Fort Worth - TX



Brushy Creek - Cedar Park TX



Marana, AZ



Solar lighting
Your commitment to sustainability

Contact us

Jacob Fox

Sales Representative

P: (339) 225-4530 x218

E: jacob.fox@Fonroche.US

FIND OUT MORE AT

www.FonrocheSolarLighting.com

FONROCHE LIGHTING AMERICA | 4900 David Strickland Road
Forest Hill, TX 76119 | USA
Telephone : 339-225-4530



STAFF REPORT

AGENDA ITEM: Authorizing and Approving a Services Agreement with NEOGOV for the purchase of Applicant Tracking System Recruit Module

MEETING DATE: April 16, 2024

PREPARED BY: Arcelia Cruz, Human Resources Coordinator

REVIEWED BY: Christopher Lopez; Interim City Manager

RECOMMENDATION:

Staff recommends council adopt the resolution authorizing the Interim City Manager to execute a two-year service agreement with NEOGOV for the purchase of applicant tracking system Recruit Module.

BACKGROUND AND DISCUSSION:

NEOGOVS Recruit Module is a cloud-based module that provides public sector organizations with Human Resources Management System (HRMS) solutions by automating and supporting the entire employee lifecycle to include recruitment, hiring and onboarding processes in one centralized platform. NEOGOV is the leading provider of HRMS software for public sector organizations.

Currently, the Human Resources Division lacks an advanced HRMS platform, which has resulted in a highly fragmented and manually driven work process that is very inefficient and duplicative. The approval and implementation of NEOGOV Recruit Module will significantly upgrade the City's current employment application process and employment cycle from initial job advertising through onboarding by providing a more streamline and automated solution that will result in a more efficient and effective recruitment process and will provide a better employee experience over the full employment cycle.

The billing for the first-year service agreement will include the following fees: \$5,500.00 for implementation cost to Insight Module and Onboard Module. \$6,073.20 for the annual subscriptions to Governmentjobs.com, Insight and Onboard. This represents a 40% discounted rate in the first-year licensing fees and a discounted rate from \$7,260.00 to \$5,500.00 for the setup. For the second-year service agreement the annual subscriptions for Governmentjobs.com, Insight and Onboard will be \$10,628.10, no pricing incentives for the second year. The grand total for the two-year service agreement will cost \$22,201.30.

FISCAL IMPACT:

The two-year service agreement with NEOGOV Recruit Module will cost a total of \$22,201.30. This cost to fund this service agreement is available in the current FY 23/24 Human Resources Budget.

ATTACHMENTS:

1. Resolution
2. Service Agreement with NEOGOV
3. NEOGOV Order Form
4. NEOGOV Recruit Module overview

RESOLUTION NO. 2024-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
AUTHORIZING AND APPROVING THE INTERIM CITY MANAGER TO
EXECUTE A SERVICES AGREEMENT WITH NEOGOV FOR THE PURCHASE
OF APPLICANT TRACKING SYSTEM RECRUIT MODULE**

WHEREAS, the City of Livingston Human Resources Coordinator has met with representatives of NEOGOV; and

WHEREAS, desires to have a Human Resources Management System that will provide an automated applicant tracking system and onboarding solution that will support the entire employment lifecycle; and

WHEREAS, the City of Livingston desires to enter into a two-year service contract with NEOGOV for Human Resources Management Systems support;

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

Section 1. The City Council authorizes the Interim City Manager to execute the services agreement with NEOGOV.

Section 2. This resolution will become effective immediately.

I hereby certify that the foregoing Resolution No. 2024-XX is a full, true and correct copy of a resolution duly passed and adopted by City Council of the City of Livingston at a regular meeting thereof duly held on 16th day of April 2024, by the vote recorded as follows:

AYES:
NOES:
ABSENT:
ABSTAIN:

By: _____
Jose A. Moran, Mayor
of the City of Livingston

ATTEST:

Monica Cisneros, Deputy City Clerk
of the City of Livingston

APPROVED AS TO LEGAL FORM

Roy C. Santos, City Attorney

SERVICES AGREEMENT

V071423

You agree that by placing an order through a NEOGOV standard ordering document such as an “Order Form”, “Service Order,” “Ordering Document,” “SOW” or other document mutually agreed by the parties detailing the services, pricing and subscription term (each, an “Order Form” for purposes of this Agreement), you agree to follow and be bound by the terms and conditions set forth herein. “Governmentjobs.com”, “NEOGOV”, “we”, and “our” means Governmentjobs.com, Inc. (D/B/A/ NEOGOV), for and on behalf of itself and its subsidiaries PowerDMS, Inc., Cuehit, Inc., Ragnasoft LLC (D/B/A/ PlanIT Schedule), and Design PD, LLC (D/B/A Agency360) (collectively, “NEOGOV” and, where applicable, its other affiliates; “Customer”, “you”, “your” means the NEOGOV client, customer, and/or the subscriber identified in the Order Form).

“Services Agreement” or the “Agreement” shall be used to collectively refer to this NEOGOV Services Agreement, documents incorporated herein including the applicable Order Form, each Addendum (as applicable), and Special Conditions (if any). “Addendum” means each Addendum set forth either as an Exhibit hereto or otherwise made available at <https://www.neogov.com/service-specifications> (the “NEOGOV Site”) and, as applicable, made a part of this Agreement. “Special Conditions” means individually negotiated variations, amendments and/or additions to this Service Agreement of which are either drafted, or incorporated by reference, into the Order Form.

1. Provision of Services. Subject to the terms of this Agreement NEOGOV hereby agrees to provide Customer with access to its SaaS Applications and Professional Services (each defined below) included or ordered by Customer in the applicable Order Form (collectively referred to as the “Services”). Customer hereby acknowledges and agrees that NEOGOV’s provision and performance of, and Customer’s access to, the Services is dependent and conditioned upon Customer’s full performance of its duties, obligations and responsibilities hereunder. This Agreement entered into as of the earlier of: (i) date of your signature on an applicable Order Form; or (ii) use of the Services commences (the “Effective Date”). The Agreement supersedes any prior and contemporaneous discussions, agreements or representations and warranties.
2. SaaS Subscription.
 - a) Subscription Grant. “SaaS Applications” means each proprietary NEOGOV web-based software-as-a-service application that may be set forth on an Order Form and subsequently made available by NEOGOV to Customer, and associated components as described in any written service specifications made available to Customer by NEOGOV (the “Service Specifications”). Subject to and conditioned on Customer’s and its Authorized Users’ compliance with the terms and conditions of this Agreement, NEOGOV hereby grants to Customer a limited, non-exclusive, non-transferable, and non-sublicensable right to (i) onboard, access and use, and to permit Authorized Users to onboard, access and use, the SaaS Applications specified in the Order Form solely for Customer’s internal, non-commercial purposes; (ii) generate, print, and download Customer Data as may result from any access to or use of the SaaS Applications; and (iii) train Authorized Users in uses of the SaaS Applications permitted hereunder (these rights shall collectively be referred to as the “SaaS Subscription”). “Authorized Users” means (1) Customer employees, agents, contractors, consultants (“Personnel”) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Services Agreement and (2) for whom access to the Services has been purchased hereunder. You shall not exceed the usage limits (if any) as detailed in the user tier in the applicable Order Form. You may not access the SaaS Applications if you are a direct competitor of NEOGOV or its affiliates. In addition, you may not access the SaaS Applications for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes. You shall be responsible for each Authorized User’s access to and use of the SaaS Applications and compliance with applicable terms and conditions of this Agreement.
 - b) Subscription Term. Unless otherwise specified in an applicable Order Form, SaaS Subscriptions shall commence on the Effective Date and remain in effect for twelve (12) consecutive months, unless terminated earlier in accordance with this Agreement (the “Initial Term”). Thereafter, SaaS Subscriptions shall automatically renew for successive twelve (12) month terms (each a “Renewal Term” and together with the Initial Term, collectively, the “Term”) unless a party delivers to the other party, at least thirty (30) days prior to the expiration of the Initial Term or the applicable Renewal Term, written notice of such party’s intention to not renew the SaaS Subscriptions, or unless terminated earlier in accordance with this Agreement. The Term for the Services is a continuous and non-divisible commitment for the full duration regardless of any invoice schedule. The purchase of any Service is separate from any other order for any other Service. Customer may purchase certain Services independently of other Services. Your obligation to pay for any Service is not contingent on performance of any other Service or delivery of any other Service.
3. Customer Responsibilities. Customer will not, and will ensure its Authorized Users do not (a) make any of the Services available to anyone other than Authorized Users or use any Services for the benefit of anyone other than Customer and its Authorized Users, unless otherwise agreed in writing by the parties, (b) sell, resell, license, sublicense, distribute, make

available, rent or lease any of the Services, or include any of the Services in a service bureau or outsourcing offering, unless otherwise agreed in writing by the parties, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of the privacy rights, publicity rights, copyright rights, or other rights of any person or entity, (d) use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses, (e) interfere with or disrupt the integrity or performance of the Services (including, without limitation, activities such as security penetration tests, stress tests, and spamming activity), (f) attempt to gain unauthorized access to the Services or its related systems or networks, (g) disassemble, reverse engineer, or decompile the Services, or modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (h) remove the copyright, trademark, or any other proprietary rights or notices included within NEOGOV Intellectual Property and on and in any documentation or training materials, or (i) use the Services in a manner which violates the terms of this Agreement, any Order Form or any applicable laws.

4. Professional Services. “Professional Services” shall mean professional services purchased by Customer as detailed in an applicable Order Form or NEOGOV Scope of Work (SOW) describing the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Professional Services may include training, implementation, and best practices of and concerning the SaaS Applications. Professional Services are subject to the terms of the Professional Services Addendum made available on the NEOGOV Site and made a part hereof and may be subject to additional terms pursuant to an SOW and Service Specifications describing, if applicable, the work to be performed, fees, and any applicable milestones, dependencies, and other technical specifications or related information. Order Forms or SOWs must be signed by Customer before NEOGOV shall commence work. If Customer executes a separate SOW, this Agreement and documents incorporated herein (including but not limited to the Professional Services Addendum) shall control in the event of a conflict with the terms of the SOW. All Professional Services purchased by Customer must be utilized within twelve (12) months of the date of the applicable Order Form or SOW.
5. Payment Terms.
 - a) Fees. Customer shall pay all Subscription, Onboarding and Set-Up fees (“Subscription Fees”) and Professional Service fees (“Professional Service Fees”, collectively the “Fees”) as set forth in an Order Form within thirty (30) days of the date of NEOGOV’s invoice. Fees shall be invoiced annually in advance and in a single invoice for each Term. Unless explicitly stated otherwise in an Order Form, all payments due under an Order Form are expressed in and shall be paid in U.S. dollars. Invoices shall be delivered to the stated “Bill To” party on the Order Form. Unless explicitly provided otherwise, once placed the Order Form is non-cancellable and sums paid nonrefundable. Any invoiced amount that is not received by NEOGOV when due as set forth in an Order Form will be subject to a late payment fee of 1.5% per month or the maximum rate permitted by law, whichever is lower. If any amount owing by Customer is more than 30 days overdue, NEOGOV may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full. If Subscription Fees are based upon the Authorized User or employee count as may be specified in an Order Form, Customer shall owe NEOGOV supplemental Subscription Fees to the extent Customer exceeds the number of Authorized Users or employees set forth in the Order Form. Except as otherwise specifically stated in the Order Form, NEOGOV may change the charges for the Services with effect from the start of each Renewal Term by providing Customer with new pricing at least thirty (30) day notice prior to commencement of a Renewal Term. The new pricing shall be deemed to be effective if Customer (a) returns an executed Order Form to NEOGOV, (b) remits payment to NEOGOV of the fees set forth in the invoice referencing the new pricing, or (c) the Customer or any of its Authorized Users access or use the Services after the expiration of the previous Term.
 - b) Taxes. Customer will pay all taxes, duties and levies imposed by all federal, state, and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV’s net income or those exempt by applicable state law. Customer shall provide NEOGOV with a certificate or other evidence of such exemption within ten (10) days after the Effective Date of this Agreement and thereafter upon NEOGOV’s request therefor.
 - c) Purchase Orders. Any reference to a purchase order in an Order Form or any associated invoice is solely for Customer’s convenience in record keeping, and no such reference or any delivery of services to Customer following receipt of any purchase order shall be deemed an acknowledgement of or an agreement to any terms or conditions referenced or included in any such purchase order. If a purchase order is delivered by Customer in connection with the purchase of Services, none of the terms and conditions contained in such purchase order shall have any effect or modify or supersede the terms and conditions of this Agreement. NEOGOV’s failure to object to terms contained in any such purchase order shall not be a waiver of the terms set forth in this provision or in this Agreement.
6. Term and Termination.

- a) Term. This Agreement shall commence on the Effective Date and shall remain in effect until all SaaS Subscriptions have expired and/or both parties have achieved full performance of Professional Services, unless it is terminated earlier in accordance with this Agreement.
- b) Termination for Cause; Effect of Termination. Either Party may terminate this Agreement immediately if the other is in material breach of this Agreement and such breach is not cured within thirty (30) days following non-breaching party's written specification of the breach. NEOGOV may suspend the Services or terminate this Agreement immediately in the event the Services or Customer's use of the Services provided hereunder pose a security risk to the Services, NEOGOV or any third party, or become illegal or contrary to any applicable law, rule, regulation, or public policy. Upon expiration or any termination of this Agreement, Customer shall cease all use and refrain from all further use of the Services and other NEOGOV Intellectual Property. Additionally, Customer shall be obligated to pay, as of the effective date of such expiration or termination, all amounts due and unpaid to NEOGOV under this Agreement. Unless otherwise specified, following 90 days after expiration or termination of the Agreement NEOGOV may remove Customer Data from NEOGOV Services and without Customer consent or notice.
7. Audit Rights. Upon reasonable notice, NEOGOV or its agent shall have the right to audit Customer's records relating to its compliance with this Agreement. Customer shall cooperate fully with this audit. If any audit conducted under this Section indicates that any amount due to NEOGOV was underpaid, Customer shall within three (3) business days pay to NEOGOV the amount due. All expenses associated with any such audit shall be paid by NEOGOV unless the audit reveals underpayment in excess of five percent (5%), in which case Customer shall pay such expenses as well as any amount due to NEOGOV.
8. Maintenance; Modifications; Support Services.
- a) Maintenance, Updates, Upgrades. NEOGOV maintains NEOGOV's hardware and software infrastructure for the Services and is responsible for maintaining the NEOGOV server operation and NEOGOV database security. NEOGOV may in its sole discretion, periodically modify, Update, and Upgrade the features, components, and functionality of the Services during the Term. "Update" means any update, bug fix, patch or correction of the Services or underlying NEOGOV software that NEOGOV makes generally available to its customers of the same module, excluding Upgrades. Updates are automatic and available upon Customer's next login to the Services following an Update at no additional cost to Customer. "Upgrade" means any update of the Services or underlying NEOGOV software such as platform updates, and major product enhancements and/or new features that NEOGOV makes commercially available. NEOGOV shall have no obligation to provide Upgrades to customers and retains the right to offer Upgrades free of cost or on a per customer basis at additional cost. NEOGOV shall have no liability for, or any obligations to, investments in, or modifications to Customer's hardware, systems or other software which may be necessary to use or access the Services due to a modification, Update, or Upgrade of the Services.
- b) Program Documentation; Training Materials. "Program Documentation" shall mean all user guides, training, and implementation material, and Service descriptions provided by NEOGOV to Customer in connection with the Services. NEOGOV hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable license to use, print, and distribute internally via non-public platforms, the Program Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services. Primary training of NEOGOV Services is conducted by self-review of online materials. NEOGOV's pre-built, online training consists of a series of tutorials to introduce the standard features and functions (the "Training Materials"). The Training Materials may be used as reference material by Customer Personnel conducting day-to-day activities.
- c) Implementation. For Services requiring implementation, NEOGOV implementation supplements the Training Materials and is conducted off-site unless otherwise agreed in the Order Form. For an additional fee as detailed on an applicable Order Form, NEOGOV personnel will provide consultation on best practices for setting up the Services, answer Customer questions during the implementation period, and use commercially reasonable efforts to ensure Authorized User Admins grasp the system. The length of the implementation time is dependent on the type of Service and the Customer's responsiveness. NEOGOV is not responsible or liable for any delay or failure to perform implementation caused in whole or in part by Customer's delay in performing its obligations hereunder and, in the event of any such delay, NEOGOV may, in its sole discretion, extend all performance dates as NEOGOV deems reasonably necessary.
- d) Support. Phone support for the Services is available to Customer Monday through Friday, excluding NEOGOV holidays. Customer may submit a request for online support for the Services 24 hours a day, seven days a week, and the NEOGOV support desk will acknowledge receipt of the request within a reasonable time. The length of time for a resolution of any problem is dependent on the type of case.
- e) Limitations. Unless otherwise specified in the Order Form, this Agreement does not obligate NEOGOV to render any maintenance or support services that are not expressly provided herein, including, but not limited to data uploads, manual

data entry, migration services, data conversion, refinement, purification, reformatting, SQL dump, or process consultation.

