



LINDSAY CITY COUNCIL REGULAR MEETING AGENDA

City Hall, 251 E. Honolulu St., Lindsay, CA 93247

Notice is hereby given that the Lindsay City Council will hold a Regular Meeting on February 8, 2022 at 6:00 PM in person and via webinar. The webinar address for members of the public is <https://zoom.us/j/99279557087>.

Persons with disabilities who may need assistance should contact the City Clerk at least 24 hours prior to the meeting at (559) 562-7102 ext. 8011 or via email at lindsay.cityclerk@lindsay.ca.us.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PLEDGE**

Led by Council Member SERNA.

4. **APPROVAL OF AGENDA**
5. **PUBLIC COMMENT**

The public is invited to comment on any subject under the jurisdiction of the Lindsay City Council. Please note that speakers that wish to comment on a Regular Item or Public Hearing on tonight's agenda will have an opportunity to speak when public comment for that item is requested by the Mayor. Comments shall be limited to three (3) minutes per person, with thirty (30) minutes for the total comment period, unless otherwise indicated by the Mayor. The public may also choose to submit a comment before the meeting via email. Public comments received via email will be distributed to the Council prior to the start of the meeting and incorporated into the official minutes; however, they will not be read aloud. Under state law, matters presented under public comment cannot be acted upon by the Council at this time.

6. **COUNCIL REPORT**
7. **CITY MANAGER REPORT**
8. **RECOGNITIONS**

8.1 Proclamation Recognizing Lieutenant Nicholas Nave as the 14th Senate District *Firefighter of the Year* (p. 4)

9. **PRESENTATIONS**

9.1 Quarterly Financial Update

Presented by Juana Espinoza, Director of Finance

9.2 Department of Public Safety Fire Division Update (pp. 5-9)

Presented by Chief Rob Moore, Interim Director of Public Safety

10. CONSENT CALENDAR

Routine items approved in one motion unless an item is pulled for discussion.

10.1 Waive Full Reading of All Ordinances In Full and Authorize Reading by Title Only

10.2 Minutes from January 25, 2022 City Council Regular Meeting (pp. 10-14)

10.3 Second Reading of **Ordinance 595**, An Ordinance of the City of Lindsay Amending Title 3 of the Lindsay Municipal Code, Amending Utility Users Tax (pp. 15-30)

10.4 Minute Order Approval of the Subaward Agreement Regarding FY 2021 State Homeland Security Grant Programs Funding for Equipment, Planning, Administration, Training, and Exercises (pp. 31-57)

10.5 Minute Order Authorization to Enter Into an Agreement with ERS Industrial Services, Inc. for the Water Treatment Plant Filter Bank A Renovation Project and Granting City Manager or Their Designee Authorization to Execute Any Documents Thereto (pp. 58-63)

11. ACTION ITEMS

11.1 Consider the Minute Order Approval of Proposed Contract Change Order #3 (CCO#3) for the Wastewater Influent and Effluent Flow Control & Monitoring Project (pp. 64-67)

Presented by Edna Hubbard, Engineer Technician

11.2 Consider the Minute Order Approval of City Services Manager/Inspector Job Description (pp. 68-72)

Presented by Joseph M. Tanner, City Manager

11.3 Consider the Approval of **Resolution 22-07**, A Resolution Approving the Lindsay City Council Goals, Strategies, and Action Plan for 2022-2027 (pp. 73-82)

Presented by Joseph M. Tanner, City Manager

11.4 Consider Minute Order Authorization to Enter Into an Agreement with VL Friday Night Market for Services Regarding the Friday Night Market and Granting City Manager Authorization to Execute Any Documents Thereto (pp. 83-95)

Presented by Joseph M. Tanner, City Manager

12. PUBLIC HEARINGS

12.1 Consider the Approval of **Resolution 22-06**, A Resolution Establishing Fees for Permits Allowing for Mobile Food Vending Operations (pp. 96-106)

Presented by Ed Real, Assistant City Planner

13. EXECUTIVE (CLOSED) SESSION

13.1 Conference with Real Property Negotiators

Pursuant to Cal Gov. Code § 54956.8

Property: 181 East Honolulu Street, Lindsay, CA 93247 APN 205-263-006-000

Agency Negotiator: Joseph M. Tanner, City of Lindsay

Negotiating Parties: Mt. Whitney Place Associates

Under Negotiation: Terms and Conditions of Potential Sale

13.2 Conference with Legal Counsel – Anticipated Litigation

Pursuant to Cal Gov. Code § 54956(d)(2)

Significant exposure to litigation re: California State Auditor Report 2020-804

13.3 Conference with Real Property Negotiators

Pursuant to Cal Gov. Code § 54956.8

Property: 365 N Sweetbriar Ave, Lindsay, CA 93247 APN 205-293-015-000

Agency Negotiator: Joseph M. Tanner, City of Lindsay

Negotiating Parties: California Department of Housing and Community Development

Under Negotiation: Terms and Conditions of Potential Sale

14. REQUEST FOR FUTURE ITEMS

15. ADJOURNMENT

Lindsay City Council meetings are held in the City Council Chambers at 251 E. Honolulu Street in Lindsay, California beginning at 6:00 P.M. on the second and fourth Tuesday of every month unless otherwise noticed. Materials related to an Agenda item submitted to the legislative body after distribution of the Agenda Packet are available for public inspection in the office of the City Clerk during normal business hours. Complete agenda is available at www.lindsay.ca.us. In compliance with the Americans with Disabilities Act & Ralph M. Brown Act, if you need special assistance to participate in this meeting, or to be able to access this agenda and documents in the agenda packet, please contact the office of the Deputy City Clerk at (559) 562-7102 x 8025. Notification 48 hours prior to the meeting will enable the City to ensure accessibility to this meeting and/or provision of an alternative format of the agenda and documents in the agenda packet.



Proclamation

WHEREAS, on January 28, 2022, the Honorable Senator Melissa Hurtado of the 14th Senate District of California held the first annual “Spirit of SD 14 Awards”; and

WHEREAS, the Office of Senator Hurtado carefully selected the recognized persons for this year’s Spirit of SD 14 to represent the dedication, tenacity, and spirit of the Central Valley; and

WHEREAS, Lindsay’s very own Lieutenant Nicholas Nave was recognized as *Firefighter of the Year* for the entire 14th Senate District which spans Kern, Tulare, Fresno, and Kings County; and

WHEREAS, the City of Lindsay is especially appreciative of the dual police and fire roles that its public safety officers perform, and proud of Lieutenant Nave’s recognition at the state level for going above and beyond in his service to the 14th Senate District and the Lindsay community.

NOW, THEREFORE, BE IT RESOLVED, that I, Ramona Caudillo, Mayor of the City of Lindsay, along with members of the Lindsay City Council, do hereby formally recognize Lieutenant Nicholas Nave as the first 14th Senate District *Firefighter of the Year*.

IN WITNESS WHEREOF, I hereby set my hand and caused the Seal of the City of Lindsay to be affixed this 8th Day of February 2022.

LINDSAY CITY COUNCIL

Ramona Caudillo, Mayor



Lindsay Department of Public Safety
Rob Moore – Interim Director of Public Safety
185 N. Gale Hill Ave
Lindsay, Ca 93247
Tel: (559)562-2511
Fax: (559)562-7126

Lindsay Department of Public Safety: Fire Analysis and Recommendations

Background

In terms of organizational structure, the combination of Police and Fire under a single department is not a new concept, but an old and not very successful concept, if not deployed properly. Lindsay is one of only three departments in the state of California that uses this concept. In its inception, it looked feasible on paper as the author painted a perfect world picture of having 26 staff that were both police and fire trained. With the author's model, the department would maintain an efficient number of staffing at any given time to provide adequate coverage for both police and fire needs. Also at the time, the proper training could be obtained in-house at a reasonable cost. This is no longer the case today.

There are two other departments in the state that provide combined Police and Fire service in the way in which the model intended. Police officers are on duty as police officers, and firefighters are on duty as firefighters, they do not have a dual response role. They switch off on a rotation and are cross trained in both fire and police.

With Lindsay's current staffing levels, the original Public Safety Model is not feasible. Only having two officers on at one time does not provide sufficient staffing levels for police services only, let alone simultaneously providing fire services as well. The City is also unable to obtain firefighter 1 certification as was done in the past, further explanation provided in the Training section below.

Analysis: Staffing Levels

At the start of my employment with the City of Lindsay in October 2021, staffing levels were as follows:

- 1 Chief of Police/Director of Public Safety
- 2 Lieutenants
 - 1 covering Police
 - 1 covering Fire
- 3 Sergeants
- 8 Officers

- 2 of which are out per Labor Code 4850
- 1 Firefighter Lieutenant
 - New hire

Per the Memorandum of Understanding (MOU) between the City of Lindsay and the Lindsay Public Safety Officers' Association, two officers must be on duty on each shift, one being a supervisor. Keep in mind, these officers are required to respond to police and fire services as well. Having only two officers on a shift is not ideal due to several circumstances. Many calls for service can require two officers on one call. When an officer makes an arrest, this leaves only one officer to respond to other calls for service, no matter the type of call or the potential associated level of violence. This does not include the potential for fire services that may be needed as well.

There have been situations where officers have been on a fire service call, dressed out in fire gear, when an in-progress priority police service call comes in. This poses a completely different problem in terms of response to public safety.

Analysis: Training

Training is a very dynamic topic for the Lindsay Department of Public Safety. Not only are staff police officers, but they are also firefighters as well. This is a challenge on many levels, but for training, it is twofold and very expensive. Currently, it is hard enough to keep police officers trained due to the ongoing required training as well as the mandated training that becomes extremely difficult to stay contemporary with, due to constant changes. A purpose trained employee is much easier to employ, maintain and retain. Recruitment will also be much better for the simple fact that most people choose to pursue a career path in either Police or Fire, not both.

As it stands currently, a Police Officer must attend a Police Academy that is approximately 6 months long. This is training that is required by P.O.S.T. before an officer can even be employed as a peace officer. The City currently employs officers that have obtained their Firefighter-1 certification in the past through in-house training. Things have changed over time, and staff is no longer able to obtain this certification as has been done in the past. Now, officers must go through three separate trainings to achieve the Firefighter-1 certification, all three certifications taking approximately 18 months to complete.

Given the situation as it stands and the combined Police and Fire model, the City would need to invest an additional 18 months of paid training to achieve the Firefighter-1 status for any future police officers hired. This will come at a great expense. Also, during this 18-month period, the City would need to comply with required police training. It should also be noted, for the most part, firefighters apply for positions with their Firefighter-1 status in hand. This is not the case when a police officer applies for a police position, they most often have their POST certificate, but have no fire experience at all.

Staffing levels are somewhat low for a city of Lindsay's size, especially being a Department of Public Safety. FBI statistical reporting when it comes to recommended staffing levels by definition does not take into account each city's unique dynamics. As such, it is recommended to determine staffing levels with surrounding peer cities as example and take into account Lindsay's specific needs, statistics and officer's duties. Not all cities demand the same duties from their police officers, and Lindsay is the only city in the area with staff that have a dual first responder role.

Recommendation No. 1: Department Reorganization

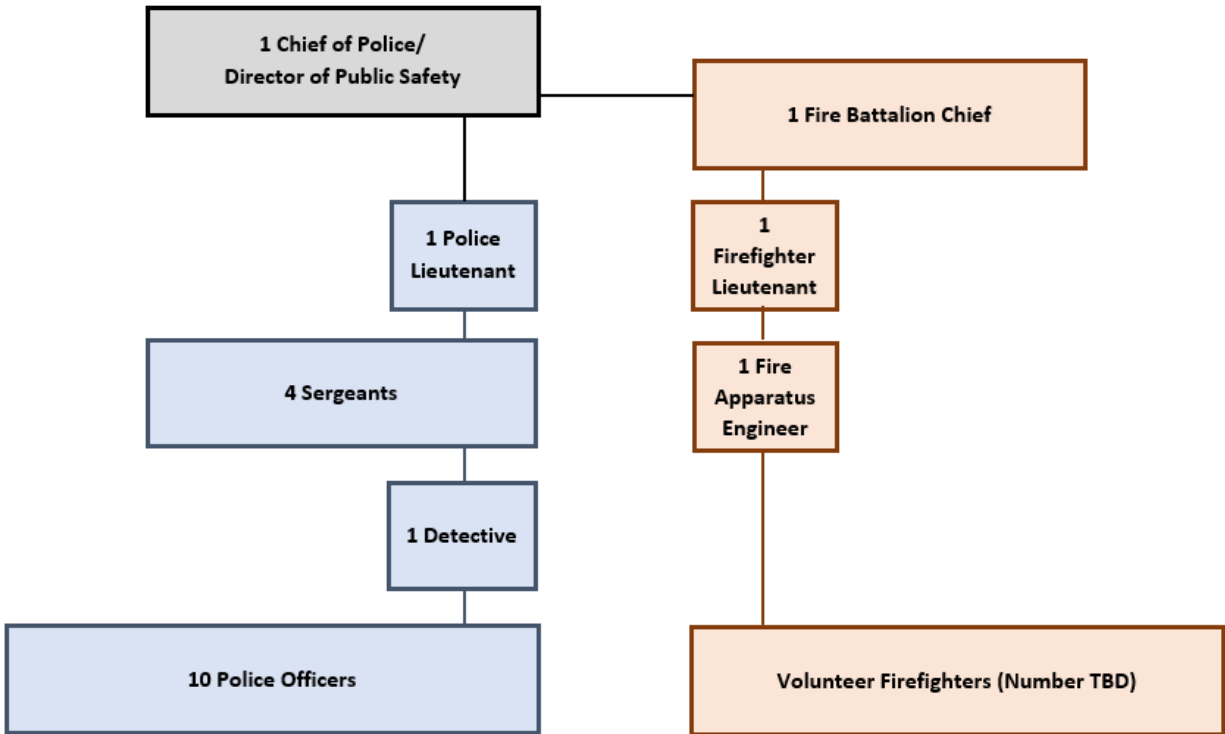
It is my official recommendation as Interim Chief of the department that Lindsay return to a separate Police and Fire model. Fire can be staffed with minimal staffing and still achieve the levels of fire coverage needed. This will be supplemented with the development of a volunteer firefighter program and can be successful. There is also the potential to be able to send the department's Rescue Fire Truck out for mutual aid response and in this way generate revenue for the city; however, the City would have to significantly build the volunteer base before participating in this program. As a useful example, the Woodlake District Fire Department was able to generate \$400,000.00 last year alone utilizing this program. This presents an excellent opportunity for the City's Rescue Fire Truck to bring money to the City by to OES mutual aids.

Recommendation No. 2: Increased Staffing

The minimum recommendation for staffing levels are as follows in conjunction with Department reorganization.

- 1 Chief of Police/Director of Public Safety
- 1 Police Lieutenant
- 4 Sergeants
- 1 Detective
- 10 Officers
- 1 Firefighter Battalion Chief (with peace officer powers for arson investigations)
- 1 Firefighter Lieutenant
- 1 Fire Apparatus Engineer
- Volunteer Firefighters (Number TBD)

Figure 1. Proposed Department Reorganization and Increased Staffing



The above would be contingent on shifting one Lieutenant Position from the Police Department, to the Fire Department (Lt. Nave) as a Fire Battalion Chief. The Police Chief/Director of Public Safety would continue to oversee the Fire Department until it was determined feasible to completely split Fire from Police. Once the split could be accomplished, a Fire Chief would need to be promoted from within or newly hired. Housing would continue to remain the same with some minor adjustments. Police and Fire services could then function as standalone disciplines and departments, providing a greater and much more efficient service for the citizens of Lindsay. Once the position of Fire Chief was established, the position of Battalion Chief could be eliminated and reclassified to a lesser title, with adjusted job duties at a much-reduced rate of pay.

Next Steps

The following constitute the recommended next steps to get the Fire Department off the ground. This will be for a basic start up in order to assess where the department finds itself and where it needs to be within no more than 6 months. At the end of our target date, the City will once again assess staffing levels, calls for service, logistics etc., to determine future planning for the departments.

1. Hire one additional Firefighter (engineer). This is the level below a Fire Lieutenant that can still drive and operate a firetruck.
2. Develop the rate of pay to adopt the ABC/48-96 schedule for 24-hour fire coverage per the MOU.
3. Bring on 4-6 volunteers to start with.
4. Minor adjustments to the fire quarters to accommodate 24 hours stays.
5. Fire Dispatching services. This may be able to come later, but the current quote from Tulare County Fire is at approximately \$80,000. This figure will be reduced provided the City participates in mutual aid with the County on fire services. This is a recommended course of action because Lindsay will receive the same response from County in the event of structure and/or larger fires. The mutual aid agreement greatly reduces the Tulare County Fire dispatching services, but also provides much greater fire response in return. This will basically be a great force multiplier.
6. Transition Lt. Nave's position over to Fire as a Firefighter Battalion Chief. He will keep his police officer powers in order to investigate Arson cases. He will not be a Lindsay Police Officer, but rather a Sworn Firefighter. Lt. Nave has a great deal of knowledge in firefighting, but he will need to further his fire training for the next level should that be the ultimate direction we decide to pursue.

The above can be accomplished in short order, and at a minimal cost to start. Over the following months, the department will assess the budget in order to determine what monies need to be allocated to fire from the combined Public Safety budget. The department will also utilize the existing police officers that have fire training to supplement fire response until the City is able to hire sufficient trained and dedicated fire volunteers to sustain our goals.



**LINDSAY CITY COUNCIL
REGULAR MEETING AGENDA
MINUTES**

City Hall, 251 E. Honolulu St., Lindsay, CA 93247

Notice is hereby given that the Lindsay City Council will hold a Regular Meeting on January 25, 2022 at 6:00 PM in person and via webinar. The webinar address for members of the public is <https://zoom.us/j/99279557087>.

Persons with disabilities who may need assistance should contact the City Clerk at least 24 hours prior to the meeting at (559) 562-7102 ext. 8011 or via email at lindsay.cityclerk@lindsay.ca.us.

1. CALL TO ORDER

2. ROLL CALL

Present	Council Member SERNA Mayor Pro Tem FLORES Mayor CAUDILLO Council Member CERROS Council Member SANCHEZ
Absent	N/A

3. PLEDGE

Led by Council Member SANCHEZ.

4. APPROVAL OF AGENDA

- Presentation Item 9.2 moved to the next regular meeting.

Motion to Approve Agenda							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	CAUDILLO	(5-0) Approved	Aye	Aye	Aye	Aye	Aye

5. PUBLIC COMMENT

- No comment.

6. COUNCIL REPORT

- Mayor Pro Tem FLORES shared that DACA application assistance is being provided at Porterville College.

- Council Member CERROS shared regarding the January 24, 2022 EKTGSA meeting and water supply issues in the Central Valley; unfortunately the Lindsay Bank of America branch will be closing on March 3, 2022.
- Mayor CAUDILLO shared regarding the City Selection Committee meeting held on January 19, 2022; recent training regarding Council protocol and Council-Manager relations; also attended the January 21, 2022 event where Bank of Sierra officially presented a donation plaque to the City for the property at 284 E. Hermosa St.

7. CITY MANAGER REPORT

- The most recent COVID situation report showed alarming numbers in Tulare County.
- Applications for mortgage and utility assistance through CDBG funds are open for Lindsay residents.
- The RFP for the demolition of the packing house where the site of the future transit center will be situated is set to be released shortly; another RFP for tree-trimming services for palm trees along Hermosa is also forthcoming.

8. CONSENT CALENDAR

Routine items approved in one motion unless an item is pulled for discussion.

