



CITY OF MENDOTA

"Cantaloupe Center Of The World"

ROBERT SILVA
Mayor
ROLANDO CASTRO
Mayor Pro Tem
VICTOR MARTINEZ
JESSE MENDOZA
OSCAR ROSALES

AGENDA MENDOTA CITY COUNCIL Regular City Council Meeting CITY COUNCIL CHAMBERS 643 QUINCE STREET March 26, 2019 6:00 PM

CRISTIAN GONZALEZ
City Manager
JOHN KINSEY
City Attorney

The Mendota City Council welcomes you to its meetings, which are scheduled for the 2nd and 4th Tuesday of every month. Your interest and participation are encouraged and appreciated. Notice is hereby given that Council may discuss and/or take action on any or all of the items listed on this agenda. **Please turn your cell phones on vibrate/off while in the council chambers.**

Any public writings distributed by the City of Mendota to at least a majority of the City Council regarding any item on this regular meeting agenda will be made available at the front counter at City Hall located at 643 Quince Street Mendota, CA 93640, during normal business hours, 8 AM - 5 PM.

In compliance with the Americans with Disabilities Act, those requiring special assistance to participate at this meeting please contact the City Clerk at (559) 655-3291. Notification of at least forty-eight hours prior to the meeting will enable staff to make reasonable arrangements to ensure accessibility to the meeting.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

FINALIZE THE AGENDA

1. Adjustments to Agenda
2. Adoption of final Agenda

CITIZENS ORAL AND WRITTEN PRESENTATIONS

At this time members of the public may address the City Council on any matter not listed on the agenda involving matters within the jurisdiction of the City Council. Please complete a "request to speak" form and limit your comments to THREE (3) MINUTES. Please give the completed form to City Clerk prior to the start of the meeting. All speakers shall observe proper decorum. The Mendota Municipal Code prohibits the use of boisterous, slanderous, or profane language. All speakers must step to the podium, state their names and addresses for the record. Please watch the time.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the regular City Council meeting of March 12, 2019 and the special City Council meeting of March 13, 2019.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

CONSENT CALENDAR

Matters listed under the Consent Calendar are considered to be routine and will be enacted by one motion and one vote. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Calendar and will be considered separately.

1. MARCH 12, 2019 THROUGH MARCH 20, 2019
WARRANT LIST CHECKS NO. 45073 THRU 45134
TOTAL FOR COUNCIL APPROVAL = \$363,428.87
2. Proposed adoption of **Resolution No. 19-17**, authorizing execution of a contract amendment for planning and engineering services for the construction of improvements to and expansion of Rojas-Pierce Park.
3. Proposed adoption of **Resolution No. 19-18**, authorizing execution of an engineering services agreement for the Lozano Street and Derrick Avenue restriping.
4. Proposed adoption of **Resolution No. 19-19**, approving an update to the Westamerica Bank signature card.
5. Proposed adoption of **Resolution No. 19-20**, approving the third amendment to the Cooperative Agreement to Establish Program Eligibility and Funding Requirements.

BUSINESS

1. Council discussion on amendments to the Mendota Municipal Code regarding the provisions concerning mobile food vendors.
 - a. *Receive report from City Manager Gonzalez*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens floor to receive any comment from the public*
 - d. *Council take action as appropriate*

PUBLIC HEARING

1. Public hearing and second reading of **Ordinance No. 19-03**, amending Title 8, Chapter 8.20 of the Mendota Municipal Code relating to the recovery of attorney fees in nuisance abatement proceedings.
 - a. *Receive report from City Manager Gonzalez*
 - b. *Inquiries from Council to staff*
 - c. *Mayor opens the public hearing, accepting comments from the public*
 - d. *Mayor closes the public hearing*
 - e. *Council provide any input, waive second reading, and adopt Ordinance No. 19-03*

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. Administrative Services
a) Monthly update
2. City Attorney
a) Update
3. City Manager


MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)
2. Mayor

ADJOURNMENT

CERTIFICATION OF POSTING

I, Celeste Cabrera, City Clerk of the City of Mendota, do hereby declare that the foregoing agenda for the Mendota City Council Regular Meeting of March 26, 2019, was posted on the outside bulletin board located at City Hall, 643 Quince Street Friday, March 22, 2019 at 4:35 p.m.



Celeste Cabrera, City Clerk



MINUTES OF MENDOTA REGULAR CITY COUNCIL MEETING

Regular Meeting

March 12, 2019

Meeting called to order by Mayor Silva at 6:00 p.m.

Roll Call

Council Members Present: Mayor Robert Silva, Mayor Pro Tem Rolando Castro, Councilors Victor Martinez, Jesse Mendoza, and Oscar Rosales

Council Members Absent: None

Flag salute led by Mayor Silva

Invocation not held.

FINALIZE THE AGENDA

1. Adjustments to Agenda.
2. Adoption of final Agenda.

A motion was made by Mayor Pro Tem Castro to adopt the agenda, seconded by Councilor Martinez; unanimously approved (5 ayes).

PROCLAMATION

1. Proposed adoption of **Proclamation No. 19-01**, honoring and celebrating imminent centenarian and longtime Mendota resident Norberto Rojas.

Mayor Silva introduced the item and City Clerk Flood read the proclamation into the record.

City Council congratulated Mr. Rojas and thanked him for his contributions to the community.

Mr. Joseph Amador said some words of encouragement and offered a prayer.

CITIZENS ORAL AND WRITTEN PRESENTATIONS

Kevin Romero (160 Tuft Street) – provided an update on Mendota High School sports.

Ofelia Ochoa (1817 Jennings Street) – requested that the agenda be translated into Spanish; and communicated some issues related to what the cannabis company would require in order to work there.

APPROVAL OF MINUTES AND NOTICE OF WAIVING OF READING

1. Minutes of the special City Council meetings of February 20, 2019 and February 27, 2019, and the regular City Council meeting of February 26, 2019.
2. Notice of waiving of the reading of all resolutions and/or ordinances introduced and/or adopted under this agenda.

A motion was made by Councilor Rosales to approve items 1 and 2, seconded by Councilor Mendoza; unanimously approved (5 ayes).

CONSENT CALENDAR

1. FEBRUARY 26, 2019 THROUGH MARCH 8, 2019
WARRANT LIST CHECKS NO. 45032 THRU 45072
TOTAL FOR COUNCIL APPROVAL = \$237,901.37
2. Proposed adoption of **Resolution No. 19-14**, authorizing execution of a professional services agreement for the topographic and biological surveys in support of the improvements to and expansion of Rojas-Pierce Park.
3. Proposed adoption of **Resolution No. 19-15**, conditionally approving the exclusive-use permits for City facilities for 2019.

A motion was made by Councilor Rosales to adopt items 1 through 3 of the Consent Calendar, seconded by Councilor Martinez; unanimously approved (5 ayes).

BUSINESS

1. Introduction and first reading of **Ordinance No. 19-02**, amending Title 17, Chapter 17.08, Section 17.08.040 of the Mendota Municipal Code to modify the procedure for the initiation of zoning amendments.

Mayor Silva introduced the item and City Manager Gonzalez deferred to the City Attorney, who summarized his report including the reason for the revisions; the changes made for adopting a land-use ordinance, which is currently cumbersome; the delays

and problems that arise due to the overbearing requirements; and how the changes being made streamline the process.

A motion was made by Councilor Rosales to perform the first reading of Ordinance No. 19-02, and waive the second reading, seconded by Councilor Martinez; unanimously approved (5 ayes).

2. Introduction and first reading of **Ordinance No. 19-03**, amending Title 8, Chapter 8.20 of the Mendota Municipal Code relating to the recovery of attorney fees in nuisance abatement proceedings.

Mayor Silva introduced the item and City Attorney Kinsey summarized the current process; and the need to change the law to make it specifically allow the awarding of attorney fees due to an abatement action.

Discussion was held on the need to hold irresponsible property owners accountable.

A motion was made by Councilor Rosales to perform the first reading of Ordinance No. 19-03, and waive the second reading, seconded by Councilor Martinez; unanimously approved (5 ayes).

3. Council discussion and consideration of **Resolution No. 19-16**, authorizing the City Manager to execute documents that will allow the City to participate in the County JPA for receiving Community Development Block Grant funds.

Mayor Silva introduced the item and City Manager Gonzalez summarized his report, including the City recently pulling out of the County's program; staff's interest in re-joining the program in order to have guaranteed funding; and the need to execute an agreement to memorialize its commitment.

Discussion was held on the limitation of applying for additional funds by re-joining the County's program; and the reason being due to having a lack of competent grant writers.

Joseph Amador (1897 7th Street) - requested that the City do what is needed to get funds back to our local non-profits.

A motion was made by Councilor Rosales to adopt Resolution No. 19-16, seconded by Councilor Mendoza; unanimously approved (5 ayes).

PUBLIC HEARING

1. Public hearing and second reading of **Ordinance No. 19-01**, approving an amendment to the Development Agreement by and between the City of Mendota and KSA Homes, Inc., relating to the development of the property commonly known as the La Colonia property.

Mayor Silva introduced the item and City Manager Gonzalez summarized his report including the proposed changes that would be made to the existing development agreement such as reducing the amount of the lots; the development impacts fees arrangement; and provided the staff recommendation.

Discussion was held on the circulation issues that may arise at the new development and what type of businesses are interested in developing the commercial lot.

Mayor Silva opened the hearing to the public and, seeing no one present willing to comment, closed it in that same minute.

A motion was made by Councilor Rosales to adopt Ordinance No. 19-01, seconded by Mayor Pro Tem Castro; unanimously approved (5 ayes).

DEPARTMENT REPORTS AND INFORMATIONAL ITEMS

1. Animal Control, Code Enforcement, and Police Department
 - a) Monthly Report

Chief Andreotti provided information on animal control, code enforcement, and the police department.

Discussion was held on all of the code enforcement activity that will begin as the weather heats up; a burned vehicle on Garcia Street that needs to be towed; roosters making noise in residential neighborhoods; changing the ordinances to promote beautifying the community; interest in the old car wash business; some curb, gutter, and sidewalk that is unsafe; racing that is going on Sunday morning on Amador Street; and people illegally making and selling food out of their homes.

2. Economic Development
 - a) Monthly Report

Economic Development Manager Flood provided information on the upcoming AB1234 ethics training; and announced his departure from the City of Mendota.

The Council wished Mr. Flood well on future endeavors.

3. City Attorney
 - a) Update

City Attorney Kinsey announced the upcoming AB 1234 ethics training.

4. City Manager

City Manager Gonzalez deferred to Assistant City Engineer Osborn for a presentation on the intersection that will be by the La Colonia development; and the staff recommendation of having a roundabout by the development.

Discussion was held on the advantages and disadvantages of having a roundabout at the location.

MAYOR AND COUNCIL REPORTS AND INFORMATIONAL ITEMS

1. Council Member(s)

Mayor Pro Tem Castro thanked staff for its involvement in cleaning up Jack's Resort and inquired on the possibility of building a new City Hall.

Councilor Rosales thanked the public for attending the meeting.

Councilor Mendoza thanked staff for its hard work, the public for coming to the meeting; stressed the importance of public participation; and congratulated Mr. Rojas for his achievements.

2. Mayor

Mayor Silva spoke about the proposal for Highway 180 to connect to the I-5.

ADJOURNMENT

With no more business to be brought before the Council, a motion for adjournment was made at 7:24 p.m. by Mayor Pro Tem Castro, seconded by Councilor Rosales; unanimously approved (5 ayes).

Robert Silva, Mayor

ATTEST:

Celeste Cabrera, City Clerk



**MINUTES OF MENDOTA
CITY COUNCIL/PLANNING COMMISSION/RECREATION COMMISSION
JOINT WORK/STUDY SESSION**

Joint Work/Study Session Wednesday, March 13, 2019 10:00 AM

Meeting called to order by Mayor Silva 10:00 a.m.

ROLL CALL CITY COUNCIL

Council Members Present: Mayor Robert Silva, Mayor Pro Tem Rolando Castro, and Council Members Jesse Mendoza and Oscar Rosales

Council Members Absent: Council Members Victor Martinez

ROLL CALL PLANNING COMMISSION

Commissioners Present: Chairperson Juan Luna, and Commissioners Jose Alonso and Jonathan Leiva

Commissioners Absent: Vice-Chairperson Albert Escobedo and Commissioner Jose Gutierrez

ROLL CALL RECREATION COMMISSION

Commissioners Present: Chairperson Robert Silva, Vice-Chairperson Paul Ochoa, and Commissioner Jose Alonso

Commissioners Absent: Commissioners Jessica Barron and Angela Gonzalez

Staff Present: Cristian Gonzalez, City Manager; Rudy Marquez, Finance Officer; Matt Flood, Economic Development Manager; Jennifer Lekumberry, Administrative Services Director; Gregg Andreotti, Chief of Police; Jeronimo Angel, Chief Plant Operator; Teofilo Bautista, Public Works Superintendent; Kevin Smith, Lieutenant; Ophelia

**Lugo, Records Manager; Nancy Diaz, Finance
Administrative Supervisor; and Celeste Cabrera,
Deputy City Clerk.**

Flag Salute not performed.

WORK/STUDY SESSION

1. AB 1825 – Sexual harassment training

City Attorney Kinsey and Assistant City Attorney Cardella provided a summary of the agenda for the training; provided information on conflict of interest laws and their purpose; summarized the purpose of the Brown Act, including regulations related to the creation and publishing of an agenda, what is considered a "meeting", and what are impermissible meetings; the Public Records Act; Economic Interest Disclosure regulations and the Form 700; laws related to campaign contributions; laws relating to gifts, including the receipt of gifts and what are and what are not considered gifts; prohibitions regarding accepting honoraria; the misuse/gift of public funds; prohibitions on mass mailing; loans; conflicts of interest; the Political Reform Act, including common law conflicts and bias; anti-nepotism laws; and competitive bidding.

Discussion was held on whether it is required to also create meeting agendas in Spanish; different potential methods to provide meeting information to Spanish-speaking residents; examples that constitute a meeting that are in violation of the Brown Act; Brown Act enforcement measures; notice and demand for cure of current violations; whether messages sent over social media are subject to the Public Records Act; what are considered gifts; and due process.

The Council thanked City Attorney Kinsey and Assistant City Attorney Cardella for their work.

PUBLIC COMMENT

None Offered

ADJOURNMENT

Consensus was reached to adjourn the work/study session at 12:01 p.m.