9. NEOGOV Intellectual Property. NEOGOV shall exclusively own all right, title and interest in and to all pre-existing and future intellectual property developed or delivered by NEOGOV including all Services, products, systems, software (including any source code or object code) or Service Specifications related thereto, Updates or Upgrades, trademarks, service marks, logos and other distinctive brand features of NEOGOV and all proprietary rights embodied therein (collectively, the “NEOGOV Intellectual Property”). This Agreement does not convey or transfer title or ownership of the NEOGOV Intellectual Property to Customer or any of its users. All rights not expressly granted herein are reserved by NEOGOV. Other than recommendation use or as required by law, all use of NEOGOV trademarks must be pre-approved by NEOGOV prior to use. Trademarks shall include any word, name, symbol, color, designation or device, or any combination thereof that functions as a source identifier, including any trademark, trade dress, service mark, trade name, logo, design mark, or domain name, whether or not registered.
10. Data Processing and Privacy.
- a) Customer Data. “Customer Data” shall mean all data that is owned or developed by Customer, whether provided to NEOGOV by Customer or provided by a third party to NEOGOV in connection with NEOGOV’s provision of Services to Customer, including Personnel data collected, loaded into, or located in Customer data files maintained by NEOGOV. NEOGOV Intellectual Property, including but not limited to the Services and all derivative works thereof, NEOGOV Confidential Information, and Platform Data do not fall within the meaning of the term “Customer Data”. Customer exclusively owns all right, title, and interest in and to all Customer Data. Customer grants NEOGOV a license to host, use, process, display, create non-personal derivative works of, and transmit Customer Data to provide the Services. NEOGOV reserves the right to delete or disable Customer Data stored, transmitted or published by Customer using the Services upon receipt of a bona fide notification that such content infringes upon the intellectual property rights of others, or if NEOGOV otherwise reasonably believes any such content is in violation of this Agreement.
- b) Platform Data. “Platform Data” shall mean any anonymized data reflecting the access to or use of the Services by or on behalf of Customer or any user, including statistical or other analysis and performance information related to the provision and operation of the Services including any end user visit, session, impression, clickthrough or click stream data, as well as log, device, transaction data, or other analysis, information, or data based on or derived from any of the foregoing. NEOGOV shall exclusively own all right, title and interest in and to all Platform Data. Customer acknowledges NEOGOV may compile Platform Data based on Customer Data input into the Services. Customer agrees that NEOGOV may use Platform Data to the extent and in the manner permitted under applicable law. Such anonymized data neither identifies Customer or its users, nor can Customer or any its users can be derived from such data.
- c) Data Processing Agreement. To the extent Customer uses the Services to target and collect personal information from users located in the European Union, European Economic Area, or Switzerland (the “EU”) or the United Kingdom (“UK”), or has Authorized Users accessing the Services from the EU or UK, the terms of the NEOGOV Data Processing Addendum (“DPA”) made available on the NEOGOV Site is hereby incorporated herein by reference and made part of this Agreement.
- d) Data Responsibilities.
- i) NEOGOV will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by NEOGOV personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by applicable law, or (c) as Customer expressly permits in writing. Customer acknowledges and agrees that it is commercially reasonable for NEOGOV to rely upon the security processes and measures utilized by NEOGOV’s cloud infrastructure providers.
- ii) Customer is solely responsible for the development, content, operation, maintenance, and use of Customer Data, including but not limited to compliance with applicable laws. NEOGOV will have no responsibility or liability for the accuracy of the Customer Data prior to receipt of such data into the Services. Without limiting the foregoing, Customer shall be solely responsible for and shall comply with all applicable laws and regulations relating to (a) the accuracy and completeness of all information input, submitted, or uploaded to the Services, (b) the privacy of users of the Services, including, without limitation, providing appropriate notices to and obtaining appropriate consents from any individuals to whom Customer Data relates; and (c) the collection, use, modification, alteration, extraction, retention, copying, external storage, disclosure, transfer, disposal, and other processing of any Customer Data. NEOGOV is not responsible for lost data caused by the action or inaction of Customer or Authorized Users. Unless

otherwise mutually agreed in writing, Customer shall not maintain any financial, health, payment card, or similarly sensitive data that imposes specific data security or data protection obligations within the Services. Customer shall provide and institute all appropriate tools and procedures required to ensure the security of its own information system and, more specifically, to prevent, detect and destroy the occurrence of any viruses.

- e) Breach Notice. NEOGOV will notify Customer of unauthorized access to, or unauthorized use, loss or disclosure of Customer Data within its custody and control (a “Security Breach”) within 72 hours of NEOGOV’s confirmation of the nature and extent of the same or when required by applicable law, whichever is earlier. Each party will reasonably cooperate with the other with respect to the investigation and resolution of any Security Breach. If applicable law or Customer’s policies require notification of its Authorized Users or others of the Security Breach, Customer shall be responsible for such notification.
 - f) Data Export, Retention and Destruction. Customer may export or delete Customer Data from the Services at any time during a Subscription Term, using the existing features and functionality of the Services. Customer is solely responsible for its data retention obligations with respect to Customer Data. If and to the extent Customer cannot export or delete Customer Data stored on NEOGOV’s systems using the then existing features and functionality of the Services, NEOGOV will, upon Customer’s written request, make the Customer Data available for export by Customer or destroy the Customer Data. If Customer requires the Customer Data to be exported in a different format than provided by NEOGOV, such additional services will be subject to a separate agreement on a time and materials basis. Except as otherwise required by applicable law, NEOGOV will have no obligation to maintain or provide any Customer Data more than ninety (90) days after the expiration or termination of this Agreement. Customer acknowledges that it is solely responsible for determining any retention requirements with respect to the Customer Data as required by applicable law and NEOGOV disclaims all liability in connection with such determination. In addition, to the extent Customer requests that NEOGOV retain Customer Data beyond the expiration of the retention period required by applicable law, rule or regulation, NEOGOV disclaims all liability in connection with retaining such Customer Data including but not limited to any claims related to loss or destruction of such Customer Data.
11. Third Party Services. The Services may permit Customer and its Authorized Users to access services or content provided by third parties through the Services (“Third Party Services”). Customer agrees that NEOGOV is not the original source and shall not be liable for any inaccuracies contained in any content provided in any of the Third Party Services. NEOGOV makes no representations, warranties or guarantees with respect to the Third Party Services or any content contained therein. NEOGOV may discontinue access to any Third Party Services through the Services if the relevant agreement with the applicable third party no longer permits NEOGOV to provide such access. If loss of access to any Third Party Services (to which Customer has a subscription under this Agreement) occurs during a Subscription Term, NEOGOV will refund to Customer any prepaid fees for such Third Party Services covering the remainder of the Subscription Term.
12. Nondisclosure.
- a) Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer’s Confidential Information includes its Customer Data. NEOGOV Confidential Information includes the NEOGOV Intellectual Property and the Services. The Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.
 - b) Obligations. The Receiving Party will: (i) use the same degree of care it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care); (ii) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (iii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not less protective of the Confidential Information than those herein.
 - c) Exceptions. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the

extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

- d) Equitable Relief. The parties recognize and agree there is no adequate remedy at law for breach of the provisions of the confidentiality obligations set forth in this Section 12, that such a breach would irreparably harm the Disclosing Party and the Disclosing Party is entitled to seek equitable relief (including, without limitation, an injunction) with respect to any such breach or potential breach in addition to any other remedies available to it at law or in equity.

13. Representations, Warranties, and Disclaimers.

- a) Mutual Representations. Each party represents and warrants to the other party that (i) it has full power and authority under all relevant laws and regulations and is duly authorized to enter into this Agreement; and (ii) to its knowledge, the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having jurisdiction over it.
- b) Service Performance Warranty. NEOGOV warrants that it provides the Services using a commercially reasonable level of care and skill and in a professional manner in accordance with generally recognized industry standards for similar services.
- c) No Other Warranty. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS WARRANTY SECTION, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE, OR THAT ANY ERROR WILL BE CORRECTED.
- d) Disclaimer of Actions Caused by and/or Under the Control of Third Parties. NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS OR WITH RESPECT TO ANY THIRD PARTY SERVICES.
- e) No Medical Advice. Through certain Services, NEOGOV may make certain telehealth related information available to Customer and/or facilitate user access to telemedicine, expert medical services, and/or emergency medical services. NEOGOV is independent from healthcare providers who provide telemedicine services and is not responsible for such healthcare providers' acts, omissions or for any content or communications made by them. The Services do not provide medical advice and do not create a healthcare provider/patient relationship between Customer and NEOGOV or otherwise. Any Services, or content accessed from the Services, are for informational purposes only and do not constitute medical advice. Customer should seek professional medical advice, diagnosis, and/or treatment for any and all medical conditions, whether as a result of using Services or otherwise. NEOGOV IS NOT RESPONSIBLE OR LIABLE FOR ANY ADVICE, COURSE OF TREATMENT, DIAGNOSIS OR ANY OTHER TREATMENT OR INFORMATION THAT CUSTOMER OR ITS USERS MAY OBTAIN THROUGH THE USE OF THE SERVICES.

14. Indemnification.

- a) Customer Indemnity. To the extent permitted by applicable law, Customer will defend and indemnify NEOGOV from and against any claim, demand, suit or proceeding made or brought against NEOGOV (i) by a third party alleging that any Customer Data infringes or misappropriates such third party's intellectual property rights, (ii) in connection with Customer's violation of any applicable laws, or (iii) any claim or allegation by any third party resulting from or related to Customer's or any of its Authorized User's breach of Section 3 of this Agreement.

- b) NEOGOV Indemnity. Subject to subsections 14(b)(i) through 14(b)(iii) and 14(c) of this Section, if a third party makes a claim against Customer that any NEOGOV intellectual property furnished by NEOGOV and used by Customer infringes a third party's intellectual property rights, NEOGOV will defend the Customer against the claim and indemnify the Customer from the damages and liabilities awarded by the court to the third-party claiming infringement or the settlement agreed to by NEOGOV.
- i) Alternative Resolution. If NEOGOV believes or it is determined that any of the Services may have violated a third party's intellectual property rights, NEOGOV may choose to either modify the Services to be non-infringing or obtain a license to allow for continued use. If these alternatives are not commercially reasonable, NEOGOV may end the subscription or license for the Services and refund a pro-rata portion of any fees covering the whole months that would have remained, absent such early termination, following the effective date of such early termination.
- ii) No Duty to Indemnify. NEOGOV will not indemnify Customer if Customer alters the Service or Service Specifications, or uses it outside the scope of use or if Customer uses a version of the Service or Service Specifications which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Services or Service Specifications which was provided to Customer, or if the Customer continues to use the infringing material after the subscription expires. NEOGOV will not indemnify the Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by NEOGOV. NEOGOV will not indemnify Customer for any portion of an infringement claim that is based upon the combination of Service or Service Specifications with any products or services not provided by NEOGOV. NEOGOV will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third-party intellectual property rights.
- iii) Exclusive Remedy. This Section provides the exclusive remedy for any intellectual property infringement claims or damages against NEOGOV.
- c) Indemnification Procedures. In order to receive the indemnities described hereunder, the indemnified party must: (i) promptly notify the indemnifying party, in writing, of any claim; (ii) cooperate reasonably with indemnifying party, at the indemnifying party's expense, in the defense and/or settlement thereof; and (iii) allow the indemnifying party to control the defense and/or settlement thereof except that the indemnifying party may not, without the indemnified party's prior written consent, enter into any settlement that does not unconditionally release the indemnified party from liability. The indemnified party shall have the right to participate in any defense of a claim and/or to be represented by counsel of its own choosing at its own expense, provided that ultimate control of such defense shall remain solely with the indemnifying party.

15. Limitations of Liability.

- a) EXCLUSION OF DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, INCLUDING FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL, LOSS OF BUSINESS OPPORTUNITY OR PROFIT, OR LOSS OF REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
- b) CAP ON MONETARY LIABILITY. EXCEPT FOR DAMAGES ARISING OUT OF LIABILITY WHICH CANNOT BE LAWFULLY EXCLUDED OR LIMITED, OR CUSTOMER'S OBLIGATIONS TO MAKE PAYMENT UNDER THIS AGREEMENT, THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY FOR ANY AND ALL CLAIMS AGAINST THE OTHER PARTY UNDER THIS AGREEMENT, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, SHALL NOT EXCEED THE AMOUNT OF ALL PAYMENTS ACTUALLY RECEIVED BY NEOGOV FROM CUSTOMER IN CONNECTION WITH THIS AGREEMENT IN THE 12 MONTH PERIOD PRECEDING THE DATE OF THE EVENT INITIALLY GIVING RISE TO SUCH LIABILITY. THE EXISTENCE OF ONE OR MORE CLAIMS WILL NOT ENLARGE THE LIMIT.

16. Reimbursement of Costs in Third Party Litigation. With respect to any litigation or other court proceeding involving Customer and a third party, if any subpoena or other legally binding request related to such litigation or court proceeding is served to NEOGOV requesting copies of documents maintained by NEOGOV or otherwise requesting NEOGOV to appear as a witness in any capacity or provide testimony with respect to Customer's documentation, Customer shall reimburse NEOGOV for its out-of-pocket costs associated with compliance with such request, including but not limited to NEOGOV's reasonable attorneys' fees.
17. Text Message Communications. NEOGOV may offer Personnel the opportunity to receive text messages regarding job application or hiring process reminders, applicant status updates, or other human resource related notices. Since these text message services depend on the functionality of third-party providers, there may be technical delays on the part of those providers. NEOGOV may make commercially reasonable efforts to provide alerts in a timely manner with accurate information, but cannot guarantee the delivery, timeliness, or accuracy of the content of any alert. NEOGOV shall not be liable for any delays, failure to deliver, or misdirected delivery of any alert; for any errors in the content of an alert; or for any actions taken or not taken by you or any third party in reliance on an alert. NEOGOV cannot vouch for the technical capabilities of any third parties to receive such text messages. To the extent you utilize text messaging features, NEOGOV shall not be responsible for your use of such features, and you shall indemnify NEOGOV with respect to any damages resulting from your use including but not limited any violations of applicable law. NEOGOV MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY, OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES; (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES; AND (iii) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS, OR SETTINGS CONNECTED WITH THE SERVICES.
18. Publicity. Unless otherwise provided in the applicable Order Form, NEOGOV may identify Customer as one of its customers and use Customer's logo for such purposes, subject to any trademark usage requirements specified by Customer.
19. Force Majeure. Except for Customer's payment obligations to NEOGOV, neither party shall be liable for any damages, costs, expenses or other consequences incurred by the other party or by any other person or entity for any act, circumstance, event, impediment or occurrence beyond such party's reasonable control, including, without limitation: (a) acts of God; (b) changes in or in the interpretation of any law, rule, regulation or ordinance; (c) strikes, lockouts or other labor problems; (d) transportation delays; (e) unavailability of supplies or materials; (f) fire or explosion; (g) riot, pandemic, military action or usurped power; (h) actions or failures to act on the part of a governmental authority; (i) internet service interruptions or slowdowns, vandalism or cyber-attacks, or (j) any other cause beyond the reasonable control of such party.
20. Independent Contractor; No Third Party Beneficiary; Fulfillment Partners. The relationship of the parties shall be deemed to be that of an independent contractor and nothing contained herein shall be deemed to constitute a partnership between or a joint venture by the parties hereto or constitute either party the employee or agent of the other. Customer acknowledges that nothing in this Agreement gives Customer the right to bind or commit NEOGOV to any agreements with any third parties. This Agreement is not for the benefit of any third party and shall not be deemed to give any right or remedy to any such party whether referred to herein or not. NEOGOV may designate any third-party affiliate, or other agent or subcontractor (each a "Fulfillment Partner"), without notice to, or the consent of, Customer, to perform such tasks and functions to complete any Services.
21. Entire Agreement; Amendment; Addendum. This Services Agreement, the Exhibits hereto, each Addendum (as may be applicable pursuant to the terms therein) and documents incorporated herein, the applicable Order Form, and Special Conditions (if any) constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all prior or contemporaneous oral and written statements of any kind whatsoever made by the parties with respect to such subject matter. It is expressly agreed that the terms of this Agreement and any NEOGOV Order Form shall supersede the terms in any non-NEOGOV purchase order or other ordering document. Notwithstanding the foregoing, any conflict of terms shall be resolved by giving priority in accordance with the following order: 1) Special Conditions (if any), 2) NEOGOV Order Form, 3) the NEOGOV Services Agreement, and 4) incorporated documents (including the Exhibits and each applicable Addendum). This Agreement supersedes the terms and conditions of any clickthrough agreement associated with the Services. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the parties to be bound. If you are subscribing for the HRIS or PowerEngage Platform, you hereby specifically agree to the terms of the applicable Addendum set forth on the NEOGOV Site.
22. General.
 - a) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the state of California, without giving effect to conflict of law rules. Any legal action or proceeding relating to this Agreement shall be instituted only in any state or federal court in Los Angeles, California.