- 8.1 Waive Full Reading of All Ordinances In Full and Authorize Reading by Title Only
- 8.2 Minutes from January 11, 2022 City Council Regular Meeting (pp. 5-9)
- 8.3 Second Reading of **Ordinance 594**, An Ordinance of the City of Lindsay Amending Chapter 5.28.040 of Title 5 of the Lindsay Municipal Code, Amending Cannabis Dispensaries Permitted Uses And Zoning; and Amending Chapter 18.10.030 of Title 18 of the Lindsay Municipal Code, Central Commercial District Conditional Uses (pp. 10-14)
- 8.4 Minute Order Approval of Request for Proposal (RFP) for Audit Services (pp. 15-46)
- 8.5 Minute Order Approval of Appointment of Council Member Representatives to Boards, Agencies, and Committees (pp. 47-49)
- 8.6 Minute Order Approval of the City Council Regular Meeting Schedule for January – December 2022 (pp. 50-51)
- 8.7 Consider the Minute Order Approval of Sewer Connection for Assessor’s Parcel Number (APN) 202-152-018 (pp. 52-54)
- 8.8 Consider the 1) Approval of **Resolution 22-01**, Declaring a Portion of Unused Public Property Exempt Surplus Land Under the Surplus Land Act; and 2) Minute Order Authorization of the Sale of Said Property to Millbrook Investments, LLC for the Development of a New Single-Family Subdivision (pp. 55-58)
- 8.9 Consider the Approval of **Resolution 22-04**, Authorizing Submittal Of Application(s) for All CalRecycle for Grants For Which The City Of Lindsay Is Eligible (pp. 59-62)
- 8.10 Warrant List for December 29, 2021 through January 19, 2022 (pp. 63-71)

Motion to Approve Consent Calendar							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CAUDILLO	SERNA	(5-0) Approved	Aye	Aye	Aye	Aye	Aye

9. PRESENTATIONS

9.1 Update from the Lindsay High School Associated Student Body (ASB) Representative

Presented by Rogelio Castillo, ASB Representative

9.2 City Council Goals and Objectives 2022-2023

Presented by Joseph M. Tanner, City Manager

9.3 Quarterly Financial Update

Presented by Juana Espinoza, Finance Director

10. PUBLIC HEARINGS

10.1 First Reading of Ordinance 595, An Ordinance of the City of Lindsay Amending Title 3 of the Lindsay Municipal Code, Amending Utility Users Tax (pp. 72-103)

- a. Consider Approval of **Resolution 22-02**, Authorizing the City Manager to Execute Agreement with the California Department of Tax and Fee Administration for Implementation of the Local Prepaid Mobile Telephony Services Collection Act
- b. Consider the Approval of **Resolution 22-03**, Authorizing the Examination OF Prepaid Mobile Telephony Service's Surcharge and Local Charge Records

Presented by Juana Espinoza, Finance Director

- Mayor CAUDILLO opened the public hearing at 6:54 PM; no public comment was received; the public hearing was closed at 6:54 PM.

Motion to Jointly Approve First Reading of Ordinance 595, Resolution 22-02, and Resolution 22-03							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CAUDILLO	CERROS	(5-0) Approved	Aye	Aye	Aye	Aye	Aye

10.2 Third Reading of **Ordinance 593**, An Ordinance of the City of Lindsay Amending Title 5 of the Lindsay Municipal Code, Adding Chapter 5.37 Mobile Vending Establishing Permitting Procedures and Regulations (pp. 104-109)

Presented by Ed Real, Assistant City Planner

- Mayor CAUDILLO opened the public hearing at 6:57 PM; no public comment was received; the public hearing was closed at 6:57 PM.

Motion to Approve Item 10.2							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CAUDILLO	SERNA	(5-0) Approved	Aye	Aye	Aye	Aye	Aye

11. ACTION ITEMS

11.1 Consider Proposal Received in Response to the Friday Night Market Request for Proposal and Provide Direction to Staff (110-140)

Presented by Joseph Tanner, City Manager

Motion to Award Friday Night Market RFP to VL Friday Night Market and Grant City Manager Authority to Execute Contract							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
CERROS	SANCHEZ	(5-0) Approved	Aye	Aye	Aye	Aye	Aye

11.2 Selection of Mayor Pro Tem for a One-Year Term Commencing on January 25, 2022 (p. 141)

Presented by Mayra Espinoza-Martinez, Executive Projects Manager/City Clerk

- Mayor Pro Tem FLORES nominated Council Member CERROS. Council Member CERROS accepted nomination.
- Mayor CAUDILLO nominated Council Member SERNA. Council Member SERNA accepted nomination.
- In accordance with the City Council Handbook, the Council entertained the first motion received.

Motion to Select Council Member Cerros as Mayor Pro Tem							
1 st	2 nd	Result	SERNA	FLORES	CAUDILLO	CERROS	SANCHEZ
FLORES	SANCHEZ	(4-1) Approved	Aye	Aye	Nay	Aye	Aye

12. EXECUTIVE (CLOSED) SESSION

12.1 Conference with Labor Negotiators Pursuant to Cal Gov. Code § 54957.6

Agency Designated Representative: Joseph M. Tanner, City of Lindsay

Employee Organization: Lindsay Public Safety Officers’ Association

12.2 Conference with Labor Negotiators Pursuant to Cal Gov. Code § 54957.6

Agency Designated Representative: Joseph M. Tanner, City of Lindsay

Employee Organization: Lindsay Miscellaneous Employees Bargaining Unit

12.3 Conference with Real Property Negotiators

Pursuant to Cal Gov. Code § 54956.8

Property: 365 N Sweetbriar Ave, Lindsay, CA 93247 APN 205-293-015-000

Agency Negotiator: Joseph M. Tanner, City of Lindsay

Negotiating Parties: California Department of Housing and Community Development

Under Negotiation: Terms and Conditions of Potential Sale

12.4 Conference with Real Property Negotiators

Pursuant to Cal Gov. Code § 54956.8

Property: 100 E Honolulu St, Lindsay, CA 93247 APN 205-236-014

Agency Negotiator: Joseph M. Tanner, City of Lindsay

Negotiating Parties: Jose Cabrera. Property Owner

Under Negotiation: Terms and Conditions of Potential Sale

12.5 Conference with Real Property Negotiators

Pursuant to Cal Gov. Code § 54956.8

Property: 122 E Honolulu St, Lindsay, CA 93247 APN 205-236-013

Agency Negotiator: Joseph M. Tanner, City of Lindsay

Negotiating Parties: Salvador Perez, Property Owner

Under Negotiation: Terms and Conditions of Potential Sale

- Nothing to report.

13. **REQUEST FOR FUTURE ITEMS**

14. **ADJOURNMENT**

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STAFF REPORT

TO: Lindsay City Council
FROM: Juana Espinoza, Finance Director
DEPARTMENT: Finance Department
ITEM NO.: 10.3
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Second Reading of **Ordinance 595**, An Ordinance of the City of Lindsay Amending Title 3 of the Lindsay Municipal Code, Amending Utility Users Tax.

BACKGROUND | ANALYSIS

In 2014, the California State Legislature passed AB 1717 enacting the Prepaid Mobile Telephony Service Surcharge Collection Act. This bill would, on and after January 1, 2016, suspend the authority of a city, including any charter city, to impose a utility user tax on the consumption of prepaid communications services under tax laws existing prior to January 1, 2016.

AB 1717 would instead require the utility user tax rate for prepaid telephony services to be applied during that period under any ordinance to be at specified tiered rates to be collected and administered by the State Board of Equalization, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, and transmitted to the city, county, or a city and county, as provided.

Further, AB1717 specified that a change in a utility user tax rate for prepaid telephony services or access charge rate resulting from either the rate limitations or the end of the suspension period is not subject to voter approval under either statute or Article XIII C of the California Constitution. This bill would require these local charges imposed by a city, county, or a city and county be administered and collected by the State Board of Equalization, deposited in the Local Charges for Prepaid Mobile Telephony Services Fund, which this bill would create, and transmitted to the city, county, or a city and county, as provided.

The California Department of Tax and Fee Administration has approved updated language to our municipal code section 3.30 Utility Users Tax to incorporate the approved tiered rate for prepaid telephony services. The tiered rate for the utility user tax, as identified in section 42102 is 5.50%

Staff recommends updating existing municipal code language to include the utility users rate for prepaid telephony services to provide additional revenue to the general fund in future years.



STAFF REPORT

FISCAL IMPACT

FUND: 101

REVENUE ACCOUNT: 309090 UTILITY USERS TAX

ATTACHMENTS

- Ordinance 595 – Redlined

ORDINANCE NO. 595

AN ORDINANCE OF THE CITY OF LINDSAY AMENDING CHAPTER 3.30 OF THE LINDSAY MUNICIPAL CODE, ADDING A UTILITY USERS TAX TO PREPAID TELEPHONY SERVICES FOR GENERAL PURPOSES

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

Section 1: PURPOSE. The provisions of this ordinance are intended to amend Chapter 3.30 of the City of Lindsay Municipal Code.

Section 2. CODE ENACTMENT. Lindsay Municipal Code, Chapter 3.30 is hereby amended as follows:

3.30 Utility Users Tax

3.30.010 Description And Purpose

The purpose of this chapter is to impose a general tax, herein referred to as a "utility users tax," as a revenue measure to provide funds to pay the usual and necessary expenses of the city. The proceeds shall be paid into the General Fund of the city to be expended only for expenses of the city chargeable to the general fund. Proceeds of the tax shall be general fund moneys available for any municipal purpose.
(Ord. 458 § 1 (part), 1994)

3.30.020 Definitions

The following words and phrases, whenever used in this chapter, shall be construed as defined in this section:

"City" means the city of Lindsay.

"Gas" means natural or manufactured gas or any alternate hydrocarbon fuel which may be supplied by pipeline to a service user by a service supplier.

"Miscellaneous subscriber paid services" means electronically transmitted financial, news, sports, entertainment, educational, information and shopping service furnished to service users for a fee.

"Month" means a calendar month.

"Person" means any domestic or foreign corporation, firm, association, syndicate, joint stock company, partnership of any kind, joint venture, club, Massachusetts business or common law trust, society, or individual.

"Service supplier" means any entity required to collect or self-impose and remit a tax as

imposed by this chapter. "Sewer service" means the collection of domestic, commercial or industrial liquid waste and disposal thereof by primary, secondary or tertiary treatment, followed by recycling or by land application.

"Subscriber paid television" means television service furnished to subscribers for a fee irrespective of the manner in which service is received, whether by cable or other means.

"Tax administrator" means the person or persons so designated from time to time by the city manager of the city of Lindsay.

"Telephone corporation," "electrical corporation," "gas corporation," "water corporation," "cable television corporation," "sewer system corporation," and "refuse (solid waste) corporation," shall have the same meanings as defined in Sections 215.5, 218, 222, 230.6, 234, and 241 of the California Public Utilities Code, and 40193 of the Public Resources Code respectively, except "electrical corporation," "gas corporation," "water corporation," "sewer system corporation" and "refuse (solid waste) corporation" shall also be construed to include the city itself, any municipality, franchised agency, governmental agency, public agency, broker/marketer or person engaged in the selling or supplying of electrical power or gas or water or refuse service or sewer service to a service user. Cable television corporations shall include all television service received by a service user paid by subscription without reference to the means or manner of the transmission of the signal for which the subscriber is charged.

(Ord. 458 § 1 (part), 1994)

3.30.030 Exemptions

Nothing in this section shall be construed as imposing a tax upon:

- A. The county of Tulare, the state or the United States, or upon the Lindsay Unified School District or Lindsay Elementary School District or upon any other person, the imposition of which will be in violation of the laws of the United States or the state or the Constitution of the United States or the state;
- B. Any service user using gas or electrical energy for propulsion of farming tools and equipment, fork lifts, operation of stationary mechanical equipment used in the growing of crops, including wind machines and irrigation water wells and return and pressure systems;
- C. Bottled gas without regard to the nature of use;

~~D. Cellular telephone service;~~

E.D. Water delivered by a service supplier, other than the city, to a service user for the irrigation of lands devoted to the production of crops for sale;

~~F.E.~~ Bottled water service.

(Ord. 458 § 1 (part), 1994)

3.30.040 Maximum Tax Alternative

- A. The maximum annual tax levied by this chapter to be paid by any single service user for one location under this chapter, shall be one thousand dollars per year, per utility. The phrase "one location" as used in this subsection means one or more contiguous sites not divided by a public street for which the service user receives one or more utility billings.
- B. A utility service user, to qualify for the payment of a maximum tax pursuant to this chapter, must qualify for such right in the manner hereinafter provided and must comply with each and all of the following provisions:
 - 1. The utility service user shall make written application on forms supplied by the tax administrator on or before June 1st of the year immediately preceding the fiscal year in which the maximum tax would be applicable or within thirty days after the commencement of the receipt of such utility service within the city. In the event of a new utility service, in such application the utility service user shall request, in writing, to pay the maximum tax to which the utility service tax will apply in lieu of tax payments billed by the utility service supplier.
 - 2. The tax year to which the maximum limitations shall apply shall be from July 1st of each year until the next succeeding June 30th. For the period of time from December 1, 1994, to June 30, 1995, the maximum tax shall be prorated on a calendar month basis.
 - 3. Said application shall include the utility user's name, applicable service location to which the maximum tax is to be applied, and the specific utility or utilities to which the maximum tax will be paid, together with such other information as may be required by the tax administrator.
 - 4. The service user shall obtain the written approval of the tax administrator to pay the maximum tax.
 - 5. The service user shall make payment of the maximum tax, for each applicable utility service, directly to the tax administrator, on or before July 1st of the fiscal year for which the maximum tax is to be paid. In the event of a new utility service, within thirty days after commencement of the receipt of such utility service at such location or within thirty days after the commencement of the levy of the tax.
 - 6. The tax administrator shall provide to each applicable utility service

provider a copy of the approved application to pay maximum tax and a copy of proof of payment of said maximum tax.

C. Commencing on July 1, 1996, and annually on July 1st of each year thereafter, the maximum tax payable pursuant to this chapter shall be adjusted by reference to the Consumer Price Index issued by the Bureau of Labor Statistics of the United States Department of Labor for Urban Consumers in the State of California or such other consumer price index issued by the Bureau of Labor Statistics in replacement thereof as follows:

1. The applicable consumer price index in effect on December 1, 1994, shall be deemed to be the base for determining any increase in the maximum tax.
2. The consumer price index for June 1st of each succeeding year commencing on June 1, 1996, shall be determined.
3. If the consumer price index established under subsection (C)(2) of this section is greater than the consumer price index determined under subsection (C)(1) of this section, the difference shall be determined.
4. The percentage increase in the consumer price index over and above that established under subsection (C)(1) of this section shall be the percentage increase in the maximum tax.
5. For computing the increase in the maximum tax each year, the base shall be the amount used to determine the increase for the previous period under subsection (C)(2) of this section.
6. To make the computation each year, the difference between the price index figure determined under subsection (C)(1) of this section and the price index figure determined under subsection (C)(2) of this section, shall be ascertained by subtracting the lesser from the greater. If the resulting figure is a negative figure, no increase in the maximum tax shall result. If a positive figure results, said change will be applied to establish a revised maximum annual tax.
7. For the purpose of making the computation of the maximum tax pursuant to this subsection, the tax administrator shall make the computation required by this subsection as of June 1st of each year. After making such computation, the tax administrator shall notify all persons known to him that are contemplating the exercise of a service user's right to pay the maximum tax. The annual computation of the maximum tax made by the tax administrator shall be binding upon all persons subject to the maximum tax. The computation of the maximum tax made by the tax

administrator shall be binding upon all persons, bodies, or agencies subject to the tax or seeking to review or modify the same.

- D. Any utility service user who is qualified for the payment of a maximum tax pursuant to the provisions set forth hereinabove shall thereafter not be taxed by the utility service provider for the fiscal year within which the utility service user has qualified for the payment of the maximum tax and paid the tax. The utility service provider shall not be responsible for the collection of the applicable utility tax for any party that has qualified for payment of the maximum tax as set forth hereinabove.
- E. No utility service user shall be entitled to pay only the maximum tax, or to any refund for any payments made in excess of the maximum tax, unless he/she has satisfied the terms and conditions of subsection B of this section.

(Ord. 458 § 1 (part), 1994)

3.30.050 Telephone Users Tax

- A. There is imposed a tax on the amounts paid for all intrastate, interstate and international telephone services, except cellular telephone service, by every person in the city using such services. The tax imposed by this section shall be at the rate of six percent of the charges made for such services and shall be paid by the person paying for such services.
- B. As used in this section, the term "charges" shall not include charges for services paid for by inserting coins in coin-operated telephones except that where such coin-operated service is furnished for a guaranteed amount, the amounts paid under such guarantee, plus any fixed monthly or other periodic charge, shall be included in the base for computing the amount of tax due; nor shall the term "charges" include charges for any type of service or equipment furnished by a service supplier subject to public utility regulations during any period in which the same or similar services or equipment are also available for sale or lease from persons other than a service supplier subject to public utility regulation; nor shall the words "telephone communication services" include cellular land and noncellular mobile service or maritime mobile services as defined in Section 2.1 of Title 47 of the Code of Federal Regulations, as said section existed on January 1, 1970. The term "telephone communication services" refers to that service which provides access to a telephone system and the privilege of telephone quality communication with substantially all persons having telephone stations which are part of such telephone system to the extent not prohibited by federal and/or state law, now or in the future. The tax imposed by this section applies to all telephone communication service however charge or billed, including, but not limited to prepaid services, post-paid services, 800 services (or any other toll-free numbers), or 900 services. The telephone users tax is intended to, and does, apply to all qualified charges billed to a telephone account having a situs in the city, irrespective of whether a particular communication service

originates and/or terminates within the city. The tax imposed by this section shall in no instance exceed tax rates allowed under state or federal tax laws.

- C. The tax imposed by this section shall be collected from the service user by the person providing the telephone communication services, or the person receiving payment for such services. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).
- D. Notwithstanding the provisions of subsection A of this section, the tax imposed under this section shall not be imposed upon any person for using telephone communication services to the extent that the amounts paid for such services are exempt from or not subject to the tax imposed under Division 2, Part 20, of the California Revenue and Taxation Code, or the tax imposed under Section 4251 of the Internal Revenue Code.

(Ord. 458 § 1 (part), 1994)

3.30.060 Electricity Users Tax

- A. There is imposed a tax upon every person using electrical energy in the city. The tax imposed by this section shall be at the rate of six percent of the charges made for such energy and shall be paid by the person paying for such electrical energy. The tax applicable to electrical energy provided by self-production or a nonutility supplier shall be determined by applying the tax rate to the equivalent charges the service user would have incurred if the energy used had been provided by the electrical corporation franchised by the city. Rate schedules for this purpose shall be available from the city. Nonutility suppliers shall install and maintain an appropriate utility-type metering system which will enable compliance with this section, or may arrange another methodology for applying the tax acceptable to the tax administrator. "Charges," as used in this section, shall include charges made for: (1) metered energy and (2) minimum charges for service, including customer charges, service charges, demand charges, standby charges and all other annual and monthly charges, fuel or other cost adjustments.
- B. The tax imposed in this section shall be collected from the service user by the energy service supplier or nonutility supplier. An energy supplier providing wheeling services only for delivery of electricity through its distribution system shall collect the tax from the service user based upon the cost of wheeling the electricity. The tax on energy provided by self-production or by a nonutility supplier shall be collected and remitted in the manner set forth in Section 3.30.080. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).