Robert Silva, Mayor

ATTEST:

Celeste Cabrera, City Clerk

CITY OF MENDOTA
CASH DISBURSEMENTS
3/12/2019 - 3/20/2019
Check# 45073 - 45134

Date	Check #	Amount	Vendor	Department	Description
March 12, 2019	45073	\$3,615.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	(7) HRA ADMINISTRATION - MARCH 2019 (PD), (17) MONTHLY MEDICAL ADMINISTRATION FEES - MARCH 2019, MEDICAL CHECK RUN 3/12/19
March 12, 2019	45074	\$802.92	AFLAC	GENERAL	AFLAC INSURANCE FOR MARCH 2019
March 12, 2019	45075	\$4,109.11	AMERITAS GROUP	GENERAL	DENTAL INSURANCE FOR APRIL 2019
March 12, 2019	45076	\$1,332.81	COMCAST	GENERAL-WATER-SEWER	CITYWIDE XFINITY SERVICES 3/6/19 - 4/5/19
March 12, 2019	45077	\$9,211.20	STANTEC CONSULTING SERV	SEWER	4TH QUARTER 2018 GROUNDWATER MONITORING REPORT
March 12, 2019	45078	\$296.80	AT&T	GENERAL-WATER-SEWER	MONTHLY SERVICES 559-266-6456 2/26/19 - 3/25/19
March 12, 2019	45079	\$277.00	SAN JOAQUIN VALLEY AIR	SEWER	19/20 ANNUAL DIESEL FIRED ELECTRICAL GENERATOR
March 13, 2019	45080	\$757.20	AMERITAS GROUP	GENERAL	VISION INSURANCE FOR APRIL 2019
March 13, 2019	45081	\$1,180.60	BANKCARD CENTER	GENERAL-WATER-SEWER	CREDIT CARD EXPENSES 1/29/19 - 2/22/19 - ANTOJITOS GUANACOS, HITT MARKETING (PD), VEGAS RCI RESERVATION (EXPLORERS), LEAGUE OF CA
March 19, 2019	45082	\$108,417.00	WESTAMERICA BANK	GENERAL	PAYROLL TRANSFER 3/4/2019 - 3/17/2019
March 20, 2019	45083	\$236.00	A-1 ELECTRIC/ FRESNO MOTOR EXCHANGE	STREETS	STREET SWEEPER-REAR ENGINE NOT STARTING LABOR/REPAIR
March 20, 2019	45084	\$64.79	ACE TROPHY SHOP	GENERAL	(1) PLAQUE 8X10 COVE (EXPLORERS)
March 20, 2019	45085	\$7,000.00	ADMINISTRATIVE SOLUTIONS INC	GENERAL	MEDICAL CHECK RUN 3/19/2019
March 20, 2019	45086	\$27.35	AIRGAS, USA	WATER	RENT CYL IND SMALL CARBON DIOXIDE FOR FEBRUARY 2019
March 20, 2019	45087	\$107.93	ALERT-O-LITE	GENERAL	(4) WEED EATER HEAD AUTO CUT
March 20, 2019	45088	\$295.00	ALEX AUTO DIANOSTICS	GENERAL-STREETS	DUMP TRUCK - ELECTRICAL REPAIRS ON IN-OP STOP LAMP, VEH#81 - SYNTHETIC MOTOR OIL & FILTER CHANGE (PD)
March 20, 2019	45089	\$27.95	GREGG ANDREOTTI	GENERAL	EXPENSE REIMBURSEMENT - POSTAGE PACKAGE & POSTAGE RETURN (PD)
March 20, 2019	45090	\$1,006.79	AUTOMATED OFFICE SYSTEMS	GENERAL-WATER-SEWER	MAINTENANCE CONTRACT COPIER - CITY HALL FEBRUARY 2019 & MAINTENANCE CONTRACT COPIER- POLICE DEPARTMENT FEBRUARY 2019
March 20, 2019	45091	\$233.19	BELMONT NURSERY	GENERAL	(3) ACER REBRUM 'REDPOINTE' STD#15 - BASEBALL DIAMOND
March 20, 2019	45092	\$32.00	CELESTE CABRERA	GENERAL	EXPENSE REIMBURSEMENT - OFFICIAL RECORDS COPIES FROM FRESNO COUNTY
March 20, 2019	45093	\$1,318.20	CONSOLIDATED ELECTRICAL	STREETS	(1) 30W SOLAR LED AREA LIGHT
March 20, 2019	45094	\$64,777.00	CSJVRMA	GENERAL	LIABILITY PROGRAM & WORKERS' COMPENSATION PROGRAM
March 20, 2019	45095	\$293.00	CENTRAL VALLEY TOXICOLOGY	GENERAL	(1) ABUSE SCREEN & DRUG CONFIRMATION LEVEL (PD), (1) ABUSE SCREEN, SINGLE DRUG SCREEN, AND DRUG CONFIRMATION (PD)
March 20, 2019	45096	\$154.50	CORELOGIC INFORMATION	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENT REALQUEST SERVICES FOR FEBRUARY 2019
March 20, 2019	45097	\$397.00	DEPARTMENT OF JUSTICE	GENERAL	(4) FINGERPRINT APPS (2) FINGERPRINT FBI & CUSTOMER RECORDS (PD)
March 20, 2019	45098	\$99.00	EMBASSY CONSULTING SERVICES, LLC	GENERAL	(1) CIVILIAN LEADERSHIP COURSE REGISTRATION FEES (PD)

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March 20, 2019	45099	\$55.78	MATTHEW FLOOD	GENERAL	EXPENSE REIMBURSEMENT - RECORDER NOTICES AND MOWRY BRIDGE MEETING ITEMS
March 20, 2019	45100	\$140.60	FRESNO COUNTY SHERIFF	GENERAL	RMS JSM ACCESS FEE FEBRUARY 2019 (PD)
March 20, 2019	45101	\$1,320.00	GONZALEZ TRANSPORT, INC	STREETS	(3) 4 HR FREIGHT BASEROCK COALINGA - MENDOTA
March 20, 2019	45102	\$255.00	CRISTIAN GONZALEZ	GENERAL-WATER-SEWER	PER DIEM FOR LEAGUE OF CALIFORNIA CITIES APRIL 3RD THRU APRIL 6TH, 2019 (3 DAYS)
March 20, 2019	45103	\$783.11	GRANITE CONSTRUCTION	WATER-STREETS	(3 LOADS) 3/4" CALTRANS CLASS 2 AGGREGATED BASS (68.86 TON)
March 20, 2019	45104	\$4,184.55	HARDWARE DISTRIBUTION	STREETS-SEWER	(32) 5 GALLON FAST-DRY YELLOW PAINT, (20) 36X24 AIRPORT SIGNS
March 20, 2019	45105	\$1,794.98	ICAD, INC	WATER	PRISON SITE - PLC PROGRAMMING (WTP), 6072T/ PRISON HMI UPGRADE LABOR & MATERIALS (WTP) (1 OF 2)
March 20, 2019	45106	\$484.00	KERWEST NEWSPAPER	GENERAL-WATER-SEWER	(2) CLASSIFIED ADS FOR GENERAL MAINTENANCE WORKER, (2) FULL-TIME SERGEANT ADS, AND PASSTHRU - (8) NOTICE OF PUBLIC HEARING
March 20, 2019	45107	\$2,000.00	LAGERLOF, SENEAL, GOSNEY, & KRUSE, LLP	WATER-SEWER	PROFESSIONAL SERVICES RENDERED THRU FEBRUARY 28, 2019 BOND COUNCIL
March 20, 2019	45108	\$100.00	JENNIFER LEKUMBERRY	GENERAL	EDUCATIONAL REIMBURSEMENT PROGRAM FY 17/18 3 OF 3
March 20, 2019	45109	\$450.00	LG ELETRIC	SEWER	WWTP - MAIN ELECTRICAL SWITCH GEAR REPAIRS
March 20, 2019	45110	\$56,929.80	MID VALLEY DISPOSAL, INC	REFUSE-STREETS	SANITATION CONTRACT SERVICES FOR MARCH 2019, (6) ROLL OFF BIN EXCHANGE 10 YARD & 40 YARD
March 20, 2019	45111	\$209.85	OFFICE DEPOT	GENERAL-WATER-SEWER	MULTIPLE DEPARTMENT OFFICE SUPPLIES
March 20, 2019	45112	\$8,347.74	PACIFIC GAS & ELECTRIC	GENERAL-WATER-SEWER-STREETS	WATER DEPARTMENT UTILITIES 2/13/19 - 3/14/19
March 20, 2019	45113	\$36,493.34	PROVOST & PRITCHARD	GENERAL-WATER-SEWER	PROFESSIONAL SERVICES FOR FEBRUARY 2019- ENGINEERING RETAINER, STORM DRAIN MASTER PLAN, WASTEWATER MASTER PLAN, WATER SYSTEM
March 20, 2019	45114	\$991.99	PURCHASE POWER	GENERAL-WATER-SEWER	POSTAGE METER REFILL 3/12/2019
March 20, 2019	45115	\$17,151.53	R&B COMPANY	WATER-SEWER	(120) SEWER PIPE, (1) PVC, (1) MANHOLE STOP RING, (1) 2" IRRIGATION METER, (1) BADGER SS METER, (1) 4"COMP METER, (1)WILKINS W/BALL
March 20, 2019	45116	\$327.62	R.G. EQUIPMENT COMPANY	WATER	(1) SEAT BELT KIT BIN 8, (6) BLADE-RECYCLER 60" DECK
March 20, 2019	45117	\$83.34	RAMON'S TIRE & AUTO SERVICE	GENERAL-WATER-SEWER	2016 FORD SUPER DUTY OIL CHANGE, OIL FILTER, & AIR FILTER, MOWER - (1) LAWN MOWER TIRE REPAIR
March 20, 2019	45118	\$828.50	ERNEST PACKING SOLUTIONS	GENERAL-WATER-SEWER	JANITORIAL SUPPLIES FOR MARCH 2019 - (2)MICROFIBER KIT (1) DEGREASER, (4) CAN LINER
March 20, 2019	45119	\$80.00	ARMANDO SANDOVAL	WATER-SEWER	EXPENSE REIMBURSEMENT D.O.T. PHYSICAL TEST
March 20, 2019	45120	\$4,820.42	SIERRA DISPLAY, INC	GENERAL	(5) GREEN BANNER (23) IMPRINTS (1) SCREEN (7) BURGANDY BANNERS, (11) NAVY BRACKET, (6) BANNERFLEX MAIN CASTING (12) HEAVY DUTY 30" BAND
March 20, 2019	45121	\$817.10	SIGNMAX	STREETS	(6) 30" SQ ANCHOR 2.25 X 2.25 (5) 30X30 STOP & BUMP SIGN
March 20, 2019	45122	\$3,587.48	SORENSEN MACHINE WORKS	GENERAL-WATER-SEWER-STREETS	MULTIPLE DEPARTMENT SUPPLIES - JANUARY & FEBRUARY 2019
March 20, 2019	45123	\$326.72	UNION PACIFIC RAILROAD COMPANY	STREETS	PUBLIC STREET ENCROACHMENT APRIL 2019

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March 20, 2019	45124	\$288.83	SUNNYSIDE TROPHY	GENERAL	(1) 9X12 PIANO FINISH RED PLAQUE & (1) SUNBURST 14X17 PLAQUE (CC&PD)
March 20, 2019	45125	\$210.46	TELSTAR INSTRUMENTS, INC	SEWER	(2) METER EVALUATIONS SERVICES - WWTP
March 20, 2019	45126	\$584.28	TRIANGLE ROCK PRODUCTS, INC	STREETS	ST 3/8CM SC3000 ASPHALT CITY STREET PATCHING (QTY 4.17& 3.98)
March 20, 2019	45127	\$489.00	UNITED HEALTH CENTERS	WATER-SEWER	(2) PRE-EMPLOYMENT SCREEN (PD&PW)
March 20, 2019	45128	\$1,045.21	UNITED RENTALS NORTHWEST	WATER	(1) TRENCHER WALKBEHIND TRACK (DITCHWITCH) RENTAL & RETURN
March 20, 2019	45129	\$542.82	USA BLUEBOOK	WATER-SEWER	(1) GASKET MATERIAL 36'X36' RED RUBBER/8' THICK, (1) RED SPIDER ELEMENT, (1) POWDER METAL HUB BORE, COUPLING HUB, (2) HEAVY DUTY
March 20, 2019	45130	\$1,119.94	VERIZON WIRELESS	GENERAL-WATER-SEWER	CITYWIDE CELL PHONE SERVICES 2/7/2019 - 3/6/2019
March 20, 2019	45131	\$45.00	VILLAMAR MOTORS & TRANS	GENERAL	VEH #M89 - MOTOR OIL CHANGE & OL FILTER (PD)
March 20, 2019	45132	\$1,626.97	VULCAN MATERIALS COMPANY	STREETS	ST 1/2IN HMA TYPE A ASPHALT (25.03 TON) STAMOULES ST
March 20, 2019	45133	\$8,552.15	WANGER JONES HELSLEY	GENERAL	LEGAL SERVICES RE: SPECIAL LEGAL SERVICES 2/15/2019, LEGAL SERVICES RE: GENERAL LEGAL SERVICES 2/15/2019
March 20, 2019	45134	\$291.42	ZEE MEDICAL SERVICE	GENERAL-WATER-SEWER	FIRST AIT KIT SUPPLIES FOR CITY HALL, WATER PLANT, POLICE DEPARTMENT, & PUBLIC WORKS
		\$363,428.87			

AGENDA ITEM

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CRISTIAN GONZALEZ, CITY MANAGER

SUBJECT: CONSTRUCTION OF IMPROVEMENTS TO AND EXPANSION OF ROJAS-PIERCE PARK RECOMMENDATION FOR APPROVAL OF PLANNING AND ENGINEERING SERVICES CONTRACT AMMENDMENT

DATE: MARCH 26, 2019

ISSUE

Should the City Council adopt the attached resolution to authorize approval of the attached contract amendment with Provost & Pritchard Consulting Group for environmental planning, engineering and construction engineering services in connection with Construction of Improvements at Rojas-Pierce Park, in the total amount of \$112,740.00?

BACKGROUND

For several years, staff has been working with potential state and federal funding sources to secure the monies necessary to construct a major expansion and improvement to the recreational and athletic facilities at Rojas-Pierce park. Despite the City's status as a Severely Disadvantaged Community (SDAC) and the priority that brings in certain funding programs, and despite a commitment of \$329,000 from the Community Development Block Grant program (CDBG), the City's desired project has remained out of reach.

That situation has changed with the agreement reached for development of the La Colonia subdivision. As stated in the amended agreement, the developer will provide \$884,000 to the City's General Fund, to be committed to the improvement of Rojas-Pierce park. Total funds available for park improvements are summarized as follows:

Community Development Block Grant (CDBG)	\$329,000.00
Banked City Park Development Impact Funds	\$305,000.00
La Colonia Impact Fees:	<u>\$884,000.00</u>
Total Available:	\$1,518,000.00

At this point, the project is expected to include the following elements:

- Additional soccer field with LED lighting, scoreboard and metal bleachers
- High-school-size baseball field with skinned or turfed infield, LED lighting, scoreboard and metal bleachers on concrete pads
- Modular restroom building with snack bar area
- Expanded grass area with automated irrigation, for the new fields

The project will not include extension of Smoot Avenue nor construction of additional parking. Those improvements will remain on the list for construction with future funding sources.

