

MEETING AGENDA

The City Council/Successor Agency of the City of Firebaugh

Vol. No. 22/02-07

Date/Time: February 7, 2022/6:00 p.m.

***SPECIAL NOTICE DUE TO COVID-19 MEETING WILL BE HELD TELECONFERENCE VIA ZOOM,**

**PURSUANT TO PARAGRAPH 11 OF EXECUTIVE ORDER N-25-20,
EXECUTED BY THE GOVERNOR OF CALIFORNIA ON MARCH 12, 2020**

Members of the public who wish to address the Council may do so by submitting a written comments to the Deputy Clerk via email deputyclerk@ci.firebaugh.ca.us Please provide: Council Meeting Date, Item Number your comment are pertaining to, Name, Email and comment, no later than 3:00 PM the day of the meeting.

***Pursuant to Government Code Section 54953 (b)(2), all action taken during this teleconferenced meeting shall be by roll call vote.**

Join Zoom Meeting

<https://us02web.zoom.us/j/86036567922?pwd=bFVaOGpCL2hNemdWN0NnOHBhWlRCdz09>

Meeting ID: 860 3656 7922

Passcode: 936222

Phone: 1-669-900-9128

CALL TO ORDER

ROLL CALL

Mayor Brady Jenkins
Mayor Pro Temp Felipe Pérez
Council Member Marcia Sablan
Council Member Elsa Lopez
Council Member Freddy Valdez

In compliance with the Americans with Disabilities Act, if you need special assistance to access the Andrew Firebaugh Community Center to participate at this meeting, please contact the Deputy City Clerk at (559) 659-2043. Notification 48 hours prior to the meeting will enable the city to make reasonable arrangements to ensure accessibility to the Andrew Firebaugh Community Center.

Any writing or documents provided to a majority of the City Council regarding any item on this agenda will be made available for public inspection at City Hall, in the Deputy City Clerk's office, during normal business hours.

PLEDGE OF ALLEGIANCE

APPROVAL OF THE AGENDA

PUBLIC COMMENT

CONSENT CALENDAR

Items listed on the calendar are considered routine and are acted upon by one motion unless any Council member requests separate action. Typical items include minutes, claims, adoption of ordinances previously introduced and discussed, execution of agreements and other similar items.

1. APPROVAL OF MINUTES – The City Council regular meeting on January 3, 2022.

PUBLIC HEARING

2. MOTION TO RENEW CONSIDERATION OF ORDINANCE NO. 22-01 AND CONSIDERATION OF ORDINANCE APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FIREBAUGH AND ELEMENT 7 LLC – SECOND READING.

Recommended Action: Council receives public comment & waives the second reading Ord. No. 22-01.

3. ORDINANCE NO. 22-02 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AMENDING MUNICIPAL CODE SECTION 25-41.13.6 RELATING TO LIMITED COMMERCIAL CANNABIS OPERATIONS PURSUANT TO REGULATORY PERMIT-FIRST READING.

Recommended Action: Council receives public comment & waives the first reading Ord. No. 22-02.
NEW BUSINESS

4. THE CITY COUNCIL OF THE CITY OF FIREBAUGH TO DISCUSS AND CONSIDER CEN CAL BUILDERS REQUEST CONSIDERATION OF NEW PROPOSED CONSTRUCTION OF DIAZ STREET REGARDING THE DEL RIO ESTATES.

Recommended Action: Council receives public comment & gives staff direction.

5. RESOLUTION NO. 22-01 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING APPLICATION(S) FOR PER CAPITA GRANT FUNDS.

Recommended Action: Council receives public comment & approves Res. No. 22-01.

6. RESOLUTION NO. 22-02 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING EMPLOYMENT AGREEMENT FOR BENJAMIN GALLEGOS.

Recommended Action: Council receives public comment & approves Res. No. 22-02.

7. RESOLUTION NO. 22-03 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL CALRECYCLE GRANTS FOR WHICH FIREBAUGH IS ELIGIBLE.

Recommended Action: Council receives public comment & approves Res. No. 22-03.

8. RESOLUTION NO. 22-04 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING USE OF EMERGENCY REMOTE TELECONFERENCING PROVISIONS.

Recommended Action: Council receives public comment & approves Res. No. 22-04.

9. RESOLUTION NO. 22-05 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AMENDING MASTER FEE RESOLUTION RELATING TO ANNUAL LICENSE FEES FOR BUSINESSES, TRADES AND PROFESSIONS.

Recommended Action: Council receives public comment & approves Res. No. 22-05.

10. RESOLUTION NO. 22-06 - A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH EXTENDING THE CONTRACT WITH GOUVEIA ENGINEERING, INC. FOR THE ON-CALL ENGINEERING SERVICES FOR FEDERALLY FUNDED TRANSPORTATION PROJECTS FOR THE CITY OF FIREBAUGH AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT.

Recommended Action: Council receives public comment & approves Res. No. 22-06.

11. THE CITY COUNCIL OF THE CITY OF FIREBAUGH DISCUSS AND CONSIDER AMENDING FEES TO ORDINANCE NO. 92-2 – ITINERANT BUSINESS LICENSES FEES.

Recommended Action: Council receives public comment & gives staff direction.

STAFF REPORTS

CLOSED SESSION

ANNOUNCEMENT AFTER CLOSED SESSION

ADJOURNMENT

Certification of posting the agenda

I declare under penalty of perjury that I am employed by the City of Firebaugh and that I posted this agenda on the bulletin boards at City Hall, February 4, 2022, at 5:00 p.m. by Rita Lozano Deputy City Clerk.

MEETING MINUTES

The City Council/Successor Agency of the City of Firebaugh
Vol. No. 22/01-03

**PURSUANT TO PARAGRAPH 11 OF EXECUTIVE ORDER N-25-20,
EXECUTED BY THE GOVERNOR OF CALIFORNIA ON MARCH 12, 2020**

City Council Meeting held via teleconferencing

***Pursuant to Government Code Section 54953 (b) (2), all action taken during this teleconferenced meeting shall be by roll call vote.**

Location of Meeting: Andrew Firebaugh Community Center
1655 13th Street, Firebaugh, CA 93622

Date/Time: January 3, 2022/6:00 p.m.

CALL TO ORDER Meeting called to order by Mayor Valdez at 6:00 p.m.

ROLL CALL Mayor Brady Jenkins
Mayor Pro Tem Felipe Pérez
Council Member Elsa Lopez
Council Member Freddy Valdez

ABSENT: Council Member Marcia Sablan

OTHERS: City Attorney James Sanchez; City Manager/Acting Public Works Director, Ben Gallegos; Deputy Clerk, Rita Lozano; Finance Director, Pio Martin; Police Chief, Sal Raygoza; Fire Chief, John Borboa; P. Anthony Thomas, Josh Black of Element 7, Matthew, Amy Fleming, BJ Fleming, & others.

PLEDGE OF ALLEGIANCE Police Chief Raygoza led pledge of Allegiance.

APPROVAL OF THE AGENDA

Motion to approve agenda by Council Member Valdez, second by Council Member Lopez, motion passed by 4-0 vote.

PUBLIC COMMENT Attendee stated they were happy to be in open in-person meetings.

PRESENTATION None

CONSENT CALENDAR

1. APPROVAL OF MINUTES – The City Council regular meeting on December 20, 2021.

Motion to approve Consent Calendar by Council Member Lopez, second by Council Member Valdez, motion passed by 4-0 vote.

PENDING – UNTIL MARCH 2022

2. *[Faint, illegible text]*

PUBLIC HEARING

3. ORDINANCE NO. 21-07 - AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FIREBAUGH AND ELEMENT 7, LLC – SECOND READING.

Opening hearing at 6:03 pm – No comment given – Close hearing at 6:04 pm

Motion to approve Ord. No. 21-07 by Council Member Valdez, second by Council Member Perez, motion failed by 2-2 vote.

NEW BUSINESS

None

STAFF REPORTS

- Police Chief Sal Raygoza – it was a quite New Year's Eve, no large parties, possibly due to COVID, no gun fire but there was a lot of fireworks.
- City Manager, Ben Gallegos – will be out of the office the rest of the week.
- Deputy City Clerk, Rita Lozano – Form 700 is due April 1, 2022, looks like council's availability for the joint meeting with the school district will be held after 6:00 pm, sometime between Tuesday through Thursday, in February. I'm still working with Susan to finalize the date.
- Finance Director, Pio Martin – will be starting the new texting service, "TextMyGov". Individuals will be able submit services request, report issues, make payments and receive a response from staff. We can also notify public of emergency shutoffs; they can report when light poles are out, but they will still need to provide the pole number because some poles are PG&E.
- City Attorney, James Sanchez – requested council for any comments regarding the City Manager's contract to finalize for approval at the next Council meeting.
- City Attorney, James Sanchez – nothing to report
- Council Member Lopez – nothing to report
- Council Member Sablan – nothing to report
- Council Member Perez - nothing to report.
- Council Member Jenkins – nothing to report
- Council Member Valdez – nothing to report

CLOSED SESSION

ANNOUNCEMENT AFTER CLOSED SESSION

ADJOURNMENT

Motion to adjourn at 6:19 pm by Council Member Valdez, second by Council Member Lopez, motion passes by a 4-0 vote.

ORDINANCE NO. 22-01

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FIREBAUGH AND ELEMENT 7, LLC

WHEREAS, the Firebaugh City Council desires to approve a Development Agreement with Element 7, LLC (“Developer”) for development of a retail commercial cannabis business, including manufacturing, distribution, and delivery at 1210 12th Street, Firebaugh, CA (“Development Agreement”); and

WHEREAS, Developer desires to conduct commercial cannabis operations and related uses as described in the Development Agreement on APN: 008-080-029 (“Property”), consistent with applicable laws, City land use plans, ordinances, and regulations.

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

Section 1. Incorporation of Agreement.

This ordinance incorporates the Development Agreement between the City and Developer, a copy of which is attached to this ordinance as **Exhibit A**.

Section 2. Hearing before the Planning Commission.

On December 13, 2021, in accordance with Government Code Section 65867, the Planning Commission conducted a noticed public hearing on an application to consider the Development Agreement. During the hearing, the Planning Commission received and considered evidence and testimony. After the hearing concluded, the Planning Commission forwarded to the City Council a recommendation to approve the Development Agreement and related environmental documents.

Section 3. Hearing before the City Council; Findings.

On December 20, 2021, in accordance with Government Code Section 65867, the City Council conducted a noticed public hearing on the Development Agreement and related environmental documents. During the hearing, the City Council received and considered evidence and testimony concerning the proposed Development Agreement and related environmental documents. Based on the information in the application and the evidence and testimony received at the hearing, the City Council approved the Development Agreement and related environmental documents and finds that the proposed Development Agreement:

- a) Will not have a significant impact on the environment and is exempt from review under Section 15301(a) of the Guidelines of the California Environmental Quality Act, and a Notice of Exemption has been prepared; and
- b) Is consistent with the objectives, policies, and general land uses specified in the general plan and any applicable specific plans; and
- c) Is compatible and in conformity with public convenience, general welfare, and good land use and zoning practice; and
- d) Is not detrimental to the health, safety, and general welfare of the city; and

- e) Does not adversely affecting the orderly development of property or the preservation of property values; and
- f) Is in the best interest of City and that the public health, safety, and welfare will be served by entering into this Agreement; and
- g) Will contribute to the economic growth of City; and
- h) Will facilitate development of the property subject to the Development Agreement, which should be encouraged in order to meet important economic, social, environmental, or planning goals of the City; and
- i) Without the Development Agreement, Developer would be unlikely to proceed with development of property in the manner proposed; and
- j) Requires Developer to incur substantial costs to provide public improvements, facilities, or services from which the general public will benefit, including job creation, enhanced tax revenue and diversification of the City economic base.

Section 4. Approval and Authorization.

The City Council hereby approves the Development Agreement. The City Council hereby authorizes the Mayor to sign on the City's behalf, on or after the effective date of this ordinance.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Firebaugh held on the 20th day of December 2021 & adopted at a regular meeting of the City Council of the City of Firebaugh held on the 3rd day of January 2022 by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

EXHIBIT “A”

Element 7 Development Agreement

PROJECT DEVELOPMENT AGREEMENT

CITY OF FIREBAUGH

AND

ELEMENT 7 FIREBAUGH, LLC

DEVELOPMENT AGREEMENT

This Project Development Agreement (“Agreement”) is entered into effective November 10, 2021 (“Effective Date”) between the City of Firebaugh, a California municipal corporation and general law city (“City”) and Element 7, LLC, a California limited liability company (“Developer”), with respect to the following Recitals, which are a substantive part of this Agreement:

RECITALS

A. This Agreement is contingent on Developer obtaining a commercial cannabis regulatory permit (“Regulatory Permit”) and a Conditional Use Permit to conduct commercial cannabis operations and related uses as described in Section I below and consistent with the Firebaugh Municipal Code and applicable law.

B. Developer represents that its principals are experienced developers and/or operators of commercial cannabis operations or have otherwise contracted with experienced commercial developers, operators, contractors, and other professionals for the purposes of developing the Project on the Property. Developer acknowledges that it will be responsible for all improvements to the Property necessary for the Project.

C. Developer represents its intention to use reasonable efforts to hire City residents to work in its commercial cannabis operations, and City encourages Developer to hire locally.

D. Developer and City previously entered into a Development Agreement dated December 16, 2019. The Parties desire to have this Agreement supersede the previous Development Agreement.

NOW, THEREFORE, pursuant to the authority contained in the California’s Development Agreement statutes (Government Code section 65864, *et seq.*), enacted pursuant to Article XI, Section 2 of the California Constitution, and in consideration of the foregoing recitals of fact, all of which are expressly incorporated into this Agreement, the mutual covenants set forth in this Agreement, the City and Developer agree as follows:

I. Development of Property. Developer proposes to develop and operate a Commercial Cannabis Operation, which includes, manufacturing, distribution and dispensary sale of cannabis at 1210 12th Street, Firebaugh, CA to serve the uses (“Project”) under the Medicinal and Adult Use Cannabis Regulation and Safety Act (“MAUCRSA”) and applicable law. For purposes of this Agreement, the definition of Property and Project shall be as noted on map attached as **Exhibit A**.

Developer agrees to the following:

- Developer to pay for all infrastructure and development costs relating to the Project.
- Developer to install complete perimeter lighting and security cameras.
- Developer must provide on-site security personnel 24 hours per day.

A Cannabis Regulatory Permit and a Conditional Use Permit are required prior to the development of the Property or following any assignment or transfer of Project or Property to be used for a commercial cannabis operation.

City Council finds that upon the grant of a Cannabis Regulatory Permit, Conditional Use Permit and the approval of this Agreement, the Developer shall have invested a substantial sum in reliance on the approvals, including, but not limited to, cannabis regulatory permitting related to the Property as well as significant land acquisition costs. Therefore, the Council agrees that during the Term of this Agreement, the Developer shall have a vested right subject to this Agreement to undertake the development and operation of the Project in accordance with the Project approvals issued by the City. No Subsequent Land Use Regulation (defined below) shall delay, hinder, materially increase the cost of development or operation or impede the purpose or the effect of the vested rights of the Developer which arise hereunder unless necessitated by county, state, federal law or local public health and safety necessity.

Except as otherwise provided under the provisions of this Agreement, the only rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development and operation of the Property, shall be those set forth in the Existing Land Use Regulations and the Subsequent Land Use Regulations (if any) to which Developer has consented in writing, subject to the terms of this Agreement.

“Existing Land Use Regulations” means all ordinances, laws, resolutions, codes, rules, regulations, moratoria, initiatives, policies, requirements, or guidelines of the City in effect on the Agreement Effective Date (defined below) which govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to, the General Plan, the Zoning Code, and all other ordinances of City establishing subdivision standards, park regulations, impact or development fees and building and improvement standards.