(Ord. 458 § 1 (part), 1994)

3.30.070 Gas Users Tax

- A. There is imposed a tax upon every person using gas in the city, which is transported through a pipeline distribution system. The tax imposed by this section shall be at the rate of six percent of the charges made for such gas and shall be paid by the person paying for the gas. The tax applicable to gas provided by a nonutility supplier shall be determined by applying the tax rate, to the equivalent charges the service user would have incurred if the gas or gas transportation had been provided by a gas corporation franchised by the city. "Charges" as used in this section shall include: (1) the charge for gas which is delivered through a gas pipeline distribution system; (2) gas transportation charges; and (3) demand charges, service charges, customer charges, minimum charges, annual and monthly charges.
- B. The tax imposed in this section shall be collected from the service user by the energy service supplier or nonutility supplier. An energy supplier providing transportation services only for delivery of gas through a pipeline distribution system shall collect the tax from the service user based upon the cost of transporting the gas. The tax on energy provided by self-production or by a nonutility supplier shall be collected and remitted in the manner set forth in Section 3.30.080. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).

(Ord. 458 § 1 (part), 1994)

3.30.080 Collection Of Tax From Service Users Receiving Gas Or Electricity From Nonutility Suppliers

- A. Any service user subject to the tax imposed by Section 3.30.050, 3.30.060 or 3.30.070 hereof, who produces electricity or gas for self-use or who receives electricity or gas directly from a nonutility supplier, shall report said fact to the tax administrator and remit the tax due directly to the city within thirty days of such use.
- B. The tax administrator may require said service user to identify its nonutility supplier and provide, subject to audit, filed tax returns or other satisfactory evidence documenting the quantity of electricity or gas used and the price thereof.

(Ord. 458 § 1 (part), 1994)

3.30.090 Water Users Tax

- A. There is imposed a tax upon every person in the city using water which is delivered by the city by mains or pipes. The tax imposed by this section shall be at the rate of six percent of the charges made for such water and shall be paid by the person paying for such water.

- B. The tax imposed in this section shall be collected from the service user by the person supplying the water. The amount collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).

(Ord. 458 § 1 (part), 1994)

3.30.100 Subscriber-Paid Television

- A. There is imposed a tax upon every person in the city using subscriber-paid television service. The tax imposed by this section shall be at the rate of six percent of the charges made for such service and shall be paid by the person paying for such service.
- B. The tax imposed in this section shall be collected from the service user by the person furnishing the subscriber-paid television service. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).
- C. Notwithstanding any other provision of this section, a service user receiving subscriber-paid television services directly from a nonutility supplier, or otherwise not having the full tax due, billed and collected by the service supplier, shall report said fact to the tax administrator within thirty days of said use; and shall remit the amount of tax due directly to the city.

(Ord. 458 § 1 (part), 1994)

3.30.110 Refuse Users Tax

- A. There is imposed a tax upon every person in the city using refuse service. The tax imposed by this section shall be at the rate of six percent of the charges made for such service and shall be paid by the person paying for such services.
- B. The tax imposed in this section shall be collected from the service user by the person furnishing the refuse service. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).

(Ord. 458 § 1 (part), 1994)

3.30.120 Sewer Users Tax

- A. There is imposed a tax upon every person in the city using sewer service. The tax imposed by this section shall be at the rate of six percent of the charges made for such service and shall be paid by the person paying for such services.

- B. The tax imposed in this section shall be collected from the service user by the person furnishing the sewer service. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).

(Ord. 458 § 1 (part), 1994)

3.30.130 Miscellaneous Subscriber-Paid Service Users Tax

- A. There is imposed a tax upon every person in the city using miscellaneous subscriber-paid services, other than a subscriber-paid television service. The tax imposed by this section shall be at the rate of six percent of the charges made for such service and shall be paid by the person paying for such service.
- B. The tax imposed in this section shall be collected from the service user by the person furnishing the miscellaneous subscriber-paid television service. The amount of the tax collected in one month shall be remitted to the tax administrator on or before the last day of the following month or as agreed to under the provisions of Section 3.30.170(C).
- C. Notwithstanding any other provision of this ordinance, a service user receiving miscellaneous subscriber-paid television services directly from a nonutility supplier, or otherwise not having the full tax due, billed and collected by the service supplier, shall report said fact to the tax administrator within thirty days of said use; and shall remit the amount of tax due directly to the city.

(Ord. 458 § 1 (part), 1994)

3.30.140 Interest And Penalty

- A. Taxes collected from a service user which are not remitted to the tax administrator on or before the due dates provided in this chapter are delinquent. Should the due date occur on a weekend or legal holiday, the return may be postmarked on the first regular working day following a Saturday, Sunday or legal holiday.
- B. Interest for delinquency in remittance of any tax collected or any deficiency determination shall attach and be paid by the person required to collect and remit at the rate of one and one-half percent per month of the total tax collected or imposed herein.
- C. The tax administrator shall have the power to impose additional penalties upon persons required to collect and remit taxes under the provisions of this chapter for fraud or negligence in reporting or remitting at the rate of fifteen percent of the amount of the tax collected or as recomputed by the tax administrator.

(Ord. 458 § 1 (part), 1994)

3.30.150 Actions To Collect

Any tax required to be paid by a service user under the provisions of this chapter shall be deemed a debt owed by the service user to the city. Any such tax collected from a service user which has wilfully been withheld from the tax administrator shall be deemed a debt owed to the city by the person required to collect and remit. Any person owing money to the city under the provisions of this chapter shall be liable to an action brought in the name of the city for the recovery of such amount, together with attorney's fees and costs.

(Ord. 458 § 1 (part), 1994)

3.30.160 Duty To Collect, Procedures

The duty to collect and remit the taxes imposed by this chapter shall be performed as follows:

- A. Notwithstanding the provisions of any other section of this chapter, the tax shall be collected insofar as practicable at the same time as and along with the charges made in accordance with the regular billing practices of the service supplier. Where the amount paid by a service user to a service supplier is less than the full amount of the energy charge and tax which has accrued for the billing period, such amount and any subsequent payments by a service user shall be applied to the utility charge first until such charge has been fully satisfied. Any remaining balance shall be applied to taxes due. In those cases where a service user has notified the service supplier of refusal to pay the tax imposed under this chapter, Section 3.30.170 will apply.
- B. The duty to collect tax from a service user shall commence with the beginning of the first full regular billing period applicable to the service user where all charges normally included in such regular billing are subject to the provisions of this chapter. Where a person received more than one billing, one or more being for different periods than another, the duty to collect shall arise separately for each billing.

(Ord. 458 § 1 (part), 1994)

3.30.170 Additional Power And Duties Of Tax Administrator

- A. The tax administrator shall have the power and duty, and is hereby directed, to enforce each and all of the provisions of this chapter.
- B. The tax administrator shall have the power to adopt rules and regulations not inconsistent with provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the taxes herein imposed. A copy of such rules and regulations shall be on file in the tax administrator's office.
- C. The tax administrator may make administrative agreements to vary the strict requirements of this chapter so that collection of any tax imposed herein may be made in conformance with the billing procedures of a particular service supplier so

long as said agreements result in collection of the tax in conformance with the general purpose and scope of this chapter. A copy of each such agreement shall be on file in the tax administrator's office.

- D. The tax administrator shall determine the eligibility of any person who asserts a right to exemption from the tax imposed by this chapter. The tax administrator shall provide the service supplier with the name of any person whom the tax administrator determines is exempt from the tax imposed hereby, together with the address to which service is supplied to any such exempt person.
- E. The tax administrator shall provide written notice to all service suppliers of any change in the city's boundaries within thirty days after the effective date of such change. Said notice shall set forth the revised boundaries by street and address along with a copy of the final annexation order from the Local Agency Formation Commission. The tax imposed shall apply to charges appearing on bills rendered as soon thereafter as the service supplier is able to arrange for bookkeeping and accounting functions so that the tax imposed can be billed to and/or collected from the service user, but in no case more than ninety days after said effective date.

(Ord. 458 § 1 (part), 1994)

3.30.180 Assessment, Administrative Remedy

- A. The tax administrator may make an assessment for taxes not remitted by a person required to remit.
- B. Whenever the tax administrator determines that a service user has deliberately withheld the amount of the tax owed by the service user from the amounts remitted to a person required to collect the tax, or that a service user has refused to pay the amount of tax to such person, or whenever the tax administrator deems it in the best interest of the city, the tax administrator may relieve such person of the obligation to collect taxes due under this chapter from certain named service users for specified billing periods.
- C. The service supplier shall provide the city with amounts refused and/or unpaid with the names and addresses of the service users neglecting to pay the tax imposed under provisions of this chapter.
- D. The tax administrator shall notify the service user that the tax administrator has assumed responsibility to collect the taxes due for the stated periods and demand payment of such taxes. The notice shall be served on the service user by personal delivery or by deposit of the notice in the United States mail, postage prepaid thereon, addressed to the service user at the address to which billing was made by the person required to collect the tax; or, should the service user have changed addresses, to the last known address. If a service user fails to remit the tax to the tax

administrator within fifteen days from the date of the service of the notice, which shall be the date of mailing if service is not accomplished in person, a penalty of twenty-five percent of the amount of the tax set forth in the notice shall be imposed, but not less than five dollars. The penalty shall become a part of the tax herein required to be paid. Interest shall accrue from the date due at the rate of one and one-half percent per month.

- E. In the event suit is instituted for any taxes becoming due to the city under this chapter, the court shall award a reasonable attorney's fee to the city.

(Ord. 458 § 1 (part), 1994)

3.30.190 Records

- A. It shall be the duty of every person required to collect and remit to the city any tax imposed by this chapter to keep and preserve, for a period of three years, all records as may be necessary to determine liability for the remittance to the tax administrator, which records the tax administrator shall have the right to inspect at all reasonable times.
- B. A person providing transportation services of any utility to a user for delivery through any distribution system shall make available to the tax administrator records of the names and addresses of service users for whom only transportation services are provided by such persons. All information provided to the tax administrator pursuant to this section shall be used solely for the purposes of this chapter.

(Ord. 458 § 1 (part), 1994)

3.30.200 Refunds

- A. Whenever the amount of any tax has been overpaid or paid more than once or has been erroneously or illegally collected or received by the tax administrator under this chapter, it may be refunded by the tax administrator. No utility service user shall be entitled to a refund, nor may a utility service supplier apply for a refund, for the payment of a utility user's tax in excess of the maximum tax established by the council. It is the intent of this chapter that the only means for limiting payment of the utility user's taxes to any maximum amount established by the city council is for the utility service user to avail itself of the provisions of Section 3.30.040 of this chapter.
- B. Any service user who is qualified under this section shall be entitled to a refund. The refund referred to in this subsection shall be one-third of the total utility taxes paid under this chapter by such person for utility services supplied to his/her primary residence for each full fiscal year after he/she has reached the age of sixty-two years. To be entitled to the refund referred to in this subsection, the service user shall make a claim for refund directly to the city, only during the months of July and August in

the fiscal year following the year for which refund is claimed. Should the service user fail to make application for such refund during the time referred to in this subsection, the service user's right to such refund shall lapse and terminate.

- C. In making an application for a refund, the service user shall file an application with the tax administrator on the forms supplied by the tax administrator which will be accompanied by a copy of each bill issued by the service supplier showing the tax paid, together with a receipt for payment or the canceled check for the amount of the utility bill.
- D. Upon being satisfied that the applicant is entitled to a refund under the provisions of this chapter, the tax administrator shall be and is authorized, instructed and directed to make the refund applied for.
- E. No refund shall be paid under the provisions of this section unless the claimant establishes the right thereto by written records showing entitlement thereto.
- F. Notwithstanding other provisions of this section, whenever a service supplier, pursuant to an order of the California Public Utilities Commission or a court of competent jurisdiction, makes a refund to service users of charges for past utility services, the taxes paid pursuant to this chapter on the amount of such refunded charges shall also be refunded to service users, and the service supplier shall be entitled to claim a credit for such refunded taxes against the amount of tax which is due upon the next monthly returns. In the event this chapter is repealed, the amounts of any refundable taxes will be borne by the city.

(Ord. 458 § 1 (part), 1994)

Section 4. CEQA REVIEW. The City Council hereby finds that this ordinance is not subject to review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2) [the activity will not result in direct or reasonably foreseeable indirect physical changes in the environment].

Section 5. NO LIABILITY. The provisions of this ordinance shall not in any way be construed as imposing any duty of care, liability or responsibility for damage to person or property upon the City of Lindsay, or any official, employee or agent thereof.

Section 6. PENDING ACTIONS. Nothing in this ordinance or in the codes hereby adopted shall be construed to affect any suit or proceeding pending or impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance or code repealed by this ordinance, nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

Section 7. SEVERABILITY. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, is for any reason held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the

validity or enforceability of the remaining sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases of this ordinance, or its application to any other person or circumstance. The City Council of the City of Lindsay hereby declares that it would have adopted each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof, irrespective of the fact that any one or more other sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases hereof be declared invalid or unenforceable.

Section 8. CONSTRUCTION. The City Council intends this ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this ordinance shall be construed in light of that intent. To the extent the provisions of the Lindsay Municipal Code as amended by this ordinance are substantially the same as provisions in the Lindsay Municipal Code existing prior to the effectiveness of this ordinance, then those amended provisions shall be construed as continuations of the earlier provisions and not as new enactments.

Section 9. EFFECTIVE DATE. The foregoing ordinance shall take effect thirty (30) days from the date of the passage hereof. Prior to the expiration of fifteen (15) days from the enactment hereof a certified copy of this ordinance shall be posted in the office of the City Clerk pursuant to Government Code section 36933(c)(1) and a summary shall be published once in the Porterville Recorder, a newspaper printed and published in the City of Porterville, State of California, together with the names of the Council members voting for and against the same.

THE FOREGOING ORDINANCE, read by title only with waiving of the reading in full, was introduced at a regularly scheduled meeting on the ___th day of _____ 2022.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the ___th day of _____ 2022.

CITY COUNCIL OF THE CITY OF LINDSAY

Ramona Caudillo, Mayor

ATTEST:

Mayra Espinoza-Martinez, City Clerk

**Subaward Agreement Regarding FY 2021 State Homeland Security Grant Programs
Funding for Equipment, Planning, Administration, Training and Exercises**

THIS AGREEMENT is entered into by and between the County of Tulare (“COUNTY”) and City of Lindsay (“SUBRECIPIENT”), referred to individually herein as “Party” or collectively as “Parties,” on the following terms and conditions:

WHEREAS, the Fiscal Year 2021 (“FY 2021”) California State Homeland Security Grant Program (“SHSGP”) provides funding through Federal grants from the Department of Homeland Security to enhance the capabilities of state and local first responders by allowing the purchase of advanced types of equipment, as well as addressing other critical homeland security needs, including administration, planning, training, and exercise-related costs.

WHEREAS, COUNTY applied to the California Governor’s Office of Emergency Services (“CalOES”) for a FY 2021 SHSGP grant.

WHEREAS, as part of its grant application, COUNTY requested sufficient funds to support certain activity(ies) or program(s) planned by SUBRECIPIENT that may be eligible for SHSGP grant funds.

WHEREAS, COUNTY was awarded FY 2021 SHSGP grant funding; and COUNTY, upon recommendation of the local Approval Authority designated in the SHSGP Guidelines, determined to allocate some of this funding to support SUBRECIPIENT’S eligible program(s) or activity(ies).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, COUNTY and SUBRECIPIENT hereby agree as follows:

1. GRANT SUBAWARD. Subject to the terms, conditions, and other limitations specified herein, COUNTY intends to subaward to SUBRECIPIENT a portion of its FY 2021 SHSGP Grant for the following program and/or activity:

Department/Agency: Lindsay Department of Public Safety

Program/Activity: (12) Motorola APX 6000 P25 Compliant Portable Radio's & (11) Motorola APX 6000 P25 Compliant Mobile Radio's

Details about the specific program or activity authorized, the amounts allocated to the specified program or activity, and the anticipated performance and disbursement timelines shall be confirmed by subsequent award letter(s) from COUNTY (“Award Letter(s)”) in accordance with this Agreement. **SUBRECIPIENT agrees not to expend any anticipated FY 2021 SHSGP grant funds until after it has received [an] Award Letter(s) authorizing the specific activity or program and confirming the award amount.** Award Letter(s) may include attachments, which are considered to be integral parts of the Award Letter(s). Unless SUBRECIPIENT notifies COUNTY before it begins spending the funds authorized in a FY 2021 SHSGP Award Letter that it declines some or all of the program, activity, and/or funds outlined in the Award Letter, SUBRECIPIENT will be deemed to have accepted all of the terms and conditions specified in the Award Letter(s), including any applicable attachments.

COUNTY reserves the exclusive right to determine the method and timing of disbursement of SHSGP funds to SUBRECIPIENT. Furthermore, and in addition to all other rights provided to COUNTY under

this Agreement or the law, COUNTY reserves the right to, issue revised Award Letter(s) to modify SUBRECIPIENT's authorized program, activity, award amounts, and/or performance periods, in accordance with the recommendations of the Local Approval Authority, the changing needs of SUBRECIPIENT and/or the likelihood of SUBRECIPIENT expending its subaward; however, such modifications will only be made after consultation with SUBRECIPIENT, and in accordance with the recommendations of the Local Approval Authority.

2. PERFORMANCE PERIOD. SUBRECIPIENT's Performance Period for all activities covered by the terms of this Agreement shall commence on October 1, 2021. Unless COUNTY specifies otherwise in SUBRECIPIENT's Award Letter(s), SUBRECIPIENT's Performance Period for all activities covered by the terms of this Agreement shall continue until whichever of the following dates or events occurs first: (i) April 30, 2023, or (ii) until otherwise terminated under the provisions of this Agreement. Only activities performed during the County-specified FY 2021 SHSGP Performance Period are eligible for funding/reimbursement pursuant to this Agreement.

3. GRANT REQUIREMENTS AND ASSURANCES. The SUBRECIPIENT hereby agrees to review, adhere to, and comply with all COUNTY, state, and federal grant award requirements. SUBRECIPIENT acknowledges that COUNTY was required to accept and agree to the "**CalOES Standard Assurances**" (attached as **Exhibit A**, and incorporated by reference herein), and that COUNTY may be required to impose some or all of these assurances on all of its subrecipients, at all levels. Accordingly, SUBRECIPIENT specifically accepts, agrees to, and will abide by the CalOES Standard Assurances, with the understanding that everywhere it references "Applicant" or "subrecipient" in Exhibit A shall be read to refer to SUBRECIPIENT. The CalOES Standard Assurances shall be binding on the SUBRECIPIENT, as well as its successors, transferees, contractors, consultants, etc. SUBRECIPIENT acknowledges that failure to comply with any of the assurances may result in suspension, termination, or reduction of grant funds.

Some of the requirements that SUBRECIPIENT hereby agrees to comply with appear in the following documents:

- (a) Applicable Federal Regulations, including: (i) Title 2, Part 200 of the Code of Federal Regulations (CFR) (which contains, among other items, Government cost principles, uniform administrative requirements and audit requirements for Federal grant programs), and (ii) updates issued by the Office of Management and Budget (OMB) on <http://www.whitehouse.gov/omb/>;
- (b) Federal Program Notice of Funding Opportunity (NOFO).
- (c) California Supplement to the NOFO; and
- (d) Federal and State Grant Program Guidelines.

By signing this Agreement, SUBRECIPIENT specifically makes the applicable certifications in Exhibit A, including the Lobbying and Political Activities and Debarment and Suspension Certifications (Paragraphs 3 and 4 of Exhibit A, respectively), as evidenced by the signature of SUBRECIPIENT's authorized agent.

4. FEDERALLY FUNDED SERVICES. Because this grant subaward involves the provision of federal funds to SUBRECIPIENT, the terms and conditions outlined and incorporated in **Exhibit B, "Federally-Funded Services,"** will apply to this Agreement, and are incorporated herein by reference.