ANALYSIS

Staff has prepared preliminary opinions of costs for the various elements of this project. The project will be designed and constructed in accordance with State Building Code and Federal accessibility laws. We believe that available funding is sufficient to construct the planned elements, though the construction documents will be structured to allow deletion of certain elements to reduce the bid price to within budget should actual construction bids come in higher than expected.

This will be the first project using CDBG funding since the City elected to leave the Fresno County CDBG program and participate in the Statewide funding pool. Doing so means that the City now has the obligation to carry out all necessary environmental analysis under CEQA and NEPA, the State and Federal environmental protection acts. Formerly, this work was done by County staff at no cost to the City as part of the CDBG funding award. Staff has discussed this work with both the City Planner and the City Engineer. Mr. Schoettler, the City Planner, does not practice environmental planning as is needed here and has recommended that Provost & Pritchard be retained to do the work.

There are many factors affecting the schedule of this project. Some are matters of law, while some are just practical requirements. Some of the environmental and design work can be done simultaneously, but we must have the CEQA and NEPA processes complete and the environmental documents certified before the project can be advertised for bid, so that all final mitigation measures as adopted can be incorporated into the bid documents. There is also a statutory schedule requirement for processing the CEQA and NEPA documents.

We want to involve the Recreation Commission in the final selection of equipment such as bleachers, bases and the scoreboard, to help assure that the community feels connected to and a part of this project, so we are including their meetings in the design schedule milestones. Also, once the park improvements are constructed and complete, the new grass requires three to four months of establishment before it is mature enough to stand up to the heavy use that an athletic field gets. Once the grass is established, final work including installation of bases and readjustment of sprinklers can take place before the contractor is completely finished. That combination of requirements does a lot to dictate the overall schedule for the project.

The table on the following page presents what we believe to be a realistic schedule to have the park open for public use. This schedule is attainable but could slip if the winter of 2019-20 is wet and conditions are unsuitable for installing the park improvements or starting the new lawn area.

**Rojas-Pierce Park Improvements
Tentative Project Schedule**

Project Task	Estimated Timeframe
Survey, Prepare Preliminary Plans	March 13 – April 26
CEQA & NEPA Documentation	March 13 – July 23
City Review Plans, Select Equipment	May 2* – May 13
Prepare Final Plans for Bid	May 13 – July 23
State Review	July 23 – August 6
Bidding Period	July 29 – August 30
Council Award Contract	September 10**
Initial Construction Period	September 30 – December 30
Establishment Period	January 1 – March 31
Final Construction and Clean-Up	April 1 – April 30

* Date of Regular Recreation Commission Meeting ** Date of Regular City Council Meeting

The attached contract amendment with Provost & Pritchard Consulting Group provides for the necessary environmental planning, design engineering and construction services to prepare construction documents for use in the solicitation of bids for and the construction of the park improvements. The fees for the typical engineering and construction services scope will total \$80,720. Fees for the environmental planning services necessary to meet CEQA and NEPA requirements and obtain Air District Permitting will be \$32,020. The total fees under the contract will be \$112,740.

FISCAL IMPACT

Compensation for these services will be paid from the impact fees summarized above, all of which are dedicated to funding park improvements. No General Funds will be expensed as part of this action.

RECOMMENDATION

That the City Council adopt the attached resolution authorizing approval of the attached contract amendment with Provost & Pritchard Consulting Group for the environmental planning, engineering and construction engineering services in connection with Construction of Improvements at Rojas-Pierce Park, in the total amount of \$112,740.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AUTHORIZING
EXECUTION OF A CONTRACT AMENDMENT
FOR PLANNING AND ENGINEERING SERVICES
FOR THE CONSTRUCTION OF IMPROVEMENTS
TO AND EXPANSION OF ROJAS-PIERCE PARK**

RESOLUTION NO. 19-17

WHEREAS, the City of Mendota has determined that certain improvements to Rojas-Pierce Park are necessary and desirable for the benefit of the community; and

WHEREAS, the City has assembled funds sufficient to complete design and construction of those contemplated improvements; and

WHEREAS, the City has determined that the City Engineer, Provost & Pritchard Consulting Group, is the firm most qualified to provide the needed environmental planning, design engineering and construction administration services necessary for project; and

WHEREAS, the City wishes to retain the City Engineer, Provost & Pritchard Consulting Group, to provide the environmental planning, design engineering and construction administration services necessary to prepare construction documents for use in the solicitation of bids for and the construction of the contemplated park improvements; and

WHEREAS, the City Engineer has submitted a proposal for such services acceptable to City staff, which is attached hereto as Exhibit "A" and incorporated herein; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota authorizes the City Manager to approve and execute the Contract Amendment No. 1 for Planning and Engineering Services for the Construction of Playfield and Related Improvements, Rojas-Pierce Park received for this project which was presented to the Council at its regular meeting of March 26, 2019, in the amount of \$112,740.

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of March, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera, City Clerk



286 W. Cromwell Avenue
 Fresno, CA 93711-6162
 Tel: (559) 449-2700
 Fax: (559) 449-2715
www.ppeng.com

March 20, 2019

Cristian Gonzalez, City Manager
 City of Mendota
 643 Quince Street
 Mendota, CA 93640

**RE: Additional Phase Amendment for Rojas Pierce Park Improvements, Mendota, CA
 P&P Project No. 3336-19004**

Dear Cristian:

We have begun the topographic and biological surveys authorized earlier this month in support of the subject project. In response to your request we have prepared this proposal to provide planning and engineering services related to a variety of improvements at Rojas Pierce Park. Planned improvements include construction of an additional soccer field, a baseball field, lighting systems, bleachers, a soccer scoreboard, new modular restrooms and a concession stand.

Funding for the project is expected to come from local development impact fees and CDBG funding; plans and specifications will be prepared to meet federal funding requirements.

A proposed scope of work is submitted for Provost & Pritchard Consulting Group to incorporate these changes.

This an addendum to the previously-approved Provost & Pritchard Consulting Group proposal and Consultant Services Agreement, with project number referenced above.

Phase ENV: Environmental Documents

We understand that an Initial Study/Mitigated Negative Declaration (IS/MND) is anticipated to be the appropriate level of CEQA documentation for the proposed Project, and that an Environmental Assessment (EA) is anticipated to be the appropriate level of NEPA documentation for the proposed Project. Below are the tasks described to complete the ENV phase.

- Provost & Pritchard will prepare the Administrative Draft IS/MND pursuant to the CEQA Guidelines Appendix G Environmental Checklist.
- Provost & Pritchard will complete the following desktop studies to provide analysis within the IS/MND:
 - California Historical Resources Information System (CHRIS) Report and Record Search from California State University Bakersfield (CSUB) for Assessor's Parcel Number 012-190-55.
 - Sacred Lands File Search through the Native American Heritage Commission and letters to the list of tribes indicated.

- Preparation of a letter for AB 52 compliance with the August 8, 2016 letter with the Santa Rosa Rancheria Tachi Tribe, to be put on City letterhead.
- Provost & Pritchard will utilize CalEEMod for determining air quality pollutants and greenhouse gases potentially generated by the project.
- Provost & Pritchard will utilize in-house GIS staff to provide maps

Deliverables: One (1) electronic copy of the Administrative Draft IS/MND.

- Public Review Draft Initial Study/Mitigated Negative Declaration (MND) and Notice of Intent to Adopt the IS/MND

- Upon receipt of one (1) set of consolidated City review comments, Provost & Pritchard will incorporate all comments into the Draft IS/MND, Notice of Intent (NOI), and Notice of Completion (NOC) and provide the City with an electronic screen-check of the revised documents, with all insertions, deletions and formatting changes in strike-through and underline (i.e. Microsoft Word "Track Changes").
- After City staff comments on the screen-check IS/MND, NOI, and NOC, Provost & Pritchard will finalize the documents based upon the comments received and will provide electronic copies of each document to the City. Provost & Pritchard will publish the NOI pursuant to CEQA Guidelines and distribute the NOC and the Draft IS/MND to the State Clearinghouse (SCH) and other interested agencies and individuals identified by the City for the public review period.

*Deliverables: One (1) electronic copy of the Draft IS/MND, NOI and NOC for the City
15 CD copies of the Draft IS/MND for distribution at the SCH.*

- Preparation of Notice of Determination
 - CEQA Guidelines §15075 requires that the lead agency file a Notice of Determination (NOD) within five (5) working days of the agency's decision to approve the project (Public Resources Code §21083).
 - Provost & Pritchard will prepare a draft NOD for review and filing by City staff.

Deliverables: One (1) electronic copy of the NOD.

- Provost & Pritchard will prepare the Draft EA pursuant to the HUD Guidelines
- Provost & Pritchard will complete the following desktop studies to provide analysis within the EA: Floodplain, Historical Preservation, SHPO letter, Sole Source Aquifer, Endangered Species, Wild and Scenic Rivers, Clean Air Act, Farmlands, Environmental Justice, Noise, Explosives, Chemicals, and Airport Zones.
- Coordinate with Lorie Ann Adams (CDBG Grant Consultant) on submission.

Phase PS&E: Park Improvements Design and Bidding

P&P staff will prepare Plans and Specifications for construction of the improvements planned for the park, as well as other tasks listed below.

- Working with City staff, determine desirable overall park layout including playfield orientations, lighting, bleachers, restroom and concession stand locations. The aesthetic appearance will be coordinated with the improvements at the west end of the existing park.

- Irrigation system will be designed to run off the existing City water supply lines in the park. Additional timers may be required, but can be programmed to operate during hours which are not used by existing timers so that flow capacity will not conflict.
 - Engineer will investigate use of in-ground drip irrigation for turf as to practical and cost feasibility. Should drip irrigation not prove feasible and/or affordable for this application, sprinklers will be pop-up gear-driven rotary heads.
- New turf areas will be hydroseeded with a turf mix specified by the City and suitable for local soil and weather conditions and heavy athletic field use.
- Lay out and dimension baseball field per standard high school dimensions (370 feet to left field and right field foul poles, 90-foot base paths, pitcher's mound at 60 feet, 6 inches, at standard elevation)
- Baseball in-field to be decomposed granite surface or artificial turf and equipped with removable plastic bases and semi-permanent plastic home plate and pitching rubber.
- Baseball field to include standalone permanent backstop structure, presumed to be concrete and galvanized steel with chain link covering. Engineer to coordinate size and layout of back stop with City during design. Final backstop configuration shall be approved by City not later than the 30% design plans.
- Lay out and dimension standard soccer field
- Soccer field shall include pre-manufactured goals, to be selected by the City and included on the Plans by Engineer.
- Scoreboard location shall be selected by City. Scoreboard configuration shall be selected by City from vendor's available standard options and shall be shown on the Plans by the Engineer. All scoreboard options shall be finalized no later than the 30% design plans.
- Playfield lighting shall be provided by vendor-designed LED systems pre-engineered to provide adequate light levels at locations all over the fields. Plans shall call for specific lighting systems and shall clearly exclude non-engineered lighting systems. Lighting systems shall be connected to existing City electrical panel.
- Engineer shall work with City to select free standing pre-manufactured aluminum or steel pre-manufactured bleacher systems for the playfields and shall show the installation locations on the plans. Bleachers shall be installed on concrete pads, which shall be designed and shown by the Engineer.
- Engineer shall present City with vendor's standard options for single-stall restrooms (men's/women's) and City shall select the preferred alternative. Engineer shall prepare site, grading and utility plans for the modular restroom building including electrical, water and sewer service. Modular restroom building is intended to be an Owner Furnished, Owner Installed (OFOI) item and not part of the publicly bid construction package.
- It is anticipated that sewer service will require pumping to the City sewer main in Smoot Street. Engineer shall design and specify an appropriate pump for inclusion in the Plans, including necessary detail drawings for construction and connection to the City sewer system.
- We anticipate one preliminary submittal to the City for review when PS&E are approximately 30% complete, for review of the equipment to be used, since so much depends on the City's preferences. This will ensure that we are proceeding in accordance with the City's direction.

- Together with staff, we will meet with the Recreation Commission to review the 30% PS&E, with emphasis on the equipment selections (bleachers, water fountains, scoreboard, etc.) to achieve their buy-in and comfort level with the project. Final equipment decision authority will remain with staff.
- After review is complete and the City has made its design decisions, we will generate 100% final construction documents ready for use in bidding.
- Bid package will include plans, specifications including required CDBG Federal contract language. We will provide two (2) copies of the full size plan set and the project manual, one for review at City Hall and the other for review at our office. The plans are assumed to contain the following sheets:
 - Cover sheet
 - Legend and Abbreviation
 - Site Topography & Demolition Plan (1"=30')
 - Overall Site Plan (1"=30')
 - Horizontal Control Plan (1"=30')
 - Grading and Drainage Plan (1"=30')
 - Restroom pad grading and utilities (incl. pump) 1"=10'
 - Site Utility Plan (1"=30')
 - Irrigation Plan (1"=30')
 - Details & Sections
- We will submit the PS&E package to the State for their review and approval prior to bid advertisement (assumed two week review period.)
- Notify Builders' Exchanges and provide electronic project documents for use by contractors at those locations as well as via CD or download directly from P&P. Place two advertisements in the Business Journal.
- Organize and attend the pre-bid meeting and job walk.
- Prepare any necessary clarifications and addenda during the bid time resulting from bidder questions.
- Attend and run the bid opening, to be held at the City of Mendota.
- Prepare bid canvass and make recommendation of the lowest responsible, responsive bidder to the City Council, coordinate recommendation with Lorie Ann Adams (CDBG consultant) and State. Prepare Notice of Award to successful bidder.

Deliverables: One (1) hard copy of the 30% design plans, outline specifications and preliminary engineer's estimate, two (2) hard copies and one (1) electronic copy of the final design plans and specifications including engineer's estimate; one (1) electronic copy of bid canvass and letter recommending award, one (1) copy of Notice of Award.

Phase ISR: Indirect Source Review

The proposed project creates more than 20,000 square feet of recreational space, therefore, the San Joaquin Valley Air Pollution Quality Control District Rule 9510 requirements and related fees apply. Consequently, an Air Impact Assessment (AIA) application is required to be submitted to the Air District no later than applying for a final discretionary approval with a public agency (before requesting bids from contractors.) Since the City is only constructing a portion of the remaining master planned facilities without the extension of streets or on-street parking, we recommend a phased construction approach to the AIA submittal; this will greatly reduce or eliminate any ISR fees.

ISR Scope of Work

The Indirect Source Review (ISR) – Air Impact Assessment (AIA) will be developed during the final construction documents phase. The ISR will be in compliance with San Joaquin Valley Air Pollution Control District (District) Rule 9510 and all other applicable rules/regulations.

