



**CITY OF CORNING
CITY COUNCIL AGENDA
TUESDAY, JUNE 28, 2011
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. CALL TO ORDER: 7:30 p.m.

B. ROLL CALL:

Council:

**Toni Parkins
John Leach
Darlene Dickison
Dave Linnet
Gary Strack**

Mayor:

C. PLEDGE OF ALLEGIANCE: Led by the City Manager.

D. INVOCATION: Led by Mayor Strack.

Persons of no religious persuasion will not be expected in any manner to stand or to participate other than to remain quiet out of respect for those who do choose to participate.

E. PROCLAMATIONS, RECOGNITIONS, APPOINTMENTS, PRESENTATIONS:

F. BUSINESS FROM THE FLOOR: If there is anyone in the audience wishing to speak on items not already set on the Agenda, please come to the podium, and briefly identify the matter you wish to have placed on the Agenda. The Council will then determine if such matter will be placed on the Agenda for this meeting, scheduled for a subsequent meeting, or recommend other appropriate action. If the matter is placed on tonight's Agenda, you will have the opportunity later in the meeting to return to the podium to discuss the issue. The law prohibits the Council from taking formal action on the issue, however, unless it is placed on the Agenda for a later meeting so that interested members of the public will have a chance to appear and speak on the subject.

G. CONSENT AGENDA: It is recommended that items listed on the Consent Agenda be acted on simultaneously unless a Councilmember or members of the audience requests separate discussion and/or action.

- 1. Waive reading, except by title, of any Ordinance under consideration at this meeting for either introduction or passage, per Government Code Section 36934.**
- 2. Waive the Reading and approve the Minutes of the June 14, 2011 Regular City Council Meeting with any necessary corrections:**
- 3. June 22, 2011 Claim Warrant - \$197,197.01.**
- 4. June 22, 2011 Business License Report.**
- 5. Approve updated Terms and Conditions of accepting the Airport Improvement Grant's Master Agreement with the Federal Aviation Administration.**
- 6. Award Bids for Public Works Fuel, Asphalt, Gravel and Oil/Grease for July 1, 2011 through June 30, 2014.**
- 7. Approve Contract Change Order No. 6 increasing the Solano/Marguerite Avenue Traffic Signal Installation Project by \$3,200 for a total Project cost of \$300,401.47, approve Partial Payment Request No. 6 in the amount of \$76,866.67, and accept the Notice of Completion for the Solano St./Marguerite Avenue Traffic Signal Project.**

H. ITEMS REMOVED FROM THE CONSENT AGENDA:

I. PUBLIC HEARINGS AND MEETINGS:

J. ADJOURN TO THE CITY OF CORNING PUBLIC FINANCING CORPORATION:

CITY OF CORNING PUBLIC FINANCING CORPORATION:

The City of Corning Public Financing Corporation was created in 1997 to facilitate the City of Corning by financing public improvements and acquisition of City facilities and property. The Public Financing Corporation's Articles of Corporation provide the key specific purpose for its existence.

CALL TO ORDER:

ROLL CALL:

Council:

**Toni Parkins
John Leach
Darlene Dickison
Dave Linnet
Gary Strack**

Mayor:

8. Adopt Resolution No. 06-28-2011-02, A Resolution authorizing the execution of an Installment Purchase Agreement and an Assignment Agreement between the City of Corning and the City of Corning Public Financing Corporation to finance Water System improvements for the City.
9. Approve the Installment Purchase Agreement between the City of Corning and the City of Corning Public Financing Corporation.

OTHER BUSINESS:

ADJOURN TO REGULAR CITY COUNCIL MEETING:

K. REGULAR AGENDA:

10. Approve the Installment Purchase Agreement between the City of Corning and the City of Corning Public Financing Corporation and Adopt Resolution No. 06-28-2011-03, a Resolution authorizing the execution of an Installment Purchase Agreement to finance improvements to the Municipal Water System.
11. Ordinance No. 645, Medical Marijuana Dispensaries: An Ordinance of the City of Corning adding a Chapter to Title 17 of the Corning Municipal Code that would define and prohibit the establishment of medical marijuana dispensaries in the City of Corning. (Second Reading)
12. Approve 3-Year Agreement for Audit Services with Donald R. Reynolds, CPA.
13. Review and consider approval of renewal of Contract for City legal services.
14. Approve Resolution 06-28-2011-01 establishing an Appropriations Limit for the City of Corning fiscal year 2011-2012 at \$10,465,777.
15. Approve annual Statement of Investment Policy 2011-2012.
16. Solano Street Repaving Plan and Long Term Funding Plan; 2011 Street Paving Project.
17. Presentation, discussion and possible adoption of Resolution No. 06-28-2011-04 a Resolution adopting the Annual Program of Service and City Budget for Fiscal Year 2011-2012.

L. ITEMS PLACED ON THE AGENDA FROM THE FLOOR:

M. COMMUNICATIONS, CORRESPONDENCE AND INFORMATION:

N. REPORTS FROM MAYOR AND COUNCIL MEMBERS: City Councilmembers will report on attendance at conferences/meetings reimbursed at City expense (Requirement of Assembly Bill 1234).

Parkins:

Leach:

Dickison:

Linnet:

Strack:

O. ADJOURNMENT!:

POSTED: FRIDAY, JUNE 24, 2011



**CITY OF CORNING
CITY COUNCIL MINUTES
TUESDAY, JUNE 14, 2011
CITY COUNCIL CHAMBERS
794 THIRD STREET**

A. CALL TO ORDER: 7:30 p.m.

B. ROLL CALL:

Council:

**Toni Parkins
John Leach
Darlene Dickison
Dave Linnet
Gary Strack**

Mayor:

All members of the City Council were present except Mayor Gary Strack.

C. PLEDGE OF ALLEGIANCE: Led by the City Manager.

D. INVOCATION: Led by John Leach.

Persons of no religious persuasion will not be expected in any manner to stand or to participate other than to remain quiet out of respect for those who do choose to participate.

E. PROCLAMATIONS, RECOGNITION'S, APPOINTMENTS, PRESENTATIONS:

Presentation: Certificate of Appreciation to the Volunteers from the Church of Jesus Christ of Latter Day Saints for their "Helping Hands Project" work completed at Northside Park.

Vice Mayor Toni Parkins presented a Certificate of Appreciation to Jerry Lequia, Church of Jesus Christ of Latter Day Saints congregation member on behalf of the Church's Volunteers that participated in the Church's worldwide "Helping Hands" project work completed at Northside Park.

F. BUSINESS FROM THE FLOOR: None.

G. CONSENT AGENDA: It is recommended that items listed on the Consent Agenda be acted on simultaneously unless a Councilmember or members of the audience requests separate discussion and/or action.

- 1. Waive reading, except by title, of any Ordinance under consideration at this meeting for either introduction or passage, per Government Code Section 36934.**
- 2. Waive the Reading and Approve the Minutes of the May 24, 2011 City Council Meeting with any necessary corrections:**
- 3. June 8, 2011 Claim Warrant - \$169,985.76.**
- 4. June 8, 2011 Business License Report.**
- 5. May 2011 Building Permit Valuation - \$136,896.**
- 6. May 2011 Wages and Salaries - \$317,196.51.**
- 7. May 2011 – Treasurer's Report.**
- 8. City of Corning Wastewater Operation Summary Report – May 2011.**
- 9. Approve Contract Change Order No. 5 increasing the Solano/Marguerite Avenue Traffic Signal Installation Project by \$7,255 for a total Project cost of \$297,210.47.**
- 10. Approve Progress Pay Estimate No. 5 in the amount of \$74,054.86 to Franklin Construction for the 2010 Traffic Signal Installation Project.**

11. Ordinance No. 646 amending Chapter 15.32 of the Corning Municipal Code regarding the Informal Bid Limit of the "Contract and Bidding Procedures for Public Projects". (Second Reading and Action)

Vice Mayor Parkins introduced the items listed on the Consent Agenda. Councilor Leach asked to pull Consent Item 9 for further discussion.

Councilor Dickison moved to approve Consent Agenda Items 1-8 and 10-11. Councilor Leach seconded the motion. **Ayes: Parkins, Leach, Dickison and Linnet; opposed: none. Absent: Strack; abstain: none. Motion was approved by a 4-0 vote with Strack absent.**

H. ITEMS REMOVED FROM THE CONSENT AGENDA:

9. Approve Contract Change Order No. 5 increasing the Solano/Marguerite Avenue Traffic Signal Installation Project by \$7,255 for a total Project cost of \$297,210.47.

Councilor Leach asked Public Works Director John Brewer if this would be the last change order for this project; he was informed no. Mr. Brewer explained that there will be another in the amount of \$3,200 that is associated with additional paving work needed because of issues relating to the depth of street asphalt at the site. He stated that this will be presented to the Council at the next meeting.

Councilor Leach asked if we had resolved the turn lane issue; Mr. Brewer stated yes. Councilor Leach then asked the City Manager how this additional cost will affect the City's finances; Mr. Kimbrough explained that the City is prepared for these types of contingencies on street projects.

Ross Turner, explaining that this project was presented when he was on the Council, stated that at no time does he remember discussion of the City providing a retaining wall along Marguerite and Solano Streets for the property owner on the southeast corner of the intersection. Mr. Brewer stated his belief that the retaining wall was included in the original plans presented to the Council and explained that the retaining wall was provided in lieu of the City paying costs for additional surveying and to purchase the necessary right-of-way from the property owner.

Councilor Leach moved to approve Contract Change Order No. 5 increasing the Traffic Signal Installation Project Contract by \$7,255. Councilor Linnet seconded the motion. **Ayes: Parkins, Leach, Dickison and Linnet; opposed: none. Absent: Strack; abstain: none. Motion was approved by a 4-0 vote with Strack absent.**

I. PUBLIC HEARINGS AND MEETINGS:

12. Ordinance No. 645, Medical Marijuana Dispensaries: An Ordinance of the City of Corning adding a Chapter to Title 17 of the Corning Municipal Code that would define and prohibit the establishment of medical marijuana dispensaries in the City of Corning. (First Reading)

Vice Mayor Parkins introduced this item by title and Planning Director John Stoufer briefed the Council on the contents of the proposed Ordinance. Mr. Stoufer emphasized that the law is unclear, however he believes that to date approximately 100 jurisdictions have approved a ban on Dispensaries.

Mr. Stoufer explained that State Law does not currently define Dispensaries; therefore as part of this Ordinance, it includes a definition of a Marijuana Dispensary in Section 17.65.020. He then publicly read this section defining Dispensaries. Mr. Stoufer explained that within the proposed Ordinance, Section 17.65.030 Prohibition of Marijuana Dispensaries states: "Notwithstanding any other provision of this Code, the establishment, development, construction, maintenance, or operation of a Marijuana Dispensary is hereby prohibited, and is not a permitted or conditionally permitted use in any zoning district, even if located within an otherwise permitted use." He then referred the Council to the City Attorney for further explanation.

City Attorney Michael Fitzpatrick informed the Council of the termination date of the existing Interim Ordinance, explaining that the City currently has no Zoning District for this type of

business within the City. He stated that even if the Council does not take action prior to the termination date of the existing Interim Ordinance, a Dispensary could not open in the City of Corning. Mr. Fitzpatrick then outlined the Council's options related to this item tonight.

John Stoufer reminded Council prior to opening the public hearing that the issue being considered tonight relates to Dispensaries only and has nothing to do with cultivation. He also recommended that the Council refer this item back to the Planning Commission should the Council decide to make substantial changes to the proposed Ordinance.

Vice Mayor Parkins opened the Public Hearing at 7:50 p.m.

Speakers in favor of the Ordinance: There were four speakers from the audience in favor of the proposed Ordinance. One speaker, Pastor Ken Kellinger encouraged the adoption of the Ordinance and claimed to have counseled a teenager claiming to have acquired marijuana from a man who had obtained the marijuana from Tehama Herbal Collective when it was operating in town. Another speaker stated she was in favor of the proposed Ordinance and cited health issues she has experienced such as headaches when exposed to the odor/smoke from the marijuana. Another audience member stated her belief that we don't need another Dispensary, stating they can go to a pharmacy to obtain their marijuana. It was explained that because marijuana possession is still against federal law, pharmacies cannot dispense it.

There were three speakers from the audience opposed to the Ordinance including former Tehama Herbal Collective owner/operator Ken Prather. Sharon Novack stated her belief that it is our Christian duty to be compassionate and allow the dispensing of medical marijuana for those suffering and to stand behind those that have voted for this. Another audience member stated his support for allowing Dispensaries and why.

Ken Prather addressed the Council stating that not having a Dispensary in town was "inhumane and unfair" and claimed that illegal marijuana sales have increased in Corning since his Collective was closed. He stated that he had asked for an alternative zone when he located THC on Solano Street and read from a document relating to SB 420 and Prop. 215. He cited the City of Los Angeles and the City of Chico as examples of Cities allowing and regulating Dispensaries. Mr. Prather stated he felt that the proposed Ordinance which defines a Dispensary as four or more people, in combination with the Cultivation Ordinance was unfair. He stated his belief that the cost to cultivate marijuana within the City under the current Cultivation Ordinance's standards were to cost prohibitive for many on a fixed income to produce. He also stated that traveling out of town to obtain medical marijuana was also cost prohibitive for many. He appealed to the Council to work with the Ad-Hoc Committee and re-evaluate this Ordinance.

Councilor Leach said he has done some research on the subject and has received and read the emails sent to him, he understands that there is a need for medical marijuana; however he also realizes that there is some abuse of it as well. He announced that he discussed the issue with the City Attorney earlier tonight regarding his concerns of possible lawsuits relating to this issue. Councilor Leach stated that he has a lot of mixed emotions on the issue and he would like this to go back to the Ad-Hoc Committee to discuss the possibility of allowing a zone within the City for this.

Councilor Linnet stated he discussed this issue with Mr. Prather for about 2 hours last week and one of the questions he asked Mr. Prather was whether a Dispensary serving only City residents would work. He also confirmed with Mr. Prather that not having a Dispensary in Corning was not preventing those in need of medical marijuana from obtaining it in Chico or Redding. He also stated that he is not against someone using it for medical purposes; however he is against a Dispensary within the City.

Councilor Dickison stated that she is not against the use of it for medical reasons, however she feels that it is abused. She stated that she has no problem with the use for medical reasons; however she is against a Dispensary in the City.

Councilor Parkins stated that she sees the issue as a no win situation. She said that she is not against it for those needing it for medicinal purposes; however she stated that the majority of the feedback she has received from City residents on this issue is that they do not want a Dispensary in town, or they believe the City is not ready one at this time. She further stated that she also doesn't agree with all of the Where As' as stated currently in the Ordinance. She then asked for Council's direction.

Councilor Leach then read an article from the Red Bluff Daily News related to this issue.

Ken Prather stated that THC was a Collective, and stated that he would like to know how THC was defined as a Dispensary. He emphasized that THC was a Collective that dispensed the marijuana. He stated that the City is defining us as a Dispensary and are discussing banning us. Mr. Prather stated he didn't think the City should ban us to try and eliminate recreational use of marijuana; stating that the City is driving them to the illicit drug market. He again referred to SB420 and Prop. 215.

Planning Director Stoufer again explained the definition of a Dispensary under the proposed Ordinance and emphasized that with the adoption of this Ordinance Dispensaries would be banned within the City. He further stated that the City is not banning Collectives or Cooperatives, but rather placing limitations via member numbers for Collectives and Cooperatives. He stated that 4 or more people dispensing marijuana within the City under the proposed Ordinance would be defined as a Dispensary. Mr. Stoufer explained that a Cooperative or Collective is defined as 3 or less members.

City Attorney Michael Fitzpatrick explained the Council's motion options relating to this item.

Vice Mayor Parkins closed the public hearing at 8:42 p.m.

Councilor Dickison suggested accepting it for the first reading and continuing the public hearing to the next meeting for discussion. Vice Mayor Parkins stated that she had already closed the public hearing.

Councilor Linnet stated he agreed with City Manager Kimbrough that taking no action tonight is just postponing a decision.

City Attorney Fitzpatrick stated that while the public hearing had been closed tonight, the public can still speak on the issue and voice their concerns at the next meeting where it will be brought back to Council.

Councilor Leach moved to introduce and waive the first reading of Ordinance No. 645, the Ordinance adding a Chapter to Title 17 of the Corning Municipal Code that would define a Medical Marijuana Dispensary and prohibit the establishment of a dispensary, as defined, within any Zoning District in the City of Corning. Councilor Dickison seconded. **Ayes: Parkins, Leach, Dickison and Linnet; opposed: none. Absent: Strack; abstain: none. Motion was approved by a 4-0 vote with Strack absent.**

J. REGULAR AGENDA:

13. Request Council's approval to install City sewer connection for Sunsweet Dryers located at 23760 Loleta Avenue.

This item was introduced by Vice Mayor Parkins and explained by City Public Works Director John Brewer. Mr. Brewer confirmed that the business was located within the City's "Sphere of Influence" and announced a correction in the recommendation that would state "authorize" rather than "install". Councilor Dickison then moved to authorize the connection to the City's sewer system for Sunsweet Dryers located at 23760 Loleta Avenue. Councilor Linnet seconded

the motion. **Ayes: Parkins, Leach, Dickison and Linnet; opposed: none. Absent: Strack; abstain: none. Motion was approved by a 4-0 vote with Strack absent.**

14. Plan for filling the Assistant Public Works Director Position following the anticipated retirement of current Assistant Public Works Director Carl Crain.

Vice Mayor Parkins introduced this item by title and Public Works Director John Brewer and City Manager Kimbrough outlined the proposed plan. Mr. Brewer explained that the person selected for this position must possess a rare combination of training and people skills, both of which Mr. Crain has. Mr. Kimbrough pointed out that this position is that of a senior member of management and is a critical position requiring a lot of knowledge and versatility. The person in this position supervises projects dealing with sewerline, waterline, stormwater drainage system, and street construction and maintenance. This position also supervises maintenance of all City buildings and parks.

Councilors Linnet and Leach both asked if the position would be first advertised in house. Mr. Kimbrough stated that the advertisement for the position would be open to the public; however any interested employees are welcome to apply. Both Leach and Linnet stated their concerns of not advertising in house first so as to protect the promotional ladder.

Following a lengthy discussion, Councilor Dickison moved to approve the draft recruitment and succession plan for replacing Assistant Public Works Director Carl Crain upon his retirement. Motion received no second. **Item not passed for lack of a second on the motion.**

15. Establish monthly City Awards for "Business of the Month" and "Employer of the Month" and appoint award recommendation committee members.

This item was introduced by Vice Mayor Parkins and City Manager Kimbrough explained that Councilor Linnet presented the idea for such awards to Mayor Strack and himself. City Clerk Lisa Linnet put together the Staff Report based upon Mr. Linnet's ideas. Councilor Linnet stated that this is geared towards the small businesses and was not in conjunction with any awards/certificates issued to businesses by the Chamber of Commerce.

Councilor Dickison stated that the Chamber currently issues similar awards and asked how these awards would differ from theirs. Councilor Linnet responded stating that the proposed awards would be an acknowledgement from the City and be directed more towards the small businesses.

Vice Mayor Parkins asked if those recommended for the committee had been contacted; she was informed that they had.

Councilor Leach moved to approve the establishment of monthly "Business of the Month" and "Employer of the Month" awards and the appointment of Councilman Dave Linnet, Police Chief Tony Cardenas and Fire Dispatcher/Volunteer Fireman Rocky Peterson to serve on the selection committee. Councilor Linnet seconded the motion. **Ayes: Parkins, Leach, Dickison and Linnet; opposed: none. Absent: Strack; abstain: none. Motion was approved by a 4-0 vote with Strack absent.**

K. ITEMS PLACED ON THE AGENDA FROM THE FLOOR: None

L. COMMUNICATIONS, CORRESPONDENCE AND INFORMATION: None.

M. REPORTS FROM MAYOR AND COUNCIL MEMBERS: City Councilmembers will report on attendance at conferences/meetings reimbursed at City expense (Requirement of Assembly Bill 1234).

Parkins: None

Leach: None

Dickison: Reported that the LAFCO meeting had again been canceled for lack of agenda.

Linnet: Reported that we are keeping ahead of the graffiti in town.

Strack: Not present.

Pastor Ken Killinger stated that he prays for the City Council. He then asked about the progression with the Skateboard Park. Planning Director John Stoufer provided a brief update of the Park status.

N. ADJOURNMENT!: 9:10 p.m.

Lisa M. Linnet, City Clerk



MEMORANDUM

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: LORI SIMS
ACCOUNTING ASSISTANT

DATE: June 22, 2011

SUBJECT: Cash Disbursement Detail Report for the
Tuesday, June 28, 2011 Council Meeting

PROPOSED CASH DISBURSEMENTS FOR YOUR APPROVAL CONSIST OF THE FOLLOWING:

A.	Cash Disbursements	Ending	06-16-11	\$	99,195.52
B.	Payroll Disbursements	Ending	06-15-11	\$	41,060.00
C.	Cash Disbursements	Ending	06-14-11	\$	(- 2,520.59)
D.	Cash Disbursements	Ending	06-22-11	\$	59,462.08
GRAND TOTAL				\$	<u>197,197.01</u>

REPORT.: Jun 16 11 Thursday
 RUN....: Jun 16 11 Time: 11:27
 Run By.: LORI

CITY OF CORNING
 Cash Disbursement Detail Report
 Check Listing for 06-11 Bank Account.: 1020

PAGE: 001
 ID #: PY-DP
 CTL.: COR

Check Number	Check Date	Vendor Number	Vendor Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Description
012558	06/09/11	CAM02	CAMELLIA VALLEY SUPPLY	-3124.98	.00	-3124.98	0771570u	Ck# 012558 Reversed
				-413.58	.00	-413.58	0771620u	Ck# 012558 Reversed
			Check Total.....:	-3538.56	.00	-3538.56		
012600	06/10/11	AME06	AMERICAN RIVER COLLEGE	104.00	.00	104.00	110610	TRAINING/ED-POLICE
012601	06/10/11	PGE01	PG&E	124.69	.00	124.69	110606	ELECT-STR & TRF LIGHTS (S
012602	06/14/11	HOL06	HOLIDAY INN	449.30	.00	449.30	110613	TRAINING/ED-POLICE
012603	06/14/11	JOU00	JOURDAN, JUSTIN BRYANT	339.98	.00	339.98	110613	TRAINING/ED-POLICE
012604	06/15/11	ACC00	ACCESS INFORMATION	126.00	.00	126.00	61788	EQUIP MAINT. - GEN/CITY
012605	06/15/11	AND03	ANDERS, JOANN	305.00	.00	305.00	11-121	GRANT ADM/HOUSING ELEMENT
012606	06/15/11	ARA02	ARAMARK UNIFORM SRV.INC.	38.36	.00	38.36	1152579	Mat/Supplies --
012607	06/15/11	BAS01	BASIC LABORATORY, INC	86.00	.00	86.00	1105611	ProfServices Water Dept
012608	06/15/11	BEN04	BEN TOILET RENTALS, INC.	301.21	.00	301.21	240026	MAT & SUPPLIES - PARKS
012609	06/15/11	CAM02	CAMELLIA VALLEY SUPPLY	458.74	.00	458.74	0771570A	Mat/Supplies - WTR
				413.58	.00	413.58	0771620A	Mat/Supplies - WTR
			Check Total.....:	872.32	.00	872.32		
012610	06/15/11	CAR12	CARREL'S OFFICE MACHINES	4.89	.00	4.89	100905	MAT/SUPPLIES - LIBRARY
012611	06/15/11	CHE02	CHEM QUIP, INC.	179.22	.00	179.22	5090302	MAT/SUPPLIES - POOL
				16.20	.00	16.20	5090303	MAT/SUPPLIES - POOL
			Check Total.....:	195.42	.00	195.42		
012612	06/15/11	COR22	CORNING MEDICAL ASSOC	966.00	.00	966.00	110610	Emp Physicals - POOL
012613	06/15/11	FRA03	FRANKLIN CONSTRUCTION, IN	66649.37	.00	66649.37	11-0615	SIGNAL IMPROVEMENTS/ST. P
012614	06/15/11	LNC01	LN CURTIS & SONS	193.69	.00	193.69	121349300	MAT/SUPPLIES - FIRE
012615	06/15/11	NOR31	NORM'S PRINTING	62.24	.00	62.24	009944	Office Supplies/City Coun
				290.65	.00	290.65	009961	Mat&Supplies/GenCity (Bud
			Check Total.....:	352.89	.00	352.89		
012616	06/15/11	OFF01	OFFICE DEPOT	10.81	.00	10.81	135125076	Office Supplies PoliceDis
				309.32	.00	309.32	566410573	Office Supplies PoliceDis

REPORT.: Jun 16 11 Thursday
 RUN....: Jun 16 11 Time: 11:27
 Run By.: LORI

CITY OF CORNING
 Cash Disbursement Detail Report
 Check Listing for 06-11 Bank Account.: 1020

PAGE: 002
 ID #: PY-DP
 CTL.: COR

Check Number	Check Date	Vendor Number	Vendor Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Description
012616	06/15/11	OFF01	OFFICE DEPOT	127.04	.00	127.04	567251029	Office Supplies PoliceDis
Check Total.....:				447.17	.00	447.17		
012617	06/15/11	RAR01	ROLLS, ANDERSON & ROLLS	28078.00	.00	28078.00	8498	PROP 84 PARK - PROP 84 PK
012618	06/15/11	RED14	RED BLUFF OUTDOOR POWER,	14.40	.00	14.40	011074	MAT/SUPPLIES - STR
012619	06/15/11	RIC04	RICHARD HEATH & ASSOCIATE	500.00	.00	500.00	13156	CDBG REHAB
012620	06/15/11	SWW00	SWWC SERVICES, INC.	690.00	.00	690.00	17856	Profession Services/WWTP
				703.80	.00	703.80	17861	Professional Services/WWT
Check Total.....:				1393.80	.00	1393.80		
012621	06/15/11	UNI02	UNIFORMS, TUXEDOS & MORE	866.00	.00	866.00	106844	SAFETY ITEMS - POLICE
012622	06/16/11	CON07	CONEXIS	30.00	.00	30.00	05110R348	MEDICAL INS - COBRA
012623	06/16/11	HIL10	JOURDAN, TIFFANY	145.59	.00	145.59	110615	TRAINING/ED - DISPATCH
012624	06/16/11	JES10	JESSEE HEATING & AIR, INC	75.00	.00	75.00	051673	BLDG/MAINT - LIBRARY
				75.00	.00	75.00	051674	BLDG/MAINT - TRANSP.FAC
Check Total.....:				150.00	.00	150.00		
Cash Account Total.....:				99195.52	.00	99195.52		
Total Disbursements.....:				99195.52	.00	99195.52		
Cash Account Total.....:				.00	.00	.00		

REPORT.: Jun 16 11 Thursday
 RUN....: Jun 16 11 Time: 11:27
 Run By.: LORI

CITY OF CORNING
 Cash Disbursement Detail Report - Payroll Vendor Payment(s)
 Check Listing for 06-11 Bank Account.: 1025

PAGE: 003
 ID #: PY-DP
 CTL.: COR

Check Number	Check Date	Vendor Number	Name	Gross Amount	Discount Amount	Net Amount	-----Payment Information-----	
							Invoice #	Description
5049	06/15/11	BAN03	POLICE OFFICER ASSOC.	325.00	.00	325.00	B10614	POLICE OFFICER ASSOC
5050	06/15/11	CAL37	CALIFORNIA STATE DISBURSE	179.07	.00	179.07	B10614	WITHHOLDING ORDER
5051	06/15/11	EDD01	EMPLOYMENT DEVELOPMENT	3200.41	.00	3200.41	B10614	STATE INCOME TAX
				1213.71	.00	1213.71	1B10614	SDI
			Check Total.....	4414.12	.00	4414.12		
5052	06/15/11	ICM01	ICMA RETIREMENT TRUST-457	2654.00	.00	2654.00	B10614	ICMA DEF. COMP
5053	06/15/11	OEU03	OPERATING ENGINEERS	500.00	.00	500.00	B10614	CREDIT UNION SAVINGS
5054	06/15/11	PERS1	PUBLIC EMPLOYEES RETIRE	26012.17	.00	26012.17	B10614	PERS PAYROLL REMITTANCE
5055	06/15/11	PERS4	Cal Pers 457 Def. Comp	444.50	.00	444.50	B10614	PERS DEF. COMP.
5056	06/15/11	PRE03	PREMIER WEST BANK	4699.75	.00	4699.75	B10614	HSA DEDUCTIBLE
5057	06/15/11	STA04	STATE OF CALIFORNIA	519.25	.00	519.25	B10614	WAGEASN 1107012828
5058	06/15/11	VAL06	VALIC	1312.14	.00	1312.14	B10614	AIG VALIC P TAX
			Cash Account Total.....	41060.00	.00	41060.00		
			Total Disbursements.....	41060.00	.00	41060.00		

REPORT.: Jun 14 11 Tuesday
 RUN....: Jun 14 11 Time: 14:29
 Run By.: LORI

CITY OF CORNING
 Cash Disbursement Detail Report
 Check Listing for 06-11 Bank Account.: 1020

PAGE: 001
 ID #: PY-DP
 CTL.: COR

Check Number	Check Date	Vendor Number	Vendor Name	Gross Amount	Discount Amount	Net Amount	Payment Information	
							Invoice #	Description
012558	06/09/11	CAM02	CAMELLIA VALLEY SUPPLY	-3124.98	.00	-3124.98	0771570u	Ck# 012558 Reversed
				-413.58	.00	-413.58	0771620u	Ck# 012558 Reversed
			Check Total.....	-3538.56	.00	-3538.56		
012600	06/10/11	AME06	AMERICAN RIVER COLLEGE	104.00	.00	104.00	110610	TRAINING/ED-POLICE
012601	06/10/11	PGE01	PG&E	124.69	.00	124.69	110606	ELECT-STR & TRF LIGHTS (S
012602	06/14/11	HOL06	HOLIDAY INN	449.30	.00	449.30	110613	TRAINING/ED-POLICE
012603	06/14/11	JOU00	JOURDAN, JUSTIN BRYANT	339.98	.00	339.98	110613	TRAINING/ED-POLICE
			Cash Account Total.....	-2520.59	.00	-2520.59		
			Total Disbursements.....	-2520.59	.00	-2520.59		

REPORT.: Jun 22 11 Wednesday
 RUN....: Jun 22 11 Time: 14:23
 Run By.: LORI

CITY OF CORNING
 Cash Disbursement Detail Report
 Check Listing for 06-11 Bank Account.: 1020

PAGE: 001
 ID #: PY-DP
 CTL.: COR

Check Number	Check Date	Vendor Number	Vendor Name	Gross Amount	Discount Amount	Net Amount	Invoice #	Payment Information Description
012625	06/22/11	ATT13	AT&T	719.51	.00	719.51	110611	COMMUNICATIONS-
012626	06/22/11	BAS01	BASIC LABORATORY, INC	86.00	.00	86.00	1105819	ProfServices Water Dept
012627	06/22/11	BAT01	BATTERIES PLUS	117.78	.00	117.78	138602	MAT & SUPPLIES-POLICE
				36.14	.00	36.14	138685	MAT & SUPPLIES-POLICE
			Check Total.....:	153.92	.00	153.92		
012628	06/22/11	CAL40	CAL SIGNAL CORP	1265.00	.00	1265.00	3088	SIGNAL IMPROV-STR
012629	06/22/11	DEP03	DEPT OF TRANS/CAL TRANS	612.51	.00	612.51	9900095	Equip.Maint. St&Trf Light
012630	06/22/11	GAL02	GALLS, AN ARAMARK COMPANY	92.15	.00	92.15	511430482	SAFETY ITEMS-POLICE
012631	06/22/11	GRA02	GRAINGER, W.W., INC	619.38	.00	619.38	955870447	SMALL TOOLS-MECH MAINT
				239.92	.00	239.92	955870448	SMALL TOOLS-MECH MAINT
			Check Total.....:	859.30	.00	859.30		
012632	06/22/11	JOH06	JOHNSON'S TURBO CLEAN	792.87	.00	792.87	3724	MAT & SUPPLIES-BLD MAINT
012633	06/22/11	LAR01	LARRY'S PEST & WEED,	4667.00	.00	4667.00	39144	WEED/TREE SPRAY-STR
012634	06/22/11	NEX02	NEXTEL	127.63	.00	127.63	086319115	COMMUNICATIONS-POLICE
012635	06/22/11	NOR31	NORM'S PRINTING	14.02	.00	14.02	009946	MAT & SUPPLIES-CITY COUNC
				91.56	.00	91.56	009972	OFFICE SUPPLIES-FINANCE
			Check Total.....:	105.58	.00	105.58		
012636	06/22/11	OFF01	OFFICE DEPOT	134.61	.00	134.61	568011752	Office Supplies PoliceDis
012637	06/22/11	PAC16	PACIFIC TELEMAGEMENT SE	38.00	.00	38.00	279581	COMMUNICATIONS-GEN CITY
012638	06/22/11	PGE2A	PG&E	49.00	.00	49.00	110617	ELECT-BLUE HERON CT
012639	06/22/11	QUI02	QUILL CORPORATION	389.95	.00	389.95	4825493	Office Supplies-
012640	06/22/11	RAR01	ROLLS, ANDERSON & ROLLS	968.50	.00	968.50	8503	SIGNAL IMPROV-ENGR
012641	06/22/11	REV01	REVIVAL ANIMAL HEALTH	271.97	.00	271.97	67575	MAT & SUPPLIES-ACO
012642	06/22/11	SWW00	SWWC SERVICES, INC.	45087.79	.00	45087.79	17869	PROF SVCS-WWTP
				2696.38	.00	2696.38	17870	PRETREATMENT PROG-SWR
			Check Total.....:	47784.17	.00	47784.17		
012643	06/22/11	WAR05	WARREN, DANA KARL	332.50	.00	332.50	110620	REC INSTRUCTOR-REC

REPORT.: Jun 22 11 Wednesday
RUN...: Jun 22 11 Time: 14:23
Run By.: LORI

CITY OF CORNING
Cash Disbursement Detail Report
Check Listing for 06-11 Bank Account.: 1020

PAGE: 002
ID #: PY-DP
CTL.: COR

Check Number	Check Date	Vendor Number	Vendor Name	Gross Amount	Discount Amount	Net Amount	-----Payment Information----- Invoice #	Description
012644	06/22/11	RET00	RETAIL PROFIT SYSTEMS	11.91	.00	11.91	16341	OFFICE SUPPLIES-FINANCE
Cash Account Total.....:				59462.08	.00	59462.08		
Total Disbursements.....:				59462.08	.00	59462.08		
				=====	=====	=====		

Date.: Jun 22, 2011
Time.: 2:42 pm
Run by: LORI

CITY OF CORNING
NEW BUSINESSES FOR CITY COUNCIL

Page.: 1
List.: NEWB
Group: WTFMB

Business Name	Address	CITY/STATE/ZIP	Contact Name	Business Desc. #1	Business Start Date	Primary Teleph
BILLY'S LOCAL REAL F	1311 YOLO ST	CORNING, CA 96021	MARIANNETURRIWILLIAM	DELI, BBQ, FOOD SERVICE, PRODUCE, RETAIL	06/10/11	(530) 526-0821
NORTHERN COUNTIES RO		GERBER, CA 96035	MAGANA JOEL	CONTRACTOR	06/14/11	(530) 567-6151
PEGGY'S GIFT & THRIF	711 FOURTH ST	CORNING, CA 96021	TEDRICK MICHELL	ANTIQUES/COLLECTABLES	06/16/11	(530) 824-0800
RRR CONSTRUCTION	7102 COUNTY RD 15	ORLAND, CA 95963	HERNANDEZ LAZARO	CONTRACTOR	06/15/11	(530) 345-9646

ITEM NO.: G-5
APPROVE UPDATED TERMS AND CONDITIONS
OF ACCEPTING AIRPORT IMPROVEMENT
GRANTS MASTER AGREEMENT WITH
FEDERAL AVIATION ADMINISTRATION

JUNE 28, 2011

TO: CITY COUNCIL OF THE CITY OF CORNING, CALIFORNIA

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
JOHN L. BREWER, AICP; PUBLIC WORKS DIRECTOR



SUMMARY:

The Federal Aviation Administration (FAA) regularly approves improvements to airports throughout the country. In many cases, the FAA also sponsors those improvements through funding; typically at the rate of 95%. In that manner, local airports are improved with minimal "match funding" from the host city.

The FAA recently modified their standard program assurances to address some concerns with such issues as "Through the Fence" access for residences, grant drawdown timing, and a whole litany of airport operational requirements. They've asked that we sign the Master Agreement. Signing the document will entitle us to receive additional Airport Improvement grants in the future.

AIRPORT IMPROVEMENT PROJECTS:

As you know, we recently wrapped up a \$2.5 million Airport Improvement Project that relocated our runway some 900 feet north.

We're currently working to obtain FAA funding of our perimeter fencing project. That project has been significantly scaled down due to potential threatened or endangered species impacts associated with wetlands and wetlands habitats. We understand the City must have the agreement in place prior to receiving funding for that "Perimeter Fence Airport Improvement Grant".

RECOMMENDATION:

That the City Council:

- **Authorize the City Manager, in his capacity as Airport Manager, to sign the attached FAA document titled "Terms and Conditions of Accepting Airport Improvement Grants" Master Agreement document.**



U.S. Department
of Transportation
**Federal Aviation
Administration**

May 2011

Terms and Conditions Of Accepting Airport Improvement Program Grants

Sponsor: City of Corning

Airport: Corning Municipal

This document contains the terms and conditions of accepting Airport Improvement Program (AIP) grants from the Federal Aviation Administration (FAA) for the purpose of carrying out the provisions of Title 49, United States Code. These terms and conditions become applicable when the sponsor accepts a Grant Offer from the FAA that references this document. The terms and conditions may be unilaterally amended by the FAA, by notification in writing, and such amendment will only apply to grants accepted after notification.

Definitions:

- A. Sponsor - An agency that is legally, financially, and otherwise able to assume and carry out the certifications, representations, warranties, assurances, covenants and other obligations required in this document and in the accepted grant agreement.
- B. Project – Work as identified in this grant agreement.
- C. Primary Airport – A commercial service airport the Secretary determines to have more than 10,000 passengers boarding each year.
- D. "this grant" – In this document, the term "this grant" refers to the applicable grant agreement or grant agreements that incorporate(s) these terms and conditions as part of the grant agreement.

I. Certifications

Section 47105(d), Title 49 of the United States Code authorizes the Secretary to require certification from sponsors that they will comply with statutory and administrative requirements. The following list of certified items includes major requirements for this aspect of project implementation. However, the list is not comprehensive, nor does it relieve sponsors from fully complying with all applicable statutory and administrative standards. In accepting a grant, the sponsor certifies that each of the following items will be complied with in the performance of grant agreements. If a certification cannot be met for a specific project, the sponsor must fully explain in an attachment to the project application.

A. Sponsor Certification for Selection of Consultants

General procurement standards for consultant services within Federal grant programs are described in 49 CFR 18.36. Sponsors may use other qualifications-based procedures provided they are equivalent to specific standards in 49 CFR 18 and Advisory Circular 150/5100-14.

1. All advertisements will be placed to ensure fair and open competition from a wide area of interest.
2. For any and all contracts over \$100,000, consultants will be selected using competitive procedures based on qualifications, experience, and disadvantaged business enterprise requirements with the fee determined through negotiation.
3. An independent cost analysis will be performed, and a record of negotiations will be prepared reflecting the considerations involved in the establishment of fees for all engineering contracts with basic service fees exceeding \$100,000.
4. If any services are to be performed by sponsor force account personnel prior approval must be obtained from FAA.
5. All consultant services contracts will clearly establish the scope of work and delineate the division of responsibilities between all parties engaged in carrying out elements of the project.
6. All costs associated with work ineligible for AIP funding will be clearly identified and separated from eligible items.
7. All mandatory contract provisions for grant-assisted contracts will be included in all consultant services contracts.
8. If any contract is awarded without competition, pre-award review and approval will be obtained from FAA.
9. Cost-plus-percentage-of-cost methods of contracting prohibited under Federal standards will not be used.
10. If services being procured cover more than a single grant project the scope of work will be specifically described in the advertisement, and future work will not be initiated beyond five years.

B. Sponsor Certification for Project Plans and Specifications

General AIP standards are described in Advisory Circulars 150/5100-6, 150/5100-15, and 150/5100-16. A list of current advisory circulars with specific standards for design or construction of airports and procurement or installation of airport equipment and facilities is referenced in Section III.C.34.

1. All plans and specifications will be developed in accordance with all current applicable Federal standards and requirements, or state standard specifications developed under a Federal grant, and no deviation from or modification to standards set forth in the advisory circulars will be allowed without prior approval of the FAA.
2. All equipment specifications will rely on the national standards as contained in the Advisory Circulars, without deviations, to the maximum extent possible. Specifications for the procurement of equipment for which there is no Federal specification or standard, will not be proprietary nor written to restrict competition. If there is no national standard, or if the national standard provides for a choice to be made, at least two manufacturers will assure that they can meet the specification. A deviation from the national standard will require FAA approval of the design standard modification.
3. All development to be included in any plans is depicted on an Airport Layout Plan approved by FAA.

4. All development which is ineligible for AIP funding will either be omitted from the plans and specifications or costs associated with ineligible or AIP non-participating items will be separated and noted as non-AIP work and deducted from AIP project reimbursement requests.
5. Process control and acceptance tests required for any and all projects by standards contained in Advisory Circular 150/5370-10 will be included in the project specifications.
6. If a value engineering clause is incorporated into any contract, concurrence will be obtained from FAA.
7. All plans and specifications will incorporate applicable requirements and recommendations set forth in the Federally approved environmental finding.
8. For all construction activities within or near aircraft operational areas, the applicable requirements contained in Advisory Circular 150/5370-2 will be discussed with FAA and incorporated into the specifications. A safety/phasing plan will be prepared, and prior FAA concurrence will be obtained.
9. All projects will be physically completed without Federal participation in costs that are due to errors or omissions in the plans and specifications that were foreseeable at the time of project design.
10. All Airport Layout Plan (ALP) revisions and proposals for facility construction clearance will include coordinates that are either surveyed or based on reference coordinates previously found acceptable to FAA. The coordinates will be verified and found consistent with the dimensions shown on the project sketch/ALP. The coordinates will be in terms of the North American Vertical Datum of 1988) NAD88.
11. All site elevations on Airport Layout Plan (ALP) revisions and proposals for construction clearance will be within +/-0.1 foot vertically and the vertical datum will be in terms of the National Geodetic Vertical Datum of 1929.

C. Sponsor Certification for Equipment/Construction Contracts

Standards for advertising and awarding equipment and construction contracts within Federal grant programs are described in 49 CFR 18.36. Sponsors may use their procurement procedures reflecting State and local laws or regulations provided procurements conform to specific standards in 49 CFR 18 and Advisory Circulars 150/5100-6, 150/5100-15, and 150-5100-16.

1. A code or standard of conduct will be in effect governing the performance of the sponsor's officers, employees, or agents in soliciting and awarding procurement contracts.
2. Qualified personnel will be engaged to perform contract administration, engineering supervision, and construction inspection and testing on all projects.
3. All procurement will be publicly advertised using the competitive sealed bid method of procurement. If procurement is less than \$100,000, project may use three (3) quote method.
4. All requests for bids will clearly and accurately describe all administrative and other requirements of the equipment and/or services to be provided.
5. Concurrence will be obtained from FAA prior to contract award under any of the following circumstances:
 - a. Only one qualified person/firm submits a responsive bid,

- b. The contract is to be awarded to other than the lowest responsive and responsible bidder,
 - c. Life cycle costing is a factor in selecting the lowest responsive bidder,
 - d. Proposed contract prices are more than 10% over the sponsor's cost estimate.
6. All contracts exceeding \$100,000, require a bid guarantee of 5%, a performance bond of 100%, and a payment bond of 100%.
 7. All contracts exceeding \$100,000 will contain provisions or conditions specifying administrative, contractual, and legal remedies, including contract termination, for those instances in which contractors violate or breach contract terms. They also will contain provisions requiring compliance with applicable standards and requirements issued under Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and environmental protection regulations (40 CFR Part 15).
 8. All construction contracts involving labor will contain provisions insuring that in the employment of labor preference will be given to honorably discharged Vietnam era veterans and disabled veterans.
 9. All construction contracts exceeding \$2,000 will contain provisions requiring compliance with the Davis-Bacon Act and bid solicitations will contain a copy of the current Federal wage rate determination. Provisions requiring compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) and the Copeland "Anti-Kick Back" Act will be included.
 10. All construction contracts exceeding \$10,000 will contain appropriate clauses from 41 CFR part 60 for compliance with Equal Employment Opportunity Executive Order 11246.
 11. All construction, professional service, and equipment contracts exceeding \$250,000 will contain clauses required from Title VI Civil Rights Assurances and 49 CFR 26 for Disadvantaged Business Enterprises.
 12. Appropriate checks will be made to assure that contracts or subcontracts are not awarded to those individuals or firms suspended, debarred, or voluntarily excluded from doing business with any DOT element and appearing on the DOT Unified List.

D. Sponsor Certification for Real Property Acquisition

Requirements on real property acquisition and relocation assistance are in 49 CFR 24 and the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act).

1. Good and sufficient title will be held on property in any and all projects. The sponsor's attorney or other official will prepare and have on file title evidence on the property.
2. If defects and/or encumbrances exist in the title, which adversely impact the sponsor's intended use of property in the project, they will be extinguished, modified, or subordinated.
3. If property for airport development will be leased, the term is for 20 years or the useful life of the project. The lessor is a public agency and the lease contains no provisions, which prevent full compliance with the grant agreement.
4. Property will be in conformance with the current Exhibit A (property map). The property map is based on deeds, title opinions, land surveys, the approved Airport Layout Plan, and project documentation.