5. DISPOSAL OR DISPOSITION OF PROPERTY. SUBRECIPIENT acknowledges that pursuant to 2 CFR section 200.316, any real property, equipment, and intangible property that are acquired or improved

with any SHSGP award must be held in trust by SUBRECIPIENT as trustee for the beneficiaries of the project or program under which the property was acquired or improved. SUBRECIPIENT may be required by COUNTY, CalOES, or the federal government to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with the SHSGP award and that use and disposition conditions apply to the property.

Furthermore, SUBRECIPIENT agrees that when the equipment or supplies acquired with funds from this subaward are no longer needed for the original activity or program, or for other SUBRECIPIENT activities supported by the Department of Homeland Security (DHS)/ Federal Emergency Management Agency (FEMA), SUBRECIPIENT must notify COUNTY to request instructions on proper disposition of the equipment or supplies. SUBRECIPIENT is not permitted to sell, assign, or otherwise transfer title to (or any other interest in) equipment or supplies purchased with SHSGP funds except as permitted by 2 CFR Part 200. Furthermore, SUBRECIPIENT must obtain the express written permission of COUNTY for disposition of property that may have a current per unit fair market value of \$5,000 or more. Though not exclusive or exhaustive, additional information regarding disposition of property acquired with SHSGP funds can be found at 2 CFR Part 200, sections 200.313 through 200.316.

6. SUBAWARDS AND CONTRACTS. With the understanding that not all provisions may be applicable to subawardees, SUBRECIPIENT agrees to include all of the commitments specified in Exhibit A, and any other commitments or requirements included in this Agreement that expressly so designate, in the award documents it issues for all subawards at all tiers, including contracts under grants and cooperative agreements and subcontracts. SUBRECIPIENT further agrees that it will include the commitments in Exhibit A in all contracts paid for in full or part with FY 2021 SHSGP funds.

7. DESIGNATED COUNTY AUTHORIZED AGENT. Only those individuals designated by resolution of the Tulare County Board of Supervisors as Authorized Agents for FY 2021 SHSGP (“COUNTY Authorized Agents”) are authorized to sign FY 2021 SHSGP Award Letters on behalf of COUNTY, or to suspend performance in accordance with Paragraph 16(d), below. All other notices from COUNTY may come from other COUNTY personnel.

8. PROOF OF SUBRECIPIENT AUTHORITY. Before this Agreement will be approved by COUNTY, SUBRECIPIENT must provide to COUNTY written authorization (in the form of a resolution, or some other format specifically authorized by COUNTY) from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the SUBRECIPIENT and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required.
- (b) Any liability arising out of performance of this Agreement shall be the responsibility of the SUBRECIPIENT and the city council, governing board, or authorized body.
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body.
- (d) SUBRECIPIENT is authorized by the city council, governing board, or authorized body to apply for federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay the non-federal share of project cost, if any_ to ensure proper planning, management, and completion of the project described in this application; and
- (e) Official executing this Agreement is authorized by the SUBRECIPIENT.

9. DISALLOWANCE AND OFFSET. If, pursuant to this Agreement, SUBRECIPIENT requests or receives payment from COUNTY for programs, activities, or equipment, the reimbursement for which is later disallowed by the State of California or the United States Government, SUBRECIPIENT shall promptly refund the disallowed amount to COUNTY upon COUNTY's request. At its option, and to the fullest extent permitted by law, COUNTY may offset the amount disallowed from any payment due or to become due to SUBRECIPIENT under this Agreement or any other agreement between SUBRECIPIENT or COUNTY.

Furthermore, if any of COUNTY's FY 2021 SHSGP grant funding is reduced, modified, or eliminated for any reason, COUNTY reserves the right to reduce, modify, or eliminate any or all of this FY 2021 SHSGP grant subaward to SUBRECIPIENT. SUBRECIPIENT agrees to promptly return any amounts requested by COUNTY in accordance with this provision. At its option, COUNTY may offset the amount to be returned by SUBRECIPIENT from any payment due or to become due to SUBRECIPIENT under this Agreement or any other agreement between SUBRECIPIENT and COUNTY.

10. MONITORING AND REPORTS. SUBRECIPIENT is responsible for oversight of the operations of the FY 2021 SHSGP supported activities. SUBRECIPIENT must monitor its activities to ensure compliance with applicable Federal requirements and achievement of specific performance expectations. SUBRECIPIENT's monitoring must cover each program, function or activity supported by FY 2021 SHSGP funding.

SUBRECIPIENT agrees to provide ongoing performance and financial reports regarding any and all of SUBRECIPIENT's programs and activities funded with FY 2021 SHSGP funding. At a minimum, these reports will be due on an annual basis, but COUNTY reserves the right to request more frequent reporting. Within 90 days of completion or termination of FY 2021 SHSGP funded subawards, SUBRECIPIENT is also expected to provide a final performance report and a final expenditure report in a format acceptable to COUNTY, State, and the Federal government. SUBRECIPIENT will be notified of any additional required reports by separate Award Letter(s) or notice(s) from COUNTY.

11. MANDATORY DISCLOSURES. Pursuant to 2 CFR section 200.113, SUBRECIPIENT must disclose, in a timely manner, and in writing to COUNTY and ultimately to the federal awarding agency, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this subaward. Pursuant to the terms and conditions outlined in Appendix XII to 2 CFR Part 200 ("Award Term and Condition for Recipient Integrity and Performance Matters"), SUBRECIPIENT may also be also required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in 2 CFR section 200.338, "Remedies for noncompliance," including suspension or debarment.

12. SUBMITTING FALSE CLAIMS. Under applicable federal and state law, if SUBRECIPIENT submits a false claim to COUNTY under this Agreement, then SUBRECIPIENT will be liable to COUNTY for the statutory penalties set forth in those statutes, including, but not limited to statutory fines, treble damages, costs, and attorneys' fees. SUBRECIPIENT will be deemed to have submitted a false claim to COUNTY if SUBRECIPIENT:

- (a) Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval.
- (b) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;
- (c) Conspires to defraud COUNTY, State, or the Federal Government by getting a false claim

- allowed or paid by COUNTY;
- (d) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or
 - (e) Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

13. INSURANCE. SUBRECIPIENT certifies it is insured or self-insured for general liability exposures with limits of no less than \$1 million per occurrence. SUBRECIPIENT certifies it is insured or self-insured for workers' compensation and maintains statutory limits. SUBRECIPIENT agrees that coverage limits specified within the Agreement will not be used to reduce limits of coverage from SUBRECIPIENT'S full policy limits. Insurance Policies will not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce available coverage and limits from the insurer. Failure to maintain or renew coverage may be a material breach of this Agreement.

14. LIABILITY OF COUNTY. COUNTY's payment obligations to SUBRECIPIENT for FY 2021 SHSGP funds are limited by all provisions and other requirements specified in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages arising out of or in connection with this Agreement, including, but not limited to, lost profits, equipment purchased, or activities performed in connection with this Agreement.

15. HOLD HARMLESS, INDEMNIFICATION, AND DEFENSE.

(a) To the fullest extent permitted by law, SUBRECIPIENT must indemnify, defend (at SUBRECIPIENT'S sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect, and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of SUBRECIPIENT with respect to any activities and/or programs performed, training provided, or items purchased or used under or in relation to this Agreement (including, without limitation, the acts, errors, and/or omissions of SUBRECIPIENT, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, contractors, anyone employed directly or indirectly by any of them, or for whose acts they may be liable, or any or all of them). SUBRECIPIENT'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemnified Party, then SUBRECIPIENT'S indemnification obligation shall be reduced in proportion to the established comparative liability.

(b) The duty to defend is a separate and distinct obligation from SUBRECIPIENT'S duty to indemnify. SUBRECIPIENT shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to SUBRECIPIENT of the Claim in any form

or at any stage of an action or proceeding, whether or not liability is established. Payment to SUBRECIPIENT by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to defense or indemnification under this Agreement. An allegation or determination that persons other than SUBRECIPIENT are responsible for the Claim does not relieve SUBRECIPIENT from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if SUBRECIPIENT asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then SUBRECIPIENT may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. SUBRECIPIENT'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. SUBRECIPIENT'S liability for indemnification under this Agreement is in addition to any liability SUBRECIPIENT may have to COUNTY for a breach by SUBRECIPIENT of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit SUBRECIPIENT'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.

(c) SUBRECIPIENT must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

16. TERMINATION

(a) Without Cause (For Convenience): Either Party may terminate this Agreement for convenience by giving thirty (30) days' prior written notice to the other Party of its intention to terminate pursuant to this provision, specifying the date of termination. COUNTY will not pay lost anticipated profits or other economic loss resulting from termination of this Agreement. After receiving a notice of termination for convenience from SUBRECIPIENT, and prior to the effective date of termination, COUNTY may, in its sole discretion, continue to disburse grant funding to SUBRECIPIENT for the programs or activities permitted under this Agreement and specified in the effective Award Letter(s); however, COUNTY specifically reserves the right to cancel or modify some of the programs or activities specified in the Award Letter if it seems infeasible for SUBRECIPIENT to complete its work before the termination of the contract. Any funding disbursed to SUBRECIPIENT but not yet spent at the time the Agreement is terminated must be returned to COUNTY. All such disbursements continue to be subject to the restrictions otherwise provided in this Agreement or by law.

COUNTY will not impose sanctions on SUBRECIPIENT for a termination for convenience.

(b) With Cause: Either party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) be adjudged a bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or

- (4) suffer any judgment which remains unsatisfied for 30 days, and which would substantively impair the ability of the judgment debtor to perform under this Agreement.

COUNTY also reserves the right to immediately suspend and/or to terminate this Agreement, for cause, upon discovery of a material breach by SUBRECIPIENT. A material breach includes, but is not limited to, (i) SUBRECIPIENT's failure to comply with the terms and conditions of this Agreement or of any Award Letter(s) issued by COUNTY; (ii) a material misrepresentation by SUBRECIPIENT to COUNTY in relation to this grant program; or (iii) failure to comply with all applicable laws or regulations. COUNTY will provide written notice of the material breach and its determination to either suspend or terminate the contract, specifying the date of termination. At COUNTY's sole discretion, COUNTY may provide SUBRECIPIENT with a reasonable period of time to cure the breach. If COUNTY terminates this Agreement for cause, COUNTY reserves the right to reduce, modify, or eliminate any or all of this subaward and any other outstanding SHSGP subawards to SUBRECIPIENT. Upon demand by COUNTY, SUBRECIPIENT agrees to immediately return FY 2021 SHSGP funding that has been disbursed to SUBRECIPIENT and which remains in SUBRECIPIENT's possession at the time this Agreement is terminated. In addition, the payment of any grant funds that have yet to be disbursed for work already completed by SUBRECIPIENT under this Agreement remains subject to the restrictions on payments otherwise provided in this Agreement and by law, and is further conditioned on COUNTY's confirmation of SUBRECIPIENT's satisfactory completion of the activities or programs specified in this Agreement and any related Award Letter(s).

COUNTY will not pay lost anticipated profits or other economic loss, nor will the County pay compensation or make reimbursement to cure any breach arising out of or resulting from such termination for cause. If this Agreement is terminated for cause, COUNTY may impose sanctions, including possible rejection of future proposals based on specific causes of non-performance. Furthermore, if this Agreement is terminated for SUBRECIPIENT's failure to comply with applicable federal statutes or regulations, including those specifically incorporated into this Agreement by reference, SUBRECIPIENT is advised that the COUNTY's termination decision may be considered in evaluating future applications for federal grant awards.

(c) Effects of Completion or Termination: Expiration, completion, or termination of this Agreement shall not terminate any of SUBRECIPIENT's obligations to indemnify, defend, or hold harmless; to maintain and make available any records pertaining to the Agreement; to cooperate with any audit; to be subject to offset; to make any reports of pre-termination contract activities; to honor its obligations related to the disposal or disposition of property purchased with SHSGP funding; to comply with the continuing applicable obligations contained in Exhibit A; or to comply with any other continuing or closeout obligations required by this Agreement or by federal or state law or regulation, including those specified in 2 CFR Part 200. Where SUBRECIPIENT's activities or programs have been terminated by the COUNTY for cause, said termination will not affect any rights of the COUNTY to recover damages from or against SUBRECIPIENT.

(d) Suspension of Performance: Independent of any right to terminate this Agreement, COUNTY Authorized Agents may immediately suspend performance by SUBRECIPIENT, in whole or in part, in response to health, safety or financial emergency, a change in SHSGP grant funding to COUNTY, or a failure or refusal by SUBRECIPIENT to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

17. RECORDS. SUBRECIPIENT shall maintain complete and accurate records with respect to the activities, programs, and/or purchases funded by or related to FY 2021 SHSGP funding and/or this Agreement, including all records relating to procurement of goods and services. In addition,

SUBRECIPIENT shall maintain complete and accurate records with respect to any payments to employees, subawardees, contractors, or subcontractors. All such records shall be prepared in accordance with generally accepted accounting procedures and any applicable procedures required by the COUNTY or the federal or state government. All applicable records shall be clearly identified, maintained on site, and be kept readily accessible.

SUBRECIPIENT further agrees to make all such records available to federal, state, and COUNTY government representatives, as further specified in Exhibit A, Paragraph 9 and Exhibit B, Paragraph 10. SUBRECIPIENT shall ensure that members of the public also have access to such records upon request, in accordance with the Freedom of Information Act and the California Public Records Act. SUBRECIPIENT specifically agrees to require any subrecipients, contractors, successors, transferees, and assignees to acknowledge and agree to comply with all of these record keeping and access requirements.

Failure to comply with these requirements may result in suspension of payments under the grant, termination of the grant, or both. SUBRECIPIENT may be ineligible for award of any future grants if COUNTY or Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

18. NOTICES. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, sent by facsimile transmission, or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:

Andrew Lockman
Emergency Services Manager
Tulare County HHSA/Office of
Emergency Services
5957 S Mooney Blvd
Visalia, CA 93277
Phone No.: (559) 624-7498
Fax No.: (559) 624-7499

With a Copy To:

COUNTY ADMINISTRATIVE OFFICER
2800 W. Burrel Ave.
Visalia, CA 93291

Phone No.: (559) 636-5005

Fax No.: (559) 733-6318

SUBRECIPIENT:

Rob Moore
Interim Director of Public Safety
Lindsay Department of Public Safety
185 N Gale Hill Ave
Lindsay, CA 93247
Phone No.: (559) 562-2511
Fax No.: (559) 562-7126

Notice personally delivered is effective when delivered. Notice sent by facsimile transmission is deemed to be received upon successful transmission. Notice sent by first class mail shall be deemed received on the fifth (5th) day after the date of mailing. Either party may change the above address by giving written notice pursuant to this paragraph.

19. CONFLICTS WITH LAWS OR REGULATIONS/ SEVERABILITY. This Agreement is subject to all

applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the parties, to be in conflict with any code or regulation governing its subject, the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either party is lost, the Agreement may be terminated at the option of the affected party, and some or all of the grant money may need to be returned to COUNTY. Such a termination will be treated as a termination for cause, in accordance with Paragraph 16 above. In all other cases, the remainder of the Agreement shall continue in full force and effect.

20. MODIFICATION. No part of this Agreement may be modified without the written consent of both Parties.

21. EXHIBITS AND RECITALS. The Recitals and the Exhibits to this Agreement are fully incorporated into and are integral parts of this Agreement.

22. GOVERNING LAW. This Agreement shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The Parties agree that this contract is made in and shall be performed in Tulare County, California.

23. FURTHER ASSURANCES. Each Party will execute any additional documents and perform any further acts which may be reasonably required to effect the purposes of this Agreement.

24. NO THIRD PARTY BENEFICIARIES. Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

25. WAIVERS. The failure of either Party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either Party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other Party.

26. HEADINGS. Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

27. ORDER OF PRECEDENCE. In the event of any conflict or inconsistency between or among the body of the Agreement and any Award Letter or other communication between COUNTY and SUBRECIPIENT, then the terms and conditions of the body of this Agreement shall prevail.

28. ASSIGNMENT. This Agreement is entered into by COUNTY in reliance on the identity and representations made by SUBRECIPIENT, and no part of this Agreement or this subaward (including any equipment purchased with the subaward) may be assigned, transferred, or sold by SUBRECIPIENT without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion. Any FY 2021 SHSGP funds provided to SUBRECIPIENT and not yet expended at the time of any attempted unauthorized assignment or transfer will be forfeit to COUNTY at the time of attempted assignment or transfer. Furthermore, the voluntary or involuntary assignment of this Agreement to a receiver or trustee in bankruptcy, will constitute a material breach and will automatically terminate this Agreement without advance notice or opportunity to cure.

29. COMPLIANCE WITH LAWS. SUBRECIPIENT shall comply with all applicable laws, ordinances, rules, and regulations and obtain and keep current all permits, licenses and/or approvals required by law to perform the activities or services, or to purchase any equipment, specified in this Agreement.

30. CONFLICT OF INTEREST

(a) SUBRECIPIENT agrees to, at all times during the performance of this Agreement, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including SUBRECIPIENT, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee, or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on SUBRECIPIENT or any business firm in which SUBRECIPIENT has an interest, with certain narrow exceptions.

(b) SUBRECIPIENT agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interest laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

31. COUNTERPARTS. The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

32. CERTIFICATION AND ACKNOWLEDGEMENT: The undersigned represents that he/she is authorized to enter into this Agreement for and on behalf of the SUBRECIPIENT. As the duly authorized representative of the SUBRECIPIENT, the undersigned hereby certifies that the SUBRECIPIENT has the legal authority to apply for County, State, and Federal assistance, and the institutional, managerial, and financial capability (including funds sufficient to pay any non-Federal share of project cost) to ensure proper planning, management and completion of the project described in the FY 2021 SHSGP application, within the prescribed timelines.

The undersigned further acknowledges that the SUBRECIPIENT is responsible for reviewing and adhering to all COUNTY, state, and federal grant award requirements.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year signed by the last Party below.

SUBRECIPIENT

By: _____
[Title]

Date: _____

ATTEST:

By: _____

Approved as to form:

By: _____

COUNTY OF TULARE

By: _____
Chairman, Board of Supervisors

Date: _____

ATTEST: JASON T. BRITT
County Administrative Officer/
Clerk of the Board of Supervisors

By: _____
Deputy

Approved as to form: County Counsel

By: _____
Deputy, Matter No. 2021506.

EXHIBIT A



Standard Assurances For All Cal OES Federal Grant Programs

As the duly authorized representative of the Applicant, I hereby certify that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) California Supplement to the NOFO; and
- (d) Federal and State Grant Program Guidelines.

Federal Regulations

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. The Applicant hereby agrees to comply with the following:

1. Proof of Authority

The Applicant will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body, and
- (d) The official executing this agreement is, in fact, authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

EXHIBIT A

2. Period of Performance

The Applicant will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.213 and codified in 2 C.F.R. Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud, and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals, subgrantees, recipients or subrecipients:

EXHIBIT A

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101-12213);
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)— be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);

EXHIBIT A

- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;

EXHIBIT A

- (e) Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (g) Executive Order 11514 which sets forth national environmental standards;
- (h) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (i) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (j) The Endangered Species Act of 1973, (P.L. 93-205);
- (k) Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- (l) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (m) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Access to Records

In accordance with 2 C.F.R. § 200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

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10. Conflict of Interest

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment

The Applicant will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subgrantee, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

14. Human Trafficking

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

The Applicant will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts, and
- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

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16. Worker's Compensation

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and
- (d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

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19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. California Public Records Act and Freedom of Information Act

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM - PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at CRCL@hq.dhs.gov or by mail at U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

In the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

23. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

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24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

25. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

26. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

27. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

28. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

29. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

30. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

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31. Non-supplanting Requirement

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

33. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

35. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

36. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

37. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

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IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2018, Version 8.1, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The undersigned represents that he/she is authorized to enter into this agreement for and on behalf of the Applicant.