Our proposed scope of work includes the following:

- Prepare an ISR per District requirements.
 - Air Impact Assessment (AIA) application completion, including maps and figures.
 - Review the draft of the Air District's analysis of the AIA submittal to confirm or dispute their findings.
 - Submit the ISR-AIA to the Air District on behalf of the City.

Deliverables: Provide one hard copy and an electronic copy of the ISR-AIA documents to the City for your records.

ISR Assumptions:

- Items to be provided by the City:
 - Payment of all application (\$804) and any subsequent impact fees to the District

Phase LCA: Limited Construction Services

Because the construction is of a nature that is familiar to the City, no detailed construction observation services are planned. Construction Observation services will be provided by the City staff.

Also, because the City has already been coordinating this statewide CDBG funding separately, we are assuming that practice will continue through construction and we have not included any CDBG reporting in our scope of work. All of that work will remain the responsibility of the City.

P&P will provide the following services, over the assumed four-month construction period. If the construction period exceeds four months, additional compensation may be requested:

- Schedule, attend and run a pre-construction meeting, to include the City, Lorie Ann Adams, and representatives of the Contractor. Agenda will include job site safety responsibility, labor compliance, scheduling construction staking and inspections, access to the site, equipment staging, materials staging, disposal of salvaged materials, and other topics of concern to the parties. Make notes and prepare minutes for circulation to the parties.
- Respond to Contractor RFIs, review requests for potential change orders, review Contractor payment requests and coordinate with for City preparation of payment warrants.

- Construction staking services for this project will be limited to control staking for major facilities. Detailed construction staking will be the responsibility of the construction contractor, as is typical for City projects. Requests for re-staking of control stakes where stakes have been lost through no fault of the City will be identified as extra services, and will be billed as time and materials, to be back-charged to the Contractor as part of his normal monthly payments.
- Make not more than four (4) visits to the site to observe general compliance with contract documents; these may occur outside of contractor working hours.
- Participate in a job walk-through upon substantial completion of the work. Engineer will prepare a punch-list of items to be corrected prior to filing of Notice of Completion.
- Review final corrective work and recommend filing the Notice of Completion. Prepare NOC form, Council agenda item and staff report for Council action prior to recordation.
- Prepare Record Drawings from marked-up drawings and notes received from the Contractor and the City.

Deliverables: Pre-construction meeting minutes, monthly recommendations regarding Contractor payment requests, summaries of site visit reports, punch list summary, letter recommending filing of Notice of Completion, staff report and Council action item for Notice of Completion. One (1) hard-copy set and one (1) electronic (.PDF) set of Record Drawings

Additional Services

The following items are not included in our scope of work or fee at this time but may be added at the discretion of the City. If any additional scope is desired, we will prepare a scope and fee proposal as an amendment to this agreement for the City's approval prior to proceeding:

- Re-setting of any construction stakes damaged or destroyed for any reason except through the direct negligence or error of P&P staff, whether by Contractor, City or by vandalism.
- Construction Observation or Inspection.
- Preparation of SWPPP and Dust Control Plan (assumed to be done by the Contractor)
- Other services not included in the above Scope of Work.
- Preparation of additional technical studies not included in the scope of services.
- Services related to the annexation of the City property into City Limits.
- An electrical subconsultant can hired if it is determined that electrical design work is needed.

Professional Fees

We propose to complete the work in the phases above on a fixed fee and time-and-materials basis as shown in the following table. Each phase will be billed monthly, in proportion to the percentage of the phase work that is complete for fixed-fee phases and at standard labor rates for time-and-materials phases. Normally reimbursable expenses, including mileage for all planned site visits, are included in the fixed-fee phase fees shown, and will be billed in addition to the hourly labor charges for the time-and-materials phases.

Proposal Task	Phase Fee
Phase ENV: Environmental Documents	\$27,770 (Fixed Fee)
Phase PS&E: Park Improvements Design and Bidding	\$61,350 (Fixed Fee)
Phase LCA: Limited Construction Services	\$19,370 (T&M)
Phase ISR: Indirect Source Review	\$4,250 (Fixed Fee)
Total Contract Adjustment:	\$112,740

Project Timeline:

Once we are authorized to proceed, we will move forward with the above scopes. We anticipate that project construction will be completed in Spring 2020, though this date may be affected by weather in the coming winter. Actual timelines and durations of tasks may vary due to factors outside of the control of Provost & Pritchard. We will work diligently to meet the project timeline as closely as we can.

Assumptions:

- The project will be bid and constructed in a single bid package under one general contractor.
- The restroom building will be procured by the City separately from the construction contract.
- No improvements will be made to Smoot Street.
- No on- or off-street parking improvements are included.
- Vendors providing equipment will design electrical connections to the existing power supply.
- The land to be developed is owned by the City but lies outside of the current City limits; however, the City is exempt from needing to pull a County Grading Permit or obtain approvals by any other County department. Similarly, approvals by Fresno County Fire Protection District are not required.
- The City will apply for and obtain required permit operate a food facility from the Fresno County Department of Public Health, Environmental Health Division.
- Field survey work will not include establishment of property boundaries, setting property corners, or preparation/filing of a Record of Survey map with Fresno County. Should any of that prove to be necessary the work can be done under additional services.
- A Cultural Resources Field Study is not proposed at this time.
- The Cultural Resources Research will not discover any archaeological resources that will require documentation.
- City staff will provide Provost & Pritchard with one (1) set of consolidated comments, which will include Legal Counsel review of the draft Initial Study and MND as needed.
- With the exception of review of the design drawings, meetings with the City are assumed to be held by telephone conferencing for cost efficiency. Time, travel and mileage would be charged on a materials basis in effect with rates at the time.
- Provost & Pritchard will prepare and distribute all notices required for the publication and circulation of the Public Review Draft IS/MND, NOI, and NOC pursuant to CEQA.

- Provost & Pritchard will publish the NOI with the Business Journal and file the NOI with the Fresno County Clerk's office and the NOC with the State Clearinghouse for the project pursuant to the CEQA Guidelines.
- The City will file the NOD and current CDFW fees with the Fresno County Clerk's office. This proposal does not include the CDFW fee (currently \$2,354.75) nor County filing fee (currently \$50.00).
- During the public review/comment period, should comment letters be received, or require modification to the IS/EA P&P will submit a revised scope and fee to the City for their review and approval.
- Provost & Pritchard will pay the Business Journal advertising fee for the Request for Bids

This project will be subject to the terms and conditions of the Consultant Services Agreement, executed on March 14, 2019. The signed documents will be our notice to proceed. As always, we thank you for the opportunity to be of service.

Please sign, date and return to Michael Osborn, Project Manager at Provost & Pritchard Consulting Group by emailing mosborn@ppeng.com.

Client:	Provost & Pritchard Engineering Group, Inc. dba Provost & Pritchard Consulting Group
By:	 Matthew W. Kemp, PE
Name/Title:	C 66088 Vice President
Date Signed:	3/20/19

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: MICHAEL OSBORN, ASSISTANT CITY ENGINEER
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: RECOMMENDATION FOR AUTHORIZATION OF THE ENGINEERING SERVICES AGREEMENT FOR THE LOZANO STREET & DERRICK AVENUE RESTRIPING
DATE: MARCH 26, 2019

ISSUE

Should the City Council adopt the attached resolution authorizing approval of the attached agreement with Provost & Pritchard Engineering Group for engineering services for the Lozano Street & Derrick Avenue Restriping, in the total amount of \$6,500?

BACKGROUND

The residents of the Hacienda Gardens area in the northern portion of the City have limited egress options to the rest of the City. The intersection of Lozano Street and Derrick Avenue (SR 33) is currently a right-turn (northbound) only egress from the Hacienda Gardens area with both right and left turn ingress into the development from Derrick Avenue. The second point of ingress and egress is the Barboza Street and Bass Avenue intersection which is heavily impacted with Hacienda Gardens residents wanting to travel southbound on Derrick Ave, as well as traffic from Mendota Elementary School and vehicles from a large portion of the eastside of the city. City staff and the City Engineer have engaged Caltrans Traffic Operations staff and Caltrans has agreed to allow the intersection of Lozano and Derrick Avenue to be modified to allow left turn egress movements southbound onto Derrick Avenue from Lozano Street. We have prepared a conceptual exhibit of the revised striping and the Deputy Director of Caltrans District 6 Maintenance and Operations has found it acceptable to move forward.

ANALYSIS

The proposed modifications to the Lozano Street & Derrick Avenue intersection will improve vehicular traffic flow entering and exiting the Hacienda Gardens area of the City and significantly reduce the volume of vehicles at the Barboza and Bass intersection.

In order to contract with a striping contractor, the City must first prepare construction documents – plans of sufficient detail and project specifications. These documents will also be used to obtain an encroachment permit from Caltrans, which is required to perform the proposed work in the State's right-of-way. The construction contract is estimated to exceed \$5,000 dollars and therefore, per City of Mendota Municipal Code, the construction contract must go through the formal bid procedure.

FISCAL IMPACT

Compensation for these services will be paid from a combination of Measure C, Gas Tax, and LTF Street Funds. No General Funds will be expensed as part of this action.

RECOMMENDATION

Staff recommends that the City Council adopt the attached resolution authorizing approval of the attached agreement with Provost & Pritchard Engineering Group for Lozano Street & Derrick Avenue Restriping, in the total amount of \$6,500.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AUTHORIZING
EXECUTION OF AN ENGINEERING SERVICES
AGREEMENT FOR THE LOZANO STREET &
DERRICK AVENUE RESTRIPING**

RESOLUTION NO. 19-18

WHEREAS, the signing and striping of the intersection of Lozano Street and Derrick Avenue (State Route 33) currently prohibits the movement of vehicles exiting the Hacienda Gardens area from turning southbound onto Derrick Avenue from Lozano Street; and

WHEREAS, City of Mendota staff and the City Engineer are aware of the additional vehicular traffic this shifts down to the Barboza Street and Bass Avenue intersection, adding to congestion during peak commute times; and

WHEREAS, City of Mendota staff and the City Engineer have engaged Caltrans Traffic Operations staff to modify the intersection to allow left turn egress movements from Lozano Street onto southbound Derrick Avenue; and

WHEREAS, the Deputy District Director of Caltrans District 6 Maintenance and Operations has agreed to the proposed modifications; and

WHEREAS, the City intends to retain the City Engineer, Provost & Pritchard Engineering Group, Inc., to provide engineering and construction administration services necessary to obtain a Caltrans encroachment permit and implement the signing and striping changes; and

WHEREAS, the City Engineer has submitted a proposal acceptable to City staff, which is attached hereto as Exhibit "A" and incorporated herein.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota that authorization is hereby given to the City Manager to approve and execute the agreement and proposal received from Provost & Pritchard Engineering Group for the Lozano Street and Derrick Avenue Restriping dated March 20, 2019, in the total amount of \$6,500.

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of March, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera, City Clerk



286 W. Cromwell Avenue
Fresno, CA 93711-6162
Tel: (559) 449-2700
Fax: (559) 449-2715
www.ppeng.com

March 20, 2019

Mr. Cristian Gonzalez, City Manager
City of Mendota
643 Quince Street
Mendota, CA 93640

Subject: Engineering Services for
Lozano Street & Derrick Avenue Restriping, Mendota, CA

Dear Cristian:

Thank you for the opportunity to submit this proposal to provide engineering services for the subject project. This proposal discusses our understanding of the project, recommends a scope of services together with associated fees, deliverables and approximate schedules, sets forth our assumptions and discusses other services that may be of interest as the project proceeds.

Project Understanding:

We understand that the residents of the Hacienda Gardens area in the northern portion of the City have limited egress options to the rest of the City. The intersection of Lozano Street and Derrick Avenue (SR 33) is currently a right-turn (northbound) only egress from the Hacienda Gardens area with both right and left turn ingress into the development. The second point of ingress and egress is the Barboza Street and Bass Avenue intersection which is heavily impacted with Hacienda Gardens residents wanting to travel southbound on Derrick Ave, as well as traffic from Mendota Elementary School and a large portion of the eastside of the city. Caltrans has agreed to allow the intersection of Lozano and Derrick Avenue to be modified to allow left turn movements for egress southbound onto Derrick Avenue from Lozano Street. We have prepared a conceptual exhibit of the revised striping and Caltrans Traffic Operations has found it acceptable to move forward.

Scope of Services:

Our proposed scope of work for this proposal is segregated into several phases, described below.

Phase ENGR: Engineering Services

This phase of work includes the following:

- Prepare a Plans, Specifications and Estimate (PS&E) package including:
 - Develop the conceptual striping exhibit into construction documents with a cover sheet and a single plan sheet, including appropriate information, notes, references and details for construction.
 - A specification book with necessary contractual and technical information.
 - An Engineer's Opinion of Probable Construction Cost.
- Apply for and coordinate with Caltrans to obtain an Encroachment Permit for this project.
- Assist City with the formal bid procedure for the construction contract.

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- Review contractors' submittal package and respond to any Request for Information (RFIs).
- Visit the site once to observe contractor's layout ("cat tracking") prior to application of final pavement markings.
- Review pay requests.
- Visit the site a second time to prepare final punch list.

Professional Fees:

Provost & Pritchard Consulting Group will perform the services in these Phases for the fixed fee amount of \$6,500. These services will be invoiced monthly, on a percent-complete basis. Reimbursable Expenses are included in the Fixed Fee amount stated.

Schedule:

Once we receive an executed copy of this Proposal together with the signed Consultant Services Agreement and are authorized to proceed, we can prepare the PS&E package for initial submittal for Caltrans Encroachment Permit in approximately two to four weeks. Agency review time is beyond our control.

Assumptions:

- As related to the estimation of quantities, areas and/or volumes for construction, such estimates are made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry and will be performed pursuant to generally accepted standards of professional practice in effect at the time of performance. However, such estimates are only estimates and shall not constitute representations, warranties or guarantees of the quantities of the subject of the estimate.
- As related to the preparation of opinion of probable construction costs, such opinion is to be made on the basis of Consultant's experience and qualifications and represents Consultant's best judgment as to the probable construction costs. However, since Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing, such opinions of probable construction costs do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs.
- A topographic field survey will not be required, and the use of aerial imagery is acceptable for the base map to be used for design.
- The City will follow Formal Bid Procedure – Competitive Sealed Bids per MMC, a pre-bid conference will not be required.
- Construction staking will not be required.
- Record Drawings will not be required.
- Provost & Pritchard CAD standards and title block will be used for the design of this project.

- Since the proposed striping layout has already been reviewed by Caltrans Traffic Operations, further changes to the striping layout are not anticipated. Revisions to the striping layout will be considered additional services.

Additional Services:


The following services are not included in this proposal, however these and others can be provided at additional cost, upon request.


- Additional office or field services required due to any governmental agency changes in ordinances, codes, policies, procedures or requirements after the date of this agreement.
- Any extra work performed by Consultant due to changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant.