5. For any and all acquisition of property interest in noise sensitive approach zones and related areas, property interest will be obtained to ensure land is used for purposes compatible with noise levels associated with operation of the airport.
6. For all acquisition of property interest in runway protection zones and areas related to FAR Part 77 surfaces, property interest will be obtained for the right of flight, right of ingress and egress to remove obstructions, right to make noise associated with aircraft operations, and to restrict the establishment of future obstructions.
7. All appraisals will include valuation data to estimate the current market value for the property interest acquired on each parcel and will be prepared by qualified real estate appraisers hired by the sponsor. An opportunity will be provided the property owner or their representative to accompany appraisers during inspections.
8. All appraisals will be reviewed by a qualified review appraiser to recommend an amount for the offer of just compensation. All written appraisals and review appraisal will be available to FAA for review.
9. A written offer to acquire property will be presented to the property owner for not less than the approved amount of just compensation.
10. Every effort will be made to acquire property through negotiation with no coercive action to induce agreement. If negotiation is successful, project files will contain supporting documents for settlements.
11. If a negotiated settlement is not reached, condemnation will be initiated and a court deposit not less than the just compensation will be made prior to possession of the property. Project files will contain supporting documents for awards.
12. If displacement of persons, businesses, farm operations, or nonprofit organizations is involved, a relocation assistance program will be established. Displaced persons will receive general information in writing on the relocation program, notice of relocation eligibility, and a 90 day notice to vacate.
13. Relocation assistance services, comparable replacement housing, and payment of necessary relocation expenses will be provided within a reasonable time period for displaced occupant in accordance with the Uniform Act.

E. Sponsor Certification for Construction Project Final Acceptance

General requirements for final acceptance and close-out of Federally funded construction projects are in 49 CFR 18.50. The sponsor shall determine that project costs are accurate and proper in accordance with specific requirements of the Grant Agreement and contract documents.

1. All personnel engaged in project administration, engineering supervision, and construction inspection and testing will be determined to be qualified and competent to perform the work.
2. All daily construction records will be kept by the resident engineer/construction inspector. These records document work in progress, quality and quantity of materials delivered, test locations and results, instructions provided the contractor, weather, equipment use, labor requirements, safety problems, and changes required.
3. All weekly payroll records and statements of compliance will be submitted by the prime contractor and reviewed by the sponsor for Federal labor and civil rights requirements (Advisory Circular 150/5100-6 and 150/5100-15).

4. All complaints regarding the mandated Federal provisions set forth in the contract documents will be submitted to the Department of Labor.
5. All tests specified in the plans and specifications will be performed and the test results documented. A summary of test results will be available to FAA.
6. For all test results outside allowable tolerances, appropriate corrective actions will be taken.
7. All payments to the contractor will be made in compliance with contract provisions and verified by the sponsor's internal audit of contract records kept by the resident engineer. If appropriate, all pay reduction factors required by the specifications will be applied in computing final payments and a summary of pay reductions will be available to FAA.
8. All projects will be accomplished without significant deviations, changes, or modifications from the developed plans and specifications, except where approval will be obtained from FAA.
9. All final project inspections will be conducted with representatives of the sponsor and the contractor. Project files will contain documentation of the final inspection.
10. All work in the Grant Agreement will be physically completed and corrective actions required as a result of the final inspection will be completed to the satisfaction of the construction contract and the sponsor.
11. As-built plans and an equipment inventory, if applicable, will be maintained as sponsor records. If requested, a revised Airport Layout Plan will be made available to FAA prior to start of development.
12. All applicable close-out financial reports will be submitted to FAA within four (4) years of the date of grant.

F. Sponsor Certification for Seismic Design and Construction

49 CFR Part 41 sets forth the requirements in the design and construction of the building(s) to be financed with the assistance of the Federal Aviation Administration. Compliance will be met by adhering to at least one of the following accepted standards:

1. Model codes found to provide a level of seismic safety substantially equivalent to that provided by use of the 1988 National Earthquake Hazards Reduction Program (NEHRP) including:
 - a. The 1991 International Conference of Building Officials (IBCO) Uniform Building Code, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.
 - b. The 1992 Supplement to the Building Officials and Code Administration International (BOCA) National Building Code, published by the Building Officials and Code Administrators, 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.
 - c. The 1992 Amendments to the Southern Building Code Congress (SBCC) Standard Building Code, published by the Southern Building Code Congress International, 900 Montclair Road, Birmingham, Alabama 35213-1206.
2. Revisions to the model codes listed above that are substantially equivalent or exceed the then current or immediately preceding edition of the NEHRP recommended provisions, as it is updated, may be approved by the DOT Operating Administration to meet the requirements of 49 CFR Part 41.

3. State, county, local, or other jurisdictional building ordinances adopting and enforcing the model codes, listed above, in their entirety, without significant revisions or changes in the direction of less seismic safety, meet the requirement of 49 CFR Part 41.

G. Sponsor Certification for Drug-Free Workplace

1. The sponsor certifies that it will continue to provide a drug-free workplace by:
 - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the sponsor's workplace and specifying the actions that will be taken against employees for violations of such prohibitions.
 - b. Establishing an ongoing drug-free awareness program to inform employees about:
 - (1) The dangers of drug abuse in the workplace.
 - (2) The grantee's policy of maintaining a drug-free workplace.
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs.
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - c. Making it a requirement that each employee to be engaged in the performance of a grant be given a copy of the statement required by paragraph a.
 - d. Notifying the employee in the statement required by paragraph a that, as a condition of employment under a grant, the employee will:
 - (1) Abide by the terms of the statement.
 - (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
 - e. Notifying the agency in writing, within ten calendar days after receiving notice under paragraph d(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notices shall include the identification number(s) of each affected grant.
 - f. Taking one of the following actions, within 30 calendar days of receiving notice under paragraph d(2) with respect to any employee who is so convicted:
 - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended.
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State or local health, law enforcement, or other appropriate agency.
 - (3) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

2. The sponsor may insert in the space provided below the site(s) for the performance of work done in connection with grants:

Place of Performance (street address, city, county, state, zip code)

II. General Conditions

- A. The allowable costs of all AIP funded project shall not include any costs determined by the FAA to be ineligible for consideration under the Title 49 U.S.C.
- B. Payment of the United States' share of all allowable project costs will be made pursuant to and in accordance with the provisions of such regulations and procedures as the Secretary shall prescribe. Final determinations of the United States' share will be based upon the final audits of the total amount of allowable project costs, and settlement will be made for any upward or downward adjustments to the Federal share of costs.
- C. The sponsor shall carry out and complete all AIP funded projects without undue delays and in accordance with the terms hereof, and such regulations and procedures as the Secretary shall prescribe.
- D. The FAA reserves the right to amend or withdraw a grant offer at any time prior to its acceptance by the sponsor.
- E. A grant offer will expire, and the United States shall not be obligated to pay any part of the costs of the project unless the grant offer has been accepted by the sponsor on or before 60 days after the grant offer but no later than September 30 of the Federal fiscal year the grant offer was made, or such subsequent date as may be prescribed in writing by the FAA.
- F. The FAA reserves the right to unilaterally terminate this grant if the sponsor fails to perform projects without undue delay or seek timely reimbursement for work completed. If the scope of work approved in the grant has not been accomplished, FAA may seek recovery of the grant.
- G. The sponsor agrees to monitor progress on the work to be accomplished by this grant and make payments only for work that has been satisfactorily completed. The sponsor further agrees that ten percent (10%) of the total contract value will not be paid until acceptable final project documentation is provided.
- H. The sponsor shall take all steps, including litigation if necessary, to recover Federal funds spent fraudulently, wastefully, or in violation of Federal antitrust statutes, or misused in any manner in any project upon which Federal funds have been expended. For the purposes of this grant agreement, the term "Federal funds" means funds however used or disbursed by the sponsor that were originally paid pursuant to this or any other Federal grant agreement. It shall obtain the approval of the Secretary as to any determination of the amount of the Federal share of such funds. It shall return the recovered Federal share, including funds recovered by settlement, order or judgment, to the Secretary. It shall furnish to the Secretary, upon request, all documents and records pertaining to the determination of the amount of the Federal share or to any settlement, litigation, negotiation, or other efforts taken to recover such funds. All settlements or other final positions of the sponsor, in court or otherwise, involving the recovery of such Federal share shall be approved in advance by the Secretary.

- I. The United States shall not be responsible or liable for damage to property or injury to persons, which may arise from, or be incident to, compliance with a grant agreement.
- J. If, during the life of an AIP funded project, the FAA determines that a grant amount exceeds the expected needs of the sponsor by \$25,000 or five percent (5%), whichever is greater, a grant amount can be unilaterally reduced by letter from FAA advising of the budget change. Conversely, with the exception of planning projects, if there is an overrun in the eligible project costs, FAA may increase a grant to cover the amount of the overrun not to exceed the statutory fifteen (15%) percent limitation for primary airports. For non-primary airports, with the exception of planning projects, FAA may increase a grant to cover the amount of overrun by not more than fifteen percent (15%) of the original grant amount for development and not more than fifteen (15%) percent of the original grant portion pertaining to land or by an amount not to exceed twenty-five percent (25%) of the total increase in allowable project costs attributable to the acquisition of land or interests in land, whichever is greater, based on current credible appraisals or a court award in a condemnation proceeding. FAA will advise the sponsor by letter of the increase. Planning projects will not be increased above the planning portion of the maximum obligation of the United States shown in the grant agreement. Upon issuance of either of the aforementioned letters, the maximum obligation of the United States is adjusted to the amount specified. In addition, the sponsor's officially designated representative, is authorized to request FAA concurrence in revising the project description and grant amount within statutory limitations. A letter from the FAA concurring in the said requested revision to the project work description and/or grant amount shall constitute an amendment to a Grant Agreement.
- K. If requested by the sponsor and authorized by the FAA, the letter of credit method of payment may be used. It is understood and agreed that the sponsor agrees to request cash withdrawals on the letter of credit only when actually needed for its disbursements and to timely reporting of such disbursements as required. It is understood that failure to adhere to this provision may cause the letter of credit to be revoked.
- L. Unless otherwise approved by the FAA, it will not acquire or permit any contractor or subcontractor to acquire any steel or manufactured products produced outside the United States to be used for any project for airport development or noise compatibility for which funds are provided under this grant. The sponsor will include in every contract a provision implementing this condition.
- M. If this grant agreement includes pavement work that equals or exceeds \$250,000, the Sponsor will perform the following:
1. Furnish a construction management program to FAA prior to the start of construction which shall detail the measures and procedures to be used to comply with the quality control provisions of the construction contract, including, but not limited to, all quality control provisions and tests required by the Federal specifications. The program shall include as a minimum:
 - The name of the person representing the Sponsor who has overall responsibility for contract administration for the project and the authority to take necessary actions to comply with the contract.
 - Names of testing laboratories and consulting engineer firms with quality control responsibilities on the project, together with a description of the services to be provided.
 - Procedures for determining that testing laboratories meet the requirements of the American Society of Testing Materials standards on laboratory evaluation, referenced in the contract specifications (D3666, C1077).
 - Qualifications of engineering supervision and construction inspection personnel.
 - A listing of all tests required by the contract specifications, including the type and frequency of tests to be taken, the method of sampling, the applicable test standard, and the acceptance criteria or tolerances permitted for each type of test.

- Procedures for ensuring that the tests are taken in accordance with the program, that they are documented daily, that the proper corrective actions, where necessary, are undertaken.
2. Submit at completion of the project, a final test and quality control report documenting the results of all tests performed, highlighting those tests that failed or did not meet the applicable test standard. The report shall include the pay reductions applied and reasons for accepting any out-of-tolerance material. An interim test and quality control report shall be submitted, if requested by the FAA.
 3. Failure to provide a complete report as described in paragraph 2, or failure to perform such tests, shall, absent any compelling justification, result in a reduction in Federal participation for costs incurred in connection with construction of the applicable pavement. Such reduction shall be at the discretion of the FAA and will be based on the type or types of required tests not performed or not documented and will be commensurate with the proportion of applicable pavement with respect to the total pavement constructed under this grant agreement.
 4. The FAA, at its discretion, reserves the right to conduct independent tests and to reduce grant payments accordingly if such independent tests determine that Sponsor tests results are inaccurate.
- N. For a project to replace or reconstruct pavement at the airport, the Sponsor shall implement an effective airport pavement maintenance management program as is required by Airport Sponsor Assurance Number 11. The Sponsor shall use such program for the useful life of any pavement constructed, reconstructed, or repaired with Federal financial assistance at the airport. As a minimum, the program must conform with the following provisions:

Pavement Maintenance Management Program

An effective pavement maintenance management program is one that details the procedures to be followed to assure that proper pavement maintenance, both preventive and repair, is performed. An airport sponsor may use any form of inspection program it deems appropriate. The program must, as a minimum, include the following:

1. Pavement Inventory. The following must be depicted in an appropriate form and level of detail:
 - a. Location of all runways, taxiways, and aprons;
 - b. Dimensions;
 - c. Type of pavement, and;
 - d. Year of construction or most recent major rehabilitation.

For compliance with the Airport Improvement Program (AIP) assurances, pavements that have been constructed, reconstructed, or repaired with federal financial assistance shall be so depicted.

2. Inspection Schedule.
 - a. Detailed Inspection. A detailed inspection must be performed at least once a year. If a history of recorded pavement deterioration is available; i.e., Pavement Condition Index (PCI) survey as set forth in Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," the frequency of inspections may be extended to three years.
 - b. Drive-By Inspection. A drive-by inspection must be performed a minimum of once per month to detect unexpected changes in the pavement condition.
3. Record Keeping. Complete information on the findings of all detailed inspections and on the maintenance performed must be recorded and kept on file for a minimum of five years. The types of distress, their locations, and remedial action, scheduled or performed, must be documented. The minimum information to be recorded is listed below:
 - a. Inspection date;

- b. Location;
- c. Distress types; and
- d. Maintenance scheduled or performed.

For drive-by inspections, the date of inspection and any maintenance performed must be recorded.

- 4. **Information Retrieval.** An airport Sponsor may use any form of record keeping it deems appropriate, so long as the information and records produced by the pavement survey can be retrieved to provide a report to the FAA as may be required.
- 5. **Reference.** Refer to Advisory Circular 150/5380-6, "Guidelines and Procedures for Maintenance of Airport Pavements," for specific guidelines and procedures for maintaining airport pavements and establishing an effective maintenance program. Specific types of distress, their probable causes, inspection guidelines, and recommended methods of repair are presented.
- O. Takeover of Instrument Landing System and Associated Equipment in Project.** If this grant includes an instrument landing system and associated equipment and the FAA has agreed to takeover the system and equipment, the Sponsor must check the facility prior to its commissioning to assure it meets the operational standards. The Sponsor must also remove, relocate, or lower each obstruction on the approach, or provide for the adequate lighting or marking of the obstruction if any aeronautical study conducted under FAR part 77 determines that to be acceptable, and mark and light the runway, as appropriate.
- P. Airport-Owned Visual or Electronic NAVAIDS In Project.** If this grant includes a visual or electronic navigational aid, the Sponsor must provide for the continuous operation and maintenance of any navigational aid funded under the AIP during the useful life of the equipment and check the facility prior to its commissioning to assure it meets the operational standards. The Sponsor must also remove, relocate, or lower each obstruction on the approach or provide for the adequate lighting or marking of the obstruction if any aeronautical study conducted under FAR Part 77 determines that to be acceptable, and mark and light the runway, as appropriate. The FAA will not take over the ownership, operation, or maintenance of any sponsor-acquired equipment other than an AIP-funded instrument landing system and associated equipment where FAA agrees to take over the system and equipment.
- Q. Non-AIP Work in Application.** It is understood and agreed by and between the parties hereto that notwithstanding the fact that a Project Application may include therein the construction of work not included in this grant agreement project description, said work shall not be a part of this project and, if or to the extent accomplished by the Sponsor, such accomplishment shall be without any participation in the costs thereof by the United States under this project. It is further understood and agreed that, in the event the work which is excluded from the project is accomplished by the Sponsor, the Sponsor shall maintain as a portion of the cost records covering this project, separable cost records pertaining to the above-identified work excluded from Federal participation under this project, which records shall be made available for inspection and audit by the FAA to the end that the cost of the excluded work may be definitely determined. It is further understood and agreed that the Sponsor will submit a Program Statement/cost estimate depicting the excluded costs or a cost estimate depicting only those costs eligible for Federal participation in this project.
- R. Utility Relocation in Project.** It is understood and agreed by and between the parties hereto that the United States shall not participate in the cost of any utility relocation unless and until the Sponsor has submitted evidence satisfactory to the FAA that the Sponsor is legally responsible for payment of such costs. FAA participation will be limited to those utilities located on private right-of-way or utilities that exclusively serve the Airport.
- S. Revenue from Real Property – Land in Project.** The Sponsor agrees that all net revenues produced from real property purchased in part with Federal funds in this grant shall be used on the

airport for airport planning, development or operating expenses, except that all income from real property purchased for noise compatibility purposes or for future aeronautical use be used only to fund projects which would be eligible for grants under the Act. Income from noise or future use property may not be used for the Sponsor's matching share of any airport grant. Airport fiscal and accounting records shall clearly identify actual sources and uses of these funds.

- T. **Future Development Land.** If this grant includes acquisition of land for future development, the Sponsor agrees to implement within five years of such grant the airport development that requires this land acquisition, unless the FAA agrees to a different duration. Furthermore, the Sponsor agrees not to dispose of the land by sale or lease without prior consent and approval of the FAA. In the event the land is not used within ten years for the purpose for which it was acquired, the Sponsor will refund the Federal share of acquisition cost or the current fair market value of the land, whichever is greater, unless the FAA agrees to a different duration.
- U. **Runway Protection Zones.** The Sponsor agrees to take the following actions to maintain and/or acquire a property interest, satisfactory to the FAA, in the Runway Protection Zones:
1. **Existing Fee Title Interest in the Runway Protection Zone:** The Sponsor agrees to prevent the erection or creation of any structure or place of public assembly in the Runway Protection Zone, except for NAVAIDS that are fixed by their functional purposes or any other structure approved by the FAA. Any existing structures or uses within the Runway Protection Zone will be cleared or discontinued unless approved by the FAA.
 2. **Existing Easement Interest in the Runway Protection Zone:** The Sponsor agrees to take any and all steps necessary to ensure that the owner of the land within the designated Runway Protection Zone will not build any structure in the Runway Protection Zone that is a hazard to air navigation or which might create glare or misleading lights or lead to the construction of residences, fuel handling and storage facilities, smoke generating activities, or places of public assembly, such as churches, schools, office buildings, shopping centers, and stadiums.
 3. **Future Interest in the Runway Protection Zone:** The Sponsor agrees that it will acquire fee title or less-than-fee interest in the Runway Protection Zones that presently are not under its control under an agreed schedule with the FAA. Said interest shall provide the protection noted in above Subparagraphs 1 and 2.
- V. **Noise Projects on Privately Owned Property.** No payment shall be made under the terms of this grant agreement for work accomplished on privately owned land until the Sponsor submits the agreement with the owner of the property required by Assurance 5d of the *ASSURANCES Airport Sponsors*, and such agreement is determined to be satisfactory. As a minimum, the agreement with the private owner must contain the following provisions:
1. The property owner shall subject the construction work on the project to such inspection and approval during the construction or installation of the noise compatibility measures and after completion of the measures as they may reasonably be requested by the Secretary or the Sponsor.
 2. The property owner shall assume the responsibility for maintenance and operation of the items installed, purchased, or constructed under this grant agreement. Neither the FAA nor the Sponsor bears any responsibility for the maintenance and operation of these items.
 3. If Federal funds for the noise compatibility measures are transferred by the Sponsor to the owner of the private property, or the owner's agent, the property owner shall agree to maintain and make available to the Secretary or the Sponsor, upon reasonable request, records disclosing the amount of funds received and the disposition of those funds.
 4. The property owner's right to sue the owner of the noise-impacting Airport for adverse noise impacts will be abrogated if the property owner deliberately or willfully acts to reduce or destroy

the effectiveness of the noise compatibility measures during the useful life of such measures. This obligation shall remain in effect throughout the useful life of the noise compatibility measures, but not to exceed 20 years from the date of the Sponsor's acceptance of federal aid for the project.

- W. Update Approved Exhibit "A" For Land in Project.** It is understood and agreed by and between the parties hereto that notwithstanding the fact that this grant offer is made and accepted upon the basis of the current Exhibit "A" Property Map, the Sponsor hereby covenants and agrees that upon completion of an AIP funded land acquisition project, it will update said Exhibit "A" Property Map to standards satisfactory to the FAA and submit said documentation in final form to the FAA. It is further mutually agreed that the reasonable cost of developing said Exhibit "A" Property Map is an eligible administrative cost for participation within the scope of this project.
- X. Friction Measuring Devices.** If this grant includes acquisition of friction measuring devices, the Sponsor assures that it will properly calibrate, operate, and maintain the friction measuring equipment in accordance with the manufacturer's guidelines and instructions and Advisory Circular 150/5320-12. The friction measuring equipment and tow vehicle (if applicable) shall not be used for any other purpose other than for conducting friction measuring tests on airport pavement surfaces and directly related activities, such as training and calibration.
- Y. Low Emission Systems.** If this grant includes low emission systems work, the Sponsor agrees to the following conditions under the Voluntary Airport Low Emission (VALE) program:
1. Vehicles and equipment purchased with assistance from this grant shall be maintained and used for their useful life at the airport for which they were purchased. Moreover, any vehicles or equipment replaced under this program shall not be transferred to another airport or location within the same or any other nonattainment or maintenance area. No airport-owned vehicles or equipment may be transferred to, taken to, or used at another airport without the consent of the FAA in consultation with the United States Environmental Protection Agency and State air quality agency.
 2. All vehicles and equipment purchased with assistance from this grant shall be clearly labeled using the VALE program emblem designed by the FAA.
 3. The Sponsor shall maintain annual reporting records of all vehicles and equipment purchased with assistance from this grant. These public records shall contain detailed information involving individual vehicles and equipment, project expenditures, cost effectiveness, and emission reductions.

The Sponsor certifies that it shall replace any disabled or seriously damaged vehicle or equipment purchased with assistance from this grant, at any time during its useful life, with an equivalent vehicle or unit that produces an equal or lower level of emissions. The Sponsor assumes all financial responsibility for replacement costs. The Sponsor also certifies that it shall fulfill this replacement obligation, beyond the useful life of the affected vehicle or equipment, for the possible longer life of Airport Emission Reduction Credits that were granted to the Sponsor for this vehicle or equipment.

Z. Trafficking in Persons

- a. Provisions applicable to a recipient that is a private entity.
 1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either —
 - A. Associated with performance under this award; or
 - B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity--
 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either —
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 49 CFR Part 29.
- c. Provisions applicable to any recipient.
 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions. For purposes of this award term:

1. "Employee" means either:

- i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
- ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.

ii. Includes:

A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).

B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

AA. **Acquisition of Noise Land:** The Sponsor hereby agrees that upon completion of the land acquisition in this project, it will prepare a Noise Land Inventory Map and Reuse Plan to standards satisfactory to the Federal Aviation Administration (FAA) and submit said documentation in final form to the FAA. It is further mutually agreed that the reasonable cost of developing said Noise Land Inventory Map and Disposal Plan is an eligible administrative cost for participation within the scope of this project.

III. Assurances

A. General.

1. These assurances shall be complied with in the performance of grant agreements for airport development, airport planning, and noise compatibility program grants for airport sponsors.
2. These assurances are required to be submitted as part of the project application by sponsors requesting funds under the provisions of Title 49, U.S.C., subtitle VII, as amended. As used herein, the term "public agency sponsor" means a public agency with control of a public-use airport; the term "private sponsor" means a private owner of a public-use airport; and the term "sponsor" includes both public agency sponsors and private sponsors.
3. Upon acceptance of the grant offer by the sponsor, these assurances are incorporated in and become part of the grant agreement.

B. Duration and Applicability.

1. Airport development or Noise Compatibility Program Projects Undertaken by a Public Agency Sponsor. The terms, conditions and assurances of the grant agreement shall remain in full force and effect throughout the useful life of the facilities developed or equipment acquired for an airport development or noise compatibility program project, or throughout the useful life of the project items installed within a facility under a noise compatibility program project, but in any event not to exceed twenty (20) years from the date of acceptance of a grant offer of Federal funds for the project. However, there shall be no limit on the duration of the assurances regarding Exclusive Rights and Airport Revenue so long as the airport is used as an airport. There shall be no limit on the duration of the terms, conditions, and assurances with respect to real property acquired with Federal funds. Furthermore, the duration of the Civil Rights assurance shall be specified in the assurances.
2. Airport Development or Noise Compatibility Projects Undertaken by a Private Sponsor. The preceding paragraph 1 also applies to a private sponsor except that the useful life of project items installed within a facility or the useful life of the facilities developed or equipment acquired under an airport development or noise compatibility program project shall be no less than ten (10) years from the date of acceptance of Federal aid for the project.
3. Airport Planning Undertaken by a Sponsor. Unless otherwise specified in the grant agreement, only Assurances 1, 2, 3, 5, 6, 13, 18, 30, 32, 33, and 34 in section IIIC apply to planning projects. The terms, conditions, and assurances of the grant agreement shall remain in full force and effect during the life of the project.

C. Sponsor Certification. The sponsor hereby assures and certifies, with respect to this grant that:

1. **General Federal Requirements.** It will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance and use of Federal funds for this project including but not limited to the following:

Federal Legislation

- a. Title 49, U.S.C., subtitle VII, as amended.
- b. Davis-Bacon Act - 40 U.S.C. 276(a), et seq.¹
- c. Federal Fair Labor Standards Act - 29 U.S.C. 201, et seq.
- d. Hatch Act - 5 U.S.C. 1501, et seq.²
- e. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 Title 42 U.S.C. 4601, et seq.^{1,2}
- f. National Historic Preservation Act of 1966 - Section 106 - 16 U.S.C. 470(f).¹

- g. Archeological and Historic Preservation Act of 1974 - 16 U.S.C. 469 through 469c.¹
- h. Native Americans Grave Repatriation Act - 25 U.S.C. Section 3001, et seq.
- i. Clean Air Act, P.L. 90-148, as amended.
- j. Coastal Zone Management Act, P.L. 93-205, as amended.
- k. Flood Disaster Protection Act of 1973 - Section 102(a) - 42 U.S.C. 4012a.¹
- l. Title 49, U.S.C., Section 303, (formerly known as Section 4(f))
- m. Rehabilitation Act of 1973 - 29 U.S.C. 794.
- n. Civil Rights Act of 1964 - Title VI - 42 U.S.C. 2000d through d-4.
- o. Age Discrimination Act of 1975 - 42 U.S.C. 6101, et seq.
- p. American Indian Religious Freedom Act, P.L. 95-341, as amended.
- q. Architectural Barriers Act of 1968 - 42 U.S.C. 4151, et seq.¹
- r. Power plant and Industrial Fuel Use Act of 1978 - Section 403- 2 U.S.C. 8373.¹
- s. Contract Work Hours and Safety Standards Act - 40 U.S.C. 327, et seq.¹
- t. Copeland Antikickback Act - 18 U.S.C. 874.¹
- u. National Environmental Policy Act of 1969 - U.S.C. 4321 et seq.¹
- v. Wild and Scenic Rivers Act, P.L. 90-542, as amended.
- w. Single Audit Act of 1984 - 31 U.S.C. 7501, et seq.²
- x. Drug-Free Workplace Act of 1988 - 41 U.S.C. 702 through 706.

Executive Orders

- a. Executive Order 11246 - Equal Employment Opportunity¹
- b. Executive Order 11990 - Protection of Wetlands
- c. Executive Order 11998 - Flood Plain Management
- d. Executive Order 12372 - Intergovernmental Review of Federal Programs.
- e. Executive Order 12699 - Seismic Safety of Federal and Federally Assisted New Building Construction¹
- f. Executive Order 12898 - Environmental Justice

Federal Regulations

- a. 14 CFR Part 13 - Investigative and Enforcement Procedures.
- b. 14 CFR Part 16 - Rules of Practice For Federally Assisted Airport Enforcement Proceedings.
- c. 14 CFR Part 150 - Airport noise compatibility planning.
- d. 29 CFR Part 1 - Procedures for predetermination of wage rates.¹
- e. 29 CFR Part 3 - Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States.¹
- f. 29 CFR Part 5 - Labor standards provisions applicable to contracts covering federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act).¹
- g. 41 CFR Part 60 - Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Federal and federally assisted contracting requirements).¹
- h. 49 CFR Part 18 - Uniform administrative requirements for grants and cooperative agreements to state and local governments.³
- i. 49 CFR Part 20 - New restrictions on lobbying.
- j. 49 CFR Part 21 - Nondiscrimination in federally-assisted programs of the Department of Transportation - effectuation of Title VI of the Civil Rights Act of 1964.
- k. 49 CFR Part 23 - Participation by Disadvantage Business Enterprise in Airport Concessions.
- l. 49 CFR Part 24 - Uniform relocation assistance and real property acquisition for Federal and federally assisted programs.^{1,2}

- m. 49 CFR Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Programs.
- n. 49 CFR Part 27 - Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.¹
- o. 49 CFR Part 29 – Government wide debarment and suspension (non-procurement) and government wide requirements for drug-free workplace (grants).
- p. 49 CFR Part 30 - Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors.
- q. 49 CFR Part 41 - Seismic safety of Federal and federally assisted or regulated new building construction.¹

Office of Management and Budget Circulars

- a. A-87 - Cost Principles Applicable to Grants and Contracts with State and Local Governments.
- b. A-133 - Audits of States, Local Governments, and Non-Profit Organizations

¹ These laws do not apply to airport planning sponsors.

² These laws do not apply to private sponsors.

³ 49 CFR Part 18 and OMB Circular A-87 contain requirements for State and Local Governments receiving Federal assistance. Any requirement levied upon State and Local Governments by this regulation and circular shall also be applicable to private sponsors receiving Federal assistance under Title 49, United States Code.

Specific assurances required to be included in grant agreements by any of the above laws, regulations or circulars are incorporated by reference in the grant agreement.

2. Responsibility and Authority of the Sponsor.

- a. **Public Agency Sponsor:** It has legal authority to apply for the grant, and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.
 - b. **Private Sponsor:** It has legal authority to apply for the grant and to finance and carry out the proposed project and comply with all terms, conditions, and assurances of this grant agreement. It shall designate an official representative and shall in writing direct and authorize that person to file this application, including all understandings and assurances contained therein; to act in connection with this application; and to provide such additional information as may be required.
3. **Sponsor Fund Availability.** It has sufficient funds available for that portion of the project costs which are not to be paid by the United States. It has sufficient funds available to assure operation and maintenance of items funded under the grant agreement which it will own or control.
4. **Good Title.**

- a. It, a public agency or the Federal government, holds good title, satisfactory to the Secretary, to the landing area of the airport or site thereof, or will give assurance satisfactory to the Secretary that good title will be acquired.
- b. For noise compatibility program projects to be carried out on the property of the sponsor, it holds good title satisfactory to the Secretary to that portion of the property upon which Federal funds will be expended or will give assurance to the Secretary that good title will be obtained.

5. Preserving Rights and Powers.

- a. It will not take or permit any action which would operate to deprive it of any of the rights and powers necessary to perform any or all of the terms, conditions, and assurances in the grant agreement without the written approval of the Secretary, and will act promptly to acquire, extinguish or modify any outstanding rights or claims of right of others which would interfere with such performance by the sponsor. This shall be done in a manner acceptable to the Secretary.
- b. It will not sell, lease, encumber, or otherwise transfer or dispose of any part of its title or other interests in the property shown on Exhibit A to this application or, for a noise compatibility program project, that portion of the property upon which Federal funds have been expended, for the duration of the terms, conditions, and assurances in the grant agreement without approval by the Secretary. If the transferee is found by the Secretary to be eligible under Title 49, United States Code, to assume the obligations of the grant agreement and to have the power, authority, and financial resources to carry out all such obligations, the sponsor shall insert in the contract or document transferring or disposing of the sponsor's interest, and make binding upon the transferee all of the terms, conditions, and assurances contained in this grant agreement.
- c. For all noise compatibility program projects which are to be carried out by another unit of local government or are on property owned by a unit of local government other than the sponsor, it will enter into an agreement with that government. Except as otherwise specified by the Secretary, that agreement shall obligate that government to the same terms, conditions, and assurances that would be applicable to it if it applied directly to the FAA for a grant to undertake the noise compatibility program project. That agreement and changes thereto must be satisfactory to the Secretary. It will take steps to enforce this agreement against the local government if there is substantial non-compliance with the terms of the agreement.
- d. For noise compatibility program projects to be carried out on privately owned property, it will enter into an agreement with the owner of that property which includes provisions specified by the Secretary. It will take steps to enforce this agreement against the property owner whenever there is substantial non-compliance with the terms of the agreement.
- e. If the sponsor is a private sponsor, it will take steps satisfactory to the Secretary to ensure that the airport will continue to function as a public-use airport in accordance with these assurances for the duration of these assurances.
- f. If an arrangement is made for management and operation of the airport by any agency or person other than the sponsor or an employee of the sponsor, the sponsor will reserve sufficient rights and authority to insure that the airport will be operated and maintained in accordance Title 49, United States Code, the regulations and the terms, conditions and assurances in the grant agreement and shall insure that such arrangement also requires compliance therewith.

- g. It will not permit or enter into any arrangement that results in permission for the owner or tenant of a property used as a residence, or zoned for residential use, to taxi an aircraft between that property and any location on airport.
6. **Consistency with Local Plans.** The project is reasonably consistent with plans (existing at the time of submission of this application) of public agencies that are authorized by the State in which the project is located to plan for the development of the area surrounding the airport.
 7. **Consideration of Local Interest.** It has given fair consideration to the interest of communities in or near where the project may be located.
 8. **Consultation with Users.** In making a decision to undertake any airport development project under Title 49, United States Code, it has undertaken reasonable consultations with affected parties using the airport at which project is proposed.
 9. **Public Hearings.** In projects involving the location of an airport, an airport runway, or a major runway extension, it has afforded the opportunity for public hearings for the purpose of considering the economic, social, and environmental effects of the airport or runway location and its consistency with goals and objectives of such planning as has been carried out by the community and it shall, when requested by the Secretary, submit a copy of the transcript of such hearings to the Secretary. Further, for such projects, it has on its management board either voting representation from the communities where the project is located or has advised the communities that they have the right to petition the Secretary concerning a proposed project.
 10. **Air and Water Quality Standards.** In projects involving airport location, a major runway extension, or runway location it will provide for the Governor of the state in which the project is located to certify in writing to the Secretary that the project will be located, designed, constructed, and operated so as to comply with applicable air and water quality standards. In any case where such standards have not been approved and where applicable air and water quality standards have been promulgated by the Administrator of the Environmental Protection Agency, certification shall be obtained from such Administrator. Notice of certification or refusal to certify shall be provided within sixty days after the project application has been received by the Secretary.
 11. **Pavement Preventive Maintenance.** With respect to a project approved after January 1, 1995, for the replacement or reconstruction of pavement at the airport, it assures or certifies that it has implemented an effective airport pavement maintenance-management program and it assures that it will use such program for the useful life of any pavement constructed, reconstructed or repaired with Federal financial assistance at the airport. It will provide such reports on pavement condition and pavement management programs as the Secretary determines may be useful.
 12. **Terminal Development Prerequisites.** For projects which include terminal development at a public use airport, as defined in Title 49, it has, on the date of submittal of the project grant application, all the safety equipment required for certification of such airport under section 44706 of Title 49, United States Code, and all the security equipment required by rule or regulation, and has provided for access to the passenger enplaning and deplaning area of such airport to passengers enplaning and deplaning from aircraft other than air carrier aircraft.
 13. **Accounting System, Audit, and Record Keeping Requirements.**
 - a. It shall keep all project accounts and records which fully disclose the amount and disposition by the recipient of the proceeds of the grant, the total cost of the project in connection with which the grant is given or used, and the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records

pertinent to the project. The accounts and records shall be kept in accordance with an accounting system that will facilitate an effective audit in accordance with the Single Audit Act of 1984.

- b. It shall make available to the Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, for the purpose of audit and examination, any books, documents, papers, and records of the recipient that are pertinent to the grant. The Secretary may require that an appropriate audit be conducted by a recipient. In any case in which an independent audit is made of the accounts of a sponsor relating to the disposition of the proceeds of a grant or relating to the project in connection with which the grant was given or used, it shall file a certified copy of such audit with the Comptroller General of the United States not later than six (6) months following the close of the fiscal year for which the audit was made.
14. **Minimum Wage Rates.** It shall include, in all contracts in excess of \$2,000 for work on any projects funded under the grant agreement which involve labor, provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a-276a-5), which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.
 15. **Veteran's Preference.** It shall include in all contracts for work on any project funded under the grant agreement which involve labor, such provisions as are necessary to insure that, in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given to Veterans of the Vietnam era and disabled veteran as defined in Section 47112 of Title 49, United States Code. However, this preference shall apply only where the individuals are available and qualified to perform the work to which the employment relates.
 16. **Conformity to Plans and Specifications.** It will execute the project subject to plans, specifications, and schedules approved by the Secretary. Such plans, specifications, and schedules shall be submitted to the Secretary prior to commencement of site preparation, construction, or other performance under this grant agreement, and, upon approval of the Secretary, shall be incorporated into this grant agreement. Any modification to the approved plans, specifications, and schedules shall also be subject to approval of the Secretary, and incorporated into the grant agreement.
 17. **Construction Inspection and Approval.** It will provide and maintain competent technical supervision at the construction site throughout the project to assure that the work conforms to the plans, specifications, and schedules approved by the Secretary for the project. It shall subject the construction work on any project contained in an approved project application to inspection and approval by the Secretary and such work shall be in accordance with regulations and procedures prescribed by the Secretary. Such regulations and procedures shall require such cost and progress reporting by the sponsor or sponsors of such project as the Secretary shall deem necessary.
 18. **Planning Projects.** In carrying out planning projects:
 - a. It will execute the project in accordance with the approved program narrative contained in the project application or with the modifications similarly approved.
 - b. It will furnish the Secretary with such periodic reports as required pertaining to the planning project and planning work activities.
 - c. It will include in all published material prepared in connection with the planning project a notice that the material was prepared under a grant provided by the United States.

- d. It will make such material available for examination by the public, and agrees that no material prepared with funds under this project shall be subject to copyright in the United States or any other country.
- e. It will give the Secretary unrestricted authority to publish, disclose, distribute, and otherwise use any of the material prepared in connection with this grant.
- f. It will grant the Secretary the right to disapprove the sponsor's employment of specific consultants and their subcontractors to do all or any part of this project as well as the right to disapprove the proposed scope and cost of professional services.
- g. It will grant the Secretary the right to disapprove the use of the sponsor's employees to do all or any part of the project.
- h. It understands and agrees that the Secretary's approval of this project grant or the Secretary's approval of any planning material developed as part of this grant does not constitute or imply any assurance or commitment on the part of the Secretary to approve any pending or future application for a Federal airport grant.

19. Operation and Maintenance.

- a. The airport and all facilities which are necessary to serve the aeronautical users of the airport, other than facilities owned or controlled by the United States, shall be operated at all times in a safe and serviceable condition and in accordance with the minimum standards as may be required or prescribed by applicable Federal, state and local agencies for maintenance and operation. It will not cause or permit any activity or action thereon which would interfere with its use for airport purposes. It will suitably operate and maintain the airport and all facilities thereon or connected therewith, with due regard to climatic and flood conditions. Any proposal to temporarily close the airport for non-aeronautical purposes must first be approved by the Secretary. In furtherance of this assurance, the sponsor will have in effect arrangements for-
 - (1) Operating the airport's aeronautical facilities whenever required;
 - (2) Promptly marking and lighting hazards resulting from airport conditions, including temporary conditions; and
 - (3) Promptly notifying airmen of any condition affecting aeronautical use of the airport.

Nothing contained herein shall be construed to require that the airport be operated for aeronautical use during temporary periods when snow, flood or other climatic conditions interfere with such operation and maintenance. Further, nothing herein shall be construed as requiring the maintenance, repair, restoration, or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the sponsor.

- b. It will suitably operate and maintain noise compatibility program items that it owns or controls upon which Federal funds have been expended.

20. Hazard Removal and Mitigation. It will take appropriate action to assure that such terminal airspace as is required to protect instrument and visual operations to the airport (including established minimum flight altitudes) will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards.

21. Compatible Land Use. It will take appropriate action, to the extent reasonable, including the adoption of zoning laws, to restrict the use of land adjacent to or in the immediate vicinity of the

airport to activities and purposes compatible with normal airport operations, including landing and takeoff of aircraft. In addition, if the project is for noise compatibility program implementation, it will not cause or permit any change in land use, within its jurisdiction, that will reduce its compatibility, with respect to the airport, of the noise compatibility program measures upon which Federal funds have been expended.

22. Economic Nondiscrimination.

- a. It will make the airport available as an airport for public use on reasonable terms and without unjust discrimination to all types, kinds and classes of aeronautical activities, including commercial aeronautical activities offering services to the public at the airport.
- b. In any agreement, contract, lease, or other arrangement under which a right or privilege at the airport is granted to any person, firm, or corporation to conduct or to engage in any aeronautical activity for furnishing services to the public at the airport, the sponsor will insert and enforce provisions requiring the contractor to:
 - (1) furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
 - (2) charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.
- c. Each fixed-based operator at the airport shall be subject to the same rates, fees, rentals, and other charges as are uniformly applicable to all other fixed-based operators making the same or similar uses of such airport and utilizing the same or similar facilities.
- d. Each air carrier using such airport shall have the right to service itself or to use any fixed-based operator that is authorized or permitted by the airport to serve any air carrier at such airport.
- e. Each air carrier using such airport (whether as a tenant, nontenant, or subtenant of another air carrier tenant) shall be subject to such nondiscriminatory and substantially comparable rules, regulations, conditions, rates, fees, rentals, and other charges with respect to facilities directly and substantially related to providing air transportation as are applicable to all such air carriers which make similar use of such airport and utilize similar facilities, subject to reasonable classifications such as tenants or nontenants and signatory carriers and nonsignatory carriers. Classification or status as tenant or signatory shall not be unreasonably withheld by any airport provided an air carrier assumes obligations substantially similar to those already imposed on air carriers in such classification or status.
- f. It will not exercise or grant any right or privilege which operates to prevent any person, firm, or corporation operating aircraft on the airport from performing any services on its own aircraft with its own employees [including, but not limited to maintenance, repair, and fueling] that it may choose to perform.
- g. In the event the sponsor itself exercises any of the rights and privileges referred to in this assurance, the services involved will be provided on the same conditions as would apply to the furnishing of such services by commercial aeronautical service providers authorized by the sponsor under these provisions.
- h. The sponsor may establish such reasonable, and not unjustly discriminatory, conditions to be met by all users of the airport as may be necessary for the safe and efficient operation of the airport.

- i. The sponsor may prohibit or limit any given type, kind or class of aeronautical use of the airport if such action is necessary for the safe operation of the airport or necessary to serve the civil aviation needs of the public.
23. **Exclusive Rights.** It will permit no exclusive right for the use of the airport by any person providing, or intending to provide, aeronautical services to the public. For purposes of this paragraph, the providing of the services at an airport by a single fixed-based operator shall not be construed as an exclusive right if both of the following apply:
- a. It would be unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide such services, and
 - b. If allowing more than one fixed-based operator to provide such services would require the reduction of space leased pursuant to an existing agreement between such single fixed-based operator and such airport.

It further agrees that it will not, either directly or indirectly, grant or permit any person, firm, or corporation, the exclusive right at the airport to conduct any aeronautical activities, including, but not limited to charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity, and that it will terminate any exclusive right to conduct an aeronautical activity now existing at such an airport before the grant of any assistance under Title 49, United States Code.

24. **Fee and Rental Structure.** It will maintain a fee and rental structure for the facilities and services at the airport which will make the airport as self-sustaining as possible under the circumstances existing at the particular airport, taking into account such factors as the volume of traffic and economy of collection. No part of the Federal share of an airport development, airport planning or noise compatibility project for which a grant is made under Title 49, United States Code, the Airport and Airway Improvement Act of 1982, the Federal Airport Act or the Airport and Airway Development Act of 1970 shall be included in the rate basis in establishing fees, rates, and charges for users of that airport.

25. **Airport Revenues.**

- a. All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by it for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport. Provided, however, that if covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.
- b. As part of the annual audit required under the Single Audit Act of 1984, the sponsor will direct that the audit will review, and the resulting audit report will provide an opinion concerning, the use of airport revenue and taxes in paragraph (a), and indicating whether funds paid or transferred to the owner or operator are paid or transferred in a manner

consistent with Title 49, United States Code and any other applicable provision of law, including any regulation promulgated by the Secretary or Administrator.

- c. Any civil penalties or other sanctions will be imposed for violation of this assurance in accordance with the provisions of Section 47107 of Title 49, United States Code.

26. Reports and Inspections. It will:

- a. submit to the Secretary such annual or special financial and operations reports as the Secretary may reasonably request and make such reports available to the public; make available to the public at reasonable times and places a report of the airport budget in a format prescribed by the Secretary;
- b. for airport development projects, make the airport and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request;
- c. for noise compatibility program projects, make records and documents relating to the project and continued compliance with the terms, conditions, and assurances of the grant agreement including deeds, leases, agreements, regulations, and other instruments, available for inspection by any duly authorized agent of the Secretary upon reasonable request; and
- d. in a format and time prescribed by the Secretary, provide to the Secretary and make available to the public following each of its fiscal years, an annual report listing in detail:
 - (1) all amounts paid by the airport to any other unit of government and the purposes for which each such payment was made; and
 - (2) all services and property provided by the airport to other units of government and the amount of compensation received for provision of each such service and property.

