

AGENDA
REGULAR MEETING OF THE
CITY OF KING CITY COUNCIL
AND
Sitting as SUCCESSOR AGENCY OF
THE RDA FOR THE CITY OF KING

TUESDAY SEPTEMBER 24, 2019
6:00 P.M.

CITY HALL
212 S. VANDERHURST AVENUE
KING CITY, CALIFORNIA 93930

**Spanish interpretation services will be available at meeting*

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in a City meeting, Please contact the City Clerk's Office (831-386-5925) at least 48 hours prior to the Meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting.

** Please submit all correspondence for City Council PRIOR to the meeting with a copy to the City Clerk.*

- 1. CALL TO ORDER**
- 2. ROLL CALL:** Council Members Darlene Acosta, Robert Cullen, Carlos DeLeon, Mayor Pro Tem Carlos Victoria, and Mayor Mike LeBarre
- 3. FLAG SALUTE**
- 4. CLOSED SESSION ANNOUNCEMENTS**
- 5. SPECIAL PRESENTATIONS**
 - A. Proclamation Honoring Joanne Banuelos
 - B. Young Legislators' Program presentation by Anna Velazquez, District Director, Senator Caballero's Office, California Senate 12th District
 - C. Presentation on S.O.S. (South of Salinas) 101 Traffic Safety Alliance, Laura Guidici Mills

6. PUBLIC COMMENT

Any member of the public may address the Council for a period not to exceed *three minutes'* total on any item of interest within the jurisdiction of this Council that is not on the agenda. The Council will listen to all communications; however, in compliance with the Brown Act, the Council cannot act on items not on the agenda. Comments should be directed to the Council as a whole and not to any individual Council Member. Slanderous, profane or personal remarks against any Council Member, staff member or member of the audience is not permitted.

7. COUNCIL COMMUNICATIONS & COMMITTEE REPORTS

Individual Council Members may comment on Council business, his or her Council activities, City operations, projects or other items of community interest. Council Members may also request staff to report back at a subsequent meeting on any matter or take action to direct staff to prepare a staff report for a future agenda.

8. STAFF COMMUNICATIONS

Comments presented by the City Manager, City Attorney or other staff on City business and/or announcements.

9. CONSENT AGENDA

The following items listed below are scheduled for consideration as a group. The recommendations for each item are noted. Members of the audience may speak on any item(s) listed on the Consent Agenda. Any Council Member, the City Manager, or the City Attorney may request that an item be withdrawn from the Consent Agenda to allow for full discussion. The Council may approve the remainder of the Consent Agenda on one motion. Items withdrawn from the Consent Agenda may be considered by separate motions at the conclusion of the discussion of each item.

- A. Meeting Minutes of September 10, 2019 Council Meeting
Recommendation: approve and file.

- B. Consideration: Award of Contract for Street Striping and Pavement Marking Services
Recommendation: award and contractor services agreement for annual street striping services to Safety Striping Service, Inc. in the amount \$75,159.90.

- C. Consideration: Acceptance of Creekbridge Soccer Park (APN 026-616-001 Parcel A of Tract No. 1457, Volume 23 C&T Page 21)
Recommendation: adopt the Resolution accepting the dedication of the Creekbridge Soccer Park.

10. PUBLIC HEARINGS

- A. Consideration: An Ordinance Regulating Industrial Hemp
Recommendation: open the public hearing, consider public testimony, introduce and conduct the first reading of an Ordinance adopting Hemp Regulations, by title only, and set the second reading and adoption for the next regularly scheduled Council meeting of October 8, 2019.

- B. Consideration: An Ordinance of the City Council of the City of King Amending Chapter 5.34, of Title 5 of the King City Municipal Code Pertaining to Itinerant Vendor, Solicitors, and Peddlers
Recommendation: introduce an ordinance amending Chapter 5.34, of Title 5 pertaining to itinerant vendors, solicitors and peddlers, and waive the first reading of the ordinance by title only.

11. REGULAR BUSINESS

None

12. CITY COUNCIL CLOSED SESSION

Announcement(s) of any reportable action(s) taken in Closed Session will be made in open session and repeated at the beginning of the next Regular City Council meeting as this portion of the meeting is not recorded.

13. ADJOURNMENT

City of King

PROCLAMATION

Honoring

Joanne Banuelos

September 24th, 2019

WHEREAS, Joanne Banuelos is a proud resident of King City, along with her husband Rudy Banuelos, who she has been married to for 68 years; and

WHEREAS, Joanne Banuelos has lived in King City since 1948 and is a King City High School alumnus from the class of 1950; and

WHEREAS, Joanne Banuelos wrote a regular column in the King City Rustler on community news and events for 14 years, beginning with her first article on March 23, 2005 until her final article on July 10, 2019; and

WHEREAS, Joanne Banuelos has dedicated herself to keeping the community informed on important City related activities in an honest and objective manner; and

WHEREAS, Joanne Banuelos has earned a reputation of going above and beyond in the preparation of her articles by attending the meetings of the City Council, as well as all City committees and commissions on a regular basis to monitor City business; and

WHEREAS, Joanne Banuelos has demonstrated that she sincerely cares about the well being of the King City community.

NOW, THEREFORE, BE IT PROCLAIMED on behalf of the City Council of the City of King that we honor Joanne Banuelos for her many years of dedicated service to King City and express our deep appreciation for all her contributions by helping to maintain an educated, informed and knowledgeable community.

Mike LeBarre, Mayor

**City Council Meeting
September 10, 2019**

1. CALL TO ORDER:

Regular Meeting called to order at 6:00pm by Mayor LeBarre.

2. FLAG SALUTE:

The flag salute was led by Rob Cullen.

3. ROLL CALL:

City Manager Adams conducted roll call.

City Council: Mike LeBarre, Darlene Acosta, Rob Cullen, Carlos DeLeon, Mayor Pro Tem Carlos Victoria.

City Staff: City Manager Steven Adams; City Attorney Roy Santos; Executive Admin. Asst./Deputy City Clerk, Erica Sonne.

4. CLOSED SESSION ANNOUNCEMENTS:

None

5. PRESENTATIONS:

None

6. PUBLIC COMMUNICATIONS:

None

7. COUNCIL COMMUNICATIONS:

Council Member Acosta stated she had nothing at this time.

Council Member DeLeon stated he had nothing at this time.

Mayor Pro Tem Victoria stated he has an AMBAG meeting this week in Corralitos and he reminded that El Grito is Sunday.

Council Member Cullen stated that he went on the AG tour August 24th and Elite Molecular was on the tour and they did a great job on regulations and their process and a new automated machine. Solid Waste Authority Executive board meeting was last week. The full board meeting will be next week. Salinas continues to be frustrating to work with still wanting to withdraw from the Solid Waste Authority. In addition, the City of Salinas as wanted the Solid Waste Authority to move out of their current location on Sun Street but block them from moving to a new location. They are reforming their advisory group and one seat will be a cannabis company so Brett Saunders from Golden State Sciences will be one of them and from the Chamber of Commerce Marc Bloom. The ambassador group is going to have a group of workshops for business. He is giving flyers out for all the council members to distribute.

Mayor LeBarre stated his meeting schedule is on the table. He is looking forward to El Grito. He will be attending the Monterey County Reads / Panetta Institute awards ceremony on the 20th of September. He attended the TAMC Executive Committee on the 4th of September reporting TAMC made some changes on how they look at Measure X streamlining to make it better for Cities. On September 19th he reported that the Monterey County Water Resource Agency funding workshop will happen addressing the short fall in maintenance.

8. CITY STAFF REPORTS AND COMMENTS:

City Manager Steven Adams stated a reminder of Coffee with a cop is tomorrow morning.

City Attorney Roy Santos stated he had nothing to report tonight.

9. CONSENT AGENDA

- A. Meeting Minutes of August 27, 2019 Council Meeting
- B. City of King August 23, 2019 Invoices Paid
- C. City of King August 26, 2019 Invoices Paid
- D. City of King August 27, 2019 Invoices Paid
- E. City of King August 28, 2019 Invoices Paid
- F. Successor Agency August 28, 2019 Invoices Paid
- G. Consideration: Agreement with Rava Business Park, Inc. for Industrial Wastewater Disposal
- H. Consideration: Agreement for Management of the King City Municipal Golf Course, Including Adopting Finding of a Class 1 Categorical Exemption Pursuant to Section 1530 of the CEQA Guidelines
- I. Consideration: Amendment to Condition of Approval No. 56 of the Arboleda Specific Plan
- J. Consideration: Job Description for Full-Time Code Enforcement Officer
- K. Consideration: Award of Bid for the 2019 King City Street Project, Including Adopting Finding of a Categorical Exemption, Pursuant to Section 15301 of the CEQA Guidelines
- L. Consideration: Award of Bid of the 2019 King City Slurry Project, Including Adopting Finding of a Categorical Exemption, Pursuant to Section 15301 of the CEQA Guidelines
- M. Consideration: Amendment to Lease with the Salinas Valley Fair, Inc.
- N. Consideration: Appropriation for Repair of Pump at the City Park and Golf Course and Irrigation Upgrades.

Mayor LeBarre stated that we will be pulling 9(N) for an adjustment.

Council member DeLeon pulled item 9(H)

Action: Motion to approve consent agenda items A- G and I-M by Cullen and seconded by Victoria.

AYES: Council Members: Mayor LeBarre, Acosta, Cullen, DeLeon and Mayor Pro Tem Victoria

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

Council Member DeLeon asked that the City Manager Adams and Geoff English, Public Works Special Projects Coordinator answer questions about the amount that this appropriation has gone up. Unfortunately hooking up to Cal Water would be more costly. We have just put in a new field that we cannot let die. The best alternative is to repair the pump. Staff feels this is an emergency item.

Action: Motion to approve consent agenda items 9(N) raising the amount to \$55,000 by Cullen and seconded by Victoria.

AYES: Council Members: Mayor LeBarre, Acosta, Cullen, DeLeon and Mayor Pro Tem Victoria

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

Council member DeLeon wanted to know if we had another party that would take over the Golf Course. City Manager explained that we did but they have not moved forward yet and we wanted to get a 3-year commitment to give us time to figure out what we will recommend.

Council member Cullen would like to have some data on how many people use the Golf Course and some history. Council member DeLeon would like an update on softball field as well.

Action: Motion to approve consent agenda items 9(H) by DeLeon and seconded by Victoria.

AYES: Council Members: Mayor LeBarre, Acosta, Cullen, DeLeon and Mayor Pro Tem Victoria

NOES: Council Members:

ABSENT: Council Members:

10. PUBLIC HEARINGS:

None

11. REGULAR BUSINESS:

A. Consideration: Downtown Diagonal Parking Plan and Memorandum of Understanding with Hartnell Community College District

City Attorney Santos stated that as a result of Council member Cullen's business being within 500 ft. of this item, he will recuse himself and leave the room. Council member Cullen recused himself and left the building.

City Manager Adams introduced this item with a PowerPoint.

Karen Jernigan is in favor of diagonal parking.

Action: Motion to 1) approve a diagonal parking plan for the downtown area; 2) approve and authorize the City Manager to execute a Memorandum of Understanding (MOU) with Hartnell Community College District to pay for the parking improvements to assist in mitigating parking impacts from the expansion of the King City Education Center; and 3) authorize the City Manager to make non-substantive changes to the MOU as necessary in a form approved by the City Attorney by Victoria and seconded by DeLeon.

AYES: Council Members: Mayor LeBarre, Acosta, DeLeon and Mayor Pro Tem Victoria

NOES: Council Members:

ABSENT: Council Members: Cullen,

ABSTAIN: Council Members:

12. CITY COUNCIL CLOSED SESSION

Government Code Section 54956.9(d)(1)
Conference with legal counsel – Existing Litigation
Name of Case: Mario Mottu

ADJOURNMENT:

Mayor LeBarre adjourned to closed session at 6:47p.m.

Approved Signatures:

Mayor, Michael LeBarre
City of King

City Clerk, Steven Adams
City of King



Item No. 9(B)

REPORT TO THE CITY COUNCIL

DATE: SEPTEMBER 24, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: STEVE ADAMS, CITY MANAGER

BY: GEOFF ENGLISH, PUBLIC WORKS SPECIAL PROJECTS COORDINATOR

RE: CONSIDERATION OF AWARD OF CONTRACT FOR STREET STRIPING AND PAVEMENT MARKING SERVICES

RECOMMENDATION:

It is recommended City Council award a contractor services agreement for annual street striping services to Safety Striping Service, Inc. in the amount \$75,159.90.

BACKGROUND:

The City maintains approximately 31 centerline miles of public roads that include striping and pavement markings to assist with traffic control. The striping and pavement markings include linear striping between lanes and direction of travel, as well as crosswalks, stop limit lines, turn arrows, stop legends and other traffic control markings. These markings are painted on road surface and as a result of wear from traffic and weather, must be periodically repainted. Historically, linear stripe painting has been completed by a private contractor because the City does not own the equipment necessary to paint linear street striping. The City Public Works Department has traditionally painted the pavement marking legends and crosswalks.

The proposed striping and pavement marking work includes the following:

- Routine linear striping historically completed by private contractors and funded in the current Street Maintenance budget.
- Diagonal parking stalls per agreement with Hartnell College
- Pavement markings associated with scheduled street resurfacing projects and funded through the Pavement Management program.

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- Pavement markings such as crosswalks, stop legends and turn-arrows as funding allows to reduce workloads for City Public Works staff

The City Council previously allocated \$30,000 in the current fiscal year budget. Addition funding for the project is available from Measure X funds allocated to the FY 2019-20 Pavement Management program (\$35,000) and from the agreement with Hartnell College for angled parking near the college (\$10,000).

DISCUSSION:

On Thursday, August 15, 2019, Bids were distributed and advertised for the annual street striping services. On Thursday, September 12, 2019, formal bids for street striping services were received from five (5) companies. The apparent, responsive low-bidder, Safety Striping Service, Inc. It is recommended that the City Council award a contract to Safety Striping Service, Inc. in the amount of \$75,159.90 for street striping services. (Attachment #3).

This year, staff is recommending the contract work be expanded to include all pavement markings, including stop bars and warning approaches. With existing staffing, it has been difficult to complete the painting needed. This can result in increased liability and safety risks if drivers aren't able to see approaching stop bars and warnings. This will complete all the repainting at one time and relieve staff of this task, which will better enable the Public Works Department to focus resources on other priorities.

COST ANALYSIS:

Award of this contract will result in expenditures of \$30,000 from the Street Maintenance Budget in FY 2019-20. The FY 2019-20 budget includes \$30,000 for street striping services. Up to \$10,000 will be provided from the agreement with Hartnell college for the diagonal parking component. Funding from the Hartnell College diagonal parking project will be actual cost for the proposed work. It is anticipated that the diagonal parking striping costs will not exceed \$10,000. The balance of funding, approximately \$35,200, will be provided from Measure X funds allocated for the 2019 Pavement Management program.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Approve staff's recommendation to award the contract to Safety Striping Service, Inc.;
2. Do not approve staff's recommendation to award the contract and direct staff to revise and rebid the proposed street striping and pavement marking work; or

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3. Provide other direction to staff.

EXHIBITS:

1. Formal Bid Results – Street Striping Services
2. Draft Agreement

Submitted by: 
Geoff English, Public Works Special Project Coordinator

Approved by: 
Steven Adams, City Manager



2019 King City Street Striping Services

September 12, 2019 2pm

BIDS RECIEVED

	Bidder(s) Company Name and Address	Base bid amount
1	Central Striping Service Inc.	\$79,255
2	Chrisp Company	\$69,932.30
3	Central Valley	\$38,099.50
4	Safety Striping Services, Inc.	\$31,752.20
5	Toste Construction, Inc.	\$86,816.50
6		

Erica L. Sonne


**AGREEMENT FOR PUBLIC WORKS SERVICES
BETWEEN THE CITY OF KING AND
SAFETY STIPING SERVICE, INC.**

THIS AGREEMENT FOR PUBLIC WORKS SERVICES (herein "Agreement") is made and entered into this 24th day of September, 2019 ("Effective Date") by and between the City of King, a California municipal corporation ("City") and Safety Striping Service, Inc., ("Contractor"). City and Contractor are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services defined and described particularly in Article 1 of this Agreement.

B. Contractor, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of King Municipal Code, City has authority to enter into and execute this Agreement.

D. The Parties desire to formalize the selection of Contractor for performance of those services defined and described particularly in Article 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. WORK OF CONTRACTOR

1.1 Scope of Work.

In compliance with all terms and conditions of this Agreement, the Contractor shall provide those services specified in the "Scope of Work" attached hereto as Exhibit "A" and incorporated herein by this reference, which may be referred to herein as the "services" or "work" hereunder. As a material inducement to the City entering into this Agreement, Contractor represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the work required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be both of good quality as well as fit for the purpose intended. For purposes of this

Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 [Reserved]

1.3 Compliance with Law.

Contractor shall keep itself informed concerning, and shall render all services hereunder in accordance with, all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Compliance with California Labor Law.

(a) Public Work. The Parties acknowledge that the work to be performed under this Agreement is a “public work” as defined in Labor Code Section 1720 and that this Agreement is therefore subject to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works contracts and the rules and regulations established by the Department of Industrial Relations (“DIR”) implementing such statutes. The work performed under this Agreement is subject to compliance monitoring and enforcement by the DIR. Contractor shall post job site notices, as prescribed by regulation.

(b) Prevailing Wages. Contractor shall pay prevailing wages to the extent required by Labor Code Section 1771. Pursuant to Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are on file at City Hall and will be made available to any interested party on request. By initiating any work under this Agreement, Contractor acknowledges receipt of a copy of the Department of Industrial Relations (DIR) determination of the prevailing rate of per diem wages, and Contractor shall post a copy of the same at each job site where work is performed under this Agreement.