Terms and Conditions:

If this proposal is acceptable, please sign below and on the attached Consultant Services Agreement, and return a copy of both to our office. These documents will serve as our Notice to Proceed. This proposal is valid for 30 days from the date above.

Sincerely Yours,
Provost & Pritchard Consulting Group


Michael Osborn, RCE 66022
Project Manager


Heather Bashian, RCE 73072
Vice President

Terms and Conditions Accepted:

By City of Mendota

Signature

Cristian Gonzalez

Printed Name

City Manager

Title

Date

5. Client agrees not to reuse Work Product, in whole or in part, for any project other than the project that is the subject of this agreement. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes or unauthorized reuse of the Work Product for any other project by anyone on Client's behalf. Client agrees not to use or permit any other person to use versions of Work Product which are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non-final Work Product. Client hereby waives any claim for liability against Consultant for use of non-final Work Product. If a reviewing agency requires that check prints be submitted with a stamp or seal, those shall not be considered final for purposes of this paragraph.
6. In the event Client (1) makes, agrees to, authorizes, or permits changes in Work Product, or (2) makes, agrees to, authorizes, or permits construction of such unauthorized changes, which changes are not consented to in writing by Consultant, or (3) does not follow recommendations prepared by Consultant pursuant to this agreement, resulting in unauthorized changes to the project, Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant. Client agrees to release Consultant from all liability arising from such unauthorized changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from such changes.
7. Under no circumstances shall delivery of Work Product for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's unauthorized use or reuse of the Work Product.
8. The Client is aware that differences may exist between electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed sealed hard-copy documents shall govern.

LIMITATIONS

9. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this agreement, or by amendments to this agreement. If Consultant recommends that Client retain the services of a Geotechnical Engineer and Client chooses to not do so, Consultant shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing.
10. Client acknowledges that, unless specifically stated to the contrary in the proposal's description of services to be provided, Consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should Consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect Consultant's services, Consultant may, at its option, suspend or terminate work on the project until such time as Client retains a qualified contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.

INDEMNIFICATION

11. To the fullest extent allowed by law, Consultant will indemnify and hold harmless, but shall have no duty to defend Client, its officers, directors, employees and agents (collectively, the "Client Indemnitees") from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties arising out of or relating to the Project, but only to the extent caused by the negligent or other wrongful acts or omissions of Consultant, its subconsultants, or any person or entity for whose acts or omissions any of them are responsible, or by the failure of any such party to perform as required by this Agreement. To the fullest extent allowed by law, Client will indemnify and hold harmless, but shall have no duty to defend Consultant and its officers, directors, employees and agents from, for and against any and all claims, demands, damages, losses, expenses, liabilities and penalties arising out of or relating to the Project, but only to the extent caused by the negligent or other wrongful acts or omissions of Client or any person or entity for whose acts or omissions it is responsible, or by the failure of any such party to perform as required by this Agreement. The obligations and rights of this Section are in addition to other obligations and rights of indemnity provided under this Agreement or applicable law.

FINANCIAL

12. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within sixty (60) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated for cause pursuant to Sections 26 through 31. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination including all costs and expenses incurred in the performance of services up to suspension or termination.
13. Consultant shall not be liable to Client for any costs or damages that may result from the termination or suspension of services under this agreement due to Client's failure to pay Consultant invoices in accordance with the terms of this paragraph. In the event that Consultant agrees to resume terminated or suspended services after receiving full payment of all late invoices, Client agrees that time schedules and fees, as applicable, related to the services will be equitably adjusted to reflect any delays or additional costs caused by the termination or suspension of services.
14. In all cases where the proposal calls for payment of a retainer, that payment shall be made by Client to Consultant prior to commencement of services under this agreement. Upon receipt of retainer payment, the Consultant shall commence services as provided for under this Agreement. Unless otherwise provided for in the project proposal, such retainer shall be held by Consultant throughout the duration of the contract, and shall be applied to the final project invoice, and to any other outstanding AR, including late payment charges, on the project. Any amount of said retainer in excess of the final invoice and other outstanding AR shall be returned to the Client within 30 days of issuance of the final project invoice.
15. Client agrees that all billings from Consultant to Client will be considered correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing. In the event of a dispute over any billing or portion of billing, Client agrees to pay the undisputed portion of any billings in accordance with the payment terms set forth in Section 18.
16. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one half percent (1-1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing. Client acknowledges that payments applied first to unpaid late payment charges and then to unpaid balances of invoices.
17. In the event Consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to field or office employees or any taxes or fees imposed by local, state, or federal government on consultants' fees during the lifetime of this agreement, the new fee schedule shall apply to all subsequent work on time-and-materials contracts.
18. If payment for Consultant's services is to be made on behalf of Client by a third party lender, Client agrees that Consultant shall not be required to indemnify the third party lender, in the form of an endorsement or otherwise, as a condition to receiving payment for services. Client agrees to reimburse Consultant for all collection agency fees, legal fees, court costs, reasonable consultant staff costs and other expenses paid or incurred by Consultant in the event that collection efforts become necessary to enforce payment of any unpaid billings due to Consultant in connection with the services provided in this agreement.

LIMITATION OF LIABILITY

19. **Notwithstanding any other provisions of this Agreement to the contrary, the aggregate liability of the Consultant under this Agreement, whether for breach of contract, tort, strict liability or any other legal theory, will not exceed the total amount of Consultant's compensation for performing services under this Agreement or \$50,000, whichever is greater, however this limitation of Consultant's liability does not apply to third-party claims, or to the Client's reasonable attorneys' fees and expert witnesses' fees and litigation expenses arising out of or related to such third-party claims for which Consultant is liable.**

DISPUTE RESOLUTION

20. In an effort to resolve any conflicts or disputes that arise regarding performance under this agreement by either party, Client and Consultant agree that all such disputes shall be submitted to nonbinding mediation, using a mutually agreed upon mediation services experienced in the resolution of construction disputes. Unless the parties mutually agree otherwise, such mediation shall be a pre-

condition to the initiation of any litigation. The parties further agree to include a similar mediation provision in their agreements with other independent contractors and consultants retained for the project and require them to similarly agree to these dispute resolution procedures. This provision shall not be interpreted to restrict the right of either party to file an action in a court of law, in the County of Fresno, State of California, having appropriate jurisdiction or to preclude or limit the Consultant's right to record, perfect or to enforce any applicable lien or Stop Notice rights.

CONSTRUCTION PROJECTS

21. If the scope of services contained in this agreement does not include construction phase services for this project, Client agrees that such construction phase services will be provided by Client or by others. Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the negligence or other wrongful acts of Consultant, its employees, its subconsultants, or any other person or entity for which Consultant is responsible.
22. Client agrees to include provisions in its contract with the construction contractor to the effect that in accordance with generally accepted construction practices, the construction contractor will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or its employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.
23. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction phase work. If the contractor and/or subcontractors believe there are deficiencies, conflicts, errors, omissions, code violations, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors shall notify Client so those deficiencies may be corrected or otherwise addressed by Consultant prior to the commencement of construction phase work.
24. If, during the construction phase of the project, Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and, at Client's option, retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Further, Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph.
25. If, due to the Consultant's error, omission or negligence, a required item or component of the Project is omitted from the Consultant's construction documents, the Consultant shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. The Consultant will not be responsible for any cost or expense that enhances the value of the Project.

SUSPENSION AND TERMINATION

26. If the Project or the Consultant's services are suspended by the Client for more than thirty (30) consecutive calendar days, the Consultant shall be compensated for all services performed and reimbursable expenses incurred prior to the receipt of notice of suspension. In addition, upon resumption of services, the Client shall compensate the Consultant for expenses incurred as a result of the suspension and resumption of its services, and the Consultant's schedule and fees for the remainder of the Project shall be equitably adjusted.

27. If the Consultant's services are suspended for more than ninety (90) days, consecutive or in the aggregate, the Consultant may terminate this Agreement upon giving not less than five (5) calendar days' written notice to the Client.
28. If the Client is in breach of the payment terms or otherwise is in material breach of this Agreement, the Consultant may suspend performance of services upon five (5) calendar days' notice to the Client. The Consultant shall have no liability to the Client, and the Client agrees to make no claim for any delay or damage as a result of such suspension caused by any breach of this Agreement by the Client. Upon receipt of payment in full of all outstanding sums due from the Client, or curing of such other breach that caused the Consultant to suspend services, the Consultant shall resume services, and there shall be an equitable adjustment to the remaining project schedule and fees as a result of the suspension.
29. Client acknowledges Consultant has the right to complete all services included in this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services not performed or completed by Consultant and from liability for any third-party reliance, use, interpretation or extrapolation of Consultant's work product. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to Section 26. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to Section 28.
30. The Client may terminate this Agreement for the Client's convenience and without cause upon giving the Consultant not less than seven (7) calendar days' written notice.
31. In the event of termination of this Agreement by either party, Consultant shall invoice Client for all outstanding services and expenses reasonably incurred by the Consultant in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination. The Client shall within thirty (30) calendar days of termination pay the Consultant for all services rendered and all reimbursable costs incurred by the Consultant up to the date of termination, in accordance with the payment provisions of this Agreement.

OTHER

32. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
33. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
34. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this agreement shall not constitute the waiver of any other breach of the Agreement.
35. Client and Consultant agree that if any term or provision of this Agreement is determined to be illegal, in conflict with any law, void or otherwise unenforceable, and if the essential terms and provisions of this Agreement remain unaffected, then the validity of the remaining terms and provisions will not be affected and the offending provision will be given the fullest meaning and effect allowed by law.
36. This agreement shall be governed by and construed in accordance with the laws of the State of California.
37. Within the limits of the approved scope and fee, Consultant may engage the services of any subconsultants when, in the Consultant's sole opinion, it is appropriate to do so. Such subconsultants may include testing laboratories, geotechnical engineers and other specialized consulting services deemed necessary by the Consultant to carry out the scope of the Consultant's services.
38. Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with final order or judgment issued by the Bankruptcy Court.

- 39. This agreement shall not be construed to alter, affect or waive any design professional's lien, mechanic's lien or stop notice right, which Consultant may have for the performance of services pursuant to this agreement. Client agrees to provide to Consultant the current name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.
- 40. Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.
- 41. Consultant and Client each agree to waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with paragraphs 26 through 31, except for termination expenses provided for in said paragraph 31. Client further agrees that to the fullest extent permitted by law, Consultant shall not be liable to Client for any special, indirect or consequential damages whatsoever, whether caused by Consultant's negligence, errors, omissions, strict liability, breach of contract, breach of warranty or other cause or causes whatsoever, including but not limited to, loss of use of equipment or facility, and loss of profits or revenue.
- 42. This Agreement is the entire Agreement between the Client and the Consultant. It supersedes all prior communications, understandings and agreements, whether oral or written. Amendments to this Agreement must be in writing and signed by both the Client and the Consultant.

Client	<u>City of Mendota</u>	Provost & Pritchard Engineering Group, Inc., dba Provost & Pritchard Consulting Group	
By	_____	By	_____
Name/Title	<u>Cristian Gonzalez, City Manager</u>	Name/Title	<u>Heather Bashian, RCE 73072 Vice President</u>
Date Signed	_____	Date Signed	<u>3/20/19</u>

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: NANCY M. DIAZ, FINANCE ADMINISTRATIVE SUPERVISOR
VIA: CRISITIAN GONZALEZ, CITY MANAGER
SUBJECT: RESOLUTION NO. 19-19 APPROVING AN UPDATE TO THE WESTAMERICA BANK SIGNATURE CARD
DATE: MARCH 26, 2019

ISSUE

Should the City Council approve Resolution No. 19-19 to update the Westamerica Bank signature card?

BACKGROUND

The current signature card held at the City's bank, Westamerica Bank, needs to be updated to reflect changes that have occurred. The changes include title changes and personnel changes.

ANALYSIS

Westamerica Bank has requirements that need to be satisfied in order to update the information on a signature card for an account. Meeting Minutes or a minute order is required to include the following: name of the business entity; names and titles of all officers of the business entity; names and titles of all authorized signers on the account. A Personal Information Sheet and copy of identification card is required for all signers on account. After the information is provided to Westamerica Bank, a signature card with information is provided to the City to be signed by the authorized signers.

FISCAL IMPACT

None.

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 19-19 approving an update to the signature card at Westamerica Bank.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
AN UPDATE TO THE WESTAMERICA
BANK SIGNATURE CARD**

RESOLUTION NO. 19-19

WHEREAS, the City of Mendota has authorized signees for the signature card with Westamerica Bank (Signature Card); and

WHEREAS, there have been personnel updates with signees with the City of Mendota; and

WHEREAS, there has been a reorganization with the City Council of the City of Mendota; and

WHEREAS, the signees for the signature card with Westamerica Bank need to be updated to reflect the changes with personnel and the reorganization of the City Council; and

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Mendota hereby approves an update to the Westamerica Bank signature card by removing Matthew S. Flood and Victor Martinez from Signature Card, adding Celeste Cabrera and updating titles for Robert Silva, Cristian Gonzalez and Victor Martinez as stated in Exhibit "A", attached hereto and incorporated herein

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of March, 2019, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Celeste Cabrera, City Clerk

EXHIBIT A

Organization: City of Mendota
City Council: Robert Silva – Mayor
Rolando Castro – Mayor Pro Tempore
Victor Martinez – Councilmember
Jesse Mendoza – Councilmember
Oscar Rosales - Councilmember

Authorized Signers:

Robert Silva – Mayor
Rolando Castro – Mayor Pro Tempore
Cristian Gonzalez – City Manager
Rudy Marquez – Finance Officer
Celeste Cabrera – City Clerk

AGENDA ITEM – STAFF REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: JENNIFER LEKUMBERRY, DIRECTOR OF ADMINISTRATIVE SERVICES
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: AMENDMENT NO. 3 TO COOPERATIVE AGREEMENT TO ESTABLISH PROGRAM ELIGIBILITY AND FUNDING REQUIREMENTS THE FRESNO COUNTY TRANSPORTATION AUTHORITY AND THE CITY OF REEDLEY FOR THE SUSTAINABLE AVIATION PROJECT
DATE: MARCH 26, 2019

ISSUE

Shall the council approve and authorize the City Manager to execute Amendment No. 3 to Cooperative Agreement to Establish Program Eligibility and Funding Requirements the Fresno County Transportation Authority and the City of Reedley for the Sustainable Aviation Project?

BACKGROUND

On May 9, 2017, the City Council approved a Program Eligibility and Funding Agreement with the Fresno County Transportation Authority (FCTA) and the City of Reedley for the purchase of four Pipistrel Alpha Electro trainer aircraft, as well as flight training cost assistance for low income veterans, students and others from disadvantaged communities, and administrative costs for partnering agencies and the California Energy Commission San Joaquin Valley Clean Transportation Center (CALSTART) to demonstrate the feasibility of advanced electrified aviation technology.