- b) Severability. If any provision of this Agreement is held to be illegal or unenforceable, such provision shall be limited or eliminated to the minimum extent necessary so that the remainder of this Agreement will continue in full force and effect. Provisions that survive termination or expiration are those relating to, without limitation, accrued rights to payment, acknowledgements and reservations of proprietary rights, confidentiality obligations, warranty disclaimers, and limitations of liability, and others which by their nature are intended to survive.
- c) Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given either when personally delivered, one (1) business day following delivery by recognized overnight courier or electronic mail, or three (3) business days following deposit in the U.S. mail, registered or certified, postage prepaid, return receipt requested. All such communications shall be sent to (i) Customer at the address set forth in the Order Form and (ii) NEOGOV at the address specified in the applicable Order Form.
- d) Waiver. The waiver, express or implied, by either party of any breach of this Agreement by the other party will not waive any subsequent breach by such party of the same or a different kind.
- e) Electronic Delivery. Delivery of a copy of this Agreement or an Order Form bearing an original signature by electronic mail or by any other electronic means will have the same effect as physical delivery of the paper document bearing the original signature.
- f) Assignment. Customer may not assign this Agreement without the express written approval of NEOGOV. Any attempt at assignment in violation of this Section shall be null and void.
- g) Construction. The parties intend this Agreement to be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The exhibits, addendum, schedules, attachments, and appendices referred to herein are an integral part of this Agreement to the same extent as if they were set forth verbatim herein.

Exhibit A
Government Customer Addendum

If Customer is a Government Customer, the following Government Customer Addendum (“Government Addendum”) forms part of the Services Agreement, and in the case of any conflict or inconsistency between the terms and provisions of this Addendum and any other provision of the Services Agreement, the terms of this Government Addendum shall control. For purposes hereof, a “Government Customer” means a Customer which is a (a) U.S. Federal agency, (b) state government, agency, department, or political subdivision (including a city, county or municipal corporation), or (c) instrumentality of any of the foregoing (including a municipal hospital or municipal hospital district, police or fire department, public library, park district, state college or university, Indian tribal economic development organization, or port authority).

1. **Applicability.** The provisions of this Addendum shall apply only if Customer is a Government Customer under the Services Agreement.
2. **Termination for Non-Appropriation of Funds.** If Customer is subject to federal, state or local law which makes Customer’s financial obligations under this Services Agreement contingent upon sufficient appropriation of funds by the applicable legislature (or other appropriate governmental body), and if such funds are not forthcoming or are insufficient due to failure of such appropriation, then Customer will have the right to terminate the Services Agreement at no additional cost and with no penalty by giving prior written notice documenting the lack of funding. Customer will provide at least thirty (30) days advance written notice of such termination. Customer will use reasonable efforts to ensure appropriated funds are available. It is expressly agreed that Customer shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Agreement, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its fiscal operations. If Customer terminates the Services Agreement under this Section 2, Customer agrees not to replace the Services with functionally similar products or services for a period of one year after the termination of the Services Agreement.
3. **Indemnification.** If Customer is prohibited by federal, state or local law from agreeing to hold harmless or indemnify third parties, Section 14(a) and the indemnification provision included in Section 17 of the Services Agreement shall not apply to Customer, to the extent disallowed by applicable law.
4. **Open Records.** If the Customer is subject to federal or state public records laws, including laws styled as open records, freedom of information, or sunshine laws (“Open Records Laws”) the confidentiality requirements of Section 12 of the Services Agreement apply only to the extent permitted by Open Records Laws applicable to the Customer. This Section is not intended to be a waiver of any of the provisions of the applicable Open Records Laws, including, without limitation, the requirement for the Customer to provide notice and opportunity for NEOGOV to assert an exception to disclosure requirements in accordance with the applicable Open Records laws.
5. **Cooperative Purchasing.** As permitted by law, it is understood and agreed by Customer and NEOGOV that any (i) federal, state, local, tribal, or other municipal government (including all administrative agencies, departments, and offices thereof); (ii) any business enterprise in which a federal, state, local, tribal or other municipal entity has a full, majority, or other controlling interest; and/or (iii) any public school (including without limitation K-12 schools, colleges, universities, and vocational schools) (collectively referred to as the “New Entity”) may purchase the Services specified herein in accordance with the terms and conditions of this Agreement. It is also understood and agreed that each New Entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the New Entity and NEOGOV. With respect to any purchases by a New Entity pursuant to this Section, Customer: (i) shall not be construed as a dealer, re-marketer, representative, partner or agent of any type of NEOGOV, or such New Entity; (ii) shall not be obligated, liable or responsible for any order made by New Entities or any employee thereof under the agreement or for any payment required to be made with respect to such order; and (iii) shall not be obliged, liable or responsible for any failure by any New Entity to comply with procedures or requirements of applicable law or to obtain the due authorization and approval necessary to purchase under the agreement. Termination of this Agreement shall in no way limit NEOGOV from soliciting, entering into, or continuing a contractual relationship with any New Entity. Any New Entity who purchases Services under this Section hereby represents that it has the authority to use this Services Agreement for the purchase and that the use of the Services Agreement for the purchase is not prohibited by law or procurement regulations applicable to the New Entity.
6. **Subcontractors.** For purposes of this Agreement, including any subsequent documentation requested by Customer pursuant to this Agreement, the term "subcontractors" shall exclude subcontractors (i) who perform routine software development and maintenance services which are not specific to the Customer, (ii) subcontractors who will not have any

access to Customer Data, and (iii) subcontractors who have access to Customer Data solely within NEOGOV's or Customer's systems.


Exhibit B
Integration Terms Addendum

NEOGOV offers integrations and platform APIs for integrations to third party systems (“Integration Services”). Customer may use only those Integration Services purchased or subscribed to as listed within the NEOGOV Order Form. The following terms (the “Integration Terms Addendum”) shall apply to the extent that Customer utilizes a system integration between the Services and either: (a) an affiliated integrated service, including those found at <https://api.neogov.com/connect/marketplace.html> and/or <https://apidocs.powerdms.com> (“Affiliated API”) or to the extent that Customer utilizes a system integration between the Services and an unaffiliated third-party service (“Customer Application”) integrated using NEOGOV’s open API (“Open API”). Integration Services are not available for HRIS Services and this Exhibit B shall not apply to HRIS Services.

1. **Provision of Integrations.** Subject to and conditioned on compliance with all terms and conditions set forth in this Agreement, NEOGOV hereby grants Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable license during the applicable Term to use and/or access the Affiliated API as described in this Agreement, or the Open API for communication between Customer’s human resource related third application(s) that will interoperate with NEOGOV Services (collectively these uses shall be referred to as the “API” or “Integration”). Customer acknowledges there are no implied licenses granted under this Agreement. NEOGOV reserves all rights that are not expressly granted. Customer may not use the API for any other purpose without our prior written consent. Customer may not share the API with any third party, must keep the API and all log-in information secure, and must use the API key as Customer sole means of accessing the API.
2. **Integration Intellectual Property.** All right, title, and interest in the API and any and all information, data, documents, materials, inventions, technologies, know-how, descriptions, requirements, plans, reports, works, intellectual property, software, hardware, systems, methods, processes, and inventions, customizations, enhancements, improvements and other modifications based on or derived from the API are and will remain, as appropriate, with NEOGOV. All right, title, and interest in and to the third-party materials, including all intellectual property rights therein, are and will remain with their respective third-party rights holders subject to the terms and conditions of the applicable third-party license agreements. Customer has no right or license with respect to any third-party materials except as expressly licensed under such third-party license agreements.
3. **Integration Terms of Use.** Except as expressly authorized under this Agreement, you may not remove any proprietary notices from the API; use the API in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; combine or integrate the API with any software, technology, services, or materials not authorized by NEOGOV; design or permit Customer Application(s) to disable, override, or otherwise interfere with any NEOGOV-implemented communications to end users, consent screens, user settings, alerts, warning, or the like; use the API in any of Customer Application(s) to replicate or attempt to replace the user experience of the Services; or attempt to cloak or conceal Customer identity or the identity of Customer Application(s) when requesting authorization to use the API.
4. **Customer Integration Responsibilities.** Customer, Customer developed web or other software services or applications, and Customer third-party vendors that integrate with the API (collectively the “Customer Applications”), shall comply with all terms and conditions of this Agreement, all applicable laws, rules, and regulations, and all guidelines, standards, and requirements that may be posted on <https://api.neogov.com/connect/index.html> and/or <https://apidocs.powerdms.com> from time to time. In addition, Customer will not use the API in connection with or to promote any products, services, or materials that constitute, promote, or are used primarily for the purpose of dealing in spyware, adware, or other malicious programs or code, counterfeit goods, items subject to U.S. embargo, unsolicited mass distribution of email (“spam”), multi-level marketing proposals, hate materials, hacking, surveillance, interception, or descrambling equipment, libelous, defamatory, obscene, pornographic, abusive, or otherwise offensive content, stolen products, and items used for theft, hazardous materials, or any illegal activities.
5. **Cooperation.** If applicable, Customer shall timely provide such cooperation, assistance, and information as NEOGOV reasonably requests to enable the API. NEOGOV is not responsible or liable for any late delivery or delay or failure of performance caused in whole or in part by Customer’s delay in performing, or failure to perform, any of its obligations under this Agreement. NEOGOV will provide Customer maintenance and support services for API issues arising from the information technology designed, developed, and under then current control of NEOGOV. NEOGOV shall have no obligation to provide maintenance or support for issues arising from the inaction or action of Customer or third parties of which are outside NEOGOV control.
6. **Provision of Open API.** In the event license fees or other payments are not due in exchange for the right to use and access the Open API, you acknowledge and agree that this arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein.

Notwithstanding the foregoing, NEOGOV reserves the right to charge for access with effect from the start of each Renewal Term by giving Customer at least ninety (90) day notice prior to commencement of a Renewal Term.

7. API Key. In order to use and access the Open API, you must obtain an Open API key through the registration process. Customer agrees to monitor Customer Applications for any activity that violates applicable laws, rules and regulation, or any terms and conditions of this Agreement, including any fraudulent, inappropriate, or potentially harmful behavior. This Agreement does not entitle Customer to any support for the Open API. You acknowledge that NEOGOV may update or modify the Open API from time to time and at our sole discretion and may require you to obtain and use the most recent version(s). You are required to make any such changes to Customer Applications that are required for integration as a result of such Update at Customer sole cost and expense. Updates may adversely affect how Customer Applications communicate with the Services.
8. Efficient Processing. You must use efficient programming, which will not cause an overwhelming number of requests to be made in too short a period of time, as-determined solely by NEOGOV. If this occurs, NEOGOV reserves the right to throttle your API connections, or suspend or terminate your access to the Open API. NEOGOV shall use reasonable efforts to provide Customer notice and reasonable time to cure prior to taking such actions.
9. Open API Limitations. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL NEOGOV BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY DIRECT, LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF THE USE OR INABILITY TO USE THE OPEN API; OR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF FIFTY DOLLARS, EVEN IF NEOGOV HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES AND WHETHER OR NOT SUCH LOSS OR DAMAGES ARE FORESEEABLE OR NEOGOV WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ANY CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT MUST BE BROUGHT WITHIN ONE YEAR AFTER THE OCCURRENCE OF THE EVENT GIVING RISE TO SUCH CLAIM.
10. Open API Termination. Notwithstanding the additional Termination rights herein, NEOGOV may immediately terminate or suspend Customer access to Open APIs in our sole discretion at any time and for any reason, with or without notice or cause. In addition, your Open API subscription will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.



NEOGOV

HUMAN RESOURCES MANAGEMENT SUITE

for the public sector

Exhibit A
Order Form



NEOGOV

Customer:

Governmentjobs.com, Inc. (dba "NEOGOV")
2120 Park Pl, Suite 100
El Segundo, CA 90245
United States
billing@neogov.com
Sales Rep: Tyler Olsen

Livingston, City of (CA)
1416 C Street
Livingston, CA 95334
USA

Quote Valid From: 1/8/2024
Quote Valid To: 2/16/2024

Quote Number: Q-14150
PaymentTerms: Annual,Net 30
Subscription Term in Months: 12

Employee Count: 49
Order Summary

Year 1

Year 1 licenses discounted 40%, Setups discounted from \$7,260 to \$5,500

Service Description	Start Date	End Date	Term Price (USD)
Governmentjobs.com Subscription			\$504.00
Insight Subscription			\$2,970.00
Onboard Subscription			\$2,599.20
Year 1 TOTAL:			\$6,073.20

Year 2

Service Description	Start Date	End Date	Term Price (USD)
Governmentjobs.com Subscription			\$882.00
Insight Subscription			\$5,197.50
Onboard Subscription			\$4,548.60
Year 2 TOTAL:			\$10,628.10

Year 1

Year 1 licenses discounted 40%, Setups discounted from \$7,260 to \$5,500

Service Description	Start Date	End Date	Term Price (USD)
Insight Setup			\$3,080.00
Onboard Setup			\$2,420.00
Year 1 TOTAL:			\$5,500.00

ORDER TOTAL (USD) : **\$22,201.30**

A. Terms and Conditions

1. Agreement. This Ordering Document and the Services purchased herein are expressly conditioned upon the acceptance by Customer of the terms of the NEOGOV Services Agreement either affixed hereto or the version most recently published prior to execution of this Ordering Form available at <https://www.neogov.com/service-specifications>. Unless otherwise stated, all capitalized terms used but not defined in this Order Form shall have the meanings given to them in the NEOGOV Services Agreement.
2. Effectiveness & Modification. Neither Customer nor NEOGOV will be bound by this Ordering Document until it has been signed by its authorized representative (the "Effective Date"). Unless otherwise stated in this Ordering Document, all SaaS Subscriptions shall commence on the Effective Date. This Ordering Document may not be modified or amended except through a written instrument signed by the parties.
3. Summary of Fees. Listed above is a summary of Fees under this Order. Once placed, your order shall be non-cancelable and the sums paid nonrefundable, except as provided in the Agreement.
4. Order of Precedence. This Ordering Document shall take precedence in the event of direct conflict with the Services Agreement, applicable Schedules, and Service Specifications.

B. Special Conditions (if any).

**"Livingston, City of
(CA)"**

Signature:

Print Name:

Date:

DEVELOP

MANAGE

COMPLY

RECRUIT

The NEOGOV platform combines 4 modules – Recruit, Develop, Manage, and Comply – to automate and support the entire public sector employee lifecycle.

THE RECRUIT MODULE

automates hiring by centralizing the process of attracting applicants, screening them, and landing a qualified hire that's productive on day one, while ensuring compliance.

One of the main challenges in public sector HR is building and maintaining a highly qualified workforce. NEOGOV's Recruit module cohesively integrates a public sector-specific job board, applicant tracking system, and onboarding solution to deliver a faster, more efficient, and compliant recruitment process.

SCREEN: INSIGHT

- Highlight your organization with a branded online career portal that accommodates complex applications and is accessible from your website
- Same time screening candidates with auto-scoring
- Modernize communication with text messaging, electronic offer letters, and a self-service portal
- Generate reports for EEO, diversity and inclusion initiatives, and analyze time-to-hire
- Integrates with multiple background check and assessment providers



HIRE: ONBOARD

- Accelerate the onboarding process by providing new hires access to online forms before their start date
- Auto-assign tasks to multiple stakeholders and track completion
- Reinforce job duties, expectations, and assign mentors
- Schedule check-backs to drive engagement and address any concerns in the first 90 - 120 days and increase retention
- Automate offboarding tasks, document exit interviews, and formalize knowledge transfer from vacated positions
- Simplify rehires and seasonal employee onboarding



OLANDA

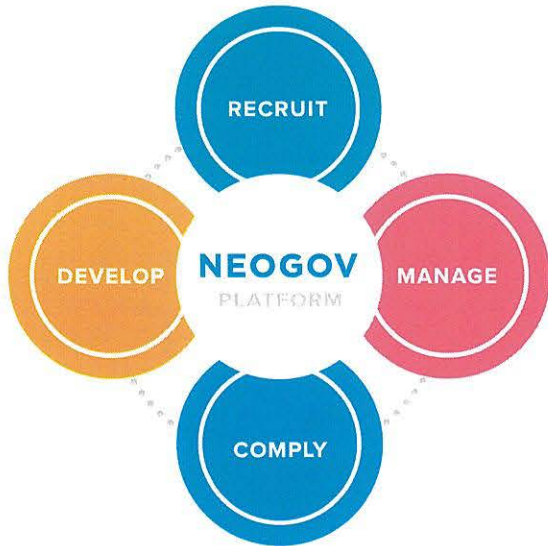
Public sector HR folks, she's got a lot on her plate. Thanks to NEOGOV, it's all manageable.