27. Use by Government Aircraft. It will make available all of the facilities of the airport developed with Federal financial assistance and all those usable for landing and takeoff of aircraft to the United States for use by Government aircraft in common with other aircraft at all times without charge, except, if the use by Government aircraft is substantial, charge may be made for a reasonable share, proportional to such use, for the cost of operating and maintaining the facilities used. Unless otherwise determined by the Secretary, or otherwise agreed to by the sponsor and the using agency, substantial use of an airport by Government aircraft will be considered to exist when operations of such aircraft are in excess of those which, in the opinion of the Secretary, would unduly interfere with use of the landing areas by other authorized aircraft, or during any calendar month that-

- a. Five (5) or more Government aircraft are regularly based at the airport or on land adjacent thereto; or
- b. The total number of movements (counting each landing as a movement) of Government aircraft is 300 or more, or the gross accumulative weight of Government aircraft using the airport (the total movement of Government aircraft multiplied by gross weights of such aircraft) is in excess of five million pounds.

28. Land for Federal Facilities. It will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such

purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

29. Airport Layout Plan.

- a. It will keep up to date at all times an Airport Layout Plan of the airport showing (1) boundaries of the airport and all proposed additions thereto, together with the boundaries of all offsite areas owned or controlled by the sponsor for airport purposes and proposed additions thereto; (2) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (3) the location of all existing and proposed non-aviation areas and of all existing improvements thereon. Such Airport Layout Plans and each amendment, revision, or modification thereof, shall be subject to the approval of the Secretary which approval shall be evidenced by the signature of a duly authorized representative of the Secretary on the face of the Airport Layout Plan. The sponsor will not make or permit any changes or alterations in the airport or any of its facilities which are not in conformity with the Airport Layout Plan as approved by the Secretary and which might, in the opinion of the Secretary, adversely affect the safety, utility or efficiency of the airport.
- b. If a change or alteration in the airport or the facilities is made which the Secretary determines adversely affects the safety, utility, or efficiency of any federally owned, leased, or funded property on or off the airport and which is not in conformity with the Airport Layout Plan as approved by the Secretary, the owner or operator will, if requested, by the Secretary (1) eliminate such adverse effect in a manner approved by the Secretary; or (2) bear all costs of relocating such property (or replacement thereof) to a site acceptable to the Secretary and all costs of restoring such property (or replacement thereof) to the level of safety, utility, efficiency, and cost of operation existing before the unapproved change in the airport or its facilities.

30. **Civil Rights.** It will comply with such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from funds received from this grant. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon in which case the assurance obligates the sponsor or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or (b) the period during which the sponsor retains ownership or possession of the property.

31. Disposal of Land.

- a. For land purchased under a grant for airport noise compatibility purposes, it will dispose of the land, when the land is no longer needed for such purposes, at fair market value, at the earliest practicable time. That portion of the proceeds of such disposition which is proportionate to the United States' share of acquisition of such land will, at the discretion of the Secretary, 1) be paid to the Secretary for deposit in the Trust Fund, or 2) be reinvested in an approved noise compatibility project as prescribed by the Secretary, including the purchase of nonresidential buildings or property in the vicinity of residential buildings or property previously purchased by the airport as part of a noise compatibility program.
- b. For land purchased under a grant for airport development purposes (other than noise compatibility), it will, when the land is no longer needed for airport purposes, dispose of such land at fair market value or make available to the Secretary an amount equal to the United States' proportionate share of the fair market value of the land. That portion of the

proceeds of such disposition which is proportionate to the United States' share of the cost of acquisition of such land will, (a) upon application to the Secretary, be reinvested in another eligible airport improvement project or projects approved by the Secretary at that airport or within the national airport system, or (b) be paid to the Secretary for deposit in the Trust Fund if no eligible project exists.

- c. Land shall be considered to be needed for airport purposes under this assurance if (a) it may be needed for aeronautical purposes (including runway protection zones) or serve as noise buffer land, and (b) the revenue from interim uses of such land contributes to the financial self-sufficiency of the airport. Further, land purchased with a grant received by an airport operator or owner before December 31, 1987, will be considered to be needed for airport purposes if the Secretary or Federal agency making such grant before December 31, 1987, was notified by the operator or owner of the uses of such land, did not object to such use, and the land continues to be used for that purpose, such use having commenced no later than December 15, 1989.
 - d. Disposition of such land under (a), (b) or (c) will be subject to the retention or reservation of any interest or right therein necessary to ensure that such land will only be used for purposes which are compatible with noise levels and safety associated with operation of the airport.
32. **Engineering and Design Services.** It will award each contract, or sub-contract for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping or related services with respect to the project in the same manner as a contract for architectural and engineering services is negotiated under Title IX of the Federal Property and Administrative Services Act of 1949 or an equivalent qualifications-based requirement prescribed for or by the sponsor of the airport.
33. **Foreign Market Restrictions.** It will not allow funds provided under this grant to be used to fund any project which uses any product or service of a foreign country during the period in which such foreign country is listed by the United States Trade Representative as denying fair and equitable market opportunities for products and suppliers of the United States in procurement and construction.
34. **Policies, Standards, and Specifications.** It will carry out the project in accordance with policies, standards, and specifications approved by the Secretary including but not limited to the most current version, at the time the grant is signed, of the advisory circulars listed under the following table titled "Current FAA Advisory Circulars for AIP Projects", and in accordance with applicable state policies, standards, and specifications approved by the Secretary.

CURRENT FAA ADVISORY CIRCULARS REQUIRED FOR USE IN AIP FUNDED AND PFC APPROVED PROJECTS

Dated: 6/2/2010

View the most current versions of these ACs and any associated changes at:
http://www.faa.gov/airports_airtraffic/airports/resources/advisory_circulars

NUMBER	TITLE
70/7460-1K	Obstruction Marking and Lighting
150/5000-13A	Announcement of Availability—RTCA Inc., Document RTCA-221, Guidance and Recommended Requirements for Airports Surface Movement Sensors
150/5020-1	Noise Control and Compatibility Planning for Airports
150/5070-6B Change 1	Airport Master Plans
150/5070-7	The Airport System Planning Process
150/5200-28D	Notices to Airmen (NOTAMS) for Airport Operators
150/5200-30C	Airport Winter Safety and Operations
150/5200-33B	Hazardous Wildlife Attractants On or Near Airports
150/5210-5D	Painting, Marking and lighting of Vehicles Used on an Airport
150/5210-7D	Aircraft Fire and Rescue Communications
150/5210-13B	Water Rescue Plans, Facilities, and Equipment
150/5210-14B	Airport Fire and Rescue Personnel Protective Clothing
150/5210-15A	Airport Rescue & Firefighting Station Building Design
150/5210-18A	Systems for Interactive Training of Airport Personnel
150/5210-19A	Driver's Enhanced Vision System (DEVS)
150/5220-4B	Water Supply Systems for Aircraft Fire and Rescue Protection
150/5220-13B	Runway Surface Condition Sensor Specification Guide
150/5220-16C	Automated Weather Observing Systems for Non-Federal Applications
150/5220-17A And Change 1	Design Standards for Aircraft Rescue Firefighting Training Facility

NUMBER	TITLE
150/5220-18A	Buildings for Storage and Maintenance of Airport Snow and Ice Control Equipment and Materials
150/5220-20 and Change 1	Airport Snow and Ice Control Equipment
150/5220-21B	Guide Specification for Lifts Used to Board Airline Passengers With Mobility Impairments
150/5220-22A	Engineered Materials Arresting System (EMAS) for Aircraft Overruns
150/5220-23	Frangible Connections
150/5220-24	Foreign Object Detection Equipment
150/5300-13 and Changes 1 –15	Airport Design
150/5300-14B	Design of Aircraft Deicing Facilities
150/5300-16A	General Guidance and Specifications for Aeronautical Surveys: Establishment of Geodetic Control and Submission to the National Geodetic Survey
150/5300-17B	General Guidance and Specifications for Aeronautical Survey Airport Imagery Acquisition
150/5300-18B	General Guidance and Specifications for Submission of Aeronautical Surveys to NGS: Field Data Collection and Geographic Information System (GIS) Standards
150/5320-5C and Changes 1	Surface Drainage Design
150/5320-6E	Airport Pavement Design and Evaluation
150/5320-12C and Changes 1 through 8	Measurement, Construction, and Maintenance of Skid Resistant Airport Pavement Surfaces
150/5320-14	Airport Landscaping for Noise Control Purposes
150/5320-15A	Management of Airport Industrial Waste
150/5325-4B	Runway Length Requirements for Airport Design
150/5335-5A	Standardized Method of Reporting Pavement Strength PCN
150/5340-1J and Changes 2	Standards for Airport Markings (Change 1&2)
150/5340-5C	Segmented Circle Airport Marker System
150/5340-18E	Standards for Airport Sign Systems

NUMBER	TITLE
150/5340-30D	Design and Installation Details for Airport Visual Aids
150/5345-3F	Specification for L821 Panels for Control of Airport Lighting
150/5345-5B	Circuit Selector Switch
150/5345-7E	Specification for L824 Underground Electrical Cable for Airport Lighting Circuits
150/5345-10F	Specification for Constant Current Regulators Regulator Monitors
150/5345-12E	Specification for Airport and Heliport Beacon
150/5345-13B	Specification for L841 Auxiliary Relay Cabinet Assembly for Pilot Control of Airport Lighting Circuits
150/5345-26D	Specification for L823 Plug and Receptacle, Cable Connectors
150/5345-27D	Specification for Wind Cone Assemblies
150/5345-28F	Precision Approach Path Indicator (PAPI) Systems
150/5345-39C	FAA Specification L853, Runway and Taxiway Retroreflective Markers
150/5345-42F	Specification for Airport Light Bases, Transformer Housings, Junction Boxes and Accessories
150/5345-43F	Specification for Obstruction Lighting Equipment
150/5345-44H	Specification for Taxiway and Runway Signs
150/5345-45C	Low-Impact Resistant (LIR) Structures
150/5345-46D	Specification for Runway and Taxiway Light Fixtures
150/5345-47B	Specifications for Series to Series Isolation Transformers for Airport Lighting System
150/5345-49C	Specification L854, Radio Control Equipment
150/5345-50B	Specification for Portable Runway and Taxiway Lights
150/5345-51A	Specification for Discharge-Type Flasher Equipment
150/5345-52A	Generic Visual Glideslope Indicators (GVGI)
150/5345-53C	Airport Lighting Equipment Certification Program

NUMBER	TITLE
150/5345-54B	Specification for L-1884, Power and Control Unit for Land and Hold Short
150/5345-55A	Specification for L893, Lighted Visual Aid to Indicate Temporary Runway Closure
150/5345-56A	Specification for L-890 Airport Lighting Control and Monitoring System (ALCMS)
150/5360-9	Planning and Design of Airport Terminal Facilities at NonHub Locations
150/5360-12E	Airport Signing and Graphics
150/5360-13 and Change 1	Planning and Design Guidance for Airport Terminal Facilities
150/5370-2E	Operational Safety on Airports During Construction
150/5370-10E	Standards for Specifying Construction of Airports
150/5370-11A	Use of Nondestructive Testing Devices in the Evaluation of Airport Pavement
150/5380-6B	Guidelines and Procedures for Maintenance of Airport Pavements
150/5390-2B	Heliport Design
150/5390-3	Vertiport Design
150/5395-1	Seaplane Bases

**THE FOLLOWING ADDITIONAL APPLY TO AIP PROJECTS ONLY
DATED: 6/2/2010**

NUMBER	TITLE
150/5100-14D	Architectural, Engineering, and Planning Consultant Services for Airport Grant Projects
150/5100-15A	Civil Rights Requirements for the Airport Improvement Program
150/5100-17 and Changes 1 through 6	Land Acquisition and Relocation Assistance for Airport Improvement Program Assisted Projects
150/5200-37	Introduction to Safety Management Systems (SMS) for Airport Operators
150/5300-15A	Use of Value Engineering for Engineering Design of Airports Grant Projects
150/5320-17	Airfield Pavement Surface Evaluation and Rating (PASER) Manuals
150/5370-6D Change 1-4	Construction Progress and Inspection Report – Airport Grant Program
150/5370-12A	Quality Control of Construction for Airport Grant Projects
150/5370-13A	Offpeak Construction of Airport Pavements Using Hot-Mix Asphalt
150/5380-7A	Airport Pavement Management Program
150/5380-8A	Handbook for Identification of Alkali-Silica Reactivity in Airfield Pavements

**THE FOLLOWING ADDITIONAL APPLY TO PFC PROJECTS ONLY
DATED: 6/2/2010**

NUMBER	TITLE
150/5000-12	Announcement of Availability – Passenger Facility Charge (PFC) Application (FAA Form 5500-1)

- 35. Relocation and Real Property Acquisition.** (1) It will be guided in acquiring real property, to the greatest extent practicable under State law, by the land acquisition policies in Subpart B of 49 CFR Part 24 and will pay or reimburse property owners for necessary expenses as specified in Subpart B. (2) It will provide a relocation assistance program offering the services described in Subpart C and fair and reasonable relocation payments and assistance to displaced persons as required in Subpart D and E of 49 CFR Part 24. (3) It will make available within a reasonable period of time prior to displacement, comparable replacement dwellings to displaced persons in accordance with Subpart E of 49 CFR Part 24.
- 36. Access By Intercity Buses.** The airport owner or operator will permit, to the maximum extent practicable, intercity buses or other modes of transportation to have access to the airport; however, it has no obligation to fund special facilities for intercity buses or for other modes of transportation.
- 37. Disadvantaged Business Enterprises.** The recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non discrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26, and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801).
- 38. Hangar Construction.** If the airport owner or operator and a person who owns an aircraft agree that a hangar is to be constructed at the airport for the aircraft at the aircraft's owner's expense, the airport owner or operator will grant to the aircraft owner for the hangar a long term lease that is subject to such terms and conditions on the hangar as the airport owner or operator may impose.
- 39. Competitive Access.**
- a. If the airport owner or operator of a medium or large hub airport (as defined in section 47102 of title 49, U.S.C.) has been unable to accommodate one or more requests by an air carrier for access to gates or other facilities at that airport in order to allow the air carrier to provide service to the airport or to expand service at the airport, the airport owner or operator shall transmit a report to the Secretary that:
 - (1) Describes the requests;
 - (2) Provides an explanation as to why the requests could not be accommodated; and
 - (3) Provides a time frame within, if any, the airport will be able to accommodate requests.
 - b. Such report shall be due on either February 1 or August 1 of each year if the airport has been unable to accommodate the request(s) in the six month period prior to the applicable due date.

IV. Standard DOT Title VI Assurances

The sponsor hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation (DOT), it will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and all requirements imposed by 49 CFR Part 21, - Nondiscrimination in Federally Assisted Programs of the Department of Transportation -- Effectuation of Title VI of the Civil Rights Act of 1964

(hereinafter referred to as the "Regulations") to the end that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement. Without limiting the above general assurance, the sponsor agrees concerning this grant that:

- A. Each "program" and "facility" (as defined in Sections 21.23(e) and 21.23 (b)) will be conducted or operated in compliance with all requirements of the Regulations.
- B. It will insert the following clauses in every contract subject to the Act and the Regulations:

"During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. Compliance with Regulations. The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. Nondiscrimination. The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. Information and Reports. The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. Sanctions or Noncompliance. In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or*
- b. Cancellation, termination, or suspension of the contract, in whole or in part.*

6. Incorporation of Provisions. The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor."

- C. Where Federal financial assistance is received to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
- D. Where Federal financial assistance is in the form or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over, or under such property.
- E. It will include the following clauses, as appropriate:

"1. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

2. The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as a covenant running with the land") that: (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended, of the FAA may direct as a means of enforcing such provisions including sanctions or noncompliance. Provided, however, that in the event a contract becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the sponsor with other parties:

- 1. for the subsequent transfer of real property acquired or improved with Federal financial assistance under this Project; and
 - 2. for the construction or use of or access to space on, over, or under real property acquired or improved with Federal financial assistance under this Project.
- F. This assurance obligates the sponsor for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of personal property or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the sponsor or any transferee for the longer of the following periods.
 - 1. the period during which the property is used for a purpose for which Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits, or

- 2. the period during which the sponsor retains ownership or possession of the property.
- G. It will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other sponsors, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants or Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations, and this assurance.
- H. It agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

This assurance is given in consideration of and for the purpose of obtaining Federal financial ACE-1450 Standard DOT Title VI Assurance 8/29/96 assistance for this Project and is binding on its contractors, the sponsor, subcontractors, transferees, successors in interest and other participants in the Project. The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the sponsor.

V. Sponsor Acceptance of Terms and Conditions

I certify that, for any and all projects with federal participation to be undertaken by the Sponsor, the Sponsor agrees to accomplish the projects within the terms and conditions contained herein.

City of Corning
Name of Sponsor

Signature Sponsor's Designated Official Representative

Title

Dated



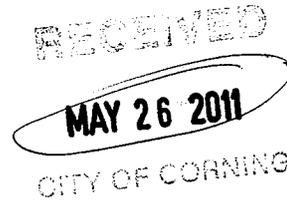
U.S. Department
of Transportation
**Federal Aviation
Administration**

Western-Pacific Region
San Francisco Airports District Office

831 Mitten Road, Rm. 210
Burlingame, CA 94010-1303

May 20, 2011

Mr. John Brewer
Public Works Director
City of Corning
794 Third Street
Corning, California 96021



Dear Mr. Brewer:

The Federal Aviation Administration recently amended the Airport Improvement Program grant assurances to incorporate the interim policy regarding access to airports from residential property (through-the-fence). The interim policy is added to the standard sponsor assurances under section C (Sponsor Certification), 5 (Preserving Rights and Powers), paragraph g. Accordingly, we revised the Master Agreement to reflect the change. (19.20)

In addition, we deem it prudent at this time to make the following changes:

- Add General Conditions F and G to address timely grant drawdown (19.3)
- Incorporate special conditions M to AA in the revised Master Agreement (pages 9-15)

Please execute the attached Master Agreement and return it within 30 days. Please note the new Master Agreement is required to be enforced for all future grant offers.

If you have any questions, please feel free to contact me at (650) 876-2778 ext. 626, email: Ron.biaoco@faa.gov, or contact Ms. Pet Mandap at (650) 876-2778 ext. 628, email: Pet.mandap@faa.gov.

Sincerely,

Ron Biaoco
Airports Program Manager

Enclosure

To Mike Fitzpatrick
6/9/2011 via email

**ITEM NO: G-6
AWARD BIDS FOR PUBLIC
WORKS FUEL, GRAVEL,
ASPHALT, OIL/GREASE FOR A
THREE YEAR PERIOD**

JUNE 28, 2011

**TO: HONORABLE MAYOR AND COUNCILMEMBERS
OF THE CITY OF CORNING**

**FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
JOHN L. BREWER; AICP, DIRECTOR OF PUBLIC WORKS**



SUMMARY:

We recently sought bids for supplies we regularly purchase. At the June 16, 2011 bid opening, staff received 3 proposals for discounted Fuel, 1 proposal for Asphalt Materials, 1 proposal for Gravel Products and 2 proposals for Oil/Grease. The Bid Summary is attached for Council review. Staff has reviewed them and on the basis of those bids recommends the following companies be awarded the adjacent listed products and materials bids for the Public Works Department.

Gasoline/Diesel:	Northern Lights Energy
Gravel Products:	Thomas Creek Rock
Asphalt Materials:	Tehama Asphalt
Oil/Grease:	Redding Oil Company

The prices quoted for the products and materials will be in effect for a three-year time period, beginning July 1, 2011 through June 30, 2014. Funds for these materials are annually included in the yearly budget.

FUEL BID:

This item is to supply fuel for all City vehicles. Northern Lights Energy, TBS Petroleum (dba Corning Shell), and Redding Oil Company (dba Corning 76) each submitted proposals for the Gasoline/Diesel component of the Public Works Materials & Supplies. Please refer to Bid Summary page 1. Note that though listed on the bid summary, we no longer buy Hi Octane gasoline-so that bid item should be ignored.

To better evaluate the bids, we looked at an entire year of the City's fuel purchases. That analysis sheet is attached as Bid Summary Page 4. From that, since we buy considerably more gasoline than diesel, staff determined utilizing Northern Lights Energy would cost the City slightly less money (\$66.91/year). Northern Lights Energy is therefore the lowest bidder.

GRAVEL & ASPHALT:

The bids submitted for Gravel and Asphalt products are listed on Bid Summary Page 2. Only one bid was presented for asphalt. That bid should be awarded to Tehama

Asphalt. Likewise, one bid for gravel products was submitted, by Thomas Creek Rock, and that firm should be awarded that supplier bid.

OIL AND GREASE:

Two bids were submitted. See Bid Summary-Page 3. Redding Oil is the low bidder for oil and grease.

RECOMMENDATION:

THAT THE CITY COUNCIL:

- **AWARD BIDS TO SUPPLY FUEL TO NORTHERN LIGHTS ENERGY; GRAVEL PRODUCTS TO THOMAS CREEK ROCK; ASPHALT MATERIALS TO TEHAMA ASPHALT, AND OIL/GREASE PRODUCTS TO REDDING OIL COMPANY FOR A THREE YEAR PERIOD COMMENCING JULY 1, 2011 AND RUNNING THROUGH JUNE 30, 2014.**

BID SUMMARY
(Fuel, Gravel, Asphalt, Oil/Grease)
June 16, 2011 at 2:00 pm

BID FOR DISCOUNTED GASOLINE/DIESEL (3 Proposals Received)

Current Price on June 16, 2011 at 2:00 pm:

1) Northern Lights Energy, Inc Corning, CA		Price on Pump	Price Discount	Cost to City
Item #1.	Unleaded Fuel per gallon:	<u>\$3.70/9</u>	<u>.035¢</u>	<u>\$3.67/4</u>
Item #2.	Unleaded 91-Octane: Full per gallon	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
Item #3.	Diesel Fuel per gallon:	<u>\$4.15/9</u>	<u>.035¢</u>	<u>\$4.12/4</u>

BID FOR DISCOUNTED GASOLINE/DIESEL

Current Price on June 16, 2011 at 2:00 pm:

2) TBS Petroleum (Shell) Corning, CA		Price on Pump	Proposed Discount	Cost to City
Item #1.	Unleaded Fuel per gallon:	<u>\$3.73/9</u>	<u>.06¢</u>	<u>\$3.67/9</u>
Item #2.	Unleaded 91-Octane: Full per gallon	<u>\$3.93/9</u>	<u>.06¢</u>	<u>\$3.87/9</u>
Item #3.	Diesel Fuel per gallon:	<u>\$4.17/9</u>	<u>.06¢</u>	<u>\$4.11/9</u>

BID FOR DISCOUNTED GASOLINE/DIESEL

Current Price on June 16, 2011 at 2:00 pm:

3) Redding Oil Co. DBA Corning 76 Corning, CA		Price on Pump	Price Discount	Cost to City
Item #1.	Unleaded Fuel per gallon:	<u>\$3.81/9</u>	<u>.03¢</u>	<u>\$3.78/9</u>
Item #2.	Unleaded 91-Octane: Full per gallon	<u>\$4.01/9</u>	<u>.03¢</u>	<u>\$3.98/9</u>
Item #3.	Diesel Fuel per gallon:	<u>\$4.29/9</u>	<u>.03¢</u>	<u>\$4.26/9</u>

BID FOR GRAVEL PRODUCTS (1 Proposal Received)

**1) Thomas Creek Rock
Corning, CA**

Item #1.	¾" Class II Base	<u>\$8.50 per ton</u>
Item #2.	Pit Run	<u>\$4.80 per ton</u>
Item #3.	Drain Rock	<u>\$8.25 per ton</u>
Item #4.	¾" Screened Base	<u>\$8.50 per ton</u>
Item #5.	Pea Gravel	<u>\$4.75 per ton</u>
Item #6.	Sand	<u>\$9.00 per ton</u>

BID FOR ASPHALT PRODUCT MATERIALS (1 Proposal Received)

**1) Tehama Asphalt
Red Bluff, CA**

Item #1.	¾" Asphalt Concrete	<u>\$66.00</u>
Item #2.	½" Asphalt Concrete	<u>\$64.00</u>
Item #3.	¾" MC (Medium Cure) Asphalt Cold Mix	<u>N/A</u>
Item #4.	SS 1 Emulsion Oil	<u>N/A</u> per Gallon, <u>N/A</u> per ton
Item #5.	Hydro Patch	<u>N/A</u>

BID FOR OIL/GREASE PRODUCTS (2 Proposals Received)

**1) Redding Oil Co.
Redding, CA**

			Proposal added Sales Tax
Item #1.	Hydraulic Oil 10W	<u>\$422.95 per drum.</u>	\$457.84
Item #2.	Gear Oil 80/90 W	<u>\$593.95 per drum.</u>	\$642.95
Item #3.	AW 46 Turbine Oil	<u>\$428.45 per drum.</u>	\$463.80
Item #4.	Chassis Lube	<u>\$239.50 ¼ drum.</u>	\$259.26
Item #5.	Transmission Oil	<u>\$489.50 per drum.</u>	\$529.88

**2) Northern Lights Energy, Inc
Corning, CA**

Item #1.	Hydraulic Oil 10W	<u>\$461.45 per drum.</u>	
Item #2.	Gear Oil 80/90 W	<u>\$676.00 per drum.</u>	
Item #3.	AW 46 Turbine Oil	<u>\$604.45 per drum.</u>	
Item #4.	Chassis Lube	<u>\$310.80 ¼ drum.</u>	
Item #5.	Transmission Oil	<u>\$475.75 per drum.</u>	

City usage by Department

Beginning August 2010 to June 2011

PD-Gas	PW-Gas	PW-Diesel	Fire-Gas	Fire-Diesel
914.46	463.81	45.58	23.98	4.52
813.73	446.85	9.38	44.92	42.45
924.72	487.31	94.05	77.23	115.54
740.23	364.93	31.12	28.48	58.05
826.35	398.44	94.51	17.93	62.79
925.15	340.02	72.06	24.49	87.06
930.56	455.53	216.46	25.84	39.52
889.19	484.96	69.31	18.21	129.4
1047.51	376.18	37.07	24.52	33.53
1077.51	371.78	55.19	16.16	103.38
1201.72				

Total Gallons **10,291.13** **4,189.81** **724.73** **301.76** **676.24**

Total City Gasoline = 14,782

Total City Diesel = 1,401

Bidder Comparison

	Northern Lights Energy	TBS Petroleum (Shell)	Redding Oil DBA Corning 76
Gasoline	\$54,309.07	\$54,382.98	\$56,009.00
Diesel	\$5,777.72	\$5,770.72	\$5,980.87

Total Cost **\$60,086.79** \$60,153.70 \$61,989.87

The above totals are derived from each Bidders proposed Cost to the City multiplied by the total City gallon usage. Northern Lights Energy is the lowest Bidder.

**ITEM NO. G-7
APPROVE CHANGE ORDER NO. 6 IN THE AMOUNT
OF \$3,200.00; APPROVE PARTIAL PAYMENT
REQUEST NO. 6 IN THE AMOUNT OF \$76,866.67;
AND ACCEPT THE SOLANO ST./MARGUERITE AVE.
TRAFFIC SIGNAL PROJECT PROJECT AS
COMPLETE.**

JUNE 28, 2011

TO: CITY COUNCIL OF THE CITY OF CORNING, CALIFORNIA

**FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
ED ANDERSON, CITY ENGINEER
JOHN L. BREWER, AICP; PUBLIC WORKS DIRECTOR**



SUMMARY:

This report addresses multiple items related to the new traffic signal project at Solano Street and Marguerite Avenue. First, staff recommends approval of Change Order No. 6 to cover the costs of additional paving on Solano Street. Second, we recommend approval of Progress Payment Request No. 6 to Franklin Construction in the amount of \$76,866.67. And third, staff recommends the acceptance of the construction of the traffic signal and related work at the intersection of Solano Street and Marguerite Avenue.

The work has been satisfactorily completed¹ by Franklin Construction and the traffic signal is in operation. A Notice of Completion has been prepared and is ready to be filed with the County Recorder following acceptance of the work by the City Council.

BACKGROUND:

The project was awarded back in August 2010; however, unprecedented inclement weather this year forced the shutdown of the work for a significant period. Although the traffic signal facilities were able to be installed; i.e. poles, foundations, electrical conduit, etc. the related paving and concrete work was put on hold until the weather was cooperative. Because of the long, wet spring it was also decided to wait a little longer until the school year was complete before closing the intersection for paving and concrete work.

Several issues arose during construction that needed to be resolved by change orders. The cost of those change orders is summarized below under "Cost Summary" and on the attached Change Order document. The Change Orders addressed issues such as:

Upgrading to more expensive cameras and controller because the District 2 Caltrans maintenance department technicians in Redding, who maintain our traffic signals, did not stock the replacement parts, nor did they work on, the less expensive equipment camera that was bid by both contractors who presented bids.

Extra excavation was required on Marguerite Avenue on the east side under the new sidewalk, and backfilled with base rock, when it was discovered that the water main under the

¹ Note: at the time of this writing, a few minor "cleanup" issues remain to be completed. However, we expect those to be addressed before the Council meeting.

street had been leaking and the ground was too saturated to obtain compaction under the new shoulder and sidewalk.

Change Order No. 6 is for extra asphalt paving thickness that was required on Solano because the existing pavement thickness was discovered to be less than expected and, coupled with the new overlay, would not have provided the minimum 2-inch thickness of asphalt concrete required for the street. See the "Justifications" section of the Change Order document.

COST SUMMARY:

Original Construction Contract	\$ 252,242.00
Contract Change Order No. 1	\$ 28,225.37
Contract CCO No. 2	\$ 4,372.20
Contract Change Order No. 3 (contract extension)	\$ 0.00
Change Order No. 4	\$ 5,115.90
Change Order No. 5	\$ 7,255.00
Proposed Change Order No. 6	\$ 3,200.00
Total Adjusted Contract Amount	<u>\$300,401.47</u>

Note that the total project construction cost was \$300,401.47, slightly over the original Engineer's Estimate of \$300,000 noted in the staff report dated August 24, 2010.

FUTURE LANDSCAPING:

Though it's beyond the scope of the current project, it is the desire of city staff to follow-up with some landscaping at the northeast corner, behind the traffic signal controller and the other electrical equipment, to mirror and compliment the new landscaping at the Meuser Building at the southeast corner of the intersection. City staff feels that this intersection has now become an asset to the city and portrays an attractive "gateway" to motorists entering Corning from the east. Of course landscaping and irrigation to serve it mean additional cost to the City.

RECOMMENDATION:

That the City Council:

- **APPROVE CCO #6, \$3,200 FOR EXTRA PAVING THICKNESS ON SOLANO STREET.**
- **APPROVE PROGRESS PAY ESTIMATE #6, IN THE AMOUNT OF \$76,866.67 TO FRANKLIN CONSTRUCTION (THE \$30,041.05 RETENTION WILL BE DUE 35-DAYS FOLLOWING THE FILING OF THE NOTICE OF COMPLETION, PROVIDING THERE ARE NO LIENS FILED AGAINST THE CONTRACTOR DURING THE 35-DAY LIEN PERIOD.)**
- **ACCEPT THE PROJECT AS COMPLETE AND AUTHORIZE STAFF TO FILE THE NOTICE OF COMPLETION WITH THE COUNTY CLERK.**

CONTRACT CHANGE ORDER

Order No. 6

Date: June 16, 2011

Contract for: Traffic Signal Installation and Related Work at Marguerite and Solano St.

Owner: City of Corning, 794 Third Street, Corning, CA 96021

To: Franklin Construction, Inc. 217 Flume St., Suite 200, Chico, CA 95928

You are hereby requested to comply with the following changes from the contract plans and specifications.

<u>Description of Changes</u>	<u>DECREASE</u> <u>In Contract Price</u>	<u>INCREASE</u> <u>In Contract Price</u>
1. Increase overlay thickness on Solano, east of Marguerite an additional 0.07 for a total resultant overlay thickness of 0.17' (2-inches).		\$ 3,200.00
Net Change in Contract Price:		+\$ 3,200.00

JUSTIFICATIONS:

1. The contract was awarded to Franklin Construction prior to the completion of the new Medical Facility on the southeast corner of the intersection. Consequently, the area on Solano Street requiring an overlay on the north side was unknown at the time. It was decided to use the change order process for the overlay on the remaining portion of Solano following award of the traffic signal project. The overlay was originally contemplated to be 0.10-foot over the existing pavement surface; however, when the area was ground down prior to paving, it was discovered that the existing pavement thickness was less than 0.10 foot over base rock. Minimum pavement thickness should be 0.17-foot (2-inches) to support normal traffic. Therefore, the overlay thickness was increased to 2-inches, requiring 40-tons more of asphalt concrete at \$80/ton, resulting in a cost increase of \$3,200. Labor and equipment time remained the same as required for the lesser originally contemplated thickness.

The contract total including this and previous change orders will be: \$ 300,410.47

The contract completion date will remain at: June 30, 2011

This document will become a supplement to the Contract and all provisions will apply hereto.

Requested: 
Franklin Construction, Inc.

Date: 6/20/11

Recommended: _____
J.E. (Ed) Anderson, City Engr

Date: _____

Accepted: _____
City of Corning

Date: _____

PARTIAL PAYMENT ESTIMATE

Corning: Solano/Marguerite Traffic Signal Project

Progress Payment Estimate No. 6

OWNER:

City of Corning

CONTRACTOR:

Franklin Construction of Chico, CA

PERIOD OF ESTIMATE:

FROM: 06/1/11 to 06/30/11

CONTRACT CHANGE ORDER SUMMARY

ESTIMATE

No.	Approval Date	Amount		
		Additions	Deductions	
1	01/11/11	\$28,225.37	0	1. Original Contract..... \$252,242.00
2	01/25/11	\$ 4,372.20	0	2. Change Orders..... \$ 48,168.47
3	03/08/11	0	0	3. Revised Contract (1+2)..... \$300,410.47
4	05/24/11	\$5,115.90	0	4. Work Completed (100%)..... \$300,410.47
5	06/14/11	\$ 7,755.00	\$500.00	5. Stored Materials 0
6	06/28/11	\$ 3,200.00		6. Subtotal (4+5)..... \$ 300,410.47
TOTALS		+\$48,668.47	- \$500.00	7. Retainage10%..... \$ (30,041.05)
NET CHANGE		\$48,168.47		8. Previous Payments..... \$ 193,502.75
				9. Amount Due (6-7-8)..... \$ 76,866.67

CONTRACT TIME

Original (days) 120
 Revised 210
 Remaining 0

On Schedule Yes
 No

Starting Date: 12/01/10
 Projected Completion: 06/30/11

CONTRACTOR'S CERTIFICATION:

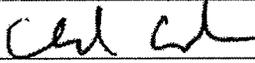
The undersigned Contractor certifies that to the best of their knowledge, information and belief the work covered by this payment estimate has been completed in accordance with the contract documents, that all amounts have been paid by the contractor for work for which previous payment estimates was issued and payments received from the owner, and that current payment shown herein is now due.

ARCHITECT OR ENGINEER'S CERTIFICATION:

The undersigned certifies that the work has been carefully inspected and to the best of their knowledge and belief, the quantities shown in this estimate are correct and the work has been performed in accordance with the contract documents.

Contractor Franklin Construction, Inc.

Engineer Ed Anderson, City Engineer

By 

By _____

Date 6/20/11

Date: _____

APPROVED BY OWNER:

Owner City of Corning

By _____

Stephen J. Kimbrough

Date _____

City of Corning
Engineering Division
Partial Payment Request

Contractor: Franklin Construction, Inc.	Date: 6/16/11	Purchase Order No.:
Address: 217 Flume Street, Suite 200, Chico, CA 95928	Project No.: 21038	Application No.: 6
Project: Traffic Signal Installation and Related Work at Marguerite and Solano St.	From: 6/1/11	To: 6/30/11

Item No.	Description	Estimated Contract Quantity	Previous Quantity To Date	Quantity To Date	Unit	Unit Cost	Total To Date	% Complete	Remarks
BASE BID									
1	Demolition	1	0.90	1.00	LS	\$ 29,100.00	\$ 29,100.00	100%	
2	Traffic Signal - Complete	1	0.90	1.00	LS	\$ 123,000.00	\$ 123,000.00	100%	
3	Concrete Valley Gutter	385	383.00	385.00	SF	\$ 7.15	\$ 2,752.75	100%	
4	Vertical Curb & Gutter	295	378.00	295.00	LF	\$ 23.00	\$ 6,785.00	100%	
5	Concrete Flatwork	1475	1548.00	1475.00	SF	\$ 5.50	\$ 8,112.50	100%	
6	Concrete Handicap Curbs	115	42.00	115.00	LF	\$ 13.25	\$ 1,523.75	100%	
7	Truncated Domes	3	3.00	3.00	EA	\$ 340.00	\$ 1,020.00	100%	
8	Install 6" Concrete Driveway	216	274.00	216.00	SF	\$ 5.50	\$ 1,188.00	100%	
9	Aggregate Baserock	2650	2375.00	2650.00	SF	\$ 4.90	\$ 12,985.00	100%	
10	Install 2" Type C Asphalt Concrete	2650	0.00	2650.00	SF	\$ 5.00	\$ 13,250.00	100%	
11	Thermoplastic Striping	1	0.00	1.00	LS	\$ 9,815.00	\$ 9,815.00	100%	
12	Install Modular Block Wall	525	420.00	525.00	LF	\$ 60.00	\$ 31,500.00	100%	
13	Traffic Control	1	0.75	1.00	LS	\$ 9,810.00	\$ 9,810.00	100%	
14	SWPPP	1	1.00	1.00	LS	\$ 1,400.00	\$ 1,400.00	100%	
CCO#1 Contract Change Order #1									
1	Reduce Curb Return Radius From 30-feet to 20-feet	1	1.00	1.00	LS	\$ -	\$ -	100%	
2	Replace Iteris VIVDS with Trafficon Brand	1	0.00	1.00	LS	\$ 8,771.89	\$ 8,771.89	100%	
3	Install (2) Pedestrian Push Buttons	1	0.00	1.00	LS	\$ 1,433.48	\$ 1,433.48	100%	
4	Install 0.10-foot Asphalt Concrete Overlay on Solano St.	1	0.00	1.00	LS	\$ 18,020.00	\$ 18,020.00	100%	
CCO#2 Contract Change Order #2									
1	Connt 2nd Line in Solano St., Replace CG&SW	1	1.00	1.00	LS	\$ 4,372.20	\$ 4,372.20	100%	
CCO#3 Contract Change Order #3									
1	Extend Contract Completion Date to 6/30/2011	1	1.00	1.00	LS	\$ -	\$ -	100%	
CCO#4 Contract Change Order #4									
1	Over Excavation For Hydrant Leak	1	1.00	1.00	LS	\$ 5,115.90	\$ 5,115.90	100%	
CCO#5 Contract Change Order #5									
1	Increase Solano Overlay	990	0.00	990.00	SF	\$ 1.00	\$ 990.00	100%	
2	Pave Medical Office Parking Lot	1,555	0.00	1555.00	SF	\$ 3.00	\$ 4,665.00	100%	
3	Install Concrete Steps	1	0.00	1.00	LS	\$ 2,100.00	\$ 2,100.00	100%	
4	Revise Striping Plan (Deduct)	1	0.00	1.00	LS	\$ (500.00)	\$ (500.00)	100%	
CCO#6 Contract Change Order #6									
1	Increase Solano Overlay to 2"	40	0.00	40.00	TN	\$ 80.00	\$ 3,200.00	100%	

Distribution: Finance
Contractor
Engineering
P.O. Binder

Total Amount Earned to Date:	\$	300,410.47
10% Retention:		\$30,041.05
Retention Released:		\$0.00
Net Amount Retained:		\$30,041.05
Total Less Net Retention:		\$270,369.42
Amount Previously Paid:		\$193,502.75
Total Amount Payable:		\$76,866.68

Reviewed and Approved: _____
Construction Engineer

WHEN RECORDED MAIL TO:

City of Corning
794 Third Street
Corning, CA 96021

NOTICE OF COMPLETION

NOTICE IS HEREBY GIVEN THAT:

1. The undersigned is an owner of interest or estate in the hereafter described project, the nature of which interest is: The Marguerite Avenue and Solano Street Traffic Signal.
2. The full name and address of the undersigned owner is: City of Corning, 794 Third Street, Corning, CA 96021.
3. The project known as the "Marguerite Avenue and Solano Street Traffic Signal Project" includes the following improvements: Installation of new traffic signal including street modifications and related work.
4. The work has been satisfactorily completed and is suitable to be put into use as of _____, and is hereby accepted for ownership and operation by: The Public Works Director and Building Official of the City of Corning, in accordance with the authority provided by the City Council of the City of Corning at a Regular Council Meeting, on June 28, 2011.
5. The name of the General Contractor for the project is: Franklin Construction, Inc. 217 Flume Street, Suite 200, Chico, CA 95928 under a contract dated: December 1, 2010.
6. The property herein referred to is situated in the City of Corning, Tehama County, and State of California and more particularly described as follows: City street intersection located at Marguerite Avenue and Solano Street.

Date: _____

Stephen J. Kimbrough
City Manager, City of Corning

ATTEST:

Lisa M. Linnet, City Clerk

**ITEM NO.: J-8
RESOLUTION NO. 6-28-2011-02 - CITY OF CORNING
PUBLIC FINANCING CORPORATION RESOLUTION
AUTHORIZING THE EXECUTION OF AN
INSTALLMENT PURCHASE AGREEMENT AND AN
ASSIGNMENT AGREEMENT TO FINANCE WATER
SYSTEM IMPROVEMENTS FOR THE CITY OF
CORNING
JUNE 28, 2011**

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
LISA M. LINNET, CITY CLERK



SUMMARY:

In order to implement the construction financing for the City of Corning's Clark Park Well, the City must take a number of actions, these actions are as follows:

1. Hold a meeting of the City of Corning Public Financing Corporation.
2. Corporation's governing body must pass City of Corning Public Financing Corporation Resolution No, 6-28-2011-02 authorizing the execution of an Installment Purchase Agreement between the City of Corning and the City of Corning Public Financing Corporation and an Assignment Agreement to Finance Water System Improvements for the City of Corning.

The United States of America, acting through the Rural Utilities Service ("RUS") has agreed to finance a portion of the costs of the improvements through a loan in the amount of \$613,000, to be repaid with interest as specified in the letter of conditions dated June 17, 2010, as amended by Amendment No. 1 dated May 27, 2011. Following the Resolution is a complete copy of the Letter of Conditions.

BACKGROUND:

The City of Corning Public Financing Corporation was created in 1997 to assist the City of Corning by financing public improvements and acquisition of City facilities and property. The Public Financing Corporation Board of Directors currently consist of the four sitting City Council Members and the Mayor. The City Manager is the Executive Director, the City Clerk is the Secretary, and the Finance Director/City Manager is the Treasurer of the Corporation. The City Attorney serves as the legal counsel.

RECOMMENDATION:

**CITY OF CORNING PUBLIC FINANCING CORPORATION BOARD OF
DIRECTORS ADOPT CORNING PUBLIC FINANCING CORPORATION
RESOLUTION NO. 6-28-2011-02 AUTHORIZING THE EXECUTION OF AN
INSTALLMENT PURCHASE AGREEMENT AND AN ASSIGNMENT AGREEMENT
TO FINANCE WATER SYSTEM IMPROVEMENTS FOR THE CITY OF CORNING.**

CITY OF CORNING PUBLIC FINANCING CORPORATION

RESOLUTION NO. 6-28-2011-02

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN INSTALLMENT
PURCHASE AGREEMENT AND AN ASSIGNMENT AGREEMENT
TO FINANCE WATER SYSTEM IMPROVEMENTS
FOR THE CITY OF CORNING**

WHEREAS, the City of Corning intends to make improvements to its municipal water system;

WHEREAS, the United States of America, acting through the Rural Utilities Service ("RUS"), has agreed to finance a portion of the costs of the improvements through a loan in the amount of \$613,000, to be repaid with interest at a rate determined as specified in the letter of conditions dated June 17, 2010, as amended by Amendment No. 1 dated May 27, 2011;

WHEREAS, the City has asked the City of Corning Public Financing Corporation to assist the City in connection with the financing;

WHEREAS, the financing will be accomplished by (i) the City and the Corporation entering into an Installment Purchase Agreement, whereby the Corporation will sell the improvements to the City in exchange for installment payments; and (ii) the Corporation's assignment of its interests in the Installment Purchase Agreement to RUS pursuant to an Assignment Agreement, in exchange for payment of the amount required to be paid by the Corporation to the City under the Installment Purchase Agreement, which will be used to pay the costs of constructing the improvements;

NOW, THEREFORE, the Board of Directors of the City of Corning Public Financing Corporation hereby resolves as follows:

Section 1. Recitals. All of the above recitals are true and correct and the Board so finds and determines.

Section 2. Authorization of Officers to Execute and Deliver Documents. The Board hereby approves the Installment Purchase Agreement and the Assignment Agreement in substantially the respective forms presented to this meeting and authorizes and directs the President, the Executive Director, and the Secretary (the "Designated Officers"), and each of them individually, for and in the name of and on behalf of the Corporation, to execute and deliver the Installment Purchase Agreement and the Assignment Agreement (and the certificate of participation attached thereto) in such forms with such changes, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer's and the Board's approval of any such changes, insertions, revision, corrections, or amendments to the forms of the agreements presented to this meeting.

Section 3. General Authorization. All actions heretofore taken by the officers and agents of the Corporation with respect to the execution and delivery of the Installment Purchase Agreement and the Assignment Agreement are hereby approved, and the Designated Officers and any and all other officers of the Corporation are hereby authorized and directed, for and in the name and on behalf of the Corporation, to do any and all things and take any and all actions related to the execution and delivery of any and all certificates, requisitions, agreements and other documents that they, or any of them, may deem necessary or advisable in order to consummate the financing implemented by the delivery of the Installment Purchase Agreement and the Assignment Agreement and to effect the purposes of this resolution.

Section 4. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED on June 28, 2011.