On March 15, 2018 Grantee took delivery of the aircrafts and was required to rent hanger space with charging facilities in order to maintain the aircrafts' batteries until the permanent hangers and charging facilities were available.

On September 27, 2018 Amendment No. 1 to the Agreement, allowed rental of hanger space with charging facilities through December 21, 2018 as an eligible expense. The City of Mendota was unable to obtain FAA approval for the construction of the hangar during the timeframe established in Amendment No. 1.

On February 5, 2019, the City of Mendota received approval from the FAA to erect the one hangar currently owned by the City of Mendota.

ANALYSIS

The attached amendment would extend the hanger rental time frame to no later than June 30, 2019 with no overall increase in Measure C funding. This amendment will give the City of Mendota sufficient time to erect the aircraft hangar to store aircraft.

FISCAL IMPACT

There is no anticipated fiscal impact to the City, General Fund or otherwise, as a result of approving the amendment All costs incurred to date been fully reimbursed by the FCTA.

RECOMMENDATION

Staff recommends that the City Council approve and authorize the City Manager to execute Amendment No. 3 to Cooperative Agreement to Establish Program Eligibility and Funding Requirements the Fresno County Transportation Authority and the City of Reedley for the Sustainable Aviation Project.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MENDOTA APPROVING
THIRD AMENDMENT TO COOPERATIVE
AGREEMENT TO ESTABLISH PROGRAM
ELIGIBILITY AND FUNDING REQUIREMENTS**

RESOLUTION NO. 19-20

WHEREAS, on May 9, 2017, the City Council of the City of Mendota (City Council) approved a Program Eligibility and Funding Agreement (Agreement) with the Fresno County Transportation Authority (FCTA) and the City of Reedley for the purchase of four (4) Pipistrel Alpha Electro trainer aircraft, as well as flight training cost assistance for low income veterans, students and others from disadvantaged communities, and administrative costs for partnering agencies and the California Energy Commission San Joaquin Valley Clean Transportation Center (CALSTART) to demonstrate the feasibility of advanced electrified aviation technology; and

WHEREAS, by Amendment No. 1 to the Agreement, FCTA agreed that the rental of hangar space with charging facilities through December 31, 2018 was an eligible expense; and

WHEREAS, by Amendment No. 2 the Grantee was authorized to utilize up to \$5,000 of the City of Mendota's Administrative budget to compensate an aviation attorney for Federal Aviation Administration approval services; and

WHEREAS, Grantee has not been able to complete the aircraft hangar facilities at the City of Mendota resulting in continued accumulation of hangar rental charges at Chandler Field; and

WHEREAS, Grantee has requested that the hangar rental as authorized by Amendment No. 1 be extended through June 30, 2019; and

WHEREAS, it is the intent of the Parties to approve a further amendment to the Agreement, authorizing the extension of hangar rental eligibility beyond the time limit established in Amendment No. 1.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Mendota that the Third Amendment to the Professional Services Contract by and between the City of Mendota, the City of Reedley, and the Fresno County Transportation Authority, attached hereto as Exhibit "A," is hereby approved, and the City Manager is hereby authorized and directed to execute same.

Robert Silva, Mayor

ATTEST:

I, Celeste Cabrera, City Clerk of the City of Mendota, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said Council, held at the Mendota City Hall on the 26th day of March, 2019, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Celeste Cabrera, City Clerk

AMENDMENT NO. 3 TO COOPERATIVE AGREEMENT TO ESTABLISH PROGRAM ELIGIBILITY AND FUNDING REQUIREMENTS

Regional Public Transit Program: New Technology Reserve Sub Program
Grantee: City of Mendota and City of Reedley
Project: Sustainable Aviation

This **Amendment No. 3** to the Program Eligibility and Funding Agreement (“**Cooperative Agreement**” or “**Agreement**”) is made and entered into on _____, 2019, with a retroactive effective date of January 1, 2019, by and between the City of Mendota and the City of Reedley (hereinafter referenced collectively as “**Grantee**” or alternatively as “**Partnering Agencies**”), on the one hand, and the Fresno County Transportation Authority (“**Authority**”), on the other hand.

1. RECITALS

1.1 WHEREAS, on April 12, 2017, the Parties entered into the Cooperative Agreement for funding electric airplanes, charging stations and hangars as a part of the Measure C Regional Public Transit Program subprogram entitled “New Technology Reserve” (NTR), and

WHEREAS, the purpose of the NTR subprogram was to finance research or to provide funding for implementation of projects intended to reduce traffic congestion, energy consumption and air emissions resulting from less vehicular traffic and less surface street congestion; and, improve mobility in more densely developed areas by providing convenient and direct transit service; and

WHEREAS, the Authority’s Board previously (on December 7, 2016) had approved the reservation of \$1,071,348 in NTR funding to be made available for implementation of the Project, with the understanding that Grantee (or their pass-through partners) would provide \$1,765,880 in matching funds; and

WHEREAS, the funding made available through the Agreement was for purchase of four Pipistrel Alpha Electro trainer airplanes, installation of four electric aircraft chargers, installation of two aircraft hangars, as well as flight

training cost assistance for low income students, and administrative costs for Partnering Agencies and CALSTART; and

WHEREAS, the Grantee took delivery of the airplanes on March 15, 2018 and was required to rent hangar space with charging facilities in order to maintain the aircrafts' batteries until the permanent hangars and charging facilities were available; and

WHEREAS, by Amendment No. 1 to the Agreement, FCTA agreed that the rental of hangar space with charging facilities through December 31, 2018 was an eligible expense; and

WHEREAS, the Grantee, through CALSTART, has engaged the services of an experienced aviation attorney to assist Grantee in obtaining approval by the Federal Aviation Authority (FAA) for commercial use (including flight training operations) of the electric aircraft; and

WHEREAS, by Amendment No. 2 the Grantee was authorized to utilize up to \$5,000 of the City of Mendota's Administrative budget to compensate an aviation attorney for FAA approval services; and

WHEREAS, Grantee has not been able to complete the aircraft hangar facilities at the City of Mendota resulting in continued accumulation of hangar rental charges at Chandler Field; and

WHEREAS, Grantee has requested that the hangar rental as authorized by Amendment No. 1 be extended through June 30, 2019; and

- 1.2 WHEREAS, it is the intent of the Parties to approve a further amendment to the Agreement, authorizing the extension of hangar rental eligibility beyond the time limit established in Amendment No. 1.

2. TERMS

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein made and the mutual benefits to be derived therefrom, the parties hereto represent, covenant and agree as follows:

2.1 The terms of the Cooperative Agreement, as previously modified by Amendment No. 1 and Amendment No. 2, are hereby further amended to include the following language, which shall replace and supersede the provisions of Section 2.1 of Amendment No. 1:

“Funding made available through this Agreement shall be available solely for purchase of four Pipistrel Alpha Electric trainer airplanes, installation of four electric aircraft chargers, installation of two aircraft hangers, as well as flight training cost assistance for low income students, and administrative costs for Partnering Agencies and CALSTART; and temporary hanger rental cost beginning March 15, 2018 and extending no later than **June 30, 2019** with no overall increase in Measure C funding..”

2.2 All other terms and conditions contained in the Cooperative Agreement, as previously modified by Amendment No. 1 and Amendment No. 2, are unaffected by this Amendment No. 3 and shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned parties have executed this Amendment No. 3 on the day and year first written above.

FRESNO COUNTY TRANSPORTATION AUTHORITY

ATTEST

By: _____ (Signature)	By: _____ (Signature)
Name: <u>Ernest "Buddy" Mendes</u> (Typed)	Name: <u>Mike Leonardo</u> (Typed)
Title: <u>Chairman of the Authority</u>	Title: <u>Executive Director</u>

APPROVED AS TO LEGAL FORM:
DANIEL C. CEDERBORG,
COUNTY COUNSEL

APPROVED AS TO ACCOUNTING
FORM

By: _____ (Signature)	By: _____ (Signature)
Name: Michael E. Rowe	Name: Oscar J. Garcia, CPA
Title: <u>Principal Deputy County Counsel</u>	Title: <u>Auditor Controller/Treasurer-Tax Collector</u>

CITY OF MENDOTA

ATTEST

By _____ (Signature)	By: _____ (Signature)
Name <u>Cristian Gonzalez</u> (Typed)	Name: _____
Title <u>City Manager</u>	Title: _____

APPROVED AS TO FORM

BY: _____

CITY OF REEDLEY

ATTEST

By: _____
(Signature)

By: _____
(Signature)

Name: _____
Nicole Zieba
(Typed)

Name: _____

Title: _____
City Manager

Title: _____

APPROVED AS TO FORM

BY: _____

AGENDA ITEM

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: CRISTIAN GONZALEZ, CITY MANAGER

SUBJECT: POTENTIAL CODE AMENDMENTS REGARDING SB 946: STATEWIDE STANDARDS FOR LOCAL REGULATION OF SIDEWALK VENDORS

DATE: MARCH 26, 2019

BACKGROUND:

On September 17, 2018, Governor Brown signed Senate Bill No. 946 (“SB 946”) into law. The new law establishes standards for the local regulation of “sidewalk vendors,” which are defined as any “person who sells food or merchandise from a . . . nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.” (Govt. Code § 51036(a).) Under the new law, a “local authority shall not regulate sidewalk vendors except in accordance” with SB 946. (§ 51037(a).) Among other things, the new law provides:

- Regulation of sidewalk vendors generally must be directly related to objective health, safety, or welfare concerns, which do not include perceived community animus or economic competition;
- Sidewalk vendors generally may not be prohibited, except in the area of a farmers’ market, swap meet, or temporary special permit;
- Specific requirements apply to the regulation of sidewalk vendors in public parks;
- Consent of non-governmental entity or individual may not be required as a prerequisite to operation;
- A permit or business license requirement may only be imposed if a social security number is not required to obtain the permit or license; and
- Failure to comply with sidewalk vending regulations may only be punished as specified in SB 946.

The Mendota Municipal Code (“MMC”) regulates sidewalk vendors in Chapter 5.28 (itinerant food vendors) and Chapter 5.32 (itinerant merchandise vendors). Notably, the City’s regulations apply to *both* motorized vendors (which are not covered under SB 946) and non-motorized vendors (which are). Thus, while the MMC need not be amended to the extent Chapters 5.28 and 5.32 are applied to motorized vendors, several provisions in those chapters may be construed

as inconsistent with SB 946 if applied to non-motorized vendors. As such, the City will either need to stop enforcing these provisions, repeal them completely, or amend them to comply with SB 946.

DISCUSSION:

The City has several options to address SB 946. First, the City can make no changes to Chapters 5.28 and 5.32 and instead simply interpret those provisions not in compliance with SB 946 as applying *only* to motorized itinerant vendors. This will avoid the administrative burden of modifying the regulations for consistency with SB 946 but will leave non-motorized itinerant much less regulated than they presently are.

Second, the City can amend Chapters 5.28 and 5.32 to clarify that the provisions not in compliance with SB 946 apply *only* to motorized itinerant vendors. This will avoid potential confusion in the future regarding whether the regulations apply to non-motorized vendors but will require some minor modifications to the existing provisions to clarify the scope of their application. Additionally, like the first option, this option will leave non-motorized itinerant vendors much less regulated than they presently are.

Third, the City can amend Chapters 5.28 and 5.32 to clarify that they apply *only* to motorized itinerant vendors *and* develop new regulations for non-motorized itinerant vendors that comply with SB 946. Unlike the first two options, this will ensure that non-motorized itinerant vendors are adequately regulated; however, the development of new regulations for non-motorized vendors will entail a significant administrative burden. An additional benefit of this approach is that if the City Council adopts a new ordinance for non-motorized itinerant vendors, it can include findings that all provisions subject to SB 946 are “directly related to objective, health, safety, or welfare concerns.” This will place the new regulations on firm legal ground, as courts are highly deferential to a legislative body’s findings of fact in support of legislation of general applicability. (See, e.g., *Am. Bank & Tr. Co. v. Cmty. Hosp.*, 36 Cal. 3d 359, 372 (1984) [“It is not the judiciary’s function, however, to reweigh the ‘legislative facts’ underlying a legislative enactment.”].)

Staff recommends that the City choose the third option. In terms of legal risk, it is by far the cleanest option. It will ensure that all provisions of the MMC are consistent with SB 946 and will avoid any possibility for confusion regarding the application of existing provisions to non-motorized itinerant vendors in the future. Additionally, it will ensure that non-motorized itinerant vendors are properly regulated in accordance with the City’s needs and the applicable legal requirements. The only downside is that it will take some time to develop the new regulations for non-motorized itinerant vendors. However, if the City wants to ensure that non-motorized itinerant vendors are adequately regulated in compliance with SB 946, it is the only option that can achieve that goal.

FISCAL IMPACT:

This fiscal impact of potential amendments cannot be determined at this time, as it depends on whether the Council decides to adopt amendments, and if so, what sort of amendments it decides to adopt.

RECOMMENDATION:

Staff recommends that that City Council schedule a workshop with staff to scope issues regarding potential amendments to Chapters 5.28 and 5.32 of the MMC.

M E M O R A N D U M

DATE: March 22, 2019
TO: Cristian Gonzalez, Matt Flood
FROM: NRC
RE: Senate Bill No. 946

I. INTRODUCTION

Question Presented: Whether and to what extent any provision of the Mendota Municipal Code (MMC) must be amended to comply with Senate Bill No. 946 (SB 946), which establishes statewide standards for local regulation of sidewalk vendors.

Short Answer: Most provisions in MMC Chapters 5.28 (itinerant food vendors) and 5.32 (itinerant merchandise vendors) are likely in violation of SB 946. However, SB 946 applies only to *non-motorized* itinerant vendors, and Chapters 5.28 and 5.32 generally apply to *both* non-motorized and motorized itinerant vendors. Therefore, Chapters 5.28 and 5.32 are valid to the extent they are applied to motorized itinerant vendors but generally unenforceable to the extent applied to non-motorized itinerant vendors. Nevertheless, there is room for meaningful regulation of non-motorized itinerant vendors under SB 946. Consequently, we would recommend that the City amend Chapters 5.28 and 5.32 to clarify that they apply *only* to motorized itinerant vendors and adopt a new ordinance to regulate non-motorized vendors that complies with SB 946.

Although under SB 946 the City is not required to adopt a new program to regulate non-motorized itinerant vendors, if Chapters 5.28 and 5.32 are amended to apply only to motorized itinerant vendors, it is likely that many itinerant vendors will simply switch to non-motorized facilities in order to avoid regulation. Moreover, by adopting a new ordinance to regulate non-motorized vendors, the City can include legislative findings that will help insulate the new laws from legal challenge. This will ensure that all itinerant vendors are adequately regulated and that all relevant provisions of the MMC have a strong legal basis.