“Subsequent Land Use Regulations” means any change in or addition to the Existing Land Use Regulations which would otherwise be applicable to the Property and the Project and which are adopted by the City after the Agreement Effective Date and which thereafter become effective during the Term, including, without limitation, any change in the general or a specific plan, zoning, subdivision, or building regulation applicable to the Property, including, without limitation, any such Subsequent Land Use Regulation which is enacted by means of an ordinance, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the City Council or any other board, agency, commission or department of City, or any officer or employee thereof, which affected the Existing Land Use Regulations of the City during the Term, and which would, absent this Agreement, otherwise be applicable to the Project.

“Agreement Effective Date” means the effective date of the City legislative action approving this Agreement.

II. Lawfulness of Activities. In entering into this Agreement and processing the Regulatory Permit, the City makes no guarantees or promises as to the lawfulness of the proposed commercial cannabis operations under State or federal law, and Developer is obligated to comply with all applicable laws. To the fullest extent permitted by law, City shall not assume any liability whatsoever with respect to approving the Ordinance, a Regulatory Permit for Developer, this Agreement or any other commercial cannabis operation approved by City.

III. Developer Representations. Developer represents and warrants that Developer, and/or principal members of Developer, is/are an experienced developer and operator of commercial properties with experience in cannabis operations, or has otherwise contracted with experienced commercial developers, architects, and/or other professionals for the purpose of developing the Property. The qualifications and identity of Developer and Developer’s contractors are of particular concern to City, and because of such qualifications and identity, the City has entered into this Agreement with Developer. City has considered and relied upon Developer’s representations and warranties in entering into this Agreement.

IV. Fees. Developer shall pay to City the following fees specified in Firebaugh Municipal Code section 25-42.13.6(p):

- a. Business License Fee.
- b. Regulatory License Fee.
- c. Conditional Use Permit Fee.
- d. Revenue Raising Fee. An annual fee of \$25 per square foot for the first 3,000 square feet of building space for the commercial cannabis operation and \$10 per square foot for any remaining space over and above the first 3,000 square feet.
- e. Distribution and Sale. Developer agrees to pay the City 1% of gross receipts from the distribution of cannabis products and a separate 1% for the sale of cannabis products. This amount will be increased by an additional 1% for each year after the initial year.

The cannabis fees shall be fixed as specified in this Section IV for the Term of this Agreement.

The requirements of this Section shall be a recorded covenant running with the land and binding on all owners, tenants, and Regulatory Permit holders for the Property. The covenants shall expire on the expiration or earlier termination of this Agreement.

If the above cannabis operations are on the same parcel, the Manufacturing and Distribution operations can be added to one (1) Regulatory Permit. If on separate parcels, then

separate permits will be required.

V. Local Contractors. To the extent practical, Developer will use reasonable efforts to hire construction/remodel contractors for the Property that are based within the City of Firebaugh or whose work force is made up of a significant number (e.g., 30%) of residents of the City of Firebaugh (a "Local Contractor"). Nothing in this section V. shall be construed to require Developer to accept a bid from a Local Contractor that is more than five percent (5%) higher than the lowest bid received for the same or similar work.

VI. Compliance with Laws. Developer shall operate the commercial cannabis operation in substantial conformity with the MAUCRSA and any implementing laws and regulations, as they may be amended from time to time. Developer shall similarly comply with all other applicable laws, state labor standards, City zoning and development standards, building, plumbing, mechanical and electrical codes, all other provisions of the Firebaugh Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, California Government Code Section 4450, *et seq.*, California Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.* with respect to the existing and any proposed improvements on the Property.

VII. Administrative Actions. The parties acknowledge that in the future there could be claims, enforcement actions, requests for information, subpoenas, criminal or civil actions initiated or served by either the Federal Government or the State Government in connection with Developer's development, operation and use of the Property (collectively, "Actions"). If any Action is brought by either the Federal or State Government, City shall, consistent with applicable law, (i) immediately notify Developer of the nature of the Claim, and if applicable law allows, provide Developer no more than ten days from the date of the notice to obtain injunctive or other relief. City, and (ii) and provide all correspondence or documents submitted to the City.

VIII. Developer's Indemnity.

a. **Commercial Cannabis Operations.** Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature arising from or related to any State or federal law enforcement action against Developer, Developer's tenants, subtenants, licensees, contractors and employees ("Developer Parties") in connection with the commercial cannabis operation conducted on the Property after the issuance of the Regulatory Permit ("Cannabis Claims"). Developer's defense and indemnity obligations under this Agreement shall apply, regardless of intent or fault, to any allegation or claim of liability brought against the City related to the subject Project, including land use and environmental law actions or meeting notice law actions following Project approval, modification, or denial. Developer's duty shall arise at the first claim, petition, or allegation of liability against City. Developer's indemnity shall not extend to any loss of revenue suffered or incurred by City in connection with any termination, cessation, restriction, seizure, or other limitation of any commercial cannabis operation on the Property.

b. Construction and Other Operations. In addition to the indemnity obligations of subsection (a), Developer shall defend, indemnify, assume all responsibility for, and hold City and its officers, agents, employees, and volunteers, harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof, including all construction and operation activities on the Property, and for any damages to property or injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any acts or omissions of Developer Parties in the performance under this Agreement, whether such damage shall accrue or be discovered before or after termination of this Agreement ("Other Claims"). Developer's liability under this Subsection (b) is limited to the extent the property damage or bodily injury is caused by the sole negligence or willful misconduct of City or its agents or employees.

IX. Restrictions on Encumbrance, Assignment or Transfer.

a. Developer can encumber, sell, mortgage, assign or transfer the Property consistent with this Agreement. This cannabis regulatory Agreement would not be extinguished by a mortgage foreclosure so long as the foreclosing owner complies with all regulatory permits and applicable law relating to transfers of the Agreement.

b. Assignment/Transfer. In the case of a transfer of this Agreement or any of Developer's rights hereunder, Developer shall; (i) provide advance written notice of the proposed transfer, (ii) provide its representation and documentation that the transferee has similar experience and similar financial capacity as Developer possessed on the Effective Date of this Agreement, to undertake the obligations of this Agreement, and (iii) provide proposed assignment documents indicating whether the Developer or transferee or both will assume the obligations of this Agreement. If the transferee has similar commercial cannabis agricultural experience and financial capacity as Developer, the transfer may relieve the Developer of its obligations upon execution of an assignment agreement in a form reasonably approved by the City. If the City disagrees with the proposed transfer, the parties may submit the dispute to a neutral mediation with each party sharing the mediator costs. If the parties remain in disagreement following mediation, the parties may submit a decision to an arbitrator for a binding decision. The parties shall share the costs of arbitration.

c. Assignee Obligations. In the absence of specific written agreement by City or binding arbitration decision, no assignment or transfer by Developer of all or any portion of its rights shall be deemed to relieve it or any successor party from any obligations under this Agreement. In addition, no attempted assignment of any of Developer's obligations hereunder shall be effective unless and until the successor party executes and delivers to City an assignment agreement in a form reasonably approved by the City assuming such obligations and has received a regulatory permit.

X. Defaults and Remedies. Failure by either party to perform any action or covenant required by this Agreement within the time periods provided herein, following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written Notice of Default ("Notice") to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any

proceeding against any other party, and the other party shall not be in Default if such party within fifteen (15) days from receipt of such Notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall diligently complete such cure, correction or remedy.

In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Fresno, California, or in the United States District Court for the Eastern District of California – Fresno Division, if allowable.

XI. Community Benefit.

Developer shall enter binding Community Benefit arrangements with at least one local nonprofit public benefit entity to ensure public benefit to the residents of Firebaugh.

XII. General Provisions.

a. Notices, Demands, and Communications Between the Parties. Any approval, disapproval, demand, document or other notice (“Notice”) which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To City: City of Firebaugh
 City Manager
 1133 P Street
 Tel: (559) 659-2043
 Fax: (559) 659-3412
 Email: bgallegos@Firebaugh.org

With a copy to: James Sanchez
 Lozano Smith
 7404 N. Spalding
 Fresno, California 93720
 Tel: (559) 431-5600
 Fax: (559) 431-4420
 Email: jsanchez@lozanosmith.com

To Developer: Robert M. DiVito
 Element 7 Firebaugh, LLC
 645 West 9th Street, #110-631
 Los Angeles, CA 90015
 Tel: (312) 823 7638
 Email: robert@e7ca.com

With a copy to: Attn: Sheila Merchant
Email: Sheila.merchant@gmail.com

Any written notice, demand or communication shall be deemed received: immediately if delivered by hand; 24 hours after delivery to a receipted, overnight delivery service such as Federal Express; 24 hours after delivery by e-mail with an acknowledgement of receipt by the intended recipient; and on the fourth (4th) day from the date it is postmarked if delivered by registered or certified mail.

b. Successors and Assigns. All of the terms, covenants, and conditions of this Agreement shall be binding upon Developer and City, and their respective successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other successors and assigns as herein provided. This Agreement shall run with the land and be binding upon Developer's successors and assigns in and to the Property.

c. Relationship Between City and Developer. It is hereby acknowledged that the relationship between City and Developer is not that of a partnership or joint venture and that City and Developer shall not be deemed or construed for any purpose to be the agent of the other. Except as expressly provided herein or in the Attachments hereto, City shall not have any rights, powers, duties or obligations with respect to the Project.

d. No Third-Party Beneficiaries. There shall be no third-party beneficiaries of this Agreement.

e. City Approvals and Actions. City shall maintain authority over this Agreement, and the authority to implement this Agreement through the City Manager (or his/her duly authorized representative). The City Manager shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of City so long as such actions do not materially or substantially change the uses or development contemplated under this Agreement, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform if applicable. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the City Council.

f. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement shall be executed in two (2) originals, each of which is deemed to be an original.

g. Integration. This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements including the Development Agreement dated December 16, 2019, other understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and

upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes all Attachments and Exhibits attached hereto, which are incorporated herein.

h. Interpretation and Applicable Law. This Agreement has been prepared with input from both parties, and shall be interpreted as though prepared jointly by both parties. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

i. No Waiver. Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies. Nor shall a waiver by either party of a breach of any of the covenants, conditions or promises under this Agreement to be performed by the other party be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

j. Modifications. For any alteration, change or modification of or to this Agreement to become effective, it shall be made in writing and in each instance signed on behalf of each party.

k. Legal Advice. Each party represents and warrants to the other the following: They have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

l. Cooperation. Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

m. Non-Liability of Officials and Employees of the City. No official, employee or agent of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

n. Attorneys' Fees. In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

o. Term. The term of this Agreement ("Term") shall be for a period of three (3) years

commencing on the Effective Date.

p. Savings Clause. If any provision of this Agreement or the application thereof is held in-valid, the invalidity shall not affect other provisions or applications of the Agreement which can be given effect without the invalid provisions or applications and to this end the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the City and the Developer have executed this Project Development Agreement as of the date set forth above.

Dated: _____

ELEMENT 7 FIREBAUGH, LLC

By: _____
(Signature)

(Print)

Dated: _____

CITY OF FIREBAUGH

By: _____
Ben Gallegos, City Manager

ATTEST:

By: _____
Rita Lozano, City Clerk

EXHIBIT A

LEGAL DESCRIPTION AND DEPICTION OF PARCEL

[See Attached]

ORDINANCE NO. 22-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AMENDING MUNICIPAL CODE SECTION 25-41.13.6 RELATING TO LIMITED COMMERCIAL CANNABIS OPERATIONS PURSUANT TO REGULATORY PERMIT

WHEREAS, on January 1, 2018, the State of California began licensing commercial cannabis businesses for both medicinal and adult marijuana use throughout the State; and

WHEREAS, on June 4, 2018, the City Council of the City of Firebaugh adopted Ordinance No. 18-02, the "Cannabis Control Ordinance," approving the permitting of certain commercial cannabis operations in the M-2 land-use zone, excluding both retail and mobile dispensaries; and

WHEREAS, on May 3, 2021, the City Council of the City of Firebaugh adopted Ordinance No. 21-02, amending the Municipal Code to allow commercial cannabis activities in the Urban Reserve (UR) zone district; and

WHEREAS, the City of Firebaugh desires to clarify that commercial cannabis activities will include commercial greenhouse structures, including hothouses, headhouses, cold frames and hoop structures which meet industry best practices to mitigate and control odor.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FIREBAUGH DOES ORDAIN AS FOLLOWS:

Section 1. Section 25-41.13.6 of the Firebaugh Municipal Code is hereby amended (additions are shown in bold; deletions are stricken through):

§ 25-41.13.6 Limited Commercial Cannabis Operations Pursuant to Regulatory Permit

Notwithstanding the prohibition on commercial cannabis operations set forth in § 25-41.13.4, and the limitations upon the cultivation of cannabis set forth in § 25-41.13.3 and 25-41.13.4, commercial cannabis operations may be allowed as set forth in this section.

- a. Purpose. The purpose of this section is to allow limited commercial cannabis operations in the City of Firebaugh as may be permitted under the Medicinal and Adult Use Cannabis Regulation and Safety Act ("MAUCRSA" or "Act") and to adopt local regulations applicable to those operations.
- b. Permitted uses.
 1. Business owners meeting the requirements of this section shall be eligible to apply for a regulatory permit to conduct the following commercial cannabis operations, as may be approved by the City Council at its discretion:
 - (a) Cultivation.
 - (b) Processing.
 - (c) Extraction.

(d) Manufacturing.

(e) Testing.

(f) Distribution.

(g) Transportation.

(h) Retail sales.

[Added 7-15-2019 by Ord. No. 19-03]

(i) Deliveries.

[Added 7-15-2019 by Ord. No. 19-03]

2. The regulatory permit issued pursuant to this section shall specify whether the commercial cannabis operation shall be limited to medicinal cannabis.
3. The regulatory permit issued pursuant to this section shall specify the precise commercial cannabis operation, by clear description and, when appropriate, shall reference the license type specified in the Act for which a state license is being sought.
4. The commercial cannabis operation shall at all times be in compliance with this section as it may be amended from time to time or repealed and replaced by another section governing commercial cannabis operations.
5. No regulatory permit shall issue unless or until the business owner and the property owner enter into a project development agreement with the City. **The project development agreement shall be processed in same manner as a cannabis regulatory permit approved by the Council.**
6. Dispensaries are expressly allowed as set forth in § 25-41.13.4.
[Amended 7-15-2019 by Ord. No. 19-03]
7. The City Council retains the discretion to deny a regulatory permit or limit a regulatory permit to specified commercial cannabis operations.

c. Minimum operational requirements and restrictions. The following operational requirements and restrictions shall apply to all commercial cannabis operations:

1. The Act and other state laws. The commercial cannabis operations shall at all times be in compliance with the Act and the implementing regulations, as they may be amended from time to time, as well as all state license(s) required under the Act, and any other applicable state law. The operator shall obtain all licenses required under the Act prior to opening for business.
2. Register of employees. The operator shall maintain a current register of the names of persons required to have employee permits. The register shall be made available to the Police Chief at all times immediately upon request.
3. Signage. There shall be no signage or markings on the premises or off-site that in any way evidence that commercial cannabis operations are occurring on the property. Interior building signage is permissible provided the signage is not visible outside of the building.