**CITY OF CORNING PUBLIC FINANCING
CORPORATION**

Mayor Gary R. Strack, President

ATTEST:

City Clerk Lisa M. Linnet, Secretary

I hereby certify that the foregoing is a full, true and correct copy of a Resolution duly passed and adopted by the Board of Directors of the City of Corning Public Financing Corporation at a meeting held on June 28, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Secretary

INSTALLMENT PURCHASE AGREEMENT

between the

CITY OF CORNING

and the

CITY OF CORNING PUBLIC FINANCING CORPORATION

Dated August 1, 2011

relating to

**Revenue Certificate of Participation
(Clark Park Municipal Water Project)**

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INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT, made and entered into as of **August 1, 2011**, between the **CITY OF CORNING**, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California, (the "City"), and the **CITY OF CORNING PUBLIC FINANCING CORPORATION**, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"),

WITNESSETH:

WHEREAS, the City proposes to purchase certain improvements to the Water System from the Corporation upon the terms and conditions set forth herein;

WHEREAS, the United States of America, acting through the Rural Utilities Service of the United States Department of Agriculture, Rural Development, has agreed to finance the costs of the acquisition of the improvements;

WHEREAS, the City has previously executed and delivered (i) that certain Lease Agreement dated as of December 1, 1999, by and between the City and the Corporation, as amended and restated by that certain Amended and Restated Lease Agreement dated as of February 1, 2005 (the "Lease Agreement"), and (ii) that certain Installment Sale Agreement (1997 Water Project Refinancing) dated as of February 1, 2005 (the "2005 Installment Sale Agreement"), by and between the City and the Corporation;

WHEREAS, the City may enter into contracts under which payments are secured by a pledge of Water Net Revenues on a parity with the pledge of Water Net Revenues that secures payments under the Lease Agreement and the 2005 Installment Sale Agreement;

WHEREAS, the City has met the conditions set forth in Section 4.8(b) (Parity Debt) of the Lease Agreement and Section 4.08 (Limitations on Future Obligations Secured by Water Net Revenues) of the 2005 Installment Purchase Agreement;

WHEREAS, the City and the Corporation have duly authorized the execution of this Agreement;

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, in consideration of these premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICABILITY

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

Assignee means the United States of America, acting through the Rural Utilities Service of the United States Department of Agriculture, Rural Development, as assignee of the Corporation's interests hereunder, and its successors and assigns.

Certificate means the Revenue Certificate of Participation (Clark Park Municipal Water Project) evidencing the rights to receive the Installment Payments to be made by the City hereunder, which payments are secured by a pledge of Water Net Revenues on a parity with the pledge of Water Net Revenues that secures the Series 1999A Installment Payments, the 1999B Installment Payments, and the 2005A Installment Payments.

City means City of Corning, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

Corporation means the City of Corning Public Financing Corporation, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

Event of Default means an event described in Section 8.1.

Fiscal Year means the period beginning on July 1 of each year and ending on the June 30 of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the City.

Installment Payment Dates mean March 1 and September 1 of each year, commencing March 1, 2012.

Installment Payments means the installment payments of interest and principal scheduled to be paid by the City under and pursuant to this Agreement.

Installment Purchase Agreement means this Installment Purchase Agreement, by and between the City and the Corporation, dated August 1, 2011, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

2005 Installment Sale Agreement means the Installment Sale Agreement (1997 Water Project Refinancing), dated as of February 1, 2005, by and between the City and the Corporation.

Lease Agreement means the Amended and Restated Lease Agreement dated as of February 1, 2005, by and between the City and the Corporation.

Letter of Conditions means the letter of conditions dated June 17, 2010, as amended by Amendment No. 1 dated May 27, 2011, specifying the terms under which USDA Rural Development, through its Rural Utilities Service, will fund the acquisition of the Assets and the construction and acquisition of the Project.

Loan Resolution means the resolution adopted by the City Council of the City on July 13, 2010, in the form of the loan resolution specified by RUS Bulletin 1780-27, as required by Paragraph I(4)(a) of the Letter of Conditions.

Manager means the City Manager of the City, or any other person designated by the City Manager to act on behalf of the City Manager.

Net Proceeds means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such proceeds.

Operation and Maintenance Expenses means, for any period of calculation, all expenses and costs of management, operation, maintenance and repair of the Water System, and all incidental costs, fees and expenses and capital expenditures properly chargeable to the Water System, but excluding debt service or other similar payments and depreciation and obsolescence charges or reserves therefore and amortization of intangibles.

Owner means any person who shall be the registered owner of the Certificate.

Parity Debt means the payments made pursuant to any other indebtedness or other obligations (including leases and installment purchase agreements) hereafter issued or incurred and secured by a pledge of and lien on Water Net Revenues equally and ratably with the Installment Payments. Parity Debt includes (i) the lease payments under the Lease Agreement, which are evidenced by the 1999 Certificates of Participation, Series A and the 1999 Certificates of Participation, Series B, and (ii) the installment payments under the 2005A Installment Purchase Agreement (1997 Water Project Refinancing), which are evidenced by the Revenue Certificates of Participation, 2005 Series A.

Project means the improvements to be acquired from the Corporation.

Purchase Price means the principal amount plus interest thereon owed by the City to the Corporation under the terms hereof as provided in Section 4.1.

Reserve Requirement means an amount equal to the average annual amount payable as Installment Payments.

USDA Rural Development means the United States Department of Agriculture, Rural Development.

Water Gross Revenues means all income and revenue received by the City from the ownership and operation of the Water System, including, without limiting the generality of the foregoing,

(1) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of the Water System;

(2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to the Water System; and

(3) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Water System;

provided, that the term "Water Gross Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the City.

Water Net Revenues means, for any period of calculation, Water Gross Revenues less Operation and Maintenance Expenses of the Water System.

Water Service means the water distribution service made available or provided by the Water System.

Water System means the municipal water system of the City serving the City and its inhabitants, including all improvements, extensions, and additions thereto, and including all property, real, personal and mixed, of every nature now or hereafter owned by the City and used in the operations of its municipal water system.

Section 1.2. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City or the Corporation any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Corporation shall be for the sole and exclusive benefit of the other parties.

Section 1.3. Successor Is Deemed Included in all References to Predecessor. Whenever either the City or the Corporation is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City or the Corporation, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Corporation shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 1.4. Waiver of Personal Liability. No director, officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or hereby.

Section 1.5. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All

references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to the Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 1.6. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The City and the Corporation hereby declare that they would have executed the Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 1.7. California Law. This Installment Purchase Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 1.8. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City: City of Corning
794 Third Street
Corning, CA 96021
Attention: City Manager

If to the Corporation: City of Corning Public Financing Corporation
794 Third Street
Corning, CA 96021
Attention: President

Section 1.9. Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

ARTICLE II REPRESENTATIONS BY THE CITY AND THE CORPORATION

Section 2.1. Representations by the City. The City makes the following representations:

(a) The City is a municipal corporation organized and existing under the laws of the State of California.

(b) The City has full legal right, power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) By proper action, the City has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

Section 2.2. Representations by the Corporation. The Corporation makes the following representations and warranties:

(a) The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

(b) The Corporation has full legal right, power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) By proper action, the Corporation has duly authorized the execution, delivery and due performance of this Agreement.

ARTICLE III INSTALLMENT PURCHASE OF THE PROJECT

Section 3.1. Installment Purchase of the Project by the City; Title. The Corporation hereby sells the Project to the City for the Purchase Price, as described in Section 4.1. All right, title and interest in each component of the Project shall vest in the City immediately upon construction thereof. Such vesting shall occur without further action by the Corporation or the City, and the Corporation shall, if requested by the City or if necessary to assure such automatic vesting, deliver any and all documents required to assure such vesting.

Section 3.2. Construction of the Project. The Corporation hereby agrees that, following the delivery of the Certificate, it shall cause the Project to be constructed by the City as its agent. The City shall enter into contracts and provide for, as agent for the Corporation, the complete construction of the Project. The City hereby agrees that it will cause the construction of the Project to be diligently performed after the deposit of funds pursuant to Section 3.3.

It is hereby expressly understood and agreed that the Corporation shall be under no liability of any kind or character whatsoever for the payment of any cost of the Project and that all such costs and expenses shall be paid by the City, regardless of whether the funds deposited pursuant to Section 3.3 are sufficient to cover all such costs and expenses.

Section 3.3. Application of Proceeds. To pay the costs of construction of the Project and the costs of issuance of the Certificate, on the date of delivery of the Certificate, the Corporation hereby agrees to cause to be paid to the City the sum of \$613,000. The City agrees that it will apply the funds received from the Corporation for the following purposes:

(a) Costs of Issuance. to pay costs of issuance of the Certificate (estimated at \$21,326.62).

(b) Project Costs: to deposit the balance of funds remaining thereafter into the Construction Account, which is hereby established for the Project, under the control of the City.

**ARTICLE IV
INSTALLMENT PAYMENTS**

Section 4.1. Purchase Price.

(a) The Purchase Price to be paid by the City hereunder to the Corporation is the sum of the principal amount of the City's obligations hereunder plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to prepayment as provided in Article VII.

(b) The principal amount of the payments to be made by the City hereunder is set forth in Exhibit A hereto.

(c) The interest to accrue on the unpaid balance of such principal amount is as specified in Section 4.2 and Exhibit A hereto and shall be paid by the City as and constitute interest paid on the principal amount of the City's obligations hereunder.

Section 4.2. Installment Payments. The City shall, subject to its rights of prepayment provided in Article VII, pay the Corporation the Purchase Price in installment payments of interest and principal in the amounts and on the Installment Payment Dates as set forth in Exhibit A hereto.

Interest shall accrue at the rate of _____% per annum on the aggregate unpaid principal components of Installment Payments, calculated based on a 365-day year and actual days elapsed.

Each Installment Payment shall be paid to the Corporation in lawful money of the United States of America. If the City fails to make any of the payments required to be made by it under this section, such payment shall continue as an obligation of the City until such amount shall have been fully paid and the City agrees to pay the same with interest accruing thereon at the rate or rates of interest then applicable to the remaining unpaid principal balance of the Installment Payments if paid in accordance with their terms.

The obligation of the City to make the Installment Payments out of Water Net Revenues is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full, the City will not discontinue or suspend any Installment Payments required to be made by it under this section when due, whether or not the Water System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and whether or not the Project has been completed, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

The City's obligations to make the Installment Payments and other obligations of the City hereunder are special obligations of the City payable solely from, and secured by a pledge of and lien upon the Water Net Revenues. The Installment Payments do not constitute a debt of the City, the Corporation, the State of California or any political subdivision thereof within the meaning of any constitutional or statutory provision or limitation. Neither the full faith and

credit nor the taxing power of the City, the State of California or any political subdivision thereof is pledged to the payment thereof.

Section 4.3. Net Contract. The Installment Purchase Agreement shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

ARTICLE V SECURITY

Section 5.1. Pledge of Water Net Revenues. The City hereby irrevocably pledges all of the Water Net Revenues to the payment of the Installment Payments. This pledge shall constitute a first lien on the Water Net Revenues for the payment of the Installment Payments on parity with the pledge of Water Net Revenues that secures the Parity Debt.

Section 5.2. Establishment and Funding of the Reserve Account. (a) In accordance with Paragraph I(2) of the Letter of Conditions, the City hereby establishes and promises to maintain an account designated as the "Reserve Account." On each anniversary of the delivery of the Certificate, commencing in 2012, the City shall deposit into the Reserve Account an amount equal to one-tenth (1/10) of the average annual amount payable as Installment Payments until the amount on deposit in the Reserve Account is equal to the Reserve Requirement.

(b) **Application of the Reserve Account.** In accordance with Paragraph 14 of the Loan Resolution, the City may withdraw and apply funds from the Reserve Account only with the prior approval of USDA Rural Development and only (i) to make Installment Payments when no other funds of the City are available therefor, (ii) to pay the final Installment Payment, or (iii) to fund emergency maintenance to the Water System, extensions to the Water System, and replacement of short-lived assets used in connection with the Water System. The City shall deposit any earnings received from the investment of funds in the Reserve Account therein until the balance of the Reserve Account is equal to the Reserve Requirement; thereafter, the City shall deposit any such earnings into its water enterprise fund.

(c) **Replenishment of the Reserve Account.** On or before the last day of each month, the City shall deposit in the Reserve Account one-twelfth (1/12) of the amount of any prior withdrawal from the Reserve Account until the amount withdrawn is fully restored to the Reserve Account.

Section 5.3. Depreciation Reserve . (a) **Funding of a Depreciation Reserve.** The City has previously established its Water Capital Replacement Fund #383 (the "Replacement Fund"), which is used to fund the replacement of equipment used in connection with the City's Water System. In accordance with Paragraph I(2) of the Letter of Conditions, on each anniversary of the delivery of the Certificate, for as long as the Installment Payments are unpaid, the City shall deposit into the Replacement Fund not less than \$27,000 to provide for the timely replacement of short-lived assets; provided that, before each anniversary date, the City shall evaluate the condition of the short-lived assets of the Water System, estimate the amount required for timely replacement of short-lived assets, and shall increase or may decrease the

amount to be deposited as appropriate, based on such evaluation. For purposes of this section, "short-lived assets" means equipment and other components of the Water System that have a useful life significantly less than the repayment period of the Certificate.

(b) Application of the Depreciation Reserve. In accordance with Paragraph I(2) of the Letter of Conditions, the City may withdraw and apply the funds deposited into the Replacement Fund pursuant to subsection (a) above only for replacement of short-lived assets used in connection with the City's Water System.

ARTICLE VI COVENANTS OF THE CITY

Section 6.1. Compliance with Installment Purchase Agreement and Loan Resolution. The City will punctually pay the Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate the Installment Purchase Agreement for any cause. The City will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Loan Resolution resolved therein to be observed and performed by it.

Section 6.2. Tax Covenant. The City shall at all times do and perform all acts and things permitted by law that are necessary and desirable in order to assure that interest paid with respect to the Certificate will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being so excluded. This covenant shall survive the payment in full of the Installment Payments.

Section 6.3. Additional Debt. The City will not issue or incur any bonds or obligations of any kind or nature payable from or enjoying a lien on the Water Net Revenues, unless such other bonds or obligations are made subordinate to the Installment Payments and any Parity Debt, provided that the City may incur Parity Debt if all the conditions set forth in Section 4.8(b) of the Lease Agreement are satisfied, which provision is hereby incorporated in its entirety and shall continue to apply in the event the lease payments under the Lease Agreement and installment payments under the 2005 Installment Sale Agreement are paid or prepaid in full.

The City may incur obligations secured by the Water Net Revenues on a junior or subordinate basis with the prior written consent of USDA Rural Development in accordance with Section 7 of the Loan Resolution.

Section 6.4. Protection of Security and Rights of the Corporation. The City will preserve and protect the security hereof and the rights of the Corporation to the Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

Section 6.5. Indemnification of Corporation. The City hereby agrees to indemnify and hold harmless the Corporation and its directors, officers and employees if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of its duties hereunder and the Assignment Agreement; provided that no indemnification will be made for

willful misconduct, negligence or breach of an obligation hereunder or the Assignment Agreement by the Corporation.

Section 6.6. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Corporation of the rights and benefits provided to it herein.

ARTICLE VII PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1. Prepayment. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the City. Refunds and extra payments, as defined in the regulations of USDA Rural Development according to the source of funds involved, shall, after payment of interest, be applied to the Installment Payments last to become due hereunder and shall not affect the obligation of the City to pay the remaining Installment Payments as scheduled herein. Any such prepayment shall be applied to redeem all or a portion of the Certificate.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

Section 8.1. Events of Default and Remedies. (a) Events of Default. The following shall be Events of Default hereunder:

(1) Failure by the City to pay any Installment Payment at the time specified herein.

(2) Failure by the City to observe and perform any covenant, condition or agreement on its part contained herein or in the Loan Resolution, other than in clause (1) of this subsection, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation; provided, however, that the Corporation and the City may agree that action by the City to cure such failure may be extended beyond such thirty-day period.

(b) Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Corporation shall have the right, at its option upon notice to the City, to:

(1) declare the entire principal amount of the unpaid Installment Payments and the accrued interest thereon to be immediately due and payable, whereupon the same shall immediately become due and payable;

(2) for the account of the City, incur and pay reasonable expenses for repair, maintenance, and operation of the Water System and such other reasonable expenses as may be necessary to cure the cause of default, and/or

(3) take possession of the Water System, repair, maintain, and operate or rent it.

The provisions of the preceding clause (1) are subject to the condition that if, at any time after the principal amount of the unpaid Installment Payments shall have been so declared due and payable pursuant to the preceding clause (1), and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the Installment Payments coming due prior to such declaration, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 8.2. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.1, all Water Net Revenues thereafter received by the City shall be applied in the following order --

First, to the payment, without preference or priority, and in the event of any insufficiency of such Water Net Revenues ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation if any, in carrying out the provisions of this article, including reasonable compensation to their respective accountants and counsel;

Second, to the payment of the Operation and Maintenance Expenses; and

Third, to the payment of the entire principal amount of the unpaid Installment Payments and the unpaid principal amount of any Parity Debt and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Installment Payments and such Parity Debt if paid in accordance with their respective terms.

Section 8.3. Other Remedies of the Corporation. The Corporation shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Corporation; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust.

Section 8.4. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments to the Corporation at the respective due dates or upon prepayment, or shall

affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Corporation shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Corporation to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation, the City and the Corporation shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.5. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE IX ASSIGNMENT; AMENDMENTS

Section 9.1. Assignment. The City hereby consents to the assignment by the Corporation of its rights under this Installment Purchase Agreement to USDA Rural Development, which rights are evidenced by the Certificate. The City shall maintain a register containing the name and address of the Owner.

The Owner may transfer ownership of the Certificate by surrender thereof to the City accompanied by a duly executed instrument of transfer in a form approved by the City. The City shall deliver to the transferee a new Certificate in the aggregate amount of the unpaid principal installments and shall record the transfer in the Certificate register.

Section 9.2. Amendments Permitted. (a) This Agreement and the rights and obligations of the Corporation and the City and of the Owner may be modified or amended at any time but only with the written consent of the Owner. No such modification or amendment shall (1) reduce the rate of interest or amount of principal represented by the Certificate or extend the time of payment of principal or interest represented thereby, without the consent of the Owner, or (2) modify the requirement for the consent of the Owner for the execution of any amendment or modification of this Agreement, or (3) modify any of the rights or obligations of the Corporation without its written consent thereto.

(b) This Agreement and the rights and obligations of the Corporation and the City and of the Owner may also be modified or amended at any time, without the consent of the

Owner, but only to the extent permitted by law and only for any one or more of the following purposes--

(1) to add to the covenants and agreements of the Corporation or the City contained in this Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Corporation or the City, and that shall not adversely affect the interests of the Owner;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Agreement or in regard to questions arising under this Agreement, as the Corporation or the City may deem necessary or desirable and that shall not adversely affect the interests of the Owner; and

(3) to make such other amendments or modifications as may be in the best interests of the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF CORNING

Mayor

ATTEST:

City Clerk

CITY OF CORNING PUBLIC FINANCING CORPORATION

By: _____
Chairman of the Board of Directors

ATTEST:

Secretary of the Board of Directors

EXHIBIT A

PURCHASE PRICE

1. The aggregate principal amount of payments to be made by the City hereunder with respect to the Certificate is \$613,000.

2. The principal components of the Installment Payments with respect to the Certificate are payable in the following amounts on March 1 in the following years:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
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On March 1, 2012, the City shall pay as the interest component of its Installment Payment an amount equal to ____% per annum of the aggregate unpaid principal components of Installment Payments calculated based on a 365-day year and actual days elapsed from August, 2011. On each March 1 and September 1 thereafter, to and including March 1, 2051, the City shall pay as the interest component of its Installment Payments an amount equal to one-half of ____% of the aggregate unpaid principal components of Installment Payments.

SOURCES AND USES OF FUNDS

Sample Bond Run
Sample Debt Service Schedule

Sources:

Bond Proceeds:	
Par Amount	613,000.00
	<hr/>
	613,000.00
	<hr/>

Uses:

Project Fund Deposits:	
Project Fund #1	613,000.00
	<hr/>
	613,000.00
	<hr/>

BOND SUMMARY STATISTICS

Sample Bond Run
Sample Debt Service Schedule

Dated Date	08/01/2011
Delivery Date	08/01/2011
Last Maturity	03/01/2051
Arbitrage Yield	3.249841%
True Interest Cost (TIC)	3.249841%
Net Interest Cost (NIC)	3.250000%
All-In TIC	3.249841%
Average Coupon	3.250000%
Average Life (years)	24.355
Duration of Issue (years)	16.049
Par Amount	613,000.00
Bond Proceeds	613,000.00
Total Interest	485,210.14
Net Interest	485,210.14
Total Debt Service	1,098,210.14
Maximum Annual Debt Service	27,744.30
Average Annual Debt Service	27,744.26
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
<hr/>	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life
Serial Bond	613,000.00	100.000	3.250%	24.355
	613,000.00			24.355

	TIC	All-In TIC	Arbitrage Yield
Par Value	613,000.00	613,000.00	613,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense			
- Other Amounts			
Target Value	613,000.00	613,000.00	613,000.00
Target Date	08/01/2011	08/01/2011	08/01/2011
Yield	3.249841%	3.249841%	3.249841%

BOND DEBT SERVICE

Sample Bond Run
Sample Debt Service Schedule

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
08/01/2011					
03/01/2012	4,562.70	3.250%	11,621.46	16,184.16	16,184.16
09/01/2012			9,887.11	9,887.11	
03/01/2013	7,970.00	3.250%	9,887.11	17,857.11	27,744.22
09/01/2013			9,757.59	9,757.59	
03/01/2014	8,229.10	3.250%	9,757.59	17,986.69	27,744.28
09/01/2014			9,623.87	9,623.87	
03/01/2015	8,496.50	3.250%	9,623.87	18,120.37	27,744.24
09/01/2015			9,485.80	9,485.80	
03/01/2016	8,772.70	3.250%	9,485.80	18,258.50	27,744.30
09/01/2016			9,343.25	9,343.25	
03/01/2017	9,057.80	3.250%	9,343.25	18,401.05	27,744.30
09/01/2017			9,196.06	9,196.06	
03/01/2018	9,352.10	3.250%	9,196.06	18,548.16	27,744.22
09/01/2018			9,044.09	9,044.09	
03/01/2019	9,656.10	3.250%	9,044.09	18,700.19	27,744.28
09/01/2019			8,887.17	8,887.17	
03/01/2020	9,969.90	3.250%	8,887.17	18,857.07	27,744.24
09/01/2020			8,725.16	8,725.16	
03/01/2021	10,293.90	3.250%	8,725.16	19,019.06	27,744.22
09/01/2021			8,557.89	8,557.89	
03/01/2022	10,628.50	3.250%	8,557.89	19,186.39	27,744.28
09/01/2022			8,385.17	8,385.17	
03/01/2023	10,973.90	3.250%	8,385.17	19,359.07	27,744.24
09/01/2023			8,206.85	8,206.85	
03/01/2024	11,330.60	3.250%	8,206.85	19,537.45	27,744.30
09/01/2024			8,022.73	8,022.73	
03/01/2025	11,698.80	3.250%	8,022.73	19,721.53	27,744.26
09/01/2025			7,832.62	7,832.62	
03/01/2026	12,079.00	3.250%	7,832.62	19,911.62	27,744.24
09/01/2026			7,636.34	7,636.34	
03/01/2027	12,471.60	3.250%	7,636.34	20,107.94	27,744.28
09/01/2027			7,433.67	7,433.67	
03/01/2028	12,876.90	3.250%	7,433.67	20,310.57	27,744.24
09/01/2028			7,224.42	7,224.42	
03/01/2029	13,295.40	3.250%	7,224.42	20,519.82	27,744.24
09/01/2029			7,008.37	7,008.37	
03/01/2030	13,727.50	3.250%	7,008.37	20,735.87	27,744.24
09/01/2030			6,785.30	6,785.30	
03/01/2031	14,173.70	3.250%	6,785.30	20,959.00	27,744.30
09/01/2031			6,554.98	6,554.98	
03/01/2032	14,634.30	3.250%	6,554.98	21,189.28	27,744.26
09/01/2032			6,317.17	6,317.17	
03/01/2033	15,109.90	3.250%	6,317.17	21,427.07	27,744.24
09/01/2033			6,071.64	6,071.64	
03/01/2034	15,601.00	3.250%	6,071.64	21,672.64	27,744.28
09/01/2034			5,818.12	5,818.12	
03/01/2035	16,108.00	3.250%	5,818.12	21,926.12	27,744.24
09/01/2035			5,556.36	5,556.36	
03/01/2036	16,631.50	3.250%	5,556.36	22,187.86	27,744.22
09/01/2036			5,286.10	5,286.10	
03/01/2037	17,172.10	3.250%	5,286.10	22,458.20	27,744.30
09/01/2037			5,007.06	5,007.06	
03/01/2038	17,730.10	3.250%	5,007.06	22,737.16	27,744.22
09/01/2038			4,718.94	4,718.94	

BOND DEBT SERVICE

Sample Bond Run
Sample Debt Service Schedule

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
03/01/2039	18,306.40	3.250%	4,718.94	23,025.34	27,744.28
09/01/2039			4,421.46	4,421.46	
03/01/2040	18,901.30	3.250%	4,421.46	23,322.76	27,744.22
09/01/2040			4,114.32	4,114.32	
03/01/2041	19,515.60	3.250%	4,114.32	23,629.92	27,744.24
09/01/2041			3,797.19	3,797.19	
03/01/2042	20,149.90	3.250%	3,797.19	23,947.09	27,744.28
09/01/2042			3,469.75	3,469.75	
03/01/2043	20,804.80	3.250%	3,469.75	24,274.55	27,744.30
09/01/2043			3,131.67	3,131.67	
03/01/2044	21,480.90	3.250%	3,131.67	24,612.57	27,744.24
09/01/2044			2,782.61	2,782.61	
03/01/2045	22,179.00	3.250%	2,782.61	24,961.61	27,744.22
09/01/2045			2,422.20	2,422.20	
03/01/2046	22,899.90	3.250%	2,422.20	25,322.10	27,744.30
09/01/2046			2,050.08	2,050.08	
03/01/2047	23,644.10	3.250%	2,050.08	25,694.18	27,744.26
09/01/2047			1,665.86	1,665.86	
03/01/2048	24,412.50	3.250%	1,665.86	26,078.36	27,744.22
09/01/2048			1,269.16	1,269.16	
03/01/2049	25,205.90	3.250%	1,269.16	26,475.06	27,744.22
09/01/2049			859.56	859.56	
03/01/2050	26,025.10	3.250%	859.56	26,884.66	27,744.22
09/01/2050			436.65	436.65	
03/01/2051	26,871.00	3.250%	436.65	27,307.65	27,744.30
	613,000.00		485,210.14	1,098,210.14	1,098,210.14

ASSIGNMENT AGREEMENT

between the

CITY OF CORNING PUBLIC FINANCING CORPORATION

and the

UNITED STATES OF AMERICA, acting through the
RURAL UTILITIES SERVICE

Dated August 1, 2011

ASSIGNMENT AGREEMENT

This ASSIGNMENT AGREEMENT, dated August 1, 2011 (the "Assignment Agreement"), made by the **CITY OF CORNING PUBLIC FINANCING CORPORATION** (the "**Corporation**") and accepted by the UNITED STATES OF AMERICA, acting through the **RURAL UTILITIES SERVICE ("USDA Rural Utilities")**;

WITNESSETH:

WHEREAS, the Corporation and the City of Corning (the "City") have executed and entered into an Installment Purchase Agreement (the "Installment Purchase Agreement"), dated the date hereof, whereby the City has agreed to purchase from the Corporation certain improvements to be made to the City's water system (the "Project");

WHEREAS, under and pursuant to the Installment Purchase Agreement, the City is obligated to make Installment Payments, as defined therein, to the Corporation for the purchase of the Project;

WHEREAS, the Corporation desires to assign to USDA Rural Utilities, without recourse, all of the Corporation's rights to receive the Installment Payments scheduled to be paid by the City under and pursuant to the Installment Purchase Agreement;

WHEREAS, in consideration of such assignment, USDA Rural-Utilities has agreed to deliver \$613,000 to the Corporation upon the delivery of this Assignment Agreement in satisfaction of the Corporation's obligation to make certain payments and deposits relating to the costs of the construction of the Project; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly authorized to execute and enter into the Assignment Agreement;

NOW, THEREFORE, in consideration of the premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. Assignment. The Corporation hereby transfers, assigns and sets over to USDA Rural Utilities all of the Corporation's rights under the Installment Purchase Agreement (hereinafter, collectively, the "Assigned Property"):

(1) the right to receive and collect all of the Installment Payments from the City under the Installment Purchase Agreement;

(2) the right to take all actions and give all consents under the Installment Purchase Agreement; and

(3) the right to exercise such rights and remedies conferred on the Corporation pursuant to the Installment Purchase Agreement as may be necessary or convenient (i) to enforce payment of the Installment Payments, or (ii) otherwise to protect the interests of USDA Rural Utilities (as assignee of the Corporation) in the event of default by the City under the Installment Purchase Agreement.

Section 2. Acceptance. USDA Rural Utilities hereby accepts the foregoing assignment. The above assignment is intended to be an absolute and unconditional assignment to USDA Rural Utilities and is not intended as a loan by USDA Rural Utilities to the Corporation. Accordingly, in the event of bankruptcy of the Corporation, the Assigned Property shall not be part of the Corporation's estate. However, if the above assignment is deemed to be a loan by USDA Rural Utilities to the Corporation, then the Corporation shall be deemed to have granted to USDA Rural Utilities, and hereby grants to USDA Rural Utilities, a continuing first priority security interest in the Assigned Property and all proceeds thereof as collateral security for all obligations of the Corporation hereunder and all obligations of the City under the Installment Purchase Agreement and this Assignment Agreement shall be deemed a security agreement with respect to such loan.

Section 3. Certificate of Participation. The Corporation shall execute and deliver to USDA Rural Utilities one Certificate of Participation in substantially the form set forth in Exhibit A hereto evidencing and representing the rights to receive payments that are assigned hereunder. The Certificate of Participation, which shall be delivered on the date of delivery of this Assignment Agreement, shall evidence and represent the rights to receive the Installment Payments shown in Exhibit A to the Installment Purchase Agreement as delivered on the date of delivery of this Assignment Agreement, which relate to the purchase of the Assets and the construction and acquisition of the Project.

Section 4. Representations. The Corporation represents and warrants to USDA Rural Utilities that:

(A) Enforceability of Assignment Agreement. The Corporation has the power, authority, and legal right to execute, deliver and perform this Assignment Agreement and this Assignment Agreement is a valid, binding, and enforceable obligation of the Corporation, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles; and

(B) Marketable Title. Good and marketable title to the Assigned Property has been duly vested in USDA Rural Utilities free and clear of any liens, security interests, encumbrances or other claims other than the rights of the City under the Installment Purchase Agreement, and the Corporation has not assigned or transferred any of the Assigned Property or any interest in the Assigned Property to any party other than USDA Rural Utilities.

Section 5. Covenants. (A) Nonimpairment of Installment Purchase Agreement. The Corporation agrees that it (1) shall not have any right to amend, modify, compromise, release, terminate or permit prepayment of the Installment Purchase Agreement, and (2) shall not take

any action that may impair the payment of Installment Payments or the validity or enforceability of the Installment Purchase Agreement.

(B) Receipt of Installment Payments. If the Corporation receives any Installment Payments, then the Corporation shall receive such payments in trust for USDA Rural Utilities and shall immediately deliver the same to USDA Rural Utilities in the form received, duly endorsed by the Corporation for deposit by USDA Rural Utilities.

(C) Further Assurances. The Corporation shall execute and deliver to USDA Rural Utilities such notices of assignment, UCC financing statements, assignments of financing statements and other documents, in form and substance reasonably satisfactory to USDA Rural Utilities, and the Corporation shall take such other actions, as USDA Rural Utilities may reasonably request from time to time to evidence, perfect, maintain, and enforce USDA Rural Utilities' rights in the Assigned Property and/or to enforce or exercise USDA Rural Utilities' rights or remedies under the Installment Purchase Agreement. USDA Rural Utilities may, where permitted by law, file such UCC financing statements without the Corporation's signature.

Section 6. Execution in Counterparts. This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute but one and the same instrument.

Section 7. Definitions. Unless the context otherwise requires, capitalized terms used herein shall have the meanings specified in the Installment Purchase Agreement.

Section 8. Applicable Law. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of California.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment Agreement by their officers thereunto duly authorized as of the day and year first above written.

CITY OF CORNING PUBLIC FINANCING CORPORATION

By: _____
President

ATTEST:

Secretary

UNITED STATES OF AMERICA, acting through
the **RURAL UTILITIES SERVICE**

By: _____
Authorized Officer

CONSENT TO ASSIGNMENT

The City of Corning hereby consents to the above Assignment Agreement and agrees to comply with the terms and conditions thereof.

CITY OF CORNING

By: _____
Mayor

ATTEST:

City Clerk

EXHIBIT A

FORM OF CERTIFICATE OF PARTICIPATION

**REVENUE CERTIFICATE OF PARTICIPATION
(CLARK PARK MUNICIPAL WATER PROJECT)**

Evidencing and Representing the Interest of the
Registered Owner Hereof in Installment Payments to be made by the
CITY OF CORNING

<u>PAYMENT DATES</u>	<u>INTEREST RATE PER ANNUM</u>	<u>DATE</u>
March 1 and September 1, as described below	_____ %	August, 2011

REGISTERED OWNER: UNITED STATES OF AMERICA, acting through the RURAL
UTILITIES SERVICE

PRINCIPAL AMOUNT: \$ _____

THIS IS TO CERTIFY that the registered owner named above (the "Owner"), or registered assigns, of this Certificate of Participation (the "Certificate"), is the owner of the right to receive certain Installment Payments under and pursuant to that certain installment purchase agreement (the "Installment Purchase Agreement") between the City of Corning (the "City"), a public agency duly organized and existing under and by virtue of the Constitution and laws of the State of California, and the City of Corning Public Financing Corporation (the "Corporation"), a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California, dated August 1, 2011, all of which rights to receive such Installment Payments and other rights under the Installment Purchase Agreement have been assigned without recourse by the Corporation to the Owner.

The registered owner of this Certificate is entitled to receive, subject to the terms of the Installment Purchase Agreement and any right of prepayment prior thereto as hereinafter provided for, the Installment Payments. The principal components of the Installment Payments are payable on **March 1** of the years shown below in the amounts specified below:

Year Amount Year Amount Year Amount Year Amount

On **March 1, 2012**, the City shall pay as the interest component of its Installment Payment an amount equal to ____% per annum of the aggregate unpaid principal components of Installment Payments calculated based on a 365-day year and actual days elapsed from August, 2011. On each **March 1** and **September 1** thereafter, to and including **March 1, 2051**, the City shall pay as the interest component of its Installment Payments an amount equal to one-half of ____% of the aggregate unpaid principal components of Installment Payments. Each **March 1** and **September 1** referred to above is a "Payment Date."

The City shall pay the principal and interest represented hereby on each Payment Date to the registered owner, unless otherwise requested by the registered owner, by the Pre-Authorized Debt (PAD) payment process.

This Certificate has been executed and delivered pursuant to an assignment agreement dated August 1, 2011, between the Corporation and the Owner (the "Assignment Agreement"). Reference is hereby made to the Installment Purchase Agreement and the Assignment Agreement for a description of the terms on which the Certificate is delivered, the provisions with regard to the nature and extent of the covenants and pledges securing the Installment Payments represented by this Certificate, for the nature, extent and manner of enforcement of such covenants and pledges, the rights of the registered owner of the Certificate, and the rights and obligations of the City under the Installment Purchase Agreement. All the terms of the Installment Purchase Agreement and the Assignment Agreement are hereby incorporated herein and constitute a contract between the City and the registered owner from time to time of this Certificate. The registered owner of this Certificate, by its acceptance hereof, consents and agrees to all the provisions of the Installment Purchase Agreement and the Assignment Agreement.

The Installment Payments are payable, both as to principal and interest, solely from, and are secured by a pledge of, the Water Net Revenues, as that term is defined in the Installment Purchase Agreement. The credit or taxing power of the City is not pledged for the payment of the principal and interest components of Installment Payments represented by this Certificate. No owner of this Certificate shall ever have the right to compel any exercise of the taxing power of the City to pay the principal and interest components of Installment Payments represented by this Certificate.

The Certificate is subject to redemption prior to its final maturity, as a whole or in part on any date, from any available source of funds at the option of the City, at a prepayment price equal to the sum of the principal amount represented hereby to be redeemed plus accrued interest represented hereby to the date fixed for redemption, without premium.

This Certificate is transferable by the registered owner hereof, in person or by its attorney duly authorized in writing, upon surrender of this Certificate to the City. Upon such transfer a new fully registered Certificate of the same tenor and payment dates for the remaining unpaid amounts will be delivered by the Corporation to the transferee in exchange herefor.

No recourse shall be had for the payment of the principal or interest represented by this Certificate or for any claim based thereon or upon any obligation, covenant, or agreement contained in the Installment Purchase Agreement or Assignment Agreement, against the

Corporation or any past, present or future director, officer, employee, or agent of the Corporation, or through the Corporation, or any successor to the Corporation, under any rule of law or equity, statute, or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of the Corporation and any director, officer, employee, or agent as such is hereby expressly waived and released as a condition of and in consideration for the execution of the Assignment Agreement and the delivery of this Certificate.

The City may deem and treat the registered owner hereof as the absolute owner hereof for all purposes, and the City shall not be affected by any notice to the contrary.

The City has certified in the Installment Purchase Agreement that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Installment Purchase Agreement (except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles). The Corporation hereby warrants that it has the requisite power and authority to enter into the Installment Purchase Agreement and the Assignment Agreement and to execute and deliver this Certificate.

The City has designated its obligations under the Installment Purchase Agreement represented by this Certificate to be a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code of 1986.

IN WITNESS WHEREOF, this Certificate has been executed by an authorized signatory of the Corporation as of August, 2011.

**CITY OF CORNING PUBLIC
FINANCING CORPORATION**

By: _____
Authorized Signatory

[FORM OF ASSIGNMENT]

For value received, the undersigned hereby sell, assign and transfer unto _____ the within Certificate and hereby irrevocably constitute and appoint _____ attorney, to transfer the same on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature:

NOTE: The signature to this Assignment must correspond with the name on the face of the within Certificate in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed by:

NOTE: Signature must be guaranteed by an eligible guarantor institution (being banks, stock brokers, savings and loan associations, and credit unions with membership in and approved signature guarantee medallion programs) pursuant to Securities and Exchange Commission Rule 17A(d)15.

Social Security Number, Tax Identification
Number, or other identifying number of Assignee: _____



Committed to the future of rural communities.

**United States Department of Agriculture
Rural Development
California**
www.rurdev.usda.gov/ca

RECEIVED

JUN 17 2010

June 17, 2010

CITY OF CORNING

LETTER OF CONDITIONS

Stephen Kimbrough, City Manager
City of Corning
794 Third Street
Corning, CA 96021

Subject: Application for USDA Rural Development's Water and Waste Disposal Program
for the Clark Park Municipal Water Project

Dear Mr. Kimbrough:

This letter, with attachments, establishes conditions that must be understood and agreed to by the applicant before further consideration may be given to their application. Any changes in project cost, source of funds, scope of services or any other significant change in the project or applicant must be reported to and approved by USDA Rural Development by written amendment to this letter. Any change not approved by USDA Rural Development will be cause for discontinuing processing of the application.

This letter is not to be considered as loan approval or as representation to the availability of funds. The application can be processed on the basis of a USDA Rural Development loan not to exceed \$613,000. Funds for this project are provided by the Rural Utilities Service (RUS). The loan will be considered approved on the date Form RD 1940-1, "Request for Obligation of Funds," is mailed by USDA Rural Development. This is also the date that the interest rate is established.

Please complete and return the attached Form RD 1942-46, "Letter of Intent to Meet Conditions," and Form RD 1940-1, "Request for Obligation of Funds," within the next ten (10) days, if you desire that we give further consideration to your application. The execution of these and all other documents required by USDA Rural Development must be authorized by appropriate resolutions of the applicant's governing body.

The interest rate will be the lower of the rate in effect at the time of loan approval or the time of loan closing, whichever is less, unless you choose otherwise.

808 W. 12th Street, Alturas, CA 96101-3211
Phone: (530) 233-4615 • Fax: (530) 233-8869 • TDD: (530) 792-5848

Committed to the future of rural communities

Rural Development is an Equal Opportunity Lender, Provider, and Employer. Complaints of discrimination should be sent to USDA, Director, Office of Civil Rights, Washington, D. C. 20250-9410

SOURCES AND USES OF FUNDS

Sample Bond Run
Sample Debt Service Schedule

Sources:

Bond Proceeds:	
Par Amount	613,000.00
	<hr/>
	613,000.00

Uses:

Project Fund Deposits:	
Project Fund #1	613,000.00
	<hr/>
	613,000.00

The loan will be repayable over a period not to exceed 40 years from the date of loan closing at the intermediate interest rate. The first combined principal and/or interest payment will be due one (1) year following loan closing.

You may be required to refinance (graduate) the unpaid balance of the RD loan, in whole or in part, if at any time RD determines your entity is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

Based on Standard Form 424, "Application for Federal Assistance," the project cost and funding will be as follows:

a.	<u>Project Cost</u>	
	Admin & Legal	\$ 7,000
	Bond Counsel	\$ 18,000
	Engineering	
	PER	\$ 10,000
	Design & Contract Admin	\$ 45,000
	Additional Services	\$ 25,000
	Construction	\$461,750
	Contingencies	\$ 46,250
	TOTAL:	\$613,000
b.	<u>Source of Funds</u>	
	USDA Loan	\$613,000

Section I of the attached conditions (Items 1—17) will be satisfied prior to loan closing or before construction begins, whichever occurs first, in either case not later than one (1) year from the date of this letter. **In the event the project has not advanced to the point of construction within one (1) year, USDA Rural Development reserves the right to discontinue the processing of the application.**

If you have any questions, feel free to contact this office.

Sincerely,

J. Michael Colbert
Area Loan Specialist

cc: Janice Waddell, Community Programs Director, USDA Rural Development, Davis, CA
Ed Anderson, Engineer, Chico, CA
Jonathan P. Cristy, Bond Counsel, Kronick, Moskovitz, Tiedemann & Girard, Sacramento, CA

I. CONDITIONS TO BE SATISFIED PRIOR TO LOAN CLOSING OR BEFORE CONSTRUCTION BEGINS, WHICHEVER OCCURS FIRST

1. American Recovery and Reinvestment Act of 2009 ("Recovery Act").

Recovery Act requirements apply to this financing. In addition to the other conditions contained in this Letter of Conditions, you must understand and agree to these following conditions specific to the Recovery Act:

- a. **Certifications.** With respect to Recovery Act funds made available to State or local governments for infrastructure investments, Section 1511 of the Recovery Act requires the Governor, mayor or other chief executive, as appropriate, to certify that the infrastructure investment has been properly approved as required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. RD Water and Waste personnel will provide specific guidance on the information required in the certification.
- b. **Reports on Use of Funds.** Section 1512 of the Recovery Act requires each recipient receiving Recovery Act funding to provide specific information to the government on a periodic basis for inclusion in various internal and publicly-available reports. RD Water and Waste Program personnel will provide specific guidance on the type and frequency of information required to assist Recovery Act recipients in complying with this condition.
- c. **Buy American.** Section 1605 of the Recovery Act requires that all projects financed with Recovery Act funds be bid and constructed using only iron, steel and manufactured goods produced in the United States in accordance with Section 1605 of the Recovery Act. Specific guidance, including contract provisions to be included in any construction contracts, is being formulated and drafted as of the date of this Letter of Conditions. RD Water and Waste Program personnel will provide specific guidance related to this condition as soon as it is available.
- d. **Wage Rate Requirements.** Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors for the project will be paid wages at rates not less than those prevailing on projects of a character similar in the locality where this project will occur. Specific guidance, including contract provisions to be included in any construction or otherwise related contracts, is being formulated and drafted as of the date of this Letter of Conditions. RD Water and Waste Program personnel will provide specific guidance related to this condition as soon as it is available.

Compliance with the conditions in this section is required for financing under the Recovery Act. However, these conditions are not substitutes for, or in lieu of, the remaining conditions contained in this Letter of Conditions. Each of the conditions in this Letter of Conditions must also be understood and complied with to receive financing for your project.

2. **Reserves**—The applicant will establish a separate debt service reserve in an amount at least equal to an average annual loan installment. This reserve will be accumulated at the rate of at least one-tenth of that average installment each year until the required level is reached, which is one average annual loan installment.

In addition, you must fund a separate depreciation reserve for short-lived assets by depositing a sum of \$27,000 annually. This amount should be evaluated each year and budgeted for, based on the need to provide for timely replacement of short-lived assets.

3. Disbursement of Funds

- a. Interim loan financing during construction will not be required. USDA Rural Development funds will not be provided before the execution of a construction contract.
- b. You must establish a separate account, to be known and hereafter referred to as the Construction Account. All project funds will be deposited into this account and must be in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. The account shall be used solely for the purpose of paying authorized costs of the project as outlined in the project budget. Once the funds are deposited into the Construction Account, they become your responsibility.

4. Security Requirements

- a. Prior to loan closing the applicant will execute the attached RUS Bulletin 1780-27, "Loan Resolution (Public Bodies)". Please note the refinancing provision in paragraph 2. Also, on page 3 there is a certification to be executed at loan closing.
- b. The applicant is a legally organized California Municipal Corporation pursuant to Article 11, section 2 of the State of California Constitution. The loan will be secured by a first lien and pledge of revenues evidenced with Certificates of Participation. The Certificates of Participation must be prepared in accordance with RUS Instruction 1780 Subpart D, and State law. The assistance and opinion of a recognized and experienced attorney must be obtained.
- c. The loan will be secured by a first lien and pledge of revenues from the water system. The loan must be on parity with the Series A 2005 Certificates of Participation in the original amount of \$2,500,000 and the 1999 USDA Certificates of Participation Series A and B in the original amounts of \$4,000,000 and \$322,000, respectively. Please complete and return the enclosed Form RD 465-1, "Application for Partial Release, Subordination or Consent".