To increase applicants, she boosts the posting to other job boards without leaving the platform.

She notifies candidates to self-schedule a written exam. Text reminders are sent the day before.

Thanks to an integration, a background check is processed for the top candidate.

COMPLETE THE SUITE



Complete the NEOGOV platform to support the entire employee lifecycle.

RECRUIT

Accelerate time to hire by automating and centralizing the candidate attraction, selection, and onboarding process.

DEVELOP

Build a more capable workforce with professional development tools and customized training programs that maintain compliance.

MANAGE

Ensure HR stays organized and compliant by centralizing employee data, payroll, and benefits in a highly secure system.

COMPLY

Manage, update, distribute, and track important documents, creating a single source of truth for all compliance needs.

THE NEOGOV DIFFERENCE



Public Sector-Focused

We focus exclusively on the unique needs and compliance requirements of government agencies and higher ed institutions.



Shared Library of Global Resources

Save time by tapping into our global resource library to leverage other organizations' detailed class specs, forms, and processes.



Online Community of Peers

Join thousands of other public sector HR leaders who participate in discussions and solve challenges together.



Free Customer Support and Training

We're here to help. Contact a live customer service agent with questions, attend free training events, and access online courses.



STAFF REPORT

AGENDA ITEM: Consideration of an Ordinance of the City Council of the City of Livingston Repealing Chapter 3, Underground Utility Districts, of Title 9 and Replacing it with Chapter 3, Underground, Utilities, of Title 9 of the City of Livingston Municipal Code.

MEETING DATE: April 16, 2024

PREPARED BY: Roy Santos, City Attorney

REVIEWED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Waive the Second Reading of the Ordinance by Title Only, Open the Public Hearing, Close the Public Hearing and Adopt the Ordinance as Presented.

BACKGROUND AND DISCUSSION:

In 2023, the Mayor and City Council directed the City Attorney's Office to amend the Municipal Code relating to Underground Utilities. The Council directed this item to comply with updated state laws as well as the previous code requiring undergrounding of utilities for infill lots, or in the event of rebuilding due to fire or other events outside of the control of the property owner. This requirement had the effect of adding substantial costs for infill development and for those projects in neighborhoods in which underground utilities were not previously done.

The revised code requires new developments to underground utilities rather than by the use of poles and overhead lines while also in accordance with the California Public Utilities Commission rules and regulations. The requirement applies to electrical and telecommunications connections between utility company distribution lines and all proposed structures on a site, and all new installations that distribution utilities within a site.

Exceptions to the undergrounding requirements apply to the following:

1. New structures on parcels of five acres or larger, or requiring uninterrupted utility runs of five hundred feet or more;
2. Public utility distribution service to the edge of the lot, except in an underground utility district or where seventy-five (75%) percent of the lots on the street within one thousand (1,000ft) feet of the site area already developed, and have overhead service from the utility company distribution source to the residences;
3. Where underground installation may cause a substantial adverse environmental impact, as determined by the City; and
4. Temporary overhead extensions for use during construction and/or for the purpose of testing the power supply.

If the Council chooses not to adopt the proposed ordinance, applicants would be required to adhere to the existing ordinance which is attached as a reference.

Additional options for the Council to consider include the following:

1. Not approving this ordinance. Applicants would be required to underground utilities per the existing ordinance.
2. Directing the Attorney's Office to modify the proposed ordinance and bring back with modification.
3. Other direction as provided by the Council.

FISCAL IMPACT:

There is no fiscal impact with the adoption of the ordinance.

ATTACHMENTS:

1. Ordinance

ORDINANCE NO. ____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
REPEALING AND REPLACING IN ITS ENTIRETY CHAPTER 3 OF TITLE 9 OF THE
LIVINGSTON MUNICIPAL CODE PERTAINING TO UNDERGROUND UTILITIES**

WHEREAS, the City of Livingston (“the City”) has the authority, under its police power, to enact regulations for the public peace, morals, and welfare of the City, California Constitution Article XI, section 7; and

WHEREAS, the City wishes to enact regulations governing undergrounding of utilities at this time; and

WHEREAS, absent clear regulation there is a potential threat to the public peace, health, and safety, and, unless the City takes action to regulate it, the secondary impacts; and

WHEREAS, the City has a compelling interest in protecting the public health, safety, and welfare of its citizens, residents, visitors and businesses, and in preserving the peace and quiet of the neighborhoods within the City by regulating underground utilities; and

WHEREAS, nothing in this Ordinance shall be construed to: (1) allow any person to engage in conduct that endangers others or causes a public nuisance; or (2) allow any activity which is illegal under state or federal law.

NOW THEREFORE, the City Council of the City of Livingston does hereby ordain as follows:

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. The Ordinance is exempt from the California Environmental Quality Act (“CEQA”) because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment. (CEQA Guidelines § 15061(b)(3).) It is also exempt because it consists of regulations and restrictions on activities to assure the maintenance, restoration, or enhancement of natural resources and the environment by prohibiting environmentally destructive components of unregulated cannabis cultivation. (CEQA Guidelines §§ 15307 and 15308.)

SECTION 3. Chapter 3, of Title 9, of the Livingston Municipal Code is repealed in its entirety and shall read as follows:

Chapter 3

UNDERGROUND UTILITIES

Section 9-3-1 Underground Utilities.

Utilities serving new development shall be installed underground rather than by the use of poles and overhead lines, and where applicable shall be installed in accordance with California Public Utilities Commission rules and regulation. This requirement applies to electrical service and telecommunications (including cable TV, telephone and data transmission) connections

between utility company distribution lines and all proposed structures on a site, and all new installations that distribute utilities within a site. This section does not apply to the following:

- (a) New structures on parcels of five acres or larger, or requiring uninterrupted utility runs of five hundred feet or more;
- (b) Public utility distribution service to the edge of the lot, except in an underground utility district or where seventy-five (75%) percent of the lots on the street within one thousand (1,000ft) feet of the site area already developed, and have overhead service from the utility company distribution source to the residences;
- (c) Where underground installation may cause a substantial adverse environmental impact, as determined by the City;
- (d) Temporary overhead extensions for use during construction and/or for the purpose of testing the power supply.

This section may require an applicant to underground utilities from the utility company distribution source to the site, as well as on the site itself. The utility service provider should be contacted for information on the Public Utility Commission's rules and regulations regarding the undergrounding of utilities. Poles and overhead lines other than those allowed by this section are allowable subject to Minor Use Permit approval, provided that the City first finds that either topographical, soil or similar physical conditions or the distance to the utility company distribution source make the use of underground utilities unreasonable or impractical.

Section 9-3-2 Administrative Penalties.

- (a) The administrative citation penalty for all violations of this chapter, within a rolling twelve-month period, deemed misdemeanors under the Livingston Municipal Code shall be as follows:
 - (1) First administrative citation: two hundred fifty dollars per violation;
 - (2) Second administrative citation: five hundred dollars per violation;
 - (3) Third administrative citation: one thousand dollars per violation; and
 - (4) One thousand dollars per violation for each subsequent administrative citation.
- (b) The administrative citation penalty for all violations of this chapter, within a rolling twelve-month period, deemed infractions under the Livingston Municipal Code shall be as follows:
 - (1) First administrative citation: one hundred dollars per violation;
 - (2) Second administrative citation: two hundred dollars per violation;
 - (3) Third administrative citation: five hundred dollars per violation; and
 - (4) Five hundred dollars per violation for each subsequent administrative citation.

SECTION 6: EFFECTIVE DATE.

This Ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the Ordinance, or a summary of the Ordinance, shall be published once in a newspaper of general circulation.

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving reading, except by Title, at a regular meeting thereof held on the 2nd day of April 2024, and adopted the Ordinance after the second reading at a regular meeting held on the ____ day of _____ 2024, by the following roll call vote:

- AYES:
- NOES:
- ABSTAIN:
- ABSENT:

ATTEST

Monica Cisneros, Deputy City Clerk

CITY OF LIVINGSTON

By: _____
Jose Moran, Mayor
of City of Livingston

APPROVED AS TO FORM

By: _____
Roy C. Santos, City Attorney

I, _____, Deputy City Clerk of the City of Livingston, California, DO HEREBY CERTIFY that the foregoing is a true and accurate copy of the Ordinance passed and adopted by the City Council of the City of Livingston on the date and by the vote indicated herein.



STAFF REPORT

AGENDA ITEM: Resolution Appointing Four (4) Parks Recreation and Arts Commissioners.

MEETING DATE: April 16, 2024

PREPARED BY: Jacquelyn Benoit, Recreation Superintendent

REVIEWED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution 2024-____, appointing four Parks Recreation and Arts Commissioners for the terms remaining on exiting commissioners. Alan Cadiente with the expiration of 1/31/2028, Darmeen Randhawa 1/31/2028, Cristy Pineda with the expiration of 1/31/28, and Anabel Perez expiration of 1/31/28. All four applicants are Livingston residents and have been involved in the Recreation Programs and understand the department's goals and philosophies.

BACKGROUND:

In 2023 commissioners Kenneth Abeloe, Stella Estrada and Linda Deol (alternate) resigned for various reasons. In January 2024 Jilda Lopez resigned and in March Ashely Gonzalez also resigned due to work and family commitments. None of the existing commissioners have completed their terms; however, since they were all appointed to fill uncompleted terms and not all commissioners currently have expired terms at the same time, staff is requesting council to appoint the four new commissioners with terms ending 1/31/2028. Vacancies have been posted for months and we now have enough applicants to bring to the council. The council has been notified through the Recreation Staff report regarding vacancies. Vacant positions have been publicized on the digital board and the website as well as Facebook. The application deadline is open until positions are filled.

The city received a total of five applications; however, one applicant withdrew their application. Attached are the four applications. The parties have been asked to be in attendance at the Council meeting to answer any questions they may have.

FISCAL IMPACT:

None.

ATTACHMENTS:

1. Resolution
2. Applications: Darmeen Randhawa, Alan Cadiente, Cristy Pineda, Anabel Perez

RESOLUTION 2024-

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
APPOINTING ALAN CADIENTE, DARMEEN RANDHAWA, CRISTY PINEDA, AND ANABEL
PEREZ TO THE PARKS RECREATION AND ARTS COMMISSION**

WHEREAS, In 2023 we lost 3 commissioners Kenneth Abeloe, Stella Estrada and Linda Deol (alternate) for various reasons, then in January 2024 Jilda Lopez resigned and in March Ashely Gonzalez also resigned due to work and family commitments, and

WHEREAS, The city received a total of 5 applications; however, one applicant withdrew their application. ALAN CADIENTE, DARMEEN RANDHAWA, CRISTY PINEDA, and ANABEL PEREZ are all Livingston residents and have been involved in the Recreation Programs and understand the departments goals and philosophies, and

WHEREAS, None of the existing commissioners have completed their terms; however, since they were all appointed to fill uncompleted terms and not all commissioners currently have expired terms at the same time, I am asking for the council to appoint the 4 new commissioners with terms ending 1/31/2028. Vacancies have been posted for months and now we have enough applicants to bring to the council, and

WHEREAS, The council has been notified through the Recreation Staff report regarding vacancies. Vacant positions have been publicized on the digital board, word of mouth, the city website as well as Facebook. The application deadline is open until positions are filled; and

WHEREAS, by appointing the 4 applicants the commission would have 8 regular members; and

NOW, THEREFORE, BE IT RESOLVED that the City of Livingston does hereby appoint ALAN CADIENTE, DARMEEN RANDHAWA, CRISTY PINEDA, and ANABEL PEREZ TO THE PARKS RECREATION AND ARTS COMMISSION.

I hereby certify that the foregoing Resolution No. 2024-__ is a full, true and correct copy of a resolution duly passed and adopted by City Council of the City of Livingston at a regular meeting thereof duly held on 16th day of April 2024, by the vote recorded as follows:

AYES:
NOES:
ABSENT:
ABSTAIN:

By: _____
Jose A. Moran, Mayor
of the City of Livingston

ATTEST:

Monica Cisneros, Deputy City Clerk
of the City of Livingston

APPROVED AS TO LEGAL FORM

Roy C. Santos, City Attorney



Parks Recreation and Arts Commission

Deadline for Submission September 1, 2023 at 4:30pm

Supplemental Questionnaire

Please return to:

City of Livingston

Attn: City Clerk

1416 C Street

Livingston, CA 95334

(209)394-8041 ext 121

NAME: Darmeen K Randhawa

DATE: 11-10-23

NOV 27 2023

Please print or type your answers to the following questions and submit them with your completed application. You may submit additional sheets, if necessary, to complete your answers.

1) Have you ever attended a **Parks Recreation and Arts Commission** meeting? YES NO

Date attended _____

2) How did you learn about the vacancy on the **Parks Recreation and Arts Commission**?

I was contacted by Toni and Jackie from Rec. about this position.

3) Describe your involvement in community activities, volunteer and civic organizations:

My involvement in community, volunteer and civic organizations are as follows: Coach for little kids basketball and @baseball, 10-yr softball player 6 years nearly.

4) What is it about the **Parks Recreation and Arts Commission** that interests you? What qualities, experience and expertise would you bring to the **Parks Recreation and Arts Commission**?

I find making Livingston Rec a place for kids to grow and be safe while playing variety of sports something that interests me. I feel the more involvement we have of our community of kids, equals to less kids getting into bad activities and staying off the streets. Quality: I feel that I could bring new ideas and ways to in the right way, make events more fun and involving.

5) How would you see your role as a commissioner when recommending policy and working with the council?

My role as commissioner would be bringing a new perspective from a younger generation to the community. Someone that is close in age or been there not that long ago. I've been involved in the community whether it was with highschool sports ← I played 4 years of volleyball and softball, and 3 years of basketball. I was involved in leadership as well, so I feel that if granted this opportunity I would be able to bring alot to the table with discussions and new policy and regulations.



6) What are the current issues that the Parks Recreation and Arts Commission will face?

Currently I feel we face diversity. Not alot of the community is involved like different cultures.

we do not have active involvement with all age groups.



7) If appointed, what specific goals would you like to see the Parks Recreation and Arts Commission achieve?

I would like to see park & arts achieve alot. I would like to see more sports, more local activities being brought out for those who do not like sports. Overall more things for our community.



in H/ we met, gen.



Committee/Commission Application

Name Darmeen Ranchhaver	Address [REDACTED]	Committee/Commission Applying For Recreation
Live Within City Limits <input checked="" type="radio"/> Yes <input type="radio"/> No	Phone Number [REDACTED]	Occupation LVN

Please describe you background and qualifications

- ① nurse LVN
- ② LHS Graduate w 4 years of Athletics
- ③ Livingston resident.
- ④ Apart of co-ed softball (5) years.
- ⑤ Coached Livingston rec sports.
- ⑥ Activity involved with community.
- ⑦ knowledgable / Teachable
- ⑧ young / fresh minded.



Parks Recreation and Arts Commission

Deadline for Submission Open Until Filled

Supplemental Questionnaire

Please return to:

City of Livingston

Attn: City Clerk

1416 C Street

Livingston, CA 95334

(209)394-8041 ext 121

NAME: ALAN N. CADIENTE

DATE: APRIL 1, 2024

Please print or type your answers to the following questions and submit them with your completed application. You may submit additional sheets, if necessary, to complete your answers.

1) Have you ever attended a Parks Recreation and Arts Commission meeting? YES

NO

Date attended _____

2) How did you learn about the vacancy on the Parks Recreation and Arts Commission?

VIA A CITY EMPLOYEE

3) Describe your involvement in community activities, volunteer and civic organizations:

LIVINGSTON:

- CURRENT EXPLORER ADVISOR
- FORMER ASSISTANT BOXING COACH (LIVN. SI-FIFTY GYM)

MERCED:

- MERCED HS - ASSIST W/FUNDRAISER EVENTS - TRIP-TIP COOK & FIREWORKS BOOTH

4) What is it about the Parks Recreation and Arts Commission that interests you? What qualities, experience and expertise would you bring to the Parks Recreation and Arts Commission?

- I'M ALWAYS INTERESTED IN BEING A VIABLE MEMBER OF THE COMMUNITY - BE A POSITIVE FORCE IN THE DEVELOPEMENT OF OUR YOUTH.

- I BELIEVE MY YEARS IN LAW ENFORCEMENT, BEING A TEAM PLAYER AND BEING CURRENTLY ACTIVE W/YOUTH GROUPS WILL PROVE I CAN BE AN ASSET TO THE COMMISSION.

5) How would you see your role as a commissioner when recommending policy and working with the council?

- AS STATED, I AM A TEAM PLAYER. HOPEFULLY WE CAN ADDRESS ANY QUESTIONS / CONCERNS OF THE COUNCIL. AND AS A COMMISSION, WE CAN WORK TOGETHER AS A PANEL TO PROVIDE INSIGHT / SUGGESTIONS / CLOSURE TO CURRENT / FUTURE ENDEAVORS.