(c) Penalty for Failure to Pay Prevailing Wages. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1774 and 1775 concerning the payment of prevailing rates of wages to workers and the penalties for failure to pay prevailing wages. The Contractor shall, as a penalty to the City, forfeit two hundred dollars (\$200) for each calendar day, or portion thereof, for each worker paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any public work done pursuant to this Agreement by Contractor or by any subcontractor.

(d) Payroll Records. Contractor shall comply with and be bound by the provisions of Labor Code Section 1776, which requires Contractor and each subcontractor to: keep accurate payroll records and verify such records in writing under penalty of perjury, as specified in Section 1776; certify and make such payroll records available for inspection as provided by Section 1776; and inform the City of the location of the records.

(e) Apprentices. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6, and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects.

Contractor shall be responsible for compliance with these aforementioned Sections for all apprenticeable occupations. Prior to commencing work under this Agreement, Contractor shall provide City with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) days after concluding work pursuant to this Agreement, Contractor and each of its subcontractors shall submit to the City a verified statement of the journeyman and apprentice hours performed under this Agreement.

(f) Eight-Hour Work Day. Contractor acknowledges that eight (8) hours labor constitutes a legal day's work. Contractor shall comply with and be bound by Labor Code Section 1810.

(g) Penalties for Excess Hours. Contractor shall comply with and be bound by the provisions of Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the performance of this Agreement by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the Labor Code. Pursuant to Labor Code section 1815, work performed by employees of Contractor in excess of eight (8) hours per day, and forty (40) hours during any one week shall be permitted upon public work upon compensation for all hours worked in excess of 8 hours per day at not less than one and one-half (1½) times the basic rate of pay.

(h) Workers' Compensation. California Labor Code Sections 1860 and 3700 provide that every employer will be required to secure the payment of compensation to its employees if it has employees. In accordance with the provisions of California Labor Code Section 1861, Contractor certifies as follows:

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

Contractor's Authorized Initials _____

(i) Contractor's Responsibility for Subcontractors. For every subcontractor who will perform work under this Agreement, Contractor shall be responsible for such subcontractor's compliance with Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, and shall make such compliance a requirement in any contract with any subcontractor for work under this Agreement. Contractor shall be required to take all actions necessary to enforce such contractual provisions and ensure subcontractor's compliance, including without limitation, conducting a review of the certified payroll records of the subcontractor on a periodic basis or upon becoming aware of the failure of the subcontractor to pay the subcontractor's workers the specified prevailing rate of wages. Consultant shall diligently take corrective action to halt or rectify any such failure by any subcontractor.

1.5 Licenses, Permits, Fees and Assessments.

Contractor shall obtain at its sole cost and expense such licenses, permits, registrations, and approvals as may be required by law for the performance of the services required by this Agreement. Contractor shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Contractor's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officials, officers, employees or agents of City, against any such fees, assessments, taxes, penalties or interest levied, assessed or imposed against City hereunder.

1.6 Familiarity with Work.

(a) By executing this Agreement, Contractor warrants that Contractor (i) has thoroughly investigated and considered the scope of work to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Contractor warrants that Contractor has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder.

(b) Contractor shall promptly, and before the following conditions are disturbed, notify the City, in writing, of any: (i) material Contractor believes may be hazardous waste as defined in Section 25117 of the Health & Safety Code required to be removed to a Class I, II, or III disposal site in accordance with existing law; (ii) subsurface, unknown or latent conditions, materially different from those indicated; or (iii) unknown physical conditions at the site of any unusual nature, different from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Agreement, and will materially affect the performance of the services hereunder.

(c) City shall promptly investigate the conditions, and if it finds that the conditions do materially differ, or do involve hazardous waste, and cause a decrease or increase in Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order per Section 1.10 of this Agreement.

(d) In the event that a dispute arises between City and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from any scheduled completion date set, but shall proceed with all work to be performed under the Agreement. Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

1.7 Protection and Care of Work and Materials.

The Contractor shall adopt reasonable methods, including providing and maintaining storage facilities, during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components

thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as caused by City's own negligence. Stored materials shall be reasonably accessible for inspection. Contractor shall not, without City's consent, assign, sell, mortgage, hypothecate, or remove equipment or materials which have been installed or delivered and which may be necessary for the completion of the work.

1.8 Warranty.

Contractor warrants all work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees that for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the work or non-conformance of the work to the Agreement, commence and prosecute with due diligence all work necessary to fulfill the terms of the warranty at its sole cost and expense. Contractor shall act as soon as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair, remove and replace any portions of the work (or work of other contractors) damaged by its defective work or which becomes damaged in the course of repairing or replacing defective work. For any work so corrected, Contractor's obligation hereunder to correct defective work shall be reinstated for an additional one year period, commencing with the date of acceptance of such corrected work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstatement of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand.

1.9 Further Responsibilities of Parties.

Both parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 Additional Work and Change Orders.

(a) City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Work or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written change order is first given by the Contract Officer to the Contractor, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Contractor ("Change Order"). All Change Orders must be signed by the Contractor and Contract Officer prior to commencing the extra work thereunder.

(b) Any increase in compensation of up to ten percent (10%) of the Contract Sum or \$25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any increase in compensation of up to ten percent (10%) of the Contract Sum, or a total compensation amount up to \$25,000, whichever is less; or any increase in the time to perform of up to one hundred eighty (180) days; and does not materially affect the Work and which are not detrimental to the Work or to the interest of the City, may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively, must be approved by the City Council.

(c) Any adjustment in the Contract Sum for a Change Order must be in accordance with the unit prices set forth in the Bid Schedule in Exhibit "C". If the rates in the Schedule of Compensation do not cover the type of work in the Change Order, the cost of such work shall not exceed an amount agreed upon in writing and signed by Contractor and Contract Officer. If the cost of the Change Order cannot be agreed upon, the City will pay for actual work of the Change Order completed, to the satisfaction of the City, as follows:

(i) Labor: the cost of labor shall be the actual cost for wages of workers and subcontractors performing the work for the Change Order at the time such work is done. The use of labor classifications that would increase the cost of such work shall not be permitted.

(ii) Materials and Equipment: the cost of materials and equipment shall be at cost to Contractor or lowest current price which such materials and equipment are reasonably available at the time the work is done, whichever is lower.

(iii) If the cost of the extra work cannot be agreed upon, the Contractor must provide a daily report that includes invoices for labor, materials and equipment costs for the work under the Change Order. The daily report must include: list of names of workers, classifications, and hours worked; description and list of quantities of materials used; type of equipment, size, identification number, and hours of operation, including loading and transportation, if applicable; description of other City authorized services and expenditures in such detail as the City may require. Failure to submit a daily report by the close of the next working day may, at the City's sole and absolute discretion, waive the Contractor's rights for that day.

(d) It is expressly understood by Contractor that the provisions of this Section 1.10 shall not apply to services specifically set forth in the Scope of Work. Contractor hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Work may be more costly or time consuming than Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor. City may in its sole and absolute discretion have similar work done by other contractors.

(e) No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

1.11 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

1.12 Trenching and Excavation.

In accordance with Public Contract Code Section 7104, whenever the digging of trenches or other excavations extend deeper than four feet below the surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any: 1) Material that the Contractor believed may be material that is hazardous waste, as defined in Health and Safety Code Section 25117, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law; 2) Subsurface or latent physical conditions at the site differing from those indicated; or 3) Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract. The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, the City shall issue a change order under the procedures described in the Contract. In the unlikely event that a dispute arises between the City and the Contractor regarding whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by contract or by law which pertain to the resolution of disputes and protests between the contracting parties. Where applicable, Contractor shall comply with the trench or excavation permit requirement found in Labor Code Section 6500 and the excavation safety requirements found in Labor Code Section 6705.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual

expenses, shall not exceed nineteen thousand, five hundred and five dollars and twenty cents (\$19,505.20) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified unit prices per measured quantities, tasks or the percentage of completion of the services less the contract retention; (iii) payment for time and materials based upon the Contractor's rates as specified in the Schedule of Compensation, provided that (a) time estimates are provided for the performance of sub tasks, (b) contract retention is maintained and (c) the Contract Sum is not exceeded; or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual subcontractor expenses of an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Contractor is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Contractor shall not invoice City for any duplicate services performed by more than one person.

City shall, as soon as practicable, independently review each invoice submitted by the Contractor to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Contractor which are disputed by City, or as provided in Section 7.3, City will cause Contractor to be paid, subject to the Schedule of Compensation (Exhibit "C"), within thirty (30) days of receipt of Contractor's correct and undisputed invoice; however, Contractor acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event that City does not cause Contractor to be paid within thirty (30) days of receipt of an undisputed and properly submitted invoice, Contractor shall be entitled to the payment of interest to the extent allowed under Public Contract Code Section 20104.50. In the event any charges or expenses are disputed by City, the original invoice shall be

returned by City to Contractor, not later than seven (7) days after receipt by the City, for correction and resubmission. Returned invoices shall be accompanied by a document setting forth in writing the reasons why the payment request was rejected. Review and payment by the City of any invoice provided by the Contractor shall not constitute a waiver of any rights or remedies provided herein or any applicable law. Notwithstanding, if the work is being funded by grant or other funding administered by a third party outside the control of the City, such as the County of Monterey, Contractor acknowledges and agrees this may increase processing time for payment, and no payment of interest shall accrue if the City has used reasonable efforts to cause the Contractor to be paid within thirty (30) days.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Contractor, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Contractor shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forty-five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as to amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Articles 1 and 5, pertaining to warranty and indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor ("Principals") are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)
_____	_____
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing Principals were a substantial inducement for City to enter into this Agreement. Therefore, the Principals shall be responsible during the term of this Agreement for directing all activities of Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the Principals may not be replaced nor may their responsibilities be substantially reduced by Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Contractor expressly waives any claim Contractor may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be the City Manager or such person as may be designated by the City Manager. It shall be the Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. All subcontractors shall obtain, at its or Contractor's expense, such licenses, permits, registrations and approvals (including from the City) as may be required by law for the performance of any services or work under this Agreement. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted

hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Contractor, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Workers Compensation Insurance. A policy of workers compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Contractor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including “any auto” and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000.00. Said policy shall include coverage for owned, non-owned, leased, hired cars and any automobile.

(d) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit “B”.

(e) Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein. For Commercial General Liability (CGL) coverage, subcontractors shall provide coverage with a format at least as broad as CG 20 38 04 13.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any

insurance maintained by City or its officers, employees or agents may apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officials, officers, employees and agents and their respective insurers. Moreover, the insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention.

All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing at least ten (10) days prior written notice to City, or at least ten (10) days prior written notice to City in the case of cancellation for nonpayment. In the event any of said policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer.

No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance, additional insured endorsement forms or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of and endorsements to all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

"CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, AT LEAST TEN (10) DAYS ADVANCED WRITTEN NOTICE OF CANCELLATION SHALL BE DELIVERED TO CITY AT (EXCEPT CANCELLATION DUE TO NONPAYMENT SHALL REQUIRE TEN (10) DAYS ADVANCED WRITTEN NOTICE)."

Contractor's Authorized Initials _____

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or any automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials,

employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

In the event of a conflict, the terms of Section 5.1 and 5.2 shall have precedence and prevail over any form of Certificate of Insurance, or any Insurance Endorsement, included in the Contract Documents.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees, volunteers and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnitors"), or arising from Contractor's or indemnitors' reckless or willful misconduct, or arising from Contractor's or indemnitors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the Indemnified Parties for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the Indemnified Parties harmless therefrom;

(c) In the event any Indemnified Party is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the Indemnified Party any and all

costs and expenses incurred by the Indemnified Party in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

In addition, Contractor agrees to indemnify, defend and hold harmless the Indemnified Parties from any and all claims and liabilities for any infringement of patent rights, copyrights or trademark on any person or persons in consequence of the use by the Indemnified Parties of articles to be supplied by Contractor under this Agreement, and of which the Contractor is not the patentee or assignee or has not the lawful right to sell the same.

Contractor shall incorporate similar indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services and work hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Notification of Third-Party Claims.

City shall timely notify Contractor of the receipt of any third-party claim relating to the work under this Agreement. City shall be entitled to recover from Contractor its reasonable costs incurred in providing such notification.

5.5 Sufficiency of Insurer or Surety.

Insurance and bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best's Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City Manager or Finance Director of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.5 may be changed accordingly upon receipt of written notice from the Risk Manager.

5.6 Substitution of Securities.

Pursuant to Public Contract Code Section 22300, substitution of eligible equivalent securities for any funds withheld to ensure performance under this Agreement may be permitted at the request and sole expense of the Contractor unless otherwise required by Section 22300. Alternatively, the Contractor may, pursuant to an escrow agreement in a form prescribed by Public Contract Code Section 22300, request payment of retentions funds earned directly to the escrow

agent at the sole expense of the Contractor unless otherwise required by Section 22300. The escrow agreement for security deposits in lieu of retention shall be substantially similar to the form provided in Public Contract Code Section 22300(f), which is incorporated herein by this reference.

5.7 Release of Securities.

City shall release the Performance and Labor Bonds when the following have occurred:

- (a) Contractor has made a written request for release and provided evidence of satisfaction of all other requirements under Article 5 of this Agreement;
- (b) the work has been accepted; and
- (c) after passage of the time within which lien claims are required to be made pursuant to applicable laws; if lien claims have been timely filed, City shall hold the Labor Bond until such claims have been resolved, Contractor has provided statutory bond, or otherwise as required by applicable law.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies, certified and accurate copies of payroll records in compliance with all applicable laws, or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of 3 years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest. Notwithstanding the above, the Contractor shall fully cooperate with the City in providing access to the books and records if a public records request is made and disclosure is required by law including but not limited to the California Public Records Act.

6.2 Reports.

Contractor shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Contractor hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Contractor

agrees that if Contractor becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Contractor, its employees, subcontractors and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Contractor shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Contractor will be at the City’s sole risk and without liability to Contractor, and Contractor’s guarantee and warranties shall not extend to such use, reuse or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom. Moreover, Contractor with respect to any documents and materials that may qualify as “works made for hire” as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed “works made for hire” for the City.

6.4 Confidentiality and Release of Information.

(a) information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Contractor, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Contractor’s conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Monterey, State of California, or any other appropriate court in such county, and Contractor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California, in the County of Santa Clara, State of California.

7.2 Disputes and Claims.

(a) Default; Cure. In the event that Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Contractor is in default, the City shall hold all invoices and shall proceed with payment on the invoices only when the default is cured. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Contractor does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Contractor's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

(b) Public Contract Code Sec. 9204 Claims Procedure (AB 626). AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for the filing of claims by a contractor, or by a contractor on behalf of a subcontractor, on any public works project effective January 1, 2017. The parties shall comply with the provisions of Public Resources Code Section 9204, which are fully set forth in Exhibit "E."

(c) Dispute Resolution. To the extent not superseded by Public Contract Code Section 9204, this Agreement is subject to the provisions of Article 1.5 (commencing at Section 20104) of Division 2, Part 3 of the California Public Contract Code regarding the resolution of public works claims of less than \$375,000. Article 1.5 mandates certain procedures for the filing of claims and supporting documentation by the Contractor, for the response to such claims by the City, for a mandatory meet and confer conference upon the request of the Contractor, for mandatory non-binding mediation in the event litigation is commenced, and for mandatory judicial arbitration upon the failure to resolve the dispute through mediation. This Agreement hereby incorporates the provisions of Article 1.5 as though fully set forth herein.

7.3 Retention of Funds.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Contractor's acts or omissions in performing or failing to perform Contractor's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Contractor, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Contractor to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Contractor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

7.6 Legal Action.

In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to

compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Contractor shall file a claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Contractor and its sureties shall be liable for and shall pay to the City the sum of one hundred dollars (\$ 100.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Contractor has initiated termination, the Contractor shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Contractor.

If termination is due to the failure of the Contractor to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Contractor shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Contractor for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

7.11 Unfair Business Practices Claims.

In entering into this Agreement, Contractor offers and agrees to assign to the City all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. § 15) or under the Cartwright Act (Chapter 2, (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services or materials related to this Agreement. This assignment shall be made and become effective at the time the City renders final payment to the Contractor without further acknowledgment of the Parties.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Contractor, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Contractor's performance of services under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the Contract Officer. Contractor agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Contractor covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Contractor shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, ancestry, or other protected class.

8.4 Unauthorized Aliens.

Contractor hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, *et seq.*, as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Additionally, Contractor acknowledges that Contractor, and all subcontractors hired by Contractor to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act (“IRCA”). Contractor is and shall remain in compliance with the IRCA and shall ensure that any subcontractors hired by Contractor to perform services under this Agreement are in compliance with the IRCA. Further, should Contractor so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement in violation of the law, and should any liability or sanctions be imposed against City for such use of unauthorized aliens, Contractor hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer (with her/his name and City title), City of King, 212 South Vanderhurst Avenue, King City, CA 93930 and in the case of the Contractor, to the person at the address designated on the execution page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section. All correspondence relating to this Agreement shall be serialized consecutively.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the parties. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Contractor and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Warranty & Representation of Non-Collusion.

No official, officer, or employee of City has any financial interest, direct or indirect, in this Agreement, nor shall any official, officer, or employee of City participate in any decision relating to this Agreement which may affect his/her financial interest or the financial interest of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any corporation, partnership, or association in which (s)he is directly or indirectly interested, or in violation of any State or municipal statute or regulation. The determination of "financial interest" shall be consistent with State law and shall not include interests found to be "remote" or "non-interests" pursuant to Government Code Sections 1091 or 1091.5. Contractor warrants and represents that it has not paid or given, and will not pay or give, to any third party including, but not limited to, any City official, officer, or employee, any money, consideration, or other thing of value as a result or consequence of obtaining or being awarded any agreement. Contractor further warrants and represents that (s)he/it has not engaged in any act(s), omission(s), or other conduct or collusion that would result in the payment of any money, consideration, or other thing of value to any third party including, but not limited to, any City official, officer, or employee, as a result of consequence of obtaining or being awarded any agreement. Contractor is aware of and understands that any such act(s), omission(s) or other conduct resulting in such payment of money, consideration, or other thing of value will render this Agreement void and of no force or effect.