Subrecipient: _____

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

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Federally-Funded Services

(Pursuant to Appendix II, 2 CFR Part 200)

(1) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, if this Agreement meets the definition of “federally assisted construction contract” in 41 CFR Part 60–1.3, then during the performance of this Agreement, the SUBRECIPIENT agrees as follows: (1) The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The SUBRECIPIENT will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The SUBRECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.(2) The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.(3) The SUBRECIPIENT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the SUBRECIPIENT'S legal duty to furnish information.(4) The SUBRECIPIENT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the SUBRECIPIENT'S commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.(5) The SUBRECIPIENT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.(6) The SUBRECIPIENT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.(7) In the event of the SUBRECIPIENT'S noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and the SUBRECIPIENT may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.(8) The SUBRECIPIENT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The SUBRECIPIENT will take such action with respect to any subcontract or purchase order as the COUNTY may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event SUBRECIPIENT becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction

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by the COUNTY, then the SUBRECIPIENT may request the United States to enter into such litigation to protect the interests of the United States. The COUNTY further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work.

The COUNTY agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance. The COUNTY further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the COUNTY agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the COUNTY under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from the COUNTY; and refer the case to the Department of Justice for appropriate legal proceedings.

The SUBRECIPIENT and each of its subcontractors shall include this equal opportunity clause in each of its subcontracts.

(2) Davis-Bacon Act, as amended (40 U.S.C. 3141–3148). If this Agreement involves payment for construction services in excess of \$2,000, then the SUBRECIPIENT must comply with the Davis-Bacon Act (40 U.S.C. 3141–3144, and 3146–3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the Davis-Bacon Act, the SUBRECIPIENT is required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the U.S. Secretary of Labor. In addition, the SUBRECIPIENT is required to pay wages not less than once a week. The COUNTY must provide SUBRECIPIENT with a copy of the current prevailing wage determination issued by the U.S. Department of Labor with respect to the services to be provided under the subject Agreement. The SUBRECIPIENT’S execution of the subject Agreement constitutes the SUBRECIPIENT’S acceptance of the wage determination. The COUNTY must report all suspected or reported violations to the Federal awarding agency.

(3) Copeland “Anti- Kickback” Act (40 U.S.C. 3145). SUBRECIPIENT must comply with the Copeland “Anti- Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). Under the Copeland “Anti- Kickback” Act, the SUBRECIPIENT and all subcontractors are prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The COUNTY must report all suspected or reported violations to the Federal awarding agency.

(4) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708). If this Agreement

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involves payments for services in excess of \$100,000 that include the employment of mechanics or laborers, then the SUBRECIPIENT must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, the SUBRECIPIENT is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies, materials, or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(5) Rights to Inventions Made Under a Contract or Agreement. If the Federal award supporting payments for services under this Agreement meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Agreement is with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” then the COUNTY and the SUBRECIPIENT must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(6) Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended. If this Agreement involves payments for services in excess of \$150,000, then the SUBRECIPIENT must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(7) Debarment and Suspension (Executive Orders 12549 and 12689). By execution of this Agreement, SUBRECIPIENT certifies to the COUNTY that it is not a party listed on the government-wide exclusions list in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension,” and is not debarred, suspended, or otherwise excluded from the award of a federally-supported contract under statutory or regulatory authority other than Executive Order 12549.

(8) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). If this Agreement involves payments for services in excess of \$100,000, then by execution of this Agreement, the SUBRECIPIENT certifies to the COUNTY that it will not and has not used Federally-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. The SUBRECIPIENT must also disclose to the COUNTY in writing any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

(9) Procurement of recovered materials. Pursuant to 2 CFR § 200.322, COUNTY and SUBRECIPIENT must comply with section 6002 of the Federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that

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contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(10) Records Retention and Access. Pursuant to 2 CFR §§ 200.333 through 200.337, the following provisions regarding Records Retention and Access will apply to this Agreement:

(a) Retention requirements for records. SUBRECIPIENT must retain all financial records, supporting documents, statistical records, and all other of its records pertinent to this Agreement for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or COUNTY. The only exceptions to the 3-year limit are the following:

(i) If any litigation, claim, or audit is started before the expiration of the 3-year period, then the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(ii) When the SUBRECIPIENT is notified in writing by the COUNTY or Federal awarding agency, cognizant agency for audit, oversight agency for audit, or cognizant agency for indirect costs to extend the retention period.

(iii) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(iv) When records are transferred to or maintained by the COUNTY, or Federal awarding agency, the 3-year retention requirement is not applicable to the SUBRECIPIENT.

(v) Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the SUBRECIPIENT'S fiscal year in which the program income is earned.

(vi) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

1. *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the COUNTY or the Federal Government to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

2. *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the COUNTY or Federal Government for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(b) Methods for collection, transmission, and storage of information. In accordance with the May 2013 Executive Order on Making Open and Machine Readable the New Default for Government Information, the Federal awarding agency and the SUBRECIPIENT should, whenever practicable, collect, transmit, and store Federal award-related information in open and machine-readable formats rather than in closed formats or on paper. The Federal awarding agency or COUNTY must always provide or accept paper versions of Federal award-related information to and from the SUBRECIPIENT upon request. If paper copies are submitted, the Federal awarding agency or COUNTY must not require more than an

EXHIBIT B

original and two copies. When original records are electronic and cannot be altered, there is no need to create and retain paper copies. When original records are paper, electronic versions may be substituted through the use of duplication or other forms of electronic media provided that they are subject to periodic quality control reviews, provide reasonable safeguards against alteration, and remain readable.

(c) Access to records.

(i) Records of SUBRECIPIENT. The Federal awarding agency, Inspectors General, the Comptroller General of the United States, the State of California, and the COUNTY, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the SUBRECIPIENT which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the SUBRECIPIENT'S personnel for the purpose of interview and discussion related to such documents.

(ii) Only under extraordinary and rare circumstances would such access include review of the true name of victims of a crime. Routine monitoring cannot be considered extraordinary and rare circumstances that would necessitate access to this information. When access to the true name of victims of a crime is necessary, appropriate steps to protect this sensitive information must be taken by both the SUBRECIPIENT and the Federal awarding agency or COUNTY. Any such access, other than under a court order or subpoena pursuant to a bona fide confidential investigation, must be approved by the head of the Federal awarding agency or delegate.

(iii) Expiration of right of access. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. Federal awarding agencies and COUNTY must not impose any other access requirements upon SUBRECIPIENT.



STAFF REPORT

TO: Lindsay City Council
FROM: Neyba Amezcua, Director of City Services & Planning
DEPARTMENT: City Services & Planning
ITEM NO.: 10.5
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Minute Order Authorization to Enter Into an Agreement with ERS Industrial Services, Inc. for the Water Treatment Plant Filter Bank A Renovation Project and Granting City Manager or Their Designee Authorization to Execute Any Documents Thereto.

BACKGROUND | ANALYSIS

The Water System is using approved surface water supplied by the Friant-Kern Canal and groundwater from Wells 14 and 15 to supply potable water to the distribution system. The surface water is treated through a conventional filtration surface water treatment plant as seen on Attachment A. There are a total of 4 filter bank units at the water treatment plant (A, B, C and D). Banks A, B and C were part of the original construction that began in 1975. The treatment plant was put on-line in 1978. Bank D was added in 2000. There had never been a complete renovation of the filter media material since the water plant was constructed and subsequently put on-line, therefore, turbidity compliance issues have been identified. Filter banks B and C were taken off-line in late 2016 and bank A in 2020 due to not being able to maintain turbidity compliance. Bank B and C were renovated and placed back on-line in 2018. Bank A is still off-line to this date.

The California Health and Safety Code (CHSC), Section 116555 requires all public water systems to comply with primary drinking water standards as defined in CHSC, Section 116275(c). Primary drinking water standards include maximum levels of contaminants, specific treatment standards, and monitoring and reporting requirements as specified in regulations adopted by the State Water Board.

Section 64653, paragraph (c)(1)(A), specifies that the turbidity level of the combined filter effluent of water suppliers serving 10,000 or more persons using conventional or direct filtration treatment shall be less than or equal to 0.3 nephelometric turbidity units (NTU) in at least 95 percent of the measurements taken each month.

The City of Lindsay received a Citation on May 13, 2021, due to failure to comply with the surface water treatment rule for March 2021. During the month of March, the turbidity level of the combined filter effluent in at least 95 percent of the measurements taken was 0.426 NTU. No reported turbidity values exceeded 1.0 NTU during this month. As such, the water system failed to meet the 0.3 NTU turbidity



STAFF REPORT

performance standard. Staff completed the required public notification and reporting in the Citation and no further actions were taken by the state.

The current water treatment plant output capacity is 1,350 gallons per minute (GPM) utilizing filter banks B, C, and D only.

Completing the renovation project of filter Bank A, could increase production capacity by as much as 550 GPM. This would allow our water system to reduce reliance of Well 14 & Well 15.

The process of renovation will include the removal of all existing Media and all the inside filters internal components. Once all existing filter media is removed and the existing internal metal and polyvinyl chloride piping are exposed, there could potentially be additional work that will have to be addressed. The original 43-year-old metal components could require a new coating just like the previous renovation of Bank B & C in 2018.

This is a highly specialized process and there is only one company in the state who responded to our request. Staff requested approval from the Purchasing Agent, Juana Espinoza, Director of Finance, of an Exception to Bidding per our Procurement Policy under the Sole Source Procurement Process and was approved.

The project contractor, ERS Industrial Services, Inc., of Fremont, CA., provided a quote for a Turnkey Service which included the coatings on our three 10-foot diameter vertical pressure vessels, Filter Bank A.

Staff highly recommends Council consider the approval of the proposal submitted by ERS Industrial Services Inc.

FISCAL IMPACT

Proposal Amount: \$244,860.00

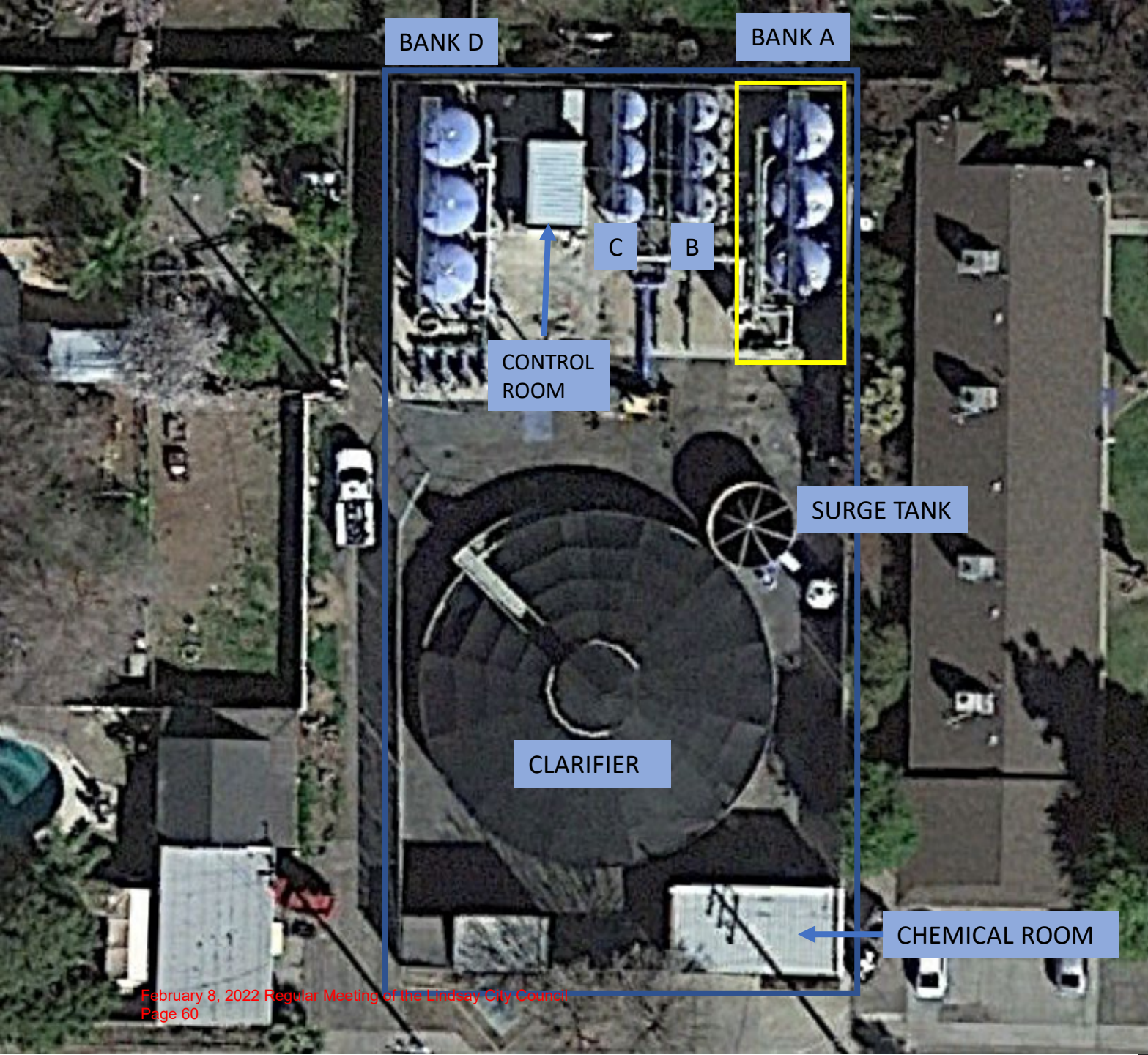
Funding Source: America Rescue Plan Act (ARPA) Water Infrastructure Project

ATTACHMENTS

- Attachment A-Water Treatment Plant Schematic
- ERS Industrial Services Inc. Quote

ATTACHMENT A

Water Treatment Plant
729 E Honolulu St





January 10, 2022

Neyba J. Amezcua
City of Lindsay
150 N. Mirage Ave,
P.O. Box 369
Lindsay, Ca 93247

QUOTE #: LIN060519R1-1QIC
PHONE #: 559-562-7102
EMAIL ADDRESS: namezcua@lindsay.ca.us

Dear Neyba:

ERS is pleased to submit its proposal for our TurnKey Service with coatings on your (3) each 10 ft. diameter vertical pressure vessels, **Bank A**, located in Lindsay, Ca. 93247.

Scope of Supply:

- Removal, packaging, and disposal of existing filter media at an approved landfill
- Removal, packaging, and storage of filter internal components for reuse
- Coatings – Filter Interior:
 - Full containment, environmental control, and protection of Concrete and piping throughout the coatings process
 - Surface preparation of concrete substrate in accordance with SSPC-SP 10: 3-5 Mil profile
 - Heated plural application (one coat) of NSF-61 approved Endura-flex 1988 Elastomeric Polyurethane (off White) @ 50-70 mil DFT
 - Holiday detection and inspection in accordance with SSPC-PA 2
- Coatings – Filter Exterior:
 - None
- Reinstallation of filter internal piping
- Installation of new media and gaskets

Clarifications:

- **Filters to be worked on at same time in 1 trip.**

Price does not include bonding

Price does not include any valves, instruments or controls

ERS will require a media sample for Disposal Testing prior to scheduling the project.

ERS will also repair or replace existing underdrains as needed, on a time and materials basis.

Disposal testing and transport to be executed in compliance with RCRA Subtitles C & D.

Class A, C33 CSLB License #724233

Registered DIR Public Works Contractor #1000003275

2120 WARM SPRINGS COURT FREMONT, CALIFORNIA 94539 | P: 510.770.0202 | E: SALES@ERSFILTER.COM



Standard Provisions:

1. Qualified manpower:
 - a. Onsite Supervisor/Environmental Technician/Hole Watch
 - b. Certifications in Forklift/Reach Lift, Crane Operator, Confined Space & Rescue, and First Aid/CPR/AED
2. Equipment and PPE:
 - a. High-power industrial vacuum system
 - b. Ventilation fan for air circulation
 - c. Four gas monitors for pre-entry and continuous LEL testing
 - d. Air-purifying respirators (supplied air respirators available if required)
3. Safety Regulations:
 - a. Confined Space:
 - i. Tripod/winch for emergency evacuation
 - ii. Fall arrest harnesses with safety lanyards for all men
 - iii. Permit-required confined space entry permits as applicable
 - iv. Daily monitoring log
 - b. 2-Way radios for communication with in-tank personnel
 - c. Cellular phone as an emergency response tool
4. New media as follows:
 - a. None

Additional Coatings Provisions:

1. Quality Control:
 - a. NACE Coating Inspector Level 2 – Certified to be onsite for duration of coatings phase in order to:
 - i. Perform and document hold-point inspections in accordance with specifications
 - ii. Provide final inspection and approval of coatings application
 - iii. Produce Daily Inspection Reports confirming coatings operations are in conformance with applicable standards
2. Equipment and PPE:
 - a. Environmentally controlled trailer with heated plural component spray equipment and specialized equipment technician
 - b. 24 hour continuous environmental control with dehumidification and monitoring of blasting and coating area



PRICING: \$244,860.00

Quote Valid for 45 days

Our time and materials work is billed at \$198.00 per man-hour, straight time, plus materials with a 25% margin. Price includes all applicable sales tax.

Please feel free to call me should you need further information or any clarification. My contact information is: phone - cell (510) 552-3285, office (510) 770-0202; email - nradonich@ersfilter.com.

Sincerely,

Nik Radonich
Sales/Engineering Manager



STAFF REPORT

TO: Lindsay City Council
FROM: Edna Hubbard, Engineer Technician
DEPARTMENT: City Services and Planning
ITEM NO.: 11.1
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Consider the Minute Order Approval of Proposed Contract Change Order #3 (CCO#3) for the Wastewater Influent and Effluent Flow Control & Monitoring Project.

BACKGROUND | ANALYSIS

The Wastewater Influent and Effluent Flow Control & Monitoring project is nearing completion. The selected contractor for this project was Telstar Instruments, Inc. (Telstar). The project scope involved updating current wastewater monitoring and control tools that capture the influent and effluent flow readings as well as updating wastewater flow pump controls at the City's Wastewater Treatment Plant (WWTP). These updates will ensure the City remains compliant with the Waste Discharge Requirements (WDRs) issued by the California Regional Water Quality Control Board.

While testing the efficiency of the monitoring tools at the WWTP, Telstar identified that the existing programmable logic controller (PLC) system needed upgrading. The PLC system is a highly specialized computer used to control the automation in machines and processes at the WWTP. With the recent upgrades and additions of the wastewater monitoring tools and controls, it is important that the PLC system is also upgraded to provide maximum efficiency in automation controls. Currently, the PLC system that is used by the City is both dated and using a refurbished output card. Any failures to the PLC system would be catastrophic to the City as it would cause a multitude of operational issues.

The project has had two prior contract change orders issued due to encountered conditions. The contract change orders that have been issued are as follows:

- CCO#1: WWTP Control Panel; Addition of a new battery and adapter for existing control panel.
- CCO#2: Extension in the number of days for completion of work.
- *Proposed* CCO#3: WWTP Existing Control Panel; Provide and install a completely new PLC system. This would include installing a new controller along with modules. The PLC system would also have to be reprogrammed and tested.



STAFF REPORT

Staff is recommending that Council approves Proposed Contract Change Order #3 for the amount of \$26,749.00.

FISCAL IMPACT

Budget: \$150,000 FY 2020-2021

Fund: Sewer

Expenditure Breakdown:

Original Contract: \$119,593.00

Approved CCO's: \$3,497.00 (2.92% Increase)

Proposed CCO's: \$26,749.00 (25.29% Total Increase)

Total Project's: \$149,839.00

ATTACHMENTS

- Proposed Contract Change Order #3
- Schematic Design Map of Wastewater Treatment Plant



City of Lindsay




DEPARTMENT OF CITY SERVICES

P.O. Box 369 — Lindsay, California 93247 — 150 North Mirage Ave.