5. Applicant Certifications

- a. The applicant will certify that 2,213 users are currently connected to the system and that the rate structure based on a monthly fee and usage schedule will be implemented as of April 1, of each year so that the scheduled rate for April 1, 2012 will be in effect as planned.
- b. The applicant's attorney will provide his/her opinion that rate increases required for this project have been adopted in accordance with Section 6 of Article XIID of the California Constitution as well as other requirements of California law. The applicant will provide a copy of the Minutes from the public meeting. All voter approval requirements under state law must be obtained before the issuance of the USDA Offer to Purchase Bonds (or COPS).

- c. If relying on mandatory connection requirements, you must provide evidence of the ordinance and a certification attesting to the number of users that will be required to connect to the proposed system prior to advertisement for construction bids.

5. **Insurance and Bonding Requirements**—The applicant must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Adequate coverage, in accordance with USDA Rural Development's regulations, must then be maintained for the life of the loan. It is the responsibility of the applicant and not that of USDA Rural Development to assure that adequate insurance and fidelity bond coverage is maintained. Applicants are encouraged to review coverage amounts and deductible provisions with their attorney, consulting engineer, and/or insurance provider(s).

- a. Property Insurance—Fire and extended coverage will be required on all above-ground structures, including applicant-owned equipment and machinery housed therein. This requirement does not apply to water reservoirs, stand pipes and elevated tanks. Provide USDA Rural Development with proof of coverage and attach Lender's Loss Payable Endorsement (438 BFU or equivalent) naming the UNITED STATES OF AMERICA as lender.
- b. Workers' Compensation Insurance—The applicant will be required to carry workers' compensation insurance for all employees in accordance with California law. Provide USDA Rural Development with proof of coverage.
- c. General liability and vehicular coverage must be maintained—Provide USDA Rural Development with proof of coverage.
- d. Fidelity Bond—Persons who have access to the funds and custody to any property will be covered by a fidelity bond. Coverage may be provided either for all individual positions or persons, or through "blanket" coverage providing protection for all appropriate employees and/or officials. The amount of coverage required by USDA Rural Development will be sufficient to cover the total annual debt and reserve service requirements for the loan. The United States of America will be named as co-obligee on the bond. A certified power-of-attorney with effective date will be attached to each bond. Provide USDA Rural Development with a copy of the bond and the power of attorney.

6. **Civil Rights & Equal Opportunity**—You should be aware of and will be required to comply with other Federal statute requirements including but not limited to:

- a. Section 504 of the Rehabilitation Act of 1973.
 - b. Civil Rights Act of 1964.
 - c. The Americans with Disabilities Act (ADA) of 1990.
 - d. Age Discrimination Act of 1975.
- i) Rural Development financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

- ii) The applicant is subject to a pre-loan closing civil rights compliance review by USDA Rural Development. Please complete and return the attached Table 3 and a copy of your "Application for Services".

7. Written Agreements for Professional Services

- a. A legal service agreement must be submitted and deemed satisfactory to USDA Rural Development. The attached RUS Bulletin 1780-7 may be used as a template.
- b. An Agreement for Engineering Services with Ed Anderson Engineering has been approved by USDA Rural Development.
- c. The bond counsel service agreement submitted by Kronick, Moskovitz, Tiedemann & Girard is satisfactory to USDA Rural Development. Once executed, please provide this office with a copy.

8. Land and Rights-of-Way—The applicant must present satisfactory evidence that they have obtained, or can obtain, any and all lands, rights-of-way, easements, permits and franchises which are required by the engineering plan. Acquisitions of necessary land and rights must be accomplished in accordance with the Uniform Relocation and Real Property Acquisition Act. The following forms, copies of which are attached, may be used for these purposes:

- a. Form RD 442-21, "Right-of-Way Certificate" (with map attached)
- b. Form RD 442-22, "Opinion of Counsel Relative to Rights-of-Way"

9. Permits—All permits involving Federal, State, and local agencies must be obtained and evidence thereof provided to USDA Rural Development prior to bidding. If the project involves a new drinking water supply source or change in a drinking water treatment process a new California Department of Health Services permit will be required. To receive this permit a CEQA environmental review must be completed and routed through the State Clearinghouse.

10. Environmental Reviews—USDA Rural Development projects are subject to NEPA environmental reviews. During any stage of project development, including construction, should environmental issues develop which require mitigation measures, USDA Rural Development applicants are required to notify USDA Rural Development and comply with such mitigation measures. Failure by an applicant to implement mitigation measures may disqualify the project from Agency funding.

Mitigation measures identified or prepared by you as part of the CEQA and NEPA environmental process must be implemented. Mitigation measures which must be followed per USDA Rural Development's Environmental Assessment are attached.

11. Engineering and Construction

- a. USDA Rural Development must approve any agreements or modifications to agreements for professional design services. The agreement for engineering services should consist of the EJCDC documents as indicated in RUS Bulletin 1780-26, "Guidance for the Use of EJCDC Standard Documents on Water and Waste Projects with USDA Financial Assistance" or other approved form of agreement.
- b. All construction will be completed under contract. The planning, bidding, contracting, and construction must comply with RUS Instruction 1780 Subpart C, and any additional requirements of California law and the requirements of other County, State, or Federal agencies.
- c. The following must be reviewed and approved by USDA Rural Development in the sequence indicated:
 - i. Preliminary Engineering Report - *Approved 9/18/2009*
 - ii. Agreement for Engineering Services *Approved 9/22/2009*
 - iii. Final Plans and Specifications for the project
 - iv. Bid Award Information.
 - v. Executed Contract Documents
- d. Affirmative steps should be taken to assure that small, minority, and women business are utilized as source of supplies, equipment, construction, and services.
- e. The Plans & Specifications must be reviewed and approved, when applicable, by any regulatory or other agencies that are required to review these documents.
- f. A representative of USDA Rural Development will attend all pre-construction conferences in connection with this project. These conferences must be held prior to the issuance of the Notice to Proceed to the contractors. The applicant's consulting engineer will conduct the conference and document the discussions and agreements.

12. Electronic Funds Transfer—All loan funds will be transferred to borrowers via Electronic Funds Transfer/Automated Clearinghouse Systems (EFT/ACH). Normal transfers will be ACH, with money being placed in Borrower's account two days after the USDA processing office approves the pay request. The applicant must submit the Electronic Funds Transfer Form containing the banking (ACH) information to the USDA Servicing Office at least 30 days prior to the date of loan closing. Failure to do so could delay loan closing.

13. Automatic Payments—The applicant is required to participate in the Pre-Authorized Debit (PAD) payment process for all new and existing indebtedness to USDA Rural Development. It will allow for the applicant's payment to be electronically debited from its account on the date their payment is due. Form RD 3550-28, "Authorization Agreement for Pre-Authorized Payments," is attached. Please fill out and sign your "Individual/Company Information" section, then have your financial institution/bank fill out the bottom portion prior to submitting the form to the USDA Rural Development service office.

14. **Loan Closing**—All applicable loan closing documents must be submitted to the following persons, by the Legal Counsel, at least 30 days prior to the planned closing date:

Dave Hartwell, Community Program Specialist, Davis, CA;
dave.hartwell@ca.usda.gov;

J. Michael Colbert, Area Specialist, Alturas, CA;
mike.colbert@ca.usda.gov

1. **Operating Budget**

- a. A rate structure sufficient to balance the USDA Rural Development approved Operating Budget will be in effect at the time of loan closing. Once the rate structure has been approved by USDA Rural Development, provide USDA Rural Development with a copy of the adopted ordinance.
- b. The applicant will develop and implement an RD approved policy for the handling of past due customer bills and penalties. Please provide a copy from the Water Enterprises Policy Manual.

17. **Vulnerability Assessments (VA) and Emergency Response Plans (ERP)**

Rural Development requires all financed water and wastewater systems to have a vulnerability assessment (VA) and an emergency response plan (ERP) in place. New water or wastewater systems must provide a certification that an ERP is complete prior to the start of operations. A certification that a VA is complete must be submitted within one year of the start of operations. All other borrowers must provide a certification that a VA and ERP are completed prior to bid authorization. DO NOT SUBMIT COPIES OF THE ACTUAL VA OR ERP DOCUMENTS TO USDA RURAL DEVELOPMENT.

USDA Rural Development staff has arranged for the California Rural Water Association (CRWA), or the Rural Community Assistance Corporation (RCAC) to assist borrowers with the preparation of their VA and ERP. CRWA or RCAC should be contacted to obtain more information and their technical assistance in the preparation of the VA & ERP, so that the required CERTIFICATION STATEMENT can be provided to USDA. Please contact Dustin Hardwick (CRWA) at (760) 920-0842 or Jean Thompson at RCAC (916) 447-9832.

II. LOAN CONDITIONS TO BE SATISFIED DURING CONSTRUCTION

1. **Disbursement of Loan Funds**—USDA Rural Development funds will be advanced as they are needed in the amount(s) necessary to cover the Rural Development proportionate share of obligation due and payable to the applicant.
2. **Inspections**—A resident inspector is required during construction. The inspection reports must be available to USDA Rural Development for review at any time. These reports must be kept at the project site or borrower's office, if near by.
3. **Monthly Reporting**—The applicant must monitor and provide a monthly report to USDA Rural Development on actual performance during construction for each project financed, or to be financed, in whole or in part with USDA Rural Development funds, to include Forms RD 1924-18, "Partial Payment Estimate"; RD 1924-7, "Contract Change Order"; SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"; and Project Daily Inspection Reports.
4. **Final Inspection**—A final inspection will be made by USDA Rural Development on the component USDA is financing before final payment is made.
5. **Excess Funds**—Any remaining funds must be utilized for approved purposes within 60 days following the final inspection or the funds will be canceled without further notification from USDA Rural Development.
6. **Anti-Deficiency Act**—All Recovery Act appropriated funds for this project must be fully disbursed no later than September 30, 2015.

III. LOAN CONDITIONS TO BE SATISFIED AFTER PROJECT COMPLETION

1. **Financial Statements**—The financial statements must maintain separate records for the water and sewer enterprise's assets, liabilities, income and expenses. Financial reports are to be submitted on an annual basis in accordance with generally accepted accounting principles (GAAP) and shall comply with the following:
 - a. OMB Circular A-133 annual audits are required when Federal Financial Assistance of \$500,000 or more per year is expended. An audit per OMB Circular A-133, must be provided to the USDA Rural Development on an annual basis.
 - b. An audit, in accordance with State or local law or regulation or regulatory agency and Water and Waste audit requirements, must be submitted when you expend less than \$500,000 in Federal financial assistance per fiscal year and the unpaid loan balance is \$1,000,000 or more.
 - c. A management report, in lieu of an audit report, may be submitted with the USDA Rural Development approval when you expend less than \$500,000 in Federal financial assistance per fiscal year and the unpaid loan balance is less than \$1,000,000.
2. **Quarterly Reports**—A quarterly management report will be required for the first year for new borrowers and for all borrowers experiencing financial or management problems for one year from the date problems were noted. If the borrower's account is current at the end of the year, the processing office may waive the required reports.
3. **Audit agreement**—If you are required to obtain the services of a licensed Certified Public Accountant (CPA), you must enter into a written audit agreement with the auditor. The audit agreement may include terms and conditions that you and auditor deem appropriate; however, the agreement should include the following:
 - a. A statement that the auditor will perform and document the audit work in accordance with GAGAS and the professional standards of the AICPA;
 - b. A statement that the auditor will submit the completed audit and accompanying letters to the borrower's governing body 30 days prior to the date the audit is due to USDA Rural Development;
 - c. A statement that the auditor will make all audit-related documents, including workpapers, available to the Agency Rural Development or its representatives, upon request; and
 - d. A statement that the auditor will immediately report, in writing, all irregularities and illegal acts to the borrower's governing body and the Agency Rural Development.
4. **Compliance Reviews**—Rural Development will be required to periodically conduct compliance review of this facility and operation. You will need to provide the local office the statistical information as requested.

5. **Security Inspections**—Rural Development is required to conduct an inspection of the facility a minimum of once every three years.

6. **VA/EPR**—You will also be required to provide a certification that the VA and ERP is complete and is current every three years after the start of operations. RD does not need or want a copy of the VA or ERP. The requested certification will be sufficient to meet our needs.

ITEM NO.: J-9
APPROVE THE INSTALLMENT PURCHASE
AGREEMENT BETWEEN THE CITY OF CORNING
AND THE CITY OF CORNING PUBLIC FINANCING
CORPORATION
JUNE 28, 2011

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
LISA M. LINNET, CITY CLERK



SUMMARY:

To implement the construction financing for the City of Corning's Clark Park Well Municipal Water Project, one of the steps necessary is for the City of Corning Public Financing Corporation and the City of Corning to both approve and execute the attached Installment Purchase Agreement.

Under the terms and conditions of this Agreement, the City of Corning proposes to purchase via an Installment Purchase Agreement between the City of Corning and the City of Corning Public Financing Corporation, a non-profit public benefit corporation, certain improvements to the City's Water System, specifically the Clark Park Municipal Water Project, from the City of Corning Public Financing Corporation.

The United States of America, acting through the Rural Utilities Service ("RUS") has agreed to finance a portion of the costs of the improvements through a loan in the amount of \$613,000, to be repaid with interest at a rate to be determined as stated in the letter of conditions dated June 17, 2010, and later amended via Amendment No. 1 dated May 27, 2011.

If approved, the Agreement stipulates that the Corporation agrees to pay the City the sum of \$613,000 for construction costs and the \$21,326.62 costs of issuance of the Revenue Certificate of Participation. The City in turn will make debt service installment payments March 1st and September 1st of each year commencing on March 1, 2012 and continuing through March 1, 2051. The required maximum annual debt service payment is not to exceed \$27,744.30. Prepayments of scheduled installments or any payments may be made at any time at the option of the City.

BACKGROUND:

The City of Corning Public Financing Corporation was created in 1997 to assist the City of Corning by financing public improvements and acquisition of City facilities and property. The Public Financing Corporation Board of Directors currently consist of the four sitting City Council Members and the Mayor. The City Manager is the Executive Director, the City Clerk is the Secretary, and the Finance Director/City Manager is the Treasurer of the Corporation. The City Attorney serves as the legal counsel.

RECOMMENDATION:

CITY OF CORNING PUBLIC FINANCING CORPORATION BOARD OF DIRECTORS APPROVE THE INSTALLMENT PURCHASE AGREEMENT BETWEEN THE CITY OF CORNING AND THE CITY OF CORNING PUBLIC FINANCING CORPORATION FOR THE CLARK PARK MUNICIPAL WATER PROJECT.

INSTALLMENT PURCHASE AGREEMENT

between the

CITY OF CORNING

and the

CITY OF CORNING PUBLIC FINANCING CORPORATION

Dated August 1, 2011

relating to

**Revenue Certificate of Participation
(Clark Park Municipal Water Project)**

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INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT, made and entered into as of **August 1, 2011**, between the **CITY OF CORNING**, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California, (the "City"), and the **CITY OF CORNING PUBLIC FINANCING CORPORATION**, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"),

W I T N E S S E T H:

WHEREAS, the City proposes to purchase certain improvements to the Water System from the Corporation upon the terms and conditions set forth herein;

WHEREAS, the United States of America, acting through the Rural Utilities Service of the United States Department of Agriculture, Rural Development, has agreed to finance the costs of the acquisition of the improvements;

WHEREAS, the City has previously executed and delivered (i) that certain Lease Agreement dated as of December 1, 1999, by and between the City and the Corporation, as amended and restated by that certain Amended and Restated Lease Agreement dated as of February 1, 2005 (the "Lease Agreement"), and (ii) that certain Installment Sale Agreement (1997 Water Project Refinancing) dated as of February 1, 2005 (the "2005 Installment Sale Agreement"), by and between the City and the Corporation;

WHEREAS, the City may enter into contracts under which payments are secured by a pledge of Water Net Revenues on a parity with the pledge of Water Net Revenues that secures payments under the Lease Agreement and the 2005 Installment Sale Agreement;

WHEREAS, the City has met the conditions set forth in Section 4.8(b) (Parity Debt) of the Lease Agreement and Section 4.08 (Limitations on Future Obligations Secured by Water Net Revenues) of the 2005 Installment Purchase Agreement;

WHEREAS, the City and the Corporation have duly authorized the execution of this Agreement;

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, in consideration of these premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICABILITY

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

Assignee means the United States of America, acting through the Rural Utilities Service of the United States Department of Agriculture, Rural Development, as assignee of the Corporation's interests hereunder, and its successors and assigns.

Certificate means the Revenue Certificate of Participation (Clark Park Municipal Water Project) evidencing the rights to receive the Installment Payments to be made by the City hereunder, which payments are secured by a pledge of Water Net Revenues on a parity with the pledge of Water Net Revenues that secures the Series 1999A Installment Payments, the 1999B Installment Payments, and the 2005A Installment Payments.

City means City of Corning, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

Corporation means the City of Corning Public Financing Corporation, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

Event of Default means an event described in Section 8.1.

Fiscal Year means the period beginning on July 1 of each year and ending on the June 30 of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the City.

Installment Payment Dates mean **March 1** and **September 1** of each year, commencing **March 1, 2012**.

Installment Payments means the installment payments of interest and principal scheduled to be paid by the City under and pursuant to this Agreement.

Installment Purchase Agreement means this Installment Purchase Agreement, by and between the City and the Corporation, dated **August 1, 2011**, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

2005 Installment Sale Agreement means the Installment Sale Agreement (1997 Water Project Refinancing), dated as of February 1, 2005, by and between the City and the Corporation.

Lease Agreement means the Amended and Restated Lease Agreement dated as of February 1, 2005, by and between the City and the Corporation.

Letter of Conditions means the letter of conditions dated June 17, 2010, as amended by Amendment No. 1 dated May 27, 2011, specifying the terms under which USDA Rural Development, through its Rural Utilities Service, will fund the acquisition of the Assets and the construction and acquisition of the Project.

Loan Resolution means the resolution adopted by the City Council of the City on July 13, 2010, in the form of the loan resolution specified by RUS Bulletin 1780-27, as required by Paragraph I(4)(a) of the Letter of Conditions.

Manager means the City Manager of the City, or any other person designated by the City Manager to act on behalf of the City Manager.

Net Proceeds means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such proceeds.

Operation and Maintenance Expenses means, for any period of calculation, all expenses and costs of management, operation, maintenance and repair of the Water System, and all incidental costs, fees and expenses and capital expenditures properly chargeable to the Water System, but excluding debt service or other similar payments and depreciation and obsolescence charges or reserves therefore and amortization of intangibles.

Owner means any person who shall be the registered owner of the Certificate.

Parity Debt means the payments made pursuant to any other indebtedness or other obligations (including leases and installment purchase agreements) hereafter issued or incurred and secured by a pledge of and lien on Water Net Revenues equally and ratably with the Installment Payments. Parity Debt includes (i) the lease payments under the Lease Agreement, which are evidenced by the 1999 Certificates of Participation, Series A and the 1999 Certificates of Participation, Series B, and (ii) the installment payments under the 2005A Installment Purchase Agreement (1997 Water Project Refinancing), which are evidenced by the Revenue Certificates of Participation, 2005 Series A.

Project means the improvements to be acquired from the Corporation.

Purchase Price means the principal amount plus interest thereon owed by the City to the Corporation under the terms hereof as provided in Section 4.1.

Reserve Requirement means an amount equal to the average annual amount payable as Installment Payments.

USDA Rural Development means the United States Department of Agriculture, Rural Development.

Water Gross Revenues means all income and revenue received by the City from the ownership and operation of the Water System, including, without limiting the generality of the foregoing,

(1) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of the Water System;

(2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to the Water System; and

(3) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Water System;

provided, that the term "Water Gross Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the City.

Water Net Revenues means, for any period of calculation, Water Gross Revenues less Operation and Maintenance Expenses of the Water System.

Water Service means the water distribution service made available or provided by the Water System.

Water System means the municipal water system of the City serving the City and its inhabitants, including all improvements, extensions, and additions thereto, and including all property, real, personal and mixed, of every nature now or hereafter owned by the City and used in the operations of its municipal water system.

Section 1.2. Benefits of Installment Purchase Agreement Limited to Parties. Nothing contained herein, expressed or implied, is intended to give to any person other than the City or the Corporation any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Corporation shall be for the sole and exclusive benefit of the other parties.

Section 1.3. Successor Is Deemed Included in all References to Predecessor. Whenever either the City or the Corporation is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City or the Corporation, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Corporation shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 1.4. Waiver of Personal Liability. No director, officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or hereby.

Section 1.5. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All

references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to the Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 1.6. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The City and the Corporation hereby declare that they would have executed the Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 1.7. California Law. This Installment Purchase Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 1.8. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City: City of Corning
 794 Third Street
 Corning, CA 96021
 Attention: City Manager

If to the Corporation: City of Corning Public Financing Corporation
 794 Third Street
 Corning, CA 96021
 Attention: President

Section 1.9. Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

ARTICLE II REPRESENTATIONS BY THE CITY AND THE CORPORATION

Section 2.1. Representations by the City. The City makes the following representations:

(a) The City is a municipal corporation organized and existing under the laws of the State of California.

(b) The City has full legal right, power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) By proper action, the City has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

Section 2.2. Representations by the Corporation. The Corporation makes the following representations and warranties:

(a) The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

(b) The Corporation has full legal right, power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) By proper action, the Corporation has duly authorized the execution, delivery and due performance of this Agreement.

ARTICLE III INSTALLMENT PURCHASE OF THE PROJECT

Section 3.1. Installment Purchase of the Project by the City; Title. The Corporation hereby sells the Project to the City for the Purchase Price, as described in Section 4.1. All right, title and interest in each component of the Project shall vest in the City immediately upon construction thereof. Such vesting shall occur without further action by the Corporation or the City, and the Corporation shall, if requested by the City or if necessary to assure such automatic vesting, deliver any and all documents required to assure such vesting.

Section 3.2. Construction of the Project. The Corporation hereby agrees that, following the delivery of the Certificate, it shall cause the Project to be constructed by the City as its agent. The City shall enter into contracts and provide for, as agent for the Corporation, the complete construction of the Project. The City hereby agrees that it will cause the construction of the Project to be diligently performed after the deposit of funds pursuant to Section 3.3.

It is hereby expressly understood and agreed that the Corporation shall be under no liability of any kind or character whatsoever for the payment of any cost of the Project and that all such costs and expenses shall be paid by the City, regardless of whether the funds deposited pursuant to Section 3.3 are sufficient to cover all such costs and expenses.

Section 3.3. Application of Proceeds. To pay the costs of construction of the Project and the costs of issuance of the Certificate, on the date of delivery of the Certificate, the Corporation hereby agrees to cause to be paid to the City the sum of \$613,000. The City agrees that it will apply the funds received from the Corporation for the following purposes:

(a) Costs of Issuance. to pay costs of issuance of the Certificate (estimated at \$21,326.62).

(b) Project Costs: to deposit the balance of funds remaining thereafter into the Construction Account, which is hereby established for the Project, under the control of the City.

**ARTICLE IV
INSTALLMENT PAYMENTS**

Section 4.1. Purchase Price.

(a) The Purchase Price to be paid by the City hereunder to the Corporation is the sum of the principal amount of the City's obligations hereunder plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to prepayment as provided in Article VII.

(b) The principal amount of the payments to be made by the City hereunder is set forth in Exhibit A hereto.

(c) The interest to accrue on the unpaid balance of such principal amount is as specified in Section 4.2 and Exhibit A hereto and shall be paid by the City as and constitute interest paid on the principal amount of the City's obligations hereunder.

Section 4.2. Installment Payments. The City shall, subject to its rights of prepayment provided in Article VII, pay the Corporation the Purchase Price in installment payments of interest and principal in the amounts and on the Installment Payment Dates as set forth in Exhibit A hereto.

Interest shall accrue at the rate of _____% per annum on the aggregate unpaid principal components of Installment Payments, calculated based on a 365-day year and actual days elapsed.

Each Installment Payment shall be paid to the Corporation in lawful money of the United States of America. If the City fails to make any of the payments required to be made by it under this section, such payment shall continue as an obligation of the City until such amount shall have been fully paid and the City agrees to pay the same with interest accruing thereon at the rate or rates of interest then applicable to the remaining unpaid principal balance of the Installment Payments if paid in accordance with their terms.

The obligation of the City to make the Installment Payments out of Water Net Revenues is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full, the City will not discontinue or suspend any Installment Payments required to be made by it under this section when due, whether or not the Water System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and whether or not the Project has been completed, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

The City's obligations to make the Installment Payments and other obligations of the City hereunder are special obligations of the City payable solely from, and secured by a pledge of and lien upon the Water Net Revenues. The Installment Payments do not constitute a debt of the City, the Corporation, the State of California or any political subdivision thereof within the meaning of any constitutional or statutory provision or limitation. Neither the full faith and

credit nor the taxing power of the City, the State of California or any political subdivision thereof is pledged to the payment thereof.

Section 4.3. Net Contract. The Installment Purchase Agreement shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof of the Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

ARTICLE V SECURITY

Section 5.1. Pledge of Water Net Revenues. The City hereby irrevocably pledges all of the Water Net Revenues to the payment of the Installment Payments. This pledge shall constitute a first lien on the Water Net Revenues for the payment of the Installment Payments on parity with the pledge of Water Net Revenues that secures the Parity Debt.

Section 5.2. Establishment and Funding of the Reserve Account. (a) In accordance with Paragraph I(2) of the Letter of Conditions, the City hereby establishes and promises to maintain an account designated as the "Reserve Account." On each anniversary of the delivery of the Certificate, commencing in 2012, the City shall deposit into the Reserve Account an amount equal to one-tenth (1/10) of the average annual amount payable as Installment Payments until the amount on deposit in the Reserve Account is equal to the Reserve Requirement.

(b) **Application of the Reserve Account.** In accordance with Paragraph 14 of the Loan Resolution, the City may withdraw and apply funds from the Reserve Account only with the prior approval of USDA Rural Development and only (i) to make Installment Payments when no other funds of the City are available therefor, (ii) to pay the final Installment Payment, or (iii) to fund emergency maintenance to the Water System, extensions to the Water System, and replacement of short-lived assets used in connection with the Water System. The City shall deposit any earnings received from the investment of funds in the Reserve Account therein until the balance of the Reserve Account is equal to the Reserve Requirement; thereafter, the City shall deposit any such earnings into its water enterprise fund.

(c) **Replenishment of the Reserve Account.** On or before the last day of each month, the City shall deposit in the Reserve Account one-twelfth (1/12) of the amount of any prior withdrawal from the Reserve Account until the amount withdrawn is fully restored to the Reserve Account.

Section 5.3. Depreciation Reserve . (a) **Funding of a Depreciation Reserve.** The City has previously established its Water Capital Replacement Fund #383 (the "Replacement Fund"), which is used to fund the replacement of equipment used in connection with the City's Water System. In accordance with Paragraph I(2) of the Letter of Conditions, on each anniversary of the delivery of the Certificate, for as long as the Installment Payments are unpaid, the City shall deposit into the Replacement Fund not less than \$27,000 to provide for the timely replacement of short-lived assets; provided that, before each anniversary date, the City shall evaluate the condition of the short-lived assets of the Water System, estimate the amount required for timely replacement of short-lived assets, and shall increase or may decrease the

amount to be deposited as appropriate, based on such evaluation. For purposes of this section, "short-lived assets" means equipment and other components of the Water System that have a useful life significantly less than the repayment period of the Certificate.

(b) Application of the Depreciation Reserve. In accordance with Paragraph I(2) of the Letter of Conditions, the City may withdraw and apply the funds deposited into the Replacement Fund pursuant to subsection (a) above only for replacement of short-lived assets used in connection with the City's Water System.

ARTICLE VI COVENANTS OF THE CITY

Section 6.1. Compliance with Installment Purchase Agreement and Loan Resolution. The City will punctually pay the Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate the Installment Purchase Agreement for any cause. The City will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Loan Resolution resolved therein to be observed and performed by it.

Section 6.2. Tax Covenant. The City shall at all times do and perform all acts and things permitted by law that are necessary and desirable in order to assure that interest paid with respect to the Certificate will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being so excluded. This covenant shall survive the payment in full of the Installment Payments.

Section 6.3. Additional Debt. The City will not issue or incur any bonds or obligations of any kind or nature payable from or enjoying a lien on the Water Net Revenues, unless such other bonds or obligations are made subordinate to the Installment Payments and any Parity Debt, provided that the City may incur Parity Debt if all the conditions set forth in Section 4.8(b) of the Lease Agreement are satisfied, which provision is hereby incorporated in its entirety and shall continue to apply in the event the lease payments under the Lease Agreement and installment payments under the 2005 Installment Sale Agreement are paid or prepaid in full.

The City may incur obligations secured by the Water Net Revenues on a junior or subordinate basis with the prior written consent of USDA Rural Development in accordance with Section 7 of the Loan Resolution.

Section 6.4. Protection of Security and Rights of the Corporation. The City will preserve and protect the security hereof and the rights of the Corporation to the Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

Section 6.5. Indemnification of Corporation. The City hereby agrees to indemnify and hold harmless the Corporation and its directors, officers and employees if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of its duties hereunder and the Assignment Agreement; provided that no indemnification will be made for

willful misconduct, negligence or breach of an obligation hereunder or the Assignment Agreement by the Corporation.

Section 6.6. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Corporation of the rights and benefits provided to it herein.

ARTICLE VII PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1. Prepayment. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the City. Refunds and extra payments, as defined in the regulations of USDA Rural Development according to the source of funds involved, shall, after payment of interest, be applied to the Installment Payments last to become due hereunder and shall not affect the obligation of the City to pay the remaining Installment Payments as scheduled herein. Any such prepayment shall be applied to redeem all or a portion of the Certificate.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

Section 8.1. Events of Default and Remedies. (a) Events of Default. The following shall be Events of Default hereunder:

(1) Failure by the City to pay any Installment Payment at the time specified herein.

(2) Failure by the City to observe and perform any covenant, condition or agreement on its part contained herein or in the Loan Resolution, other than in clause (1) of this subsection, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation; provided, however, that the Corporation and the City may agree that action by the City to cure such failure may be extended beyond such thirty-day period.

(b) Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Corporation shall have the right, at its option upon notice to the City, to:

(1) declare the entire principal amount of the unpaid Installment Payments and the accrued interest thereon to be immediately due and payable, whereupon the same shall immediately become due and payable;

(2) for the account of the City, incur and pay reasonable expenses for repair, maintenance, and operation of the Water System and such other reasonable expenses as may be necessary to cure the cause of default, and/or

(3) take possession of the Water System, repair, maintain, and operate or rent it.

The provisions of the preceding clause (1) are subject to the condition that if, at any time after the principal amount of the unpaid Installment Payments shall have been so declared due and payable pursuant to the preceding clause (1), and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the Installment Payments coming due prior to such declaration, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 8.2. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.1, all Water Net Revenues thereafter received by the City shall be applied in the following order --

First, to the payment, without preference or priority, and in the event of any insufficiency of such Water Net Revenues ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation if any, in carrying out the provisions of this article, including reasonable compensation to their respective accountants and counsel;

Second, to the payment of the Operation and Maintenance Expenses; and

Third, to the payment of the entire principal amount of the unpaid Installment Payments and the unpaid principal amount of any Parity Debt and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Installment Payments and such Parity Debt if paid in accordance with their respective terms.

Section 8.3. Other Remedies of the Corporation. The Corporation shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Corporation; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust.

Section 8.4. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments to the Corporation at the respective due dates or upon prepayment, or shall

affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Corporation shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Corporation to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation, the City and the Corporation shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.5. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE IX ASSIGNMENT; AMENDMENTS

Section 9.1. Assignment. The City hereby consents to the assignment by the Corporation of its rights under this Installment Purchase Agreement to USDA Rural Development, which rights are evidenced by the Certificate. The City shall maintain a register containing the name and address of the Owner.

The Owner may transfer ownership of the Certificate by surrender thereof to the City accompanied by a duly executed instrument of transfer in a form approved by the City. The City shall deliver to the transferee a new Certificate in the aggregate amount of the unpaid principal installments and shall record the transfer in the Certificate register.

Section 9.2. Amendments Permitted. (a) This Agreement and the rights and obligations of the Corporation and the City and of the Owner may be modified or amended at any time but only with the written consent of the Owner. No such modification or amendment shall (1) reduce the rate of interest or amount of principal represented by the Certificate or extend the time of payment of principal or interest represented thereby, without the consent of the Owner, or (2) modify the requirement for the consent of the Owner for the execution of any amendment or modification of this Agreement, or (3) modify any of the rights or obligations of the Corporation without its written consent thereto.

(b) This Agreement and the rights and obligations of the Corporation and the City and of the Owner may also be modified or amended at any time, without the consent of the

Owner, but only to the extent permitted by law and only for any one or more of the following purposes--

(1) to add to the covenants and agreements of the Corporation or the City contained in this Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Corporation or the City, and that shall not adversely affect the interests of the Owner;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Agreement or in regard to questions arising under this Agreement, as the Corporation or the City may deem necessary or desirable and that shall not adversely affect the interests of the Owner; and

(3) to make such other amendments or modifications as may be in the best interests of the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF CORNING

Mayor

ATTEST:

City Clerk

CITY OF CORNING PUBLIC FINANCING CORPORATION

By: _____
Chairman of the Board of Directors

ATTEST:

Secretary of the Board of Directors

EXHIBIT A

PURCHASE PRICE

1. The aggregate principal amount of payments to be made by the City hereunder with respect to the Certificate is \$613,000.

2. The principal components of the Installment Payments with respect to the Certificate are payable in the following amounts on March 1 in the following years:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
-------------	---------------	-------------	---------------	-------------	---------------	-------------	---------------

On March 1, 2012, the City shall pay as the interest component of its Installment Payment an amount equal to ____% per annum of the aggregate unpaid principal components of Installment Payments calculated based on a 365-day year and actual days elapsed from August, 2011. On each March 1 and September 1 thereafter, to and including March 1, 2051, the City shall pay as the interest component of its Installment Payments an amount equal to one-half of ____% of the aggregate unpaid principal components of Installment Payments.

SOURCES AND USES OF FUNDS

Sample Bond Run
Sample Debt Service Schedule

Sources:

Bond Proceeds:	
Par Amount	613,000.00
	<hr/>
	613,000.00
	<hr/>

Uses:

Project Fund Deposits:	
Project Fund #1	613,000.00
	<hr/>
	613,000.00
	<hr/>

BOND SUMMARY STATISTICS

Sample Bond Run
Sample Debt Service Schedule

Dated Date	08/01/2011
Delivery Date	08/01/2011
Last Maturity	03/01/2051
Arbitrage Yield	3.249841%
True Interest Cost (TIC)	3.249841%
Net Interest Cost (NIC)	3.250000%
All-In TIC	3.249841%
Average Coupon	3.250000%
Average Life (years)	24.355
Duration of Issue (years)	16.049
Par Amount	613,000.00
Bond Proceeds	613,000.00
Total Interest	485,210.14
Net Interest	485,210.14
Total Debt Service	1,098,210.14
Maximum Annual Debt Service	27,744.30
Average Annual Debt Service	27,744.26
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
<hr/>	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life
Serial Bond	613,000.00	100.000	3.250%	24.355
	613,000.00			24.355

	TIC	All-In TIC	Arbitrage Yield
Par Value	613,000.00	613,000.00	613,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense			
- Other Amounts			
Target Value	613,000.00	613,000.00	613,000.00
Target Date	08/01/2011	08/01/2011	08/01/2011
Yield	3.249841%	3.249841%	3.249841%

BOND DEBT SERVICE

Sample Bond Run
Sample Debt Service Schedule

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
08/01/2011					
03/01/2012	4,562.70	3.250%	11,621.46	16,184.16	16,184.16
09/01/2012			9,887.11	9,887.11	
03/01/2013	7,970.00	3.250%	9,887.11	17,857.11	27,744.22
09/01/2013			9,757.59	9,757.59	
03/01/2014	8,229.10	3.250%	9,757.59	17,986.69	27,744.28
09/01/2014			9,623.87	9,623.87	
03/01/2015	8,496.50	3.250%	9,623.87	18,120.37	27,744.24
09/01/2015			9,485.80	9,485.80	
03/01/2016	8,772.70	3.250%	9,485.80	18,258.50	27,744.30
09/01/2016			9,343.25	9,343.25	
03/01/2017	9,057.80	3.250%	9,343.25	18,401.05	27,744.30
09/01/2017			9,196.06	9,196.06	
03/01/2018	9,352.10	3.250%	9,196.06	18,548.16	27,744.22
09/01/2018			9,044.09	9,044.09	
03/01/2019	9,656.10	3.250%	9,044.09	18,700.19	27,744.28
09/01/2019			8,887.17	8,887.17	
03/01/2020	9,969.90	3.250%	8,887.17	18,857.07	27,744.24
09/01/2020			8,725.16	8,725.16	
03/01/2021	10,293.90	3.250%	8,725.16	19,019.06	27,744.22
09/01/2021			8,557.89	8,557.89	
03/01/2022	10,628.50	3.250%	8,557.89	19,186.39	27,744.28
09/01/2022			8,385.17	8,385.17	
03/01/2023	10,973.90	3.250%	8,385.17	19,359.07	27,744.24
09/01/2023			8,206.85	8,206.85	
03/01/2024	11,330.60	3.250%	8,206.85	19,537.45	27,744.30
09/01/2024			8,022.73	8,022.73	
03/01/2025	11,698.80	3.250%	8,022.73	19,721.53	27,744.26
09/01/2025			7,832.62	7,832.62	
03/01/2026	12,079.00	3.250%	7,832.62	19,911.62	27,744.24
09/01/2026			7,636.34	7,636.34	
03/01/2027	12,471.60	3.250%	7,636.34	20,107.94	27,744.28
09/01/2027			7,433.67	7,433.67	
03/01/2028	12,876.90	3.250%	7,433.67	20,310.57	27,744.24
09/01/2028			7,224.42	7,224.42	
03/01/2029	13,295.40	3.250%	7,224.42	20,519.82	27,744.24
09/01/2029			7,008.37	7,008.37	
03/01/2030	13,727.50	3.250%	7,008.37	20,735.87	27,744.24
09/01/2030			6,785.30	6,785.30	
03/01/2031	14,173.70	3.250%	6,785.30	20,959.00	27,744.30
09/01/2031			6,554.98	6,554.98	
03/01/2032	14,634.30	3.250%	6,554.98	21,189.28	27,744.26
09/01/2032			6,317.17	6,317.17	
03/01/2033	15,109.90	3.250%	6,317.17	21,427.07	27,744.24
09/01/2033			6,071.64	6,071.64	
03/01/2034	15,601.00	3.250%	6,071.64	21,672.64	27,744.28
09/01/2034			5,818.12	5,818.12	
03/01/2035	16,108.00	3.250%	5,818.12	21,926.12	27,744.24
09/01/2035			5,556.36	5,556.36	
03/01/2036	16,631.50	3.250%	5,556.36	22,187.86	27,744.22
09/01/2036			5,286.10	5,286.10	
03/01/2037	17,172.10	3.250%	5,286.10	22,458.20	27,744.30
09/01/2037			5,007.06	5,007.06	
03/01/2038	17,730.10	3.250%	5,007.06	22,737.16	27,744.22
09/01/2038			4,718.94	4,718.94	

BOND DEBT SERVICE

Sample Bond Run
Sample Debt Service Schedule

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
03/01/2039	18,306.40	3.250%	4,718.94	23,025.34	27,744.28
09/01/2039			4,421.46	4,421.46	
03/01/2040	18,901.30	3.250%	4,421.46	23,322.76	27,744.22
09/01/2040			4,114.32	4,114.32	
03/01/2041	19,515.60	3.250%	4,114.32	23,629.92	27,744.24
09/01/2041			3,797.19	3,797.19	
03/01/2042	20,149.90	3.250%	3,797.19	23,947.09	27,744.28
09/01/2042			3,469.75	3,469.75	
03/01/2043	20,804.80	3.250%	3,469.75	24,274.55	27,744.30
09/01/2043			3,131.67	3,131.67	
03/01/2044	21,480.90	3.250%	3,131.67	24,612.57	27,744.24
09/01/2044			2,782.61	2,782.61	
03/01/2045	22,179.00	3.250%	2,782.61	24,961.61	27,744.22
09/01/2045			2,422.20	2,422.20	
03/01/2046	22,899.90	3.250%	2,422.20	25,322.10	27,744.30
09/01/2046			2,050.08	2,050.08	
03/01/2047	23,644.10	3.250%	2,050.08	25,694.18	27,744.26
09/01/2047			1,665.86	1,665.86	
03/01/2048	24,412.50	3.250%	1,665.86	26,078.36	27,744.22
09/01/2048			1,269.16	1,269.16	
03/01/2049	25,205.90	3.250%	1,269.16	26,475.06	27,744.22
09/01/2049			859.56	859.56	
03/01/2050	26,025.10	3.250%	859.56	26,884.66	27,744.22
09/01/2050			436.65	436.65	
03/01/2051	26,871.00	3.250%	436.65	27,307.65	27,744.30
	613,000.00		485,210.14	1,098,210.14	1,098,210.14

ITEM NO.: K-10
APPROVE INSTALLMENT PURCHASE
AGREEMENT BETWEEN THE CITY AND THE CITY
OF CORNING PUBLIC FINANCING CORPORATION
TO FINANCE MUNICIPAL WATER SYSTEM
IMPROVEMENTS, AND ADOPT RESOLUTION NO.
6-28-2011-03 AUTHORIZING THE EXECUTION OF
SAID INSTALLMENT PURCHASE AGREEMENT
JUNE 28, 2011

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
LISA M. LINNET, CITY CLERK



SUMMARY:

The United States of America, acting through the Rural Utilities Service ("RUS") has agreed to finance a portion of the costs of the improvements through a loan in the amount of \$613,000, to be repaid with interest as specified in the letter of conditions dated June 17, 2010, and amended by Amendment No. 1 dated May 27, 2011. Following the Resolution is a copy of the Installment Purchase Agreement and a complete copy of the Letter of Conditions.

BACKGROUND:

In order to implement the construction financing for the Clark Park Municipal Water Project, (specifically the purchase, construction and installation of the Clark Park Well), the Installment Purchase Agreement and Resolution No. 06-28-2011-03 authorizing the execution of this Agreement must be adopted by the City Council.

The Resolution states: City Council finds and determines that the recitals are true and correct; authorizes Officers to execute and deliver the Installment Purchase Agreement; and designates its obligations under the Installment Purchase Agreement as a "Qualified Tax-Exempt Obligation". It further states the General Authorizations and that the Water System Improvements will be financed in the following manner:

- I. An Installment Purchase Agreement between the City and the City of Corning Public Financing Corporation whereby the Corporation will sell the improvements to the City in exchange for installment payments; and
- II. The Corporation's assignment of its interests in the Installment Purchase Agreement to RUS pursuant to an Assignment Agreement, in exchange for payment of the amount required to be paid by the Corporation to the City under the Installment Purchase Agreement, which will be used to pay the costs of constructing the improvements.

The Installment Purchase Agreement, if approved, stipulates that the Corporation agrees to pay the City the sum of \$613,000 for construction costs and the \$21,326.62 costs of issuance of the Revenue Certificate of Participation. The City in turn will make debt service installment payments March 1st and September 1st of each year commencing on March 1, 2012 and continuing through March 1, 2051. The required maximum annual debt service payment is not to exceed \$27,744.30. Prepayments of scheduled installments or any payments may be made at any time at the option of the City.

RECOMMENDATION:

APPROVE INSTALLMENT PURCHASE AGREEMENT BETWEEN THE CITY AND
THE CITY OF CORNING PUBLIC FINANCING CORPORATION TO FINANCE MUNICIPAL
WATER SYSTEM IMPROVEMENTS, AND ADOPT RESOLUTION NO. 6-28-2011-03
AUTHORIZING THE EXECUTION OF SAID INSTALLMENT PURCHASE AGREEMENT

CITY OF CORNING PUBLIC FINANCING CORPORATION

RESOLUTION NO. 6-28-2011-03

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN
INSTALLMENT PURCHASE AGREEMENT
TO FINANCE IMPROVEMENTS TO THE MUNICIPAL WATER SYSTEM**

WHEREAS, the City of Corning, a municipal corporation duly organized and existing under the Constitution and laws of the State of California, intends to finance certain improvements to its municipal water system;

WHEREAS, the United States of America, acting through the Rural Utilities Service ("RUS"), has agreed to finance a portion of the costs of the improvements through a loan in the amount of \$613,000, to be repaid with interest at a rate determined as specified in the letter of conditions dated June 17, 2010, as amended by Amendment No. 1 dated May 27, 2011;

WHEREAS, the financing will be accomplished by (i) the City and the City of Corning Public Financing Corporation entering into an Installment Purchase Agreement, whereby the Corporation will sell the improvements to the City in exchange for installment payments; and (ii) the Corporation's assignment of its interests in the Installment Purchase Agreement to RUS pursuant to an Assignment Agreement; in exchange for payment of the amount required to be paid by the Corporation to the City under the Installment Purchase Agreement, which will be used to pay the costs of constructing the improvements;

WHEREAS, the Installment Purchase Agreement, which is incorporated herein by reference, has been presented to the City Council for its review and approval;

WHEREAS, it appears to the City Council that the authorization, approval, execution, and delivery of the Installment Purchase Agreement and any documents contemplated thereby or incidental thereto are desirable and in the best interests of the City;

NOW, THEREFORE, the City Council of the City of Corning hereby resolves as follows:

Section 1. Recitals. All of the above recitals are true and correct and the Board so finds and determines.