4. Cannabis consumption. No cannabis or cannabis product shall be smoked, ingested, or otherwise consumed on the premises. Prominent signage of this prohibition shall be displayed throughout the facility.
5. Alcoholic beverages. No commercial cannabis operation shall hold or maintain a retail license from the State Department of Alcohol Beverage Control to sell alcoholic beverages or operate a business that sells alcoholic beverages. In addition, alcohol for personal consumption shall not be provided, stored, kept, located, sold, dispensed, or used on the premises.
6. Transportation. Transportation shall only be conducted as permitted by state law.
7. Deliveries. Deliveries are expressly allowed as set forth in § 25-41.13.4. [Amended 7-15-2019 by Ord. No. 19-03]
8. Noncommercial cannabis activity. No noncommercial or recreational cannabis activity shall occur on the premises.
9. Retail sales. The retail sale of cannabis is expressly allowed as set forth in § 25-41.13.4. [Amended 7-15-2019 by Ord. No. 19-03]
10. Public access. There shall be no public access to the premises, except as allowed pursuant to a permitted building site plan, development agreement, and/or a regulatory permit for a dispensary only.
[Amended 7-15-2019 by Ord. No. 19-03]
11. Minors. It shall be unlawful for any operator to allow any person who is not at least 21 years of age on the premises of a commercial cannabis operation.
[Amended 7-15-2019 by Ord. No. 19-03]
12. Distance separation from schools, day-care centers, and youth centers. A commercial cannabis operation shall not be located within 600 feet from any existing school, day-care center or youth center as defined by state law, nor from a proposed school site as identified in the General Plan. Measurements shall be from property boundary to property boundary. For purposes of this section, "school" means any public or private school providing instruction in kindergarten or grades one through 12, inclusive, but does not include any private school in which education is primarily conducted in private homes.
13. Hours of operation. Commercial cannabis operations shall be allowed to operate per the requirements of the underlying zone district and subject to the City's noise and nuisance ordinances.
14. Building and related codes. The cannabis operation shall be subject to the following requirements:
 - (a) The premises in which the commercial cannabis operations occur shall comply with all applicable local, state, and federal laws, rules, and regulations including, but not limited to, building codes and the Americans with Disabilities Act,^[1] as certified by the Building Official of the City. The operator shall obtain all required building permits and comply with all applicable City standards.
[1] *Editor's Note: See 42 U.S.C.A. § 12101 et seq.*
 - (b) The responsible party shall ensure that the premises have sufficient electrical load for the commercial cannabis operations.

- (c) To the extent permitted by the Act, butane and other flammable materials are permitted to be used for extraction and processing provided the operator complies with all applicable fire and building codes, and any other laws and regulations relating to the use of those products, to ensure the safety of that operation. The Firebaugh Fire Department, or other qualified agency retained by the City, shall inspect, and approve the premises for use of the products prior to City's issuance of a certificate of occupancy, or otherwise prior to opening for business, to ensure compliance with this requirement. Such inspection shall be at the business owner's expense.
 - (d) The operator shall comply with all laws and regulations pertaining to use of commercial kitchen facilities for the commercial cannabis operations.
 - (e) The operator shall comply with all environmental laws and regulations pertaining to the commercial cannabis operations, including the storage, use and disposal of water and pesticides, and shall otherwise use best practices to avoid environmental harm.
15. Odor Control. The business owner shall provide an odor-absorbing ventilation and exhaust system, so that odor generated inside the facility that is distinctive to its commercial cannabis operations is not detected outside the premises, outside the building or commercial greenhouse structure housing the commercial cannabis operations, or anywhere on adjacent property or public rights-of-way. A greenhouse structure shall be defined as any sort of structure that manipulates or changes the growing environment for plants. Such structures would include, but not be limited to, hothouses, headhouses, cold frames and hoop structures. Accordingly, the business owner must install and maintain the following equipment or any other equipment which the City's Building Official determines meets best industry odor control standards.
- (a) An exhaust air filtration system with odor control that prevents internal odors and pollen from being emitted externally; or
 - (b) An air system that creates negative air pressure between the cannabis facility's interior and exterior so that the odors generated inside the cannabis facility are not detectable outside the cannabis facility.
16. Consumable products. Commercial cannabis operations that manufacture products in the form of food or other comestibles shall obtain and maintain all appropriate approvals from the State and County Departments of Public Health for the provision of food or other comestibles, unless otherwise governed by the Act and licensed by the state.
17. Secure building. All commercial cannabis operations shall occur entirely inside of a building or commercial greenhouse structure which shall be secure, locked, and fully enclosed, with a ceiling, roof or top, and entirely opaque. Notwithstanding the foregoing, the roof may be of solid nonopaque material, provided other security measures exist to ensure that the commercial cannabis operation cannot be seen, heard, or smelled beyond the property line. The building or commercial greenhouse structure shall include a burglar alarm monitored by an alarm company or private security company. The building, including all walls, doors, and the roof, shall be of solid construction meeting the minimum building code requirements for industrial structures (including, without limitation, commercial greenhouse structures). The precise building construction parameters and materials to be used shall be identified and provided with the application to the City prior to construction.

18. Premises security. The following security conditions shall apply:

- (a)** Alarm system (including perimeter, fire, and panic).
- (b)** Remote monitoring of alarm systems.
- (c)** Perimeter lighting systems (motion sensor) for after-hours security.
- (d)** Perimeter security and lighting as approved by the Police Chief.
- (e)** Use of drive gates with card key access or similar to access the facility.
- (f)** Entrance areas to be locked at all times, and under the control of a designated responsible party.
- (g)** Use of access-control systems to limit access to inventory, grow and processing areas. [Amended 7-15-2019 by Ord. No. 19-03]
- (h)** Exterior and interior camera systems approved by the Police Chief. The camera systems shall meet the minimum requirements of the Act, include interior monitoring of all access points to the site from the interior, and be of a minimum five-mega-pixel resolution.
- (i)** All security systems at the site are attached to an uninterruptable power supply providing twenty-four-hour power.
- (j)** Twenty-four-hour security patrols by a recognized security company licensed by the California Department of Consumer Affairs or otherwise acceptable to the Police Chief. All current contact information regarding the security company shall be provided to the Police Chief.
- (k)** The Firebaugh Police Department or Department designee shall have access to all security systems.
- (l)** Internet Protocol ("IP") access for remote monitoring of security cameras by the Firebaugh Police Department or a department designee upon request.
- (m)** Any and all video or audio tape recordings made for security purposes shall be marked with the date and time made and shall be kept, in an unaltered state, for a period of at least 30 days and must be made available to the Firebaugh Police Department or Department designee for duplication upon demand. In addition, upon request by the Firebaugh Police Department, the responsible party shall duplicate the records for the Firebaugh Police Department or the Department designee.
- (n)** Hardened bullet-resistant windows for exterior windows as part of any new or existing construction.
- (o)** Accounting software systems need to be in place to provide audit trails of both product and cash, where applicable.
- (p)** Electronic track-and-trace systems for cannabis products as required by the Act and state regulations.
- (q)** The city may inspect the premises and audit the records of the commercial cannabis operations for compliance on a quarterly basis.

- (r) Security protocols and equipment need to be in place to protect computer information.
- (s) The foregoing premises security requirements shall be approved by the Police Chief prior to commencing operations. The Police Chief may supplement these security requirements once operations begin, subject to review by the City Council if requested by the business owner.

19. Shipments of supplies and transportation of product. The following rules apply to shipments and transportation:

[Amended 7-15-2019 by Ord. No. 19-03]

- (a) Shipments of supplies to the premises shall only occur as provided for in diagram and floor plans on file with the City as part of the application process. Vehicles delivering to the premises shall not have any markings indicating that deliveries are being made to a cannabis operation.
- (b) The transportation of cannabis samples and/or products to and from the premises shall be in unmarked vehicles with no indication that the vehicles are transporting cannabis samples and/or products. The responsible party shall stagger transportation times, vary routes from the facility, and take other security measures as requested by the Police Chief.

20. Premises maintenance. The business owner, operator, and all responsible parties shall continually maintain the premises and its infrastructure so that it is visually attractive and not dangerous to the health, safety, and general welfare of employees, patrons, surrounding properties, and the general public. The premises or commercial cannabis operation shall not be maintained in a manner that causes a public or private nuisance.

21. Location of uses. Except for deliveries as defined in § 25-41-13.4, the commercial cannabis operation permitted by this section shall only be allowed in the locations designated on the diagram and floor plans of the premises submitted with the application for a regulatory permit. Other than for deliveries as defined in § 25-41-13.4, commercial cannabis operations shall not operate at any location other than as stated in the regulatory permit.

[Amended 7-15-2019 by Ord. No. 19-03]

- d. **Commercial cannabis operation regulatory permit.** No person or entity shall operate a commercial cannabis operation within the City of Firebaugh without first obtaining a commercial cannabis regulatory permit from the City. Other than for deliveries as defined in § 25-41-13.4, the regulatory permit shall be site-specific and shall specifically identify the commercial cannabis activity that will be allowed at that site. No commercial cannabis activity, other than deliveries, will be allowed unless specifically identified in the regulatory permit. The issuance of a regulatory permit shall be at the discretion of the City Council.

[Amended 7-15-2019 by Ord. No. 19-03]

- e. **Applications for regulatory permits and responsible party designation.**

1. Application. Applicants for regulatory permits shall file their applications with the Police Chief and shall include the information set forth herein. The Police Chief may request such additional information he or she deems necessary to determine who the applicant is and what activity may be permitted. The applicant shall certify under penalty of perjury that all of the information contained in the application is true and correct. The application shall contain the following items for the business owner, operator, all responsible parties known at the time (if different than the business owner), and any other party designated below:

- (a) The full name, present address, and telephone number.

- (b) Date of birth.
- (c) Tax identification number.
- (d) The address to which notices relating to the application are to be mailed.
- (e) Previous addresses for the five years immediately preceding the submission of the application.
- (f) His or her height, weight, and color of eyes and hair.
- (g) Photographs for identification purposes (photographs shall be taken by the Police Department).
- (h) All business, occupation, or employment for the five years immediately preceding the submission of the application.
- (i) The commercial cannabis operation business history, including whether the business owner and responsible parties, while previously operating in this or another city, county, or state, has had a cannabis-related license revoked or suspended, the reason therefore, and the business, activity or occupation subsequent to such suspension or revocation.
- (j) Complete property ownership and lease details, where applicable. If the business owner is not the premises owner, the application must be accompanied with a notarized acknowledgment from the premises owner that commercial cannabis operations are authorized to occur on the premises.
- (k) A descriptive business plan for the commercial cannabis operation, including a detailed list of all commercial cannabis operations proposed to occur on the premises.
- (l) A diagram and floor plan of the entire premises, denoting all the use of areas proposed for commercial cannabis operations, including, but not limited to, cultivation, processing, manufacturing, testing, transportation, deliveries, and storage. The diagram and floor plan need not be professionally prepared but must be drawn to a designated scale or drawn with marked dimensions of the interior of the premises to an accuracy of plus or minus six inches.
- (m) The name or names of the operator. The operator shall designate one or more responsible parties, one of which shall at all times be available as a point of contact for the City, 24 hours per day. The contact information of the operator and responsible parties shall be provided to the Police Chief and updated within 24 hours of any changes.
- (n) The proposed security arrangements for ensuring the safety of persons and to protect the premises from theft.
- (o) An accurate straight-line drawing prepared within 30 days prior to the application depicting the building and the portion thereof to be occupied by the cannabis operation and the property line of any school as set forth in the Operational Requirements.
- (p) Authorization for the City and its agents and employees to seek verification of the information submitted.

2. Improper or incomplete application. If the applicant has completed the application improperly, or if the application is incomplete, the Police Chief shall, within 30 days of receipt of the original application, notify the applicant of such fact.
3. Changes in information. Except as otherwise provided, the information required by this Subsection (e) shall be updated with the Police Chief upon any change within 10 calendar days.
4. Other permits or licenses. The fact that an applicant possesses other types of state or City permits or licenses does not exempt the applicant from the requirement of obtaining a regulatory permit.

f. Employee permits.

1. Permit required. Every employee or independent contractor working at a commercial cannabis operation or involved in transportation/delivery-related services for a commercial cannabis operation, except for vendors and certificated common carriers, shall obtain an employee permit. It shall be the duty of the operator to ensure that employee permits are obtained from the Police Department prior to the employee or independent contractor commencing work. Persons who are listed as a business owner on a regulatory permit shall not be required to obtain an employee permit if such person also serves as an employee or contractor. All responsible parties, except the business owner, shall be required to obtain an employee permit.
2. Application. Each employee and independent contractor shall be required to provide the following information under penalty of perjury, so the Police Department can perform a background check:

- (a) Name, current residence address, and telephone number.
- (b) Date of birth.
- (c) Tax identification number.
- (d) His or her height, weight, and color of eyes and hair.
- (e) Photographs for identification purposes (photographs shall be taken by the Police Department).
- (f) Fingerprinted by the Police Department.
- (g) Such other identification and information as deemed necessary by the Police Chief and pertinent to the employee permit.
- (h) Authorization for the City and its agents and employees to seek verification of the information contained within the application.
- (i) The name of the business owner holding the regulatory permit and the operator for which such person is proposed to work.

- g. Application fees. Every application for a regulatory permit, employee permit, or employee permit renewal shall be accompanied by a nonrefundable fee, as established by resolution of the City Council. This fee shall be in addition to any other business license fee or permit fee imposed by this Code or other governmental agencies. The fee shall include an amount to cover the costs of fingerprinting, photographing, background checks, and the general review and processing of the application. As an alternative to the regulatory permit fee, the City and applicant may enter into a specific project processing costs agreement.

h. Investigation and action on application.

1. Upon the filing of a properly completed application and the payment of the fee, the Police Chief shall conduct an investigation of the application, including a background check of the applicant and all employees and independent contractors. All applicants for a regulatory permit and employee permit shall be required to submit to a fingerprint-based criminal history records check conducted by the Firebaugh Police Department.
2. For regulatory permits, after the background checks and investigation are complete, and in no case later than 120 days after receipt of a properly completed application, the Police Chief shall issue a recommendation that the City Council approve or deny a regulatory permit in accordance with the provisions of this section. The recommendation for approval shall include conditions the Police Chief deems reasonable under the circumstances to protect the public health, safety, and welfare of the community. The recommendation shall be forwarded to the City Council for action following any required noticing and public hearings and may be processed concurrently with any other development application(s) necessary for the commercial cannabis operation.
3. For employee permits, after the background checks and investigation are complete, and in no case later than 30 days after receipt of a properly completed application, the Police Chief shall either approve or deny an employee permit. At the discretion of the Police Chief, employee permits may be conditionally approved pending the background investigation.

i. Term of permits and renewals. Employee permits issued under this section shall expire one year following the date of issuance. Applications for renewal shall be made at least 45 days prior to the expiration date of the permit and shall be accompanied by the nonrefundable fee referenced in this section. When made less than 45 days before the expiration date, the expiration of the permit will not be stayed

j. Grounds for denial of regulatory permit. The City Council may in its sole discretion deny a regulatory permit or limit a regulatory permit to specified uses. When considering whether to deny or limit a regulatory permit, the Council shall consider the following:

1. Whether the business or conduct of the business at a particular location is prohibited by any local or state law, statute, rule, or regulation.
2. Whether the business owner or operator has been issued a local or state permit related to commercial cannabis operations at any other location in California, or another state; whether that permit was suspended or revoked; and whether the business owner or operator has had disciplinary action relating to the permit.
3. Whether the business owner or operator has knowingly made a false statement of material fact or has knowingly omitted a material fact in the application.
4. Whether the business owner or operator, or any responsible person, has been:
 - (a) Convicted of a violent felony, as specified in Subdivision (c) of Section 667.5 of the Penal Code; and
 - (b) Convicted of a serious felony, as specified in Subdivision (c) of Section 1192.7 of the Penal Code; and

- (c) Convicted of a felony involving fraud, deceit, or embezzlement; Convicted of a felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor; and
 - (d) Convicted of a felony for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the Health and Safety Code; and
 - (e) Subject to fines, penalties, or otherwise sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Sections 12025 or 12025.1 of the Fish and Game Code; and
 - (f) Sanctioned by a licensing authority or a city, county, or City and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date the application is filed with the City; and
 - (g) A conviction for any controlled substance felony subsequent to permitting shall be grounds for revocation of a regulatory permit or denial of the renewal of a regulatory permit. A "conviction" within the meaning of this subsection means a plea or verdict of guilty or a conviction following a plea of nolo contendere.
- 5. Whether the business owner or operator has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
 - 6. Whether the business owner or operator is under 21 years of age, or any older other age set by the state.
 - 7. Whether the cannabis operation complies with the zoning ordinance or development standards of the City of Firebaugh.
 - 8. Whether the required business license fee, annual regulatory fee, revenue raising fee, or other City fees and/or taxes have been paid.
 - 9. Such other grounds the Council determines are reasonable.
- k. Grounds for denial of employee permit. The grounds for denial of an employee permit shall be one or more of the following: The applicant has been issued a local or state permit related to commercial cannabis operations at any other location in California, or another state, and that permit was suspended or revoked, or the applicant has had disciplinary action relating to the permit.
- 1. The applicant has been:
 - (a) Convicted of a violent felony, as specified in Subdivision (c) of Section 667.5 of the Penal Code.
 - (b) Convicted of a serious felony, as specified in Subdivision (c) of Section 1192.7 of the Penal Code.
 - (c) Convicted of a felony involving fraud, deceit, or embezzlement.