II. DISCUSSION

A. Senate Bill No. 946

SB 946 establishes standards for the local regulation of “sidewalk vendors,” which are defined as any “person who sells food or merchandise from a . . . nonmotorized conveyance, or from one’s person, upon a public sidewalk or other pedestrian path.” (Govt. Code § 51036(a).)¹

¹ Unless otherwise specified, all citations are to the Government Code.

Under the new law, a “local authority shall not regulate sidewalk vendors except in accordance” with SB 946. (§ 51037(a).) However, if a local authority “has established an existing program” that “substantially complies” with SB 946, then it is not required to “adopt a new program to regulate sidewalk vendors.” (§ 51037(c).)

1. Regulation of sidewalk vendors generally must be directly related to objective health, safety, or welfare concerns.

SB 946 prohibits local authorities from regulating sidewalk vendors in certain ways unless the regulation is “directly related to objective health, safety, or welfare concerns.” (See, e.g., § 51038(b)(1).) Notably, “perceived community animus or economic competition does not constitute an objective health, safety, or welfare concern.” (§ 51038(e).)

- A local authority shall not require a sidewalk vendor to *operate within specific parts of the public right-of-way*, except when that restriction is directly related to objective health, safety, or welfare concerns (§51038(b)(1));
- A local authority shall not *restrict sidewalk vendors to operate only in a designated neighborhood or areas*, except when that restriction is directly related to objective health, safety, or welfare concerns (§ 51038(b)(4)(A));²
- A local authority shall not *restrict the overall number of sidewalk vendors permitted to operate* within its jurisdiction, unless the restriction is directly related to objective health, safety, or welfare concerns (§ 51038(b)(5)).

2. Sidewalk vendors may be prohibited in the area of a farmers’ market, swap meet, or a temporary special permit.

A local authority may, however, prohibit sidewalk vendors “in areas located within the immediate vicinity of a permitted certified *farmers’ market* or a permitted *swap meet*” but only during the hours those events are operating. (§ 51038(d)(1).) Additionally, a local authority may prohibit sidewalk vendors “within the immediate vicinity of an area designated for a *temporary special permit*.” (§ 51038(d)(2).) However, any notice, business interruption mitigation, or other rights provided to affected businesses or property owners must also be provided to any sidewalk vendors specifically permitted to operate in the area. (*Id.*)

3. Specific requirements apply to the regulation of sidewalk vendors in public parks.

² A local authority may prohibit stationary sidewalk vendors in areas that are zoned exclusively residential, but shall not prohibit roaming sidewalk vendors. (§ 51038(b)(4)(B).)

The new law also contain specific requirements related to the regulation of sidewalk vendors in public parks. It provides that a local authority “shall not prohibit a sidewalk vendor from selling food or merchandise in a park owned or operated by the local authority.” (§ 51038(b)(2)(A).) However, a local authority may prohibit stationary sidewalk vendors from vending in a public park “if the operator of the park has signed an *agreement for concessions* that exclusively permits the sale of food or merchandise by the concessionaire.” (*Id.*) Additionally, a local authority may regulate the “time, place, and manner” of sidewalk vending in a public park if the regulation is (i) “[d]irectly related to objective health safety, or welfare concerns,” (ii) “[n]ecessary to ensure the public’s use and enjoyment of natural resources and recreational opportunities,” or (iii) “[n]ecessary to prevent an undue concentration of commercial activity that unreasonably interferes with the scenic and natural character of the park.” (*Id.* at (b)(2)(B).)

4. Consent of non-governmental entity or individual may not be required as a prerequisite to operation.

Finally, a local authority “shall not require a sidewalk vendor to first *obtain the consent or approval of any nongovernmental entity or individual* before he or she can sell food or merchandise.” (§ 51038(b)(3).)

5. Examples of regulations “directly related to objective health, safety, or welfare concerns”

SB 649 allows a local authority to adopt additional requirements regulating the time, place, and manner of sidewalk vending if the requirements are “directly related to objective health, safety, or welfare concerns” and provides a non-exhaustive list of such regulations, including:

- Limitations on hours of operation that are not unduly restrictive. However, in nonresidential areas, any limitations on the hours of operation cannot be more restrictive than the limitations imposed on other businesses or uses on the same street, (§ 51038(c)(1));
- Requirements to maintain sanitary conditions, (§ 51038(c)(2));
- Requirements necessary to ensure compliance with the federal Americans with Disabilities Act and other disability access standards, (§ 51038(c)(3));
- Requiring the sidewalk vendor to possess a valid California Department of Tax and Fee Administration seller’s permit, (§ 51038(c)(5));
- Requiring additional licenses from other state or local agencies to the extent required by law, (§ 51038(c)(6));

- Requiring compliance with other generally applicable laws, (§ 51038(c)(7));
- Requiring a sidewalk vendor to submit information on his or her operations, including the name and mailing address of the vendor, a description of the merchandise offered, a certification that the information is true, the California seller’s permit number, and if the vendor is an agent of another, the name and address of the principal (§ 51038(c)(8)).

6. A permit or business license requirement may be imposed if a social security number is not required to obtain the permit or license.

SB 946 also permits local authorities to require a sidewalk vendor to obtain a permit for sidewalk vending or a valid business license. (§ 51038(c)(4).) However, if the local authority would otherwise require a social security number for the issuance of a permit or business license, it must accept a California driver’s license or identification number, an individual taxpayer identification number, or a municipal identification number in lieu of a social security number. (*Id.*) Additionally, the number collected “shall not be available to the public for inspection, is confidential, and shall not be disclosed except as required to administer the permit or licensure program or comply with state law or state or federal court order.” (*Id.*)

7. Failure to comply with sidewalk vending regulations may only be punished as specified in SB 946

Section 51039(a) provides that a violation of a local authority’s sidewalk vending program “is punishable only by the following”:

- An administrative fine not exceeding one hundred dollars (\$100) for a first violation;
- An administrative find not exceeding two hundred dollars (\$200) for a second violation within one year of the first;
- An administrative fine not exceeding five hundred dollars (\$500) for each additional violation within one year of the first.

If the local authority requires a permit for sidewalk vending, then fines imposed for failure to obtain such permit may be in the following amounts: two hundred fifty dollars (\$250) for the first violation, five hundred (\$500) for the second, and one thousand (\$1,000) for the third. (§ 51039(a)(3)(A).) Additionally, upon and after the fourth violation, the local authority may rescind the permit for the remainder of its term. (*Id.*)

Failure to pay an administrative fine “shall not be punishable as an infraction or misdemeanor.” (§ 51039(c).) “Additional fines, fees, assessments, or any other financial conditions beyond those authorized [above] shall not be assessed.” (*Id.*) Similarly, a violation of a local authority’s sidewalk vending regulations “shall not be punishable as an infraction or

misdemeanor, and the person alleged to have violated any of those provisions shall not be subject to arrest except when permitted under law.” (§ 51039(d)(1).)

Finally, when an administrative fine is imposed, the adjudicator must take into consideration the person’s ability to pay the fine. (§ 51039(f)(1).) If the person meets specified criteria,³ then the local authority must accept twenty percent (20%) as full satisfaction for the fine. (*Id.* at (f)(2).)

B. Mendota Municipal Code

The MMC contains several provisions that are at least arguably inconsistent with SB 649. This section will identify those provisions and evaluate whether any amendments are needed.

1. Chapter 5.28 (Itinerant Food Vendors)

i. § 5.28.020 (Permit Cap for Motorized Itinerant Food Vendors)

This section caps the number of permits for “motorized itinerant food vendor” permits at one for every 1,500 residents. This provision is arguably inconsistent with § 51038(b)(5), which provides that a “local authority shall not *restrict the overall number of sidewalk vendors permitted to operate* within its jurisdiction, unless the restriction is directly related to objective health, safety, or welfare concerns.”

However, § 5.28.020 of the MMC applies only to “motorized itinerant food vendors,” whereas SB 649 is limited to “sidewalk vendors,” defined as “a person who sells food or merchandise from a pushcart, stand, display, pedal-driven cart, wagon, showcase, rack, or *other nonmotorized conveyance*, or from one’s person, upon a public sidewalk or other pedestrian path.” Therefore, § 5.28.020’s regulation of motorized itinerant vendors is outside the scope of SB 649.

Accordingly, no amendment to § 5.28.020 is necessary.

ii. § 5.28.025 (Permit Cap for Non-Motorized Itinerant Food Vendors)

In contrast with § 5.28.020, § 5.28.025 imposes a cap on the number of “nonmotorized itinerant food vendor” permits that may be issued. Because § 5.28.025 applies to “nonmotorized” vendors, it is subject to SB 649. As such, the cap on permits is prohibited “unless the restriction is directly related to objective health, safety, or welfare concerns.” (§ 51038(b)(5).)

If the City can identify an “objective” basis demonstrating that § 5.28.025’s cap is “directly related” to “health, safety, or welfare concerns,” then § 5.28.025 is not in violation of SB 649. Therefore, if such basis is available, the City should simply adopt a resolution finding that § 5.28.025 “is directly related to objective health, safety, or welfare concerns,” and

³ See Government Code § 68632

identifying any evidence in support of that conclusion. Alternatively, the City could modify the cap to the number necessary to address “objective health, safety, or welfare concerns.” This will entail considering the reasons for the cap and identifying how they are “directly related” to “objective health, safety, or welfare concerns.” Finally, the City can ensure compliance with SB 649 by repealing § 5.28.025’s permit cap in its entirety.

iii. §§ 5.28.030 and 5.28.050 (Procedures Applicable to Permit Caps)

Sections 5.28.030 and 5.28.050 relate to procedural aspects of the permit cap. Since the permit cap for motorized itinerant vendors (§ 5.28.020) is not subject to SB 649, these provisions are not problematic to the extent they apply to motorized itinerant vendors.

However, these provisions also apply to non-motorized itinerant vendors (§ 5.28.025) and are subject to SB 649 in that respect. The City has two options to address this issue.

First, if § 5.28.025 can *not* be justified as being “directly related to objective health, safety, or welfare concerns,” then these provisions should be amended to clarify that they apply *only* to motorized itinerant vendors.

Alternatively, if § 5.28.025 *can* be justified as being “directly related to objective health, safety, or welfare concerns,” then these provisions can likely be retained as to non-motorized itinerant vendors. “A local authority may . . . adopt *additional requirements* regulating the time, place, and manner of sidewalk vending *if the requirements are directly related to objective health, safety, or welfare concerns* . . .” (§ 51038(c).) Section 5.28.030 likely satisfies this standard because it ensures fairness in the issuance of new permits. Section 5.28.050 also likely satisfies this requirement since it establishes priority based on compliance with generally applicable laws, (§ 5.28.050(A)), sanitary conditions (§ 5.28.050(B)), and that the permittee is actually using the permit, (§ 5.28.050(C)). (See § 51038(c)(1)–(8).)

iv. § 5.28.055 (Siting and Outdoor Seating)

As with the procedures applicable to the permit caps, § 5.28.055 does not distinguish between non-motorized itinerant vendors (which are subject to SB 649) and motorized itinerant vendors (which are not subject to SB 649). Thus, § 5.28.055 does not run afoul of the new law to the extent that it applies to motorized vendors. However, to the extent it applies to non-motorized itinerant vendors it is permissible only if it can be justified as being “directly related to objective health, safety, or welfare concerns.”

Subdivision (A) provides that the “temporary facility shall not be located closer than fifty (50) feet from a permitted restaurant” and that “[d]isposal of grease from the temporary facility shall conform to all applicable health and safety requirements.”

The first clause almost certainly violates § 51038(b)(4), which states that local authorities “shall not restrict sidewalk vendors to operate only in a designated . . . area . . .” Moreover, this restriction likely cannot be justified as being “directly related to objective, health, safety, or welfare concerns,” since it appears to be based on a desire to avoid “economic competition”

between the sidewalk vendor and the nearby restaurant. (See § 51038(e) [“[E]conomic competition does not constitute an objective health, safety, or welfare concern.”].)

The second clause, however, is permissible, even as to non-motorized itinerant vendors, since it is a “[r]equirement[] to maintain sanitary conditions” and requires “compliance with [] generally applicable laws.” (See § 51038(c).)

Accordingly, the first clause of subdivision (A) should be amended to clarify that it applies *only* to motorized itinerant vendors, and not to non-motorized itinerant vendors. The second clause, in contrast, need not be amended and may be applied to both types of itinerant vendors.

Subdivision (B) provides that permittees may apply for an encroachment permit to establish a temporary street-side location and to place tables and/or chairs on the city sidewalk if the following findings can be made: (1) “[t]hat adequate parking exists for customers of the temporary facility,” (2) “[t]hat placement of tables and chairs shall provide adequate setback for pedestrian traffic on the sidewalk,” and (3) “[t]hat tables and chairs shall only be allowed during the period of June 1st to September 30th of the [sic] each year.”

SB 946 does not prohibit the City from imposing a permit requirement. (See § 51038(c)(6); see also § 51038(c)(4).) Additionally, the first and second requirement are clearly “directly related to objective, health, safety, or welfare concerns,” since they address safety and access issues. Therefore, these provisions need not be amended. The third required finding, however, may be problematic, as it is not clear that permitting tables and chairs only during specified months would qualify as being “directly related to objective, health, safety, or welfare concerns.” Notably, if similar restrictions concerning the placement of tables and chairs on the sidewalk are not imposed on brick-and-mortar businesses, then this requirement would be prohibited under SB 946 as to non-motorized itinerant vendors. (See § 51038(c)(1) [“In nonresidential areas, any limitations on the hours of operation for sidewalk vending shall not be more restrictive than any limitations on hours of operation imposed on other businesses or uses on the same street.”].)

Accordingly, subdivision (B) need not be amended, except the third required finding, (5.28.055(B)(3)), may need to be amended if it cannot be shown that it is directly related to objective, health, safety, or welfare concerns, or if similar limitations are not imposed on other businesses or uses on the same street.

v. § 5.28.060 (Revocation of Permit)

This section provides that if the local health officer determines that a permittee is violating any provision of Chapter 5.28 and delivers a written citation to the owner or any employee, then the owner must correct the violation before conducting any further business or the permit will be revoked.

As applied to non-motorized itinerant vendors, this provision is inconsistent with § 51039(a), which provides, *inter alia*, that a sidewalk vending permit may be revoked *only* on or after the permittee’s fourth violation of applicable regulations. (See § 51039(a) [“A violation of a local authority’s sidewalk vending program . . . is punishable only by the following: . . . A local

authority may rescind a permit issued to a sidewalk vendor for the term of that permit upon the fourth violation or subsequent violations.”].)

As to motorized itinerant vendors, while the provision is not subject to SB 946, the provision raises serious due process concerns, since the permittee has no right to a hearing before the permit may be revoked. (See *City of San Marino v. Roman Catholic Archbishop of Los Angeles*, 180 Cal. App. 2d 657, 669 (1960) [“It is not, nor could it be, claimed that a city council exercises unlimited discretion in the matter of revoking permits. A permit having issued, the power of a municipality to revoke it is limited. If the permittee . . . fails to comply with reasonable terms or conditions expressed in the permit granted, the proper authorities may revoke it. But this is not to say that such revocation can be made without notice, hearing or the taking of evidence.”].)