Contractor's Authorized Initials _____

9.7 Authority to Act on Behalf of Entity.

The person(s) executing this Agreement on behalf of any entity that is a Party hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF KING, a municipal corporation

Steven Adams, City Manager

ATTEST:

Erica Sonne, Deputy City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Roy Santos, City Attorney

CONTRACTOR:

*By: _____
Name:
Title:

*By: _____
Name:
Title:

Address: _____

***CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE EVIDENCE OF AUTHORITY TO EXECUTE DOCUMENTS FOR ANY ENTITY CONTRACTOR MUST BE PROVIDED.**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	NUMBER OF PAGES
<input type="checkbox"/> TITLE(S) <input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	DATE OF DOCUMENT
<input type="checkbox"/> TRUSTEE(S)	_____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	
<input type="checkbox"/> OTHER _____	

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA

COUNTY OF MONTEREY

On _____, 2018 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	_____
<input type="checkbox"/> CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT
_____	_____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED	NUMBER OF PAGES
<input type="checkbox"/> GENERAL	_____
<input type="checkbox"/> ATTORNEY-IN-FACT	_____
<input type="checkbox"/> TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/> OTHER _____	_____

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

EXHIBIT "A"

SCOPE OF WORK

- I. Project Description: The work to be performed under this Contract consists of furnishing all labor, materials, tools and equipment and constructing complete and in place improvements for the City of King 2018 Citywide Street Restriping project as bid documents herein attached.
- II. Contractor's work shall also conform to all of the standards and specifications in the following documents, incorporated herein by this reference:
 - A. Notice of Formal Bid/ Quotation Request Form- Bid Number 2019-002
 - B. General Conditions and Specifications
 - C. Most current Caltrans Standard Plans and Specifications
- III. In addition to the requirements of Section 6.2, during performance of the work, Contractor will keep the City apprised of the status of performance by delivering the following status reports, starting sixty (60) days after the Effective date if the work has not already been completed:
 - A. The Contractor shall submit a narrative report as a part of his monthly progress review and update, in a form agreed upon by the Contractor and the City. The narrative report shall include a description of problem areas; current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates; and an explanation of corrective action taken or proposed.
 - B. Contractor shall update the schedule on a monthly basis, showing progress on each activity or task. After each monthly update, the Contractor shall submit to the City one (1) print of the last accepted Construction Schedule, marked up in red in accordance with the monthly review; and one (4) bond copies incorporating the updated schedule information.
- IV. All work is subject to review and acceptance by the City, and must be revised by the Contractor without additional charge to the City until found satisfactory and accepted by City.

EXHIBIT "B"

NOTICE OF FORMAL BID/ QUOTATION REQUEST
BID NUMBER 2019-002

(Attached)

BID ADDENDUM #1
BID NUMBER 2019-002

(Attached)



**CITY OF KING
DEPARTMENT OF PUBLIC WORKS**

212 S. Vanderhurst Avenue, King City CA 93930
Telephone: (831) 385-3281 Fax: (831) 386-5968

**NOTICE OF FORMAL BID/ QUOTATION REQUEST
BID NUMBER 2019-002**

DATE: August 15, 2019

SUBJECT: **2019 CITYWIDE STREET RE-STRIPING PROJECT**

The City of King is requesting Formal Quotations to provide citywide street re-striping. Unit costs provided in the bid document below are for work at the King City Airport and annual street restriping work to be completed by November 1, 2019.

SUBMISSION OF FORMAL SPECIFICATIONS

- a. SEALED FORMAL BIDS ARE DUE AT OR BEFORE 2:00PM ON TUESDAY, SEPTEMBER 10, 2019. FORMAL QUOTATIONS RECEIVED AFTER THIS TIME WILL BE REJECTED. NO BID BOND REQUIRED.**

YOU MUST INCLUDE THE BID NUMBER (2019-002) ON THE ENVELOPE.

Attention: Geoff English
Public Works Special Project Coordinator Consultant
City of King
212 S. Vanderhurst Avenue
King City CA 93930

- b. ALL QUOTATIONS MUST BE SUBMITTED ON THE ATTACHED QUOTATION FORM IN A SEALED ENVELOPE. FAXED BIDS WILL NOT BE ACCEPTED.**
- c. AWARD TO BE DETERMINE BY BASE BID. AD ALTERNATE ITEMS TO BE AWARDED BY ITEM TYPE BASED ON AVAILABLE FUNDING.**

All questions or requests for additional information must be submitted via email to Geoff English at genglish@kingcity.com no later than Tuesday, September 3, 2019 at 5pm.

CITY OF KING
FORMAL QUOTATION FORM - BID #: PW2019-002

DUE DATE: FORMAL BIDS ARE DUE BY 2:00PM ON TUES. SEPTEMBER 10, 2019

PROJECT: 2019 CITYWIDE STREET RE-STRIPING PROJECT

Pursuant to and in compliance with the *Request for Quotation and Specifications* related to the project: **2019 CITYWIDE STREET RE-STRIPING PROJECT**

It is understood and agreed that:

1. The undersigned has carefully examined all the Bid Documents, including the Quotation Form and Project Specifications.
2. The undersigned has, by investigation at the site of the Work and otherwise, satisfied itself as to the nature and location of the Work and has fully informed itself as to all conditions and matters which can in any way affect the Work or the cost thereof.
3. The undersigned fully understands the Project Description and Specifications and has checked carefully all words and figures inserted in its Quotation and further understands that the City will in no way be responsible for any errors or omissions in the preparations of the Quotation.
4. The undersigned is licensed in accordance with the laws of the State of California providing for the registration of Contractors. The undersigned hereby certifies that they possess at the time of bid, the appropriate License from the State of California for the work described herein. The undersigned further agrees that they will maintain current throughout the term of this contract this State of California License.
5. In conformance with the current statutory requirements of Section 1860 et. seq. of the Labor Code of the State of California, the undersigned confirms the following as his or her certification: ("I am aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this Contract.")
6. The work under this Contract is to be paid for by public funds; therefore, minimum prevailing wage rates published by the State Director of Industrial Relations are applicable.
7. The Contractor is responsible, per State of California regulations, to be registered with the Department of Industrial Relations at the time of bid submittal.
8. The Contractor agrees to endorse and submit with required documents the City of King Standard Agreement for Public Works Services without modification. (template copy attached)

PROJECT DESCRIPTION AND SPECIFICATIONS

2019 CITYWIDE STREET RE-STRIPING PROJECT

GENERAL CONDITIONS AND SPECIFICATIONS

1. The responsible low-bid contractor, following award by the City of King City Council shall enter the City's standard Contractor Agreement and provide all required insurance. (A copy of the City's standard Contractor Agreement is available for review in advance upon request.)
2. The responsible low-bid contractor will secure a City of King business license before starting any work.
3. The responsible low-bid contractor must be registered with the State of California Department of Industrial Regulations.
4. All striping shall be painted with oil-based paint (not thermoplastic) per Caltrans Standard. (Water-based paint substitute will not be accepted)
5. The rate of application of paint and beads shall be per Caltrans specification- Section 84. One coat shall be applied.
(all paint shall be applied within the temperature range specified as recommended by the paint manufacturer for the material being tested. Paint shall be applied with the pavement surface is dry and clean.)
6. All referenced details are per the most current Caltrans standard plans.
7. The contractor shall be licensed in California with a Class A or C-32 contractor's license.
8. Cat Tracking is an estimated quantity for streets that the current markings cannot be seen.
9. The City of King will sweep the streets in advance of re-striping. The contractor will coordinate with the City for the scheduling of street sweeping.
10. Contractor responsible for posting Temporary No-Parking signs at least 48 hours in advance for any and all streets that need to be "no-parked" for painting.
11. City of King pavement marking stencils will be made available to the successful, qualified low-bid contractor for turn-arrows.

TENTATIVE SCHEDULE

Tuesday, August 15, 2019	Bid Announcement
Tuesday, Sept. 3, 2019 5:00pm	Due Date for Contractor Bid Questions
Tuesday, Sept. 10, 2019 2:00pm	Bid Due date
Tuesday, Sept. 24, 2019	City Council Award
Friday, October 4, 2019	Agreement fully endorsed
Monday, October 7, 2019	Work period begins
Friday, November 15, 2019	Work period ends

BASE FORMAL BID SCHEDULE

Pursuant to and in compliance with the *Request for Formal Quotation and Specifications* related to the project: **2019 CITYWIDE STREET RE-STRIPING PROJECT**

The undersigned bidder, having become thoroughly familiar with the stipulations listed on the Formal Quotation Form and with the aforementioned General Conditions and Specifications for the above mentioned project and with the local conditions affecting the performance and the cost of the work to be done, hereby proposes and agrees to fully provide the described services (including the furnishing of any and all labor, materials, tools, expendable equipment and transportation services necessary to fully deliver the equipment) in strict accordance with all applicable state and local laws for the total Quotation sum of.

ANNUAL CITY STREET RESTRIPIING- BASE BID

QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
26,170	LF	Linear feet of Detail 29 – Double Yellow w/ Black		
32,140	LF	Linear feet of Detail 31 – 2 Way Left Turn Stripe		
1,830	LF	Linear feet of Detail 1 – Yellow Centerline Skip		
2,430	LF	Linear feet of Detail 24 – Solid 4" Yellow Centerline		
10,730	LF	Linear feet of Detail 38a – 8" White Turn Lane		
15,360	LF	Linear feet of Detail 27B – 4" Solid White Stripe		
8,940	LF	Linear feet of Detail 8 – 4" Lane Line Stripe		
12,200	LF	Linear feet of Detail 39 – 6" Bike Lane Stripe		
500	LF	Cat Tracking of Roads		
TOTAL FOR ALL BASE BID STRIPING				

ANNUAL CITY STREET RESTRIPIING/ PAVEMENT LEGENDS- AD ALTERNATES*

QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
10	EA	CA MUTCD Figure 8B-7 RR Grade Crossing Legend		
120	EA	CA MUTCD Figure 3B-23 STOP Legend		
200	EA	CA MUTCD Figure 3B-24 Type IV Turn Arrow (L)		
40	EA	CA MUTCD Figure 3B-24 Type IV Turn Arrow (R)		
60	EA	CA MUTCD Figure 3B-24 Type I Arrow (Straight)		
20	EA	CA MUTCD Figure 3B-24 Type II Arrow (R) (Straight Ahead and Right Turn Arrow)		

*- Ad Alternates to be included by item type as funding availability permits

Company Name: _____ DIR #: _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

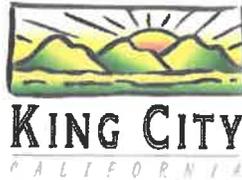
Email: _____

Signature of Vendor Rep: _____ Date: _____

Submit to: Geoff English
 City of King
 212 S. Vanderhurst Avenue
 King City CA 93930

All questions or requests for additional information must be submitted via email to Geoff English at genGLISH@kingcity.com no later than September 3, 2019 at 5pm.

**BIDS ARE DUE BY 2:00PM ON TUESDAY, SEPTEMBER 10, 2019
 FAXED OR EMAIL QUOTATIONS WILL NOT BE ACCEPTED**



**CITY OF KING
DEPARTMENT OF PUBLIC WORKS**

212 S. Vanderhurst Avenue, King City CA 93930
Telephone: (831) 385-3281 Fax: (831) 386-5968

BID ADDENDUM #1

BID NUMBER 2019-002

DATE: September 3, 2019

SUBJECT: **ADDENDUM #1- 2019 CITYWIDE STREET RE-STRIPING PROJECT**

- a. **BID SCHEDULE FORM HAS BEEN REVISED. BIDDERS MUST SUBMIT THEIR QUOTATIONS ON THE BID SCHEDULE FORM DATED 09-03-2019)**
- b. **TOTAL QUANTITY MEASUREMENTS HAVE CHANGED FOR THE ADD-ALTERNATES- PAVEMENT MARKING SECTION. TWO (2) ADDITIONAL LINE ITEMS WERE ADDED FOR 12" WHITE LIMIT LINES AND CROSSWALKS AS SHOWN ON THE REVISED BID SCHEDULE**
- c. **AN ANGLED PARKING STRIPING PLAN HAS BEEN ADDED. A LINE ITEM FOR LINEAL FOOTAGE OF 4" WHITE ANGLED PARKING STALL MARKINGS BEEN ADDED TO THE BID SCHEDULE AND WILL BE CALCULATED AS PART OF THE BASE BID FOR DETERMINATION OF LOW BIDDER FOR PURPOSES OF AWARD.**
- d. **A BID BOND IS NOT REQUIRED WITH QUOTATION SUBMITTALS.**
- e. **THE BID DUE DATE HAS BEEN EXTENDED TO THURSDAY, SEPTEMBER 12, 2019 AT 2:00PM.**

All bidders must confirm receipt of this bid addendum by sending an email to Geoff English at genglish@kingcity.com.

BASE FORMAL BID SCHEDULE - REVISED 9-03-2019

Pursuant to and in compliance with the *Request for Formal Quotation and Specifications* related to the project: **2019 CITYWIDE STREET RE-STRIPING PROJECT**

The undersigned bidder, having become thoroughly familiar with the stipulations listed on the Formal Quotation Form and with the aforementioned General Conditions and Specifications for the above mentioned project and with the local conditions affecting the performance and the cost of the work to be done, hereby proposes and agrees to fully provide the described services (including the furnishing of any and all labor, materials, tools, expendable equipment and transportation services necessary to fully deliver the equipment) in strict accordance with all applicable state and local laws for the total Quotation sum of.

ANNUAL CITY STREET RESTRIPIING- BASE BID

QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
26,170	LF	Linear feet of Detail 29 – Double Yellow w/ Black		
32,140	LF	Linear feet of Detail 31 – 2 Way Left Turn Stripe		
1,830	LF	Linear feet of Detail 1 – Yellow Centerline Skip		
2,430	LF	Linear feet of Detail 24 – Solid 4" Yellow Centerline		
10,730	LF	Linear feet of Detail 38a – 8" White Turn Lane		
15,360	LF	Linear feet of Detail 27B – 4" Solid White Stripe		
8,940	LF	Linear feet of Detail 8 – 4" Lane Line Stripe		
12,200	LF	Linear feet of Detail 39 – 6" Bike Lane Stripe		
500	LF	Cat Tracking of Roads		
4500	LF	Linear feet of 4" Diagonal Parking stalls*		
*- Diagonal Parking plan attached				
TOTAL FOR ALL BASE BID STRIPING				

ANNUAL CITY STREET RESTRIPIING/ PAVEMENT LEGENDS- AD ALTERNATES**

QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
10	EA	CA MUTCD Figure 8B-7 RR Grade Crossing Legend		
180	EA	CA MUTCD Figure 3B-23 STOP Legend		
191	EA	CA MUTCD Figure 3B-24 Type IV Turn Arrow (L)		
23	EA	CA MUTCD Figure 3B-24 Type IV Turn Arrow (R)		
70	EA	CA MUTCD Figure 3B-24 Type I Arrow (Straight)		
20	EA	CA MUTCD Figure 3B-24 Type II Arrow (R) or (L) (Straight Ahead and Right or Left Turn Arrow)		
3,967	LF	SOLID 12" WHITE STOP LIMIT LINES		
8,995	LF	SOLID 12" WHITE CROSSWALK LINES		

**- Ad Alternates to be included by item type as funding availability permits

Company Name: _____ DIR #: _____

Mailing Address: _____

Phone Number: _____ Fax Number: _____

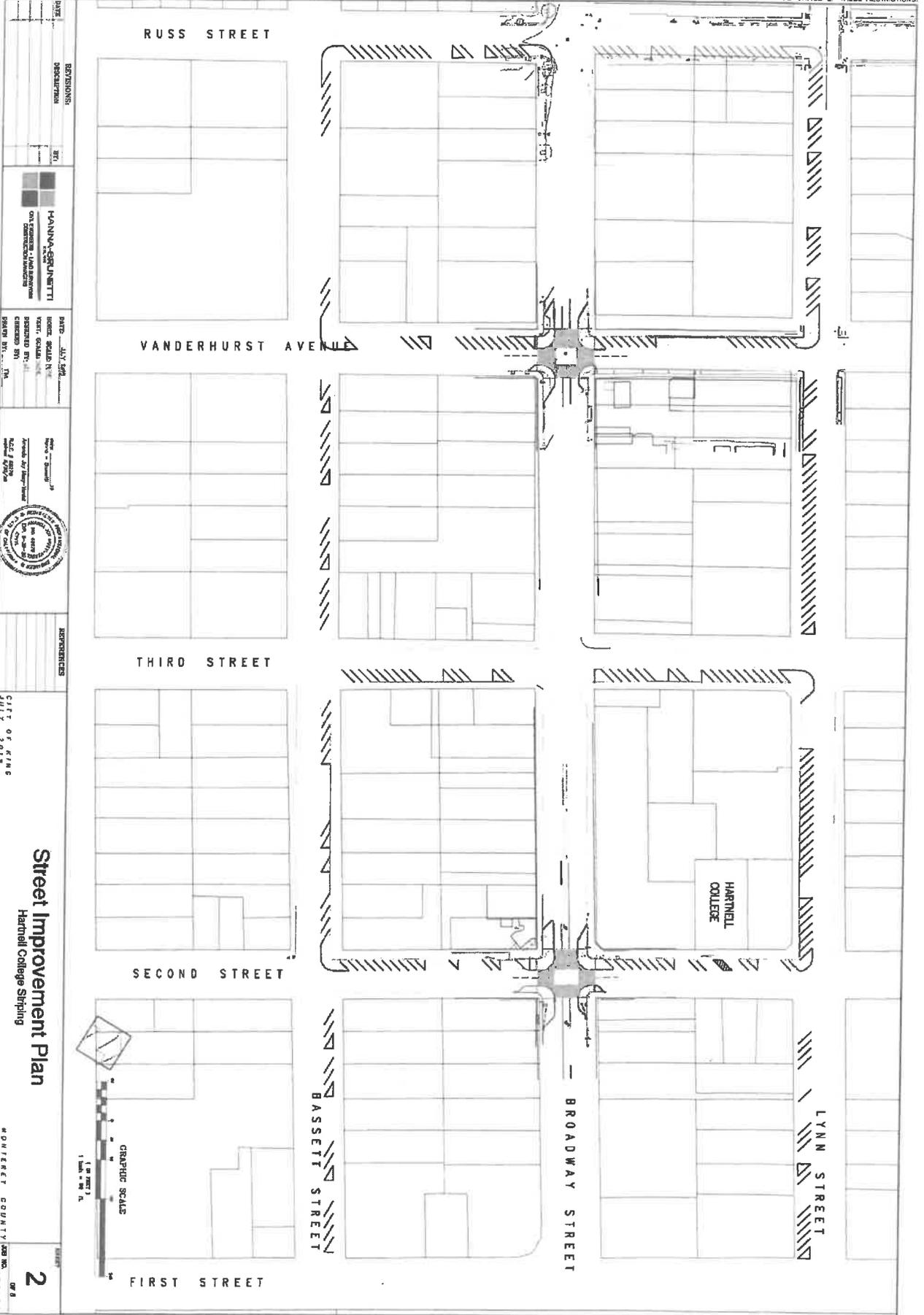
Email: _____

Signature of Vendor Rep: _____ Date: _____

Submit to: Geoff English, City of King, 212 S. Vanderhurst Avenue, King City CA 93930