- (d) Convicted of a felony for hiring, employing, or using a minor in transporting, carrying, selling, giving away, preparing for sale, or peddling, any controlled substance to a minor; or selling, offering to sell, furnishing, offering to furnish, administering, or giving any controlled substance to a minor.
 - (e) Convicted of a felony for drug trafficking with enhancements pursuant to Sections 11370.4 or 11379.8 of the Health and Safety Code.
 - (f) Subject to fines, penalties, or otherwise sanctioned for cultivation or production of a controlled substance on public or private lands pursuant to Sections 12025 or 12025.1 of the Fish and Game Code.
 - (g) Sanctioned by a licensing authority or a city, county, or City and county for unauthorized commercial cannabis activities, has had a license suspended or revoked under this division in the three years immediately preceding the date, the application is filed with the City.
- 2. The applicant has engaged in unlawful, fraudulent, unfair, or deceptive business acts or practices.
- 3. The applicant has committed any act, which, if done by a permittee, would be grounds for suspension or revocation of a permit.
- 4. An applicant is under 21 years of age, or any older age set by the state.
- I. Notice of decision and final action.**
 - 1. Regulatory permit. Action on the regulatory permit shall be as follows:
 - (a) The Police Chief shall cause a written notice of his or her recommendation on the issuance or denial of a regulatory permit, and the date and time when the City Council will consider action on the regulatory permit, to be personally delivered or mailed to the applicant by certified United States mail, postage prepaid.
 - (b) Following a public hearing, the Council may grant the regulatory permit, limit the regulatory permit to specified uses, or deny the issuance of the regulatory permit for any of the grounds specified in this section. In granting a regulatory permit, the Council may impose such conditions as it deems reasonable under the circumstances to protect the public health, safety, and welfare of the community. The decision of the Council shall be final, subject to judicial review below.
 - 2. Employee permit. Action on the employee permit shall be as follows: The Police Chief shall cause a written notice of his or her determination on the issuance or denial of an employee permit to be personally delivered or mailed to the applicant by certified United States mail, postage prepaid. The Police Chiefs decision on an employee permit shall be final.
- m. Suspension and revocation of regulatory permit or employee permit.**
 - 1. Regulatory permit. The City Council may suspend or revoke the regulatory permit of a commercial cannabis operation when any of the following occur:
 - (a) The commercial cannabis operation is conducted in violation of any provision of this section, the Act, or any other applicable law.

- (b) The commercial cannabis operation is conducted in such a manner as to create a risk of danger to the public health or safety.
 - (c) A failure to pay the regulatory fee, the revenue raising fee, or all City taxes as required.
 - (d) A failure to take reasonable measures to control patron conduct, where applicable, resulting in disturbances, vandalism, or crowd control problems occurring inside of or outside the premises, traffic control problems, or obstruction of the operation of another business.
 - (e) A failure to comply with the terms and conditions of the regulatory permit or any conditional use permit issued in connection therewith.
 - (f) Any act which would be considered grounds for denial of the regulatory permit in the first instance.
2. Employee permit. The Police Chief may suspend or revoke an employee permit when the permittee or the employee has committed any one or more of the following acts:
- (a) Any act which would be considered a ground for denial of the permit in the first instance.
 - (b) Violates any provision of this section, the Act, or any other applicable law relating to the commercial cannabis operation.
 - (c) Violates or fails to comply with the terms and conditions of the employee permit.
3. Procedures for revoking regulatory permits. For regulatory permits, the procedures for revoking conditional use permits shall be utilized, except that the matter shall be heard by the City Council in the first instance.
4. Procedures for revoking employee permits. Prior to suspension or revocation of an employee permit, the Police Chief shall conduct a hearing. Written notice of the time and place of such hearing shall be served upon the permittee at least five calendar days prior to the date set for such hearing. The notice shall contain a brief statement of the grounds to be relied upon for revoking or suspending the permit. Notice may be given either by personal delivery or by certified United States mail, postage prepaid to the last known address. Any permittee aggrieved by the decision of the Police Chief to suspend or revoke an employee permit shall have no appeal rights and the Police Chief's decision shall be final, subject to judicial review as set forth in this section.
5. Immediate suspension. The Police Chief may immediately suspend or revoke a regulatory permit or an employee permit without notice or a hearing, subject to the appeal rights set forth herein, under the following circumstances:
- (a) The business owner, operator or responsible party is convicted of a public offense in any court for the violation of any law which relates to the cannabis operation, or in the case of an employee permit, the employee is convicted of a public offense in any court for the violation of any law which relates to the permit.
 - (b) The Police Chief determines that immediate suspension is necessary to protect the public health, safety, and welfare of the community. The Police Chief shall articulate the grounds for the immediate suspension in writing and the suspension shall only be for as long as necessary to address the circumstances which led to the immediate suspension.

- n. Effect of denial or revocation. When the City Council shall have denied or revoked a regulatory permit, or the Police Chief shall have denied or revoked an employee permit, no new application for a regulatory permit or an employee permit shall be accepted and no regulatory permit or employee permit shall be issued to such person or to any corporation in which he or she shall have any beneficial interest for a period of one year after the action denying or revoking the regulatory permit or employee permit.
- o. Abandonment. A regulatory permit shall be deemed abandoned if commercial cannabis operations cease for a period of more than 90 consecutive days. Before restarting operations, a new regulatory permit shall be secured. The ninety-day period shall be tolled during periods of force majeure, which shall be defined as follows: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the "public enemy"; epidemics; quarantine restrictions; freight embargoes; lack of transportation; unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; or any other causes beyond the reasonable control of the permittee.
- p. Fees and taxes. All commercial cannabis operations in the City of Firebaugh shall pay applicable fees and taxes, which may include one or more of the following:
[Amended 7-15-2019 by Ord. No. 19-03]
 - 1. Business license fee. The business owner shall always maintain a current and valid business certificate and pay all business taxes required by Title 5, Chapter 5.04, of the Firebaugh Municipal Code pertaining to Business Licensing.^[2]
[2] *Editor's Note: See Ch. 4, Licenses and Business Regulations.*
 - 2. Regulatory license fee. The business owner permitted to operate a commercial cannabis operation within the City of Firebaugh shall pay an annual regulatory license fee ("regulatory fee") to cover the costs of services, including, but not limited to, anticipated enforcement relating to the commercial cannabis operation. The amount of the fee shall be set by resolution of the City Council and be supported by the estimated additional service costs associated with the commercial cannabis operation. The regulatory fee shall be due and payable prior to opening for business and thereafter on or before the anniversary date. The regulatory fee may be amended from time to time based upon actual costs.
 - 3. Revenue raising fee. An annual revenue raising fee ("revenue raising fee") shall be applied for the privilege of having the right to operate in the City and provided as a condition of the development agreement.
 - (a) Revenue raising fee finding. The City Council specifically finds that it is approving this Ordinance allowing commercial cannabis operations to operate in the City with the express understanding that the business will pay the revenue raising fee to the City as set forth herein, and that without the revenue raising fee, the City Council would not have adopted this Ordinance allowing commercial cannabis operations to operate in the City. By opening a commercial cannabis operation in the City, the premises owner, business owner, operator, and all responsible parties agree that, if the revenue raising fee is challenged by any one of them or a third party and set aside, the business must cease operation.
 - (b) Amount of fee and terms of payment. The revenue raising fee shall be an annual fee of \$25 per square foot for the first 3,000 square feet, which shall be the minimum annual fee for all commercial cannabis operations, and \$10 per square foot for the remaining space utilized in connection with each commercial cannabis operation. The square footage calculation shall be determined by including all portions of the premises under the control of the business owner

and deducting therefrom driveways, sidewalks, landscaping, vacant unused space, areas used exclusively for office space, employee break rooms, restrooms, and storage space unrelated to the commercial cannabis operation (such as a janitorial closet). The total under-canopy square footage shall be included in the square footage calculation.

- (c) Dispensary fees and taxes. Dispensaries permitted within the City of Firebaugh shall be subject to the annual business license fee, annual regulatory permit fee based on square footage as set forth in Subsection p3(b) above, and a percentage-based revenue-raising fee as set out in the development agreement for the commercial cannabis operation regulatory permit.
- (d) If more than one commercial cannabis operation operates on the premises, whether within a single building or multiple buildings, each regulatory permit holder shall be responsible for paying the revenue raising fee. The revenue raising fee shall be payable in advance, in not less than quarterly installments, with the first quarterly payment due prior to issuance of a certificate of occupancy. The first payment shall not be prorated, and in no event shall the first payment be less than the equivalent of one full quarterly payment. All quarterly payments shall be received by the City before the end of the quarter.
- (e) The amount of the revenue raising fee shall be set by resolution of the City Council.
- (f) Alternative voter-approved tax. If the voters of the City approve a tax on commercial cannabis operations, the business owner shall pay that tax in lieu of the revenue raising fee once the City begins to collect the tax revenue.

4. Cannabis taxes. In addition to any other business or license fees required under this § 25-41.13, the business owner or cannabis license holder shall be responsible for collecting and remitting any and all taxes, whatever their nature, that are legally in effect at the time.

- q. Recordkeeping. The responsible party shall make and maintain complete, accurate, and legible records of the permitted commercial cannabis operations evidencing compliance with the requirements of this section. Those records shall be maintained for a minimum of five years.
- r. Inspection. Commercial cannabis operations shall be open for inspection by any City law enforcement officer, City code enforcement officer, or City financial auditor or their designees at any time the commercial cannabis operation is operating, at any other time upon responding to a call for service related to the property where the commercial cannabis operations are occurring, or otherwise upon reasonable notice. Recordings made by security cameras at any commercial cannabis operation shall be made immediately available to the Police Chief upon verbal request. No search warrant or subpoena shall be needed to view the recorded materials.
- s. Indemnification.
 - 1. In authorizing commercial cannabis operations under this section, the City makes no guarantees or promises as to the lawfulness of the approved activity under state or federal law, and the business owner, operator and all responsible parties are obligated to comply with all applicable laws and regulations. To the fullest extent permitted by law, the City shall not assume any liability whatsoever with respect to the adoption of this Ordinance or the operation of any commercial cannabis operation approved pursuant to this Ordinance, or under state or federal law. The business owner, operator and all responsible parties shall defend, hold harmless, release, and indemnify the City, its agents, officers, and employees, from any liability associated with the approved use or adverse determinations made by the state or federal government. An adverse determination could include cessation of operations.

2. The business owner agrees to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of any legal challenge related to commercial cannabis operations operating under the authority of this Ordinance. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the permittee of its obligation hereunder.
3. If requested by the City Attorney, the business owner shall execute an agreement memorializing the requirements of this subsection.

Section 2: This ordinance shall take effect thirty (30) days after its adoption.

Section 3: The City Clerk is authorized and directed to cause this ordinance to be codified after its adoption.

Section 4: The City Clerk is further authorized and directed to cause this ordinance, or a summary of this ordinance, to be published once in a newspaper of general circulation published and circulated in the City of Firebaugh within fifteen (15) days after its adoption. If a summary of this ordinance is published, then the City Clerk also shall cause a summary of the proposed ordinance to be published and a certified copy of the full text of the proposed ordinance to be posted in the Office of the City Clerk at least five (5) days prior to the Council's meeting at which the ordinance is to be adopted and again after the meeting at which the ordinance is adopted. The City Attorney shall approve the summary.

* * *

The foregoing Ordinance No. 22-02 was introduced at a regular meeting of the City Council of the City of Firebaugh on the 7th day of February, 2022, and was passed and adopted at a regular meeting of the City Council on the ____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor
City of Firebaugh

Rita Lozano, Deputy City Clerk
City of Firebaugh



DEL RIO ESTATES- DIAZ ST

CEN CAL BUILDERS & DEVELOPERS INC., IN 2021 HAS DEVELOPED A BEAUTIFUL COMMUNITY OF 33 HOMES IN FIREBAUGH, CA. IN WHICH, WE HAVE TAKEN TERMENDOUS PRIDE IN. ALTHOUGH IT WAS A TOUGH YEAR DEALING WITH COVID-19, HISTORIC PRICE INCREASES IN LUMBER, RECALL OF PG&E GAS PIPE, SUPPLY CHAIN ISSUES, AND LOSS OF LOTS DUE TO PG&E UNWILLING TO RELOCATE OVERHEAD POWER LINES, WHICH IN DEFINITE HURT OUR BOTTOM DOLLAR FOR THIS PROJECT; WE ENSURED WE COMPLETED THIS COMMUNITY FOR THE RESIDENTS OF FIREBAUGH.

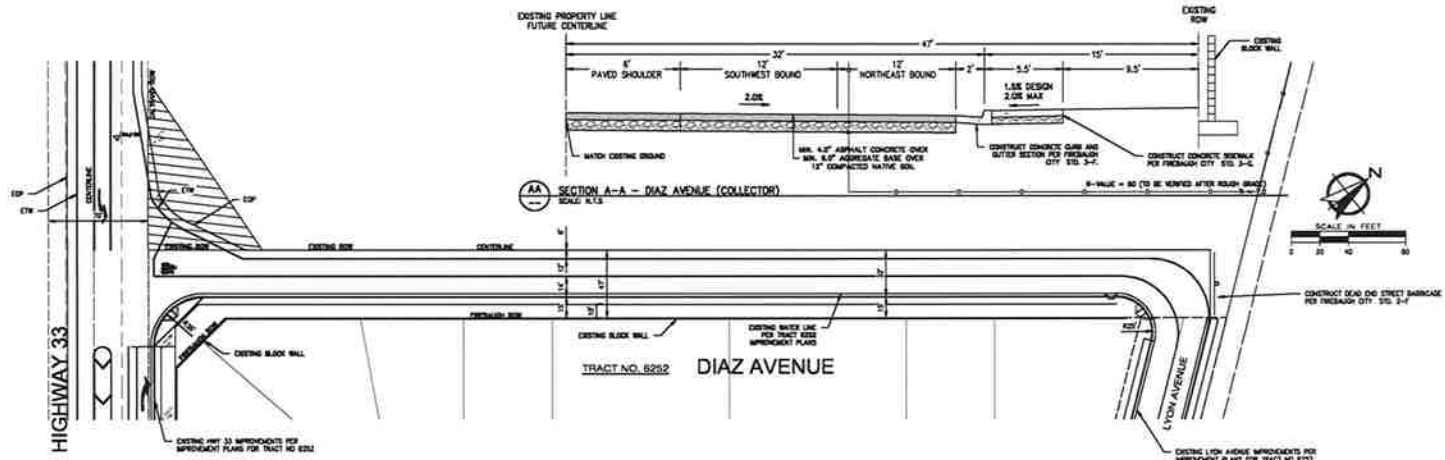
WE THUS FAR HAVE GIVEN UP LAND FOR THIS ROAD. THE DEVELOPMENT OF THIS ROAD WILL RESULT IN A HEAVY BURDEN FOR THIS PROJECT, WHICH THEN WILL RESULT IN DELAYING OUR NEXT PROJECT, WHICH WILL CONSIST OF 56 -3 BDRM, 2 BATH APARTMENT UNITS THAT WILL BE NAMED DEL RIO APARTMENTS; WE ARE AIMING TO BUILD IN 2022. THE DEL RIO APARTMENT PROJECT WILL NOT ONLY PROVIDE ADDITIONAL MUCH NEEDED HOUSING IN THE FIREBAUGH COMMUNITY, BUT IT WILL ALSO BRING THE CITY OF FIREBAUGH \$684,061.82, ALONG WITH \$310,275.84 TO THE FIREBAUGH SCHOOL DISTRICT.