6) What are the current issues that the Parks Recreation and Arts Commission will face?

- FUNDING - ALLOTTED (YEARLY) BUDGET - GRANTS AND SUCH
- ADDITIONAL FACILITIES FOR INDOOR ACTIVITIES
- INSTRUCTORS FOR LEISURE CLASSES / ACTIVITIES
- ADDITIONAL PARK AMENITIES - THINGS THAT PROVIDE COMFORT, CONVENIENCE, OR ENJOYMENT FOR FOLKS USING CITY PARK(S)

7) If appointed, what specific goals would you like to see the Parks Recreation and Arts Commission achieve?

- BE CIVIL AND HAVE COHESION AS A GROUP
- RESPECT EACH OTHERS VIEWS, COMMENTS / SUGGESTIONS
- BE PROACTIVE, NOT SO MUCH REACTIVE



Committee/Commission Application

Name	Address	Committee/Commission Applying For
ALAN N. CADIENTE	[REDACTED]	PARKS RECREATION AND ARTS COMMISSIONER
ALAN N. CADIENTE	LIVINGSTON, CA 95334	Occupation
Live Within City Limits	Phone Number	SEMI-RETIRED - SPECIAL SECURITY ATTENDANT @ MERCED S/O
<input checked="" type="radio"/> Yes	<input type="radio"/> No	

Please describe you background and qualifications

- 28 1/2 YRS. IN LAW ENFORCEMENT - SIIPT SUPERVISOR
- INSTRUCTOR
- TEAM PLAYER
- CURRENT EXPLORER ADVISOR (LUNV. POST 518)
- APPROX. 7 YRS.
- PARTICIPATE (SUPPORT SCHOOL RELATED) ACTIVITIES



Parks Recreation and Arts Commission

Deadline for Submission Open Until Filled

Supplemental Questionnaire

Please return to:

City of Livingston

Attn: City Clerk

1416 C Street

Livingston, CA 95334

(209)394-8041 ext 121

NAME: Cristy Freitas

DATE: 03/28/24

Please print or type your answers to the following questions and submit them with your completed application. You may submit additional sheets, if necessary, to complete your answers.

1) Have you ever attended a **Parks Recreation and Arts Commission** meeting? YES NO

Date attended N/A

2) How did you learn about the vacancy on the **Parks Recreation and Arts Commission**?

City of Livingston Website/Jacque Bennoit

3) Describe your involvement in community activities, volunteer and civic organizations:

I am involved in community activities through my child's participation in sports such as basketball, softball, basketball, and flag football. I also participate in the co-ed softball recreational league.

4) What is it about the **Parks Recreation and Arts Commission** that interests you? What qualities, experience and expertise would you bring to the **Parks Recreation and Arts Commission**?

Since my child partakes in different sports and I coach my softball team, I'd like to be involved in being part of the Parks Recreation and Arts Commission to help out our community. If chosen for this opportunity I would bring an energetic attitude to help our community grow our recreational opportunities.

5) How would you see your role as a commissioner when recommending policy and working with the council?

I would see it as an important role that helps out our community by advising council on how our Parks Recreation and Arts Commission can improve or have better opportunities for our residents. I believe that the insight of member of the community is helpful because I care about our city and the opportunities that we give to our residents.

6) What are the current issues that the **Parks Recreation and Arts Commission** will face?

I don't see any issues that the Parks Recreation and Art Commission is currently facing, but with my involvement I could learn and see if there are any foreseeable issues that I can advise on.

7)If appointed, what specific goals would you like to see the **Parks Recreation and Arts Commission** achieve?

If appointed, I would like to see more opportunities for recreational and athletic opportunities to be offered to adults so more of our residents can be involved in our community. I would also like to see more promoting of the opportunities we offer so residents can be more involved and be proud to be a residents of the City of Livingston.



Committee/Commission Application

Name	Address	Committee/Commission Applying For
Cristy Freitas	[REDACTED] Livingston, CA 95334	Parks Recreation and Arts Commission
Live Within City Limits	Phone Number	Occupation
<input checked="" type="radio"/> Yes <input type="radio"/> No	[REDACTED]	QA Supervisor
Please describe you background and qualifications		
I have lived in Livingston since I was 6 years old. I feel proud to say that Livingston is my hometown		
and have always wanted to be more involved in my community. This would be a great start to being		
involved with our community. I am a team player that can bring an enthusiastic energy to promote		
involvement of our residents and assist our Parks Recreation and Arts Commission in doing so.		



Parks Recreation and Arts Commission

Deadline for Submission Open Until Filled

Supplemental Questionnaire

Please return to:

City of Livingston

Attn: City Clerk

1416 C Street

Livingston, CA 95334

(209)394-8041 ext 121

NAME: <u>Anabel Perez</u>
DATE: <u>3/20/24</u>

Please print or type your answers to the following questions and submit them with your completed application. You may submit additional sheets, if necessary, to complete your answers.

1) Have you ever attended a **Parks Recreation and Arts Commission** meeting? YES NO

Date attended _____

2) How did you learn about the vacancy on the **Parks Recreation and Arts Commission**?

In conversation with fellow Explorer advisors.

3) Describe your involvement in community activities, volunteer and civic organizations:

I am an advisor for the LPD Explorers. I teach Catechism for confirmation students at my church. I am a member of the Altar society - We decorate the church & organize events.

4) What is it about the **Parks Recreation and Arts Commission** that interests you? What qualities, experience and expertise would you bring to the **Parks Recreation and Arts Commission**?

As a parent of children who have participated in many activities the city provides I am interested in providing input for any projects the city undertakes. As a Special Education teacher I hope to provide a voice for full inclusion.

5) How would you see your role as a commissioner when recommending policy and working with the council?

I see my role as another perspective as it relates to children, specifically Children with special needs.

6) What are the current issues that the Parks Recreation and Arts Commission will face?

I am hopeful that the swim team will be reestablished this summer. I feel that staffing can be one of the issues.

7) If appointed, what specific goals would you like to see the Parks Recreation and Arts Commission achieve?

I would like to see the city improve some of their events by involving the local schools such as: combining the Sweet potato festival & the High School Band Review.

In general ~~is~~ involving the community in organizing some events.



Committee/Commission Application

Name	Address	Committee/Commission Applying For
Anabel Perez	[REDACTED]	Parks Rec & Arts Commissioner
Live Within City Limits	Phone Number	Occupation
<input checked="" type="radio"/> Yes <input type="radio"/> No	[REDACTED]	SpEd Teacher

Please describe you background and qualifications

I am a mother of 6 and a Special Education teacher. My own children have participated in many activities provided by the Parks & Rec department. I have advocated at my school district for the needs of special education students including options in the playground for sensory rich experiences.



STAFF REPORT

AGENDA ITEM: Discussion and Direction on City of Livingston Fire Services

MEETING DATE: April 16, 2024

FROM: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Discussion and Direction on City of Livingston Fire Services

BACKGROUND:

On February 7, 2023, the Livingston City Council was scheduled to discuss an agreement with Merced County for enhanced staffing at Station 96 in the City of Livingston. The agenda item proposed staffing at a 2-0 level at a cost of \$399,903 to the city for the increased staffing. The proposed cost to the City of Livingston was proposed based on the call for service volume and was the rationale for the City's proportion of costs. That evening, the then Acting City Manager pulled the agenda item from discussion.

Within a couple of months, Merced County notified the City that it was increasing the contract amount to \$750,000 (from \$399,903). Currently, Livingston residents contribute approximately \$1,007,010 in fire parcel tax revenues to the County which it currently retains. The Livingston parcel tax revenues in excess of \$1M plus the proposed \$750,000 would mean Livingston resident contributions would total \$1.8M. Based on total station costs of approximately \$2.3M, city residents would be required to pay nearly 80% of the total station costs. Station 96 currently responds to Livingston calls for service as well as County calls for service. In 2022, the total calls for service totaled 61% Livingston calls, and 39% County resident calls.

Once presented with this information of the increase to \$750,000, the City Manager's Office questioned why the City of Livingston would be paying nearly 80% of the costs (\$1M parcel tax + \$750,000) when Station 96 personnel responds to city and county calls.

Ideally, the City would pay for its fair proportion of calls, and the County would pay for its fair share. Legally, the City has an obligation to its tax payers to ensure it is not covering costs in excess of what it should be paying.

In late January 2024, the City was notified that the County had "drafted" a proposal to potentially close the Livingston station as well as numerous other stations. This document was provided as an attachment to the February 6, 2024, meeting of the Mayor and City Council to undertake community wide polling for a potential sales tax measure since the City does not have an additional \$750,000 in revenues. The City Council approved the requested action, and the City will soon kickoff the community wide polling.

The City of Livingston has always understood the need for additional funding necessary for a higher level of staffing and remains open to discussing an equitable arrangement which does not unfairly burden Livingston taxpayers.

DISCUSSION:

On April 9, 2024, the Merced County Board of Supervisors had a discussion related to the potential closure of Livingston Station 96. The Board of Supervisors ultimately continued the conversation until May 7, 2024.

At this Board meeting, the City Manager's Office and City Council members voiced their concern, thoughts, and questions to the Board of Supervisors related to the potential action.

CITY OF LIVINGSTON PROPOSALS:

Since the April 9, 2024, Board meeting, the City Manager's Office has provided the County CEO's Office with two proposals to keep Station 96 operational.

The City's proposals to the County include the following:

1. Stop gap funding via overtime from July 1, 2024—Safer Grant determination to avoid potential station closure.
 - a. The County should run the analyses to provide an estimated cost
 - i. Cal Fire staff has provided estimated total overtime costs totaling approximately \$28,000--\$30,000 per month.
 - b. The County should provide their rationale for their funding contribution.
 - c. The City would provide its faire share of OT costs
2. Station 96 Cost split via calls for service listed below which takes the total Station cost of \$2.3M and splits it 61% City, 39% County
 - a. The City's portion would be \$409,441/year after factoring in fire parcel tax revenue.

It should be noted that Merced County has submitted a SAFER Grant which would cover the costs for additional personnel for a period of three years. The County should receive notification of whether it was awarded the grant sometime in the fall of 2024. Proposed Option One would provide a mechanism to get to that point, which would also allow the city to discuss an agreement in the event the County does not receive the SAFER Grant.

The City Manager's Office has discussed the options with Cal Fire personnel to assess the viability of both options as well as with Cal Fire Management. Cal Fire Management has conveyed their support for proposed Option One to keep Station 96 operational and enhance the level of service.

Finally, the City Manager's Office and Councilmembers Jason Roth and JT Mann will be travelling to Washington D.C. with the MCAG OneVoice delegation in May to lobby federal agencies for various priorities, and the SAFER Grant is a top priority.

STAFF REPORT

AGENDA ITEM: Consideration of a Resolution Approving an Administrative Fee for billing processing for Solid Waste, Recyclable Materials, and Organic Waste Collection Services within the City of Livingston.

MEETING DATE: April 16, 2024

PREPARED BY: Anthony Chavarria, Director of Public Works

REVIEWED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Staff recommends that the City Council adopt a Resolution Establishing an Administrative Fee for Solid Waste, Recycling and Organics Collection Services Processing Maintenance and Enforcement.

BACKGROUND:

On March 19, 2024, the City Council approved Resolution No. 2024-14 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 (Gilton). The term of the agreement was initiated April 1, 2024, and is for a ten (10) year initial term with option of two- five (5) year extensions.

The City granted Gilton the exclusive franchise, right and privilege to collect all Solid Waste, Organic Waste and Recyclables for all residential and commercial premises located 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.

Based on the agreement, Gilton 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. Gilton shall also perform its obligations under the Franchise 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.

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 in the attached agreement) 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 in the attached agreement).

City of Livingston personnel perform the administrative duties to process all billing for refuse services. Administrative duties for City Hall staff typically involve tasks like managing customer accounts, processing payments, handling billing inquiries and maintaining accurate records. Public Work staff duties include handling customer inquiries, scheduling illegal dumping pick-ups, cleaning debris from streets and alleys. The Public Works street sweeper duties include driving a motorized street sweeper to clean City's streets, parking lots and alleys along an assigned route and cleaning trash debris from gutters. The Public Safety Code Enforcer performs enforcement duties such as educating residents, issuing violation notices and citations to assure compliance and enforce State laws and local ordinances.

The City has projected the required administrative fee that needs to be collected to perform the billing process and other related duties within the Refuse Enterprise.

The projected administrative fee is inclusive of the following:

- Employee allocations consist of:
 - City Staff time to perform billing tasks for Solid Waste customers.
 - Staff time is inclusive of employee benefits.
 - Staff time for sweeping of street gutters to remove trash and debris.
 - Staff time to perform enforcement activities.
- Expenses in the Refuse budget to account for vehicle operations & maintenance consist of
 - OPEB Trust Contributions
 - Physical Examinations:
 - Cost share for annual DOT exams for employees
 - Contracted Services- IT
 - Cost share for Microsoft 365 and annual IT contract
 - Contract Service:
 - Consultant fee to assist with compliance of SB 1383, AB939 and AB1826
 - Cost share for ABS Direct, Inc. (printing utility statements, termination notices and postage)

- Cost share for computer and printer lease, annual work order subscription, annual web hosting fee, GovInvest training and annual subscription for TimeClock software and credit checks
- Contract Services- Legal
 - Cost share to perform legal reviews
- City Audit
 - Cost share for city annual audit
- Computer Support Agreements
 - Cost share for annual Springbrook and Civic Pay software (online payment portal)
- Vehicle O/M
 - Cost share for fuel, diesel, and vehicle maintenance for street sweeper
- Equipment O/M
 - Cost share for trailer maintenance/ backhoe, repair and maintenance
- Insurance
 - Cost share for annual liability program
- Comm/Cell Phones/ Telephone
 - Cost share for employee cell phone, laptop, and landlines
- Printing
 - Cost share for payroll checks and door hangers
- Bank Services Fee Agreement
 - Cost share for bank services
- Small Tool/ Equipment
 - Cost share for safety equipment needed by staff
- Office Supplies
 - Cost share for office supplies
- Postage
 - Cost share for mailings not provided by ABS Direct Inc. such delinquent notices and final billing

ANALYSIS:

EMPLOYEES ALLOCATIONS WITH BENEFITS

DEPARTMENT	EMPLOYEE TITLE	REFUSE TIME ALLOCATION % FROM TOTAL SALARY	TOTAL AMOUNT ALLOCATED FROM REFUSE FUND
PUBLIC WORKS	PW DIRECTOR	10%	\$20,899.00
PUBLIC WORKS	PW SUPERINTENDENT	10%	\$15,426.33
PUBLIC WORKS	SR. ADMIN. ANALYST	20%	\$30,856.56
PUBLIC WORKS	ADMIN. ANALYST	15%	\$14,897.49
PUBLIC WORKS	PW ACCOUNT CLERK	15%	\$10,154.04
PUBLIC WORKS	STREET SWEEPER	10%	\$14,220.06
PUBLIC WORKS	LEAD MAINT. WORKER	10%	\$15,824.77
PUBLIC WORKS	MAINTENANCE WORKER I	15%	\$16,184.15
PUBLIC WORKS	MAINTENANCE WORKER II	15%	\$16,333.71
PUBLIC WORKS	MAINTENANCE WORKER II	5%	\$6,525.71
CITY HALL	INTERIM CITY MANAGER	10%	\$22,875.56
CITY HALL	FINANCE DIRECTOR/ACM	10%	\$19,242.10
CITY HALL	SR. ACCOUNTANT	10%	\$16,680.98
CITY HALL	ACCOUNTANT I	10%	\$10,377.41
CITY HALL	ACCOUNTANT II	10%	\$10,604.68
CITY HALL	ACCOUNTING TECHNICIAN	22%	\$22,049.65
CITY HALL	EX. ASST./DEPUTY CITY CLERK	15%	\$15,430.19
CITY HALL	ASST. TO DEPUTY CITY CLERK/RECORDS MANAGEMENT	15%	\$10,950.24
CITY HALL	HR COORDINATOR	10%	\$12,253.38
CITY HALL	ACCOUNT CLERK	35%	\$25,270.01
CITY HALL	ACCOUNT CLERK	25%	\$14,543.13
CITY HALL	OFFICE ASSISTANT I	26%	\$20,119.29
PUBLIC SAFETY	CODE COMPLIANCE OFFICER	10%	\$14,111.56
		TOTAL	\$375,830.00

PART TIME AND OVER TIME

LIABILITY	TOTAL
PART TIME SALARIES	\$11,939.00
OVER TIME SALARIES	\$4,438.00
TOTAL	\$16,377.00

LIABILITY

LIABILITY	TOTAL
OPEB TRUST CONTRIBUTION	\$1,267.00

REFUSE BUDGET

REFUSE OPERATION/MAINTENANCE BUDGET	TOTAL
PHYSICALS EXAMINATIONS	\$60.00
CONTRACTED SERVICES - IT	\$6,292.00
CONTRACT SERVICES	\$42,000.00
CONTRACTED SERVICES-LEGAL	\$8,000.00
CITY AUDIT	\$23,568.00
COMPUTER SUPPORT AGREEMENTS	\$25,000.00
VEHICLE O/M	\$6,981.00
EQUIPMENT O/M	\$500.00
INSURANCE	\$13,705.00
COMMS/CELL PHONES/TELEPHONE	\$2,500.00
PRINTING	\$400.00
BANK SERVICE FEE AGREEMENTS	\$6,461.00
SMALL TOOLS/EQUIPMENT	\$808.00
OFFICE SUPPLIES	\$700.00
POSTAGE	\$100.00
TOTAL	\$137,075.00

TOTAL EXPENDITURES

EMPLOYEE ALLOCATIONS	\$375,830.00
PART TIME & OVER TIME SALARIES	\$16,377.00
OPEB TRUST CONTRIBUTION	\$1,267.00
OPERATION/MAINTENANCE	\$137,075.00
TOTAL EXPENDITURES	\$530,549.00

ADMINISTRATIVE FEE

TOTAL EXPENDITURES	\$530,549.00
REFUSE ACCOUNTS	3,500
ANNUAL CHARGE PER ACCOUNT	\$151.58
MONTHLY ADMINISTRATIVE FEE PER ACCOUNT	\$12.63

RECOMMENDATION:

City staff recommends approving an Administrative Fee for billing processing for Solid Waste, Recyclables Materials and Organic Waste Collection Services within the City of Livingston.