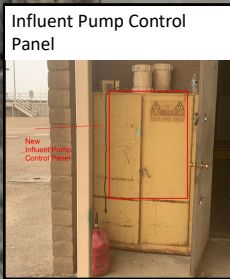
559 • 562 • 7102 ext 4

559 • 562 • 5748 fax

Wastewater Influent and Effluent Flow Control & Monitoring Project				
Contractor: Telstar Instruments, Inc.		Date: January 27, 2022		
CONTRACT CHANGE ORDER NO. 3				
Item #	Description	Extra	Credit	Days Ext.
1	WWTP Existing Control Panel: New Complete PLC System;	\$ 26,749.00	\$ -	TBD
2				0
3				0
4				0
5				0
6				0
Totals		\$ 26,749.00	\$ -	TBD
<p>APPROVAL RECOMMENDED</p>  <p>Feb. 2, 2022</p> <p>Edna Hubbard, Engineer Technician Date</p>		Total in Change Orders:	\$ 26,749.00	Calendar days time extended: TBD
		or		
		Total in Credits	\$ -	
<p>CONTRACTOR AGREEMENT</p> <p>The undersigned hereby agrees to the above-described amendment of the contract.</p>		Original Contract Amount:	\$ 119,593.00	% Increased
		Current Contract Amount:	\$ 123,090.00	
<p>Signature Title Date</p> <p>All signatures must be signed in ink</p> <p>DEPARTMENT HEAD'S APPROVAL</p>		Revised Contract Amount:	\$ 149,839.00	25.29%
		if % increased is under 10%; No Council Action Required _____		
		if % increased is over 10%; Council Action Required _____		
<p>Neyba Amezcua, Director of City Services and Planning Date</p>		if % increased exceeds 25%; Supplemental Agreement __X__ & Council Action Required __X__		
<p>CITY MANAGER'S APPROVAL</p>		Council Meeting Date: February 8, 2022		
		Approved: __ Yes __ No		
<p>Joseph Tanner, City Manager Date</p>		Notes:		

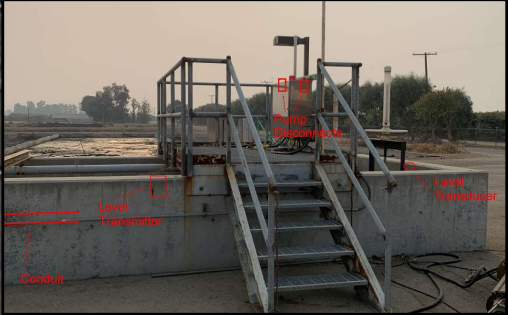
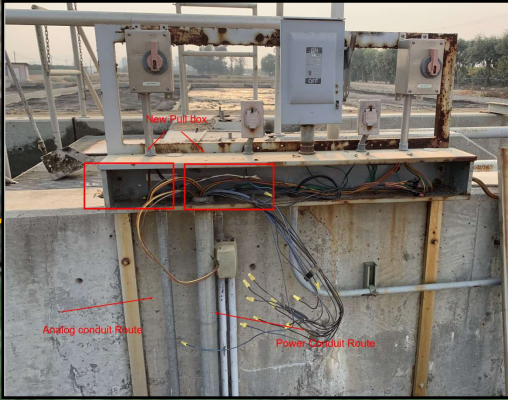


New mission system must be 5G compatible



Effluent Flume Meter

Influent Flume Meter





STAFF REPORT

TO: Lindsay City Council
FROM: Joseph Tanner, City Manager
DEPARTMENT: City Manager
ITEM NO.: 11.2
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Consider the Minute Order Approval of City Services Manager/Inspector Job Description.

BACKGROUND | ANALYSIS

Pending Council approval, the City intends to begin recruitment efforts for the position of City Services Manager/Inspector. Staff is proposing that the first year of this position be funded by the American Rescue Plan Act (ARPA) funds which the City originally planned to allocate to the position of Economic Development Coordinator.

FISCAL IMPACT

The salary for this position would be \$70,262 – \$94,162 Annually for Tier 1 (Anyone hired prior to 07/01/2018) and \$72,262 – 86,382 for Tier 2 (Anyone hired after 07/01/2018). The \$75,000 salary from the position of Economic Development Coordinator would be re-allocated to this position.

ATTACHMENTS

- City Services Manager/Inspector Job Description



City of Lindsay
Job Description
City Services Manager/Inspector

Class Title:	City Services Manager/Inspector	Salary:	Tier 1: \$70,262-94,162 Annually Tier 2: \$70,262-86,382 Annually
Department:	City Services	Step Range:	1-7
Location:	150 N. Mirage Lindsay, CA. 93247	Status:	Full-time/Exempt
Date:	MM/DD/YYYY	Union:	None

GENERAL PURPOSE:

Performs complex supervisory, administrative, and professional work in managing projects to an outcome within project scope and within both project budget and schedule and varying inspections. The list of project types that will be managed include the following: transportation system construction and improvement projects, facility construction and improvement projects, major studies projects, water system construction and improvement projects, sewer and wastewater treatment plant related construction and improvement projects and significant capital maintenance projects, and other projects having a defined scope with a specific budget requiring schedule and project-risk management.

SUPERVISION RECEIVED:

Works under the broad policy guidance and direction of the Director of City Services & Planning.

SUPERVISION EXERCISED:

Exercises supervision over clerical, administrative, maintenance and professional staff and consultants as assigned.

ESSENTIAL DUTIES AND RESPONSIBILITIES:

- Performs all matters of complex project management from project conception through project close-out to identify and neutralize or mitigate risks to accomplishing each project's scope within budget and on schedule.
- Plans, organizes, assigns, and reviews the work of assigned staff in the project management group, including coordinating the scheduling of projects and assignments, monitoring and analyzing projects and programs, and conducts staff meetings and manages project budgets.
- Participates in the planning, development, coordination, and administration of street, water, sewer, wastewater treatment plant, buildings and facilities, major study and development services related projects; participates in the development of implementation schedules; participates in preparation of cost estimates for project activities.
- Participates in the acquisition, renovation, demolition, and disposition of real estate, rehabilitation, and tenant relocation as required by specific project.
- Performs combination of varying inspections; inspects structural, plumbing, mechanical and electrical installations and swimming pools to ensure compliance with adopted codes in all residential and commercial projects; adopted codes shall include, in part, the



City of Lindsay Job Description City Services Manager/Inspector

Building, Plumbing, Mechanical and Electrical Codes, State Energy and Handicapped Codes, City Ordinances and State and local laws and codes where appropriate.

- Supervises department support staff, either directly or through subordinates.
- Determines work procedures, prepares work schedules, and expedites workflow.
- Issues written and oral instructions. Assigns duties and examines work for exactness, neatness, and conformance to policies and procedures.
- Assists with the preparation and documents budget requests; administers adopted budget in assigned area of responsibility.
- Plans, organizes, coordinates, supervises and evaluates programs, plans, services, staffing, equipment and infrastructure of the City Services Department.
- Evaluates public works needs and formulates short- and long-range plans to meet needs in all areas of responsibility, including transit, water, sewer, storm drain, street programs, traffic controls, lighting, parks and open spaces and other public works projects, facilities and programs.
- Supervises the review of private project development plans for compliance with codes, regulations, and standards, adequacy of applications for permits and compliance with approved plans.
- Provides input on the development or update of the City Transportation Improvement Program (T.I.P.), Comprehensive Sewer Plan, Comprehensive Water Plan, the Capital Improvement Program, and other plans involving the municipal infrastructure.
- Determines applicable codes, regulations, and requirements for assigned projects.
- Oversees the preparation of engineering plans and specifications, bidding, competency of contractors and vendors, and the selection criteria for public contracts.
- Oversees the maintenance of infrastructure and other records.
- Responds to public or other inquiries relative to department policies and procedures. Evaluates issues and options regarding municipal public works and makes recommendations.
- Maintains regular contact with consulting engineers, construction project engineers, City, County, State and Federal agencies, professional and technical groups and the general public regarding department activities and services.

PERIPHERAL DUTIES:

- Assists in the training of city personnel in city services systems and techniques.
- May serve as a member of committees.
- Assists in administering the permitting function, including application processing, fee assessment and collection, and permit issuance.
- Explains, interprets, and provides guidance regarding all applicable codes within area of responsibility to architects, engineers, contractors, developers, and other interested parties.
- May assist in the Board of Appeals as needed and providing required information.



City of Lindsay Job Description City Services Manager/Inspector

MINIMUM QUALIFICATIONS:

Education and Experience.

- Graduation from a four-year college or university with a degree in civil engineering, public administration or a closely related field is desirable; and
- Minimum of five years previous public works experience including at least two years utilities;
- Or any equivalent combination of education and experience.

Necessary Knowledge, Skills and Abilities.

- Considerable knowledge of civil engineering principles, practices and methods as applicable to a municipal setting; thorough knowledge of applicable City policies, laws, and regulations affecting Department activities.
- Skill in operating the listed tools and equipment.
- Ability to communicate effectively, orally and in writing, with employees, consultants, other governmental agency representatives, City officials and the general public.
- Ability to conduct necessary engineering research and compile comprehensive reports.

SPECIAL REQUIREMENTS:

- Valid State Driver's License or the ability to obtain one prior to employment.
- Registration as a Professional Engineer is desirable.
- One or more International Code Council (ICC) building inspection certifications (residential – commercial). Other certifications (plan check, electrical, plumbing, mechanical, masonry, structural masonry, CASP, fire system) are highly desirable.

TOOLS AND EQUIPMENT USED:

Personal computer, including word processing; data base; motor vehicle; calculator; phone; copy machine; tape measure.

PHYSICAL DEMANDS:

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. Work is performed mostly in office settings. Some outdoor work is required in the inspection of various land use developments, construction sites, or public works facilities. Hand-eye coordination is necessary to operate computers and various pieces of office equipment. While performing the duties of this job, the employee is occasionally required to stand; walk; use hands to finger, handle, feel or operate objects, tools, or controls; and reach with hands and arms. The employee is occasionally required to sit; climb or balance; stoop, kneel, crouch, or crawl; talk or hear; and smell. The employee must occasionally lift and/or move up to 40 pounds. Specific vision abilities required by this job include close vision, distance vision, color vision, peripheral vision, depth perception, and the ability to adjust focus.

WORK ENVIRONMENT:



City of Lindsay Job Description City Services Manager/Inspector

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodations may be made to enable individuals with disabilities to perform the essential functions. While performing the duties of this job, the employee occasionally works in outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions, or airborne particles. The noise level in the work environment is usually quiet in the office, and moderate in the field.

SELECTION GUIDELINES:

Formal application, rating of education and experience; oral interview and reference check; job related tests may be required. The duties listed above are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related or a logical assignment to the position. The job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

BENEFITS:

Tier 1 (Employees hired prior to 07/01/2018): \$70,262-94,162 Annually

Tier 2 (Employees hired after 07/01/2018): \$70,262-86,382 Annually

MID-MANAGEMENT - 10 Vacation Days, 10 Days Mid-Management Leave, 13 Holidays, 10 Sick Leave days, 100% Employee Only Medical, Dental and Vision Plans, Life Insurance, Cal Pers Retirement, Deferred Comp City Match, Aflac and Cafeteria Plan. Please view the City of Lindsay website Human Resource page for further benefit details.

COVID-19 CONSIDERATIONS:

Protecting the health and safety of our communities including our teams and of those considering a career with the City of Lindsay is our highest priority. We continue to closely monitor the evolving situation and we appreciate your understanding and flexibility with any related changes to our interviewing process. Those selected to interview will be contacted via email with instructions for a virtual or physical interview. The City of Lindsay is committed to doing everything we can to keep our staff and community safe and it will continue to adhere to all CAL/OSHA COVID-19 Emergency Temporary Standards.



STAFF REPORT

TO: Lindsay City Council
FROM: Joseph Tanner, City Manager
DEPARTMENT: City Manager
ITEM NO.: 11.3
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Consider the Approval of **Resolution 22-07**, A Resolution Approving the Lindsay City Council Goals, Strategies, and Action Plan for 2022-2027.

BACKGROUND | ANALYSIS

Staff recommends that the City Council formally adopt the Lindsay City Council Goals, Strategies, and Action Plan for 2022-2027. The purpose of this document is to outline the five overarching goals of the City Council as well as the strategies that will be used to attain said goals over the next five years.

- Goal 1. Ensure the City is Fiscally Sustainable and Resilient.
- Goal 2. Provide a Safe, Clean Community Environment for All.
- Goal 3. Expand the Economic Base in Lindsay.
- Goal 4. Invest in Critical Streets, Water, and Sewer Infrastructure.
- Goal 5. Improve the Quality of Life for People that Live and Work in Lindsay.

FISCAL IMPACT

N/A.

ATTACHMENTS

- City Council Lindsay City Council Goals, Strategies, and Action Plan 2022-2027
- Resolution 22-07



Lindsay City Council
Goals, Strategies, and Action Plan
2022-2027

City Council

Ramona Caudillo, Mayor
Hipolito Cerros, Mayor Pro Tem
Yolanda Flores, Councilmember
Rosaena Sanchez, Councilmember
Ramiro Serna, Councilmember

Mission Statement

The mission of the City Council is to develop plans and programs for the City that allow the City to adequately meet the duties and obligations set out in the City Charter of the City of Lindsay in a responsible, transparent, and forward-thinking manner, and always in accordance with State and Federal law.

Overview

The City Council represents the will of Lindsay residents and, as a governing body, is collectively responsible for crafting policy as well as authorizing the expenditure of funds to achieve said will. Under the Council-Manager form of government, the Council consists of five council members elected at large in staggered four-year terms.

The Council's duties include but are not limited to: providing the residents of Lindsay with essential services such as public safety, clean drinking water and drivable roads; overseeing and authorizing spending for City services; participating in regional organizations, boards, and committees; making provisions for, budgeting for, and providing adequate financial resources and physical facilities for a full range of quality City services and activities that equitably provide for the quality of life for all economic, social, ethnic and age groups within the City; and ensuring the overall well-being of the City.

In the fulfillment of the duties set above, the Council, in collaboration with City staff, is committed to the following set of five overarching goals:

Goal 1. Ensure the City is Fiscally Sustainable and Resilient.

Goal 2. Provide a Safe, Clean Community Environment for All.

Goal 3. Expand the Economic Base in Lindsay.

Goal 4. Invest in Critical Streets, Water, and Sewer Infrastructure.

Goal 5. Improve the Quality of Life for People that Live and Work in Lindsay.

Accomplishments

As the City moves forward it is important to look back and recognize past accomplishments, as well as identify future potential for growth. Focusing on the City's successes is important for maintaining and expanding upon the City's momentum for positive change.

- Received \$330,000 in grant funding for new police cars through the SB-170 Budget Act of 2021.

- Successfully negotiated a new franchise agreement for refuse services with Mid-Valley Disposal.
- Conducted a Proposition 218 rate analysis for refuse services to ensure the City's ability to continue providing quality services to residents.
- Approved and submitted the City's Corrective Action Plan to the California State Auditor.
- Approved a revised Fleet Management & Replacement Policy to aid the City in the timely upkeep and replacement of its Public Safety and Public Works vehicles.
- Received over \$400,000 in grant funding for utility and mortgage assistance for Lindsay residents negatively impacted by COVID-19.
- Renewed the City of Lindsay's membership in the Tulare County Economic Development Corporation.
- Approved a deferral agreement between the City and Friant Water Authority, allowing the City to better manage its obligations in the coming years.
- Expanded zoning for special events in the Downtown area.
- Transitioned in-person billing for sewer, refuse, and delinquent utility charges to Tulare County Tax rolls.
- From 2020-2021, recruited and staffed 23 positions, including 15 existing but previously unstaffed positions.
- Hired a Fire Lieutenant exclusively dedicated to the City's fire preparedness needs.
- Expanded the City's cannabis cultivation zone to include Light Industrial zoned properties.
- Successfully completed 665 sewer inspections with no sewer spills and completed major projects at the Wastewater Treatment Plant and sewer line replacements between Homassel & Hamlin Way.
- Repaired 74 water leaks, replaced over 39 dead water meters, and completed a total of 238 utility service requests/work orders.
- Repaired 33 street signs, covered 2,585 square feet of graffiti, and repaired 2,349 potholes.
- Secured \$467,635 in additional grant funding from the Lindsay Hospital District for the City's Wellness Center.
- Provided COVID-19 testing and vaccines at the Wellness Center throughout the pandemic and to present day.
- Organized the City's first annual Light's Up Lindsay Holiday Event including a tree lighting ceremony and special performances by Lindsay High School Dance & Vocal Pathways and the Cardinal Guitar Ensemble.

- Approved contract with Retail Strategies, LLC for economic development services, including small business support, retail recruitment, and a Five-Year Downtown Revitalization Plan.

Goals, Strategies, and Action Plan 2022-2027

Goal 1. Ensure the City is Fiscally Sustainable and Resilient.

Plan for stable and consistent fiscal solvency through prudent management of general fund reserves, facility replacement reserves, pension obligations, and consistent evaluation for cost and operational efficiencies.

Strategies

- Operate City government in a fiscally responsible and prudent manner to ensure that the City of Lindsay makes sound fiscal decisions.
- Develop, update, and maintain fiscal policies to ensure appropriate oversight and best practices.
- Review the City's fees and rates schedule.
- Ensure that enterprise funds are supported by appropriate revenue sources and not a drag on the General Fund.

Action Items

1. Implement Corrective Action Plan in Response to State Auditor Report 2020-804.
2. Fund City's Section 115 Trust.
3. Adopt & Implement a Five-Year Financial Planning Policy.
4. Create a rolling five-year financial forecast.
5. Review all rates and fees for municipal services.
6. Review Water, Sewer & Refuse rates every five years.
7. Continue property tax billing for sewer and refuse services.

Goal 2. Provide a Safe, Clean Community Environment for All.

Ensure an appropriate response to community needs including fire preparedness, public safety and crime prevention, and public health emergencies by prioritizing the pursuit of reliable funding sources, community-centered policing, and transparency.

Strategies

- Increase Fire Department personnel.
- Explore additional training opportunities.

- Identify funding sources other than the General Fund for public safety equipment.
- Work with community partners and other governmental agencies on crime prevention.
- Ensure that the City of Lindsay is prepared for emergencies.
- Engage and effectively respond to the Community's safety concerns.

Action Items

1. Analyze and evaluate the effectiveness of using a combined police and fire department.
2. Consider the addition of two (2) full-time firefighter positions if the City's budget permits.
3. Identify public safety equipment needs and collaborate with Senator Melissa Hurtado's office to identify potential funding sources.
4. Continue the use of the Wellness Center as a community testing and vaccine site in response to COVID-19.
5. Ensure all City staff receive level 1 NIMS training.

Goal 3. Expand the Economic Base in Lindsay.

Increase economic activity and job creation in the City to increase revenue and diversify the local economy.

Strategies

- Grow the number of employment opportunities in Lindsay.
- Assist business growth for existing businesses.
- Recruit retail and other sales or excess tax generating businesses.
- Focus on the redevelopment of Downtown Lindsay.

Action Items

1. Identify beautification and property rehabilitation projects in the Downtown Lindsay area.
2. Expand the City's retail base by developing marketing plans to recruit retailers.
3. Support the City's existing small businesses and small business expansion through the development of a small business grant program.
4. Develop relationships with property owners and potential cannabis growers within the City to develop cannabis cultivation projects.
5. Cultivate working relationship between City staff and business owners to gather information and assist when appropriate.

Goal 4. Invest in Critical Streets, Water, and Sewer Infrastructure.

Replace deteriorated streets, enhance infrastructure for water and sewer.