HOMEOWNERS THAT ARE LIVING ON COLORADO ST IN FIREBAUGH, CA, WHICH ARE SEVEN (7) HOMES THAT WILL HAVE THEIR BACKYARDS FACING WHAT IS POTENTIALLY SET TO BE DIAZ ST. SPEAKING WITH THE NEW HOMEOWNERS, AND HEARING THEIR CONCERNS, BELOW IS THE LIST OF HOMEOWNERS WHO ARE STRONGY AGAINST THE DEVELOPMENT TO BUILD A STREET ALONGSIDE THE BACK OF THEIR NEW HOMES.

DUE TO THE SAFETY FOR THEIR HOME AND FAMILIES. HOMEOWNERS ARE CONCERENED ABOUT GATHERINGS, RANDOM VEHICLES, DRINKING, DRUGS, AND BURGLARIES THAT THIS STREET WILL ATTRACT. DIAZ ST WILL BE AIMED FOR JUST THAT, AS IT IS NOT A THROUGH ROAD, AND DEAD ENDS INTO FARMLAND.

WE THE BUILDER, CEN CAL BUILDERS & DEVELOPERS INC., ARE ALSO NOT IN AGREEMENT WITH DIAZ ST BEING BUILT AT THIS TIME. WE WANT TO ENSURE THE SAFETY OF NEW HOMEOWNERS AND STRONGLY WANT THEM TO LIVE SAFE AND WORRY FREE IN THEIR HOMES WITH THEIR CHILDREN. IN SPITE OF MUCH LOSS ON THIS PROJECT, WE ENSURED THE CHILDREN OF THIS NEIGHBORHOOD HAD A PARK TO PLAY; THAT ALSO WAS AN ADDITIONNAL COST TO THIS DEVELOPMENT THAT WE TOOK A FINANCIAL BURDEN ON, NONTHELESS GRATIFIDE.

CEN CAL BUILDERS & DEVELOPERS INC., IS REQUESTING THAT THE CITY COUNCIL OF FIREBAUGH WILL BE IMPARTIAL AND DIRECT THE COST AND RESPONSIBILITY OF DEVELOPING DIAZ AVE TO ANY FUTURE DEVELOPER. THIS ROAD WILL ULTIMETLY PROVIDE ACCESS TO THEIR PROJECT. WE WANT TO CONTIUE OUR DEVELOPMENTS IN AND AROUND FIREBAUGH, AND WE ARE HOPING THE CITY COUNCIL CAN COMPROMISE BY TRUSTING OUR WORK AND OUR REPUTATION.



811
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Call before you dig.

GATEWAY
ENGINEERING, INC.
CIVIL ENGINEERING AND SURVEYORS
14000 E. 14TH AVE., SUITE 100
DENVER, CO 80231



DATE: 02/01/2022

TENTATIVE TRACT MAP NO. 6222
NW COR. OF N. DGS PALMS AND N. LYON AVENUES
DEN CAL BUILDERS & DEVELOPERS, INC.
3487 E. INTERNATIONAL AVE. CLOVIS, CA 93819
WATER LAYOUT DIAZ AVENUE 2

MINIMUM CORNER SIGHT DISTANCE

CORNER SIGHT DISTANCE (STD) = 1.47 * $\frac{V}{P}$ * $\frac{L}{100}$
 V = SPEED (MPH)
 P = PERCENT GRADE
 L = TRUCK STOP TABLE 402.1A

LEFT TURN
 650 LINES = $6' \times 12' \times 12' \times 37' = 2.5$ LINES
 $65' = 2.5$ LINES
 $65' = 2.5 \times 2.5$ LINES (1.75) = 11.25 LINES
 CORNER SIGHT DISTANCE = 1.47 * $\frac{65}{100}$ * $\frac{11.25}{100}$ = 1.05 LINES

RIGHT TURN
 650 LINES = $6' \times 12' \times 12' = 1.5$ LINES
 $65' = 1.5$ LINES
 $65' = 1.5 \times 1.5$ LINES (1.75) = 8.75 LINES
 CORNER SIGHT DISTANCE = 1.47 * $\frac{65}{100}$ * $\frac{8.75}{100}$ = 0.83 LINES

CORNER SIGHT DISTANCE
177.1'

ADJUST TO 10-45 HOURS

STD FOR FUTURE 10-45 HOURS

HIGHWAY 33

SOUTHERN PACIFIC RAILROAD



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ENGINEER: JOSEPH B. DAGGERT
 LICENSE: 71437
 DRAWN BY: WM
 CHECKED BY: DMB
 SCALE: AS SHOWN
 PROJECT NO: 18-046
 SHEET: 4



Making Conservation
a California Way of Life.

DEPARTMENT OF TRANSPORTATION

DISTRICT 6

1352 WEST OLIVE AVENUE

P.O. BOX 12616

FRESNO, CA 93778-2616

PHONE (559) 444-2493

FAX (559) 445-5875

TTY 711

www.dot.ca.gov

January 29, 2019

06-FRE-33-71.503

Cen Cal Builders Subdivision Project
Diaz Avenue Road Connection Proposal

SENT VIA EMAIL

Mr. Karl Schoettler
City Planning Consultant
c/o City of Firebaugh
1133 P Street
Firebaugh, California 93622

Dear Mr. Schoettler:

The City of Firebaugh is proposing a new collector street (Diaz Avenue) connecting to State Route (SR) 33 as part of their 2030 General Plan and Circulation Element. The purpose of Diaz Avenue is to improve circulation within the City and to relieve traffic congestion on SR 33 at Clyde Fannon Road. The submitted conceptual plan shows Diaz Avenue located approximately 4,000 feet northwest of the intersection of SR 33 and Clyde Fannon Road. The conceptual plan also shows another proposed collector street southeast and parallel to Diaz Avenue, spaced approximately 2,000 feet from Clyde Fannon Road and Diaz Avenue. Diaz Avenue would provide a second access point for the proposed Cen Cal housing development, which is recommended by the City Police and Fire Department. The Cen Cal housing development is along the northeast side of SR 33 between Lyon Avenue and the future Diaz Avenue. The City is requiring the developer to construct one-half width of the Diaz Avenue as a condition of approval of the Project. The City is considering restricting the left-turn out movement from Diaz Avenue and Lyon Avenue to SR 33 when north Firebaugh is fully developed in the future. Based on the planned intersection spacing, Caltrans can agree in concept, the "new" intersection with the following comments:

- The intersection of SR 33 and Diaz Avenue should be constructed with a dedicated southbound left-turn lane, northbound right-turn lane, and a traffic signal or a roundabout once signal warrants are met. Right of way should be preserved for the future traffic signal or roundabout.
- Left-out turning movements at Lyon Avenue to SR 33 may be restricted once the intersection of SR 33 and Diaz Avenue is fully constructed. A dedicated southbound left-turn lane and southbound right-turn lane on SR 33 to Lyon Avenue should be constructed with the proposed Cen Cal project.
- Lyon Avenue should be constructed to a right angle at SR 33 and in line with the existing driveway west of Lyon Avenue.
- If an intersection on SR 33 is signalized, then half mile signal spacing on SR 33 at major intersections shall apply.
- SR 33 is planned for a 4-lane conventional highway with raised median. Raised medians would reduce left-turn moving conflicts at the minor streets and driveways.

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

- Right-of-way dedication along SR 33 is required for the future 4-lane highway widening (see previous comments dated October 10, 2018 still applies).
- Intersection Control Evaluation (ICE) is required for justifying the selection of an intersection traffic control (signal or roundabout) per August 23, 2013 Traffic Operations Policy Directive (TOPD).

An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect. Engineering documents for encroachment permit activity and work in the State right-of-way may be submitted using English Units. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. The Streets and Highways Code Section 670 provides Caltrans discretionary approval authority for projects that encroach on the State Highway System. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change of ownership requires a new permit application. Only the legal property owner or his/her authorized agent can pursue obtaining an encroachment permit.

Upon project approval by the local public agency and prior to an encroachment permit application submittal, the project proponent is required to schedule a "Pre-Submittal" meeting with District 6 Encroachment Permit Office. Please contact District 6 Encroachment Permit Office at (559) 488-4058 to schedule this meeting.

If you have any further questions, please contact me at (559) 444-2493.

Sincerely,



DAVID PADILLA
Associate Transportation Planner
Division of Transportation Planning

c: Michael Navarro, Chief, Planning North Branch, Caltrans

**DEPARTMENT OF TRANSPORTATION
DISTRICT 6 OFFICE**

1352 WEST OLIVE AVENUE
P.O. BOX 12616
FRESNO, CA 93778-2616
PHONE (559) 488-7396
FAX (559) 488-4088
TTY 711
www.dot.ca.gov



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May 14, 2021

6-FRE-33-71.503
DIAZ CONNECTION LAYOUT
Tract map #6252

SENT VIA EMAIL

Joseph D. Daggett, PE, PLS
Gateway Engineering, Inc.
405 Park Creek Drive
Clovis, CA 93611

Dear Mr. Daggett:

Caltrans has completed its review of the latest submittal. The City of Firebaugh is proposing a new Diaz Avenue connection to State Route (SR) 33 in the City of Firebaugh in Fresno County. The City of Firebaugh is requiring Cen Cal development to construct half of Diaz Avenue for their opening day mitigation. The Project site is located adjacent to the east side of State Route (SR) 33 at the Lyon Avenue alignment. Diaz and Lyon Avenues is spaced approximately 850 feet between the two roadway centerlines on SR 33. The project was required to construct a southbound left-turn lane and a northbound right-turn lane on SR 33 to Lyon Avenue, the access to the project site. The project is currently under construction, but it was suspended due to the utility issues.

Caltrans provides the following comments consistent with the State's smart mobility goals that support a vibrant economy and sustainable communities:

1. Cen Cal development dedicated 47 feet right-of-way adjacent to the north side of the project, half-width of the 94-foot future plan for Diaz Avenue. It was Caltrans understanding that Diaz Avenue would be barricaded and non-operational until the entire width of Diaz Avenue was constructed. However, the City of Firebaugh recently indicated in the latest meeting (held on April 26, 2021 that Diaz Avenue should be constructed at half-width with the project. In addition, the intersection of SR 33 and Diaz avenue would be open to traffic allowing two-way travel.
2. The intersection of SR 33 and the half-width Diaz Avenue and the future build out of Diaz Avenue shall meet the corner sight distance requirements per the current Caltrans Highway Design Manual (HDM). Caltrans had conducted a

field review and observed that concrete walls had been constructed along the Cen Cal project frontage on SR33 and the planned Diaz Avenue. The recommended 35'x35' corner clearance at the southeast corner of SR33/Diaz Avenue as shown in the Caltrans approved encroachment permit plans had been constructed without corner clearance. **The concrete walls will need to be re-constructed to meet the 35'x35' corner clearance on Diaz Avenue/SR33 intersection.** Caltrans also observed that a **Backflow Preventer will need to be relocated outside Caltrans right of way.** **Caltrans request the project proponent provide the corner sight distance diagram per the current Caltrans HDM Chapter 400.** A scaled hard copy of the diagram should be submitted to Caltrans for further review.

3. The interim and ultimate intersection of SR33/Diaz should be designed for the 56-foot STAA truck design vehicle. The intersection of SR33/Diaz Avenue **can be designed for a temporary public road intersection per Caltrans HDM Figure 405.7.** The southeast curb return with sidewalk and curb ramp should be constructed per Caltrans standards. The submitted cross section (half of Diaz Avenue) showed a 15-foot sidewalk, a 7-foot raised median, and a 25-foot pavement. **The 25-foot roadbed may be insufficient to accommodate two-lanes two-way traffic plus a bike lane. It is recommended that the half 7-foot raised median be deferred and paved to provide 32 feet of pavement.** A wider roadbed at the ingress and egress of Diaz Avenue at SR33 should be provided. **Additional right of way at the northeast property at the intersection would be required to allow for transition and to accommodate the 56-foot STAA truck.** Please provide truck turning diagram(s) in scale and submit to Caltrans for review.
4. **A southbound left-turn lane on SR 33 to Diaz Avenue will be required for the interim and ultimate improvements.** The southbound left-turn lane is recommended due to the high travel speeds within this section of SR 33. The current posted speed limit on SR 33 approaching the proposed Diaz Avenue alignment is 55 mph.
5. **A northbound through lane, right-turn lane, and a bike lane should be provided at the intersection of SR 33 and Diaz Avenue for the interim improvement.** A 6-foot bike lane between the through lane and right-turn lane should be provided. When SR 33 is widened to four lanes in the future, there would be insufficient right of way to place the northbound right-turn lane to Diaz Avenue. **Diaz Avenue at SR 33 will be a single stop control for the interim improvement.**

6. When Diaz Avenue/SR 33 becomes a major connection and traffic volumes warrants other type of traffic control, a roundabout should be considered. The roundabout will require additional right of way on the northeast corner of SR 33/Diaz Avenue. A traffic analysis will be required when other types of intersection traffic control are warranted. An Intersection Control Evaluation (ICE) will be required for justifying the selection of an intersection traffic control (signal or roundabout) per the August 23, 2013 Traffic Operations Policy Directive (TOPD).
7. The intersections of Diaz Avenue/SR 33 and Lyon/SR 33 are closely spaced. When the intersection of Diaz Avenue/SR 33 is widened and signalized or a roundabout is constructed, the left-turn out movement at Lyon to southbound SR 33 should be restricted with a raised median. In a previous email, the City of Firebaugh also considered restricting left-turn out movement from Lyon Avenue to southbound SR 33 when the northern part of the City is fully developed, and Diaz Avenue becomes the main access to SR 33.
8. Signalized intersections along SR33 should be maintained at a minimum of half mile spacing. Access to SR 33 should be minimized in an effort to minimize traffic conflicts.
9. Per the current Caltrans Transportation Concept Report, SR 33 at Diaz Avenue is planned for a four-lane highway with raised median and left-turn lane on 110 feet right of way.
10. Please provide the existing and the proposed right of way lines on the plans. Please provide the number of lanes for future Diaz Avenue in the cross section.
11. Plans should be provided to show the ultimate intersection to determine the future right-of-way need.
12. An encroachment permit must be obtained for all proposed activities for placement of encroachments within, under or over the State highway rights-of-way. Activity and work planned in the State right-of-way shall be performed to State standards and specifications, at no cost to the State. Engineering plans, calculations, specifications, and reports (documents) shall be stamped and signed by a licensed Engineer or Architect. Engineering documents for encroachment permit activity and work in the State right-of-way may be submitted using English Units. The Permit Department and the Environmental Planning Branch will review and approve the activity and work in the State right-of-way before an encroachment permit is issued. The

Streets and Highways Code Section 670 provides Caltrans discretionary approval authority for projects that encroach on the State Highway System. Encroachment permits will be issued in accordance with Streets and Highway Codes, Section 671.5, "Time Limitations." Encroachment permits do not run with the land. A change of ownership requires a new permit application. Only the legal property owner or his/her authorized agent can pursue obtaining an encroachment permit.