**BIDS ARE DUE BY 2:00PM ON THURSDAY, SEPTEMBER 12, 2019
FAXED OR EMAIL QUOTATIONS WILL NOT BE ACCEPTED**

THE USE OF THESE PLANS AND SPECIFICATIONS SHALL BE RESTRICTED TO THE ORIGINAL SITE FOR WHICH THEY WERE PREPARED AND PUBLICATION THEREOF IS EXPRESSLY LIMITED TO SUCH USE. REPRODUCTION OR PUBLICATION BY ANY METHOD, IN WHOLE OR PART, IS PROHIBITED. TITLE TO THE PLANS AND SPECIFICATIONS REMAINS IN THE ENGINEER WITHOUT PREJUDICE. VISUAL CONTACT WITH THESE PLANS AND SPECIFICATIONS SHALL CONSTITUTE PRIMA FACIE EVIDENCE OF THE ACCEPTANCE OF THESE RESTRICTIONS.



DESCRIPTION:
 SHEET NO. 2
HANNA-SERUNETTI
 CIVIL ENGINEER AND ARCHITECT
 1000 S. G ST. SUITE 100
 SAN JOSE, CA 95128
 (408) 298-1111

DATE: JULY 2016
PROJECT: HARPELL COLLEGE
DESIGNED BY: HANNA-SERUNETTI
DRAWN BY: HANNA-SERUNETTI

REVISIONS:

CITY OF KING CITY, CALIFORNIA

Street Improvement Plan
 Harpell College Shipping

CONTRACT NO. 182126
 OF 1

2

EXHIBIT "C"

SCHEDULE OF COMPENSATION

- I. Contractor shall perform all work at the rates submitted as part of Contractor's Proposal, as follows at a not-to-exceed amount of \$75,159.90:.

ANNUAL CITY STREET RESTRIPIING- BASE BID				
QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
26,170	LF	Linear feet of Detail 29 – Double Yellow w/ Black	\$0.29	\$7,589.30
32,140	LF	Linear feet of Detail 31 – 2 Way Left Turn Stripe	\$0.27	\$8,677.80
1,830	LF	Linear feet of Detail 1 – Yellow Centerline Skip	\$0.12	\$219.60
2,430	LF	Linear feet of Detail 24 – Solid 4" Yellow Centerline	\$0.16	\$388.80
10,730	LF	Linear feet of Detail 38a – 8" White Turn Lane	\$0.21	\$2,253.30
15,360	LF	Linear feet of Detail 27B – 4" Solid White Stripe	\$0.16	\$2,457.60
8,940	LF	Linear feet of Detail 8 – 4" Lane Line Stripe	\$0.12	\$1,072.80
12,200	LF	Linear feet of Detail 39 – 6" Bike Lane Stripe	\$0.19	\$2,318.00
500	LF	Cat Tracking of Roads	\$5.00	\$2,500.00
4500	LF	Linear feet of 4" Diagonal Parking stalls*	\$0.95	\$4,275.00
*- Diagonal Parking plan attached				
TOTAL FOR ALL BASE BID STRIPING				\$31,752.20

ANNUAL CITY STREET RESTRIPIING/ PAVEMENT LEGENDS- AD ALTERNATES**				
QTY.	UNIT	DESCRIPTION	UNIT COST	TOTAL
10	EA	CA MUTCD Figure 8B-7 RR Grade Crossing Legend	\$130.00	\$1,300.00
180	EA	CA MUTCD Figure 3B-23 STOP Legend	\$41.00	\$7,380.00
191	EA	CA MUTCD Figure 3B-24 Type IV Turn Arrow (L)	\$28.00	\$5,348.00
23	EA	CA MUTCD Figure 3B-24 Type IV Turn Arrow (R)	\$28.00	\$644.00
70	EA	CA MUTCD Figure 3B-24 Type I Arrow (Straight)	\$44.00	\$3,080.00
20	EA	CA MUTCD Figure 3B-24 Type II Arrow (R) or (L) (Straight Ahead and Right or Left Turn Arrow)	\$83.50	\$1,670.00
3,967	LF	SOLID 12" WHITE STOP LIMIT LINES	\$1.85	\$7,338.95
8,995	LF	SOLID 12" WHITE CROSSWALK LINES	\$1.85	\$16,640.75

** - Ad Alternates to be included by item type as funding availability permits

- II. A retention of five percent (5%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.
- III. Within the budgeted amounts for each item of work, and with the approval of the Contract Officer, funds may be shifted from one item's sub budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Work is approved per Section 1.10.
- IV. The City will compensate Contractor for the work performed upon submission of a valid invoice pursuant to Section 2.4.

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

I. Contractor shall perform all work timely in accordance with the following schedule:

	Work Item	<u>Start Date</u>	<u>Deadline Date</u>
A.	All work	Oct. 15, 2019	Dec. 15, 2019

Work shall only be performed between the hours of 7:00 a.m. and 7:00 p.m., on weekdays, except for work in retail and industrial/ commercial areas where night work is authorized. The Contractor must notify the City in advance of any planned and approved night work. Work shall not be performed on Saturdays, Sundays or legal holidays. Exceptions to the above hours of work will be permitted only after obtaining written authorization from the City.

II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

EXHIBIT “E”

PUBLIC CONTRACT CODE SEC. 9204 NEW PUBLIC WORKS CLAIMS PROCEDURE

AB 626, approved by the Governor on September 29, 2016, created a new Public Contract Code Section 9204, which specifies new procedural requirements for claims submitted by a contractor on any public works project. These new requirements contain burdens for both private contractors and public entities. The text of this new legislation is set forth below:

Public Contract Code § 9204.

Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process

(a) The Legislature finds and declares that it is in the best interests of the state and its citizens to ensure that all construction business performed on a public works project in the state that is complete and not in dispute is paid in full and in a timely manner.

(b) Notwithstanding any other law, including, but not limited to, Article 7.1 (commencing with [Section 10240](#)) of Chapter 1 of Part 2, Chapter 10 (commencing with [Section 19100](#)) of Part 2, and Article 1.5 (commencing with [Section 20104](#)) of Chapter 1 of Part 3, this section shall apply to any claim by a contractor in connection with a public works project.

(c) For purposes of this section:

(1) “Claim” means a separate demand by a contractor sent by registered mail or certified mail with return receipt requested, for one or more of the following:

(A) A time extension, including, without limitation, for relief from damages or penalties for delay assessed by a public entity under a contract for a public works project.

(B) Payment by the public entity of money or damages arising from work done by, or on behalf of, the contractor pursuant to the contract for a public works project and payment for which is not otherwise expressly provided or to which the claimant is not otherwise entitled.

(C) Payment of an amount that is disputed by the public entity.

(2) “Contractor” means any type of contractor within the meaning of Chapter 9 (commencing with [Section 7000](#)) of Division 3 of the Business and Professions Code who has entered into a direct contract with a public entity for a public works project.

(3)(A) “Public entity” means, without limitation, except as provided in subparagraph (B), a state agency, department, office, division, bureau, board, or commission, the California State University, the University of California, a city, including a charter city, county, including a

charter county, city and county, including a charter city and county, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(B) "Public entity" shall not include the following:

(i) The Department of Water Resources as to any project under the jurisdiction of that department.

(ii) The Department of Transportation as to any project under the jurisdiction of that department.

(iii) The Department of Parks and Recreation as to any project under the jurisdiction of that department.

(iv) The Department of Corrections and Rehabilitation with respect to any project under its jurisdiction pursuant to Chapter 11 (commencing with [Section 7000](#)) of Title 7 of Part 3 of the [Penal Code](#).

(v) The Military Department as to any project under the jurisdiction of that department.

(vi) The Department of General Services as to all other projects.

(vii) The High-Speed Rail Authority.

(4) "Public works project" means the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

(5) "Subcontractor" means any type of contractor within the meaning of Chapter 9 (commencing with [Section 7000](#)) of Division 3 of the Business and Professions Code who either is in direct contract with a contractor or is a lower tier subcontractor.

(d)(1)(A) Upon receipt of a claim pursuant to this section, the public entity to which the claim applies shall conduct a reasonable review of the claim and, within a period not to exceed 45 days, shall provide the claimant a written statement identifying what portion of the claim is disputed and what portion is undisputed. Upon receipt of a claim, a public entity and a contractor may, by mutual agreement, extend the time period provided in this subdivision.

(B) The claimant shall furnish reasonable documentation to support the claim.

(C) If the public entity needs approval from its governing body to provide the claimant a written statement identifying the disputed portion and the undisputed portion of the claim, and the governing body does not meet within the 45 days or within the mutually agreed to extension of time following receipt of a claim sent by registered mail or certified mail, return receipt requested, the public entity shall have up to three days following the next duly publicly noticed meeting of the governing body after the 45-day period, or extension, expires to provide the

claimant a written statement identifying the disputed portion and the undisputed portion.

(D) Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. If the public entity fails to issue a written statement, paragraph (3) shall apply.

(2)(A) If the claimant disputes the public entity's written response, or if the public entity fails to respond to a claim issued pursuant to this section within the time prescribed, the claimant may demand in writing an informal conference to meet and confer for settlement of the issues in dispute. Upon receipt of a demand in writing sent by registered mail or certified mail, return receipt requested, the public entity shall schedule a meet and confer conference within 30 days for settlement of the dispute.

(B) Within 10 business days following the conclusion of the meet and confer conference, if the claim or any portion of the claim remains in dispute, the public entity shall provide the claimant a written statement identifying the portion of the claim that remains in dispute and the portion that is undisputed. Any payment due on an undisputed portion of the claim shall be processed and made within 60 days after the public entity issues its written statement. Any disputed portion of the claim, as identified by the contractor in writing, shall be submitted to nonbinding mediation, with the public entity and the claimant sharing the associated costs equally. The public entity and claimant shall mutually agree to a mediator within 10 business days after the disputed portion of the claim has been identified in writing. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the claim. Each party shall bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator. If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.

(C) For purposes of this section, mediation includes any nonbinding process, including, but not limited to, neutral evaluation or a dispute review board, in which an independent third party or board assists the parties in dispute resolution through negotiation or by issuance of an evaluation. Any mediation utilized shall conform to the timeframes in this section.

(D) Unless otherwise agreed to by the public entity and the contractor in writing, the mediation conducted pursuant to this section shall excuse any further obligation under [Section 20104.4](#) to mediate after litigation has been commenced.

(E) This section does not preclude a public entity from requiring arbitration of disputes under private arbitration or the Public Works Contract Arbitration Program, if mediation under this section does not resolve the parties' dispute.

(3) Failure by the public entity to respond to a claim from a contractor within the time periods described in this subdivision or to otherwise meet the time requirements of this section shall result in the claim being deemed rejected in its entirety. A claim that is denied by reason of the public entity's failure to have responded to a claim, or its failure to otherwise meet the time requirements of this section, shall not constitute an adverse finding with regard to the merits

of the claim or the responsibility or qualifications of the claimant.

(4) Amounts not paid in a timely manner as required by this section shall bear interest at 7 percent per annum.

(5) If a subcontractor or a lower tier subcontractor lacks legal standing to assert a claim against a public entity because privity of contract does not exist, the contractor may present to the public entity a claim on behalf of a subcontractor or lower tier subcontractor. A subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier subcontractor, that the contractor present a claim for work which was performed by the subcontractor or by a lower tier subcontractor on behalf of the subcontractor. The subcontractor requesting that the claim be presented to the public entity shall furnish reasonable documentation to support the claim. Within 45 days of receipt of this written request, the contractor shall notify the subcontractor in writing as to whether the contractor presented the claim to the public entity and, if the original contractor did not present the claim, provide the subcontractor with a statement of the reasons for not having done so.

(e) The text of this section or a summary of it shall be set forth in the plans or specifications for any public works project that may give rise to a claim under this section.

(f) A waiver of the rights granted by this section is void and contrary to public policy, provided, however, that (1) upon receipt of a claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable; and (2) a public entity may prescribe reasonable change order, claim, and dispute resolution procedures and requirements in addition to the provisions of this section, so long as the contractual provisions do not conflict with or otherwise impair the timeframes and procedures set forth in this section.

(g) This section applies to contracts entered into on or after January 1, 2017.

(h) Nothing in this section shall impose liability upon a public entity that makes loans or grants available through a competitive application process, for the failure of an awardee to meet its contractual obligations.

(i) This section shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

Contractor's Certificate Regarding Worker's Compensation

Description of Contract:

**City of King
2019 Street Restriping Project**

Labor Code Section 3700 Provides (in part):

"Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- (a) By being insured against liability to pay compensation in one or more insurers duly authorized to write compensation insurance in this State.

- (b) By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees."

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

Dated: _____, 20____
(Contractor)

By _____

(Official Title)

(SEAL)

(Labor Code Section 1861 provides that the above certificate must be signed and filed by the Contractor with the City prior to performing any work under this contract.



9(C)

REPORT TO THE CITY COUNCIL

DATE: SEPTEMBER 24, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR

RE: CONSIDERATION OF ACCEPTANCE OF CREEKBRIDGE SOCCER PARK (APN 026-616—001 – PARCEL A OF TRACT NO. 1457, VOLUME 23 C&T PAGE 21)

RECOMMENDATION:

It is recommended that the City Council adopt the Resolution accepting the dedication of the Creekbridge Soccer Park.

BACKGROUND:

On July 20, 2004, the City Council approved the Arboleda Specific Plan with conditions of approval ("COA"). On July 26, 2005 and September 10, 2019, the COA was amended. (On September 10, 2019, the City Council conducted the second reading of an Ordinance amending COA No. 56 removing the word "permanently" from naming the parks within the Arboleda Specific Plan.)

The Arboleda Specific Plan and Vesting Tentative Tract Map COA No. 55 required the dedication of the three (3) parks located within the project. Staff recently became aware that while the Creekbridge Soccer Park and Creekbridge Baseball Park are maintained by the City, the ballfield has not been properly dedicated to the City, the dedication of the soccer park has not been formally accepted by the City, and the ownership of the parks have not been transferred to the City. The Assessor's Office shows Creekbridge Homes LLC as the entity paying taxes. Pursuant to COA No. 55, Creekbridge was required to dedicate these parks to the City in lieu of paying park fees. This requirement was included on the recorded track map for the development. A formal acceptance of the dedication is needed by the City Council to transfer the ownership.

The following is COA 55:

55. *Park Dedications:* *In lieu of payment of the park fees otherwise due (not including the Aquatic and Community Center Fees required under COA No 11(c)) on the project, the Final Map for the two hundred and first (201) lot shall include the dedication of a 3.60 acre park at Mildred and San Antonio (Baseball Park) and a 2.58 acre park south of the middle school (Soccer Park) and each Final Map which*

**CITY COUNCIL
CONSIDERATION OF ACCEPTANCE OF CREEKBRIDGE SOCCER PARK (APN 026-616—001 – PARCEL A OF TRACT NO. 1457, VOLUME 23 C&T PAGE 21)
SEPTEMBER 24, 2019
PAGE 2 OF 3**

contains a portion of the 2.42 acre Linear Park, shall include the dedication of that portion of the Linear Park which adjoins that Final Map.

If the 199th building permit has not been issued within six (6) years from the date of the GPA. Specific Plan and Vesting Tentative Tract Map approvals, all parklands shall be dedicated to the City.

DISCUSSION:

COA No. 55 of the recorded tract map offered for dedication the Creekbridge Soccer Park to the City. Tract Map No. 1457 (Parcel 1 Volume 23 C&T Page 21) offered the dedication to the City. However, staff has discovered that the dedication of the soccer park was never officially accepted by the City, and as a result, the ownership of the park has not been transferred to the City. Formal action is needed by the City Council to accept the dedication.