Strategies

- Continue to monitor drought conditions throughout the state and in the region.
- Develop and maintain infrastructure resources to support sustainable growth.
- Ensure funding is in place for long-term fiscal stability.
- Make Community Facilities Districts part of all new projects
- Ensure City's street fee is accurate and updated on a regular basis
- Work with and partner with Tulare County on funding street project that our residents use

Action Items

1. Implement American Rescue Plan Spending Plan and complete identified projects.
 - I. Infrastructure Projects (56% of Total ARPA Funds)
 - i. Water Projects: \$1,549,350.00
 - ii. Sewer Projects: \$242,500.00
 - II. Focus on repairing streets
 - III. Complete Linda Vista Project
 - IV. Meet with Resource Management Agency on a regular basis

Goal 5. Improve the Quality of Life for People that Live and Work in Lindsay.

Improve and enhance the condition of public amenities, parks, and streetscapes to bolster the quality of life for our community and impart a positive impression on City visitors.

Strategies

- Provide high quality recreation options for residents of all ages.
- Fund Recreation activities without using General Fund.
- Invest and redevelop parks.
- Continue to development important partnerships with Lindsay Unified School District and Lindsay.
- Bring much needed housing, employment, youth and family services to the residents of Lindsay.
- Determine potential recreation sites.

- Create a work environment for City employees that promotes and supports employee development, growth and community.

Action Items

1. Continue financial support Wellness Center and health and wellness activities in the City.
2. Complete renovation of Olive Bowl/Kaku Park.
3. Review the long-term goals for McDermont Fieldhouse
4. Redevelop 284 E. Hermosa St. as a Resource Center for housing, employment, youth and family services.
5. Review Friday Night Market operations.
6. Explore funding opportunities for improvements at Harvard Park



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 22-07

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY APPROVING THE LINDSAY CITY COUNCIL GOALS, STRATEGIES, AND ACTION PLAN FOR 2022-2027

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on February 08, 2022 at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, the City Council of the City of Lindsay wishes to ratify via resolution the agreed upon document, “Lindsay City Council Goals, Strategies, and Action Plan 2022-2027” which outlines a set of goals and strategies the City Council shall follow; and

WHEREAS, the “Lindsay City Council Goals, Strategies and Action Plan 2022-2027” was created with the purpose of ensuring the city is fiscally sustainable and resilient; providing a safe and clean community for all; expanding the economic base; investing in critical streets, water and sewer infrastructure, and improving the quality of life for those who live and work in the City of Lindsay;

WHEREAS, the Lindsay City Council established goals, strategies and an action plan to address the Council’s developing core values and the mission of the City Council at the January 25, 2022 regular meeting;

WHEREAS, the City Council identified five overarching goals, twenty-seven strategies and twenty-four action items to achieve these said goals and;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The City Council hereby approves and adopts the Lindsay City Council Goals, Strategies, and Action Plan 2022-2027

SECTION 2. This resolution shall be effective immediately upon its approval and adoption.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

SECTION 3. The Mayor, or presiding officer, is hereby authorized to affix their signature to the Resolution signifying its adoption by the City Council to the City of Lindsay, and the City Clerk, or their appointed deputy, is directed to attest thereto.

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	February 08, 2022
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

MAYRA ESPINOZA-MARTINEZ
CITY CLERK

RAMONA CAUDILLO
MAYOR



STAFF REPORT

TO: Lindsay City Council
FROM: Joseph Tanner, City Manager
DEPARTMENT: City Manager
ITEM NO.: 11.4
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Consider Minute Order Authorization to Enter Into an Agreement with VL Friday Night Market for Services Regarding the Friday Night Market and Granting City Manager Authorization to Execute Any Documents Thereto.

BACKGROUND | ANALYSIS

On the January 25, 2022, the Lindsay City Council directed staff to award the contract for the Friday Night Market operations to VL Friday Night Market. Staff was further directed to enter into negotiations with VL Friday Night Market regarding the terms and conditions of Friday Night Market operations and provide an update to Council on said contract before granting City Manager authorization to execute the agreement.

FISCAL IMPACT

There is no direct cost to the city. Under the contract with the new operator, VL Friday Night Market, the City would receive a flat rate of \$2,500 per market session. This \$2,500 rate per market session may increase the following year of the agreement based on market costs and revenue.

ATTACHMENTS

- Draft Agreement Between the City of Lindsay and VL Friday Night Market for Services Regarding the Friday Night Market
- Friday Night Market Boundaries Map & Description
- Friday Night Market Vendor Complaint Form (English and Spanish)

AGREEMENT BETWEEN THE CITY OF LINDSAY AND VL FRIDAY NIGHT MARKET FOR SERVICES REGARDING THE FRIDAY NIGHT MARKET

This Agreement is made and entered into as of the ____ day of _____, 2022 (the “Effective Date”) by and between the CITY OF LINDSAY, a municipal corporation (the “City”) and the VL FRIDAY NIGHT MARKET, a private company (the “Market Operator”), duly organized and existing under and by virtue of the laws of the State of California

This Agreement shall be effective as of the date set above, and shall be for a period of one (1) year. The City and Market Operator shall constitute the parties.

I. SCOPE OF SERVICES

Market Operator shall provide all staff, materials, equipment, and labor to coordinate a Friday Night Market, hereinafter called (“Market”) as described in the VL FRIDAY NIGHT MARKET proposal in Exhibit “A”. Market Operator further agrees to comply with all applicable laws, ordinances, and rules imposed by the City of Lindsay, state and federal agencies. In the event of a conflict among this Agreement and Exhibit “A”, this Agreement shall take precedence.

Services and maintenance provided by the Market Operator shall respectively include, but are not limited to those described herein:

- A. The VL FRIDAY NIGHT MARKET will be held within the City of Lindsay in an area defined by the City and provided to the Market Operator prior to the first Market of the season, and shall be subject to amendment by the City with **five (5) business days’ notice.**
- B. Upon vendor set up and periodically during the Market event, all Market-affected areas shall be inspected by Market Operator staff for dangerous conditions and/or hazards, hidden or otherwise. Market Operator staff shall make reasonable efforts to repair and/or notify the City of any dangerous or hazardous conditions immediately upon their discovery. Under no circumstances shall the Market Operator permit the Market vendors, attendees, or the public more generally to be in proximity of a known hazard.
- C. Market Operator shall be responsible and assume all liability for street closure(s).
- D. Cleanup shall occurring during and following every Market event. In no instance shall trash be allowed to accumulate. Cleanup shall include sweeping, operating leaf blowers, and picking up trash as needed and in accordance with S.B. 1383. The operation of leaf blowers should take into account the impact of noise on nearby residents and businesses, especially during evening and early morning hours.
- E. Market Operator will be granted access to public restrooms at Sweetbriar Plaza and will be responsible for fully stocking, cleaning, and managing the restrooms during the entirety of the Market session.
- F. The Market Operator shall provide appropriate and sufficient waste receptacles as needed. The Market Operator should monitor and ensure that neither Market vendors, attendees, or the general public within Market areas

deposit any items into or onto storm drain inlets, planters, gutters, or grass/shrub/dirt areas.

- G. The City will provide power and gas in the 'Mercado' area, and the operator will reimburse the City for usage during the operation of the City.
- H. With the exception of the 'Mercado' area, the City will not provide electricity to the Market Operator, Market vendors or attendees. The Market Operator will ensure that vendors do not utilize streetscape outlets.
- I. Market operator shall be responsible for providing additional safety lighting.
- J. Sidewalks affected by Market activities and other affected areas as identified by the City shall be pressure washed just prior to the first Market of the season and on a monthly basis thereafter throughout the Market season. A final pressure washing of sidewalks affected by Market activities and other affected areas as identified by the City shall occur following the last market of the season. This process shall be evaluated by the City and the schedule confirmed or adjusted in frequency and scope as needed.
- K. Market Operator shall submit to the City for approval a Security Plan for Market vendors and attendees, prior to the first Market of the Season.
- L. Market Operator shall comply with S.B. 1383 and the Lindsay Municipal Code 8.34 as amended by Ordinance 590 and submit to the City for approval an Organics Recycling Plan for Market vendors and attendees, prior to the first Market of the season.
- M. Market Operator shall provide a Grease Tank in a designated area for vendors to properly dispose of cooking oils and monitor enforcement.
- N. Market Operator will prepare a Final Report to be distributed to the City Manager and presented to City Council at the first regular meeting of the City Council in December.
- O. Market Operator shall ensure that sufficient portable potties are available per Market capacity and building code regulations.
- P. Market Operator shall grant brick-and-mortar restaurant businesses in the Downtown area a reduced participation fee of \$100 (from \$125) and a waived reservation fee (from \$15).
- Q. Market Operator shall grant brick-and-mortar retailers in the Downtown area a reduced participation fee of \$15 (from \$25) and a waived reservation fee (from \$15.)
- R. Market Operator shall grant non-profit organizations that distribute informational resources, educational materials, et al. will be granted waived participation and reservations fees.
- S. Market Operator shall grant non-profit organizations that intend to sell food and/or beverages for consumption a reduced participation fee of \$100 (from \$125) and a waived reservation fee (from \$15).
- T. Market Operator shall pursue the certification of a Farmer's Market.
- U. Market Operator shall provide vendors with a Complaint Form in both English and Spanish. Market Operator shall accept and review all Complaint Forms submitted and commit itself in good faith to resolve the dispute. If Market Operator is unable to reach a resolution with Complainants, the matter shall be escalated to the Friday Night Market Oversight Committee.
- V. Market Operator shall establish an Oversight Committee consisting of two City Council members and the Market Operator. The Oversight Committee shall have final say in resolving disputes as submitted by vendors through a Complaint Form.

- W. Damages due to actions and/or negligent supervision of the Market Operator and/or activities of Market vendors or Market attendees shall be the sole responsibility of the Market Operator to repair or replace, or reimburse for costs associated with necessary repairs or replacements.

II. TERM OF AGREEMENT

The term of the Agreement shall commence on the effective date and continue for a period of one (1) year, and subject to extension if circumstances necessitate it and Parties agree to it in writing.

III. GENERAL PROVISIONS

This Agreement may be terminated by either the City or Market Operator with or without any reason, upon giving thirty (30) days written notice to other Party.

IV. REVENUE SHARE

Market Operator shall pay the City a flat rate of \$2500 per Market session.

V. LICENSE, PERMITS, FEES AND ASSESSMENTS

The Market Operator shall obtain such licenses, permits and approvals (collectively the "Permits") as may be required by law for the performance of the work and services relating to the Market.

VI. PERSONNEL

All personnel used by the Market Operator will be employees of the Market Operator. Market Operator shall pay all salaries, insurance and expenses, all federal and state taxes. Market Operator must comply with legal requirements including the Federal Fair Labor Standards Act, Equal Opportunity Employment, and the Americans with Disabilities Act.

Under no circumstances or conditions shall any agent, servant, or employee of the Market Operator be considered as an employee of the City of Lindsay.

VII. NON-ASSIGNMENT

This Agreement is not assignable either in whole or in part by MARKET OPERATOR without the written consent of CITY.

VIII. INSURANCE

Prior to commencing work, Market Operator shall procure and maintain at Market Operator's own cost and expense for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Market Operator, their agents, representatives, employees, or sub-contractors.

The City of Lindsay shall be named as additional insured under such insurance policies and Market Operator shall provide the City with Certificates of Insurance evidencing such insurance and proof of payment of insurance premiums. Market Operator must notify the City within 24 hours of any cancellations or lapses in coverage of such insurance policies.

Without in any way affecting the indemnity provided, the Market Operator shall secure before commencement of the work and throughout the contract the following types and amounts of insurance:

A. Minimum Limits of Insurance

If Market Operator, for any reason, fails to maintain insurance coverage that is required pursuant to this Contract, the same shall be deemed a material breach of contract. CITY, at its sole option, may terminate this Contract and obtain damages from the Market Operator resulting from said breach.

1. **Commercial General Liability Insurance.** MARKET OPERATOR shall maintain commercial general liability (CGL) with a limit of not less than \$1,000,000 each occurrence/\$1,000,000 in the annual aggregate.
2. **Business Auto Liability Insurance.** MARKET OPERATOR shall maintain business auto liability with a limit of not less than \$1,000,000 each accident.
3. **Workers' Compensation and Employer's Liability Insurance.** Market Operator shall maintain workers' compensation insurance as required by the State of California and Employer's Liability Insurance in the amount of \$1,000,000 per accident for bodily injury or disease.
4. **Property Damage.** Market Operator shall maintain broad form property damage insurance, to include fire legal liability with a limit of not less than \$50,000 per occurrence.

B. Workers' Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the City of Lindsay, its officers, officials, employees, and volunteers for losses arising from activities and operations of Market Operator in the performance of services under the contract.

1. If Market Operator, for any reason, fails to maintain insurance coverage that is required pursuant to this Contract, the same shall be deemed a material breach of contract. The City, at its sole option, may terminate this Contract and obtain damages from the Market Operator resulting from said breach.

C. Acceptability of Insurers

Insurance is to be placed with insurer with a current A. M. Best's rating of no less than A:6 unless otherwise approved by the City.

D. Verification of Coverage

Market Operator shall furnish the City of Lindsay with original certificates and amendatory endorsements effecting coverage required by this section. The

certificates and endorsements for each policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. The certificates and endorsements should be on forms provided by the City or on other than the City's forms, provided those forms and endorsements conform to the requirements. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

E. Sub-Contractors

Market Operator shall include all sub-contractors as insureds under its policies or shall furnish separate certificates and endorsements for each sub-contractor. All coverages for sub-contractors shall be subject to all requirements stated herein.

IX. INDEMNIFICATION

The City of Lindsay shall not be liable for any damage, loss, or injury to the person, property or effects of the Market Operator or of any agent, servant, employee, contracted staff, volunteer or patron of the Market Operator on, in, or about the Market activities other than through the negligence attributable to the City. The Market Operator agrees to indemnify, protect, and hold harmless the City of Lindsay against any and all such damages, cost, attorney's fees, or employees.

The Market Operator shall carry workers' compensation insurance for all its employees in accordance with workers' compensation laws of the State of California. The Market Operator will indemnify the City, its officials, and employees against, and hold them harmless from, any and all liability for damages on account of injury to persons or damage to property resulting from or arising out of in any way connected with the performance by the Market Operator of this Agreement, and reimburse the City, its officials and employees for all costs, expenses, and losses incurred in consequence of any claims, demands, and/or causes of action which may be brought against the City arising out of the performance by the Market Operator of this Agreement.

The Market Operator agrees to indemnify and hold the City of Lindsay harmless from any liability, claims, or damages arising out of or in any way connected with the Market Operator's performance.

The Market Operator shall furnish the City with a Certificate of Insurance with limits of at least \$1,000,000.00 for bodily injuries on each occurrence and \$1,000,000.00 for property damage on each occurrence. The Certificate of Insurance shall state that the contractual liability assumed under this Agreement is covered and shall provide that ten (10) days' notice of cancellation or reduction in coverage shall be provided to the City. Certificates of said coverages shall be filed with the City Clerk before any work or services related to the Market commence.

X. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to its choice of law provisions). If any legal action is

necessary to enforce or interpret this Agreement, the Parties agree that such action shall be brought in the Superior Court for the State of California, County of Tulare, or the U.S. District Court for the Central District of California, Western Division. The Parties hereby submit to the exclusive jurisdiction of such courts and waive any other venue to which either Party might be entitled by domicile or otherwise.

XI. ATTORNEYS' FEES

If any Party hereto brings an action or proceeding under this Agreement or to declare rights hereunder, the Prevailing Party in any such proceeding, action, or appeal thereon shall be entitled to recover all reasonable fees, costs and expenses, including reasonable attorneys' fees. Such fees, costs and expenses may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The attorneys' fees award shall not be computed in accordance with any court fee schedule but, shall be such as to fully reimburse all attorneys' fees reasonably incurred. "Prevailing Party" shall mean and include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense.

XII. SEVERABILITY; NO WAIVER

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the other provisions of this Agreement, which shall remain in full force and effect. If any of the provisions of this Agreement shall be deemed to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall enforce the remaining provisions of this Agreement, and shall reduce such extent, duration, scope, or other provision and shall enforce them in their reduced form for all purposes contemplated by this Agreement. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

XIII. ENTIRE AGREEMENT; ETC.

This Agreement expresses the full and complete understanding of the Parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement may not be amended or modified except in writing signed by each of the Parties hereto. This Agreement shall be construed as to its fair meaning and not strictly for or against either Party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

XIV. COUNTERPARTS; AUTHORITY TO SIGN

This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which, when taken together, will constitute one agreement. Any signature pages of this Agreement transmitted by facsimile or sent by

email in portable document format (PDF) will have the same legal effect as an original executed signature page. Each of the persons signing on behalf of a Party hereto represents that they have the right and power to execute this Agreement on such Party's behalf.

****SEE FOLLOWING PAGE FOR SIGNATURES****

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed on the date first above written by their respective officers duly authorized in their behalf.

CITY OF LINDSAY:

City of Lindsay
251 E. Honolulu St.
Lindsay, CA 93247

By: _____

Joseph Tanner, City Manager

City Clerk

VL FRIDAY NIGHT MARKET:

VL Friday Night Market
1121 Maple Ave.
Lindsay, CA 932147

By: _____





Virginia Loya, Lead Entity of VL Friday Night Market

APPROVED AS TO FORM:

City Attorney

Friday Night Market Boundary

Legend

-  Market Boundaries
-  Northern Portion of Street
-  Public Parking Lot
-  Western Portion of Street



Friday Night Market Boundaries

Honolulu Street: The railroad tracks west of Sweetbriar shall be the westernmost boundary. Only the northern half of the street between Sweetbriar and the railroad tracks shall be used for market operations as to not obstruct ingress/egress from Porterville Citrus. The sidewalk just prior to Mirage shall be the easternmost boundary.

Sweetbriar Avenue: Honolulu shall be the southernmost boundary. The entrance to the public parking lot at the corner of Sweetbriar and Samoa shall be the northernmost boundary. Access to the public parking lot at the corner of Sweetbriar and Samoa shall not be obstructed at any point of ingress/egress. Additionally, only the western portion of Sweetbriar beginning from China's Alley (170 N Sweetbriar) to the northern boundary shall be used.

Elmwood Avenue: Apia shall be the southernmost boundary and the first alley to the west just beyond Honolulu shall be the northernmost boundary, approximately 175 feet north from the intersection of Honolulu and Elmwood.

VL FRIDAY NIGHT MARKET

COMPLAINT FORM

Instructions: Please fill out the form if you have a complaint regarding how VL Lindsay Friday Night Farmers Market has been unfair or discriminatory to your business or organization. This complaint form will be reviewed by the VL Lindsay Friday Night Farmers Market and if resolved, it will be filed , if not resolved, it will be discussed with an Oversight Committee for final resolution.

Date: _____

Name of the Vendor: _____

Business Name _____

Address: _____

Email: _____

Phone Number: _____ Cell No yes___/no___

Please list the reason for your complaint:

Vendor's signature _____

=====

Virginia Loya of VL Friday Night Market will answer your complaint within ten business days.

Was it resolved: ___ yes ___ no

VL MERCADO DE LOS VIERNES POR LA NOCHE
FORMULARIO DE DENUNCIA FORMULARIO DE DENUNCIA

Instrucciones: complete el formulario si tiene una queja sobre cómo VL Lindsay Friday Night Farmers Market ha sido injusto o discriminatorio para su empresa u organización. Este formulario de queja será revisado por VL Lindsay Friday Night Farmers Market y, si se resuelve, se archivaré; si no se resuelve, se discutirá con el administrador de la ciudad para obtener información. Instrucciones: complete el formulario si tiene una queja sobre cómo VL Lindsay Friday Night Farmers Market ha sido injusto o discriminatorio para su empresa u organización. Este formulario de queja será revisado por VL Lindsay Friday Night Farmers Market y, si se resuelve, se archivaré; si no se resuelve, se discutirá con un Comité de Vigilancia para la resolución final.