13. Prior to an encroachment permit application submittal, the project proponent is required to schedule a "Pre-Submittal" meeting with District 6 Encroachment Permit Office. To schedule this meeting, please call the Caltrans Encroachment Permit Office - District 6: 1352 W. Olive, Fresno, CA 93778, **at (559) 488-4058**.

a. **Please review the permit application - require document checklist at:**

<https://forms.dot.ca.gov/v2Forms/servlet/FormRenderer?frmid=TR0402&dispath=MAOTO&brapath=PERM>.

b. **Please also review the permit application - processing checklist at:**

<https://dot.ca.gov/-/media/dot-media/programs/traffic-operations/documents/encroachment-permits/tr-0416-applicable-review-process-checklist.pdf>.

If you have any questions, please call or email Edgar Hernandez at (559) 981-7436 or edgar.hernandez@dot.ca.gov.

Sincerely,



DAVID PADILLA, BRANCH CHIEF
Transportation Planning- North

RESOLUTION NO. 22-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH APPROVING APPLICATION(S) FOR PER CAPITA GRANT FUNDS

WHEREAS, the State Department of Parks and Recreation has been delegated the responsibility by the Legislature of the State of California for the administration of the Per Capita Grant Program, setting up necessary procedures governing application(s); and

WHEREAS, said procedures established by the State Department of Parks and Recreation require the grantee's Governing Body to certify by resolution the approval of project application(s) before submission of said applications to the State; and

WHEREAS, the grantee will enter into a contract(s) with the State of California to complete project(s); NOW,

THEREFORE, BE IT RESOLVED that the City Council of the City of Firebaugh hereby:

1. Approves the filing of project application(s) for Per Capita program grant project(s); and
2. Certifies that said grantee has or will have available, prior to commencement of project work utilizing Per Capita funding, sufficient funds to complete the project(s); and
3. Certifies that the grantee has or will have sufficient funds to operate and maintain the project(s), and
4. Certifies that all projects proposed will be consistent with the park and recreation element of the City Council of the City of Firebaugh general or recreation plan (PRC §80063(a)), and
5. Certifies that these funds will be used to supplement, not supplant, local revenues in existence as of June 5, 2018 (PRC §80062(d)), and
6. Certifies that it will comply with the provisions of §1771.5 of the State Labor Code, and
7. (PRC §80001(b)(8)(A-G)) To the extent practicable, as identified in the "Presidential Memorandum--Promoting Diversity and Inclusion in Our National Parks, National Forests, and Other Public Lands and Waters," dated January 12, 2017, the City Council of the City of Firebaugh will consider a range of actions that include, but are not limited to, the following:
 - (A) Conducting active outreach to diverse populations, particularly minority, low income, and disabled populations and tribal communities, to increase awareness within those communities and the public generally about specific programs and opportunities.
 - (B) Mentoring new environmental, outdoor recreation, and conservation leaders to increase diverse representation across these areas.
 - (C) Creating new partnerships with state, local, tribal, private, and nonprofit organizations to expand access for diverse populations.

- (D) Identifying and implementing improvements to existing programs to increase visitation and access by diverse populations, particularly minority, low-income, and disabled populations, and tribal communities.
 - (E) Expanding the use of multilingual and culturally appropriate materials in public communications and educational strategies, including through social media strategies, as appropriate, that target diverse populations.
 - (F) Developing or expanding coordinated efforts to promote youth engagement and empowerment, including fostering new partnerships with diversity-serving and youth-serving organizations, urban areas, and programs.
 - (G) Identifying possible staff liaisons to diverse populations.
8. Agrees that to the extent practicable, the project(s) will provide workforce education and training, contractor, and job opportunities for disadvantaged communities (PRC §80001(b)(5)).
 9. Certifies that the grantee shall not reduce the amount of funding otherwise available to be spent on parks or other projects eligible for funds under this division in its jurisdiction. A one-time allocation of other funding that has been expended for parks or other projects, but which is not available on an ongoing basis, shall not be considered when calculating a recipient's annual expenditures. (PRC §80062(d)).
 10. Certifies that the grantee has reviewed, understands, and agrees to the General Provisions contained in the contract shown in the Procedural Guide; and
 11. Delegates the authority to the (designated position, not name of person occupying position), or designee to conduct all negotiations, sign and submit all documents, including, but not limited to applications, agreements, amendments, and payment requests, which may be necessary for the completion of the grant scope(s); and
 12. Agrees to comply with all applicable federal, state and local laws, ordinances, rules, regulations and guidelines.

Approved and adopted the day 7th of February, 2022.

I, the undersigned, hereby certify that the foregoing Resolution Number was duly adopted by the City Council of the City of Firebaugh following a roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk



STAFF REPORT

TO: Firebaugh City Council

FROM: James Sanchez, City Attorney

DATE: February 7, 2022

SUBJECT: City Manager Employment Agreement – Benjamin Gallegos

DISCUSSION

Mr. Benjamin Gallegos is currently serving in the positions of City Manager and Acting Public Works Director. The City Council recently met in closed session and conducted a thorough annual performance evaluation of Mr. Gallegos, providing him with a positive performance evaluation. Following the evaluation, the City Council directed the City Attorney to draft an agreement that will provide the City Manager with a five-year term and a 2% cost of living increase.

The Manager currently receives a base salary of \$136,500, along with longevity pay (\$10,237.55), confidential employee premium (\$1,000) and certification/stipend pay. The existing annual certification pay includes:

- Pesticide Certificate (Lead and/or Supervisor Positions) - \$420
- Water Distribution Grade II Certification - \$1,500
- Sewer Distribution Grade 1 \$1,680

The proposed amendment provides that Mr. Gallegos will receive an additional annual base salary increase of \$2,730, along with increased longevity pay (\$204.70) and the current certification/stipend pay. Total annual earnings will be \$160,028.88

RECOMMENDATION

Consider adoption of this Resolution Approving Employment Agreement for Benjamin Gallegos.

FISCAL IMPACT

The Agreement provides for a 2% increase of annual base salary from the effective date of Agreement. The total annual earnings will be \$160,028.88. It also provides for a severance benefit if Council terminates the Manager without cause over the next five years.

Presently, there is sufficient funding available for the increase in the current budget and the expense will be accounted for in the Budget for the General Fund.

ATTACHMENTS

1. Resolution No. 22-02 - Approving Employment Agreement for Benjamin Gallegos.
2. Employment Agreement: Benjamin Gallegos

RESOLUTION NO. 22-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH
APPROVING EMPLOYMENT AGREEMENT FOR BENJAMIN GALLEGOS**

WHEREAS, the City Council of the City of Firebaugh adopted Resolution No. 17-49 which approved an Employment Agreement appointing Benjamin Gallegos to serve as the City Manager and Acting Public Works Director, effective November 6, 2017; and

WHEREAS, the City Council adopted Resolution No. 19-12, which approved an Amendment to Employment Agreement for Benjamin Gallegos on February 4, 2019; and

WHEREAS, the City Council adopted Resolution No. 19-59, which approved a Second Amendment to Employment Agreement: Ben Gallegos on November 14, 2019; and

WHEREAS, the City Council adopted Resolution No. 20-51, which approved the Third Amendment to Employment Agreement: Ben Gallegos on November 16, 2020; and

WHEREAS, Benjamin Gallegos is currently serving in the positions of City Manager and Acting Public Works Director and has received a positive annual performance evaluation dated December 20, 2021; and

WHEREAS, Benjamin Gallegos and the City Council of the City of Firebaugh now desire to supersede the previous Employment Agreement and enter into a new Employment Agreement such that Benjamin Gallegos shall have a five (5) year term and a two percent (2 %) increase to his base annual salary and longevity pay.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FIREBAUGH, CALIFORNIA that the City of Firebaugh hereby approves the terms set forth in the attached Employment Agreement with Benjamin Gallegos, retroactively effective January 1, 2022, which is attached and incorporated herein by this reference.

* * * * *

The foregoing Resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 7th day of February, 2022, by the following vote:

AYES: Council Member(s)
NOES: Council Member(s)
ABSENT: Council Member(s)
ABSTAIN: Council Member(s)

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

Approved as to Legal Form:

By _____
James Sanchez, City Attorney

EMPLOYMENT AGREEMENT

AN AGREEMENT MADE AND ENTERED INTO BY AND BETWEEN THE CITY OF FIREBAUGH (HEREINAFTER CALLED “City”) AND BENJAMIN GALLEGOS (HEREINAFTER CALLED “EMPLOYEE”)

WHEREAS, since December of 2015, Benjamin Gallegos has served as the City Manager of the City;
and

WHEREAS, the City desires to continue to employ Ben Gallegos as City Manager and Acting Public Works Director of the City as provided by Firebaugh Municipal Code (“FMC”) and personnel rules and regulations of the CITY; and

WHEREAS, City desires to have EMPLOYEE engage in good faith efforts to recruit and appoint a Public Works Director to free EMPLOYEE to focus on a major economic development project, planning projects like mixed-use development and Accessory Dwelling Unit efforts, training opportunities, networking, and advocacy of City issues; and

WHEREAS, City desires to provide certain benefits, establish certain conditions of employment and to set working conditions of said EMPLOYEE.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, effective January ___, 2022, the parties agree as follows:

Section 1. DUTIES

A. City agrees to employ Ben Gallegos as City Manager and Acting Public Works Director of the City of Firebaugh to perform the functions and duties specified in FMC, applicable law, personnel rules, and current job descriptions, as the same presently exist or may hereafter be amended, and to perform other legally permissible and proper duties and functions consistent with the position of City Manager and Acting Public Works Director and which the City Council may from time to time assign.

B. The City Council retains ultimate authority over all decisions respecting the City but has delegated authority to the City Manager as the operational chief of the City, and all employees, both regular and contract, reporting directly to him, excepting only the City Attorney. This operational authority extends to all areas of assignments, duties, reporting, discipline, evaluation, and termination. In keeping with the duties delegated to the City Manager, all directives of the City Council to City's Department Heads and their Departments shall be made through the City Manager, and not through the City Council or its individual members.

C. Notwithstanding the foregoing, the City Manager shall use his best efforts to comply with the legal directives enacted by a majority of a quorum of the City Council, and to implement such directives and other City policies according to prevailing professional standards. It is understood by both parties that pursuant to the FMC and applicable law, the EMPLOYEE reports to the entire Council and not to a single Council Member and from time to time may render decisions and make recommendations that the EMPLOYEE believes serve the best interests of the CITY, even though such decisions or recommendations may conflict with the preferences of individual members of the Council or the Mayor. The City Council recognizes that these conflicts may arise and will endeavor to evaluate the performance of the City Manager solely on professional criteria as to what is in the best interest of the City of Firebaugh as a whole.

D. EMPLOYEE shall make good faith effort to promote or hire an Assistant City Manager and a Public Works Director.

Section 2. COMPENSATION AND TERM OF SERVICE

A. **Compensation.** EMPLOYEE's base salary shall be in the amount of \$139,230 per year from and after the effective employment date written above. The Council will evaluate the EMPLOYEE annually and determine whether to adjust the starting salary between a 0-5% raise upon Council discretion and a satisfactory annual evaluation. In addition, EMPLOYEE is eligible for longevity pay at five (5) year increment of employment, employee will be given an increase of 2.5% of that employee's existing base salary, and an annual confidential premium in amounts provided for similar management employees. However, the Council may evaluate EMPLOYEE more frequently providing a majority of the Council wish to do so.

B. **Term of Employment.** Employment under this Agreement shall begin on the effective date and shall continue at will, except as otherwise provided herein. EMPLOYEE shall have a five (5) year term as City Manager and Acting Public Works Director. At any time during the five (5) year term, either party may give notice that EMPLOYEE will no longer be employed as City Manager and Acting Public Works Director but may return to the position of Public Works Director at the annual pay and benefits applicable to the position, unless the position has been filled with another City employee.

C. **Severance Benefits.** If the employment of EMPLOYEE ends without cause, pursuant to an involuntary separation from employment, EMPLOYEE shall receive an aggregate severance payment in the amount of number of months remaining in the five (5) year term multiplied by base salary and health insurance EMPLOYEE is receiving on the last day of actual employment, according to the provisions of this Section 2. The severance payment shall be paid in installments on a schedule similar to the City's then-existing payroll schedule. No severance payment shall be due or owing unless the EMPLOYEE is terminated without cause and has signed a separation agreement which shall include a statement that the severance payment resolves all issues or claims relating to the employment relationship and this Agreement. Any and all amounts paid pursuant to this Section shall be fully reimbursed by EMPLOYEE to City if EMPLOYEE is convicted of a crime involving abuse of his office or position as required by Government Code Section 53243.2. For the purposes of this Section 2:

1. "Last day of actual employment" means a day in which the EMPLOYEE is performing the services or functions of his office, and does not include a vacation day, holiday, administrative leave day or other paid or unpaid day off.

2. "Base salary and health insurance" includes confidential premium, and longevity pay but does not include vacation, sick leave, or other accrual of paid time off.

D. **Acknowledgment of "At Will" Nature of Employment; Notice of Termination.**

This Agreement creates a mutually binding "at will" employment relationship which may be terminated by either party without advance notice or cause, subject to the provisions herein. Before voluntarily resigning his position, EMPLOYEE agrees to give City Council at least four (4) weeks' notice in writing of his intention to resign, stating the reasons therefore and the effective date thereof. City, with EMPLOYEE's concurrence, may waive notice and permit resignation to take immediate effect.

E. **Rights in Connection with Separation or Termination.** The parties agree that the rights set forth in this Agreement shall be the exclusive rights available to the parties in the event of termination or separation from the employment.

Section 3. SUPPLEMENTAL BENEFITS

A. **Retirement.** City will provide retirement benefits standard for all employees. City reserves the right to modify or eliminate its retirement system, provided that EMPLOYEE shall be treated in any retirement plan in

a manner similar to City's other employees similarly situated. The parties recognize that state or federal law may have the effect of modifying the above provisions or any of the provisions of this Agreement.

B. Vacation. EMPLOYEE will earn 176 hours of vacation time per year accruing at 7.33 hours per pay period. 40 hours of accrued leave may be paid to the EMPLOYEE, may cash out up to 40 hours of vacation time per fiscal year, of that fiscal year. The maximum accrual of vacation time is 280 hours.

C. Administrative Leave. EMPLOYEE will earn 80 hours of Administrative Leave per year at the beginning of each fiscal year, which is standard for all management employees. Said leave shall be used in the fiscal year it is accrued or may be paid to EMPLOYEE 80 hours of that fiscal year.

D. Sick Leave. EMPLOYEE will earn 96 hours of sick time per year accruing at 3.69 hours of Sick Leave time per pay period, which is standard for all employees.

E. Certification Pay. EMPLOYEE is eligible for the following Certification Pay: (Water/Sewer Treatment Grade II \$1,500) (Water Distribution/Sewer Collection System Grade II \$1,680).

F. Health Insurance. City shall provide medical, dental and vision health insurance coverage it is currently providing EMPLOYEE as follows:

Full coverage of premiums for EMPLOYEE and family with no out-of-pocket costs.

G. Holidays. City shall provide to EMPLOYEE fourteen (14) paid holidays, two (2) of which are half days, which is standard for all employees.