ALTERNATIVES:

- (1) Council can choose Not to adopt the Administrative Fee and direct staff to determine whether Gilton will be receptive to opening up the franchise agreement and assuming all components of the administrative fee. This will result in a revenue decrease that may impact employee positions and will trigger the meet and confer process with labor unions.
- (2) Council can use an alternative funding source such as the general fund to cover the administrative fee however no analysis has been performed to reflect the impact of the general fund covering the \$530,549 administrative cost.
- (3) Council can choose alternative action and direct City staff.

FISCAL IMPACT:

Projected revenue of \$530,549 from Administrative Fee to cover City's cost of administering Solid Waste Services to be directed to the Refuse Fund

ATTACHMENTS:

1. Resolution
2. Exhibit "A" Franchise Agreement

RESOLUTION NO. 2024-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
ESTABLISHING AN ADMINISTRATIVE FEE FOR SOLID WASTE, RECYCLING AND
ORGANICS COLLECTION SERVICES PROCESSING MAINTENANCE AND
ENFORCEMENT**

WHEREAS, the California Integrated Waste Management Act of 1989 (Public Resources Code sections 40000 et seq.) requires local agencies to make adequate provision for Solid Waste handling within their jurisdictions; and

WHEREAS, the City of Livingston Municipal Code authorizes the City to enter into exclusive franchise agreements for the handling, collection, transportation and disposal of solid waste, recycling and organics; and

WHEREAS, The City Council, upon completion of the competitive bidding process, awarded Gilton an exclusive solid waste franchise for collecting, transferring, recycling, composting, and disposing solid waste from all residential and/or commercial premises in the City; and

WHEREAS, Payment of the franchise fee grants Gilton the exclusive right to collect, transfer, recycle, compost, and dispose of solid waste, including receiving exclusive access to operate heavy equipment upon city streets and rights-of-way and the exclusive right to place their multiple waste containers upon city streets and rights-of-way, within the City.

WHEREAS, City personnel perform the administrative duties to process all billing for refuse services and since the State of California's adoption of AB 939, AB 341, AB 1826 and SB 1383 requires additional services by City staff and consultants; and

WHEREAS, the City administrative fee includes of the following proportional costs incurred by the City to provide solid waste, recycling and organics services for the customers of the franchisee:

- City Staff time to perform billing tasks for Solid Waste customers
- Staff time is inclusive of employee benefits
- Expenses in the Refuse budget to account for vehicle operations & maintenance
- Staff time for sweeping of street gutters to remove trash and debris.
- Staff time to perform enforcement activities
- Consultant fee to assist with compliance of SB 1383

WHEREAS, the City believes the administrative fee is a reasonably proportionate estimate of the cost of the services being provided to solid waste customers; and

WHEREAS, the City now wishes to establish an administrative fee to cover the costs of providing solid waste, recycling and organics services to the residents and businesses within the City of Livingston.

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

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. The resolution is exempt from the California Environmental Quality Act ("CEQA") because it can be seen with certainty that there is no possibility that it will have a

significant effect on the environment. (CEQA Guidelines § 15061(b)(3).) Further, the adoption and implementation of this Ordinance is not a project, as defined in CEQA Guidelines section 15378, because it has no potential for resulting in physical change to the environment, either directly or indirectly, and is therefore not subject to environmental review under CEQA pursuant to CEQA Guidelines section 15060(c)(3).

SECTION 3. The City Council of the City of Livingston hereby establishes an administrative fee in the amount of twelve dollars and sixty-three cents (\$12.63).

SECTION 4. The City may adjust the administrative fee 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 Resolution and be based on the previous twelve-month index analysis based on the Effective Date of this Resolution.

SECTION 5. 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 16th day of April 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
Of the City of Livingston

APPROVED AS TO LEGAL FORM

Roy C. Santos, City Attorney

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made and entered into this 1st day of April 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; and

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; and

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; and

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; and

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. 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. Gross Revenues for this computation will exclude the City established Administration Fee. Further, the Parties hereby agree that 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 forgoing 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 elected 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 20. 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 21. 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 21, 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 22. 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 23. Reports and Adverse Information.

23.1 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:

23.1.1 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.

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

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

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

23.1.5 A current financial statement, upon request.

23.2 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.

23.3 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 24. Bonds and Security.

24.1 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.

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 25. Breach of Agreement.

25.1 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 26 of this Agreement, in addition to all other

remedies available to the City in law or equity.

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

25.2.1 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.

25.2.2 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.

25.2.3 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.

25.2.4 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.

25.2.5 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.

25.2.6 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 24.1 herein; or the full amount of the Payment Bond required under Section 24.2 herein.

25.2.7 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.

25.2.8 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.

25.2.9 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.

25.2.10 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.

25.2.11 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.

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

25.3 Cure Rights. Notwithstanding any other provision of this Section 25 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:

25.3.1 Immediately, if the City determines the Breach endangers the health, safety, or welfare of the public; or

25.3.2 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.

25.4 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 26. Termination, Liquidated Damages and other Remedies.

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

26.2 Liquidated Damages.

26.2.1 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.

26.2.2 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 24 as set forth herein, the termination of this Agreement, or both.

26.2.3 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 25. 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 24, order the Termination of the Franchise granted by this Agreement, or both.

26.3 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 27.

Section 27. 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 26, City shall have the following rights:

27.1 Rental of Collector Equipment. Notwithstanding the provisions set forth in Section 21 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.

27.2 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.

27.3 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 28. 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 29. 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 30 . 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 31. 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 32. 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 33. General Provisions.

33.1 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.

33.2 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

33.3 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.

33.4 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

33.5 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.

33.6 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.

33.7 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.

33.8 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.

33.9 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.

33.10 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.

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

33.12 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.

33.13 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.

33.14 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.

33.15 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.

33.16 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.

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

CITY OF LIVINGSTON

GILTON SOLID WASTE MANAGEMENT,
INC.

By: _____
Christopher Lopez
Interim City Manager

By: _____
Richard Gilton, President

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Roy C. Santos, City Attorney

Date: _____

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 9.1.
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 card-board, 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 66261.9, 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

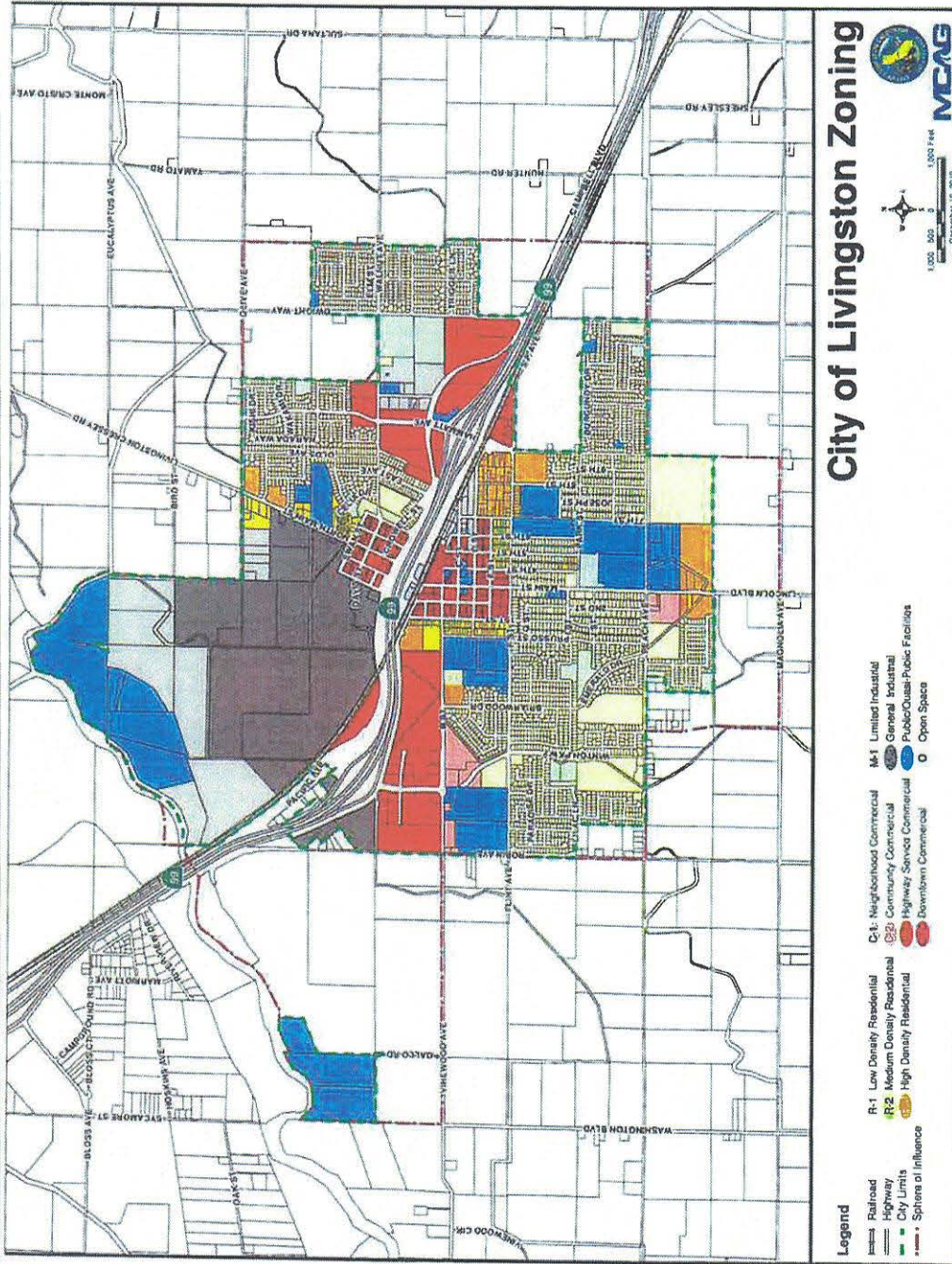


Exhibit 1

Gilton Solid Waste Management, Inc.

Revised Proposal for City of Livingston

Agreement for Solid Waste, Recyclable Materials, & Organic Waste Collection Services

Based on Increased Passthrough costs 03/01/2024

STANDARD SERVICE - WEEKLY COLLECTION ALL CONTAINERS

Two (2) Carts (1) MSW / Recycle (1) Organics	Monthly Rate
96 Gallon Carts	\$35.25
<i>Basic Bundled Service</i>	
<i>Additional carts available at a Monthly rate of \$10.00 per cart</i>	
<i>Carts are replaced as needed.</i>	

Standard Service Per Bin

Bin Size	Collection Frequency	Monthly Rate
1 Cubic Yard	1	\$67.35
1 Cubic Yard	2	\$134.65
1 Cubic Yard	3	\$201.93
1 Cubic Yard	4	\$269.21
1 Cubic Yard	5	\$336.49
1 Cubic Yard	6	\$403.85
2 Cubic Yard	1	\$134.26
2 Cubic Yard	2	\$266.11
2 Cubic Yard	3	\$401.23
2 Cubic Yard	4	\$535.41
2 Cubic Yard	5	\$669.59
2 Cubic Yard	6	\$803.85
3 Cubic Yard	1	\$198.90
3 Cubic Yard	2	\$376.21
3 Cubic Yard	3	\$566.86
3 Cubic Yard	4	\$764.64
3 Cubic Yard	5	\$961.43
3 Cubic Yard	6	\$1,160.33
4 Cubic Yard	1	\$254.58
4 Cubic Yard	2	\$496.10
4 Cubic Yard	3	\$775.89
4 Cubic Yard	4	\$1,025.84
4 Cubic Yard	5	\$1,276.65
4 Cubic Yard	6	\$1,452.41
6 Cubic Yard	1	\$357.95
6 Cubic Yard	2	\$697.76
6 Cubic Yard	3	\$1,067.07
6 Cubic Yard	4	\$1,419.66
6 Cubic Yard	5	\$1,776.83
6 Cubic Yard	6	\$2,134.78

*96 Gallon carts are available to commercial customers
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.

STAFF REPORT

AGENDA ITEM: Resolution Establishing a City-Wide Franchise Fee for Solid Waste, Recyclable Materials, and Organic Waste Collection.

MEETING DATE: April 16, 2024

PREPARED BY: Anthony Chavarria, Director of Public Works

REVIEWED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

Staff recommends that the city Council adopt a Resolution Establishing a Fifteen (15%) Percent Franchise Fee for Exclusive Access to City Solid Waste, Recycling and Organics Collection Services and Exclusive access to City Streets and Right-of-Way.

BACKGROUND:

In anticipation of the expiration of an agreement with Gilton Solid Waste Management, Inc. (Gilton), City Staff released a Request for Proposals (RFP) for an Agreement for Solid Waste, Recyclable Materials, and Organic Waste Collection Services on December 2, 2022. This RFP included provisions necessary to 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.

In order to allow for the RFP process to run its course, the City Council approved extensions with Gilton to ensure continuity of solid waste collection services.

The RFP included a franchise fee component that anticipated the Contractor to pay a Franchise Fee to the City that is 15% of the Contractor's gross revenues from all operations in the franchise area within the City pursuant to the agreement for each monthly period ("Franchise Fee").

There were three proposals submitted (1) Gilton Solid Waste Management, Inc. (Gilton), (2) Mid Valley Disposal (Mid valley), and (3) Modesto Garbage Company, Inc (WM). An evaluation team made up of City Staff and HF&H Consultants, LLC evaluated the three proposals and ranked Gilton as the top-ranked company.

On December 5, 2023, the City Council adopted Resolution No. 2023-83 selecting the desired SB-1383 compliant two cart collection system and selecting proposal option 2B, authorized the Interim City Manager to negotiate a new franchise agreement with Gilton for the Solid Waste, Recyclable Materials and Organic Waste Collection Services, approved an amendment to the agreement with Gilton for an additional two (2) months and authorized the Interim City Manager to negotiate minor adjustments to the contract extension. When identifying the new rates being proposed by Gilton, the exhibits included the 15% franchise fee.

On March 19, 2024, the City Council approved Resolution No. 2024-14 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. The agreement included a 15% Franchise Fee excluding the City's established Administration Fee.

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 in the attached agreement) 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 in the attached agreement)

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.

DISCUSSION:

The City Council, upon completion of the competitive bidding process, awarded Gilton an exclusive solid waste franchise for collecting, transferring, recycling, composting, and disposing solid wastes from all residential and/or commercial premises in the City. Payment of the franchise fee authorizes Gilton to collect, transfer, recycle, compost, and dispose of solid waste, including receiving exclusive access to operate heavy equipment upon city streets and rights-of-way and the exclusive right to place their multiple waste containers upon city streets and rights-of-way.

Further, the City believes the franchise fee as proposed of 15% is a reasonable estimate of the value of the franchise based upon the exclusive access to city property by the franchisee, the size of the City, potential expansion of the City, and exclusive access to the franchisee of approximately 3,500 paying solid waste customers.

Lastly, neither the franchise agreement nor franchise fee authorizes Gilton to provide any other services or grant any other exclusive access within the City.

City staff recommends that the City Council adopt a resolution of the City of Livingston establishing the Franchise Fee at 15%.

ALTERNATIVE:

- (1) City Council may deny the Franchise Fee Resolution.
- (2) Council could provide alternative direction.

FISCAL IMPACT:

Projected Franchise Fee revenue is estimated to be \$305,000 to be directed to the General Fund.