Since the intent of the provisions of the Specific Plan and Tract Map was for the parks to be transferred to the City, it is recommended that this error be resolved at this time. Additional work is necessary to address the Baseball Park since it was not properly dedicated. Therefore, staff will come back before the City Council to address the Baseball Park within the next two months. Addressing the Soccer Park separately at this time enables staff to move forward with efforts to seek a sponsorship in order to renovate the soccer field.

ENVIRONMENTAL REVIEW:

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, Section 15061(b)(3), has determined with certainty that there is no possibility that accepting the offer of dedication of the park may have a significant effect on the environment. Overall environmental review was conducted at the time the project was originally approved. Therefore, this project is not subject to CEQA.

COST ANALYSIS:

No additional cost will be incurred by the City Council's action since the City is currently paying for maintenance and improvements.

ALTERNATIVES:

The following recommendations are provided for Council consideration:

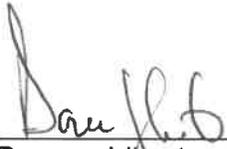
1. Accept staff's recommendation and accept the offer of dedication;
2. Do not accept the offer of dedication;

**CITY COUNCIL
CONSIDERATION OF ACCEPTANCE OF CREEKBRIDGE SOCCER PARK (APN 026-
616—001 – PARCEL A OF TRACT NO. 1457, VOLUME 23 C&T PAGE 21)
SEPTEMBER 24, 2019
PAGE 3 OF 3**

3. Request additional information; or
4. Provide staff other direction.

Exhibit: Exhibit 1 – Front Cover of Recorded Tract Map.

Submitted by:



Doreen Liberto, AICP, Community Development Director

Approved by:



Steven Adams, City Manager

RESOLUTION NO. 2019-4737

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KING, ACCEPTING AN IRREVOCABLE OFFER OF DEDICATION FOR PUBLIC PURPOSES OF THE CREEKBRIDGE SOCCER PARK (APN 026-616-001-PARCEL A OF TRACT MAP NO. 1457, VOLUME 23 C&T PAGE 21)

WHEREAS, on **July 20, 2004**, the City Council ("**Council**") approved the Arboleda Specific Plan with conditions of approval ("**COA**"), and on July 26, 2005 and September 10, 2019, the COA were amended; and

WHEREAS, the Arboleda Specific Plan and Vesting Tentative Tract Map COA No. 55 required the dedication of the three (3) parks located within the project; and

WHEREAS, staff recently became aware that while the Creekbridge Soccer Park and Creekbridge Ball Field are maintained by the City, the dedication of the soccer field has not been accepted to the City and the ownership of the soccer field has not been transferred to the City; and

WHEREAS, a formal acceptance of the dedication of the soccer field is needed by the City Council to transfer the ownership; and

WHEREAS, Creekbridge LLC. made an irrevocable offer of dedication to the City, attached hereto as **Exhibit "A,"** of the Creekbridge Soccer Park APN 026-616-001,(Parcel A of Tract Map No. 1457, Volume 23 C&T Page 21) in the City of King, County of Monterey, State of California as more particularly described in the legal description attached to **Exhibit A**, in lieu of payment of the park fees otherwise due (not including the Aquatic and Community Center Fees required under COA No 11(c)) ("**the Offer**"); and

WHEREAS, Creekbridge LLC., was the owner of at the time of dedication of the soccer field APN 026-616-001 and subject to the terms and conditions of the Offer; and

WHEREAS, pursuant to Government Code section 7050, the City Council may accept all or any portion of an irrevocable offer of dedication at any time; and

WHEREAS, the City Council desires to accept the Offer at this time for the public purposes stated therein, namely for public street and highway improvements.

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

Section 1. All of the above-stated recitals are true and correct and incorporated herein by reference.

Section 2. The City Council hereby accepts the Offer for the Creekbridge Soccer Field.

Section 3. The City Clerk is hereby authorized and directed to cause a Certificate of Acceptance to be recorded on behalf of the City in the Office of the Monterey County Recorder, and to certify the adoption of this resolution. The Mayor, City Manager, and City Clerk are hereby authorized and directed to execute any and all other documents as may be necessary to effect the recordation of the Certificate of Acceptance and its enforcement.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of King at a regular meeting thereof held on the 24th day of September, 2019 by the following vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

STEVEN ADAMS, City Clerk

CITY OF KING

By: _____

MIKE LEBARRE, Mayor

APPROVED AS TO FORM:

By: _____

ROY C. SANTOS, City Attorney

Alshire & Wynder, LLP

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

SU00027671 N1970570 E 5931302 V0123 CT Pg 21

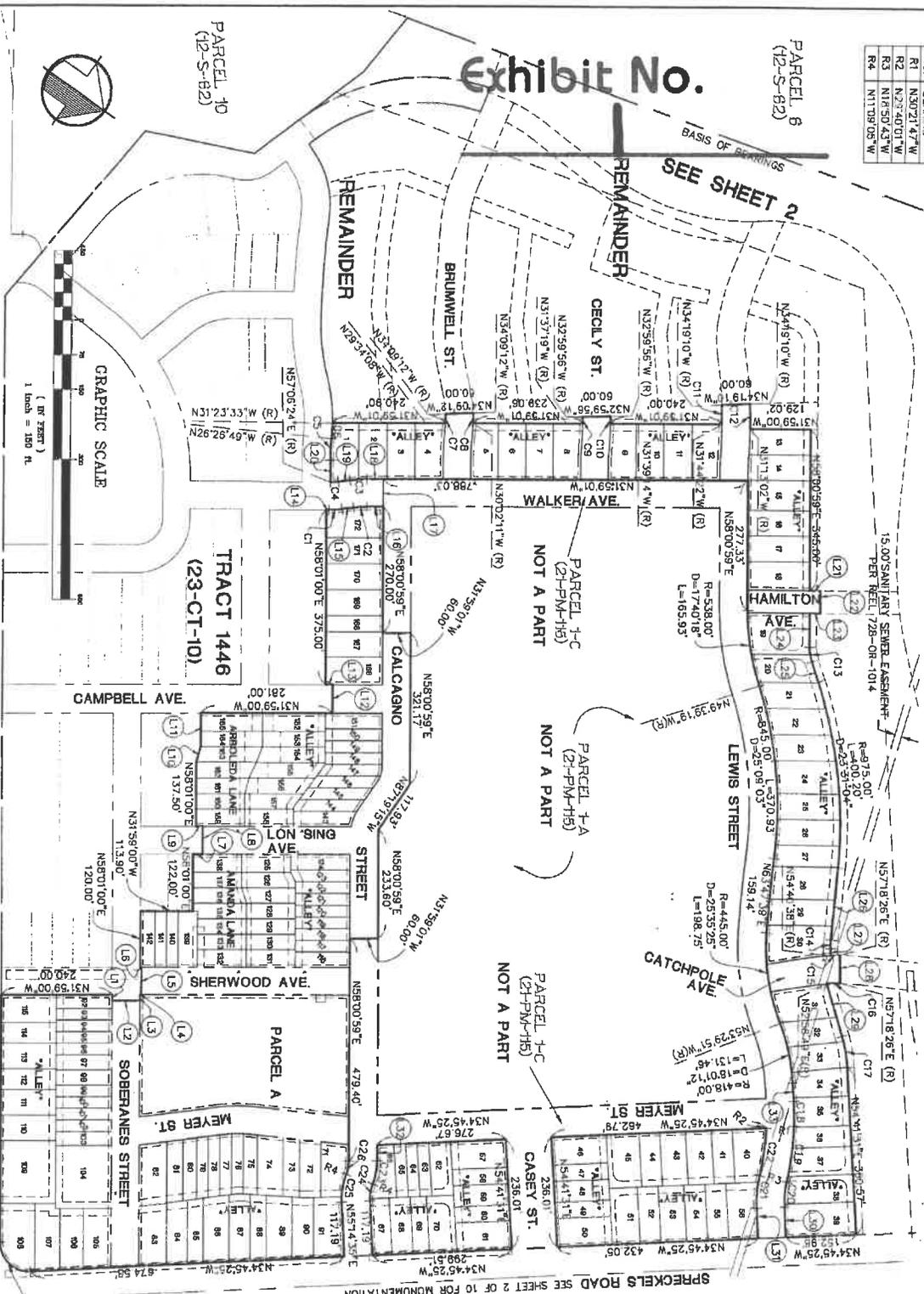
NO.	BEARINGS
R1	N3071.47°W
R2	N2340.01°W
R3	N1150.43°W
R4	N1170.05°W

Exhibit No.

TRACT NO. 1451

ARBOLEDA PHASE TWO
 BEING A SUBDIVISION OF A PORTION OF PARCEL "1-B" AS SHOWN
 ON THE PARCEL MAP RECORDED IN VOLUME 21 OF PARCEL MAPS,
 AT PAGE 115, CITY OF KING, MONTEREY COUNTY, CALIFORNIA
 PREPARED FOR CREEKBRIDGE HOMES
 CREGGAN & D'ANGELO CONSULTING ENGINEERING
 MONTEREY, CALIFORNIA DECEMBER 2005

NOTE:
 A LEAD AND TAKE (LS 5992) SHALL BE SET IN THE
 ALLEYS AND LINES AT EACH INTERIOR LOT CORNER,
 AND THE FRONT CORNER OF EACH INTERIOR LOT FROM THE
 INTERIOR SIDE LOT LINES OF EACH LOT.



CURVE	LENGTH	RADIUS	DELTA
C1	27.55'	200.00'	753.31°
C2	27.55'	200.00'	753.29°
C3	35.81'	269.00'	753.29°
C4	17.06'	140.00'	659.59°
C5	47.15'	488.00'	53.11°
C6	33.15'	364.00'	435.44°
C7	20.00'	250.00'	435.04°
C8	22.27'	310.00'	407.01°
C9	15.00'	674.28'	1727.36°
C10	16.06'	694.28'	1729.42°
C11	41.62'	924.38'	754.46°
C12	53.50'	884.28'	378.06°
C13	37.62'	100.00'	1807.05°
C14	18.63'	200.00'	523.56°
C15	49.01'	458.00'	237.48°
C16	28.39'	376.00'	478.37°
C17	68.15'	300.00'	1370.46°
C18	54.13'	605.00'	576.52°
C19	21.92'	605.00'	1137.04°
C20	53.58'	194.00'	1594.42°
C21	70.34'	254.00'	10748.19°
C22	102.94'	545.00'	10748.19°
C23	50.80'	140.00'	20748.20°
C24	36.26'	88.00'	23362.20°
C25	80.98'	148.00'	23362.20°
C26	29.08'	80.00'	20749.56°

LINE	LENGTH	BEARING	LINE	LENGTH	BEARING
L1	13.00'	N5870.00°E	L16	34.44'	N3159.01°W
L2	60.00'	N3159.00°W	L17	25.07'	N3159.31°W
L3	13.00'	N5870.00°E	L18	47.04'	N5870.00°E
L4	3.00'	N3159.00°W	L19	23.00'	N3159.00°W
L5	60.00'	N5870.00°E	L20	48.00'	N5870.00°E
L6	3.00'	N3159.00°W	L21	23.00'	N3159.00°W
L7	21.00'	N3159.00°W	L22	48.00'	N3159.00°W
L8	60.00'	N5870.00°E	L23	23.00'	N3159.00°E
L9	15.00'	N3159.00°W	L24	46.14'	N5870.58°E
L10	33.53'	N75227.14°E	L25	14.74'	N6374.58°E
L11	70.00'	N5870.00°E	L26	60.00'	N5718.76°E
L12	80.00'	N5870.00°E	L27	118.15'	N4170.45°E
L13	15.00'	N3159.00°W	L28	11.00'	N5514.35°E
L14	15.00'	N3159.00°W	L29	65.30'	N5514.35°E
L15	25.07'	N3159.31°W	L30	65.30'	N5514.35°E
L16	34.44'	N3159.01°W	L31	34.33'	N5870.58°E
L17	60.00'	N5870.58°E	L32	39.62'	N4431.21°E

LEGEND

- FOUND STD. CITY MONUMENT AS NOTED
- SET STD. CITY MONUMENT PLUS 5992
- RECORD DATA AS NOTED
- FOUND 1" IRON PIPE (AS NOTED)
- SET 1" IP LS 5992
- MONUMENT TO MONUMENT
- TOTAL DISTANCE
- PUBLIC UTILITY EASEMENT
- INGRESS, EGRESS, AND UTILITY EASEMENT
- LANDSCAPE EASEMENT
- DISTINCTIVE BORDER
- MONUMENT LINE
- LOT OR PARCEL LINE
- EASEMENT LINE

RECORD DATA

1 LS 3860, PER 21-P-93

2 LS 5992, PER 23-CT-10

3 LS 3860, PER 21-P-115

SAN ANTONIO DRIVE

PARCEL 10
(12-S-82)

PARCEL 8
(12-S-82)

TRACT 1446
(23-CT-10)

PARCEL 1-C
(21-PM-115)
NOT A PART

PARCEL 1-A
(21-PM-115)
NOT A PART

PARCEL 1-C
(21-PM-115)
NOT A PART

SPRECKELS ROAD SEE SHEET 2 OF 10 FOR MONUMENTATION

SHEET 3 OF 10 SHEETS



10(A)

REPORT TO THE CITY COUNCIL

DATE: SEPTEMBER 24, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: DOREEN LIBERTO, AICP, COMMUNITY DEVELOPMENT DIRECTOR

RE: CONSIDERATION OF AN ORDINANCE REGULATING INDUSTRIAL HEMP

RECOMMENDATION:

It is recommended that the City Council open the public hearing, consider public testimony, introduce and conduct the first reading of an Ordinance adopting Hemp Regulations, by title only, and set the second reading and adoption for the next regularly scheduled Council meeting of October 8, 2019.

BACKGROUND:

Cannabis, which includes hemp and marijuana, is legal in California for both medical and recreational use. California has been at the forefront of reform efforts of the legality of cannabis in the United States, beginning in 1972 with the State's first ballot initiative attempting to legalize cannabis. Although Proposition 19 was unsuccessful, California would later become the first state to legalize medical cannabis with the passage of the Compassionate Use Act of 1996 (Proposition 215). In November 2016, California voters approved the Adult Use of Marijuana Act (Proposition 64) to legalize the recreational use of cannabis. The use, sale, and possession of cannabis over 0.3% THC (marijuana) remains illegal under Federal law.

Hemp and marijuana are both members of the genus cannabis. There are three distinct species of cannabis: *sativa*, *indica*, and *ruderalis*. Marijuana is the dried flower of the female cannabis plant and it can come from either *cannabis indica* or *cannabis sativa* species. Hemp is only a member of the *cannabis sativa* family. Hemp has a low THC makeup (<0.3%) and is not psychoactive. Marijuana has a high THC makeup (5%-35%) and psychoactive.

The California Industrial Hemp Farming Act (Senate Bill 566, Chapter 398, Statutes of 2013) was signed into law to authorize the commercial production of

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industrial hemp in California. The Act became effective on January 1, 2017. In 2018, hemp was removed as a Schedule 1 drug under the Federal Controlled Substances Act. It is now legal under Federal and State laws to manufacture products from hemp and cultivate hemp. However, neither Federal nor State regulations have been fully adopted. All industrial hemp growers and seed breeders remain subject to the requirements of State law, including the State registration requirement contained in the California Industrial Hemp law, Food and Agricultural Code, Division 24. There are minimum Federal and State research and regulations on hemp cultivation. The California Department of Food and Agriculture (CDFA) is in the process of developing a program to administer this new law, including developing the registration process, fee structure, regulations, and other administrative details necessary to provide for the commercial production of industrial hemp.

There are a number of issues associated with the cultivation of hemp within the City's jurisdiction. As a result, staff is recommending the City be proactive and establish its own regulations at this time. On September 3, 2019, the Planning Commission recommended the City Council adopt the attached Ordinance.

DISCUSSION:

The attached Ordinance addresses two aspects of hemp: 1) cultivation; and 2) industrial manufacturing of hemp products. Due to potential cross-pollination, odor, potential to grow marijuana plants with hemp plants, and pest control issues, staff is recommending that hemp cultivation not be allowed. Industrial manufacturing of hemp products would be allowed in the M-1, M-2, M-3 and East Ranch Business Park Specific Plan areas. Because of the unknown impacts of **cultivating hemp**, more than a dozen counties have adopted interim moratoriums on cultivating hemp.

Hemp is a cannabis plant that is harvested commercially for its seeds, stalks, and flowers, and typically cultivated outdoors. Different parts of the plant are used for different uses. Seeds are often used in food and cosmetics, and stalks are the source of fiber used in building materials and clothing.

The cannabinoid (CBD) content of hemp is where it differs the most from marijuana. Namely, hemp comes with high concentrations of the non-psychoactive CBD, but it carries almost no THC (below 0.3%). It's the THC content that gives marijuana its psychoactive effects. Unlike marijuana, hemp has been excluded from the Controlled Substances Act with the introduction of the **2018 Farm Bill**. According to the new act, hemp can be commercially grown and manufactured into CBD products for sale to the public. On the molecular level, CBD is the same

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compound regardless of whether it's found in high-THC or low-THC cannabis plants.

Both hemp and marijuana have similar smells and look similar to the untrained eye. Industrial hemp strains grown for its cannabidiol oil properties (CBD oil) are indistinguishable from the high THC cannabis strains used for medicinal and recreational purposes. Since hemp needs to be cultivated outdoors, it is much more difficult to control the impact of odor on residential areas.

Cannabis is a dioecious plant, meaning that male and female features occur on different plants instead of the same one. Female marijuana plants produce flowers which are grown for their cannabinoid content and psychedelic. If male hemp plants are planted too close, the hemp can pollinate the cannabis females. Therefore, there is a concern about cross-pollination. Cross-pollination can cause marijuana plants to seed out, lessening yields and cannabinoid content, and reducing potency.

Industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other nearby crops. Additionally, the physical appearance of industrial hemp and marijuana are virtually indistinguishable and difficult to tell them apart. This could allow concealing of illegal cannabis in industrial hemp fields.