H. City Vehicle. City shall provide EMPLOYEE with a vehicle and gasoline for his use when conducting City business. Said vehicle shall be maintained by City for EMPLOYEE'S sole use.

I. Equipment. City shall provide and pay for a cell phone and laptop computer and/or tablet for EMPLOYEE for the purpose of conducting City business only.

J. Professional Development Activities. City shall pay the registration, enrollment, and other related expenses of EMPLOYEE for professional activities, including certifications and training, official travel, meetings and occasions useful to the continued professional development of EMPLOYEE and to adequately pursue necessary official and other related functions for City, subject to review and approval by the City Council and budget limitations. Provided that necessary funds are appropriated, EMPLOYEE may make use of educational programs provided by organizations such as the California League of Cities or the International City/County Management Association ("ICMA"). Membership in these and other similar organizations shall be paid by the City for the benefit of EMPLOYEE.

Section 4. GENERAL PROVISIONS

A. Validity of Agreement; Severability. If any provision or any portion thereof contained in this Agreement is held to be unconstitutional, invalid or unenforceable, the remainder of this Agreement or portion thereof is deemed to be severable and shall remain in full force and effect.

B. Entire Agreement. This Agreement contains the entire agreement between the parties as to the subject matter hereof and supersedes any prior agreement between the parties on the subject matter hereof. No promises, representation, warranty, or covenant not included in this Agreement has been or is relied on by either party. Each party has relied upon his own examination of this Agreement, the counsel of his own advisors, and the warranties, representations, and covenants in the Agreement itself. The failure or refusal of either party to read the

Agreement or other documents or to obtain legal or other advice relevant to this Agreement constitutes a waiver of any objection, contention, or claim that might have been based on such reading, inspection, or advice.

C. Construction. Headings at the beginning of each section and subsection are solely for the convenience of the parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the parties, but rather as if both parties have prepared it. Unless otherwise indicated, all references to sections are to this Agreement.

D. Modifications Shall Be In Writing and Authorized by the City Council. This Agreement may be modified or amended only by a writing duly authorized and executed by both parties. It may not be amended or modified by oral agreements or understanding between the parties. Any modification or amendment thereto shall only be effective if authorized by the City Council of the City of Firebaugh.

E. Attorney's Fees. If either party commences an action against the other to enforce this Agreement, or because of the breach by either party of this Agreement, the prevailing party in this action shall be entitled to recover attorney fees and costs incurred in connection with the prosecution or defense of this action, including any appeal of the action, in addition to all other relief. Prevailing party within the meaning of this Section shall include, without limitation, a party who successfully brings an action against the other party for sums allegedly due or performance of covenants allegedly breached, or that party who obtains substantially the relief sought in the action.

F. Notices. Any notices required by law, or this Agreement shall be in writing and deemed delivered when given in person or sent by first-class mail with postage prepaid and addressed as follows:

For CITY
City Clerk, City of Firebaugh
1133 P. Street
Firebaugh, CA 93622

For EMPLOYEE
Benjamin Gallegos
619 Diaz Street
Firebaugh, CA 93622

Dated this 7th day of February 2022

CITY OF FIREBAUGH

EMPLOYEE:

BY: _____
Brady Jenkins, Mayor

BY: _____
Ben Gallegos

ATTEST:

Approved to as Legal Form:

Rita Lozano, Deputy City Clerk

James Sanchez, City Attorney

RESOLUTION NO. 22-03

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH
AUTHORIZING SUBMITTAL OF APPLICATION(S) FOR ALL
CALRECYCLE GRANTS FOR WHICH FIREBAUGH IS ELIGIBLE**

WHEREAS, Public Resources Code sections 48000 et seq. authorize the Department of Resources Recycling and Recovery (CalRecycle) to administer various grant programs (grants) in furtherance of the State of California's (state) efforts to reduce, recycle and reuse solid waste generated in the state thereby preserving landfill capacity and protecting public health and safety and the environment; and

WHEREAS, in furtherance of this authority CalRecycle is required to establish procedures governing the application, awarding, and management of the grants; and

WHEREAS, CalRecycle grant application procedures require, among other things, an applicant's governing body to declare by resolution certain authorizations related to the administration of CalRecycle grants.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Firebaugh authorizes the submittal of application(s) to CalRecycle for SB 1383 Local Assistance Grant Program; and

BE IT FURTHER RESOLVED that the City Manager, or **his/her designee** is hereby authorized and empowered to execute and administer in the name of the City of Firebaugh all CalRecycle grant documents, including but not limited to, applications, agreements, amendments, and requests for payment, necessary to secure grant funds and implement the approved grant project; and

BE IT FURTHER RESOLVED that these authorizations are effective upon adoption of this resolution and for five (5) years from the date of adoption of this resolution.

* * * * *

The foregoing Resolution was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 7th day of February 2022, by the following vote:

AYES: Council Member(s)

NOES: Council Member(s)

ABSENT: Council Member(s)

ABSTAIN: Council Member(s)

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk



TO: Mayor Brady Jenkins and Council Members
FROM: Pio Martin, Finance Director
DATE: February 7, 2022
SUBJECT: Resolution No. 22-23– Authorizing Submittal of Applications for Cal Recycle

RECOMMENATION:

Council by motion adopt Resolution No. 22-23 – Authorizing Submittal of Application for Cal Recycle.

BACKGROUND:

The Department of Resources Recycling and Recovery (CalRecycle) offers the SB 1383 Local Assistance Grant Program pursuant to Chapter 395, Statutes of 2016. This non-competitive grant program will provide one-time funding to local jurisdictions to assist with the implementation of regulation requirements associated with SB 1383. If adopted 1) The City Council authorizes the submittal of application(s) to CalRecycle for SB 1383 Local Assistance Grant Program. 2) The City Manager, or his/her designee is authorized and empowered to execute and administer in the name of the City of Firebaugh all CalRecycle grant documents, including but not limited to, applications, agreements, amendments, and requests for payment, necessary to secure grant funds and implement the approved grant project. 3) The authorizations are effective upon adoption of this resolution and for five (5) years from the date of adoption of this resolution

FISCAL IMPACT:

Eligible for \$20,000 grant for SB 1383 Local Assistance Grant Program. Eligible use of funds:

- Education and Outreach
- Procurement Requirement
- Enforcement and Inspection

RESOLUTION NO. 22-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH AUTHORIZING USE OF EMERGENCY REMOTE TELECONFERENCING PROVISIONS

WHEREAS, the City Council of the City of Firebaugh ("City Council") is committed to open and transparent government, and full compliance with the Ralph M. Brown Act ("Brown Act"); and

WHEREAS, the Brown Act generally requires that a public agency take certain actions in order to use teleconferencing to attend a public meeting virtually; and

WHEREAS, the City Council recognizes that a local emergency persists due to the worldwide COVID-19 pandemic; and

WHEREAS, the California Legislature has recognized the ongoing state of emergency due to the COVID-19 pandemic and has responded by creating an additional means for public meetings to be held via teleconference (inclusive of internet-based virtual meetings); and

WHEREAS, on September 16, 2021, the California legislature passed Assembly Bill ("AB") 361, which amends Government Code, section 54953 and permits a local agency to use teleconferencing to conduct its meetings in any of the following circumstances: (A) the legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing; (B) the legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; or (C) the legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B), that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees; and

WHEREAS, in order for the City Council to use teleconferencing as allowed by AB 361 after October 1, 2021, it must first adopt findings in a Resolution, allowing the City Council to conduct teleconferenced meetings for a period of thirty (30) days; and

WHEREAS, if the state of emergency remains active, or state or local officials have imposed or recommended measures to promote social distancing, in order to continue to teleconference under 361, the City Council shall make findings in a Resolution every thirty (30) days regarding the current state of the emergency.

WHEREAS, Governor Gavin Newsom declared a state of emergency for the State of California due to the COVID-19 pandemic in his order entitled "Proclamation of a State of Emergency," signed March 4, 2020; and

WHEREAS, the California Occupational and Safety Health Administration (CalOSHA) continues to recommend certain social distancing requirements, as described in detail in California Code of Regulations Title 8, section 3205 Covid Prevention; and

WHEREAS, on October 4, 2021, the City Council adopted Resolution No. 21-42 that found that the state and local emergencies have caused and will continue to cause imminent risks to the health or safety of attendees; and

WHEREAS, on January 3, 2022 the City Council last renewed the required AB 361 findings; and

WHEREAS, this Resolution is being brought at the next regular City Council meeting and is substantially compliant with the required renewed findings timeline under AB 361.

WHEREAS, the City Council is conducting its meetings through the use of telephonic and internet-based services so that members of the public may observe and participate in meetings and offer public comment.

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

1. The City Council is conducting meetings during a state of emergency.
2. CalOSHA recommends measures to promote social distancing.
3. The City Council has determined that given the state of emergency, holding in-person only meetings would present imminent risks to the health or safety of members and attendees.
4. The actions taken by the City Council through this Resolution may be applied to all City Boards and committees governed by the Brown Act unless otherwise desired by that Body.
5. The City Council authorizes the City Manager or their designee(s) to take all actions necessary to conduct City Council meetings in accordance with Government Code section 54953(e) and all other applicable provisions of the Brown Act, using teleconferencing for a period of thirty (30) days from the adoption of this Resolution after which the City Council will reconsider the circumstances of the state of emergency.
6. Staff is directed to return no later than thirty (30) days after the adoption of this Resolution with an item for the Council to consider making the findings required by AB 361 in order to continue meeting under its provisions.

The foregoing resolution is effective upon adoption and was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 7th day of February, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor
City of Firebaugh

Rita Lozano, Deputy City Clerk
City of Firebaugh



TO: Mayor Brady Jenkins and Council Members
FROM: Pio Martin, Finance Director
DATE: February 7, 2022
SUBJECT: Resolution No. Master Fee Schedule

RECOMMENATION:

Informational and direction from Council.

BACKGROUND:

The City Council established and adopted annual license fees on June 18, 1990, over 31 years ago. Staff is requesting to update the Master Fee Schedule. The current fee for business is as follows.

- a. If gross receipts (as defined by subdivision f of subsection 4-2.1) are between \$1.00 and \$50,000.00 during the fiscal year (as described in section 4-1), the business license tax for that fiscal year shall be \$50.00.
- b. If gross receipts (as defined by subdivision f of subsection 4-2.1) are between \$50,000.01 and \$100,000.00 during the fiscal year (as described in section 4-1), the business license tax for that fiscal year shall be \$100.00.
- c. If gross receipts (as defined by subdivision f of subsection 4-2.1) are greater than \$100,000.00 during the fiscal year (as described tax in for section th.at 4-1), the business license tax for that fiscal year shall be \$200.00.

Requesting to add:

- Application Processing Fee \$25.00
- SB 1186 State Mandated Fee for ADA Compliance and Education. Amount set by State of California, currently at \$4.00. Seventy percent (70%) of this fee will be retain by the city for "CASp Certification and Training Fund"
- Verification of the gross receipts:

If your business is located in Firebaugh, please submit verification of the gross receipts of your business such as a copy of the income tax return for the business (i.e.: Schedule C, Form 1065, Form 865, Form 1120, Form 1120S-S Corp, Form 8825, Schedule E, profit & loss statement, financial statement, or sales tax returns) from the last completed business tax year. The City does not require a copy of the entire tax return. All documents submitted will not be returned.

If your business is located outside of Firebaugh and you conducted business in Firebaugh during your businesses last tax reporting year, please submit verification of the gross receipts of your business (i.e.: financial statement, ledger report, copies of invoices or report of invoices generated in Firebaugh) from the last completed business tax year. Be sure to report the revenue generated only in Firebaugh. All documents submitted will not be returned

- Non-verification of gross receipts fee \$200.00

FISCAL IMPACT:

- Application Processing Fee – Range of \$8,000 - \$10,000
- SB 1186 – Range from \$1,000 to \$1,500

RESOLUTION NO. 22-05

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH
AMENDING MASTER FEE RESOLUTION RELATING TO ANNUAL LICENSE FEES FOR
BUSINESSES, TRADES AND PROFESSIONS**

WHEREAS, subsection 4-2.29 of the Municipal Code of the City of Firebaugh requires the City Council of the City of Firebaugh to establish from time to time in a Master Fee Resolution a business license tax to be imposed on and paid by every person conducting, carrying on or managing for gain any business, occupation, activity, trade, calling or profession within the City of Firebaugh; and

WHEREAS, subsections 4-2.4 and 4-2.29 of the Municipal Code of the City of Firebaugh impose a business license fee based on “gross receipts” as defined in subdivision f of subsection 4-2.1, which fee is required to be set forth in such Master Fee Resolution; and

WHEREAS, the City desires to impose a fee to recover costs of the Business License processing fees; and

WHEREAS, pursuant to state law, the City is required to impose a \$4.00 (four dollars) fee on each license for ADA Compliance and Education (Government Code Section 4467).

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

1. This resolution shall amend the “Master Fee Resolution” of the City of Firebaugh.
2. There shall be an application processing fee of \$25.00 (twenty-five dollars) added to each Business License application.
3. There shall be a state mandated fee of \$4.00 (four dollars) for ADA Compliance and Education added to each Business License application.
4. This Resolution will take effect immediately upon adoption.

* * * * *

The foregoing resolution is effective upon adoption and was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 7th day of February, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

STAFF REPORT

TO: Firebaugh City Council

FROM: Ben Gallegos, City Manager

DATE: February 7, 2022

SUBJECT: Resolution Extending the Contract with Gouveia Engineering, Inc. for the On-Call Engineering Services for Federally Funded Transportation Projects for the City of Firebaugh, and Authorizing the City Manager to Execute the Agreement

BACKGROUND

On June 15, 2018, the City of Firebaugh accepted proposals from various engineering firms to provide On-Call Engineering Services for Federally Funded Transportation Projects. City staff evaluated the proposals and selected Gouveia Engineering as the most qualified and responsive firm. Subsequently, Gouveia's proposal was reviewed and approved by Caltrans based on the Architecture and Engineering (A&E) procurement process published by the Department of Federal Highways Administration (FHWA).

On January 22, 2019, the City of Firebaugh approved a resolution awarding a contract to Gouveia Engineering for said services for a maximum term of 5 years in accordance with the FHWA guidelines. The initial contract was made effective on January 22, 2019, for an initial term of three years. The contract was to be extended for two additional years per the initial contract and proposal requirements by the City of Firebaugh.

The City is in need of the services provided by Gouveia Engineering to complete the ongoing and future transportation projects for the City of Firebaugh that are funded with both State and Federal grants.

DISCUSSION

City staff recommends to the City Council that the Gouveia contract be extended two additional years for a new total contract term of 5 years. The extended contract will include updated billing rates with a total contract fee of \$1,000,000 as shown on the attached consultant contract and proposal fees.

This resolution delegates the authority to the City Manager to execute the contract amendment.

FISCAL IMPACT

The on-call contract fees would be funded from State and Federal grants awarded for City projects.

RECOMMENDATION

Staff recommends that the Council adopt Resolution No. 22-06, extending the contract with Gouveia Engineering Inc. for the on-call engineering services for federally funded transportation projects for the City of Firebaugh and authorizing the City Manager to execute the agreement.