ATTACHMENTS:

1. Resolution
2. Exhibit "A" Franchise Agreement
3. Exhibit "B" Franchise Area Map

RESOLUTION NO. 2024-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
ESTABLISHING A FIFTEEN (15%) PERCENT FRANCHISE FEE FOR EXCLUSIVE
ACCESS TO CITY SOLID WASTE, RECYCLING AND ORGANICS COLLECTION
SERVICES AND EXCLUSIVE ACCESS TO CITY STREETS AND RIGHTS-OF-WAY**

WHEREAS, the California Integrated Waste Management Act of 1989 (Public Resources Code sections 40000 et seq.) requires local agencies to make adequate provision for Solid Waste handling within their jurisdictions; and

WHEREAS, the City of Livingston Municipal Code authorizes the City to enter into exclusive franchise agreements for the handling, collection, transportation and disposal of solid waste, recycling and organics; and

WHEREAS, The City Council, upon completion of the competitive bidding process, awarded Gilton an exclusive solid waste franchise for collecting, transferring, recycling, composting, and disposing solid waste from all residential and/or commercial premises in the City; and

WHEREAS, Payment of the franchise fee grants Gilton the exclusive right to collect, transfer, recycle, compost, and dispose of solid waste, including receiving exclusive access to operate heavy equipment upon city streets and rights-of-way and the exclusive right to place their multiple waste containers upon city streets and rights-of-way, within the City.

WHEREAS, the City believes the franchise fee of fifteen (15%) percent is a reasonable estimate of the value of the franchise based upon the exclusive access to city property (including by not limited to city streets and rights-of-way) by the franchisee, the size of the City, potential expansion of the City, and exclusive access to the franchisee of approximately 3,500 paying solid waste customers; and

WHEREAS, the City granted to Gilton an exclusive franchise commencing April __, 2024, for the handling, collection, transportation, recycling, organics, and disposal of solid waste within the City, and the City now desires to establish and charge the franchisee a franchise fee of fifteen (15%) percent of franchisee's Gross Revenues over the life of the franchise.

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

SECTION 1. The above recitals are incorporated are hereby by reference.

SECTION 2. The resolution is exempt from the California Environmental Quality Act ("CEQA") because it can be seen with certainty that there is no possibility that it will have a significant effect on the environment. (CEQA Guidelines § 15061(b)(3).) Further, the adoption and implementation of this Ordinance is not a project, as defined in CEQA Guidelines section 15378, because it has no potential for resulting in physical change to the environment, either directly or indirectly, and is therefore not subject to environmental review under CEQA pursuant to CEQA Guidelines section 15060(c)(3).

SECTION 3. The City Council of the City of Livingston hereby establishes a franchise fee in the amount of fifteen (15%) percent of the franchisee's gross revenues for the collection, transferring, recycling, organics, and disposal of solid waste, including receiving exclusive access

to operate heavy equipment upon city streets and rights-of-way and the exclusive right to place their multiple waste containers upon city streets and rights-of-way.

SECTION 4. 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 16th day of April 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
Of the City of Livingston

APPROVED AS TO LEGAL FORM

Roy C. Santos, City Attorney

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made and entered into this 1st day of April 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; and

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; and

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; and

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; and

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. 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. Gross Revenues for this computation will exclude the City established Administration Fee. Further, the Parties hereby agree that 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 forgoing 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 elected 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 20. 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 21. 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 21, 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 22. 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 23. Reports and Adverse Information.

23.1 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:

23.1.1 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.

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

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

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

23.1.5 A current financial statement, upon request.

23.2 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.

23.3 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 24. Bonds and Security.

24.1 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.

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 25. Breach of Agreement.

25.1 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 26 of this Agreement, in addition to all other

remedies available to the City in law or equity.

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

25.2.1 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.

25.2.2 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.

25.2.3 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.

25.2.4 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.

25.2.5 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.

25.2.6 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 24.1 herein; or the full amount of the Payment Bond required under Section 24.2 herein.

25.2.7 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.

25.2.8 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.

25.2.9 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.

25.2.10 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.

25.2.11 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.

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

25.3 Cure Rights. Notwithstanding any other provision of this Section 25 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:

25.3.1 Immediately, if the City determines the Breach endangers the health, safety, or welfare of the public; or

25.3.2 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.

25.4 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 26. Termination, Liquidated Damages and other Remedies.

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

26.2 Liquidated Damages.

26.2.1 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.

26.2.2 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 24 as set forth herein, the termination of this Agreement, or both.

26.2.3 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 25. 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 24, order the Termination of the Franchise granted by this Agreement, or both.

26.3 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 27.

Section 27. 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 26, City shall have the following rights:

27.1 Rental of Collector Equipment. Notwithstanding the provisions set forth in Section 21 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.

27.2 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.

27.3 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 28. 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 29. 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 30 . 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 31. 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 32. 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 33. General Provisions.

33.1 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.

33.2 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

33.3 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.

33.4 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

33.5 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.

33.6 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.

33.7 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.

33.8 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.

33.9 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.

33.10 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.

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

33.12 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.

33.13 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.

33.14 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.

33.15 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.

33.16 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.

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

CITY OF LIVINGSTON

GILTON SOLID WASTE MANAGEMENT,
INC.

By: _____
Christopher Lopez
Interim City Manager

By: _____
Richard Gilton, President

Date: _____

Date: _____

APPROVED AS TO LEGAL FORM:

By: _____
Roy C. Santos, City Attorney

Date: _____

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 9.1.
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 card-board, 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 66261.9, 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

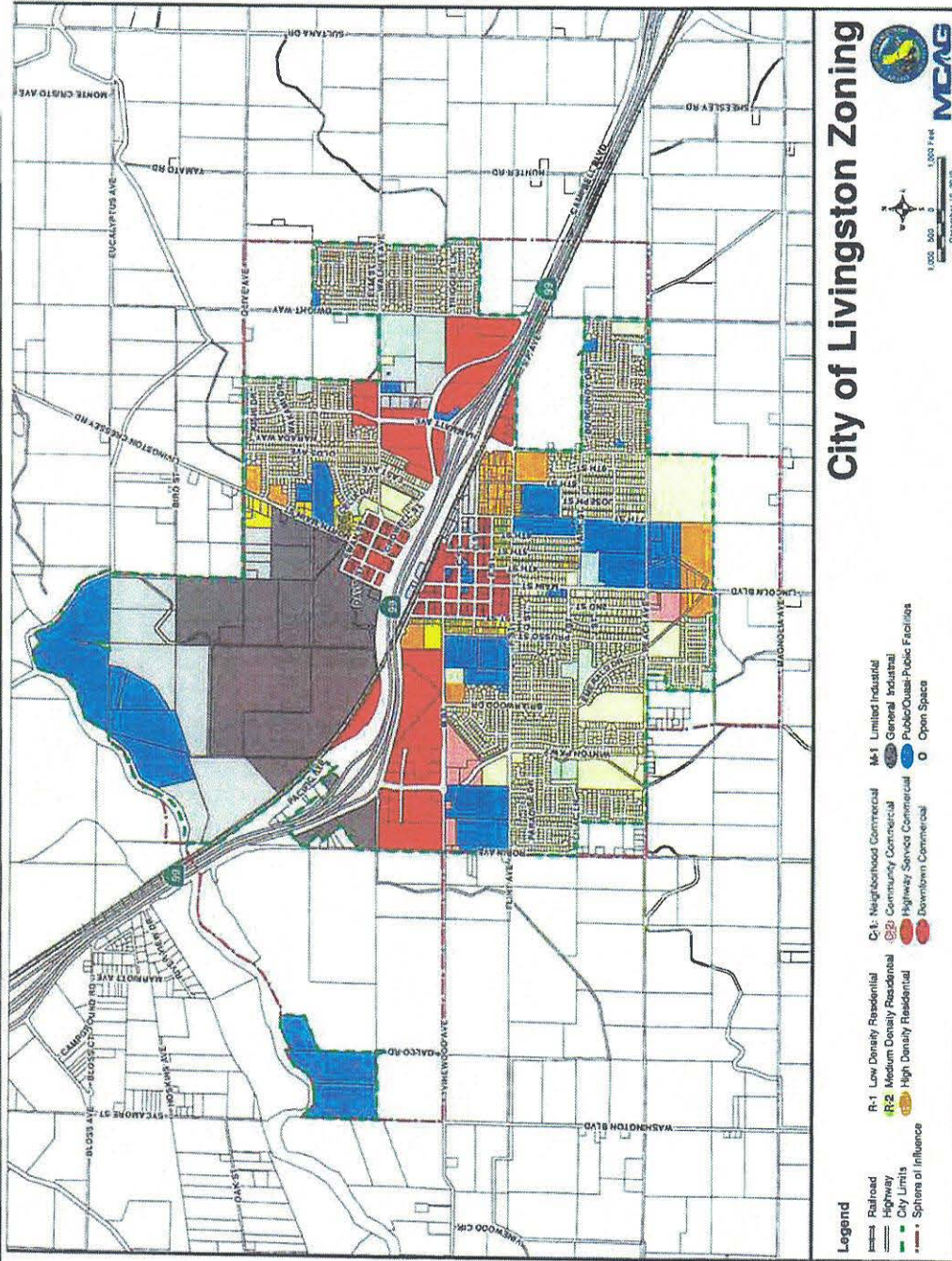


Exhibit 1

Gilton Solid Waste Management, Inc.

Revised Proposal for City of Livingston

Agreement for Solid Waste, Recyclable Materials, & Organic Waste Collection Services

Based on Increased Passthrough costs 03/01/2024

STANDARD SERVICE - WEEKLY COLLECTION ALL CONTAINERS

Two (2) Carts (1) MSW / Recycle (1) Organics	Monthly Rate
96 Gallon Carts	\$35.25
<i>Basic Bundled Service</i>	
<i>Additional carts available at a Monthly rate of \$10.00 per cart</i>	
<i>Carts are replaced as needed.</i>	

Standard Service Per Bin

Bin Size	Collection Frequency	Monthly Rate
1 Cubic Yard	1	\$67.35
1 Cubic Yard	2	\$134.65
1 Cubic Yard	3	\$201.93
1 Cubic Yard	4	\$269.21
1 Cubic Yard	5	\$336.49
1 Cubic Yard	6	\$403.85
2 Cubic Yard	1	\$134.26
2 Cubic Yard	2	\$266.11
2 Cubic Yard	3	\$401.23
2 Cubic Yard	4	\$535.41
2 Cubic Yard	5	\$669.59
2 Cubic Yard	6	\$803.85
3 Cubic Yard	1	\$198.90
3 Cubic Yard	2	\$376.21
3 Cubic Yard	3	\$566.86
3 Cubic Yard	4	\$764.64
3 Cubic Yard	5	\$961.43
3 Cubic Yard	6	\$1,160.33
4 Cubic Yard	1	\$254.58
4 Cubic Yard	2	\$496.10
4 Cubic Yard	3	\$775.89
4 Cubic Yard	4	\$1,025.84
4 Cubic Yard	5	\$1,276.65
4 Cubic Yard	6	\$1,452.41
6 Cubic Yard	1	\$357.95
6 Cubic Yard	2	\$697.76
6 Cubic Yard	3	\$1,067.07
6 Cubic Yard	4	\$1,419.66
6 Cubic Yard	5	\$1,776.83
6 Cubic Yard	6	\$2,134.78

*96 Gallon carts are available to commercial customers
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

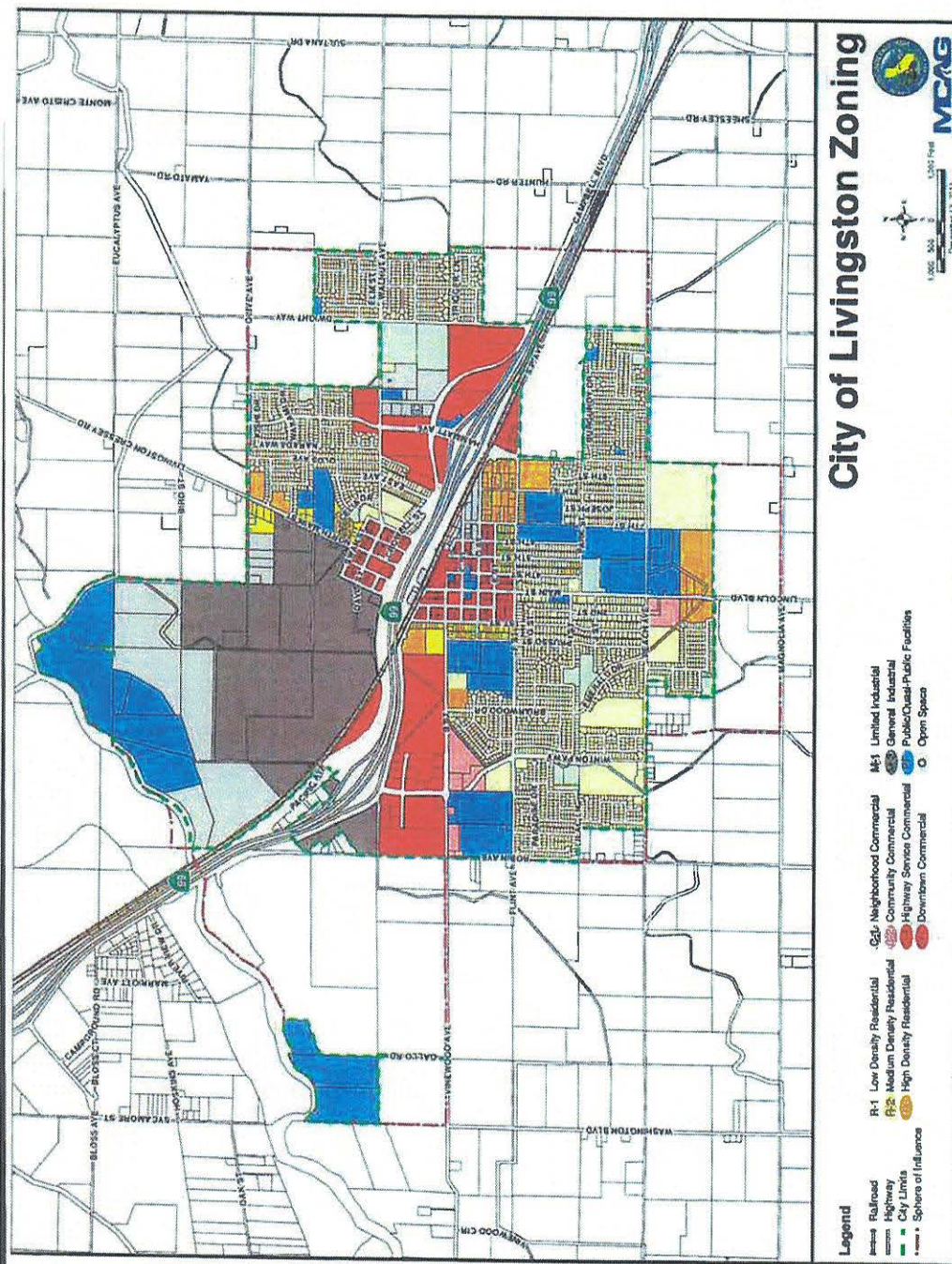
Computer Main Frame

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.

EXHIBIT B
Franchise Area





STAFF REPORT

AGENDA ITEM: Consideration of Resolution Authorizing the Interim City Manager to Execute an Agreement with HR Green, Inc. to Perform Engineering Services to Include Water Modelling, Development of a Water CIP, and Other Water Related Engineering Services as Needed

MEETING DATE: April 16, 2024

PREPARED BY: Christopher Lopez, Interim City Manager

RECOMMENDATION:

It is recommended that the City Council adopt the resolution authorizing the Interim City Manager to Execute an Agreement with HR Green, Inc. to perform Engineering Services to include water modelling, development of a water CIP, and other water related engineering services as needed.

BACKGROUND:

The City of Livingston provides potable water service to a population of approximately 15,448 residents including commercial, industrial, and public facilities within its service area boundary. The City of Livingston serves as the governing agency and sole purveyor of water within the City limits and provides water services to 2,770 metered connections based on the 202 Urban Water Management Plan.

Currently, the City utilizes eight active wells including Well Nos. 8, 9, 11, 12, 13, 14, 16, 17 which extract groundwater from the Merced Subbasin, while Well NO. 15 serves as a standby well source. The City's wells have individual capacities ranging from 800 gallons per minute (gpm) to 2,000 gpm. Collectively, the wells have a combined capacity of 10,900 gpm with water being distributed by a network of lines ranging in size from two to 16-inches in diameter. Additionally, the water system includes a 1.0MG welded steels storage tank used for water storage.

The groundwater underlying the City is part of the larger San Joaquin Valley Groundwater Basin within the San Joaquin River Hydrologic Region. By way of background, the San Joaquin Valley Groundwater Basin is divided into nine subbasins, with the City extracting from the Merced subbasin, which is classified as a critical overdraft subbasin.