Accordingly, § 5.28.060 should be amended to (1) entitle the permittee to a hearing before permit revocation, and (2) as to non-motorized itinerant vendors, state that a permit may only be revoked on or after the permittee’s fourth violation of applicable regulations.

vi. 5.28.080 (Penalty for Violation)

This section states that “[a]ny itinerant vendor who operates a temporary facility within the city limits without a permit or after his permit has been revoked is guilty of a misdemeanor.” This provision is inconsistent with SB 946 if applied to non-motorized itinerant vendors. (See § 51039(d)(1) [“A violation of a local authority’s sidewalk vending program . . . or a violation of any rules or regulations . . . that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction or misdemeanor. . .”].)

Accordingly, this provision should either be removed, or it should be amended to clarify that it applies only to motorized itinerant vendors.

2. Chapter 5.32 (Itinerant Merchandise Vendors)

Chapter 5.32 defines an “itinerant vendor” as “a person engaged in the business of selling goods, wares, merchandise or any other thing of value from a motor vehicle or mobile unit.” (MMC § 5.32.010.) As such, the regulations contained therein do not distinguish between non-motorized itinerant vendors (which are subject to SB 946) and motorized itinerant vendors (which are not).

i. § 5.32.020 (Prohibition of Itinerant Merchandise Vendors)

Section 5.32.020 makes it unlawful for “any itinerant vendor to sell merchandise at any time within the city” in (1) “[a]ny street, sidewalk or other public way;” (2) “[a]ny publicly owned property;” (3) “[a]ny open lot or field whether publicly or privately owned;” and (4) “[p]rivately owned property where such sales take place out of doors.”

As applied to non-motorized itinerant vendors, § 5.32.020 violates SB 946. (See § 51038(b)(1), (2), (4).) As applied to motorized itinerant vendors, § 5.32.020 is not problematic.

Section 5.32.020 also contains a prohibition against the sale of “any agricultural products” within the City. As to non-motorized itinerant vendors this prohibition is permissible only if it is “directly related to objective, health, safety, or welfare concerns.” (See § 51038(c).) It is not problematic as to motorized itinerant vendors.

ii. Section 5.32.040 (Penalty for Violation)

This section states that violations of the chapter are an “infraction” and “subject to the general penalty provisions of Chapter 1.20.” (MMC § 5.32.040.) Section 1.20.030 provides that “[e]very violation determined to be an infraction shall be punishable in a penal amount as set by resolution, duly authorized by the city council, but shall not be less than a fine of fifty dollars (\$50.00) nor more than a fine of five hundred dollars (\$500.00).” However, SB 946 provides that “[a] violation of any rules or regulations . . . that regulate or prohibit sidewalk vendors in the jurisdiction of a local authority, shall not be punishable as an infraction. . .” (§ 51039(d)(1).) Therefore, this section is inconsistent with SB 946 to the extent it is applied to non-motorized itinerant vendors. Accordingly, it should be amended to clarify that it applies only to motorized itinerant vendors.

III. CONCLUSION & RECOMMENDATION

Many of the provisions in the City’s existing itinerant vendors regulations are invalid under SB 946 to the extent they are applied to non-motorized itinerant vendors. Nevertheless, those same provisions are valid to the extent they are applied to motorized itinerant vendors.

Notably, SB 946 provides that it shall not “be construed to require a local authority to adopt a new program to regulate sidewalk vendors if the local authority has established an existing program that substantially complies with the requirements in this chapter.” (§ 51037(c).) Significantly, this provision states that if an entity has an “existing program that substantially complies” with SB 946, then it need not “adopt a new program to regulate sidewalk vendors.” (*Id.*) It does not state, however, that all provisions of a program that “substantially complies” with SB 946 are enforceable; only that the local authority is not required “to adopt a new program.” Indeed, § 51037(a) states that “[a] local authority ***shall not regulate sidewalk vendors except in accordance with Sections 51038 and 51039.***” Therefore, if a city’s regulation “substantially complies” with SB 946, but certain provisions are in technical violation of the new law, then although the city need not adopt new regulations to regulate sidewalk vendors, it cannot enforce those provisions that are not “in accordance with Sections 51038 and 51039.”

In light of the above, the City has several options. First, the City can make no changes to Chapters 5.28 and 5.32 and instead simply interpret those provisions not in compliance with SB 946 as applying ***only*** to motorized itinerant vendors. This will avoid the administrative burden of modifying the regulations for consistency with SB 946 but will leave non-motorized itinerant much less regulated than they presently are.

Second, the City can amend Chapters 5.28 and 5.32 to clarify that the provisions not in compliance with SB 946 apply ***only*** to motorized itinerant vendors. This will avoid potential confusion in the future regarding whether the regulations apply to non-motorized vendors but will require some minor modifications to the existing provisions to clarify the scope of their

application. Additionally, like the first option, this option will leave non-motorized itinerant vendors much less regulated than they presently are.

Third, the City can amend Chapters 5.28 and 5.32 to clarify that they apply *only* to motorized itinerant vendors *and* develop new regulations for non-motorized itinerant vendors that comply with SB 946. Unlike the first two options, this will ensure that non-motorized itinerant vendors are adequately regulated; however, the development of new regulations for non-motorized vendors will entail a significant administrative burden. An additional benefit of this approach is that if the City Council adopts a new ordinance for non-motorized itinerant vendors, it can include findings that all provisions subject to SB 946 are “directly related to objective, health, safety, or welfare concerns.” This will place the new regulations on firm legal ground, as courts are highly deferential to a legislative body’s findings of fact in support of legislation of general applicability. (See, e.g., *Am. Bank & Tr. Co. v. Cmty. Hosp.*, 36 Cal. 3d 359, 372 (1984) [“It is not the judiciary’s function, however, to reweigh the ‘legislative facts’ underlying a legislative enactment.”].)

We would recommend that the City choose the third option. In terms of legal risk, it is by far the cleanest option. It will ensure that all provisions of the MMC are consistent with SB 946 and will avoid any possibility for confusion regarding the application of existing provisions to non-motorized itinerant vendors in the future. Additionally, it will ensure that non-motorized itinerant vendors are properly regulated in accordance with the City’s needs and the applicable legal requirements. The only downside is that it will take some time to develop the new regulations for non-motorized itinerant vendors. However, if the City wants to ensure that non-motorized itinerant vendors are adequately regulated in compliance with SB 946, it is the only option that can achieve that goal.

AGENDA ITEM

TO: HONORABLE MAYOR AND COUNCILMEMBERS

FROM: NICOLAS CARDELLA, ASSISTANT CITY ATTORNEY

SUBJECT: SECOND READING AND PUBLIC HEARING OF ORDINANCE NO. 19-03
AMENDING TITLE 8, CHAPTER 8.20 BY ADDING SECTION 8.20.155
RELATING TO RECOVERY OF ATTORNEY FEES IN NUISANCE
ABATEMENT PROCEEDINGS

DATE: MARCH 26, 2019

BACKGROUND:

Government Code § 38773.5(b) states:

A city may, by ordinance, provide for the recovery of attorneys' fees in any action, administrative proceeding, or special proceeding to abate a nuisance. *If the ordinance provides for the recovery of attorneys' fees, it shall provide for recovery of attorneys' fees by the prevailing party, rather than limiting recovery of attorneys' fees to the city if it prevails.* The ordinance may limit recovery of attorneys' fees by the prevailing party to those individual actions or proceedings in which the city elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees.

(emphasis added.)

Mendota Municipal Code (MMC) § 8.20.150 is the City's cost recovery provision for nuisance abatement. It provides that "[w]henever a nuisance is not voluntarily abated by a property owner, the city may abate the nuisance and collect or otherwise recover the costs of such abatement as provided in this chapter." The provision makes no reference to attorney fees.

In *City of Monte Sereno v. Padgett* (2007) 149 Cal.App.4th 1530, the City of Monte Sereno sued property owners for abatement of a public nuisance. The trial court awarded the city its fees based on § 6.17.170 of the Monte Sereno Municipal Code (MSMC), which provided that "should the City commence a civil or criminal proceeding to abate a public nuisance, the costs of abatement which may be recorded shall include all legal costs including reasonable attorneys' fees incurred by the City in commencing and pursuing civil or criminal remedies." (*Id.* at 1536.) On appeal, the defendants contended that § 6.17.170 "conflicts with or is preempted by" Government Code § 38773.5.

The Sixth District Court of Appeal held that MSMC § 6.17.170 violated Government Code § 38773.5(b) and therefore that “its application cannot be upheld” because § 38773.5(b) “requires that the ordinance provide for recovery by the prevailing party and forbids the unilateral recovery by the city.” (*Id.* at 1537.)

Mendota’s ordinance does not expressly provide for the recovery of attorney fees. However, even if it is interpreted as providing such authority, it is arguably inconsistent with § 38773.5(b) because the ordinance only provides for “unilateral recovery by the city,” which Section 38773.5(b) “forbids.” (*Id.*; see MMC § 8.20.150 [“[T]he city may abate the nuisance and *collect or otherwise recover the costs of such abatement* . . . “] [emphasis added].) Thus, under *City of Monte Sereno*, it may be argued that MMC § 8.20.150 cannot be applied to recover attorney fees incurred in connection with nuisance abatement activities.

DISCUSSION:

Staff proposes amending Chapter 8.20 to include a new § 8.20.155. The new provision would state that, at the City’s election, the prevailing party shall be entitled to recover its attorney fees in any proceeding initiated by the city to abate a public nuisance. Further, the new provision would clarify that abatement costs may include, *inter alia*, reasonable attorney fees. These amendments would ensure that the City’s recovery of costs for nuisance abatement, including the recovery of attorney fees, complies with Government Code § 38773.5(b).

Additionally, it should be noted that a substantial portion of the legal costs the City incurs for nuisance abatement activities occur prior to the July 4 holiday when the City commences its annual weed abatement. Therefore, to ensure that the proposed amendments are made effective in advance of the 2019 weed abatement efforts, it is important that this ordinance be enacted as soon as possible.

FISCAL IMPACT:

The proposed amendments will produce a positive fiscal impact by allowing the City to recover all costs, including reasonable attorney fees, incurred in connection with the City’s nuisance abatement activities. A more precise discussion of fiscal impact will be forthcoming upon the second reading.

RECOMMENDATION:

Staff recommends that the Mayor perform the public hearing, that the Council conduct the second reading, and that the Council adopt Ordinance No. 19-03.

**BEFORE THE CITY COUNCIL
OF THE
CITY OF MENDOTA, COUNTY OF FRESNO**

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MENDOTA AMENDING
TITLE 8, CHAPTER 8.20 BY ADDING
SECTION 8.20.155 RELATING TO
RECOVERY OF ATTORNEY FEES IN
NUISANCE ABATEMENT PROCEEDINGS**

ORDINANCE NO. 19-03

WHEREAS, the City of Mendota (City) is responsible for enforcing laws and regulations for the health and safety of the City's residents, including laws related to public nuisances; and

WHEREAS, when property owners refuse or are unable to voluntarily abate public nuisances, the City incurs substantial legal costs to ensure that nuisances are properly abated; and

WHEREAS, the City desires to adopt an ordinance allowing for the recovery of attorney fees incurred in connection with any judicial action, administrative proceeding, or special proceeding to abate a public nuisance; and

WHEREAS, Government Code Section 38773.5 provides that a city may by ordinance provide for the recovery of attorney fees in any action, administrative proceeding, or special proceeding to abate a nuisance.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MENDOTA, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. The Recitals set forth above are incorporated herein and by this reference made an operative part hereof.

SECTION 2. This ordinance amends Title 8, Chapter 8.20 by adding Section 8.20.155. The amendment will provide that the prevailing party may recover its attorney fees in any judicial action, administrative proceeding, or special proceeding to abate a nuisance.

SECTION 3. Section 8.20.155 is hereby added to Chapter 8.20 of Title 8 of the Mendota Municipal Code to read as follows:

8.20.155 – Recovery of Attorney Fees

A. In any administrative action, legal proceeding, or special proceeding initiated by the city to abate a public nuisance, the prevailing party shall be entitled to recover attorney fees, provided that attorney fees shall only be available in those

actions or proceedings in which the city has provided notice at the commencement of such action or proceeding that the city intends to seek and recover attorney fees.

B. Abatement costs may include inspection costs, investigative costs, actual costs of physical abatement through demolition, repair or replacement of buildings, removal of graffiti or other inscribed material, or any other means, incidental expenses, law enforcement costs directly related to nuisance abatement, and all other costs incurred by the city in initiating proceedings and actions to enforce abatement activities, including reasonable attorney's fees.

SECTION 2. Severability. If any part of this Ordinance is held to be invalid for any reason, such decision shall not affect the validity of the remaining portions of this Ordinance, and the City Council hereby declares that it would have passed the remainder of this Ordinance, as if such invalid portion thereof had been deleted.

SECTION 3. This ordinance shall take effect thirty (30) days after its passage.

SECTION 4. The Mayor shall sign and the City Clerk shall certify to the passage of this Ordinance and will see that it is published and posted in the manner required by law.

* * * * *

The foregoing ordinance was introduced on the 12th day of March, 2019 and duly passed and adopted by the City Council of the City of Mendota at a regular meeting thereof held on the 26th day of March, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

Robert Silva, Mayor

ATTEST:

Matt Flood, City Clerk

APPROVED AS TO FORM:

John Kinsey, City Attorney

ADMINISTRATIVE SERVICES DEPARTMENT REPORT

TO: HONORABLE MAYOR AND COUNCILMEMBERS
FROM: JENNIFER LEKUMBERRY, DIRECTOR OF ADMINISTRATIVE SERVICES
VIA: CRISTIAN GONZALEZ, CITY MANAGER
SUBJECT: MONTHLY REPORT (FEBRUARY 2019)
DATE: MARCH 26, 2019

HUMAN RESOURCES

- **Recruitment**
 - One Full-Time Police Sergeant
 - Applications are currently being reviewed and interviews will follow.
 - One Temp. Part Time General Maintenance Worker I
 - Start date is pending the successful completion of the background check, drug screening and pre-employment physical.

RISK MANAGEMENT

- **Claims**
 - There were no new claims against the city in the month February.
- **Worker's Compensation Claims**
 - There was 1 new worker's compensation claim in the month of February.
- **Vehicle Accidents**
 - There was one hit and run that caused damage to a police vehicle. The RMA has approved for the City to move forward with repairs.

SENIOR CENTER

- For the month of February, there was an average of 8 attendees daily at the senior center.

SPECIAL PROJECTS

- I completed the RMA Property Insurance Renewal Packet for FY19/20.
- I completed the ACIP Crime Renewal for RMA for FY19/20.