Section 2. Authorization of Officers to Execute and Deliver Documents.
The Board hereby approves the Installment Purchase Agreement in substantially the form presented to this meeting and authorizes and directs the Mayor, the City Clerk, and the City Manager (the "Designated Officers"), and each of them individually, for and in the name of and on behalf of the City, to execute and deliver the Installment Purchase Agreement in such form with such changes, insertions, revisions, corrections, or amendments as shall be approved by the officer executing them. The execution of the foregoing by a Designated Officer shall constitute conclusive evidence of such officer's and the City Council's approval of any such changes, insertions, revision, corrections, or amendments to the form of the agreements presented to this meeting.

Section 3. Designation as "Qualified Tax-Exempt Obligation." The City Council reasonably anticipates that the City and all subordinate entities and all entities that issue obligations on its behalf will not issue more than ten million dollars of tax-exempt obligations (excluding private activity bonds) during calendar year 2011. The City Council hereby designates its obligations under the Installment Purchase Agreement as a qualified tax-exempt obligation within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986.

Section 4. General Authorization. All actions heretofore taken by the officers and agents of the City with respect to the execution and delivery of the Installment Purchase Agreement are hereby approved, and the Designated Officers and any and all other officers of the City are hereby authorized and directed, for and in the name and on behalf of the City, to do any and all things and take any and all actions related to the execution and delivery of any and all certificates, requisitions, agreements and other documents that they, or any of them, may deem necessary or advisable in order to consummate the financing implemented by the delivery of the Installment Purchase Agreement and to effect the purposes of this resolution.

Section 5. Effective Date. This resolution shall take effect immediately upon its adoption.

PASSED AND ADOPTED on June 28, 2011.

CITY OF CORNING

Gary R. Strack, Mayor

ATTEST:

Lisa M. Linnet, City Clerk

I hereby certify that the foregoing is a full, true and correct copy of a Resolution duly passed and adopted by the City of Corning at a meeting held on June 28, 2011, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Lisa M. Linnet, City Clerk

INSTALLMENT PURCHASE AGREEMENT

between the

CITY OF CORNING

and the

CITY OF CORNING PUBLIC FINANCING CORPORATION

Dated August 1, 2011

relating to

**Revenue Certificate of Participation
(Clark Park Municipal Water Project)**

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INSTALLMENT PURCHASE AGREEMENT

This INSTALLMENT PURCHASE AGREEMENT, made and entered into as of **August 1, 2011**, between the **CITY OF CORNING**, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California, (the "City"), and the **CITY OF CORNING PUBLIC FINANCING CORPORATION**, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California (the "Corporation"),

W I T N E S S E T H:

WHEREAS, the City proposes to purchase certain improvements to the Water System from the Corporation upon the terms and conditions set forth herein;

WHEREAS, the United States of America, acting through the Rural Utilities Service of the United States Department of Agriculture, Rural Development, has agreed to finance the costs of the acquisition of the improvements;

WHEREAS, the City has previously executed and delivered (i) that certain Lease Agreement dated as of December 1, 1999, by and between the City and the Corporation, as amended and restated by that certain Amended and Restated Lease Agreement dated as of February 1, 2005 (the "Lease Agreement"), and (ii) that certain Installment Sale Agreement (1997 Water Project Refinancing) dated as of February 1, 2005 (the "2005 Installment Sale Agreement"), by and between the City and the Corporation;

WHEREAS, the City may enter into contracts under which payments are secured by a pledge of Water Net Revenues on a parity with the pledge of Water Net Revenues that secures payments under the Lease Agreement and the 2005 Installment Sale Agreement;

WHEREAS, the City has met the conditions set forth in Section 4.8(b) (Parity Debt) of the Lease Agreement and Section 4.08 (Limitations on Future Obligations Secured by Water Net Revenues) of the 2005 Installment Purchase Agreement;

WHEREAS, the City and the Corporation have duly authorized the execution of this Agreement;

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Installment Purchase Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Installment Purchase Agreement;

NOW, THEREFORE, in consideration of these premises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

ARTICLE I
DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICABILITY

Section 1.1. Definitions. Unless the context otherwise requires, the terms defined in this section shall for all purposes hereof and of any amendment hereof or supplement hereto and of any report or other document mentioned herein or therein have the meanings defined herein, the following definitions to be equally applicable to both the singular and plural forms of any of the terms defined herein.

Assignee means the United States of America, acting through the Rural Utilities Service of the United States Department of Agriculture, Rural Development, as assignee of the Corporation's interests hereunder, and its successors and assigns.

Certificate means the Revenue Certificate of Participation (Clark Park Municipal Water Project) evidencing the rights to receive the Installment Payments to be made by the City hereunder, which payments are secured by a pledge of Water Net Revenues on a parity with the pledge of Water Net Revenues that secures the Series 1999A Installment Payments, the 1999B Installment Payments, and the 2005A Installment Payments.

City means City of Corning, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California.

Corporation means the City of Corning Public Financing Corporation, a nonprofit public benefit corporation duly organized and existing under and by virtue of the laws of the State of California.

Event of Default means an event described in Section 8.1.

Fiscal Year means the period beginning on July 1 of each year and ending on the June 30 of the next succeeding year, or any other twelve-month period selected and designated as the official Fiscal Year of the City.

Installment Payment Dates mean March 1 and September 1 of each year, commencing March 1, 2012.

Installment Payments means the installment payments of interest and principal scheduled to be paid by the City under and pursuant to this Agreement.

Installment Purchase Agreement means this Installment Purchase Agreement, by and between the City and the Corporation, dated August 1, 2011, as originally executed and as it may from time to time be amended or supplemented in accordance herewith.

2005 Installment Sale Agreement means the Installment Sale Agreement (1997 Water Project Refinancing), dated as of February 1, 2005, by and between the City and the Corporation.

Lease Agreement means the Amended and Restated Lease Agreement dated as of February 1, 2005, by and between the City and the Corporation.

Letter of Conditions means the letter of conditions dated June 17, 2010, as amended by Amendment No. 1 dated May 27, 2011, specifying the terms under which USDA Rural Development, through its Rural Utilities Service, will fund the acquisition of the Assets and the construction and acquisition of the Project.

Loan Resolution means the resolution adopted by the City Council of the City on July 13, 2010, in the form of the loan resolution specified by RUS Bulletin 1780-27, as required by Paragraph I(4)(a) of the Letter of Conditions.

Manager means the City Manager of the City, or any other person designated by the City Manager to act on behalf of the City Manager.

Net Proceeds means, when used with respect to any casualty insurance or condemnation award, the proceeds from such insurance or condemnation award remaining after payment of all expenses (including attorneys' fees) incurred in the collection of such proceeds.

Operation and Maintenance Expenses means, for any period of calculation, all expenses and costs of management, operation, maintenance and repair of the Water System, and all incidental costs, fees and expenses and capital expenditures properly chargeable to the Water System, but excluding debt service or other similar payments and depreciation and obsolescence charges or reserves therefore and amortization of intangibles.

Owner means any person who shall be the registered owner of the Certificate.

Parity Debt means the payments made pursuant to any other indebtedness or other obligations (including leases and installment purchase agreements) hereafter issued or incurred and secured by a pledge of and lien on Water Net Revenues equally and ratably with the Installment Payments. Parity Debt includes (i) the lease payments under the Lease Agreement, which are evidenced by the 1999 Certificates of Participation, Series A and the 1999 Certificates of Participation, Series B, and (ii) the installment payments under the 2005A Installment Purchase Agreement (1997 Water Project Refinancing), which are evidenced by the Revenue Certificates of Participation, 2005 Series A.

Project means the improvements to be acquired from the Corporation.

Purchase Price means the principal amount plus interest thereon owed by the City to the Corporation under the terms hereof as provided in Section 4.1.

Reserve Requirement means an amount equal to the average annual amount payable as Installment Payments.

USDA Rural Development means the United States Department of Agriculture, Rural Development.

Water Gross Revenues means all income and revenue received by the City from the ownership and operation of the Water System, including, without limiting the generality of the foregoing,

(1) all income, rents, rates, fees, charges or other moneys derived from the services, facilities and commodities sold, furnished or supplied through the facilities of the Water System;

(2) the earnings on and income derived from the investment of such income, rents, rates, fees, charges or other moneys to the extent that the use of such earnings and income is limited by or pursuant to the law to the Water System; and

(3) the proceeds derived by the City directly or indirectly from the sale, lease or other disposition of a part of the Water System;

provided, that the term "Water Gross Revenues" shall not include customers' deposits or any other deposits subject to refund until such deposits have become the property of the City.

Water Net Revenues means, for any period of calculation, Water Gross Revenues less Operation and Maintenance Expenses of the Water System.

Water Service means the water distribution service made available or provided by the Water System.

Water System means the municipal water system of the City serving the City and its inhabitants, including all improvements, extensions, and additions thereto, and including all property, real, personal and mixed, of every nature now or hereafter owned by the City and used in the operations of its municipal water system.

Section 1.2. Benefits of Installment Purchase Agreement Limited to Parties.

Nothing contained herein, expressed or implied, is intended to give to any person other than the City or the Corporation any right, remedy or claim under or pursuant hereto, and any agreement or covenant required herein to be performed by or on behalf of the City or the Corporation shall be for the sole and exclusive benefit of the other parties.

Section 1.3. Successor Is Deemed Included in all References to Predecessor.

Whenever either the City or the Corporation is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in the City or the Corporation, and all agreements and covenants required hereby to be performed by or on behalf of the City or the Corporation shall bind and inure to the benefit of the respective successors thereof whether so expressed or not.

Section 1.4. Waiver of Personal Liability. No director, officer or employee of the City shall be individually or personally liable for the payment of the Installment Payments, but nothing contained herein shall relieve any director, officer or employee of the City from the performance of any official duty provided by any applicable provisions of law or hereby.

Section 1.5. Article and Section Headings, Gender and References. The headings or titles of the several articles and sections hereof and the table of contents appended hereto shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof, and words of any gender shall be deemed and construed to include all genders. All

references herein to "Articles," "Sections" and other subdivisions or clauses are to the corresponding articles, sections, subdivisions or clauses hereof; and the words "hereby," "herein," "hereof," "hereto," "herewith" and other words of similar import refer to the Installment Purchase Agreement as a whole and not to any particular article, section, subdivision or clause hereof.

Section 1.6. Partial Invalidity. If any one or more of the agreements or covenants or portions thereof required hereby to be performed by or on the part of the City or the Corporation shall be contrary to law, then such agreement or agreements, such covenant or covenants or such portions thereof shall be null and void and shall be deemed separable from the remaining agreements and covenants or portions thereof and shall in no way affect the validity hereof. The City and the Corporation hereby declare that they would have executed the Installment Purchase Agreement, and each and every other article, section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more articles, sections, paragraphs, subdivisions, sentences, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 1.7. California Law. This Installment Purchase Agreement shall be construed and governed in accordance with the laws of the State of California.

Section 1.8. Notices. All written notices to be given hereunder shall be given by mail to the party entitled thereto at its address set forth below, or at such other address as such party may provide to the other party in writing from time to time, namely:

If to the City: City of Corning
794 Third Street
Corning, CA 96021
Attention: City Manager

If to the Corporation: City of Corning Public Financing Corporation
794 Third Street
Corning, CA 96021
Attention: President

Section 1.9. Execution in Counterparts. This Installment Purchase Agreement may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

ARTICLE II REPRESENTATIONS BY THE CITY AND THE CORPORATION

Section 2.1. Representations by the City. The City makes the following representations:

(a) The City is a municipal corporation organized and existing under the laws of the State of California.

(b) The City has full legal right, power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) By proper action, the City has duly authorized the execution, delivery and due performance of this Installment Purchase Agreement.

Section 2.2. Representations by the Corporation. The Corporation makes the following representations and warranties:

(a) The Corporation is a nonprofit public benefit corporation duly organized and existing under the laws of the State of California.

(b) The Corporation has full legal right, power and authority to enter into this Agreement and to carry out its obligations hereunder.

(c) By proper action, the Corporation has duly authorized the execution, delivery and due performance of this Agreement.

ARTICLE III INSTALLMENT PURCHASE OF THE PROJECT

Section 3.1. Installment Purchase of the Project by the City; Title. The Corporation hereby sells the Project to the City for the Purchase Price, as described in Section 4.1. All right, title and interest in each component of the Project shall vest in the City immediately upon construction thereof. Such vesting shall occur without further action by the Corporation or the City, and the Corporation shall, if requested by the City or if necessary to assure such automatic vesting, deliver any and all documents required to assure such vesting.

Section 3.2. Construction of the Project. The Corporation hereby agrees that, following the delivery of the Certificate, it shall cause the Project to be constructed by the City as its agent. The City shall enter into contracts and provide for, as agent for the Corporation, the complete construction of the Project. The City hereby agrees that it will cause the construction of the Project to be diligently performed after the deposit of funds pursuant to Section 3.3.

It is hereby expressly understood and agreed that the Corporation shall be under no liability of any kind or character whatsoever for the payment of any cost of the Project and that all such costs and expenses shall be paid by the City, regardless of whether the funds deposited pursuant to Section 3.3 are sufficient to cover all such costs and expenses.

Section 3.3. Application of Proceeds. To pay the costs of construction of the Project and the costs of issuance of the Certificate, on the date of delivery of the Certificate, the Corporation hereby agrees to cause to be paid to the City the sum of \$613,000. The City agrees that it will apply the funds received from the Corporation for the following purposes:

(a) Costs of Issuance. to pay costs of issuance of the Certificate (estimated at \$21,326.62).

(b) Project Costs: to deposit the balance of funds remaining thereafter into the Construction Account, which is hereby established for the Project, under the control of the City.

**ARTICLE IV
INSTALLMENT PAYMENTS**

Section 4.1. Purchase Price.

(a) The Purchase Price to be paid by the City hereunder to the Corporation is the sum of the principal amount of the City's obligations hereunder plus the interest to accrue on the unpaid balance of such principal amount from the effective date hereof over the term hereof, subject to prepayment as provided in Article VII.

(b) The principal amount of the payments to be made by the City hereunder is set forth in Exhibit A hereto.

(c) The interest to accrue on the unpaid balance of such principal amount is as specified in Section 4.2 and Exhibit A hereto and shall be paid by the City as and constitute interest paid on the principal amount of the City's obligations hereunder.

Section 4.2. Installment Payments. The City shall, subject to its rights of prepayment provided in Article VII, pay the Corporation the Purchase Price in installment payments of interest and principal in the amounts and on the Installment Payment Dates as set forth in Exhibit A hereto.

Interest shall accrue at the rate of ____% per annum on the aggregate unpaid principal components of Installment Payments, calculated based on a 365-day year and actual days elapsed.

Each Installment Payment shall be paid to the Corporation in lawful money of the United States of America. If the City fails to make any of the payments required to be made by it under this section, such payment shall continue as an obligation of the City until such amount shall have been fully paid and the City agrees to pay the same with interest accruing thereon at the rate or rates of interest then applicable to the remaining unpaid principal balance of the Installment Payments if paid in accordance with their terms.

The obligation of the City to make the Installment Payments out of Water Net Revenues is absolute and unconditional, and until such time as the Purchase Price shall have been paid in full, the City will not discontinue or suspend any Installment Payments required to be made by it under this section when due, whether or not the Water System or any part thereof is operating or operable, or its use is suspended, interfered with, reduced or curtailed or terminated in whole or in part, and whether or not the Project has been completed, and such payments shall not be subject to reduction whether by offset or otherwise and shall not be conditional upon the performance or nonperformance by any party of any agreement for any cause whatsoever.

The City's obligations to make the Installment Payments and other obligations of the City hereunder are special obligations of the City payable solely from, and secured by a pledge of and lien upon the Water Net Revenues. The Installment Payments do not constitute a debt of the City, the Corporation, the State of California or any political subdivision thereof within the meaning of any constitutional or statutory provision or limitation. Neither the full faith and

credit nor the taxing power of the City, the State of California or any political subdivision thereof is pledged to the payment thereof.

Section 4.3. Net Contract. The Installment Purchase Agreement shall be deemed and construed to be a net contract, and the City shall pay absolutely net during the term hereof the Installment Payments and all other payments required hereunder, free of any deductions and without abatement, diminution or set-off whatsoever.

ARTICLE V SECURITY

Section 5.1. Pledge of Water Net Revenues. The City hereby irrevocably pledges all of the Water Net Revenues to the payment of the Installment Payments. This pledge shall constitute a first lien on the Water Net Revenues for the payment of the Installment Payments on parity with the pledge of Water Net Revenues that secures the Parity Debt.

Section 5.2. Establishment and Funding of the Reserve Account. (a) In accordance with Paragraph I(2) of the Letter of Conditions, the City hereby establishes and promises to maintain an account designated as the "Reserve Account." On each anniversary of the delivery of the Certificate, commencing in 2012, the City shall deposit into the Reserve Account an amount equal to one-tenth (1/10) of the average annual amount payable as Installment Payments until the amount on deposit in the Reserve Account is equal to the Reserve Requirement.

(b) Application of the Reserve Account. In accordance with Paragraph 14 of the Loan Resolution, the City may withdraw and apply funds from the Reserve Account only with the prior approval of USDA Rural Development and only (i) to make Installment Payments when no other funds of the City are available therefor, (ii) to pay the final Installment Payment, or (iii) to fund emergency maintenance to the Water System, extensions to the Water System, and replacement of short-lived assets used in connection with the Water System. The City shall deposit any earnings received from the investment of funds in the Reserve Account therein until the balance of the Reserve Account is equal to the Reserve Requirement; thereafter, the City shall deposit any such earnings into its water enterprise fund.

(c) Replenishment of the Reserve Account. On or before the last day of each month, the City shall deposit in the Reserve Account one-twelfth (1/12) of the amount of any prior withdrawal from the Reserve Account until the amount withdrawn is fully restored to the Reserve Account.

Section 5.3. Depreciation Reserve . (a) Funding of a Depreciation Reserve. The City has previously established its Water Capital Replacement Fund #383 (the "Replacement Fund"), which is used to fund the replacement of equipment used in connection with the City's Water System. In accordance with Paragraph I(2) of the Letter of Conditions, on each anniversary of the delivery of the Certificate, for as long as the Installment Payments are unpaid, the City shall deposit into the Replacement Fund not less than \$27,000 to provide for the timely replacement of short-lived assets; provided that, before each anniversary date, the City shall evaluate the condition of the short-lived assets of the Water System, estimate the amount required for timely replacement of short-lived assets, and shall increase or may decrease the

amount to be deposited as appropriate, based on such evaluation. For purposes of this section, "short-lived assets" means equipment and other components of the Water System that have a useful life significantly less than the repayment period of the Certificate.

(b) Application of the Depreciation Reserve. In accordance with Paragraph I(2) of the Letter of Conditions, the City may withdraw and apply the funds deposited into the Replacement Fund pursuant to subsection (a) above only for replacement of short-lived assets used in connection with the City's Water System.

ARTICLE VI COVENANTS OF THE CITY

Section 6.1. Compliance with Installment Purchase Agreement and Loan Resolution. The City will punctually pay the Installment Payments in strict conformity with the terms hereof, and will faithfully observe and perform all the agreements, conditions, covenants and terms contained herein required to be observed and performed by it, and will not terminate the Installment Purchase Agreement for any cause. The City will faithfully observe and perform all the agreements, conditions, covenants and terms contained in the Loan Resolution resolved therein to be observed and performed by it.

Section 6.2. Tax Covenant. The City shall at all times do and perform all acts and things permitted by law that are necessary and desirable in order to assure that interest paid with respect to the Certificate will be excluded from gross income for federal income tax purposes and shall take no action that would result in such interest not being so excluded. This covenant shall survive the payment in full of the Installment Payments.

Section 6.3. Additional Debt. The City will not issue or incur any bonds or obligations of any kind or nature payable from or enjoying a lien on the Water Net Revenues, unless such other bonds or obligations are made subordinate to the Installment Payments and any Parity Debt, provided that the City may incur Parity Debt if all the conditions set forth in Section 4.8(b) of the Lease Agreement are satisfied, which provision is hereby incorporated in its entirety and shall continue to apply in the event the lease payments under the Lease Agreement and installment payments under the 2005 Installment Sale Agreement are paid or prepaid in full.

The City may incur obligations secured by the Water Net Revenues on a junior or subordinate basis with the prior written consent of USDA Rural Development in accordance with Section 7 of the Loan Resolution.

Section 6.4. Protection of Security and Rights of the Corporation. The City will preserve and protect the security hereof and the rights of the Corporation to the Installment Payments hereunder and will warrant and defend such rights against all claims and demands of all persons.

Section 6.5. Indemnification of Corporation. The City hereby agrees to indemnify and hold harmless the Corporation and its directors, officers and employees if and to the extent permitted by law, from and against all claims, advances, damages and losses, including legal fees and expenses, arising out of or in connection with the acceptance or the performance of its duties hereunder and the Assignment Agreement; provided that no indemnification will be made for

willful misconduct, negligence or breach of an obligation hereunder or the Assignment Agreement by the Corporation.

Section 6.6. Further Assurances. The City will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Corporation of the rights and benefits provided to it herein.

ARTICLE VII PREPAYMENT OF INSTALLMENT PAYMENTS

Section 7.1. Prepayment. Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of the City. Refunds and extra payments, as defined in the regulations of USDA Rural Development according to the source of funds involved, shall, after payment of interest, be applied to the Installment Payments last to become due hereunder and shall not affect the obligation of the City to pay the remaining Installment Payments as scheduled herein. Any such prepayment shall be applied to redeem all or a portion of the Certificate.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES OF THE CORPORATION

Section 8.1. Events of Default and Remedies. (a) Events of Default. The following shall be Events of Default hereunder:

(1) Failure by the City to pay any Installment Payment at the time specified herein.

(2) Failure by the City to observe and perform any covenant, condition or agreement on its part contained herein or in the Loan Resolution, other than in clause (1) of this subsection, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the City by the Corporation; provided, however, that the Corporation and the City may agree that action by the City to cure such failure may be extended beyond such thirty-day period.

(b) Remedies on Default. Whenever any Event of Default shall have happened and be continuing, the Corporation shall have the right, at its option upon notice to the City, to:

(1) declare the entire principal amount of the unpaid Installment Payments and the accrued interest thereon to be immediately due and payable, whereupon the same shall immediately become due and payable;

(2) for the account of the City, incur and pay reasonable expenses for repair, maintenance, and operation of the Water System and such other reasonable expenses as may be necessary to cure the cause of default, and/or

(3) take possession of the Water System, repair, maintain, and operate or rent it.

The provisions of the preceding clause (1) are subject to the condition that if, at any time after the principal amount of the unpaid Installment Payments shall have been so declared due and payable pursuant to the preceding clause (1), and before any judgment or decree for the payment of the moneys due shall have been obtained or entered, the City shall deposit with the Corporation a sum sufficient to pay the unpaid principal amount of the Installment Payments coming due prior to such declaration, and the reasonable expenses of the Corporation, and any and all other defaults known to the Corporation (other than in the payment of the entire principal amount of the unpaid Installment Payments and the accrued interest thereon due and payable solely by reason of such declaration) shall have been made good or cured to the satisfaction of the Corporation or provision deemed by the Corporation to be adequate shall have been made therefor, then and in every such case the Corporation, by written notice to the City, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default or shall impair or exhaust any right or power consequent thereon.

Section 8.2. Application of Funds Upon Acceleration. Upon the date of the declaration of acceleration as provided in Section 8.1, all Water Net Revenues thereafter received by the City shall be applied in the following order --

First, to the payment, without preference or priority, and in the event of any insufficiency of such Water Net Revenues ratably without any discrimination or preference, of the fees, costs and expenses of the Corporation if any, in carrying out the provisions of this article, including reasonable compensation to their respective accountants and counsel;

Second, to the payment of the Operation and Maintenance Expenses; and

Third, to the payment of the entire principal amount of the unpaid Installment Payments and the unpaid principal amount of any Parity Debt and the accrued interest thereon, with interest on the overdue installments at the rate or rates of interest applicable to the Installment Payments and such Parity Debt if paid in accordance with their respective terms.

Section 8.3. Other Remedies of the Corporation. The Corporation shall have the right:

(a) by mandamus or other action or proceeding or suit at law or in equity to enforce its rights against the City or any director, officer or employee thereof, and to compel the City or any such director, officer or employee to perform and carry out its or his duties under law and the agreements and covenants required to be performed by it or him contained herein;

(b) by suit in equity to enjoin any acts or things that are unlawful or violate the rights of the Corporation; or

(c) by suit in equity upon the happening of an Event of Default to require the City and its directors, officers and employees to account as the trustee of an express trust.

Section 8.4. Non-Waiver. Nothing in this article or in any other provision hereof shall affect or impair the obligation of the City, which is absolute and unconditional, to pay the Installment Payments to the Corporation at the respective due dates or upon prepayment, or shall

affect or impair the right of the Corporation, which is also absolute and unconditional, to institute suit to enforce such payment by virtue of the contract embodied herein.

A waiver of any default or breach of duty or contract by the Corporation shall not affect any subsequent default or breach of duty or contract or impair any rights or remedies on any such subsequent default or breach of duty or contract. No delay or omission by the Corporation to exercise any right or remedy accruing upon any default or breach of duty or contract shall impair any such right or remedy or shall be construed to be a waiver of any such default or breach of duty or contract or an acquiescence therein, and every right or remedy conferred upon the Corporation by law or by this article may be enforced and exercised from time to time and as often as shall be deemed expedient by the Corporation.

If any action, proceeding or suit to enforce any right or exercise any remedy is abandoned or determined adversely to the Corporation, the City and the Corporation shall be restored to their former positions, rights and remedies as if such action, proceeding or suit had not been brought or taken.

Section 8.5. Remedies Not Exclusive. No remedy herein conferred upon or reserved to the Corporation is intended to be exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise and may be exercised without exhausting and without regard to any other remedy conferred by law.

ARTICLE IX ASSIGNMENT; AMENDMENTS

Section 9.1. Assignment. The City hereby consents to the assignment by the Corporation of its rights under this Installment Purchase Agreement to USDA Rural Development, which rights are evidenced by the Certificate. The City shall maintain a register containing the name and address of the Owner.

The Owner may transfer ownership of the Certificate by surrender thereof to the City accompanied by a duly executed instrument of transfer in a form approved by the City. The City shall deliver to the transferee a new Certificate in the aggregate amount of the unpaid principal installments and shall record the transfer in the Certificate register.

Section 9.2. Amendments Permitted. (a) This Agreement and the rights and obligations of the Corporation and the City and of the Owner may be modified or amended at any time but only with the written consent of the Owner. No such modification or amendment shall (1) reduce the rate of interest or amount of principal represented by the Certificate or extend the time of payment of principal or interest represented thereby, without the consent of the Owner, or (2) modify the requirement for the consent of the Owner for the execution of any amendment or modification of this Agreement, or (3) modify any of the rights or obligations of the Corporation without its written consent thereto.

(b) This Agreement and the rights and obligations of the Corporation and the City and of the Owner may also be modified or amended at any time, without the consent of the

Owner, but only to the extent permitted by law and only for any one or more of the following purposes--

(1) to add to the covenants and agreements of the Corporation or the City contained in this Agreement other covenants and agreements thereafter to be observed or to surrender any right or power herein reserved to or conferred upon the Corporation or the City, and that shall not adversely affect the interests of the Owner;

(2) to cure, correct or supplement any ambiguous or defective provision contained in this Agreement or in regard to questions arising under this Agreement, as the Corporation or the City may deem necessary or desirable and that shall not adversely affect the interests of the Owner; and

(3) to make such other amendments or modifications as may be in the best interests of the Owner.

IN WITNESS WHEREOF, the parties hereto have executed this Installment Purchase Agreement by their officers thereunto duly authorized as of the day and year first written above.

CITY OF CORNING

Mayor

ATTEST:

City Clerk

CITY OF CORNING PUBLIC FINANCING CORPORATION

By: _____
Chairman of the Board of Directors

ATTEST:

Secretary of the Board of Directors

EXHIBIT A

PURCHASE PRICE

1. The aggregate principal amount of payments to be made by the City hereunder with respect to the Certificate is \$613,000.

2. The principal components of the Installment Payments with respect to the Certificate are payable in the following amounts on March 1 in the following years:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
-------------	---------------	-------------	---------------	-------------	---------------	-------------	---------------

On March 1, 2012, the City shall pay as the interest component of its Installment Payment an amount equal to ____% per annum of the aggregate unpaid principal components of Installment Payments calculated based on a 365-day year and actual days elapsed from August, 2011. On each March 1 and September 1 thereafter, to and including March 1, 2051, the City shall pay as the interest component of its Installment Payments an amount equal to one-half of ____% of the aggregate unpaid principal components of Installment Payments.

SOURCES AND USES OF FUNDS

Sample Bond Run
Sample Debt Service Schedule

Sources:

Bond Proceeds:	
Par Amount	613,000.00
	<hr/>
	613,000.00
	<hr/>

Uses:

Project Fund Deposits:	
Project Fund #1	613,000.00
	<hr/>
	613,000.00
	<hr/>

BOND SUMMARY STATISTICS

Sample Bond Run
Sample Debt Service Schedule

Dated Date	08/01/2011
Delivery Date	08/01/2011
Last Maturity	03/01/2051
Arbitrage Yield	3.249841%
True Interest Cost (TIC)	3.249841%
Net Interest Cost (NIC)	3.250000%
All-In TIC	3.249841%
Average Coupon	3.250000%
Average Life (years)	24.355
Duration of Issue (years)	16.049
Par Amount	613,000.00
Bond Proceeds	613,000.00
Total Interest	485,210.14
Net Interest	485,210.14
Total Debt Service	1,098,210.14
Maximum Annual Debt Service	27,744.30
Average Annual Debt Service	27,744.26
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life
Serial Bond	613,000.00	100.000	3.250%	24.355
	613,000.00			24.355

	TIC	All-In TIC	Arbitrage Yield
Par Value	613,000.00	613,000.00	613,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense			
- Other Amounts			
Target Value	613,000.00	613,000.00	613,000.00
Target Date	08/01/2011	08/01/2011	08/01/2011
Yield	3.249841%	3.249841%	3.249841%

BOND DEBT SERVICE

Sample Bond Run
Sample Debt Service Schedule

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
08/01/2011					
03/01/2012	4,562.70	3.250%	11,621.46	16,184.16	16,184.16
09/01/2012			9,887.11	9,887.11	
03/01/2013	7,970.00	3.250%	9,887.11	17,857.11	27,744.22
09/01/2013			9,757.59	9,757.59	
03/01/2014	8,229.10	3.250%	9,757.59	17,986.69	27,744.28
09/01/2014			9,623.87	9,623.87	
03/01/2015	8,496.50	3.250%	9,623.87	18,120.37	27,744.24
09/01/2015			9,485.80	9,485.80	
03/01/2016	8,772.70	3.250%	9,485.80	18,258.50	27,744.30
09/01/2016			9,343.25	9,343.25	
03/01/2017	9,057.80	3.250%	9,343.25	18,401.05	27,744.30
09/01/2017			9,196.06	9,196.06	
03/01/2018	9,352.10	3.250%	9,196.06	18,548.16	27,744.22
09/01/2018			9,044.09	9,044.09	
03/01/2019	9,656.10	3.250%	9,044.09	18,700.19	27,744.28
09/01/2019			8,887.17	8,887.17	
03/01/2020	9,969.90	3.250%	8,887.17	18,857.07	27,744.24
09/01/2020			8,725.16	8,725.16	
03/01/2021	10,293.90	3.250%	8,725.16	19,019.06	27,744.22
09/01/2021			8,557.89	8,557.89	
03/01/2022	10,628.50	3.250%	8,557.89	19,186.39	27,744.28
09/01/2022			8,385.17	8,385.17	
03/01/2023	10,973.90	3.250%	8,385.17	19,359.07	27,744.24
09/01/2023			8,206.85	8,206.85	
03/01/2024	11,330.60	3.250%	8,206.85	19,537.45	27,744.30
09/01/2024			8,022.73	8,022.73	
03/01/2025	11,698.80	3.250%	8,022.73	19,721.53	27,744.26
09/01/2025			7,832.62	7,832.62	
03/01/2026	12,079.00	3.250%	7,832.62	19,911.62	27,744.24
09/01/2026			7,636.34	7,636.34	
03/01/2027	12,471.60	3.250%	7,636.34	20,107.94	27,744.28
09/01/2027			7,433.67	7,433.67	
03/01/2028	12,876.90	3.250%	7,433.67	20,310.57	27,744.24
09/01/2028			7,224.42	7,224.42	
03/01/2029	13,295.40	3.250%	7,224.42	20,519.82	27,744.24
09/01/2029			7,008.37	7,008.37	
03/01/2030	13,727.50	3.250%	7,008.37	20,735.87	27,744.24
09/01/2030			6,785.30	6,785.30	
03/01/2031	14,173.70	3.250%	6,785.30	20,959.00	27,744.30
09/01/2031			6,554.98	6,554.98	
03/01/2032	14,634.30	3.250%	6,554.98	21,189.28	27,744.26
09/01/2032			6,317.17	6,317.17	
03/01/2033	15,109.90	3.250%	6,317.17	21,427.07	27,744.24
09/01/2033			6,071.64	6,071.64	
03/01/2034	15,601.00	3.250%	6,071.64	21,672.64	27,744.28
09/01/2034			5,818.12	5,818.12	
03/01/2035	16,108.00	3.250%	5,818.12	21,926.12	27,744.24
09/01/2035			5,556.36	5,556.36	
03/01/2036	16,631.50	3.250%	5,556.36	22,187.86	27,744.22
09/01/2036			5,286.10	5,286.10	
03/01/2037	17,172.10	3.250%	5,286.10	22,458.20	27,744.30
09/01/2037			5,007.06	5,007.06	
03/01/2038	17,730.10	3.250%	5,007.06	22,737.16	27,744.22
09/01/2038			4,718.94	4,718.94	

BOND DEBT SERVICE

Sample Bond Run
Sample Debt Service Schedule

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
03/01/2039	18,306.40	3.250%	4,718.94	23,025.34	27,744.28
09/01/2039			4,421.46	4,421.46	
03/01/2040	18,901.30	3.250%	4,421.46	23,322.76	27,744.22
09/01/2040			4,114.32	4,114.32	
03/01/2041	19,515.60	3.250%	4,114.32	23,629.92	27,744.24
09/01/2041			3,797.19	3,797.19	
03/01/2042	20,149.90	3.250%	3,797.19	23,947.09	27,744.28
09/01/2042			3,469.75	3,469.75	
03/01/2043	20,804.80	3.250%	3,469.75	24,274.55	27,744.30
09/01/2043			3,131.67	3,131.67	
03/01/2044	21,480.90	3.250%	3,131.67	24,612.57	27,744.24
09/01/2044			2,782.61	2,782.61	
03/01/2045	22,179.00	3.250%	2,782.61	24,961.61	27,744.22
09/01/2045			2,422.20	2,422.20	
03/01/2046	22,899.90	3.250%	2,422.20	25,322.10	27,744.30
09/01/2046			2,050.08	2,050.08	
03/01/2047	23,644.10	3.250%	2,050.08	25,694.18	27,744.26
09/01/2047			1,665.86	1,665.86	
03/01/2048	24,412.50	3.250%	1,665.86	26,078.36	27,744.22
09/01/2048			1,269.16	1,269.16	
03/01/2049	25,205.90	3.250%	1,269.16	26,475.06	27,744.22
09/01/2049			859.56	859.56	
03/01/2050	26,025.10	3.250%	859.56	26,884.66	27,744.22
09/01/2050			436.65	436.65	
03/01/2051	26,871.00	3.250%	436.65	27,307.65	27,744.30
	613,000.00		485,210.14	1,098,210.14	1,098,210.14

**ITEM NO. K-11
SECOND READING ORDINANCE NO. 645;
MEDICAL MARIJUANA DISPENSARIES; AN
ORDINANCE OF THE CITY OF CORNING ADDING A
CHAPTER TO TITLE 17 OF THE CORNING
MUNICIPAL CODE THAT WOULD DEFINE AND
PROHIBIT THE ESTABLISHMENT OF MEDICAL
MARIJUANA DISPENSARIES IN THE CITY OF
CORNING.**

JUNE 28, 2011

TO: HONORABLE MAYOR AND CITY COUNCIL MEMBERS

FROM: JOHN STOUFER, PLANNING DIRECTOR

BACKGROUND:

On June 14, 2011, at a duly noticed public hearing, the City Council waived the first reading and introduced Ordinance No. 645. If adopted the ordinance would add a chapter to Title 17 of the Corning Municipal Code that will define and prohibit the establishment of medical marijuana dispensaries, as defined, within the City of Corning. If adopted at this hearing the ordinance would become effective 30 days from the date of adoption, July 27, 2011 and would replace Interim Ordinance #637 which will expire on August 6, 2011.

DISCUSSION:

When Interim Ordinance #637 was initially adopted it was not clear whether local jurisdictions had the ability to ban dispensaries. The courts upheld temporary dispensary bans (*City of Claremont v. Kruse*), and the pending *Qualified Patients Association v. City of Anaheim* litigation was widely expected to clarify the validity of permanent bans. The *Qualified Patients* decision (issued in August 2010) ultimately declined to address the validity of a permanent ban under state law. However, since that time, the Legislature and the courts have acted to provide clarity regarding local government's authority to regulate medical marijuana uses.

Most notably, the Legislature has enacted Health and Safety Code Section 11362.768 (A.B. 2650), which prohibits the establishment of any "medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana" within a 600-foot radius of a school. Of critical importance here, the new law expressly recognizes and affirms local governments' authority to establish more stringent land use regulations: "Nothing in this section shall prohibit a city, county, or city and county from adopting ordinances or policies that further restrict the location or establishment of a medical marijuana cooperative, collective, dispensary, operator, establishment, or provider." (§ 11362.768, subd. (0).)

In February, 2011 Assembly Bill 1300 (Exhibit "B") was introduced to amend Sections 11362.7, 11362.76, and 11362.83 of the Health and Safety Code, relating to medical marijuana. The bill was amended three times by the Assembly before finally being passed in the Assembly on June 3, 2011 by a 71-1 vote. As amended the bill would only amend

Section 11362.83 which if passed by the Senate and signed into law by the Governor will allow a City or any other local governing body to:

- Adopt local ordinances that regulate the location, operation, or establishment of a medical marijuana cooperative or collective.
- The civil and criminal enforcement of local ordinances.
- Enacting other laws consistent.

In December, 2010 a Riverside judge upheld the City of Wildomar's ban on medical marijuana dispensaries and issued an order shutting down the one that had opened in defiance of the city's zoning code (Exhibit "C").

Further, in February 2011, the Court of Appeal issued a decision in *County of Los Angeles v. Hill* upholding local ordinances regulating the "manner and location" in which dispensaries are operated.

The statute does not confer on qualified patients and their caregivers the unfettered right to cultivate or dispense marijuana anywhere they choose. The County's constitutional authority to regulate the particular manner and location in which a business may operate (Cal. Const., art. XI, § 7) is unaffected by [the Medical Marijuana Program Act].

The Tehama County Superior Court has likewise issued decisions upholding both Tehama County's marijuana cultivation ordinance (*Browne v. County of Tehama*, Case No. CI 63676) and the City of Corning's zoning restrictions on dispensaries (*People v. Prather*, Case No. SCR 30434). These decisions, like those of the appellate courts, have broadly affirmed the authority of cities and counties to regulate medical marijuana activities like any other land use.

In response to Councilman Leach's question at the June 14th hearing as to "is there a location in the City where we could allow a dispensary to operate", the answer is yes. The only legislation the State has passed in this area is the aforementioned AB 2650 which enacted Section 11362.768 of the Health and Safety Code prohibiting the establishment of any "medical marijuana cooperative, collective, dispensary, operator, establishment, or provider who possesses, cultivates, or distributes medical marijuana" within a 600-foot radius of a school.

And as depicted in AB 1300 the State is basically saying that the local legislative bodies have the ability to regulate the distribution of medical marijuana in whatever manner they desire to protect the health, safety and welfare of the citizens within their community. Attached (Exhibit "D") is a medical marijuana dispensary option table that depicts some of the regulations placed on dispensaries by the cities of Shasta Lake, Redding, Ripon, Visalia, and Martinez.

ENVIRONMENTAL:

The California Environmental Quality Act (CEQA) Section 15061 (b) (3) states: "a project is exempt from CEQA if: The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is exempt from CEQA." Regulating the dispensing of medical marijuana will not have a significant effect on the environment.

This section is based on the idea that CEQA applies jurisdictionally to activities which have the potential for causing environmental effects. Where an activity has no possibility of causing a significant effect, the activity will not be subject to CEQA. This approach has been noted with approval in a number of appellate court decisions including the State Supreme Court opinion in *No Oil, Inc. v. City of Los Angeles*.

CEQA FINDINGS:

STAFF RECOMMENDATION:

Staff recommends the following Factual Subfindings and Legal Findings pursuant to the California Environmental Quality Act (CEQA):

Factual Subfinding #1

Ordinance No. 645 will add a chapter to Title 17 of the Corning Municipal Code that will define and prohibit the establishment of a medical marijuana dispensary, as defined, within the City of Corning.

Legal Finding #1

The addition of a chapter to Title 17 of the Corning Municipal Code, imposing regulations that would define and prohibit the establishment of medical marijuana dispensaries, as proposed in Ordinance No. 645, will not cause a significant effect on the environment and is therefore exempt from CEQA pursuant to Section 15061 (b) (3)

ACTION

MOVE TO ADOPT FACTUAL SUBFINDING #1 AND LEGAL FINDING #1 AND WAIVE THE SECOND READING AND ADOPT ORDINANCE NUMBER 645, THE ORDINANCE ADDING A CHAPTER TO TITLE 17 OF THE CORNING MUNICIPAL CODE THAT WOULD DEFINE A MEDICAL MARIJUANA DISPENSARY AND PROHIBIT THE ESTABLISHMENT OF A DISPENSARY, AS DEFINED, WITHIN ANY ZONING DISTRICT IN THE CITY OF CORNING.

OR:

MOVE TO DENY THE ADOPTION OF ORDINANCE NUMBER 645 AND REQUEST THAT THE ADHOC COMMITTEE MEET WITH STAFF AND PREPARE AN ORDINANCE FOR CONSIDERATION BY THE PLANNING COMMISSION AND CITY COUNCIL THAT WOULD PERMIT THE ESTABLISHMENT OF MEDICAL MARIJUANA DISPENSARIES PURSUANT TO SPECIFIC REGULATIONS ESTABLISHED IN THE ORDINANCE.

ATTACHMENTS

- Exhibit "A" Ordinance No. 645, Marijuana Dispensaries.
- Exhibit "B" Copy of Assembly Bill No. 1300
- Exhibit "C" News Article regarding Dispensary Lawsuit in City of Wildomar
- Exhibit "D" Dispensary Option Table

Exhibit "A"

ORDINANCE NUMBER 645 MEDICAL MARIJUANA DISPENSARIES WITHIN THE CITY OF CORNING

WHEREAS, the State of California approved Proposition 215 "The Compassionate Use Act of 1996" (Health and Safety Code Section 11362.5), which was to enable persons who are in need of marijuana for medical purposes; and

WHEREAS, the State also enacted SB 420 in 2004 (Health and Safety Code Section 11362.7 et seq.) to clarify the scope of The Compassionate Use Act to allow local governing bodies to adopt and enforce rules and regulations consistent with SB 420; and

WHEREAS, State law has created a limited affirmative defense to criminal prosecution for qualifying persons who collectively gather to cultivate medical marijuana but there is no provision in State law which specifically authorizes or protects the establishment of a medical marijuana dispensary or other storefront or mobile distribution operation; and

WHEREAS, under the Controlled Substances Act, the use, possession, cultivation and distribution of medicinal marijuana are unlawful and subject to federal prosecution without regard to a claimed medical need; and

WHEREAS, To protect the public safety, health, and welfare of the citizens of Corning, and prevent the possibility of the distribution of medical marijuana in violation of Health and Safety Code Section 11362.5, the City of Corning adopted Interim Ordinance No. 637 banning the establishment of a medical marijuana dispensary, collective or cooperative within any of the city zoning districts as either a permitted or a conditional use; and

WHEREAS, in California Cities that have allowed the establishment of Medical Marijuana Dispensaries issues and concerns have arisen related to their location in proximity to residential properties, schools and daycare facilities and some communities have reported adverse impacts that threaten public health, safety and welfare, including an increase in crimes such as loitering, illegal drug activity, burglaries, robberies and other criminal activity within and around dispensaries, as well as increased pedestrian and vehicle traffic, noise and parking violations, thereby generating a need for increased police response; and

WHEREAS, The establishment of a medical marijuana dispensary in the City of Corning created a zoning violation that required enforcement actions by city staff and court hearings to abate the use of a downtown building as a dispensary; and

WHEREAS, The City has recently received additional inquiries whether any of the zoning districts within the City Limits of Corning would allow a Medical Marijuana Dispensary to be established; and

WHEREAS, Adoption of Ordinance No. 645 complies with applicable State Law, as well as impose reasonable rules and regulations protecting the public health, safety and welfare of Corning residents and businesses; and

WHEREAS, it is the purpose and intent of this ordinance to implement state law by providing a means for regulating the distribution of medicinal marijuana in a manner that is consistent with state law and balances the needs of medical patients and their caregivers and promotes the health, safety, morals and general welfare of the residents and businesses within the City of Corning. Nothing in this ordinance shall be constructed to allow the use of marijuana (cannabis) for non-medical purposes, or allow any activity relating to the cultivation, distribution, or consumption of marijuana that is otherwise illegal; and

WHEREAS, the potential adverse secondary effects of allowing the distribution of medicinal marijuana presents a clear and present danger to the immediate preservation of the public peace, health, and safety of the community and Interim Ordinance # 637 will expire on August 6, 2011, therefore, the City will have no rules or regulations governing the distribution of medical marijuana; and

WHEREAS, it is the purpose and intent of this ordinance is to ensure that marijuana distributed for medical purposes remains secure and does not find its way to non-patients or illicit markets; and

WHEREAS, it is the purpose and intent of this ordinance to help law enforcement agencies perform their duties effectively and in accordance with California law; and

WHEREAS, The City of Corning Planning Commission held a public hearing on May 17, 2011 and recommended by a 3:0:2 vote that the City Council adopt Ordinance No. 645 prohibiting the establishment of medical marijuana dispensaries, as defined, within the City of Corning.