ATTACHMENTS

1. Resolution No. 22-06.
2. Contract Amendment No. 1 effective February 7, 2022
3. Gouveia Engineering Proposal Fees dated February 3, 2022

RESOLUTION NO. 22-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FIREBAUGH EXTENDING THE CONTRACT WITH GOUVEIA ENGINEERING, INC. FOR THE ON-CALL ENGINEERING SERVICES FOR FEDERALLY FUNDED TRANSPORTATION PROJECTS FOR THE CITY OF FIREBAUGH AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT

WHEREAS, the City of Firebaugh is responsible for constructing transportation projects that are state and federally funded; and

WHEREAS, these Federal funds are provided by the Federal Highways Administration (FHWA); and

WHEREAS, in order to comply with the Federal regulations and due to limited staffing and expertise, certain services including Engineering are contracted out to qualified firms; and

WHEREAS, these services can be offered on an on-call basis through a contract with a term for a maximum of five (5) years as allowed by the Federal regulations; and

WHEREAS, on June 15, 2018, the City of Firebaugh accepted proposals from various engineering firms to provide said Engineering services; and

WHEREAS, City staff selected Gouveia Engineering as the most qualified firm to provide these on-call services for a contract not to exceed \$1,000,000; and

WHEREAS, on January 22, 2019, the City of Firebaugh entered into a contract with Gouveia Engineering for on-call engineering services with an initial term of 3 years with an option to extend the contract for two additional years; and

WHEREAS, the City of Firebaugh is in need of the services provided by Gouveia Engineering to complete ongoing and future transportation projects funded with State and Federal grants; and

WHEREAS, the City Council desires to extend the contract with Gouveia Engineering for two additional years and delegates the City Manager to execute the contract amendment effective February 7, 2022.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FIREBAUGH RESOLVES the following:

1. The City Council approves an extension of two additional years to the contract with Gouveia Engineering Inc. for on-call engineering services for federally funded transportation projects for the City of Firebaugh, for an amount not to exceed \$1,000,000 per the Consultant Hourly Fees dated February 3, 2022.
2. The Gouveia contract is extended to February 7, 2024.
3. The City Council authorizes the City Manager to execute the contract amendment effective February 7, 2022, with Gouveia Engineering, Inc.

The foregoing resolution is effective upon adoption and was approved and adopted at a regular meeting of the City Council of the City of Firebaugh held on the 7th day of February, 2022, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

APPROVED:

ATTEST:

Brady Jenkins, Mayor

Rita Lozano, Deputy City Clerk

ATTEST:

I, Rita Lozano, Deputy City Clerk of the City of Firebaugh, do hereby certify that the foregoing resolution was duly adopted and passed by the City Council at a regular meeting of said City Council, held at the Firebaugh Council Chambers on February 7, 2022, by the following vote:

Rita Lozano, Deputy City Clerk

AMENDMENT NO. 1
TO ON-CALL ENGINEERING SERVICES CONTRACT
FOR FEDERALLY FUNDED TRANSPORTATION PROJECTS

This Amendment No. 1 to Consultant Services Contract is made and entered into effective the 7th day of February, 2022, by and between the CITY OF FIREBAUGH, a California municipal corporation (hereinafter referred to as "CITY") and GOUVEIA ENGINEERING, INC., a California Corporation (hereinafter referred to as "CONSULTANT").

RECITALS

WHEREAS, the CITY and CONSULTANT entered into a Consultant Services Contract ("AGREEMENT") dated January 22, 2019; and

WHEREAS, the AGREEMENT provides for an initial contract term of three (3) years and may be extended for two (2) additional years by contract amendment; and

WHEREAS, Article V, Paragraph A of the AGREEMENT shall be amended to read:

- A. CONSULTANT will be reimbursed for hours worked at the hourly rates specified in CONSULTANTs Cost Proposal (ATTACHMENT 1). The specified hourly rates shall include direct salary costs, indirect costs (employee benefits and overhead), and fee. These rates are subject to an annual adjustment for the performance period set forth in this AGREEMENT.

WHEREAS, the parties wish to extend the AGREEMENT for an additional two years with updated hourly rates.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

A. ALLOWABLE COSTS AND PAYMENTS

Paragraph A under Article V of the AGREEMENT shall read as amended.

B. PERFORMANCE PERIOD

In accordance with Article IV, Paragraph A of the AGREEMENT, the AGREEMENT is hereby extended two (2) years to February 7, 2024.

C. CONSULTANT COMPENSATION

In accordance with the amended Article V, Paragraph A, CONSULTANT shall use the revised hourly rates attached as "Exhibit A" to this Amendment No. 1 and supersedes ATTACHMENT 1 referred to in the AGREEMENT. The Exhibit A hourly rates shall remain in effect for the duration of the AGREEMENT Performance Period unless they are changed on an annual basis.

C. TERMS AND CONDITIONS

Except as expressly modified in this Amendment No. 1, the terms and conditions of the Consultant Services Agreement and the rights, duties, and obligations of the parties thereunder are unchanged and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 the day and year first hereinabove written.

CITY OF FIREBAUGH:

GOUVEIA ENGINEERING, INC.:

By, _____
Ben Gallegos, City Manager

By, _____
Mario Gouveia, P.E., President

EXHIBIT 10-H2 COST PROPOSAL Page 1 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)

(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)

Note: Mark-ups are Not Allowed

Consultant Gouveia Engineering Inc.☒ Prime Consultant☐ Subconsultant☐ 2nd Tier SubconsultantProject No. City of FirebaughContract No. FHWA 2019 - Amendment 1 Participation Amount \$1,000,000.00Date 02/03/2022

For Combined Rate	Fringe Benefit 16.70% + General & Administrative 129.05%	=	145.75% Combined
OR			
For Home Office Rate	Fringe Benefit % + General & Administrative %	=	Home Office ICR%
For Field Office Rate	Fringe Benefit % + General & Administrative %	=	Field Office ICR%

Fee	=	15%
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BILLING INFORMATION

CALCULATION INFORMATION

Name/Job Title/Classification ¹	Hourly Billing Rates ²			Effective Date of Hourly Rate		Actual or Avg. Hourly Rate ⁴	% or \$ Increase	Hourly Range - for Classifications Only
	Straight ³	OT(1.5x)	OT(2x)	From	To			
Mario Gouveia – President/Principal Engineer*	\$217.39	\$326.08	\$434.77	01/01/2022	12/31/2022	\$76.92	0.0%	Not Applicable
Noe Martinez – Principal Engineer	\$194.52	\$291.78	\$389.04	01/01/2022	12/31/2022	\$68.83	0.0%	
Carlos Fernandez – Senior Engineer	\$151.14	\$226.71	\$302.28	01/01/2022	12/31/2022	\$53.48	0.0%	
Nicholas Fontaine – Senior Engineer	\$151.14	\$226.71	\$302.28	01/01/2022	12/31/2022	\$53.48	0.0%	
Roberto Orozco – Associate Engineer	\$104.79	\$157.19	\$209.59	01/01/2022	12/31/2022	\$37.08	0.0%	
Danny Reed – Project Manager	\$160.95	\$241.42	\$321.90	01/01/2022	12/31/2022	\$56.95	0.0%	Not Applicable
Linda Gouveia – Vice-President/ Engineering Asst II	\$190.23	\$285.34	\$380.45	01/01/2022	12/31/2022	\$67.31	0.0%	
Mark Arrieta – Engineer Technician	\$107.70	\$161.56	\$215.41	01/01/2022	12/31/2022	\$38.11	0.0%	Not Applicable
Terri Chagnon – Engineer Technician	\$81.51	\$122.26	\$163.01	01/01/2022	12/31/2022	\$28.84	0.0%	
Deena Menezes – Clerical	\$96.06	\$144.09	\$192.12	01/01/2022	12/31/2022	\$33.99	0.0%	
Tina Whitsitt – Engineering Asst II	\$81.51	\$122.26	\$163.01	01/01/2022	12/31/2022	\$28.84	0.0%	
Reyes Porras Jr. - Engineering Tech.	\$106.26	\$159.39	\$212.52	01/01/2022	12/31/2022	\$37.60	0.0%	Not Applicable

NOTES:

1. Key personnel **must** be marked with an asterisk (*) and employees that are subject to prevailing wage requirements must be marked with two asterisks (**). All costs must comply with the Federal cost principles. Subconsultants will provide their own cost proposals.
2. The cost proposal format shall not be amended.
3. Billing rate = actual hourly rate * (1+ ICR) * (1+ Fee). Indirect cost rates shall be updated on an annual basis in accordance with the consultant's annual accounting period and established by a cognizant agency or accepted by Caltrans. All costs must comply with the Federal cost principles for reimbursement.
4. For named employees and key personnel enter the actual hourly rate. For classifications only, enter the Average Hourly Rate for that classification.

EXHIBIT 10-H2 COST PROPOSAL Page 2 of 3

SPECIFIC RATE OF COMPENSATION (USE FOR ON-CALL OR AS-NEEDED CONTRACTS)
(CONSTRUCTION ENGINEERING AND INSPECTION CONTRACTS)Consultant Gouveia Engineering Inc. ☒ Prime Consultant ☐ SubconsultantProject No. City of Firebaugh Contract No. FHWA 2019 - Amendment 1 Date 02/03/2022

SCHEDULE OF OTHER DIRECT COST ITEMS (Add additional pages as necessary)				
Description of Item	Quantity	Unit	Unit Cost	Total
Mileage Costs	N/A	N/A	N/A	IRS Std Mileage Rate
Subconsultant 1: CVEAS				\$150,000
Subconsultant 2: Krazan & Associates				\$70,000
Subconsultant 3:				\$
Subconsultant 4:				\$
Subconsultant 5:				\$

Note: Add additional pages if necessary.

NOTES:

1. List other direct cost items with estimated costs. These costs should be competitive in their respective industries and supported with appropriate documentation.
2. Proposed ODC items should be consistently billed regardless of client and contract type.
3. Items when incurred for the same purpose, in like circumstance, should not be included in any indirect cost pool or in the overhead rate.
4. Items such as special tooling, will be reimbursed at actual cost with supporting documentation (invoice).
5. Items listed above that would be considered "tools of the trade" are not reimbursable as other direct cost.
6. Travel related costs should be pre-approved by the contracting agency and shall not exceed current State Department of Personnel Administration rules.

7. If mileage is claimed, the rate should be properly supported by the consultant's calculation of their actual costs for company vehicles. In addition, the miles claimed should be supported by mileage logs.
8. If a consultant proposes rental costs for a vehicle, the company must demonstrate that this is its standard procedure for all of their contracts and that they do not own any vehicles that could be used for the same purpose.
9. The cost proposal format shall not be amended. All costs must comply with the Federal cost principles.
10. Add additional pages if necessary.
11. Subconsultants must provide their own cost proposals.

EXHIBIT 10-H2 COST PROPOSAL Page 3 of 3

Certification of Direct Costs:

I, the undersigned, certify to the best of my knowledge and belief that all direct costs identified on the cost proposal(s) in this contract are actual, reasonable, allowable, and allocable to the contract in accordance with the contract terms and the following requirements:

1. Generally Accepted Accounting Principles (GAAP)
2. Terms and conditions of the contract
3. [Title 23 United States Code Section 112](#) - Letting of Contracts
4. [48 Code of Federal Regulations Part 31](#) - Contract Cost Principles and Procedures
5. [23 Code of Federal Regulations Part 172](#) - Procurement, Management, and Administration of Engineering and Design Related Service
6. [48 Code of Federal Regulations Part 9904 - Cost Accounting Standards Board](#) (when applicable)

All costs must be applied consistently and fairly to all contracts. All documentation of compliance must be retained in the project files and be in compliance with applicable federal and state requirements. Costs that are noncompliant with the federal and state requirements are not eligible for reimbursement.

Prime Consultant or Subconsultant Certifying:

Name: Mario B Gouveia, PE Title *: President/Principal Engineer

Signature : _____ Date of Certification (mm/dd/yyyy): 02/03/2022

Email: mgouveia@gouveiaengineering.com Phone Number: (209) 854-3300

Address: 456 Sixth Street, Gustine, CA 95322

* An individual executive or financial officer of the consultant's or subconsultant's organization at a level no lower than a Vice President or a Chief Financial Officer, or equivalent, who has authority to represent the financial information utilized to establish the cost proposal for the contract.

List services the consultant is providing under the proposed contract:

On-call Engineering Services for Federally Funded Transportation Projects.



TO: Mayor Brady Jenkins and Council Members
FROM: Pio Martin, Finance Director
DATE: February 7, 2022
SUBJECT: Itinerant Business Ordinance No. 92-2

RECOMMENATION:

Informational and direction from Council.

BACKGROUND:

The City Council established and adopted Itinerant Business Licenses fees on September 21, 1992, over 29 years ago. Local Itinerant Business owner Ramiro Rodriguez attended council meeting on May 3, 2021, requesting for reduction of itinerant business license fee. The current fee and policy for itinerant business is as follows:

- Section 4-2.6.1 - \$500.00 per vehicle per each quarter of the fiscal year.
- Section 4-2.6.2 (b) Having a permanent business the fee owing pursuant to that section shall be \$100 per fiscal year.
- Section 4.2.6.2 (c) Shall not be made except upon public street within C-2, C3, M-1 and M-2 districts.
- Section 4-2.62. (e) Shall not remain in any one location longer than 60 consecutive minutes
- Current paid itinerant business three \$500.00 and one \$100.00
- Attached is Ordinance 92-2

Requesting to add/change:

- Application Processing Fee \$25.00
- Change fee from quarterly to monthly fee. Monthly rate \$140.00 for all itinerant businesses. Months shall be consecutive.

FISCAL IMPACT:

- Application Processing Fee – Range of \$100.00 – 200.00

§ 4-2.6.1 Itinerant Business.

[Ord. #92-9, S1]

Any person traveling from place to place to sell or display merchandise, goods, or food, without having a permanent business address within the City limits, or otherwise do business from a temporary structure or movable vehicle, is hereby required to obtain an itinerant business license from the collector at the rate of \$500 per vehicle per each quarter of the fiscal year; provided, however, that no such person without a permanent business address within the City limits shall travel from place to place to sell or display merchandise, goods, or food, or otherwise do business from a temporary structure or movable vehicle, without annually presenting to the collector proof that each such vehicle or temporary structure has obtained a health and sanitary inspection tag from the Fresno County Health Department within nine months prior to the itinerant business license renewal and has paid all health department license fees.

§ 4-2.6.2 Itinerant Restaurants; Catering Trucks; Regulations.

[Ord. #92-9, S2; Ord. #00-06, S1; Ord. #09-02, S1]

- a. For purposes of this section, "itinerant restaurant" and "catering truck" shall refer to vehicles, trucks, temporary structures, and other movable objects from which food, refreshments, snacks, or meals, hot or cold, are sold for consumption by the buyer.
- b. Itinerant restaurants and catering trucks operated within the City by persons having no permanent business address within the City limits shall be considered to be an itinerant business subject to the requirements of subsection 4-2.6.1 and the applicable provisions of this subsection 4-2.6.2.
- c. Itinerant restaurants and catering trucks operated within the City by persons having a permanent business address within the City limits shall be considered to be an itinerant business subject to the requirements of subsection 4-2.6.1 of this code, except that the fee owing pursuant to that section shall be \$100 per fiscal year, plus a business license based on gross receipts for their listed permanent business address, and provided further that such person shall operate such itinerant restaurant or catering truck pursuant to the requirements of paragraph d of this section.
- d. Sales from itinerant restaurants and catering trucks operated within the City, whether operated by persons having a permanent business address within the City limits or by persons having no permanent business address within the City limits, shall not be made except upon public streets within the Central Trading (C-2) District, the General Commercial (C-3) District, and the Light (M-1) and General (M-2) Manufacturing Districts of the City.
- e. Itinerant restaurants and catering trucks shall not remain in any one location longer than 60 consecutive minutes; provided such itinerant restaurants and catering trucks shall not remain on vacant or private lots within the City except where the owner thereof has filed with the City a written statement of consent. The provisions of this paragraph e shall not apply when the owner of the property is also the owner of the catering truck or itinerant restaurant.
- f. Close of business for itinerant restaurants and catering trucks shall be midnight.