While there are many benefits to hemp production, cultivation is best suited for the County unincorporated areas away from concentrations of population. The County has adopted a buffer of 3 miles from any municipal jurisdiction borders. Therefore, cultivation of industrial hemp prior to the adoption of reasonable City regulations may be harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby cannabis cultivators, as well as other produce.

At this time, California doesn't have many requirements for obtaining a hemp cultivation license. The state requires:

- A \$900 fee;
- The location of the farm; and
- The name of an approved hemp seed variety or cultivar a farmer plans to grow.

Cultivation of industrial hemp requires registration with the County Agricultural Commissioner. California law does not currently provide any requirements for the **manufacturing, processing,** or selling of non-food **industrial hemp** or **hemp**

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products. Assembly Bill 228 proposes to establish a regulatory framework for industrial hemp products to be used as a food, beverage, or cosmetic.

More than a dozen counties in California have enacted temporary moratoriums on hemp cultivation due to concerns regarding cross-pollination, THC testing protocols, lack of research on the impact from insects, lack of regulations by the state, odor issues, and potential concealment of marijuana plants with hemp plants. In July 2019, Monterey County adopted an ordinance on hemp cultivation.

ENVIRONMENTAL REVIEW:

Staff has performed a preliminary environmental assessment of this project and, pursuant to CEQA Guidelines, Section 15061(b)(3), has determined with certainty that there is no possibility that adopting hemp regulations may have a significant effect on the environment. Therefore, this project is not subject to CEQA.

COST ANALYSIS:

There are no costs associated with this action. However, any impact from hemp production on the City's cannabis industry could result in a reduction to future cannabis tax revenues.

ALTERNATIVES:

The following recommendations are provided for Council consideration:

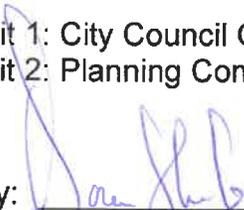
1. Introduce the proposed Ordinance which regulates industrial hemp;
2. Direct staff to modify the Ordinance;
3. Do not adopt the Ordinance;
4. Request additional information; or
5. Provide staff other direction.

Exhibits:

Exhibit 1: City Council Ordinance

Exhibit 2: Planning Commission Resolution No. 2019-263

Submitted by:



Doreen Liberto, AICP, Community Development Director

Approved by:



Steven Adams, City Manager

ORDINANCE NO. 2019-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING REPEALING CHAPTER 17.04, OF TITLE 17, DEFINITIONS, OF THE KING CITY MUNICIPAL CODE; ADDING CHAPTER 17.01, OF TITLE 17, DEFINITIONS, TO THE KING CITY MUNICIPAL CODE; AND ADDING CHAPTER 17.04, OF TITLE 17, HEMP, TO THE KING CITY MUNICIPAL CODE.

WHEREAS, Pursuant to Article XI, Section 7, of the California Constitution, the City of King (“City”) may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, in December of 2018, the President of the United States signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for hemp production, further giving states that desire to have primary regulatory authority over the production of hemp the ability to adopt their own state plans. The state plan may include a reference to a law of the state regulating the production of hemp, to the extent consistent with federal law; and

WHEREAS, under California Food and Agriculture Code, section 81006, subdivisions (d)(3) and (5) the CDFA is required to establish regulations for sampling procedures and approved laboratories for sample testing of all hemp crops no more than thirty (30) days before harvest; and

WHEREAS, in late May of 2019, the CDFA proposed emergency regulations to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction for industrial hemp cultivation. In its submission, the CDFA declared that the absence of hemp regulations constituted an emergency and immediate action was necessary to prevent serious harm to the general welfare of the citizens of California; and

WHEREAS, CDFA found a pressing need for the swift establishment of regulations to prevent delay of the first industrial hemp harvest. Based on its calculations, the absence of regulation could result in a potential direct loss of over \$43,000,000 to California farmers; and

WHEREAS, the CDFA proposed regulations are not currently operative. Until they are approved, the required sampling, testing, and destruction cannot take place absent the promulgation of local regulation; and

WHEREAS, industrial hemp strains grown for its cannabidiol oil properties (CBD oil) are indistinguishable from the high THC cannabis strains used for medicinal and recreational purposes. Permitting industrial hemp cultivation without a limitation on the acreage and location of industrial hemp plants may lead to the same type of odor and public safety issues facing cannabis operations in the City; and

WHEREAS, industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other nearby crops. The cultivation of industrial hemp prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby cannabis cultivators; and

WHEREAS, on September 3, 2019, the City of King Planning Commission (“Commission”) conducted a public hearing to consider the proposed ordinance, and after considering public testimony, the staff report and all submitted evidence to the support the ordinance, the Commission recommended the City Council (“Council”) [approve/deny] the proposed ordinance; and

WHEREAS, the City Council finds this ordinance is reasonable and necessary for the preservation of the public peace, health and safety; and

WHEREAS, in September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code, section 11018.5(a) was amended, deleting the reference to its being a crop for fiber or oilseed production. The Industrial Hemp Farming Act was also amended to its current form, including amendment of section 81006 to remove requirement for dense planting and restrictions against pruning, tending, or culling. SB 1409 includes the finding, “By removing limitations on the manner

in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research,” however the bill does not address the product safety or testing requirements of other law regarding cannabis products; and

WHEREAS, the proposed ordinance is consistent with the General Plan and any applicable Specific Plan(s); and

WHEREAS, new Chapter 17.04 establishes hemp regulations; and

WHEREAS, in accordance with the California Environmental Quality Act (“CEQA”), and pursuant to CEQA Guideline, sections 15378 and 15061(b)(3), this activity is not a “project” subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment; and

WHEREAS, on **September 24, 2019**, the Council conducted a public hearing to consider the Commission's recommendation, and after considering public testimony, the staff report and all submitted evidence, the Council now desires to approve the proposed ordinance.

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

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

SECTION 2. The City Council has reviewed the proposed ordinance and hereby finds that it is consistent with the General Plan and all applicable Specific Plan(s).

SECTION 3. The City Council, based upon its own independent judgement, finds that the proposed ordinance promotes and protects the health, safety, welfare and quality of life of the City of King residents, including promoting affordable housing.

SECTION 4. The proposed ordinance was assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines (“CEQA Guidelines”), and the environment regulations of the City. The City Council finds and determines that the proposed ordinance is not a “project” for the purposes of CEQA and consistent with CEQA Guidelines section 15378, as it merely updates existing administrative processes and will not result in direct or indirect physical changes in the environment as compared

to the current baseline. Additionally, the City Council finds and determines for the same reasons that even if the proposed ordinance were a project for the purpose of CEQA, there is no possibility that the project may have a significant adverse effect on the environment pursuant to CEQA Guidelines, section 15061(b)(3). Therefore, the proposed ordinance is not subject to CEQA.

SECTION 5. Chapter 17.04, of Title 17, Definitions, of the King City Municipal Code is hereby repealed and renumber to Chapter 17.01, of Title 17, Definitions.

SECTION 6. Newly repealed Chapter 17.04, of Title 17, of the King City Municipal Code is added to read as follows:

Chapter 17.04

Hemp

Section 17.04.010 Policy.

It is the policy of the City to regulate industrial hemp manufacturing in a responsible manner to protect the health, safety, and welfare of the residents of the City of King and to enforce rules and regulations consistent with state law.

Section 17.04.020 Definitions.

When used in this chapter, the following words shall have the meaning ascribed to them as set forth herein. Any reference to California statutes includes any regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regular provision.

- A. "City" means the City of King, a municipal corporation.
- B. "City Council" means the governing body of the City.
- C. "City Manager" means the city manager of the City of King, or the city manager's authorized deputy, agent or representative.
- D. "Established agricultural research institution" has the same meaning as in section 81000 of the California Food and Agricultural Code.
- E. "Hemp cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by seed breeders. For the purposes of this chapter, hemp cultivation shall not

include cultivation by an established agricultural research institution as defined in section 81000 of the California Food and Agricultural Code.

- F. "Industrial Hemp" have the same meanings as in section 11018.5 of the California Health and Safety Code.
- G. "Person" means any individual, firm, partnership, joint venture, association corporation, limited liability company, estate, trust, activity trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- H. "Seed breeder" has the same meaning as in section 81000 of the California Food and Agricultural Code.

Section 17.04.030 Hemp Cultivation.

Hemp cultivation shall be prohibited within all zones of the City of King, whether conducted indoors or outdoors.

Section 17.04.040 Manufacturing of Hemp Products.

The manufacturing of industrial hemp products shall be authorized solely within the M-1, M-2, M-3 zoning districts and the East Ranch Business Park Specific Plan. A conditional use permit shall be required prior to engaging in the manufacturing of industrial hemp products.

Section 17.04.050 Industrial Hemp Regulations.

- A. An industrial hemp manufacturing facility shall not be located within ____ feet of a residential zoning districts.
- B. A conditional use permit for an industrial hemp manufacturing facility shall not be approved by the City until the County of Monterey Agricultural Commissioner issues the applicant a registration under Division 24 of the California Food and Agriculture Code.
- C. Odor Control.
 - (1) Odor control devices and techniques shall be incorporated in all industrial hemp manufacturing facilities to ensure that odors from hemp are not detectable off site. Industrial hemp manufacturing facility shall provide a sufficient odor absorbing ventilation and exhaust system so that odor generated inside is not detected outside of the facility, anywhere on an adjacent property or public rights-of-way, on or about the exterior or interior

common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the industrial hemp business.

- (2) In order to determine the existence of a violation of this chapter, the city may measure for hemp odor at the industrial hemp business with an approved field olfactometer device, including, but not limited to, a Nasal Ranger Field Olfactometer® or Scentometer®, according to the manufacturer's specifications and operating instructions. The threshold of detection (Dilutions to Threshold or D/T) will be determined in a sample of the ambient air after it is diluted with three equally sized samples of odor-free air. Two (2) samples or observations will be taken not less than fifteen minutes apart within a one hour period. The two (2) samples will be taken at the building site of the industrial hemp business. If the threshold of detection is four (4) or greater, the industrial hemp business owner and/or the property owner will be issued a notice to abate public nuisance.
- (3) The notice to abate public nuisance shall include the following:
- (i) The King City Municipal Code violation which constitutes the public nuisance;
 - (ii) The required remedy for abating the public nuisance; and
 - (iii) Provide a reasonable time period to abate the public nuisance, unless the public nuisance constitutes an immediate threat to public health, safety and welfare.

Failure to timely abate the public nuisance may result in the revocation of the conditional use permit, pursuant to Municipal Code section 17.64.050. An appeal of the notice to abate public nuisance shall be filed with the city clerk within ten (10) calendar days from the date upon the notice and shall provide the specific basis for granting the appeal. An untimely filed appeal shall constitute a waiver of the appeal of the notice. Further, the ten (10) day time period for filing an appeal shall be jurisdictional, and as such, an untimely appeal shall not be considered by the city.

- (4) Every person or entity owning, possessing, or having charge or control of real property within the city shall manage that property and control the environment thereon in a manner so as not to violate the provisions of this chapter, and the owner shall be liable for violations of the provisions of this chapter, regardless of any contract or agreement with any third party regarding the property.
- (5) Every occupant, lessee, or holder of any possessory interest in real property shall maintain the property in a manner so as not to violate the provisions of this chapter.
- (6) In addition to any regulations adopted by the City of King, the city manager, or his/her designee, shall be authorized to establish any necessary rules, regulations or standards governing the issuance or denial of an industrial hemp conditional use permit, the ongoing operation of an industrial hemp manufacturing facility, and the City's oversight, if the city manager determines the rule, regulation or standard to be necessary to carry out this chapter.
 - (i) Regulations issued by the city manager shall be published on the city's website. A copy of the regulations established by the city manager shall be filed with the city clerk.
 - (ii) Regulations promulgated by the city manager shall become effective upon the date of publication. Industrial hemp manufacturing shall be in compliance with all state and local laws and regulations, including, but not limited to, any rules, regulations or standards adopted by the city manager.

Section 17.04.060 Limitations on City's Liability.

To the fullest extent permitted by the law, any industrial hemp manufacturing facility shall execute an agreement indemnifying and holding harmless the City of King, its employees, agents and contractors from any liability or claims arising from issuance of a conditional use permit, pursuant to this chapter, the King City Municipal Code or otherwise approving a conditional use permit for an industrial hemp manufacturing facility.

Section 17.04.070 Public Nuisance.

Each and every violation of the provisions of this chapter is hereby deemed unlawful and a public nuisance.

Section 17.04.080 Violation and Enforcement.

- A. Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized pursuant to this chapter and/or the provisions of the King City Municipal Code.
- B. Each and every violation of this chapter shall constitute a separate violation and shall be penalized pursuant to this chapter and/or the provisions of the King City Municipal Code.
- C. Any person who violates, causes, continues or permits another to violate the provisions of this chapter commits a misdemeanor and shall be punishable in accordance with section 1.04.010 of the King City Municipal Code. The city may also pursue all applicable civil and administrative remedies, including, but not limited to, injunctive relief and administrative citations. Should a court of competent jurisdiction subsequently determine that the misdemeanor criminal penalty provision renders the provisions of this chapter, or the provisions of any chapter adopted by reference within the King City Municipal Code unlawful, the city intends that the misdemeanor provision be severable from the remaining penalty provisions and the city will only pursue criminal infraction penalties and/or non-criminal remedies for violations of this chapter.
- D. Each and every violation of the provisions of this chapter is hereby deemed unlawful and a public nuisance which may be abated by the city pursuant to the King City Municipal Code.
- E. The administrative citation penalty for all violations of this chapter, within a rolling twelve-month period shall be as follows: one thousand dollars per violation.
- F. In addition to any other remedy or enforcement mechanism provided within this chapter or any other provision of the King City Municipal Code, the city may

commence a civil action seeking any other relief or remedy available at law or in equity.

G. The provisions of this chapter are complimentary, cumulative, supplementary, and additional to any other legal remedies available, whether found in the King City Municipal Code, state or federal laws, regulations, or case law.

Section 17.04.090 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

Section 7. This ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.

I HEREBY CERTIFY that the foregoing ordinance was introduced by the City Council after waiving the reading, except by Title, at a regular meeting thereof held on the ____ day of ____ 2019, and adopted the ordinance after the second reading at a regular meeting held on the ____ day of ____ 2019, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST

STEVEN ADAMS, City Clerk

CITY OF KING

By: _____

MIKE LEBARRE, Mayor

APPROVED AS TO FORM:

By: _____

ROY C. SANTOS, City Attorney

Aleshire & Wynder, LLP

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

RESOLUTION NO. 2019-263

RESOLUTION OF THE CITY OF KING PLANNING COMMISSION, STATE OF CALIFORNIA RECOMMENDING. THE CITY COUNCIL REPEALING CHAPTER 17.04, OF TITLE 17, DEFINITIONS, OF THE KING CITY MUNICIPAL CODE; ADDING CHAPTER 17.01, OF TITLE 17, DEFINITIONS, TO THE KING CITY MUNICIPAL CODE; AND ADDING CHAPTER 17.04, OF TITLE 17, HEMP, TO THE KING CITY MUNICIPAL CODE.

WHEREAS, pursuant to Article XI, Section 7, of the California Constitution, the City of King ("City") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, in December of 2018, the President of the United States signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for hemp production, further giving states that desire to have primary regulatory authority over the production of hemp the ability to adopt their own state plans. The state plan may include a reference to a law of the state regulating the production of hemp, to the extent consistent with federal law; and

WHEREAS, under California Food and Agriculture Code, section 81006, subdivisions (d)(3) and (5) the CDFA is required to establish regulations for sampling procedures and approved laboratories for sample testing of all hemp crops no more than thirty (30) days before harvest; and

WHEREAS, in late May of 2019, the CDFA proposed emergency regulations to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction for industrial hemp cultivation. In its submission, the CDFA declared that the absence of hemp regulations constituted an emergency and immediate action was necessary to prevent serious harm to the general welfare of the citizens of California; and

WHEREAS, the CDFA found a pressing need for the swift establishment of regulations to prevent delay of the first industrial hemp harvest. Based on its calculations, the absence of regulation could result in a potential direct loss of over \$43,000,000 to California farmers; and

WHEREAS, the CDFA proposed regulations are not currently operative. Until they are approved, the required sampling, testing, and destruction cannot take place absent the promulgation of local regulation; and

WHEREAS, industrial hemp strains grown for its cannabidiol oil properties (CBD oil) are indistinguishable from the high THC cannabis strains used for medicinal and recreational purposes. Permitting industrial hemp cultivation without a limitation on the

acreage and location of industrial hemp plants may lead to the same type of odor and public safety issues facing cannabis operations in the City; and

WHEREAS, industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other nearby crops. The cultivation of industrial hemp prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby cannabis cultivators; and

WHEREAS, in September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code, section 11018.5(a) was amended, deleting the reference to its being a crop for fiber or oilseed production. The Industrial Hemp Farming Act was also amended to its current form, including amendment of section 81006 to remove requirement for dense planting and restrictions against pruning, tending, or culling. SB 1409 includes the finding, "By removing limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research," however the bill does not address the product safety or testing requirements of other law regarding cannabis products; and

WHEREAS, the proposed ordinance is consistent with the General Plan and any applicable Specific Plan(s); and

WHEREAS, the City of King Planning Commission ("Commission") finds this ordinance is reasonable and necessary for the preservation of the public peace, health and safety; and

WHEREAS, in accordance with the California Environmental Quality Act ("CEQA"), and pursuant to CEQA Guideline, sections 15378 and 15061(b)(3), this activity is not a "project" subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment; and

WHEREAS, on September 3, 2019, the Commission conducted a public hearing to consider the proposed ordinance, and after considering public testimony, the staff report and all submitted evidence to the support the ordinance, the Commission recommended the City Council ("Council") [approve/deny] the proposed ordinance; and

NOW, THEREFORE, BE IT RESOLVED, FOUND AND DETERMINED by the Planning Commission of the City of King to recommend that the City Council adopt the Ordinance repealing Chapter 17.04, of Title 17, definitions, of the King City Municipal Code; adding Chapter 17.01, of Title 17, definitions, to the King City Municipal Code; and adding Chapter 17.04, of Title 17, Hemp, to the King City Municipal Code, attached as **Exhibit 1**.

THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED by the Planning Commission of the City of King, State of California, at a regular meeting of the Planning Commission held on this 3rd day of September 2019 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

A handwritten signature in cursive script that reads "David Nuck". The signature is written in black ink and is positioned above a horizontal line.

David Nuck, Chair

A handwritten signature in cursive script that reads "Erica Sonne". The signature is written in black ink and is positioned above a horizontal line.

Erica Sonne, Deputy City Clerk

EXHIBIT 1

ORDINANCE NO. 2019-XXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING REPEALING CHAPTER 17.04, OF TITLE 17, DEFINITIONS, OF THE KING CITY MUNICIPAL CODE; ADDING CHAPTER 17.01, OF TITLE 17, DEFINITIONS, TO THE KING CITY MUNICIPAL CODE; AND ADDING CHAPTER 17.04, OF TITLE 17, HEMP, TO THE KING CITY MUNICIPAL CODE.

WHEREAS, Pursuant to Article XI, Section 7, of the California Constitution, the City of King ("City") may adopt and enforce ordinances and regulations not in conflict with general laws to protect and promote the public health, safety, and welfare of its citizens; and

WHEREAS, in December of 2018, the President of the United States signed into law the 2018 Federal Farm Bill, H.R. 2, P.L. 115-334, which removed industrial hemp from the federal list of controlled substances and authorizes the U.S. Department of Agriculture to create quality control standards for hemp production, further giving states that desire to have primary regulatory authority over the production of hemp the ability to adopt their own state plans. The state plan may include a reference to a law of the state regulating the production of hemp, to the extent consistent with federal law; and

WHEREAS, under California Food and Agriculture Code, section 81006, subdivisions (d)(3) and (5) the CDFA is required to establish regulations for sampling procedures and approved laboratories for sample testing of all hemp crops no more than thirty (30) days before harvest; and

WHEREAS, in late May of 2019, the CDFA proposed emergency regulations to establish timeframes, procedures, methods, and confirmation for industrial hemp sampling, laboratory testing, and destruction for industrial hemp cultivation. In its submission, the CDFA declared that the absence of hemp regulations constituted an emergency and immediate action was necessary to prevent serious harm to the general welfare of the citizens of California; and

WHEREAS, CDFA found a pressing need for the swift establishment of regulations to prevent delay of the first industrial hemp harvest. Based on its calculations, the absence of regulation could result in a potential direct loss of over \$43,000,000 to California farmers; and

WHEREAS, the CDFA proposed regulations are not currently operative. Until they are approved, the required sampling, testing, and destruction cannot take place absent the promulgation of local regulation; and

WHEREAS, industrial hemp strains grown for its cannabidiol oil properties (CBD oil) are indistinguishable from the high THC cannabis strains used for medicinal and recreational purposes. Permitting industrial hemp cultivation without a limitation on the acreage and location of industrial hemp plants may lead to the same type of odor and public safety issues facing cannabis operations in the City; and

WHEREAS, industrial hemp can serve as a host to mites and other insects. At this time, there are no pesticides registered for hemp that specifically address such mites or other insects. The pesticides that have been approved for hemp are not always effective, which allows for such insects to move into other nearby crops. The cultivation of industrial hemp prior to the adoption of reasonable regulations is harmful to the welfare of residents, creates a nuisance, and threatens the safety and crops of any nearby cannabis cultivators; and

WHEREAS, on September 3, 2019, the City of King Planning Commission ("Commission") conducted a public hearing to consider the proposed ordinance, and after considering public testimony, the staff report and all submitted evidence to the support the ordinance, the Commission recommended the City Council ("Council") [approve/deny] the proposed ordinance; and

WHEREAS, the City Council finds this ordinance is reasonable and necessary for the preservation of the public peace, health and safety; and

WHEREAS, in September 2018, SB 1409 was enacted, in which the definition of industrial hemp in Health and Safety Code, section 11018.5(a) was amended, deleting the reference to its being a crop for fiber or oilseed production. The Industrial Hemp Farming Act was also amended to its current form, including amendment of section 81006 to remove requirement for dense planting and restrictions against pruning, tending, or culling. SB 1409 includes the finding, "By removing limitations on the manner in which industrial hemp may be grown and the uses for which it may be grown, this act removes barriers to the growth of industrial hemp as an agricultural product, and for agricultural or academic research," however the bill does not address the product safety or testing requirements of other law regarding cannabis products; and

WHEREAS, the proposed ordinance is consistent with the General Plan and any applicable Specific Plan(s); and

WHEREAS, new Chapter 17.04 establishes hemp regulations; and

WHEREAS, in accordance with the California Environmental Quality Act ("CEQA"), and pursuant to CEQA Guideline, sections 15378 and 15061(b)(3), this activity is not a "project" subject to CEQA as it can be seen with certainty that there is no possibility that an activity may have a significant effect on the environment; and

WHEREAS, on **September 24, 2019**, the Council conducted a public hearing to consider the Commission's recommendation, and after considering public testimony, the staff report and all submitted evidence, the Council now desires to approve the proposed ordinance.

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

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

SECTION 2. The City Council has reviewed the proposed ordinance and hereby finds that it is consistent with the General Plan and all applicable Specific Plan(s).

SECTION 3. The City Council, based upon its own independent judgement, finds that the proposed ordinance promotes and protects the health, safety, welfare and quality of life of the City of King residents, including promoting affordable housing.

SECTION 4. The proposed ordinance was assessed in accordance with the authority and criteria contained in CEQA, the State CEQA Guidelines ("CEQA Guidelines"), and the environment regulations of the City. The City Council finds and determines that the proposed ordinance is not a "project" for the purposes of CEQA and consistent with CEQA Guidelines section 15378, as it merely updates existing administrative processes and will not result in direct or indirect physical changes in the environment as compared to the current baseline. Additionally, the City Council finds and determines for the same reasons that even if the proposed ordinance were a project for the purpose of CEQA, there is no possibility that the project may have a significant adverse effect on the environment pursuant to CEQA Guidelines, section 15061(b)(3). Therefore, the proposed ordinance is not subject to CEQA.

SECTION 5. Chapter 17.04, of Title 17, Definitions, of the King City Municipal Code is hereby repealed and renumber to Chapter 17.01, of Title 17, Definitions.

SECTION 6. Newly repealed Chapter 17.04, of Title 17, of the King City Municipal Code is added to read as follows:

**Chapter 17.04
Hemp**

Section 17.04.010 Policy.

It is the policy of the City to regulate industrial hemp manufacturing in a responsible manner to protect the health, safety, and welfare of the residents of the City of King and to enforce rules and regulations consistent with state law.

Section 17.04.020 Definitions.

When used in this chapter, the following words shall have the meaning ascribed to them as set forth herein. Any reference to California statutes includes any

regulations promulgated thereunder and is deemed to include any successor or amended version of the referenced statute or regular provision.

- A. "City" means the City of King, a municipal corporation.
- B. "City Council" means the governing body of the City.
- C. "City Manager" means the city manager of the City of King, or the city manager's authorized deputy, agent or representative.
- D. "Established agricultural research institution" has the same meaning as in section 81000 of the California Food and Agricultural Code.
- E. "Hemp cultivation" means any activity involving the planting, growing, harvesting, drying, curing, grading, or trimming of hemp, including activities carried out by seed breeders. For the purposes of this chapter, hemp cultivation shall not include cultivation by an established agricultural research institution as defined in section 81000 of the California Food and Agricultural Code.
- F. "Industrial Hemp" have the same meanings as in section 11018.5 of the California Health and Safety Code.
- G. "Person" means any individual, firm, partnership, joint venture, association corporation, limited liability company, estate, trust, activity trust, receiver, syndicate, or any other group or combination acting as a unit, and the plural as well as the singular.
- H. "Seed breeder" has the same meaning as in section 81000 of the California Food and Agricultural Code.

Section 17.04.030 Hemp Cultivation.

Hemp cultivation shall be prohibited within all zones of the City of King, whether conducted indoors or outdoors.

Section 17.04.040 Manufacturing of Hemp Products.

The manufacturing of industrial hemp products shall be authorized solely within the M-1, M-2, M-3 zoning districts and the East Ranch Business Park Specific Plan. A conditional use permit shall be required prior to engaging in the manufacturing of industrial hemp products.

Section 17.04.050 Industrial Hemp Regulations.

- A. An industrial hemp manufacturing facility shall not be located within ___ feet of a residential zoning districts.
- B. A conditional use permit for an industrial hemp manufacturing facility shall not be approved by the City until the County of Monterey Agricultural Commissioner issues the applicant a registration under Division 24 of the California Food and Agriculture Code.
- C. Odor Control.
 - (1) Odor control devices and techniques shall be incorporated in all industrial hemp manufacturing facilities to ensure that odors from hemp are not detectable off site. Industrial hemp manufacturing facility shall provide a

sufficient odor absorbing ventilation and exhaust system so that odor generated inside is not detected outside of the facility, anywhere on an adjacent property or public rights-of-way, on or about the exterior or interior common area walkways, hallways, breezeways, foyers, lobby areas, or any other areas available for use by common tenants or the visiting public, or within any other unit located inside the same building as the industrial hemp business.

- (2) In order to determine the existence of a violation of this chapter, the city may measure for hemp odor at the industrial hemp business with an approved field olfactometer device, including, but not limited to, a Nasal Ranger Field Olfactometer® or Scentometer®, according to the manufacturer's specifications and operating instructions. The threshold of detection (Dilutions to Threshold or D/T) will be determined in a sample of the ambient air after it is diluted with three equally sized samples of odor-free air. Two (2) samples or observations will be taken not less than fifteen minutes apart within a one hour period. The two (2) samples will be taken at the building site of the industrial hemp business. If the threshold of detection is four (4) or greater, the industrial hemp business owner and/or the property owner will be issued a notice to abate public nuisance.
- (3) The notice to abate public nuisance shall include the following:
 - (i) The King City Municipal Code violation which constitutes the public nuisance;
 - (ii) The required remedy for abating the public nuisance; and
 - (iii) Provide a reasonable time period to abate the public nuisance, unless the public nuisance constitutes an immediate threat to public health, safety and welfare.

Failure to timely abate the public nuisance may result in the revocation of the conditional use permit, pursuant to Municipal Code section 17.64.050. An appeal of the notice to abate public nuisance shall be filed with the city clerk within ten (10) calendar days from the date upon the notice and shall provide the specific basis for granting the appeal. An untimely filed appeal shall constitute a waiver of the appeal of the notice. Further, the ten (10) day time period for filing an appeal shall be jurisdictional, and as such, an untimely appeal shall not be considered by the city.

- (4) Every person or entity owning, possessing, or having charge or control of real property within the city shall manage that property and control the environment thereon in a manner so as not to violate the provisions of this chapter, and the owner shall be liable for violations of the provisions of this chapter, regardless of any contract or agreement with any third party regarding the property.

- (4) Every occupant, lessee, or holder of any possessory interest in real property shall maintain the property in a manner so as not to violate the provisions of this chapter.
- (5) In addition to any regulations adopted by the City of King, the city manager, or his/her designee, shall be authorized to establish any necessary rules, regulations or standards governing the issuance or denial of an industrial hemp conditional use permit, the ongoing operation of an industrial hemp manufacturing facility, and the City's oversight, if the city manager determines the rule, regulation or standard to be necessary to carry out this chapter.
 - (i) Regulations issued by the city manager shall be published on the city's website. A copy of the regulations established by the city manager shall be filed with the city clerk.
 - (ii) Regulations promulgated by the city manager shall become effective upon the date of publication. Industrial hemp manufacturing shall be in compliance with all state and local laws and regulations, including, but not limited to, any rules, regulations or standards adopted by the city manager.

Section 17.04.060 Limitations on City's Liability.

To the fullest extent permitted by the law, any industrial hemp manufacturing facility shall execute an agreement indemnifying and holding harmless the City of King, its employees, agents and contractors from any liability or claims arising from issuance of a conditional use permit, pursuant to this chapter, the King City Municipal Code or otherwise approving a conditional use permit for an industrial hemp manufacturing facility.

Section 17.04.070 Public Nuisance.

Each and every violation of the provisions of this chapter is hereby deemed unlawful and a public nuisance.

Section 17.04.080 Violation and Enforcement.

- A. Any person that violates any provision of this chapter shall be guilty of a separate offense for each and every day during any portion of which any such person commits, continues, permits, or causes a violation thereof, and shall be penalized pursuant to this chapter and/or the provisions of the King City Municipal Code.
- B. Each and every violation of this chapter shall constitute a separate violation and shall be penalized pursuant to this chapter and/or the provisions of the King City Municipal Code.
- C. Any person who violates, causes, continues or permits another to violate the provisions of this chapter commits a misdemeanor and shall be punishable in accordance with section 1.04.010 of the King City Municipal Code. The city may also pursue all applicable civil and administrative remedies, including, but not

limited to, injunctive relief and administrative citations. Should a court of competent jurisdiction subsequently determine that the misdemeanor criminal penalty provision renders the provisions of this chapter, or the provisions of any chapter adopted by reference within the King City Municipal Code unlawful, the city intends that the misdemeanor provision be severable from the remaining penalty provisions and the city will only pursue criminal infraction penalties and/or non-criminal remedies for violations of this chapter.

- D. Each and every violation of the provisions of this chapter is hereby deemed unlawful and a public nuisance which may be abated by the city pursuant to the King City Municipal Code.
- E. The administrative citation penalty for all violations of this chapter, within a rolling twelve month period shall be as follows: one thousand dollars per violation.
- F. In addition to any other remedy or enforcement mechanism provided within this chapter or any other provision of the King City Municipal Code, the city may commence a civil action seeking any other relief or remedy available at law or in equity.
- G. The provisions of this chapter are complimentary, cumulative, supplementary, and additional to any other legal remedies available, whether found in the King City Municipal Code, state or federal laws, regulations, or case law.

Section 17.04.090 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, word, sentence or paragraph of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter.

Section 7. This ordinance shall take effect and be in full force and effect from and after thirty (30) calendar days after its final passage and adoption. Within fifteen (15) calendar days after its adoption, the ordinance, or a summary of the ordinance, shall be published once in a newspaper of general circulation.

I HEREBY CERTIFY that the foregoing ordinance was introduced by the City Council after waiving the reading, except by Title, at a regular meeting thereof held on the ____ day of ____ 2019, and adopted the ordinance after the second reading at a regular meeting held on the ____ day of ____ 2019, by the following roll call vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST

STEVEN ADAMS, City Clerk

CITY OF KING

By: _____
MIKE LEBARRE, Mayor
APPROVED AS TO FORM:

By: _____
ROY C. SANTOS, City Attorney
Aleshire & Wynder, LLP

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



Item No. 10(B)

REPORT TO THE CITY COUNCIL

DATE: SEPTEMBER 24, 2019

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: ROY C. SANTOS, CITY ATTORNEY

RE: CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING AMENDING CHAPTER 5.34, OF TITLE 5 OF THE KING CITY MUNICIPAL CODE PERTAINING TO ITINERANT VENDORS, SOLICITORS AND PEDDLERS

RECOMMENDATION:

It is recommended the City Council adopt the ordinance amending Chapter 5.34, of Title 5 pertaining to itinerant vendors, solicitors and peddlers, and waive the first reading of the ordinance by title only.

BACKGROUND:

In early 2018 the City proposed and adopted an ordinance regulating itinerant vendors, solicitors and peddlers within the city limits. However, shortly after the City's adopting of the ordinance, the State Legislature enacted SB 946 creating new statutes governing the activities of sidewalk vendors and the permissible regulations which public agencies may codify by local ordinance and/or resolution.

DISCUSSION:

Beginning January 1, 2019, SB 946, Government Code section 51036 *et seq.*, prohibits all criminal penalties for sidewalk vending violations, and allows anyone currently or previously prosecuted for a sidewalk vending violation to have a pending prosecution, sentence, fine, or conviction dismissed. It also set limits upon the fines cities and counties could levy for violations of their local ordinances governing sidewalk vendors. Additionally, it required all local authorities to adopt regulations governing sidewalk vending or amend existing regulations to be compliant with its requirements.

CITY COUNCIL

CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING AMENDING CHAPTER 5.34, OF TITLE 5 OF THE KING CITY MUNICIPAL CODE PERTAINING TO ITINERANT VENDORS, SOLICITORS AND PEDDLERS

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In order to comply with the new requirements established by SB 946, staff has prepared the proposed ordinance amending Chapter 5.34 of Title 5. These amendments to Chapter 5.34 remove those provisions of the previous ordinance which were deemed inconsistent with the requirements of SB 946. For example, the ordinance removes the current limitations and prohibitions on the number of vendors within city parks and upon city streets. Also, the ordinance lowers the penalties which the city can impose for violations of the municipal code governing vendors.

The amended Chapter 5.34 continues to focus on reasonable time, place and manner restrictions on itinerant vendors, solicitors and peddlers so as to protect the health and safety of the residents of the City and the vendors servicing the city. The ordinance prohibits vendors, solicitors and peddlers from conducting business after 8 P.M. and limits their services within school zones. As a result of the potential increase in the number of vendors within the city, the ordinance establishes a background check and permitting system for all vendors.