Chapter 17.65

MARIJUANA DISPENSARIES

Sections:

- 17.65.010 Purpose and Intent.**
- 17.65.020 Definitions.**
- 17.65.030 Prohibition of Marijuana Dispensaries.**
- 17.65.040 Enforcement.**

17.65.010 Purpose and Intent. It is the purpose and intent of this chapter to limit the distribution of medical marijuana to prevent adverse impacts to adjacent property owners, provide patient security, protect the health, safety and welfare of the public, and assure that medical marijuana does not find its way to non-patients or illicit markets.

This chapter is in compliance with the California Health & Safety Code Section 11362, and does not interfere with a patient's right to medical marijuana, nor does it criminalize the possession or cultivation of medical marijuana by specifically defined classifications of persons, pursuant to Proposition 215 and Senate Bill 420.

17.65.020 Definitions.

Definitions: As used herein the following definitions shall apply:

- (A) "Facility" includes any facility, building, structure, premises, or location, whether fixed or mobile, permanent or temporary, and any type of delivery service.
- (B) "Mobile Outlet" The transportation for the purpose of distribution or delivery of medical marijuana by any means.
- (C) "Marijuana Dispensary" means any for-profit or not-for-profit facility meeting any or all of the following criteria:
 - (1) A facility where marijuana is made available, cultivated, sold, given, distributed, or otherwise provided by or to four (4) or more persons (including, but not limited to, any "primary caregiver(s)," "qualified patient(s)," or "person(s) with an identification card") pursuant to Health and Safety Code sections 11362.5 and/or 11362.7 et seq. or otherwise; and/or
 - (2) A facility where four (4) or more persons (including, but not limited to, any "primary caregiver(s)," "qualified patient(s)," or "person(s) with an identification card") meet or congregate to make available, cultivate, sell, give away, distribute, or otherwise provide marijuana for medicinal or other purposes; and/or
 - (3) A facility where any person operates a storefront or mobile outlet providing medical marijuana in any form to four (4) members of a collective or cooperative or to other members of the general public.

"Marijuana Dispensary" includes any medical marijuana collective or cooperative that meets any or all of the foregoing criteria. "Marijuana Dispensary" shall not include the following uses, as long as the location of such uses is otherwise regulated by the Corning Municipal Code: a clinic licensed pursuant to Chapter 1 of Division 2 of the Health & Safety Code; a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health & Safety Code; a residential care facility for persons with chronic life- threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health & Safety Code; a residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health & Safety Code, a residential hospice; or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health & Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health & Safety Code sections 11362.5 et seq. and 11362.7 et seq. and the City of Corning Zoning Code (Title 17 of the Corning Municipal Code).

17.65.030 Prohibition of Marijuana Dispensaries. Notwithstanding any other provision of this Code, the establishment, development, construction, maintenance, or operation of a Marijuana

Dispensary is hereby prohibited, and is not a permitted or conditionally permitted use in any zoning district, even if located within an otherwise permitted use. No person shall establish, develop, construct, maintain, or operate a Marijuana Dispensary, and no application for a building permit, use permit, variance, or any other entitlement authorizing the establishment, development, construction, maintenance, or operation of any Marijuana Dispensary shall be approved by the City of Corning or any officer or employee thereof.

17.65.040 Enforcement.

A. Public Nuisance: The violation of this section is hereby declared to be a public nuisance.

B. Abatement: A violation of this section may be abated by the city attorney by the prosecution of a civil action for injunctive relief and by the summary abatement procedure set forth in subsection C of this section.

C. Summary Abatement Procedure:

a. The Chief of Police, Building Official, Planning Director, or a designee (hereafter, the "enforcement official"), are hereby authorized to order the abatement of any violation of this section by issuing a notice to abate. The notice shall:

- (1) Describe the location of and the specific conditions which represent a violation of this section and the actions required to abate the violation.
- (2) Describe the evidence relied upon to determine that a violation exists, provided that the enforcement official may withhold the identity of a witness to protect the witness from injury or harassment, if such action is reasonable under the circumstances.
- (3) State the date and time by which the required abatement actions must be completed.
- (4) State that to avoid the civil penalty provided in subsection C.a.(8) of this section and further enforcement action, the enforcement official must receive consent to inspect the premises where the violation exists to verify that the violation has been abated by the established deadline.
- (5) State that the owner or occupant of the property where the violation is located has a right to appeal the notice by filing a written notice of appeal with the city clerk by no later than three (3) business days from the service of the notice. The notice of appeal must include an address, telephone number, fax number, if available, and e-mail address, if available. The city may rely on any of these for service or notice purposes. If an adequate written appeal is timely filed, the owner or occupant will be entitled to a hearing as provided in subsection E. of this section.
- (6) State that the order to abate the violation becomes final if a timely appeal is not filed or upon the issuance of a written decision after the appeal hearing is conducted in accordance with subsection E. of this section.

(7) State that a final order of abatement may be enforced by application to the superior court for an inspection and/or abatement warrant or other court order.

(8) State that a final order to abate the nuisance will subject the property owner and the occupant to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

(9) State that in any administrative or court proceeding to enforce the abatement order the prevailing party is entitled to recover reasonable attorney fees from the other party or parties to the action, if the city elects, at the initiation of an individual action or proceeding, to seek recovery of its own attorney fees. In no action, administrative proceeding, or special proceeding shall an award of attorney fees to a prevailing party exceed the amount of reasonable attorney fees incurred by the city in the action or proceeding.

D. The notice described in subsection C.a. of this section shall be served in the same manner as summons in a civil action in accordance with article 3 (commencing with section 415.10) of chapter 4 of title 5 of part 2 of the Code of Civil Procedure, or by certified mail, return receipt requested, at the option of the city. If the owner of record, after diligent search cannot be found, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days and publication thereof in a newspaper of general circulation pursuant to Government Code section 6062.

E. Not sooner than five (5) business days after a notice of appeal is filed with the city clerk, a hearing shall be held before the city manager or a hearing officer designated by the city manager to hear such appeals. The appellant shall be given notice of the date, time and place of the hearing not less than five (5) days in advance. The notice may be given by telephone, fax, e-mail, personal service or posting on the property. At the hearing, the enforcement official shall present evidence of the violation, which may include, but is not limited to, incident and police reports, witness statements, photographs, and the testimony of witnesses. The property owner and the occupant of the property where the violation is alleged to exist shall have the right to present evidence and argument in their behalf and to examine and cross examine witnesses. The property owner and property occupant are entitled at their own expense to representation of their choice. At the conclusion of the hearing, the city manager or hearing officer shall render a written decision which may be served by regular first class mail on the appellants.

F. A final order to abate the nuisance will subject the property owner or owners and any occupant or occupants of the property who are cultivating marijuana in violation of this section to a civil penalty of five hundred dollars (\$500.00) for each day that the violation continues after the date specified in the notice under subsection C.a.(3) of this section, when the violation must be abated. The enforcement official or the city manager or hearing officer hearing an appeal pursuant to subsection C.a.(5) of this section may reduce the daily rate of the civil penalty for good cause. The party subject to the civil penalty shall have the burden of establishing good cause, which may include, but is not limited to, a consideration of the nature and severity of the violation, whether it is a repeat offense, the public nuisance impacts caused by the violation, and

the violator's ability to pay. The daily penalty shall continue until the violation is abated. The penalty may be recovered through an ordinary civil action, or in connection with an application for an inspection or nuisance abatement warrant.

G. Violation: Distribution of marijuana on parcels within the city that does not comply with this section constitutes a violation of the zoning ordinance and is subject to the penalties and enforcement as provided in subsections C.a.(8) and F. of this chapter.

H. Penalties Not Exclusive: The remedies and penalties provided herein are cumulative, alternative and nonexclusive. The use of one does not prevent the use of any others and none of these penalties and remedies prevent the city from using any other remedy at law or in equity which may be available to enforce this section or to abate a public nuisance.

* * * * *

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Corning, held on _____ and adopted at a regular meeting of the City Council of the City of Corning, held _____, by the following vote:

AYES:

NOES:

ABSENT:

Abstain:

It shall take effect and be in force thirty (30) days from the date of its passage, and before the expiration of fifteen (15) days after its passage, it or a summary of it, shall be published once, with the names of Council persons voting for and against the same, in a newspaper of general circulation in the County of Tehama.

Gary R. Strack, Mayor

ATTEST:

Lisa Linnet, City Clerk

PUBLISH: _____

AMENDED IN ASSEMBLY JUNE 1, 2011

AMENDED IN ASSEMBLY APRIL 27, 2011

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1300

Introduced by Assembly Member Blumenfield

February 18, 2011

An act to amend Sections 11362.7, 11362.76, and Section 11362.83 of the Health and Safety Code, relating to medical marijuana.

LEGISLATIVE COUNSEL'S DIGEST

AB 1300, as amended, Blumenfield. Medical marijuana.

Existing law establishes the Medical Marijuana Program to exempt certain qualified patients who hold an identification card issued pursuant to the program, and the caregivers of those persons from certain state criminal sanctions related to the possession, cultivation, transportation, processing, or use of limited amounts of marijuana, as specified. The program prohibits certain entities, including a medical marijuana cooperative or collective, from being located within a 600-foot radius of a school. Existing law also specifically provides that these provisions governing the program do not prevent a city or other local governing body from adopting and enforcing laws consistent with the program.

This bill would ~~define a cooperative or collective for purposes of the program.~~ The bill would also revise the latter provision described above to additionally provide that these provisions shall not prevent a city or other local governing body from adopting local ordinances that regulate the location, operation, or establishment of a medical marijuana

cooperative or collective, or from the civil or criminal enforcement of those local ordinances.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 11362.7 of the Health and Safety Code~~
2 ~~is amended to read:~~

3 ~~11362.7. For purposes of this article, the following definitions~~
4 ~~shall apply:~~

5 ~~(a) "Attending physician" means an individual who possesses~~
6 ~~a license in good standing to practice medicine or osteopathy issued~~
7 ~~by the Medical Board of California or the Osteopathic Medical~~
8 ~~Board of California and who has taken responsibility for an aspect~~
9 ~~of the medical care, treatment, diagnosis, counseling, or referral~~
10 ~~of a patient and who has conducted a medical examination of that~~
11 ~~patient before recording in the patient's medical record the~~
12 ~~physician's assessment of whether the patient has a serious medical~~
13 ~~condition and whether the medical use of marijuana is appropriate.~~

14 ~~(b) "Cooperative or collective," for purposes of this article,~~
15 ~~means a location where qualified patients, persons with a valid~~
16 ~~identification card, or the designated primary caregivers of qualified~~
17 ~~patients and persons with identification cards associate within this~~
18 ~~state in order to collectively or cooperatively cultivate or dispense~~
19 ~~marijuana for medical purposes to persons authorized to possess~~
20 ~~medical marijuana pursuant to Section 11362.765 or 11362.77.~~

21 ~~(c) "Department" means the State Department of Public Health.~~

22 ~~(d) "Person with an identification card" means an individual~~
23 ~~who is a qualified patient who has applied for and received a valid~~
24 ~~identification card pursuant to this article.~~

25 ~~(e) "Primary caregiver" means the individual, designated by a~~
26 ~~qualified patient or by a person with an identification card, who~~
27 ~~has consistently assumed responsibility for the housing, health, or~~
28 ~~safety of that patient or person, and may include any of the~~
29 ~~following:~~

30 ~~(1) In any case in which a qualified patient or person with an~~
31 ~~identification card receives medical care or supportive services,~~
32 ~~or both, from a clinic licensed pursuant to Chapter 1 (commencing~~
33 ~~with Section 1200) of Division 2, a health care facility licensed~~

1 pursuant to Chapter 2 (commencing with Section 1250) of Division
2 2, a residential care facility for persons with chronic life-threatening
3 illness licensed pursuant to Chapter 3.01 (commencing with Section
4 1568.01) of Division 2, a residential care facility for the elderly
5 licensed pursuant to Chapter 3.2 (commencing with Section 1569)
6 of Division 2, a hospice, or a home health agency licensed pursuant
7 to Chapter 8 (commencing with Section 1725) of Division 2, the
8 owner or operator, or no more than three employees who are
9 designated by the owner or operator, of the clinic, facility, hospice,
10 or home health agency, if designated as a primary caregiver by
11 that qualified patient or person with an identification card.

12 (2) An individual who has been designated as a primary
13 caregiver by more than one qualified patient or person with an
14 identification card, if every qualified patient or person with an
15 identification card who has designated that individual as a primary
16 caregiver resides in the same city or county as the primary
17 caregiver.

18 (3) An individual who has been designated as a primary
19 caregiver by a qualified patient or person with an identification
20 card who resides in a city or county other than that of the primary
21 caregiver, if the individual has not been designated as a primary
22 caregiver by any other qualified patient or person with an
23 identification card.

24 (f) A primary caregiver shall be at least 18 years of age, unless
25 the primary caregiver is the parent of a minor child who is a
26 qualified patient or a person with an identification card or the
27 primary caregiver is a person otherwise entitled to make medical
28 decisions under state law pursuant to Sections 6922, 7002, 7050,
29 or 7120 of the Family Code.

30 (g) "Qualified patient" means a person who is entitled to the
31 protections of Section 11362.5, but who does not have an
32 identification card issued pursuant to this article.

33 (h) "Identification card" means a document issued by the
34 department that identifies a person authorized to engage in the
35 medical use of marijuana and the person's designated primary
36 caregiver, if any.

37 (i) "Serious medical condition" means all of the following
38 medical conditions:

39 (1) Acquired immune deficiency syndrome (AIDS).

40 (2) Anorexia.

- 1 ~~(3) Arthritis.~~
- 2 ~~(4) Cachexia.~~
- 3 ~~(5) Cancer.~~
- 4 ~~(6) Chronic pain.~~
- 5 ~~(7) Glaucoma.~~
- 6 ~~(8) Migraine.~~
- 7 ~~(9) Persistent muscle spasms, including, but not limited to,~~
- 8 ~~spasms associated with multiple sclerosis.~~
- 9 ~~(10) Seizures, including, but not limited to, seizures associated~~
- 10 ~~with epilepsy.~~
- 11 ~~(11) Severe nausea.~~
- 12 ~~(12) Any other chronic or persistent medical symptom that~~
- 13 ~~either:~~
- 14 ~~(A) Substantially limits the ability of the person to conduct one~~
- 15 ~~or more major life activities as defined in the Americans with~~
- 16 ~~Disabilities Act of 1990 (Public Law 101-336).~~
- 17 ~~(B) If not alleviated, may cause serious harm to the patient's~~
- 18 ~~safety or physical or mental health.~~
- 19 ~~(j) "Written documentation" means accurate reproductions of~~
- 20 ~~those portions of a patient's medical records that have been created~~
- 21 ~~by the attending physician, that contain the information required~~
- 22 ~~by paragraph (2) of subdivision (a) of Section 11362.715, and that~~
- 23 ~~the patient may submit to a county health department or the~~
- 24 ~~county's designee as part of an application for an identification~~
- 25 ~~card.~~
- 26 ~~SEC. 2. Section 11362.76 of the Health and Safety Code is~~
- 27 ~~amended to read:~~
- 28 ~~11362.76. (a) A person who possesses an identification card~~
- 29 ~~shall:~~
- 30 ~~(1) Within seven days, notify the county health department or~~
- 31 ~~the county's designee of any change in the person's attending~~
- 32 ~~physician or designated primary caregiver, if any.~~
- 33 ~~(2) Annually submit to the county health department or the~~
- 34 ~~county's designee the following:~~
- 35 ~~(A) Updated written documentation of the person's serious~~
- 36 ~~medical condition.~~
- 37 ~~(B) The name and duties of the person's designated primary~~
- 38 ~~caregiver, if any, for the forthcoming year.~~
- 39 ~~(b) If a person who possesses an identification card fails to~~
- 40 ~~comply with this section, the card shall be deemed expired. If an~~

1 identification card expires, the identification card of any designated
2 primary caregiver of the person shall also expire.

3 ~~(c) If the designated primary caregiver has been changed, the~~
4 ~~previous primary caregiver shall return his or her identification~~
5 ~~card to the department or to the county health department or the~~
6 ~~county's designee.~~

7 ~~(d) If the owner or operator or an employee of the owner or~~
8 ~~operator of a provider has been designated as a primary caregiver~~
9 ~~pursuant to paragraph (1) of subdivision (c) of Section 11362.7,~~
10 ~~of the qualified patient or person with an identification card, the~~
11 ~~owner or operator shall notify the county health department or the~~
12 ~~county's designee, pursuant to Section 11362.715, if a change in~~
13 ~~the designated primary caregiver has occurred.~~

14 ~~SEC. 3.~~

15 *SECTION 1.* Section 11362.83 of the Health and Safety Code
16 is amended to read:

17 11362.83. Nothing in this article shall prevent a city or other
18 local governing body from adopting and enforcing any of the
19 following:

20 (a) Adopting local ordinances that regulate the location,
21 operation, or establishment of a medical marijuana cooperative or
22 collective.

23 (b) The civil and criminal enforcement of local ordinances
24 described in subdivision (a).

25 (c) Enacting other laws consistent with this article.

Exhibit "C"

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A Riverside judge Monday upheld Wildomar's ban on medical marijuana dispensaries and issued an order shutting down one that had opened in defiance of the city's zoning code.

The operator of the facility responded to the court ruling by temporarily shutting it down.

Riverside Superior Court Judge Mark Johnson said his reading of California's 1996 initiative permitting medicinal use of marijuana and of related court cases suggests Wildomar may bar dispensaries, including the one operated by Wildomar Patients Compassionate Group Inc. on Mission Trail.

J. David Nick, a San Francisco attorney representing the nonprofit group, said after the hearing he disagreed with the judge's interpretation of the law. Nick said he planned to file a notice Tuesday with the Fourth District Court of Appeal, Division 2, in Riverside that he plans to appeal.

"What people need to realize here is that we're trying to enforce the rule of law, and cities are trying to get around a law that is unpopular in certain parts of California," Nick said.

The judge's decision upheld the interpretation of the city's attorney, Stephen McEwen.

"I'm very pleased with the court ruling," McEwen said.

The Wildomar Patients Compassionate Group filed suit in November against the city, contending its ban against medical marijuana distribution outlets clashed with state law. The group then reopened its members-only center on Mission Trail.

The dispensary had previously been shut down in March, after Wildomar officials said it violated the city's zoning code. The code bars marijuana shops of any kind anywhere in the city.

"We are shut down at this moment," said William Sump, the group's general manager.

Sump said by telephone later that the dispensary's operating hours were 11 a.m. to 7 p.m. weekdays, and with the judge's decision coming on Monday morning, the shop would not open.

"We're going to be closed at least a week and a half to two weeks," he said. "We will reopen as soon as the appeals court takes the case."

Sump said he is confident the higher court will allow the facility to reopen, because the same court Monday permitted another dispensary he helps operate in Riverside to open while that case is under appeal.

The idea of allowing dispensaries has been controversial since Californians voted in 1996 to adopt the Compassionate Use Act. The measure authorizes people to legally use marijuana to treat their medical conditions if they obtain permission from doctors.

But there has been much confusion over the matter, in part because a federal ban on all marijuana sales and use is still in place. Cities and counties throughout the state have been slow to open their borders to dispensaries.

The state Supreme Court recently upheld an appellate court decision that concluded local governments may not rely on the federal prohibition to justify a local ban. The case involved a citywide ban in Anaheim.

Nick contended Monday that California's justices essentially were saying, "We're parting ways with the federal government, and we're going to create a system that is going to allow people to have this medicine."

In light of the Anaheim decision, Nick maintained it was illegal for Wildomar to ban dispensaries.

"They just can't ban it, your honor. They just can't," he said.

McEwen, however, maintained that neither California law nor the Anaheim case makes local bans illegal.

"If the Legislature had intended for every city to allow storefront dispensaries, it could have said so and would have said so," McEwen said.

The judge sided with Wildomar and granted the injunction against continued operation of the Mission Trail dispensary.

"Clearly, this does damage to the city's zoning laws," Johnson said, adding that letting someone violate the code encourages others to defy it.

Johnson told Nick he disagrees that state law requires cities to set aside places for dispensaries.

"If the appellate court overrules me, I'll be the first one to congratulate you," the judge said.

Call staff writer Dave Downey at 951-676-4315, ext. 2623.

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Posted in [Wildomar](#) on *Monday, December 20, 2010 7:05 pm* | Tags: [News](#), [Wildomar](#), [Courthouse](#), [City Government](#), [Health](#)

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Exhibit "D"

MMJ Dispensary Condition Option Table

	Shasta Lake	Redding	Ripon	Visalia	Martinez
Core Conditions					
Building					
Adequate exterior/interior security lighting	Yes	Yes	General criteria	General criteria	No
Post signage prohibiting loitering, likelihood of regular police patrols of premise and existence of neighborhood watch if one exists.	Yes	Yes	No	No	No
Floor Plan on file with the Department	Yes	Yes	No	Yes	No
Dispensary to maintain alarm system	Yes	Yes	General Security	General Security	General Security
Provide security door	No	Yes	No	No	No
Require security to patrol exterior premise of building, including parking lots and rear and side of building.	No	Yes	No	No	No
Operation					
Restrict/set days and hours of operation	8:00-8:00	9-11, 9-7 Sunday	8-5	9-5	9-8
24 hour video surveillance keeping tapes/CD's for 30 days	No	No	No	No	No
No sale of alcoholic beverages on dispensary premises	No	No	Yes	Yes	Yes
No sale of paraphernalia as defined Health and Safety Code sections 11364.5 permitted	Yes	No	Yes	Yes	Yes
No operator or employees of dispensaries shall have been convicted of any felony under state or federal law nor any conviction of a crime related to moral turpitude as verified by local law enforcement	Yes, just for sale of controlled substance	Yes	Yes	Yes	Yes
Require Medical Marijuana ID card or doctor's prescription with photo ID/membership, for entry to dispensary on all sales	No	Yes	Yes	No	No
Distance Requirements/Dispensary limits					
Distance requirements from dispensary- Suggested range 500 ft- 1,500 ft as measured from dispensary property line from residential areas, school, day care, church, recreational or teen center, library or public park.	1000 -500ft	1000 ft, 300 ft residential	500 ft	1000 ft, 500 ft residential	1000 ft, 300 ft residential
Distance requirements from dispensary- Suggested range 500 ft- 1,500 ft as measured from dispensary property line from alcohol or drug treatment center or other dispensary.	1000 -500 ft	1000 ft, no common wall share	500 ft	1000 ft	No
Limit square footage of the dispensary	No	No	No	1 per building	No
Restrict based on zone district	C-2	No	Yes	General	Yes
Limit the number of dispensaries 1 per 2000 -5000 population.	No	No	No	No	No
Supplemental Conditions					

MMJ Dispensary Condition Option Table

	Shasta Lake	Redding	Ripon	Visalia	Martinez
Building					
Limit or restrict exterior signage advertising the availability of marijuana.	Yes	No*	No	No	No
Permit specific number of parking spaces for dispensary.	Yes, retail	No	Yes, 1-250 ft	No	No
Install adequate ventilation system to mitigate smell.	Yes		No	No	No
Operation					
No sale of tobacco products allowed on premises	No	Yes	No	No	Yes
Post signage indicated that all illegal activity will be reported to law enforcement	No	No	No	Yes	Yes
Prohibit marijuana smoking on dispensary premises	Yes	Yes	Yes	Yes	Yes
Prohibit consumption of foods containing marijuana on dispensary premises	Yes	Yes	Yes	Yes	No
Limits on the number of clients any one dispensary may service	No	No	No	No	No
Provide security at door with requirement to screen weapons	No	No	No	No	No
No on-site cultivation of marijuana allowed	Yes	No	Yes	Allowed in Secured Area	Allowed per CUP.
Required use of time delay vaults and drawer and related signage	Yes, secured location.	No	No	Yes, secured location	No
Restrict the # of ounces of marijuana per patient allowed on dispensary premises (8 -10 oz)	No	No	Yes, 8 oz.	Yes, 8 oz.	Per Police
Require a license issued by the Planning Department/Police Dept with annual renewal an expiration date.	Yes	Yes	Yes, Police	Yes, Planning	Yes, Planning CUP
Fees required specific to the dispensary license not including fee required by other local and state agencies.	Yes	Yes	Yes	No	No
Background checks required for all employees and owner	Yes, police	Yes, police	Yes, police	Planning/Police	No
Time period required for approval		60 days	No	45 days	No
Notification by the applicant of all neighbors within 1,000 feet of the proposed premises. Notification – Applicants’ intent of such business.	No	Yes	No	Yes	Yes
Employees must be 21 years or older	No, 18	No, 18	No, 18	No, 18	No, 18
Employees must be bonded	No	No	No	No	No
Post the building indicating no persons under the age of 18 are allowed on the premises unless a qualified patient or in the presence of their parent or guardian.	Yes	Yes	Yes	Yes	Yes
Establish grounds for denial	Yes	Yes	Yes	Yes	Yes, distance

MMJ Dispensary Condition Option Table

	Shasta Lake	Redding	Ripon	Visalia	Martinez criteria
Police administered permit.	No	Yes	Yes	No	No
Business Licenses	Yes	No	No	Yes	No
Appeal Process	Yes	Yes	Yes	Yes	Yes
Detailed Application Criteria	Yes	Yes	No	Yes	No

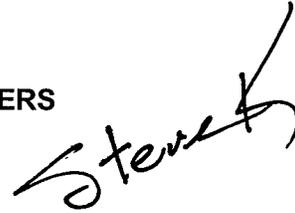
*City Code

#General

ITEM NO.: K-12
APPROVE 3-YEAR AGREEMENT FOR
AUDIT SERVICES WITH DONALD R.
REYNOLDS, CPA
JUNE 28, 2011

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER



SUMMARY:

In 2010, Staff received only one response to a "Request for Proposals" to provide audit services to the City. Following review of the proposal received by City Staff and outside accounting advisor and CPA Roy Seiler, Staff recommended Council approval of a three-year Audit Service Agreement with the independent auditor, Donald R. Reynolds, CPA. Council approved a one-year agreement only.

It is again time to institute an Agreement for auditing services and Staff is requesting authorization to enter into a new 3-year Agreement with independent auditor Donald R. Reynolds, CPA.

BACKGROUND:

Donald R. Reynolds, CPA has served as the City's Auditor for the past seven years via the initial "Request for Proposals" process, a renewal three years ago of the original Agreement, and a one-year Agreement approved last year. Because his firm has worked with the City for the past seven (7 years) they are familiar with and have a clear understanding of the City's accounting system. This previous experience and knowledge enables them to quickly see any possible problems that might otherwise go unnoticed.

In 2004 the City circulated a Request for Proposals for Audit Services to a number of qualified northern California Accounting Firms. The screening committee consisted of City Accounting Advisor Roy Seiler, CPA and Public Works Director Tom Russ. The Committee concluded that Donald R. Reynolds was well qualified to serve the City Council and he also had the lowest fees. The other Firms, though qualified, were much more expensive.

In 2010 City Staff solicited formal proposals from eight northern California Accounting Firms to provide audit services to the City under a three-year Agreement. Only one proposal was received and it was from Donald Reynolds, CPA. The following is the firm's fee structure for the past five and future three-year periods:

<u>Past:</u>	<u>Fee, Including A-133 (Single Audit)</u>	<u>Future</u>	
2006-7	\$9,500	2011-12	\$10,000
2007-8	\$9,500	2012-13	\$10,750
2008-9	\$9,500	2013-14	\$11,750
2009-10	\$10,000		
2010-11	\$10,500		

Some Cities have advocated a change in Auditors every three (3) years to ensure a new prospective on the City's accounting system. This is one management view however experience does not support this view. Actually the longer a City Council can retain the same auditor, the better that Auditor understands the City's accounting systems and the better rapport the Auditor has with the City Staff. This rapport allows the Auditor to interact on a regular basis with City Staff who become more likely to share concerns about the accounting system. There is also a significant start-up cost each time a new Auditor must learn the City's systems.

RECOMMENDATION:

MAYOR AND COUNCIL APPROVE A THREE (3) YEAR ACCOUNTING SERVICES AGREEMENT WITH MR. DONALD R. REYNOLDS, CPA AND DIRECT THE CITY ATTORNEY TO FINALIZE THE AGREEMENT FOR THE CITY MANAGER'S SIGNATURE.

Donald R. Reynolds

Certified Public Accountant

June 6, 2011

The Honorable City Council
City of Corning
794 Third Street
Corning, CA 96021

I am pleased to confirm my understanding of the services I have been requested to provide the City of Corning for the years ended June 30, 2011, 2012 and 2013. I will audit the financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information, which collectively comprise the entity's basic financial statements, of the City of Corning as of and for the years ended June 30, 2011, 2012 and 2013 respectively. Accounting standards generally accepted in the United States provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to accompany City of Corning's basic financial statements. As part of our engagements, we will apply certain limited procedures to the City of Corning's RSI. These limited procedures will consist principally of inquiries of management regarding the methods of measurement and presentation, which management is responsible for affirming to us in its representation letters each year. Unless we encounter problems with the presentation of the RSI or with procedures relating to it, we will disclaim an opinion on it. The following RSI is required by generally accepted accounting principles and will be subjected to certain limited procedures, but will not be audited:

1. Management's discussion and analysis
2. Schedule of expenditures of federal awards
3. Budgetary comparison schedules

Supplementary information other than RSI also accompanies City of Corning's basic financial statements. We will subject the following supplementary information to the auditing procedures applied in our audits of the basic financial statements and will provide an opinion on it in relation to the basic financial statements:

1. Schedule of expenditures of federal awards.

Audit Objectives

The objective of our audits is the expression of opinions as to whether your basic financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the additional information referred to in the first paragraph when considered in relation to the basic financial statements taken as a whole. The objective also includes reporting on:

P.O. Box 994508, 1438 Oregon Street, Redding, California 96099 . (530) 246-2834 . FAX (530) 244-0331

1. Internal control related to the financial statements and compliance with laws, regulations, and the provisions of contracts or grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
2. Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

The reports on internal control and compliance will each include a statement that the report is intended solely for the information and use of management, the body or individuals charged with governance, others within the entity specific legislative or regulatory bodies, federal awarding agencies, and if applicable, pass-through entities and is not intended to be and should not be used by anyone other than these specified parties.

Our audits will be conducted in accordance with generally accepted auditing standards established by the Auditing Standards Board (United States); the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provisions of OMB Circular A-133, and will include tests of accounting records, a determination of major program(s) in accordance with OMB Circular A-133, and other procedures we consider necessary to enable us to express such opinions and to render the required reports. If our opinions on the financial statements or the Single Audit compliance opinions are other than unqualified, we will fully discuss the reasons with you in advance. If, for any reason, we are unable to complete the audits or are unable to form or have not formed opinions, we may decline to express opinions or to issue reports as a result of these engagements.

Management Responsibilities

Management is responsible for the basic financial statements and all accompanying information as well as all representations contained therein. As part of the audits, we will prepare a draft of your financial statements and related notes. You are responsible for making all management decisions and performing all management functions relating to the financial statements and related notes and for accepting full responsibility for such decisions. You will be required to acknowledge in the management representation letter that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you are required to designate an individual with suitable skill, knowledge, or experience to oversee any nonaudit services we provide and for evaluating the adequacy and results of those services and accepting responsibility for them.

Management is responsible for establishing and maintaining internal controls, including monitoring ongoing activities; for the selection and application of accounting principles; and for the fair presentation in the financial statements of the respective financial position of the governmental activities, the business-type activities, the aggregate discretely presented component units, each major fund, and the aggregate remaining fund information of the County and the respective changes in financial position and cash flows, where applicable, in conformity with U.S. generally accepted accounting principles, and for federal award program compliance with applicable laws and

regulations and the provisions of contracts and grant provisions.

Management is also responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud or illegal acts could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the entity complies with applicable laws, regulations, contracts, agreements, and grants. Additionally, as required by OMB Circular A-133, it is management's responsibility to follow up and take corrective action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings should be available for our review on September 1 of each year.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying for us previous audits or other engagements or studies related to the objectives discussed in the Audit Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits or other engagements or studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, my audits will involve judgment about the number of transactions to be examined and the areas to be tested. I will plan and perform the audits to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by error, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the entity or to acts by management or employees acting on behalf of the entity. Because the determination of abuse is subjective, *Government Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because an audit is designed to provide reasonable, but not absolute assurance and because I will not perform a detailed examination of all transactions, there is a risk that a material misstatement may exist and not be detected by me. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, I will inform you of any material errors that come to my attention, and I will inform you of any fraudulent financial reporting or misappropriation

of assets that comes to my attention. I will also inform you of any violations of laws or governmental regulations that come to my attention, unless clearly inconsequential. My responsibility as auditor is limited to the period covered by my audit engagement letter for each year and does not extend to matters that might arise during any later periods for which I am not engaged as auditor.

My procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of the physical existence of inventories, and direct confirmation of receivables and certain other assets and liabilities by correspondence with selected individuals, creditors, and financial institutions. I will request written representations from your attorneys as part of the engagement, and they may bill you for responding to this inquiry. At the conclusion of my audits, I will also require certain written representations from you about the financial statements and related matters.

Audit Procedures - Internal Control

Our audits will include obtaining an understanding of the entity and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by OMB Circular A-133, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to OMB Circular A-133.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards* and OMB Circular A-133.

Audit Procedures—Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the City of Corning's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audits will not be to provide opinions on overall compliance and we will not express such opinions in our reports on compliance for each period issued pursuant to *Government Auditing Standards*.

OMB Circular A-133 requires that we also plan and perform the audit to obtain reasonable assurance about whether the auditee has complied with applicable laws and regulations and the provisions of

contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and other applicable procedures described in the *OMB Circular A-133 Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each of the City of Corning's major programs. The purpose of these procedures will be to express an opinion on the City of Corning's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to OMB Circular A-133, each year if required.

Audit Administration, Fee, and Other

I understand that your employees will prepare all cash or other confirmations I request and will locate any invoices selected by me for testing.

The audit documentation for this engagement is the property of Donald R. Reynolds, CPA and constitutes confidential information. However, pursuant to authority given by law or regulation, I may be requested to make certain audit documentation available to federal agency providing direct or indirect funding, or the U.S. General Accounting Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. I will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Donald R. Reynolds, CPA personnel. Furthermore, upon request, I may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

I expect to begin my audit on approximately August 1 of each year and expect to issue my reports by December 31 of each year.

My fee for these services will be at my standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that I agree that my gross fee, including expenses will not exceed \$10,000, \$10,750 and \$11,750 for year s ended June 30, 2011, 2012 and 2013 respectively. My standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. My invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with my firm policies, work may be suspended if your account becomes 60 days or more overdue and may not be resumed until your account is paid in full. If I elect to terminate my services for nonpayment, my engagement will be deemed to have been completed upon written notification of termination, even if I have not completed my report. You will be obligated to compensate me for all time expended and to reimburse me for all out-of-pocket costs through the date of termination. The above fees are based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, I will discuss it with you and arrive at a new fee estimate before I incur the additional costs.

Government Auditing Standards require that I provide you with a copy of my most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. My 2008 peer review report and letter of comments accompanies this letter.

I appreciate the opportunity to be of service to City of Corning and believe this letter accurately

summarizes the significant terms of my engagement. If you have any questions, please let me know. If you agree with the terms of my engagement as described in this letter, please sign the enclosed copy and return it to me.

Very truly yours,



Donald R. Reynolds, CPA

RESPONSE:

This letter correctly sets forth the understanding of City of Corning.

By: _____

Title: _____

Date: _____

ROY R. SEILER
CERTIFIED PUBLIC ACCOUNTANT

201 C. North Tehama
Willows, CA 95988

Phone: 530-934-8841
Fax: 530-934-8849
Email: rrseiler@sbcglobal.net

System Review Report

October 21, 2009

To: Donald R. Reynolds, Certified Public Accountant
and the Peer Review Committee of the State of California

I have reviewed the system of quality control for the accounting and auditing practice of Donald R. Reynolds, Certified Public Accountant (the firm) in effect for the year ended December 31, 2008. My peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. My responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on my review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under the *Government Auditing Standards*.

I noted the following deficiencies during my review:

1. Deficiency –

The firm's quality control policies and procedures require the completion of a financial statement reporting and disclosure checklist for its full disclosure engagements. However on several engagements selected for review, the firm failed to prepare the checklist. As a result, I noted several reporting standards departures and financial statement disclosure omissions. In addition, I also noted several instances where the amounts presented on one financial statement did not co-relate to similar items in another statement or in the disclosures. The firm intends to correct the reporting and financial statement disclosure deficiencies in the current year's engagements.

Recommendation -

The owner of the firm should carefully review the proper use of its financial statement reporting and disclosure checklists as part of the final financial statement review.

2. Deficiency –

The firm's policies and procedures required that signed and timely dated management representation letters be obtained for all audit and review engagements and that these letters be properly filed and maintained with the work papers and other engagement documentation. This policy was not consistently followed. As a result, for several of the engagements selected for review, the firm was unable to provide the signed representation letters from management. The firm has indicated that the missing, signed and dated, representation letters will be obtained as soon as practical.

Recommendation -

I recommend that the firm add a step to its standard procedures to determine that all required representations have been made and are properly documented. This procedure should be reviewed for completion during the engagement review stage of the audit or review.

3. Deficiency –

The firm's policies and procedures require that the owner and professional staff, if any, participating in governmental and applicable not for profit audit engagements meet the continuing education requirements established by Government Auditing Standards. However, I noted that the firm owner had not consistently monitored his conformity with Government Auditing Standards. As a result, I noted that the firm owner had not completed sufficient professional education course hours to conform with Government Auditing Standards.

Recommendation –

The owner of the firm should consistently monitor those individuals participating in governmental and applicable not for profit audit engagements to insure that the Government Auditing Standards regarding continuing professional education requirements are met.

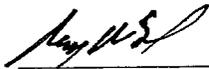
4. Deficiency –

Although the firm's quality control policies and procedures require that inspections or post-issuance review procedures be performed as part of its monitoring procedures, the firm failed to perform such procedures for each year. If timely inspection or post-issuance review procedures had been performed on an annual basis, many of the departures from professional standards noted during the review may have been identified and corrected in a timely manner.

Recommendation -

The firm should follow its quality control policies and procedures that require inspections or post-issuance review procedures be performed on an annual basis. The inspections or post-issuance review procedures should address each element of quality control, including engagement performance and should include written communication that summarize any deficiencies identified and document the actions taken or planned to prevent similar deficiencies from occurring in the future.

In my opinion, except for the deficiencies described above, the system of quality control for the accounting and auditing practice of Donald R. Reynolds, Certified Public Accountant in effect for the year ended December 31, 2008, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Donald R. Reynolds, Certified Public Accountant has received a peer review rating of *pass with deficiencies*..



Roy R. Seiler, CPA

**ITEM NO: K-13
RENEWAL OF CONTRACT FOR LEGAL
SERVICES
JUNE 28, 2011**

**TO: HONORABLE MAYOR AND COUNCIL MEMBERS
OF THE CITY OF CORNING**

FROM: MIKE FITZPATRICK, CITY ATTORNEY

SUMMARY:

The City Attorney contract is due for renewal. A fixed monthly fee will be advantageous to the City. The City has spent \$69,134 in City Attorney fees to date; including \$30,179 for litigation. I propose a flat monthly amount of \$5,600, totaling \$67,600 per year. The City benefits from a fixed amount, and the City Attorney benefits from a known professional income.

The City Council and City Staff had had the opportunity to work with Attorney Jody Burgess of the firm Maire and Burgess. This is a good time to consider retaining Mr. Burgess as Assistant City Attorney by separate contract. Mr. Burgess' monthly contract cost is included in the \$5,600 proposed flat monthly amount. If the City retains him too; his portion would be \$2,025, and mine would be \$3,575.

BACKGROUND:

My last employment agreement with the City of Corning was dated January 26, 2010 and provided for a base salary beginning 7-1-11 of \$5,500 per month plus \$1,133 in lieu of retirement for a total of \$6,633 per month. It provided for me to handle litigation for the City at no added expense.

We then renegotiated the agreement and entered into a new agreement dated April 27, 2010 which applied to the period from July 1, 2010 through June 30, 2011. The new agreement made me an independent contractor and provided for a monthly retainer of \$910 to prepare and attend two City Council meetings per month and an hourly rate of \$120 for all other legal services. This is the current contract. It does not contain the previous requirement that litigation be handled at no added charge to the City.

PROPOSAL:

I am willing, if the Council is receptive, to extending my contract with the City for one more fiscal year, July 1, 2011 through June 30, 2012 on the following terms and conditions:

1. Flat monthly fee of \$3,500 per month for me and \$2,000 per month for Attorney Burgess who has been working for me on behalf of the City of Corning, and several other public agencies, for almost a year. Flat fee would cover work during each week, attendance at Council meetings and for litigation up to 100 hour cap. Costs for mileage, supplies, attendance at legal conferences, etc. would continue as in the present contract.
2. Litigation time in excess of 100 hours total (combined time for both firms providing legal services) during contract term to be billed at the hourly rate of \$120.
3. City to reimburse me for cost of malpractice insurance coverage since the City will essentially be my only client and reason for keeping insurance (approximately \$400 per month). City to defend, protect and indemnify both attorneys should we be sued (by anyone other than by our own client, the City) for activities we perform for the City of Corning which are within the scope of the services we provide to the City.
4. Mr. Burgess and I to be allowed to allocate time between us with regard to services provided to the City, alternating attendance at City Council meetings as our respective schedules permit.

5. Two separate contracts to be entered into, one for Fitzpatrick as City Attorney and the other for Jody Burgess as Assistant City Attorney.

RECOMMENDATION:

MAYOR AND CITY COUNCIL: Consider contract proposal and move to

1. **Approve contracts with City Attorney Michael C. Fitzpatrick and Maire and Burgess for legal services for a one year period beginning July 1, 2011 through June 30, 2012.**
2. **Appoint Mr. Jody Burgess as Corning Assistant City Attorney.**

Attachments:

Prior year legal expenditures spreadsheet.

City Attorney contracts for Michael C. Fitzpatrick and Maire and Burgess.

**CITY OF CORNING
AGREEMENT FOR
CITY ATTORNEY LEGAL SERVICES**

THIS AGREEMENT, made and entered into this 28th day of June 2011, is by and between the City of Corning, hereinafter referred to as "CITY" and MICHAEL C. FITZPATRICK, an individual, hereinafter referred to as "FITZPATRICK."

RECITALS

WHEREAS, CITY desires to use the professional services of a qualified person or persons to perform the duties and responsibilities of City Attorney for the City of Corning; and

WHEREAS, FITZPATRICK as an individual in private practice wishes to continue as one of the parties providing legal services to CITY and will do so on a part-time basis;

WHEREAS, FITZPATRICK is willing to provide some of the legal services required by CITY with the understanding that CITY will enter into a contract with another law firm to perform those legal services (other than services requiring outside specialized counsel) not provided by him;

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein the parties agree as follows:

SERVICES: FITZPATRICK will be the Corning City Attorney, one of the providers to the CITY of professional, administrative, and managerial services required to perform the duties and responsibilities of the Office of City Attorney to the satisfaction of the CITY, as set forth below. Such services shall include, but not be limited to the following:

To exercise the powers, have the privileges and immunities, and to perform the functions and duties of City Attorney as set forth and enumerated in the laws of the State of California and the ordinances of the CITY. The primary duties include managing the legal affairs of the CITY, working with the City Manager and department heads in addressing the legal issues related to City business, reviewing all City contracts, assisting in the preparation of City ordinances and resolutions, monitoring the administration of claims being handled by City claims administrators, advising the City Council on legal matters, engaging in preventive law to avoid City liability for its activities, participating in

activities which promote projects designed to improve City government and representing the City in court on issues which don't require the involvement of outside specialized legal counsel.

FITZPATRICK will attend at least 50% of the regular City Council meetings (those meetings held on the 2nd and 4th Tuesdays of each month) of the CITY and the other law firm on retainer with CITY (MAIRE & BURGESS) will attend those regular meetings not attended by FITZPATRICK.

Attorney FITZPATRICK or the other law firm on retainer with CITY will represent the CITY in litigation before the local and appellate courts on all matters within their expertise. Outside legal counsel may still be engaged at CITY expense, separate and apart from this agreement, when, in FITZPATRICK's judgment, the matter being handled is beyond the field of expertise of himself and of the other firm on retainer with CITY or, for other reasons, specialized counsel is needed.

WORK DAYS AND HOURS: As legal needs are presented, FITZPATRICK will work on projects for the City of Corning and such work will be performed at various locations in City Hall, in FITZPATRICK's private office, in court as required and in other locations appropriate to the tasks being performed. FITZPATRICK, coordinating schedules with the other retained legal counsel, will use best efforts to be available throughout the work week to respond to legal issues as they arise. The actual amount of time required will vary from time to time depending on the projects and assignments which arise.

REPORTING RELATIONSHIP: FITZPATRICK shall report directly to the City Council.

COMPENSATION: CITY, for and in consideration of the promises, covenants, conditions and stipulations set forth herein, hereby agrees to provide, as total compensation to FITZPATRICK, the following:

Compensation: FITZPATRICK will be paid the following amounts:

\$3500.00 as monthly compensation; and

\$75.00 for administrative expenses (set forth below) monthly; and

\$120.00 per hour for litigation time in excess of 100 hours (combined for both law firms providing legal services) during the contract term (fiscal year).

Compensation as agreed shall be made monthly without submission of an invoice except for reimbursable costs.

Travel to and from activities for CITY other than regular Council meetings will be charged to CITY at

the then current IRS rate per mile.

Retirement: FITZPATRICK shall not receive PERS entitlements or other retirement benefits.