Fecha: _____

Nombre: _____

Nombre de negocio: _____

Dirección: _____

dirección de correo electrónico: _____

Teléfono: _____ teléfono celular ___si ___no

Por favor indique el motivo de su queja. Por favor indique el motivo de su queja.

firma del vendedor _____

Virginia Loya de VL Friday Night Market responderá a la queja dentro de diez días hábiles.

Se resolvió? ___si ___no

Firma de Virginia Loya _____ Fecha _____



STAFF REPORT

TO: Lindsay City Council
FROM: Edward Real, Assistant City Planner
DEPARTMENT: City Services & Planning
ITEM NO.: 12.1
MEETING DATE: February 8, 2022

ACTION & RECOMMENDATION

Consider the Approval of **Resolution 22-06**, A Resolution Establishing Fees for Permits Allowing for Mobile Food Vending Operations.

BACKGROUND | ANALYSIS

On January 25, 2022, the City Council of the City of Lindsay adopted Ordinance No. 593 to regulate, provide for, and permit mobile vending operations within the City of Lindsay. Per the Ordinance, a permitting fee was to be established by resolution of the City Council.

Based on other Municipality's with comparable size and population, staff recommends a Mobile Vending permitting fee of \$150. This fee is separate from and independent of the City's established Business License fee. The fee encompasses staff time that is spent to review an application as well as an inspection by the City's fire personnel.

This fee shall be superseded by the upcoming Master Fee update.

FISCAL IMPACT

Approval of Resolution No. 22-06 will not result in a cost to the City.
Revenue generated from Mobile Vending permitting fees will be deposited into the City's General Fund.

ATTACHMENTS

- Resolution No. 22-06
- Mobile Vending Permit Application



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

NUMBER 22-06

TITLE A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY ESTABLISHING FEES FOR PERMITS ALLOWING FOR MOBILE FOOD VENDING OPERATIONS

MEETING At a regularly scheduled meeting of the City of Lindsay City Council held on February 8, 2022 at 6:00 PM at 251 E. Honolulu Street, Lindsay, CA 93247

WHEREAS, on January 25, 2022, the City of Lindsay adopted Ordinance No. 593, Mobile Vending Regulations, to regulate, provide for, and permit mobile food vending operations within the City of Lindsay; and

WHEREAS, said ordinance provides that fees shall be adopted by resolution;

WHEREAS, as required by Article X111 C of the California Constitution and California law, cities can only charge rates or fees that are equal to or less than the reasonably anticipated costs of providing the service, conferring a benefit, granting a privilege, performing regulatory duties, enforcing laws, or as condition of property development; and

WHEREAS, following a properly noticed public hearing at which oral and written testimony, if provided, was considered, the City Council has determined that it is in the best interest of the City to establish a fee for permits allowing for mobile food vending operations within the City.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LINDSAY DOES HEREBY RESOLVE AS FOLLOWS:

- SECTION 1. The City Council of the City of Lindsay hereby approves the setting of fees related to mobile vending permit fees and sets the cost of said annual permit fee at \$150.
- SECTION 2. This resolution shall take effect immediately upon its adoption.



A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LINDSAY

PASSED AND ADOPTED by the City Council of the City of Lindsay as follows:

MEETING DATE	February 08, 2022
MOTION	
SECOND MOTION	
AYES	
ABSENT	
ABSTAIN	
NAYS	

CERTIFICATION OF THE FOREGOING RESOLUTION AS FULL, TRUE, PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF LINDSAY AS DETAILED.

MAYRA ESPINOZA-MARTINEZ
CITY CLERK

RAMONA CAUDILLO
MAYOR

MOBILE VENDING

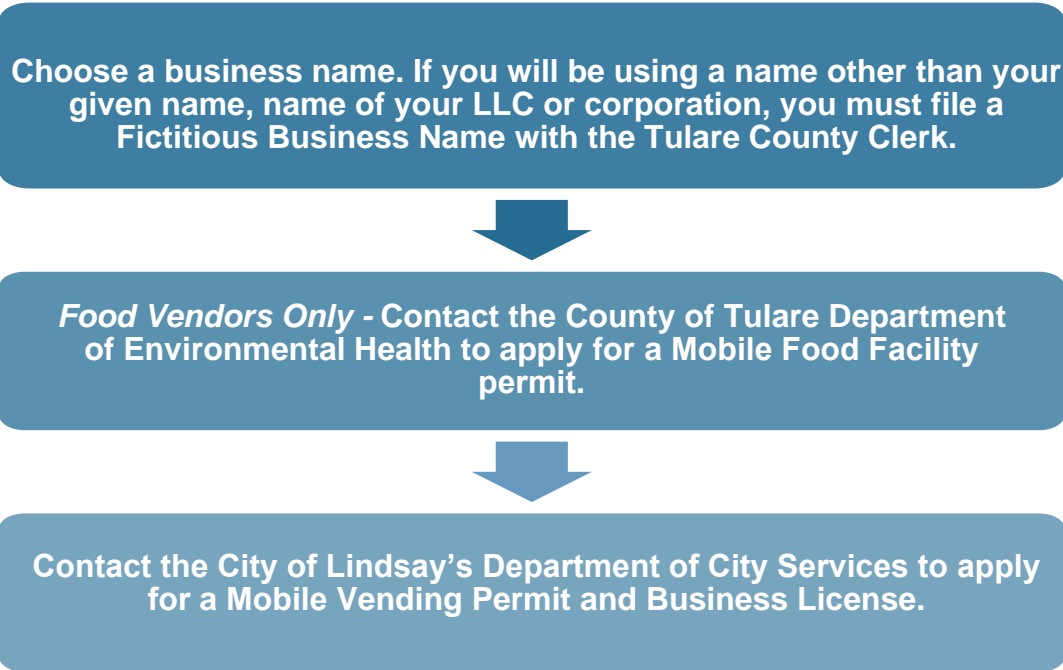
A mobile vendor is a person who sells food or merchandise by means of a motorized or nonmotorized vehicle, such as a catering truck, motorized cart, food truck, or other itinerant method, upon a public right of way or other public space. To ensure a seamless transition into full and compliant operations, the City of Lindsay has created this Mobile Vendor Packet.

Mobile Vendor Packet Contents

- Mobile Vending Permit Application
- City of Lindsay Business License Application
- Mobile Vending Regulations

Getting Started

The information below provides a general overview of the agencies that you may need to contact before you begin your mobile vending business.



Ordinance No. 593

On 1/25/2022 the City Council of the City of Lindsay approved an ordinance allowing for the operation of mobile vendors.

Important Contact Information

Tulare County Clerk

Courthouse, Room 105
221 S. Mooney Blvd
Visalia, California 93291
<https://www.tularecounty.ca.gov>
(559) 636-5051

Tulare County Environmental Health Division

5957 S Mooney Blvd
Visalia, CA 93277
<http://tularecountyeh.org>
(559) 624-7400

City of Lindsay Department of City Services

151 N Mirage Ave
Lindsay, CA 93247
www.lindsay.ca.us
(559) 562-7102



CITY OF LINDSAY MOBILE VENDING PERMIT APPLICATION

For an application to be accepted, all supplemental information required by Municipal Code 5.37.030 Authority to Operate in the City must be included with this application and the application fee.

PLEASE PRINT OR TYPE

Name of Applicant _____ Business Telephone _____

Name of Business (if applicable) _____

Business Address _____

Name of Business Operator _____ Title _____

Identification: Driver's License State ID Passport Other: _____

Identification Number: _____ Issuer: _____

Applicant's Residence Address _____

Email _____ Applicant's Phone Number _____

Ownership Type Sole Proprietor LLC Corporation Partnership

Hours of Operation (Hours) _____ (Days) _____

Items Being Sold Merchandise Food/Drinks Both

Type(s) of merchandise sold _____

Type(s) of food/drinks sold _____

List all persons/employees that will be vending with you or in place of you:

I declare under penalty of perjury the information entered on this form is true and correct to the best of my knowledge and belief. As a condition for the issuance of the permit applied for, I agree to submit any additional information required and to conduct all phases of this business in conformance with applicable laws, ordinances, and regulations established for such business. **By signing below I certify that I will comply with all applicable local, state and federal laws and acknowledge that I have read Municipal Code Title 5 Section 37 Mobile Vending Regulation.**

Date _____ Signature _____

(Return to the City of Lindsay Department of City Services, 150 N Mirage Ave. Lindsay, CA 93247 or email real@lindsay.ca.us. For more information, please call 559-562-7102 ext 8032.)

FOR OFFICE USE ONLY

Date Received _____ Permit Type _____ Amount _____ How Paid _____ Initials _____

Note: Any change in ownership or address requires a new application.

City of Lindsay Business License Application

FOR CITY USE ONLY
Acct. # _____
Class _____
Cat. Code _____
Bus. Group _____



New Renew Bus. Closed

Change: Owner Name Location

Business Name _____ Location of Business _____

Type of Business _____ Email _____

Mailing Address _____ City _____ State _____ ZIP _____

Email _____ Phone: () _____ Est. Monthly Gross Receipts _____

Type: Single Owner Partnership Corporation Name of Corporation (if applicable): _____

Owner Name _____

Owner Address _____ City _____ State _____ ZIP _____

State ID# _____ Fed. ID# (if applicable) _____ Board of Equalization # _____

State License# _____ Business Start Date or Date of Relocation _____

Business License Questionnaire

Fully describe/explain the nature of the business below in the space provided and then answer each question listed below

Yes No

1. Will the building be used for education, instruction, daycare, worship, or dining? If yes, how many square feet will you be using? _____ What is the maximum number of people anticipated at any given time?
2. Will the business operation include selling or serving alcoholic beverages? If yes, what type of ABC license? _____ What is the size in square feet of the seating area? _____
3. Is this a home business? If Yes, you must apply for a Home Occupation Business License in addition to this application. Attached ___ Yes ___ No
4. Will the business operation include the sales or serving of tobacco products? If yes, what is the tobacco resale number? _____ What type of tobacco products will be sold? _____
5. Will the business operation include any work, use, or storage conducted outside of a wholly enclosed building? If yes, explain _____
6. Will the business change the occupancy? If yes, specify: _____
7. Will the business operation include discharging any waste, wastewater, or rinse water to the ground, street, or storm drain?
8. Will the business operation include washing of any equipment or vehicles?
9. Will the business operation include the repair or maintenance of motor vehicles?
10. Will the business operation include motor vehicle fuel dispensing including gasoline, diesel, compressed natural gas, liquefied natural gas, liquefied petroleum gas (propane), or hydrogen gas?
11. Will the business operation include any use, processing, handling, storage, or discharge of chemicals, including hazardous chemicals and solvents?
12. Will the business generate any hazardous waste or e-waste at this site?
13. Will the business operation include sanding, cutting, or shaping of wood, metal, plastic, or other products producing combustible dust or fibers?
14. Will the business install, modify, rehabilitate a sign? If yes, apply for sign permit and may require a building permit
15. Will the business operation include manufacturing? If yes, specify _____

20. Acknowledgements

I ACKNOWLEDGE AND UNDERSTAND THAT IT IS THE RESPONSIBILITY OF THE APPLICANT/LICENSEE TO ENSURE THEIR BUSINESS COMPLIES WITH ALL APPLICABLE CITY OF LINDSAY MUNICIPAL CODES, CITY ZONING ORDINANCES AND STATE AND FEDERAL LAWS. NON-COMPLIANCE MAY RESULT IN THE REVOCATION OF YOUR CITY OF LINDSAY BUSINESS LICENSE. *THE CITY OF LINDSAY RECOMMENDS BUSINESS OWNERS CONTACT THE CITY OF LINDSAY'S PLANNING DEPARTMENT AT (559) 562-7102 EXT 4 **PRIOR TO** RENTING, LEASING OR PURCHASING A PROPERTY TO VERIFY THEIR PROPOSED USE COMPLIES WITH THE CITY OF LINDSAY'S ZONING ORDINANCE.*

I FURTHER UNDERSTAND THAT THE FOLLOWING APPLIES TO BUSINESSES WHO ARE MAKING APPLICATION FOR A CITY OF LINDSAY BUSINESS LICENSE (*Please initial beside each item to acknowledge you have read and understand*):

_____ All signage must be reviewed, approved and permitted by the City of LINDSAY's City Services and Planning Department. Please contact (559) 562-7102 EXT 4 regarding sign permits **PRIOR TO** installation of **ANY** signage.

_____ All modifications, other than aesthetic changes (i.e. painting, flooring), to a structure located within the City of LINDSAY are subject to approval and issuance of a City of LINDSAY Building Permit. These include, but are not limited to, repairs and improvements to plumbing, electrical and mechanical systems. Please contact the City of LINDSAY's City Services Department at (559) 562-7102 EXT 4 **PRIOR TO** any alteration or modification of any building or structure to determine if a building permit is required.

_____ Trash and recycling services **ARE MANDATORY** in the City of LINDSAY.

_____ A business license will not be issued until the application has been reviewed by the Planning Department to determine if any land use approvals (i.e., discretionary permits) are necessary for compliance with zoning regulations. To confirm the zoning of your business, please contact the City of LINDSAY's Planning Department at (559) 562-7102 EXT 4.

_____ The business location will be required to maintain parking lots and existing landscaping if they are determined to be in need of repair. The City of LINDSAY's Planning Department may require landscape for sites that do not have current landscaping. Lot frontage maintenance is the responsibility of the business at this location.

_____ Dependent on the type of tenant improvements which are proposed as part of your business, the site may be required to conform to all Americans with Disabilities Act (A.D.A.) improvements. It is advised that regardless, A.D.A. improvements be made to protect you, the business and/or property owner, from potential litigation. *Consultation with a Certified Access Specialist (CAsp) is strongly advised.*

_____ Contractors shall provide verification of Workers' Compensation Insurance coverage, if required by California law.

_____ To determine if an interceptor (ex, grease traps) is required or if an existing interceptor needs to be serviced in relation to the type of business operation you will be conducting (i.e. restaurant, food preparation, car/truck wash, etc.), please contact the City Services Department at (559) 562-7102 EXT 4

PRIOR TO THE ISSUANCE OF A BUSINESS LICENSE, THE CITY WILL CONDUCT AN INSPECTION OF THE BUSINESS LOCATION, IF LOCATED WITHIN THE INCORPORATED CITY LIMITS OF LINDSAY. THE PREMISES WILL BE INSPECTED **PRIOR TO** THE BUSINESS OPENING FOR BUSINESS AND MUST BE SET UP AND/OR STOCKED. IF THE CITY CANNOT CONTACT THE APPLICANT WITHIN 60 DAYS OF THE APPLICATION DATE, THE APPLICATION WILL CONSIDERED WITHDRAWN, AND ALL FEES PAID WILL BE NONREFUNDABLE.

SUBMITTAL OF A BUSINESS LICENSE APPLICATION AND PAYMENT OF FEE(S) DOES NOT CONSTITUTE AN APPROVAL OF A LICENSE TO OPERATE A BUSINESS. **NO BUSINESS SHALL OPERATE UNTIL THE BUSINESS LICENSE HAS BEEN APPROVED AND ISSUED BY THE CITY OF LINDSAY.**

CAUTION!

Payment of Business Tax does not authorize payer to engage in a business or profession contrary to city ordinances (including zoning ordinances) or state and federal regulations

Sales and Use Tax may apply to your business activities. You may seek written advice regarding the application of tax to your particular business by writing to the nearest State Board of Equalization Office

I HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Authorized Signature _____ Date _____

FOR CITY USE

APPROVAL DATES	REMARKS	INSPECTION FEE	FEES	
Planning		Building \$	Regular	\$
Building		Fire \$	Application	\$
Fire		Total Insp Fee \$	CASP	\$
Other		PAID DATE:	TOTAL AMOUNT DUE	\$
		RECEIPT #:		
APPROVAL SIGNATURES				
PLANNING DEPT.	BUILDING DEPT.	FIRE DEPT.	OTHER	

Zoning Classification _____	Fire Zone District _____
APN _____	Areas and Neighborhood _____
Class of Building _____	Occupancy Capacity _____



MOBILE VENDING REGULATIONS

5.37.050 Operational requirements

Mobile food vendors shall comply with the following standards:

General Provisions

1. Noise and amplified music shall comply with all applicable noise standards.
2. Exterior lighting must be hooded or shielded so as to not negatively impact vehicles and other uses in the vicinity of the mobile food truck.
3. The mobile food vendor must comply with all city, state, and federal laws. While operating in the public right-of-way, mobile vendors shall follow all applicable traffic laws and parking regulations, including time limits, and no-parking zones.
4. The sale of alcohol and tobacco products is prohibited.
5. Vendors shall not use or permit use of parking spaces on the site (e.g., customer queuing, tables, chairs, portable restrooms, signs, and any other ancillary equipment) if doing so will adversely affect the required off-street parking available for the primary use(s) of the site during peak periods as determined by the Director of City Services and Planning, or their designee.
6. The mobile vendor shall at all times ensure that the operation of the mobile food truck does not unreasonably interfere with the flow of pedestrian traffic and restricts access for persons with disabilities.
7. The mobile food vendor shall provide waste removal and shall be responsible for the collection and separation of trash/debris, organic waste, and recycling after each stop. "Trash" includes material dispensed by the vendor as well as items that may be left by customers. Prior to leaving a location, the mobile food vendor shall ensure all trash within a 25-foot radius is picked up, regardless if the trash originated from the food truck.
8. Display of Permit and Information. No mobile food vendor shall operate in the city without conspicuously displaying on their person or vehicle the city-issued mobile food vendor permit and Tulare County Department of Environmental Health permit.
9. No vending shall occur between the hours of 12:00 a.m. and 7:00 a.m. and no overnight parking shall be permitted. On a case-by-case basis, the Director of City Services and Planning, or their designee, may require shorter hours of operation or allow longer hours of operation depending on the type of vending and location.

Restaurant and School Spacing for Mobile Food Vendors

- a. Vendors shall not operate within twenty (20) feet of an existing brick and mortar restaurant during the restaurant's normal business hours, with the following exceptions:
 - i. The mobile food vendor is operating as part of a City approved special event.

- ii. The mobile food vendor has prior written permission of a restaurant owner to operate on the property of that existing business.
- b. Mobile food vendors shall not operate within three hundred (300) feet of a school, except with written approval from the Lindsay Unified School District, between the hours of 7:30 a.m. and 3:30 p.m.

A mobile food vendor may not operate within exclusively residential districts except as follows:

- a. On properties for nonresidential uses, such as schools and religious assembly facilities, with prior written authorization from the property owner.
- b. On properties where the mobile food vendor has been hired to cater at a private residence at no cost to the guests.

Mobile Vending on Public Property

City Parks

- a. Lindsay City Park

Mobile food vendors may only park and sell along the South side of Ono City Parkway for a maximum of 4 hours during the hours of 7:00 a.m. and 8:00 p.m., except when a City approved special event is taking place.

- b. Olive Bowl Park

Mobile food vendors may park along South Olive Avenue and West Apia Street for a maximum of 4 hours during the hours of 7:00 a.m. and 8:00 p.m., except when a City approved special event is taking place.

City Hall

- Mobile food vendors may park along Honolulu directly in front of City Hall only with written permission from the Director of City Services and Planning, or their designee.

Downtown

- Mobile Food Vendors may utilize public parking lots in the Central Business District (CBD) of the Central Commercial zone so long as the operation does not unreasonably interfere with the flow of pedestrian and vehicle traffic and restricts access for persons with disabilities, except when a City approved special event is taking place.