Following the passages of the Sustainable Groundwater Management Act (SGMA) by California Governor Edmund G. Brown Jr. in 2014, the County of Merced and water districts and cities within the Merced Subbasin formed three Groundwater Sustainability Agencies (GSA) in accordance with SGMA of which the City of Livingston is part of the Merced Irrigation-Urban Groundwater Sustainability Agency (MIUGSA). The member agencies of this GSA include the Merced Irrigation District, City of Merced, City of Atwater, City of Livingston, Le Grand Community Services District, Plarada Community Services District, and Winton Water Sanitary District. The City and the MIUGSA are working collaboratively to achieve sustainable groundwater conditions by 2040 in accordance with SGMA.

As defined by SGMA, "a basin is subject to critical overdraft when continuation of present water management practices would probably result in significant adverse overdraft related environmental,

social, or economic impacts.” The Merced Subbasin is currently considered to be in a state of critical overdraft per the DWR Bulletin 118 Interim 2016 Update.

Over the last year, and due to decades of lack of planning and preparation for replacement of infrastructure, the City has experienced an increase in the number of failures in water infrastructure. While the City Council adopted its first CIP in several years during the FY 23/24 Budget process, the lack of planning has resulted in delayed replacement of the City’s infrastructure. This has resulted in offline wells, reduction in system pressure, and challenges with meeting daily demand for water use. This has also resulted in staff being reactionary and responding to emergencies, versus planning for system upgrades and improvements.

Staff has identified numerous challenges and during peak daily demand situations, the system is strained and struggles to meet water demand. In the instance of mechanical failures, the system struggles even more to keep up with demand. Water operations staff is well aware of these challenges.

TECHNICAL MEMORANDUM

In October 2023, the City Manager’s authorized the preparation of a Technical Memorandum to provide an assessment of the capacity of the City of Livingston’s municipal water supply with a purpose to determine if the City’s water supply wells have adequate capacity to meet the City’s maximum day demand (MDD) and peak hour demand (PHD) under current and future water supply conditions.

Based on the report, and for reliability purposes, it is desirable to maintain a firm source capacity higher than the MDD. System demand in excess of MDD required for PHD or for fire flows can come from storage. The firm source capacity of the water system is virtually the same as the MDD (7,200-gpm≈7,222-gpm). The system’s capacity is not adequate to meet PHD (9,200-gpm<10,883-gpm).

Additionally, based on the calculations provided in the Technical Memorandum, the City’s water system would not have adequate capacity to meet the increased MDD from new developments and would not have adequate capacity to meet the projected PHD based on the firm capacity.

FUTURE SUPPLY CONDITIONS

The City is planning to construct two new wells, one of which (Well 19) will have well head TCP treatment, and two new centralized treatment facilities to remove TCP from the groundwater. The Centralized Facilities will also include water storage tanks and Booster Pumps. The following is a brief description of each facility:

1. Arakelian Park Centralized Treatment Facility
 - a. This facility will receive water from Well Nos. 12, 13 and 17 and treat it using GAC adsorption for the removal of TCP. Treated water will be discharged into a 1-million-gallon (MG) storage tank.
 - b. A 6,000-gpm booster pump station will repressurize the treated water into the distribution system.
2. Well 8 Centralized Treatment Facility
 - c. This facility will receive water from the new Well No. 8A (Well 8 replacement) and from future Well No. 18. The production of these wells is still unknown. For purposes of this report, it is assumed that Well No. 18 will produce 1,500-gpm. Treated water will be discharged into a 1.5 MG storage tank. A 4,500-gpm booster pump station will repressurize the treated water into the distribution system.
3. Well 19 with Treatment Facility
 - d. This facility will consist of the new Well 19 with well head treatment for the removal of TCP. A booster pump station will repressurize the treated water into the distribution system.

The City's total production capacity would be 11,300-gpm and the firm production capacity would be 9,300-gpm or 13.39 MGD. Therefore, the City would have adequate capacity to supply MDD to the new developments. With the new improvements, the City's PHD capacity would increase to 16,300-gpm which would also be adequate to supply the new developments.

Once the new TCP improvements are completed and based on the projected firm capacity of 9,300-gpm and 7,455-gpm MDD, the City would have approximately 25 percent remaining capacity for any future new developments beyond the presently entitled multifamily and commercial projects. The City would need to add more new wells and/or treated surface water to accommodate growth beyond that.

Existing System

There is currently no mechanism in place that allows City staff to determine available water capacity, and the respective water impacts based on various development projects. This type of information is critical and will allow staff to determine the impacts of various projects on the overall impacts to the City's supply of water.

With this information, staff would be able to make sound, rational, and data driven recommendations to the Mayor and City Council. In addition, the development community has requested this type of information to understand their respective impacts to the overall water system. This will also help in future planning.

HR Green Proposal

The HR Green proposal will accomplish the following:

1. Review existing GIS mapping and atlases of water system
 - a. Review the City's 2007 Water Distribution System Water Plan
 - b. Review system improvements and studies completed since 2007
 - c. Review studies for specific future property developments
 - d. Review the latest Comprehensive Land-use and population projections
2. Hydraulic Analysis
 - a. HR Green to create and calibrate a complete water distribution system model
 - b. Work with City staff to identify locations for additional fire hydrant flow and pressure testing as required
 - c. Identify shortcomings in the existing water distribution system
 - d. Use local fire flow guidelines to determine system fire flow needs
3. Assess the water system and waste water treatment plant, compile data obtained in Item 1 and review the current documented risk and resiliency assessment to determine system failure points, system upgrades, etc. to create a Water CIP

DISCUSSION

Based on the Technical Memorandum, and the failures that continue to plague the system, staff is recommending the adoption of this resolution to identify the larger and broader system enhancements needed for the water system. This would help identify future projects, and ensure that staff has the most updated information to ensure that the existing water and wastewater systems have information related to planned projects to ensure optimal performance.

While the city is currently moving forward on additional projects to increase capacity, this item will ensure that the city is protecting its current investments, and also preparing for replacements and enhancements to its existing infrastructure.

FISCAL IMPACT

The proposed agreement for project deliverables not to exceed \$124,000 which will be funded by a new appropriation from uncommitted and available reserves.

ATTACHMENTS:

1. Resolution
2. HR Green Proposal for Water Sufficiency Assessment

RESOLUTION NO. 2024-

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON
AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AGREEMENT
WITH HR GREEN, INC. TO PERFORM ENGINEERING SERVICES TO INCLUDE
WATER MODELLING, DEVELOPMENT OF A WATER COMPREHENSIVE CAPITAL
IMPROVEMENT PROGRAM (CIP), AND OTHER WATER RELATED ENGINEERING
SERVICES AS NEEDED**

WHEREAS, the City Council desires to adhere to the City of Livingston Code; and

WHEREAS, the City of Livingston has a responsibility to ensure its water system remains reliable, sufficient, and in an optimal condition; and

WHEREAS, the City has not updated its water model in approximately 17 years resulting in a lack of updated and reliable understanding of the City's water system; and

WHEREAS, due to a series of failures over the last year, the City is needing expertise in evaluating and recommending improvements to the existing system; and

WHEREAS, staff identified and Council adopted a "One Year CIP" in order to prioritize needs for one year; and

WHEREAS, the City has lacked a comprehensive multi-year CIP to provide for long term prioritization of replacement of its existing water infrastructure; and

WHEREAS, the City is seeking a water model that allows staff to identify the impacts of current and future developments on the City's ability to provide water to the community; and

WHEREAS, the City is seeking information on the projects necessary to assure system reliability which will be used to pursue grant funding and other requests from its state and federal representatives; and

WHEREAS, staff needs assistance in evaluating, assessing, and making recommendations to ensure the City's infrastructure remains in an optimal operation

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

Section 1. The City Council finds a benefit in obtaining water expertise assistance and thus does hereby authorize a professional services agreement with HR Green, Inc. to complete the following:

1. Review existing GIS mapping and atlases of water system
 - a. Review the City's 2007 Water Distribution System Water Plan
 - b. Review system improvements and studies completed since 2007
 - c. Review studies for specific future property developments
 - d. Review the latest Comprehensive Land-use and population projections
2. Hydraulic Analysis
 - a. HR Green to create and calibrate a complete water distribution system model

- b. Work with City staff to identify locations for additional fire hydrant flow and pressure testing as required
 - c. Identify shortcomings in the existing water distribution system
 - d. Use local fire flow guidelines to determine system fire flow needs
3. Assess the water system and wastewater treatment plant, compile data obtained in Item 1 and review the current documented risk and resiliency assessment to determine system failure points, system upgrades, etc. to create a CIP
4. Additional water, wastewater, and other engineering work necessary to update long term plans for the viability and growth of the community

Section 2. Authorize the Interim City Manager to negotiate and execute a Professional Services Agreement for Water Engineering expertise in accordance with legal concurrence with a contract amount not to exceed \$144,000 for the term of the 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 16th day of April 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



▶ 1260 Corona Pointe Court | Suite 305
Corona, CA 92879
Main 855.903.4742 + **Fax** 713.965.0044
▶ HRGREEN.COM

April 3, 2024

Christopher Lopez
Interim City Manager
City of Livingston
1416 C Street
Livingston, CA 95334

Re: Proposal for Water Sufficiency Assessment

Dear Chris,

Per your Request for a scope and fee proposal for the subject project, **HR Green, Inc. (HR Green)** is ready to provide the necessary services to perform the Water Sufficiency Assessment.

PROJECT UNDERSTANDING

The City of Livingston (City) water system serves approximately 15,000 residents. It is served by three well fields (eight wells with one in production), a water treatment plant, a 1.0MGD water storage tower and 36 miles of watermains. The City's water is available through groundwater aquifers. Due to the recently proposed increase in housing and a state conducted water availability study, the City seeks to evaluate the current system capacity to determine future City growth plans. The City also requests to develop a Capital Improvement Plan (CIP) to implement into the budget.

HR Green understands that the Scope of Services will be phased in three separate tasks:

- Task 1: Assess the capacity of the current water system by updating the existing water model, completed in 2007
- Task 2: Assess the water system (3 well fields, 1 WTP, 1 Tower). This will be used to create a Capital Improvement Plan (CIP).

PROPOSED SCOPE OF SERVICES

A. Project Management and Coordination

- a. Provide project management services for duration of the project.
- b. Project Kick-off Meeting: Schedule a project kick-off meeting with the City staff to discuss in detail the project tasks.
- c. Review existing reports related to water demand, pump capacity and past water system studies as provided by the City.

B. Assess the capacity of the current water system by updating the existing water model (Task 1)

- a. Review existing GIS mapping and atlases of water system.
 - Based on discussions, HR Green has assumed that the City has the existing water atlases in GIS format
 - Review the City's 2007 Water Distribution System Water System Plan
 - Review system improvements and studies completed since the 2007 Water Distribution System Master Plan was completed. It is assumed this information will be gathered and summarized by the City and provided to HR Green
 - Review studies for specific future property developments.

- Review the latest Comprehensive Plan land-use and population projections
 - Meet with the City to discuss proposed development and areas of concern in existing water system
- b. Hydraulic Analysis
- HR Green will create and calibrate a complete water distribution system model using WaterGEMS from the GIS database and elevations provided by the City.
 - City will use the total system average and peak day demand data and also a record of the top 10 highest demands, with respective flows during the peak day, as available. Using this information, the City will input the highest users in the model at the point of use (as provided by the City). The remaining system demands for residential and commercial customers will be distributed evenly throughout the City
 - HR Green will work together with the City's staff to identify locations for additional fire hydrant flow and pressure testing as required to calibrate the water model. The City will gather additional hydrant flow and pressure test data at the sites identified
 - Using the existing and any additional hydrant flow test data, HR Green will calibrate the water distribution system model. HR Green will input the hydrant flows and pressures and pumping flows and pressures into the computer model and adjust the model parameters so that the model is calibrated to match the measured conditions as closely as feasible. It is assumed that the City will forward the hydrant flow testing data to HR Green.
 - Using the City's population projections and land use information from the latest (Year) Comprehensive Plan, develop a population and corresponding water demand projection for the next 5- and 20-year planning periods. Include projected average day, peak day and peak hour demands.
 - Using the calibrated water distribution system model, land use, and projected water demands accounting for future projected expansion/ growth objectives, develop a water distribution system model for 5 and 20 years in the future.
 - Identify the shortcomings in the existing water distribution system from the calibrated water distribution system model for each planning period and provide recommendations for improvements.
 - Use the local fire flow guidelines to determine system fire flow needs. Program and execute a series of fire flow model scenarios, for existing conditions and future scenarios identified above, assuming fire flows at various locations throughout the system. Locations will be geographically distributed to sufficiently evaluate all areas of the system and selected in collaboration with City's staff. Compare results with required fire flows at each location, respectively, and identify any deficiencies. Provide a database listing of the pipe segments with the following information during peak hour demands:
 - Pressure
 - Flow velocities
 - Headloss per 100 feet of pipe
 - Pressure drop relative to static system pressure
 - Fire flow
- C. Assess the water system (3 well fields, 1 WTP, 1 Tower), compile the data obtained in item A and review the current documented risk and resiliency assessment to determine system failure points, system upgrades, etc. This will be used to create a Capital Improvement Plan (CIP) (Task 2).**
- a. Desktop Assessment of City's water and wastewater Infrastructure
- Collect and analyze the City's records on the water and sewer system including, but not limited to, water treatment plants and water distribution system, wastewater treatment plant, GIS data, record drawings, maintenance records, sewer televising videos, flow data, sewer back-up data, water main break inventory, etc.
 - Assess the City's existing staffing levels compared to current and upcoming regulatory requirements and programs. Incorporate recommendations into the CIP.

- b. Site Condition Assessment
 - Conduct two (2) site visits to assess the condition of water treatment plant, wastewater treatment plant, booster stations, lift station structures, mechanical equipment, electrical equipment, ground storage tanks, wells, water towers, PRV's, and control systems.
 - During the site visit, HR Green will obtain input from the City staff on the existing equipment performance and historical operational challenges.
 - Review the Trichloropropane (TCP) contamination issues (due to the agriculture activities surrounding the city) and determine betterments to treatment to address the issue. Consult with treatment equipment vendors to get required treatment units sizing and budgetary cost opinions. No detailed design is included in the proposed scope of services
 - The information gathered during our assessment of the water and sewer systems and site visits will be used to develop a list of capital improvements needed over the next five fiscal years
- c. Prioritized Project List
 - Conduct virtual Teams meeting with key City staff to prioritize the list of potential projects
 - Finalize the prioritized project list based on City input
- d. Develop Budgetary Cost Estimates
 - Develop budgetary cost estimates for each project on the prioritized list
 - Consult with treatment equipment vendors for equipment sizing to address the TCP contamination issue at one existing groundwater well and obtain budgetary cost opinions for improvements to the WTP at site. HR Green has budgeted 20 hours for this effort
- e. Finalize Capital Improvement Program
 - Formalize the Capital Improvement Program with prioritized water/sewer projects, recommended implementation timelines, and anticipated costs
 - Prepare a supporting memorandum for the CIP

DELIVERABLES AND PROJECT SCHEDULE

Task 1:

- Summary report quantifying current and projected water demands, based on two multi-family development applications submitted to the City (City to provide), compared to availability of water
- Water model of the current system.

Task 2:

- Draft Capital Improvement Program and supporting memorandum
- Final Capital Improvement Program and supporting memorandum

HR Green will develop a schedule in consultation with the City at project kickoff.

TASKS NOT INCLUDED IN PROPOSED SCOPE OF SERVICES

The following items are not included as part of the proposed scope of services:

- Geotechnical, Environmental, Survey, Hydrant/Pressure Testing and Hydrogeology services.
- Water rights analysis



- Water/Sewer Rate Studies
- Sewer modeling
- Additional site visits or on-site meetings beyond what is described above.
- Legal services
- Engineering design and construction services

Supplemental services not included in the proposed scope can be provided by HR Green under separate agreement, if desired.

PROPOSED FEE

HR Green proposes to provide these services as follows in accordance with our attached standard fee schedule.

Task 1: Time and Materials basis with an estimated fee of \$47,000

Task 2: Time and Materials basis with an estimated fee of \$77,000

If you have any questions, please contact me at 951-475-3619 or via email at sloriso@hrgreen.com.

Sincerely,

HR GREEN PACIFIC, INC.

A handwritten signature in blue ink, appearing to read 'SLR'.

Steve Loriso, PE, QSD/QSP
Group Leader



STAFF REPORT

AGENDA ITEM: Discussion and Direction regarding Community Facilities District (CFD) 2005-1 and the Respective Expenditure Against this Fund.

MEETING DATE: April 16, 2024

FROM: Christopher Lopez, Interim City Manager

RECOMMENDATION:

This item is included for the City Council to have a discussion and provide direction regarding Community Facilities District (CFD) 2005-1.

In preparation of the FY 24/25 budget, staff has identified approximately \$200,000 in unallocated expenditures against this fund.

Staff is seeking direction on how the Council would like to allocate this funding in preparation of the FY 24/25 Budget.