In addition, the ordinance adds regulations to Chapter 5.34 governing mobile food truck since the current municipal code does not address these types of vendors within the city limits. Further, while the city cannot limit the number of vendors within the parks, given the limited available parking in San Antonio park mobile food truck vendors will be limited to the designated parking locations. Any mobile food truck not parked within the designated area will be in violation of the municipal code and subject to the penalties proscribed therein.

COST ANALYSIS:

No fiscal impacts are associated with the Ordinance. Permitting fees to be enacted by resolution should cover all costs incurred by the City to administer and regulate itinerant vendors, solicitors and peddlers.

ENVIRONMENTAL REVIEW:

The ordinance is not a project within the meaning of Section 15378 of the State of California Environmental Quality Act ("CEQA") Guidelines because it has no potential for resulting in physical change in the environment, directly or indirectly. Most of the terms and scope of city discretion are guided by existing State and Federal law. The ordinance does not authorize any specific development or installation on any specific piece of property within the City's boundaries. Alternatively, the ordinance is exempt from CEQA because the City Council's adoption of the ordinance is covered by the general rule that CEQA applies only

**CITY COUNCIL
CONSIDERATION OF AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF KING AMENDING CHAPTER 5.34, OF TITLE 5 OF THE KING CITY
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to projects which have the potential for causing a significant effect on the environment (State CEQA Guidelines, § 15061(b)(3)).

ALTERNATIVES:

The following alternatives are provided for Council consideration:

1. Approve staff's recommendations;
2. Modify and introduce the ordinance;
3. Do not introduce the ordinance; or
4. Provide other direction to staff.

Submitted by 

Roy Santos, City Attorney

Approved by: 

Steven Adams, City Manager

ORDINANCE NO. 2019-__

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF KING AMENDING
CHAPTER 5.34, OF TITLE 5 OF THE KING CITY MUNICIPAL CODE PERTAINING
TO ITINERANT VENDOR, SOLICITORS AND PEDDLERS**

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

WHEREAS, in September of 2018 the State Legislature enacted SB 946 creating new statutes governing the activities of sidewalk vendors and the permissible regulations which public agencies may codify by local ordinance and/or resolution; and

WHEREAS, pursuant to the City’s express statutory authority and its police power, the City desires to enact reasonable regulations for itinerant vendors, solicitors and peddlers; and

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

WHEREAS, the City seeks to regulate itinerant vendor parking given the limited spacing for vehicle parking throughout the city limits, but especially surrounding the city’s local parks; and

WHEREAS, this Ordinance is intended to regulate itinerant vendor activities to ensure the health, safety and welfare of both the vendor’s and city residents utilizing the city parks, sidewalks and public common spaces; and

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

WHEREAS, it is the intent of the City to regulation itinerant vendors, solicitors and peddlers activities within the boundaries of the City.

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

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

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

environmentally destructive components of unregulated cannabis cultivation. (CEQA Guidelines §§ 15307 and 15308.)

SECTION 3. Chapter 5.34, of Title 5, of the King City Municipal Code and the Sections specifically identified below are amended to read as follows:

Chapter 5.34

ITINERANT VENDORS, SOLICITORS AND PEDDLERS

Section 5.34.010 Definitions.

The following words and phrases shall, for purposes of this chapter, have the meanings respectively ascribed to them by this section, as follows:

- (a) “Fixed place of business” means a fixed business place, location, building, room, stand or enclosure separate and distinct from any other business, in which goods, wares, merchandise, fruit or vegetables are kept, displayed or offered for sale to the public, regularly kept open with an agent in exclusive attendance for at least six hours per day, for at least five days per week.
- (b) “Itinerant vendor” means any person who sets up a temporary stand or place or uses a portable cart or motor vehicle as defined in the California Vehicle Code for the purpose of selling any goods, wares, merchandise, fruits or vegetables, or one who solicits orders for the sale of such goods, wares, merchandise, fruits or vegetables to be delivered at some future time or date. Itinerant vendor does not include a merchant having a fixed place of business within the city, or his or her employee, who sells or solicits orders for the sale of goods, wares, merchandise, services, fruits or vegetables, after a prior approval, either oral or written, from the vendee. Itinerant vendor does not include a merchant who sets up a temporary stand or place as part of an approved farmers market. Itinerant vendors who set up on private property must secure written permission from the property owner or person having control of said property and said written permission must be in the possession of the vendor. Further, “Itinerant vendor” includes the terms “sidewalk vendor,” “roaming vendor,” and “stationary sidewalk vendor” as defined within Government Code section 51036. Lastly, “Itinerant vendor” includes the terms “Mobile food facility” as defined within California Retail Food Code (Cal Code), Section 113831(a), which states any vehicle used in conjunction with a commissary or other permanent food facility upon which food is sold or distributed at retail. “Mobile food facility” does not include a “transporter” used to transport packaged food from a food facility, or other approved source to the consumer.

- (c) "Peddler" means any person who goes upon the premises of any private residence in the city, not having been requested or invited by the occupant thereof, carrying or transporting goods, wares, merchandise, or personal property of any nature and offering the same for sale. This definition also includes any person who solicits orders and as a separate transaction makes deliveries to purchasers as part of the scheme to evade the provisions of this chapter.
- (d) "Person" means any person, firm, corporation, association, club, society, or other organization.
- (e) "Solicitor" means any person who goes upon the premises of any private residence in the city, not having been requested or invited by the occupant thereof, for the purpose of taking or soliciting orders for the sale of goods, wares, merchandise, or personal property of any nature for future delivery, or for services to be performed in the future.
- (f) Wherever the terms "selling" or "sales" are used herein, "buying" and "purchasing" shall be deemed included.

Section 5.34.020 Permits.

It is unlawful for any solicitor, peddler or itinerant vendor to engage in business within the city without first obtaining a business license and permit which complies with the provisions of this chapter, unless the activities of the solicitor, peddler or itinerant vendor are exempt from municipal regulation by state, federal or local law.

Section 5.34.030 Permit Application.

- (a) Applicants for vendor permits under this chapter shall file with the city clerk a sworn application in writing on a form to be furnished by the city, so a background check can be performed by the city. The application shall contain the following information:
 - (1) Name, height, weight, eye color and hair color;
 - (2) Date of birth, driver's license number, Social Security number, tax identification number or state of California identification card;
 - (3) Permanent home address and telephone number;
 - (4) Local address and telephone number (if different from subdivision (c));
 - (5) A brief description of the business or activity to be conducted;
 - (6) If employed, the name, address and telephone number of the employer, or if acting as agent, the name, address and telephone number of the principal who is being represented, with credentials

establishing the relationship and the authority of the employee or agent to act for the employer or principal, as the case may be;

- (7) The length of time for which the permit is desired;
 - (8) Two photographs of the applicant, taken within sixty (60) days immediately prior to the date of filing of the application, measuring two (2) inches by two (2) inches, and showing the head and shoulders of the applicant in a clear and distinguishing manner;
 - (9) A statement as to whether or not the applicant has been convicted of any criminal offense, whether felony or misdemeanor within the last ten (10) years. Applicant shall provide information detailing any such offense, the date and place of conviction, the nature of the offense, and the punishment or penalty assessed therefor;
 - (10) Proof of possession of any license or permit which, under federal, state, or local laws or regulations, the applicant is required to have in order to conduct the proposed business, or which, under any such law or regulation, would exempt the applicant from the licensing requirements of this chapter.
 - (11) If a vehicle is to be used, the application must include a description of each vehicle to be used, with license number, make and model.
- (b) Applicant shall be fingerprinted by the King City Police Department or via the California Department of Justice LiveScan system and agree to a criminal history records check conducted by the city based upon their fingerprints.
 - (c) Applicant shall sign an authorization form for the city to seek verification of the information contained within the application, including, but not limited to, the prospective permittee's criminal history.

Section 5.34.040 Permit Fee.

At the time the application is filed with the city clerk, the applicant shall provide the city with a non-refundable fee to process their application. The fee shall include an amount to cover the costs of fingerprinting, background checks as well as general review and processing of the application. In the alternative, the applicant may provide the city clerk with a completed background check performed by a third party vendor approved by the city. The amount of the fee shall be established, and from time to time may be amended by resolution of the city council.

Section 5.34.050 Permit - Investigation and Issuance.

- (a) The City Manager or his/her designee shall deny an application based upon any of the following grounds:

- (1) The applicant has been issued a local or state permit or license to conduct itinerant vendor, solicitor or peddler activities at any other location within the state of California or another state and the permit or license was suspended or revoked, or the applicant has had disciplinary action relating to the permit or license.
- (2) The applicant has been convicted of a serious or violent offense as listed within California Penal Code Sections 667.5 and 1192.7(c).
- (3) The applicant has been convicted of a misdemeanor involving theft, dishonesty, fraud, narcotics sales or narcotic trafficking within the five (5) years preceding the date of the application.
- (4) The applicant has been convicted of a felony involving the illegal use, possession, transportation, distribution or similar activities related to controlled substances, as defined within the Federal Controlled Substance Act, unless the applicant received a Certificate of Rehabilitation as defined in the Act.
- (5) The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business practices as defined by the King City Municipal Code and/or state or federal law.
- (6) The applicant is under the age of eighteen (18), or any age as may be set by state law.
- (b) Upon approval of an application, the city shall deliver the required permit to the applicant. Such permit shall contain the signature and seal of the city clerk and shall show the name, address and photograph of the permittee, the class of vendor permit issued, the kind of goods or services to be sold or delivered thereunder, the amount of the fee paid, the date of issuance, and the length of time the permit shall be operative. It shall also show the permit number and identifying description of any vehicle to be used in carrying on the business for which the permit is issued. The city clerk shall keep a record of all active permits.

Section 5.34.060 Permit - Expiration.

All permits issued under the provisions of this chapter shall expire one (1) year from date of issuance, unless an earlier expiration date is noted on the permit.

Section 5.34.070 Permit - Badges.

The city clerk shall issue to each permittee, at the time of delivery of his or her permit, a badge, which shall be worn continuously by the permittee in such a way as to be conspicuous at all times while the permittee is conducting business in the city pursuant to such permit. The badge shall bear the appropriate words, e.g., "Permitted Vendor" or "Permitted Peddler," the period for which the permit is issued and the number of the permit, in letters and figures clearly discernible.

Section 5.34.080 Permit - Transfer Prohibited.

No permit issued under the provisions of this chapter shall be used or worn at any time by any person other than the person to whom it was issued.

Section 5.34.090 Permit - Exhibition.

Every person required to be permitted under the provisions of this chapter shall exhibit his or her permit when requested to do so by any prospective customer or King City Police Department sworn officer or code enforcement officer.

Section 5.34.100 Entry Upon Signed Premises Unlawful.

It is unlawful for any person, while conducting the business of itinerant vendor, solicitor or peddler, whether permitted or unpermitted, to enter upon any residential premises in the city where the owner, occupant, or person legally in charge of the premises has posted, at the entry to the premises, or at the entry to the principal building on said premises, a non-illuminated flat sign of not more than one square foot bearing the words "No Solicitors," or words of similar import.

Section 5.34.110 Hours of Solicitation.

It is unlawful for any person, while conducting the business of itinerant vendor, solicitor or peddler, whether permitted or unpermitted, to enter upon any residential or public premises between the hours of eight (8:00) P.M and eight (8:00) A.M. pacific standard time.

Section 5.34.115 Regulations Concerning Itinerant Vendors.

The following regulations shall apply to itinerant vendors as defined in Section 5.34.010:

- (a) No itinerant vendor shall park or stand on a public sidewalk in a manner which blocks or prevents pedestrian traffic or violates any of the requirements of the Americans with Disability Act or California Disabled Persons Act.
- (b) Itinerant vendors shall not stand or park in any parking lot of any public park in a manner which blocks or prevents vehicle traffic, pedestrian traffic or violates any of the requirements of the Americans with Disability Act or California Disabled Persons Act. Vendors within a park shall only park their vehicle, including but not limited to personal vehicle or mobile food truck, adjacent to a public park in spaces designated by signage. The designations shall be made and posted from time to time by the city manager or designee, who may limit the number of spaces for itinerant vendors. Vendor vehicles, including but not limited to personal vehicle or mobile food truck, not parked within the designated parking spaces shall constitute a public nuisance and shall be subject to the provisions of the King City Municipal Code.

- (c) No chairs or tables are allowed to be placed on the sidewalk in a manner which blocks or prevents pedestrian traffic or violates any of the requirements of the Americans with Disability Act or California Disabled Persons Act.
- (d) Vendors shall remove any debris from the sales, ensure a receptacle is available for the disposal of debris, and make sure that the area is kept clean.
- (e) School Zones. No itinerant vendor shall stand or park within three hundred feet of any school zone weekdays, Monday through Friday, from eight (8:00) A.M. to four (4:00) P..M. except for holidays and when school is not in session.
- (f) Public Streets. Consistent with Section 10.22.050, no itinerant vendor shall stand or park on any street in a commercial zone any truck, trailer, wagon or push cart in a manner which blocks or prevents vehicle traffic, pedestrian traffic or violates any of the requirements of the Americans with Disability Act or California Disabled Persons Act..
- (g) Private Property. Itinerant vendors shall be permitted on developed private property only in commercial, industrial and open space zoning districts. The area occupied by each itinerant vendor on private property shall not exceed nine hundred square feet and shall be located on hard surface paving. Itinerant vendors are prohibited in residential zoning districts.

Section 5.34.120 Enforcement Authority.

Any city police officer may require any itinerant vendor, solicitor or peddler, who is not known to such officer to be duly permitted to do so, to produce his or her permit, and to enforce the provisions of this chapter against any person found to be violating the same.

Section 5.34.130 Records.

City staff shall record any violations of this chapter on the permanent record of said permit kept pursuant to the provisions of subsection (d) of Section 5.34.050 of this chapter.

Section 5.34.140 Permit - Revocation.

Permits issued under the provisions of this chapter may be revoked by the city, after notice and hearing, for any of the following causes:

- (a) Fraud, misrepresentation, or false statement contained in the application for permit;
- (b) Fraud, misrepresentation, or false statement made by the permittee in the course of carrying on the business of vendor, solicitor or peddler;

- (c) The violation of any provision of this chapter or the King City Municipal Code;
- (d) Conviction of any crime involving theft, dishonesty, fraud, narcotics sales, narcotic trafficking or as identified within California Penal Code Sections 667.5 and 1192.7(c) and the Federal Controlled Substance Act.;
- (e) Conducting the business of vendor, solicitor or peddler in such a manner as to constitute a breach of the peace or create a threat to the health, safety, or general welfare of the public.

Section 5.34.150 Notice of Hearing on Revocation.

Notice of the hearing for revocation of a license pursuant to the provisions of Section 5.34.140 of this chapter shall be given in writing and shall set forth specifically the grounds for the proposed revocation and the time and place of the hearing. Said notice shall be mailed, postage prepaid, to the permittee at the address shown on the permit application or at the last known address of the permittee.

Section 5.34.160 Permit - Appeal Procedure.

Any person denied a permit or had a permit revoked under the provisions of this chapter shall have the right to appeal such action or decision to the city manager or his/her designee. Such appeal shall be taken by filing with the city clerk, within ten (10) days after notice of the action or decision complained of has been mailed to such person's address as shown on his or her permit application form, or to such person's last known address, a written statement setting forth the grounds for the appeal. The city clerk shall transmit the written statement to the city manager or his/her designee and the city manager or his/her designee shall set a time and place for a hearing on the appeal. Notice of the time and place of such hearing shall be given to the appellant in the same manner as is hereinabove in this section provided for the mailing of notice of action or decision. The decision of the city manager or his/her designee on such appeal shall be final and binding on all parties concerned. Unless the governing ordinance or statute provides otherwise, if the appellant seeks further relief, the appellant shall file a petition for writ of mandate in superior court pursuant to Code of Civil Procedure Sections 1094.5 and 1094.6 within ninety (90) calendar days of the date of the decision.

Section 5.34.170 Claims of Exemption.

Any person claiming to be legally exempt from the regulations set forth in this chapter, or from the payment of a permit fee as provided in Section 5.34.040 of this chapter, shall cite to the city clerk in statute or other legal authority under which exemption is claimed and shall present to the city clerk proof of qualification for such exemption.

Section 5.34.180 Penalty for Violations.

Any person who violates any of the provisions of this chapter shall be punished as follows:

- (a) With a permit:
 - (1) An administrative fine not exceeding one hundred dollars (\$100) for a first violation.
 - (2) An administrative fine not exceeding two hundred dollars (\$200) for a second violation within one (1) year of the first violation.
 - (3) An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one (1) year of the first violation.
 - (4) Upon a fourth (4) violation of this chapter, the permit shall be rescinded.
- (b) Without a permit:
 - (1) An administrative fine not exceeding two hundred fifty dollars (\$250) for a first violation.
 - (2) An administrative fine not exceeding five hundred dollars (\$500) for a second violation within one year of the first violation.
 - (3) An administrative fine not exceeding one thousand dollars (\$1,000) for each additional violation within one year of the first violation.
- (c) Failure to pay an administrative fine pursuant to section shall not be punishable as an infraction or misdemeanor.

Any other violation(s) of the King City Municipal Code shall be subject to the established enforcement and penalties of said municipal code.

SECTION 4: EFFECTIVE DATE.

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

I HEREBY CERTIFY that the foregoing Ordinance was introduced by the City Council after waiving the first reading, except by Title, at a regular meeting thereof held on the 10th day of September 2019, and adopted the Ordinance after the second reading at a regular meeting held on the ____ day of _____ 2019, by the following roll call vote:

AYES: _____

NOES: _____

ABSTAIN: _____

ABSENT: _____

ATTEST

STEVEN ADAMS, City Clerk

CITY OF KING

By: _____
MIKE LEBARRE, Mayor

APPROVED AS TO FORM:

By: _____
ROY C. SANTOS, City Attorney
Aleshire & Wynder, LLP

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