REIMBURSEMENT OF EXPENSES: FITZPATRICK shall be entitled to the same reimbursement for lodging, meals and other out-of-pocket expenses incurred during travel on CITY business as authorized for employees of the CITY while traveling on CITY business. CITY will reimburse the FITZPATRICK the sum of \$75.00 per month for administrative expenses (telephone, stationary, computer research costs, etc.) incurred on behalf of CITY. FITZPATRICK shall be entitled to attend at CITY expense continuing education classes and events subject to whatever budget constraints are in place annually.

TERM: This agreement shall be for a period of time beginning on July 1, 2011 and ending on June 30, 2012 and extends automatically from fiscal year to year thereafter on the same terms and conditions as in the last fiscal year included above unless either party provides the other with notice of termination or a requested adjustment. Either party may terminate this Agreement at-will by providing the other party not less than sixty (60) calendar days written notice of termination. The termination shall become effective upon the 60th or later designated day following delivery of written notice thereof. FITZPATRICK shall be compensated for all services performed to the effective date of termination.

PERFORMANCE STANDARDS: FITZPATRICK agrees that he will at all times faithfully, industriously, and to the best of his ability, experience and talent, perform all of the duties and functions that may be required of or from him pursuant to all terms of this Agreement in a manner reasonably satisfactory to the CITY, and in accordance with the standards reasonably expected of professional persons so engaged.

MALPRACTICE INSURANCE: FITZPATRICK shall provide errors and omissions insurance through his private practice which extends coverage to CITY and proof of coverage shall be placed on file with CITY. The cost of such policy shall be reimbursed to FITZPATRICK by CITY. CITY will protect, defend and indemnify FITZPATRICK against any and all liability, expenses, costs and damages arising out of litigation filed against him personally arising out of the work he does for the CITY. Should FITZPATRICK be named as a party and/or required to appear as a witness in any such litigation, CITY will protect, defend and indemnify FITZPATRICK against any and all expenses, costs, liability and damages he may incur in connection therewith.

ATTORNEY AS INDEPENDENT CONTRACTOR: It is understood that FITZPATRICK is an independent contractor and not an employee of CITY.

ENTIRE AGREEMENT; MODIFICATION: This Agreement embodies the whole Agreement between the parties hereto (other than the "indemnification" and related assurances provided to FITZPATRICK by Council action at its meeting of February 22, 2011 which assurances shall continue in effect unless expanded by the terms of this agreement in which case such broader protections and requirements shall apply) and there are no inducements, promises, terms, conditions or obligations other than those contained herein. No modification, alteration, or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto. Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- a. To CITY: **Stephen J. Kimbrough, City Manager**
City of Corning
794 Third Street
Corning, CA 96021

- b. To FITZPATRICK: **MICHAEL C. FITZPATRICK**
2851 Park Marina Drive, Suite 300
Redding, CA 96001

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF CORNING:

FITZPATRICK:

by _____
Gary R. Strack, Mayor

Michael C. Fitzpatrick

**CITY OF CORNING
AGREEMENT FOR
ASSISTANT CITY ATTORNEY LEGAL SERVICES**

THIS AGREEMENT, made and entered into this 28th day of June, 2011, is by and between the City of Corning, hereinafter referred to as "CITY" and MAIRE and BURGESS, a law partnership, hereinafter referred to as "MAIRE AND BURGESS."

RECITALS

WHEREAS, CITY desires to use the professional services of qualified persons to perform the duties and responsibilities of Assistant City Attorney for the City of Corning; and

WHEREAS, MAIRE AND BURGESS as a law firm in private practice wishes to act as one of the parties providing legal services to CITY and will do so on a part-time basis;

WHEREAS, MAIRE AND BURGESS is willing to provide some of the legal services required by CITY with the understanding that CITY will enter into a contract with another attorney to perform those legal services (other than services requiring outside specialized counsel) not provided by them;

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein the parties agree as follows:

SERVICES: MAIRE AND BURGESS will be one of the providers to the CITY of professional, administrative, and managerial services required to perform the duties and responsibilities of the Office of Assistant City Attorney to the satisfaction of the CITY, as set forth below. Such services shall include, but not be limited to the following:

To exercise the powers, have the privileges and immunities, and to perform the functions and duties of Assistant City Attorney as set forth and enumerated in the laws of the State of California and the ordinances of the CITY. The primary duties include assisting the City Attorney in managing the legal affairs of the CITY, working with the City Manager and department heads in addressing the legal issues related to City business, reviewing all City contracts, assisting in the preparation of City ordinances and resolutions, monitoring the administration of claims being handled by City claims administrators, advising the City Council on legal matters, engaging in preventive law to avoid City

liability for its activities, participating in activities which promote projects designed to improve City government and representing the City in court on issues which don't require the involvement of outside specialized legal counsel. MAIRE AND BURGESS will attend those regular City Council meeting (those meetings held on the 2nd and 4th Tuesdays of each month) of the CITY not attended by City Attorney FITZPATRICK.

MAIRE AND BURGESS and/or FITZPATRICK, allocating work between them, will represent the CITY in litigation before the local and appellate courts on all matters within their expertise. Outside legal counsel may still be engaged at CITY expense, separate and apart from this agreement, when, in the judgment of FITZPATRICK, the matter being handled is beyond the expertise of retained counsel or, for other reasons, specialized counsel is needed.

WORK DAYS AND HOURS: As legal needs are presented, MAIRE AND BURGESS will work on projects for the City of Corning and such work will be performed at various locations in City Hall, in MAIRE AND BURGESS's private offices, in court as required and in other locations appropriate to the tasks being performed. MAIRE AND BURGESS, coordinating schedules with the other retained legal counsel, will use best efforts to be available on a daily basis throughout the work week to respond to legal issues as they arise. The actual amount of time required will vary from time to time depending on the projects and assignments which arise.

REPORTING RELATIONSHIP: MAIRE AND BURGESS shall report directly to the City Council.

COMPENSATION: CITY, for and in consideration of the promises, covenants, conditions and stipulations set forth herein, hereby agrees to provide, as total compensation to MAIRE AND BURGESS, the following:

Compensation: MAIRE AND BURGESS will be paid the following amounts:

\$2000.00 as monthly compensation; and

\$25.00 for administrative expenses (set forth below) monthly; and

\$120.00 per hour for litigation time in excess of 100 hours (combined for both law firms providing legal services) during the contract term (fiscal year).

Compensation as agreed shall be made monthly without submission of an invoice except for reimbursable costs.

liability for its activities, participating in activities which promote projects designed to improve City government and representing the City in court on issues which don't require the involvement of outside specialized legal counsel. MAIRE AND BURGESS will attend those regular City Council meeting (those meetings held on the 2nd and 4th Tuesdays of each month) of the CITY not attended by City Attorney FITZPATRICK.

MAIRE AND BURGESS and/or FITZPATRICK, allocating work between them, will represent the CITY in litigation before the local and appellate courts on all matters within their expertise. Outside legal counsel may still be engaged at CITY expense, separate and apart from this agreement, when, in the judgment of FITZPATRICK, the matter being handled is beyond the expertise of retained counsel or, for other reasons, specialized counsel is needed.

WORK DAYS AND HOURS: As legal needs are presented, MAIRE AND BURGESS will work on projects for the City of Corning and such work will be performed at various locations in City Hall, in MAIRE AND BURGESS's private offices, in court as required and in other locations appropriate to the tasks being performed. MAIRE AND BURGESS, coordinating schedules with the other retained legal counsel, will use best efforts to be available on a daily basis throughout the work week to respond to legal issues as they arise. The actual amount of time required will vary from time to time depending on the projects and assignments which arise.

REPORTING RELATIONSHIP: MAIRE AND BURGESS shall report directly to the City Council.

COMPENSATION: CITY, for and in consideration of the promises, covenants, conditions and stipulations set forth herein, hereby agrees to provide, as total compensation to MAIRE AND BURGESS, the following:

Compensation: MAIRE AND BURGESS will be paid the following amounts:

\$2000.00 as monthly compensation; and

\$25.00 for administrative expenses (set forth below) monthly; and

\$120.00 per hour for litigation time in excess of 100 hours (combined for both law firms providing legal services) during the contract term (fiscal year).

Compensation as agreed shall be made monthly without submission of an invoice except for reimbursable costs.

Travel to and from activities for CITY other than regular Council meetings will be charged to CITY at the then current IRS rate per mile.

Retirement: MAIRE AND BURGESS shall not receive PERS entitlements or other retirement benefits.

REIMBURSEMENT OF EXPENSES: MAIRE AND BURGESS shall be entitled to the same reimbursement for lodging, meals and other out-of-pocket expenses incurred during travel on CITY business as authorized for employees of the CITY while traveling on CITY business. CITY will reimburse the MAIRE AND BURGESS the sum of \$25.00 per month for administrative expenses (telephone, stationary, computer research costs, etc.) incurred on behalf of CITY. MAIRE AND BURGESS shall be entitled to attend at CITY expense continuing education classes and events subject to whatever budget constraints are in place annually.

TERM: This agreement shall be for a period of time beginning on July 1, 2011 and ending on June 30, 2012 and extends automatically from fiscal year to year thereafter on the same terms and conditions as in the last fiscal year included above unless either party provides the other with notice of termination or a requested adjustment. Either party may terminate this Agreement at-will by providing the other party not less than sixty (60) calendar days written notice of termination. The termination shall become effective upon the 60th or later designated day following delivery of written notice thereof. MAIRE AND BURGESS shall be compensated for all services performed to the effective date of termination.

PERFORMANCE STANDARDS: MAIRE AND BURGESS agree that they will at all times faithfully, industriously, and to the best of their ability, experience and talent, perform all of the duties and functions that may be required of or from them pursuant to all terms of this Agreement in a manner reasonably satisfactory to the CITY, and in accordance with the standards reasonably expected of professional persons so engaged.

MALPRACTICE INSURANCE: MAIRE AND BURGESS shall provide errors and omissions insurance which extends coverage to CITY and proof of coverage shall be placed on file with CITY. The cost of such policy shall be solely borne by MAIRE AND BURGESS unless there are added costs to provide coverage to CITY. Notwithstanding the obligation of MAIRE AND BURGESS to provide malpractice coverage for work performed for CITY, CITY will protect, defend and indemnify MAIRE AND BURGESS against any and all liability, expenses, costs and damages arising out of litigation filed against them arising out of the work they do for the CITY. Should MAIRE AND

BURGESS be named as a party and/or required to appear as a witness in any such litigation, CITY will protect, defend and indemnify MAIRE AND BURGESS against any and all expenses, costs, liability and damages they may incur in connection therewith.

ATTORNEY AS INDEPENDENT CONTRACTOR: It is understood that MAIRE AND BURGESS is an independent contractor and not an employee of CITY.

ENTIRE AGREEMENT; MODIFICATION: This Agreement embodies the whole Agreement between the parties hereto and there are no inducements, promises, terms, conditions or obligations other than those contained herein. No modification, alteration, or variation in the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or Agreement not incorporated herein shall be binding on any of the parties hereto. Any notices required to be given pursuant to this Agreement shall be deemed to have been given by their deposit, postage prepaid, in the United States Postal Service, addressed to the parties as follows:

- a. To CITY: **Stephen J. Kimbrough, City Manager**
City of Corning
794 Third Street
Corning, CA 96021

- b. To **MAIRE AND BURGESS:**
Maire & Burgess
Attorneys at Law
2851 Park Marina Drive, Suite 300
Redding, CA 96001

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF CORNING:

MAIRE AND BURGESS:

by _____
Gary R. Strack, Mayor

Jody Burgess, Partner

Legal Costs Incurred from July 1, 2011 to date:

DATE	HOURS	PROVIDED BY	DESCRIPTION	AMOUNT	LITIGATION
6/23/2011 - 6/23/2011	3.1	Fitzpatrick Law	Litigation - Price	\$372	\$372
6/7/2011 - 6/28/2011	18.8	Fitzpatrick Law	Misc. City Business	\$2,256	
6/7/2011 - 6/28/2011		Fitzpatrick Law	Copying Chg., Phone, Fax, etc.	\$150	
6/1/2011		Fitzpatrick Law	Monthly Retainer Fee	\$910	
5/3/2011 - 5/31/2011	22.8	Fitzpatrick Law	Misc. City Business	\$2,736	
5/3/2011- 5/31/2011		Fitzpatrick Law	Copying Chg., Phone, Fax, etc.	\$150	
5/4/2011 - 5/18/2011	2.8	Fitzpatrick Law	Litigation - Price	\$336	\$336
5/1/2011		Fitzpatrick Law	Monthly Retainer Fee	\$910	
4/15/2011	2.6	Maire & Burgess	Misc. City Business	\$286	
4-4-2011 - 04-27-2011	12	Fitzpatrick Law	Misc. City Business	\$1,440	
4-4-2011 - 04-27-2011	4.6	Fitzpatrick Law	Litigation - Marijuana	\$552	\$552
4/1/2011		Fitzpatrick Law	Monthly Retainer Fee	\$910	
4-1-2011 - 04-26-2011	6.4	Fitzpatrick Law	Litigation - Price	\$768	\$768
3/22/2011	2.3	Maire & Burgess	Misc. City Business	\$253	
3/22/2011	0.2	Maire & Burgess	Misc. City Business	\$22	
3/22/2011	0.1	Maire & Burgess	Misc. City Business	\$11	
3/7/2011	1.7	Maire & Burgess	Misc. City Business	\$187	
3/1/2011		Fitzpatrick Law	Monthly Retainer Fee	\$910	
3-3-2011 - 03-28-2011	13.2	Fitzpatrick Law	Litigation - Marijuana	\$1,584	\$1,584
3-2-2011 - 03-31-2011	10.7	Fitzpatrick Law	Litigation - Price	\$1,284	\$1,284
3-1-2011 - 03-29-2011	20.3	Fitzpatrick Law	Misc. City Business	\$2,436	
2-7-2011 - 02-17-2011	5.2	Fitzpatrick Law	Litigation - Marijuana	\$624	\$624
2-7-2011 - 02-16-2011	1.7	Fitzpatrick Law	Litigation - Marijuana	\$204	\$204
2-1-2011 - 02-22-2011	16.8	Fitzpatrick Law	Misc. City Business	\$2,016	
2-1-11		Fitzpatrick Law	Monthly Retainer Fee	\$910	
1-10-2011 - 1-31-2011	6	Fitzpatrick Law	Litigation - Price	\$720	\$720
1/8/2011	0.1	Maire & Burgess	Misc. City Business	\$11	

DATE	HOURS	PROVIDED BY	DESCRIPTION	AMOUNT	LITIGATION
1/6/2011	0.1	Maire & Burgess	Misc. City Business	\$11	
1/5/2011	0.1	Maire & Burgess	Misc. City Business	\$11	
1/5/2011	0.3	Maire & Burgess	Misc. City Business	\$33	
1-3-2011 - 01-28-2011	23.5	Fitzpatrick Law	Misc. City Business	\$2,820	
1-3-2011 - 01-28-2011	0.5	Fitzpatrick Law	Litigation - Marijuana	\$60	\$60
1/3/2011		Fitzpatrick Law	Monthly Retainer Fee	\$910	
12/28/2010	0.1	Maire & Burgess	Election	\$11	
12/28/2010	0.1	Maire & Burgess	Election	\$11	
12/28/2010	0.1	Maire & Burgess	Election	\$11	
12/20/2010	0.4	Maire & Burgess	Cofer Lit.	\$44	\$44
12/20/2010	0.1	Maire & Burgess	Conf. Call	\$11	
12/16/2010	0.1	Maire & Burgess	Conf. Call	\$11	
12/15/2010	1.3	Maire & Burgess	PIR & Ltr.	\$143	
12/13/2010	0.3	Maire & Burgess	Election	\$33	
12-8-2010 - 12-27-2010	2.8	Fitzpatrick Law	Litigation - Marijuana	\$336	\$336
12/7/2010	0.4	Maire & Burgess	Theater	\$44	
12/7/2010	0.6	Maire & Burgess	Election	\$66	
12/6/2010	2.7	Maire & Burgess	Election	\$297	
12/3/2010	0.7	Maire & Burgess	Park Easement	\$77	
12/2/2010	0.4	Maire & Burgess	Election	\$44	
12-2-2010 - 12-27-2010	4	Fitzpatrick Law	Litigation - Cofer	\$480	\$480
12/1/2010	0.9	Maire & Burgess	Election	\$99	
12/1/2010		Fitzpatrick Law	Monthly Retainer Fee	\$910	
11-30-2010 - 12-27-2010	20.6	Fitzpatrick Law	Misc. City Business	\$2,472	
11/30/2010	1.7	Maire & Burgess	Review Penal Code Annotations	\$187	
11/16/2010	0.6	Maire & Burgess	Election	\$66	
11/9/2010	0.7	Fitzpatrick Law	Litigation - Elf vs. C.V. RWCB	\$84	\$84
11/3/2010	1.7	Maire & Burgess	Grazing Lease	\$187	
11-2-2010 - 11-30-2010	11.8	Fitzpatrick Law	Litigation - Cofer	\$1,384	\$1,384
11-1-2010 - 11-9-2010	9.8	Fitzpatrick Law	Litigation - Marijuana	\$1,136	\$1,136
11-1-2010 - 11-25-2010	11	Fitzpatrick Law	Litigation - Price	\$1,216	\$1,216
11/1/2010		Fitzpatrick Law	Monthly Retainer Fee	\$910	

DATE	HOURS	PROVIDED BY	DESCRIPTION	AMOUNT	LITIGATION
10-14-2010 - 10-28-2010	51.2	Fitzpatrick Law	Litigation - Cofer	\$5,912	\$5,912
10-11-2010 - 11-30-2010	17.5	Fitzpatrick Law	Misc. City Business	\$2,040	
10-11-2010 - 11-30-2010		Fitzpatrick Law	Copying Chg., Telephone Chgs. & Lexis Nexis Research Fees, Postage	\$149.75	
10-8-2010 - 10-20-2010	41	Fitzpatrick Law	Litigation - Marijuana	\$4,828	\$4,828
10-4-2010 - 10-25-2010	2.3	Fitzpatrick Law	Litigation - Price	\$264	\$264
10-1-2010 - 10-26-2010		Fitzpatrick Law	Copying Chg., Telephone Chgs. & Lexis	\$149	
10-1-2010 - 10-26-2010	16.7	Fitzpatrick Law	Misc. City Business	\$1,368	
10/1/2010		Fitzpatrick Law	Monthly Retainer Fee	\$910	
9-8-2010 - 09-27-2010	7.1	Fitzpatrick Law	Litigation - Price	\$808	\$808
9-7-2010 - 09-27-2010	31.2	Fitzpatrick Law	Litigation - Marijuana	\$3,744	\$3,744
9-1-2010 - 09-30-2010	8.8	Fitzpatrick Law	Misc. City Business	\$1,056	
9-1-2010 - 09-30-2010		Fitzpatrick Law	Copying Chg., Telephone Chgs. & Lexis Nexis Research Fees, Postage	\$149.43	
9/1/2010		Fitzpatrick Law	Monthly Retainer Fee	\$910	
8/17/2010 - 8-31-2010	7	Fitzpatrick Law	Litigation - Price	\$796	\$796
8/17/2010		Fitzpatrick Law	Copying Chg., Telephone Chgs. & Lexis Nexis Research Fees	\$148.09	
8/17/2010	0.4	Fitzpatrick Law	Litigation	\$48	\$48
8/16/2010		Fitzpatrick Law	Monthly Retainer Fee	\$910	
8-10-2010 - 8-31-2010	20.7	Fitzpatrick Law	Litigation - Marijuana	\$1,644	\$1,644
8-10-2010 - 8-12-2010	3.3	Fitzpatrick Law	Litigation - PVC Pipe	\$75	\$75
8/10/2010	0.5	Fitzpatrick Law	Litigation - Elf vs. C.V. RWCB	\$60	\$60
8/4/2010	0.3	Fitzpatrick Law	Litigation - Envir.	\$36	\$36

DATE	HOURS	PROVIDED BY	DESCRIPTION	AMOUNT	LITIGATION
08-3-2010 - 8-31-2010	18.4	Fitzpatrick Law	Misc. City Business	\$2,196	
08-3-2010 - 8-31-2010		Fitzpatrick Law	Copying Chg., Telephone Chgs. & Lexis Nexis Research Fees,	\$149.61	
7/28/2010	1.3	Fitzpatrick Law	Conflict of Interest	\$156	
7/27/2010	4	Fitzpatrick Law	Misc. City Business &	\$480	\$480
7/26/2010	1.8	Fitzpatrick Law	Misc. City Business & Litigation	\$216	
7/21/2010	5.5	Fitzpatrick Law	Misc. City Business & Litigation	\$660	
7/20/2010	0.5	Fitzpatrick Law	Litigation	\$60	\$60
7/16/2010	1	Fitzpatrick Law	Misc. City Business	\$120	
7/13/2010	4	Fitzpatrick Law	Misc. City Business & Litigation	\$480	
7/12/2010	2	Fitzpatrick Law	Litigation	\$240	\$240
7/7/2010	5.5	Fitzpatrick Law	Misc. City Business	\$660	
7/1/2010	5.4	Fitzpatrick Law	Misc. City Business & Litigation	\$648	
			Totals:	\$69,134	\$30,179

ITEM NO.: K-14
RESOLUTION NO. 06-28-2011-01
ESTABLISHING AN
APPROPRIATIONS LIMIT FOR THE
CITY OF CORNING FISCAL YEAR
2011 – 2012 AT \$10,465,777
JUNE 28, 2011

TO: HONORABLE MAYOR AND COUNCIL MEMBERS

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
LISA M. LINNET, CITY CLERK



SUMMARY:

Annually the City must set its Appropriation Limit as required by Article XIII B of the California Constitution. The Appropriation Limit is also known as the "Gann Limit," named after the Initiative Proponent who sought a Constitutional Amendment to put limitations on the growth of Government. Unfortunately, Charles Gann, an associate of Howard Jarvis, failed to seek any limitations on State Government!

The City's outside Certified Public Accountant Roy R. Seiler has produced the attached report for public review. In support of the proposed Resolution, the Appropriation Limit this coming Fiscal Year is \$10,465,777, which far exceeds the City's proposed General Fund Base Operating Budget.

RECOMMENDATION:

MAYOR AND COUNCIL RECEIVE THE REPORT OF THE CITY AUDITOR AND ADOPT RESOLUTION NO. 06-28-2011-01 ESTABLISHING AN APPROPRIATIONS LIMIT FOR THE CITY OF CORNING FOR THE FISCAL YEAR 2011-2012 IN THE AMOUNT OF \$10,465,777.

RESOLUTION NO. 06-28-2011-01

**A RESOLUTION ESTABLISHING AN APPROPRIATIONS LIMIT
FOR THE CITY OF CORNING
FISCAL YEAR 2011-2012**

WHEREAS, Article XIII B of the California Constitution requires that an appropriations limit be established,

BE IT RESOLVED, that the City Council of the City of Corning declares that the appropriation limit for the City of Corning, subject to correction and adjustment, is \$10,465,777. This appropriations limit is for the fiscal year 2011-2012 pursuant to the provisions of Sections 36936.1 and 36937 of the Government Code of California.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately and shall be published at least once in the Corning Observer, a newspaper of general circulation, printed, published and circulated in the City of Corning.

This Resolution was introduced and adopted by the City Council of the City of Corning on the 28TH day of June 2011 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

Gary R. Strack, Mayor

ATTEST:

Lisa M. Linnet, City Clerk

ROY R. SEILER
CERTIFIED PUBLIC ACCOUNTANT

201 C North Tehama
Willows, CA 95988

Phone: 530-934-8841
Fax: 530-934-8849

June 1, 2011

City of Corning
Attn: Lisa

Attached is the appropriations limitation work papers and reports. **The appropriation limitation for 2011-2012 is \$10,465,777.** The appropriations worksheets need to be accepted by the City Council and the appropriations limitation for the coming fiscal year must be approved by resolution. **Please give me a copy of that resolution after it is approved.**

As always, let me know if you have questions or concerns.

Sincerely,

Roy R. Seiler, CPA

CITY OF CORNING
APPROPRIATIONS LIMIT WORKSHEETS
FISCAL YEAR 2011/2012

ROY R. SEILER
CERTIFIED PUBLIC ACCOUNTANT

201 C. North Tehama
Willows, CA 95988

Phone: 530-934-8841
Fax: 530-934-8849

Independent Accountant's Report on Agreed Upon Procedures
Applied to Appropriations Limit Worksheets

City Council
City of Corning, California

I have applied the procedures enumerated below to the accompanying Appropriations Limit Worksheets for the City of Corning, California (City) for the 2011/2012 fiscal year. These procedures, which were agreed to by the City and the League of California Cities (as presented in the League publication entitled *Article XIII B Appropriations limitation Uniform Guidelines*) were performed solely to assist the City in meeting the requirements of Section 1.5 of Article XIII B of the California Constitution.

This engagement to apply agreed-upon procedures was performed in accordance with standards established by the American Institute of Certified Public Accountants. The sufficiency of the procedures is solely the responsibility of the specified users of the report. Consequently, I make no representation regarding the sufficiency of the procedures described below either for the purpose for which this report has been requested or for any other purpose.

The procedures performed and my findings were as follows:

1. I completed worksheets and compared the limit and annual adjustment factors included in those worksheets to the limit and annual adjustment factors that were adopted by resolution of the City Council. I also compared the population and inflation options included in the aforementioned worksheets to those that were prepared by the State of California, Department of Finance.

Finding: No exceptions were noted as a result of the procedures.

2. For the accompanying Appropriations Limit worksheet I added line A of last year's limit, to line E, total adjustments, and compared the resulting amount to line F, this year's limit.

Finding: No exceptions were noted as a result of the procedures.

3. I compared the current information presented in the accompanying Appropriations Limit worksheet to the prior year appropriation limit adopted by the City Council for the prior year.

Finding: No exceptions were noted as a result of the procedures.

4. I compared the prior year appropriations limit presented in the accompanying Appropriations Limit worksheet to the prior year appropriations limit adopted by the City Council for the prior year.

Finding: No exceptions were noted as a result of the procedures.

I was not engaged to, and did not, perform an audit, the objective of which would be the expression of an opinion on the accompanying Appropriations Limit worksheets. Accordingly, I do not express such an opinion. Had I performed additional procedures, other matters might have come to my attention that would have been reported to you. No procedures have been performed with respect to the determination of the appropriation limit for the base year, as defined by the League publication entitled *Article XIII B Appropriations Limitation Uniform Guidelines*.

This report is intended solely for the use of the City of Corning, California and should not be used by those who have not agreed to the procedures and taken responsibility for the sufficiency of the procedures for their purposes. However, this report is a matter of public record and its distribution is not limited.

June 1, 2011



Roy R. Seiler, CPA

City of Corning
FYE: June 30, 2012

GANN INITIATIVE
APPROPRIATION LIMITATION GUIDELINES

REVENUES EXEMPT FROM LOCAL LIMITS:

- All Enterprise Revenues
- State Grants (Airport, CDGB, etc.)
- State Funded Programs administered locally
- Gas Tax
- Transportation Development Act Funds

REVENUES TO BE INCLUDED:

- Shared Revenues
- Off Hwy. License Fees
- Vehicle License Fees
- Cigarette Tax
- Tax Relief Subventions (Personal Property Tax Relief, Homeowners)

City of Corning
 FYE: June 30, 2012
 APPROPRIATION LIMITATION WORKSHEETS:
 GANN INITIATIVE
 NEW APPROPRIATION LIMITS:

<u>FISCAL YEAR</u>	<u>PREVIOUS LIMIT</u>	<u>FACTOR</u>	<u>NEW LIMIT</u>
1980-81	1,846,944	1.1638	2,149,473
1981-82	2,149,473	1.0832	2,328,309
1982-83	2,328,310	1.1115	2,587,917
1983-84	2,587,916	1.0299	2,665,295
1984-85	2,665,295	1.0521	2,804,157
1985-86	2,804,157	1.0885	3,052,325
1986-87	3,052,325	1.0544	3,218,371
1987-88	3,218,371	1.0573	3,402,784
1988-89	3,402,784	1.0799	3,674,666
1989-90	3,674,666	1.0738	3,945,856
1990-91	3,945,856	1.0778	4,252,844
1991-92	4,252,844	1.0696	4,548,842
1992-93	4,548,842	1.0162	4,622,533
1993-94	4,622,533	1.0462	4,836,094
1994-95	4,836,094	1.0215	4,940,070
1995-96	4,940,070	1.0607	5,239,932
1996-97	5,239,932	1.0632	5,571,096
1997-98	5,571,096	1.0608	5,909,819
1998-99	5,909,819	1.0604	6,266,772
1999-2000	6,266,772	1.0626	6,659,072
2000-2001	6,659,072	1.0579	7,044,632
2001-02	7,044,632	1.0779	7,593,409
2002-03	7,593,409	0.9952	7,556,961
2003-04	7,556,961	1.0322	7,800,295
2004-05	7,800,295	1.0381	8,097,486
2005-06	8,097,486	1.0657	8,629,491
2006-07	8,629,491	1.0557	9,110,154
2007-08	9,110,154	1.0479	9,546,530
2008-09	9,546,350	1.0507	10,030,350
2009-10	10,030,350	1.0335	10,367,055
2010-11	10,367,055	0.9801	10,160,751
2011-12	10,160,751	1.0300	10,465,777

City of Corning
FYE: June 30, 2012
APPROPRIATION LIMITATION WORKSHEETS:
GANN INITIATIVE

	<u>CALIFORNIA PRICE FACTOR</u>		<u>CHANGE IN POPULATION %</u>	<u>COMBINED TOTAL</u>
2011-12	2.51 (1.0251)	x	0.48 (1.0048)	=1.03002

ITEM NO.: K-15
ANNUAL STATEMENT OF
INVESTMENT POLICY FOR FISCAL
YEAR 2011-2012

JUNE 28, 2011

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
OF THE CITY OF CORNING

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
PALA CANTRELL, CITY TREASURER



SUMMARY:

Per Government Code 53646, the Statement of Investment Policy is to be reviewed and submitted annually to the City Council for approval. The Investment Policy serves as the guidance mechanism for the investment of City Funds.

RECOMMENDATION:

MAYOR AND CITY COUNCIL APPROVE THE ANNUAL STATEMENT OF INVESTMENT POLICY AS SUBMITTED FOR FISCAL YEAR 2011-2012.

CITY OF CORNING
STATEMENT OF INVESTMENT POLICY

I. Introduction:

The purpose of this document is to identify various policies that enhance opportunities for a prudent and systematic investment policy and to organize and formalize investment-related activities. Related activities that comprise good cash management include accurate cash projections, expeditious collection of revenue, control of disbursements, and cost effective banking relations.

II. Scope:

The Investment Policy covers all funds and investment activities under the direct authority of the City of Corning.

III. Objective:

- A. Safety:** Safety of principal is the foremost objective of the investment program. Investments of the City of Corning shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio.
- B. Liquidity:** An adequate percentage of the portfolio will be maintained in liquid, short-term securities which can be converted to cash if necessary to meet disbursements requirements. Since all cash requirements cannot be anticipated, investments in securities with active secondary or resale markets is highly recommended. Emphasis will be on low sensitivity to market risk.
- C. Yield:** Yield becomes a consideration only after the basic requirements of safety and liquidity have been met.
- D. Market-Average Rate of Return:** The investment portfolio shall be designed to attain a market average rate of return throughout budgetary and economic cycles, taking into account the City's risk constraints, the cash flow characteristics of the portfolio, State and Local Laws and Ordinances.
- E. Diversification:** The investment portfolio will be diversified to avoid incurring unreasonable and avoidable risks regarding either specific security types or individual financial instruments.
- F. Prudence:** The City of Corning adheres to the guidance provided by the "Prudent Man Rule" (Civil Code Section #2261), which obligates a fiduciary to ensure that: "...investment shall be made with the exercise of that degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment considering the probable safety of their capital as well as the probable income to be derived."
- G. Public Trust:** All participants in the investment process shall act as custodians of the public trust. Investment officials shall recognize that the investment portfolio is subject to public review and evaluation. The overall program shall be designed and managed with a degree of professionalism that is worthy of the public trust.

IV. Declaration of Authority:

The City Treasurer has the authority to invest funds in certain eligible securities (Government Code Section 53635).

V. Reporting:

The City Treasurer shall submit a quarterly investment report to the City Council, which shall include all the elements of the report as prescribed by Government Code Section 53646.

VI. Investment Instruments:

Investments for the City of Corning shall only be made in one or more of the following:

<u>Maximum Investment Instrument Financial Institution</u>	<u>Percentage Or Amount</u>	<u>Maximum Maturity</u>
A. Checking Accounts	Unlimited	N/A
B. Certificates of Deposits	Unlimited	5 Years
C. Local Agency Investment Fund	\$ 40 MM	N/A
D. Passbook Savings Accounts	Unlimited	N/A

VII. Internal Controls:

A system of internal controls shall be established to prevent losses of public funds arising from fraud, employee error, misrepresentation of third parties, unanticipated changes in financial markets, and imprudent actions by employees, and officers of the City.

VIII. Maturities:

Security purchases and holdings shall be maintained within statutory limits imposed by Government Code.

IX. Banks and Securities Dealers:

The City Treasurer, in selecting financial institutions for deposits and investments of the City funds, shall consider the credit worthiness of such institutions. The Treasurer shall continue to monitor financial institutions, credit characteristics and financial history throughout the period in which City funds are either deposited or invested.

X. Risk Tolerance:

The City of Corning recognized that investment risk can result from issuer defaults, market price changes or various technical complications leading to temporary illiquidity. Portfolio diversification is employed as a way to control risk. No individual investment transaction shall be undertaken which jeopardizes the total capital position of the overall portfolio. The Treasurer shall periodically establish guidelines and strategies to control risk of default, market price changes, and illiquidity. A competitive bid process, when practical, will be used to place investments.

XI. Statement of Investment Policy:

This Statement of Investment Policy shall be reviewed and submitted annually to the City Council.

Date

Stephen J. Kimbrough, City Manager

ITEM NO. K-16
SOLANO STREET REPAVING PLAN AND LONG
TERM FUNDING PLAN; 2011 STREET PAVING
PROJECT

JUNE 28, 2011

TO: CITY COUNCIL OF THE CITY OF CORNING, CALIFORNIA

FROM: STEPHEN J. KIMBROUGH, CITY MANAGER
JOHN L. BREWER, AICP; PUBLIC WORKS DIRECTOR
ED ANDERSON, CITY ENGINEER



SUMMARY:

Staff recommends the City Council approve the attached comprehensive plan for resurfacing Solano Street. Staff anticipates, due to the overall cost and limited City resources that the project must be spread over a number of budget years. For that reason, the plan divides the 2.32 mile street into nine (9) "segments" and further divided each segment into "sub-segments" marked A & B. Segregating in this manner provides flexibility to pick and choose to fit repair priorities as well as future budgeting limits.

BACKGROUND:

Solano Street is the main street in Corning. It's the primary east-west arterial, and the longest single street in the City. It also serves as a "gateway" to the City that connects the downtown commercial core to the interstate. For all those reasons, Solano Street is an important part of Corning's image. It really needs to present an inviting surface that encourages residents and visitors and alike to want to do business here. At this time much of its surface is cracked, rutted, potholed and "alligatered". The entire length really needs resurfacing.

The overall length is 12,230 feet, or nearly 2.32 miles. The width varies from 35' on the east side of the freeway, to 56' through much of the City, then narrows to about 42 feet near the eastern edge of the City. The total area planned for resurfacing amounts to almost 622,000 sq. ft., or 14.28 acres.

SEGMENTS:

Due to its sheer size, resurfacing Solano Street resurfacing is a daunting task, particularly in terms of cost. Because we don't expect our street repair funding level to increase anytime soon, we opted to come up with a plan that divides the street into more manageable components. In that manner, we can "bite off" the smaller portions each year until we get the entire street resurfaced.

Please refer to the attached diagram titled "Solano Street Repaving Project-Segments". The diagram shows how we propose to divide the entire length of the street into nine (9) smaller, more-manageable segments. (Note that there's no significance to the number 9-it could just have as well been 10 segments).

The nine segments are then each broken into two smaller parts; "A" & "B", resulting in eighteen separate sub-segments. These sub-segments, vary from 260 to 1140 feet in length, and generally have common characteristics, such as width. Since some portions have more urgent repair needs than others, we expect the sub-segments will be quite useful for planning, budgetting and bidding purposes.

COST PROJECTIONS:

Utilizing the segments, we were then able to do some rough quantity and cost estimating. Please refer to the attached 11" X 17" spreadsheet marked "Solano Street Repaving Project-Segment Plan and Cost Estimates". At this time, we estimate the overall project, including pavement grinding, a 2" asphalt overlay, manhole/valve elevating, and pavement marking, will be nearly \$650,000.00. We've also prepared individual pages showing each segment, their respective lengths, and the expected project costs.

FUNDING PLAN:

The challenge of course, is to complete this major resurfacing project while at the same time keeping up with maintenance on other City Streets, all the while with limited budget resources. Our proposed FY 2011-2012 budget for asphalt concrete and materials totals \$285,900.00. If we spent that entire amount on Solano Street, we could repair about 44% of the street length. Of course that would ignore other streets that, in many cases, have repair needs that are more urgent than Solano Street.

See the attached drawing marked "Long Term Funding Plan" that illustrates a long-term funding plan to accomplish those goals. If acceptable, we'd use this plan as we prepared budgets and annual Repaving Projects for the foreseeable future. To summarize, the plan is to expend 80% of Materials and asphalt budgets for the 2011 (and subsequent) repaving projects.

That will leave 20% for ongoing material purchases for repairs throughout the remainder of the budget year. At the end of the year, any unexpended funds would roll into the following year's asphalt and materials funds.

Now, of that amount, the plan is to dedicate 70% for the Solano Street repaving project. The remaining 30% would be spent on resurfacing other streets determined to be of urgent needs. For this year, and based on the Draft 2011-2012 budget available at this writing, the chart below shows how those funding ratios would distribute.

Annual Repaving Funding Plan (based on Draft 2011-2012 Budget)	
Total FY 2011-2012 Materials/Asphalt Budget:	\$285,900.00
20% Reserve for <u>Ongoing</u> street repairs	- 57,180.00
80% Total Available for <u>2011 Repaving Project</u> :	\$228,720.00
Commit 70% to 2011 <u>Solano Street</u> Repaving Project	\$160,104.00
Leaves 30% for <u>other</u> Streets for 2011 repaving Project	\$ 68,616.00

These funding ratios would not be "set in stone", but instead be "guidelines" or "objectives" that could be adjusted as necessary to complete segments or respond to streets with more urgent repair needs. Note that at that \$160,000.00 funding level, the entire length of Solano Street could be repaved in four (4) years.

2011 STREET PAVING PROJECT:

If the Council concurs with the Funding Plan, staff will put together a 2011 Repaving Project based on those ratios and present the staff report at a subsequent meeting.

RECOMMENDATION:

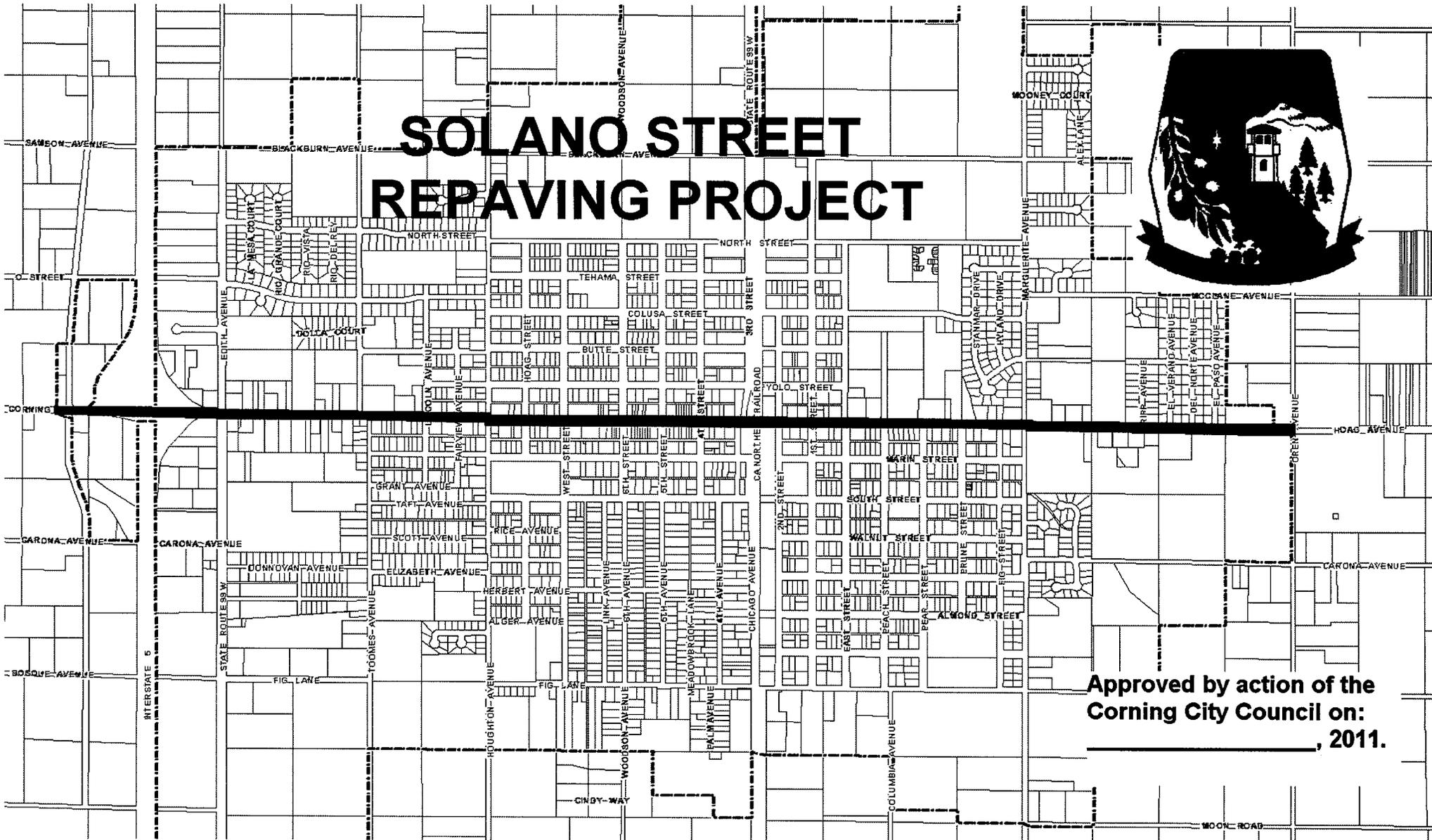
That the City Council:

- **APPROVE THE SOLANO STREET REPAVING PROJECT PLAN PRESENTED IN THIS STAFF REPORT, AND,**
- **APPROVE THE LONG TERM FUNDING PLAN PRESENTED BY STAFF TO ACCOMPLISH THE SOLANO STREET REPAVING PLAN WHILE MAINTAINING OTHER CITY STREETS, AND,**
- **DIRECT STAFF TO PREPARE A 2011 STREET REPAVING PROJECT THAT INCORPORATES THE SOLANO STREET REPAVING PROJECT AND IS CONSISTENT WITH THE LONG TERM FUNDING PLAN.**

SOLANO STREET REPAVING PROJECT

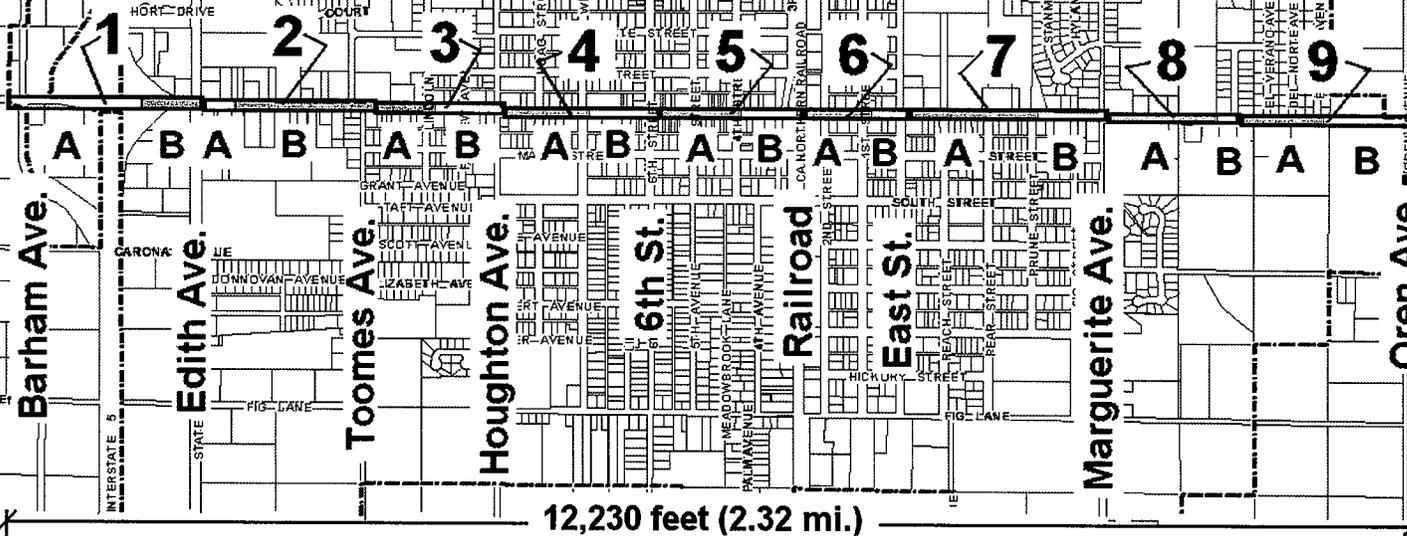


Approved by action of the
Corning City Council on:
_____, 2011.



Solano Street Repaving Project-Segments

June, 2011

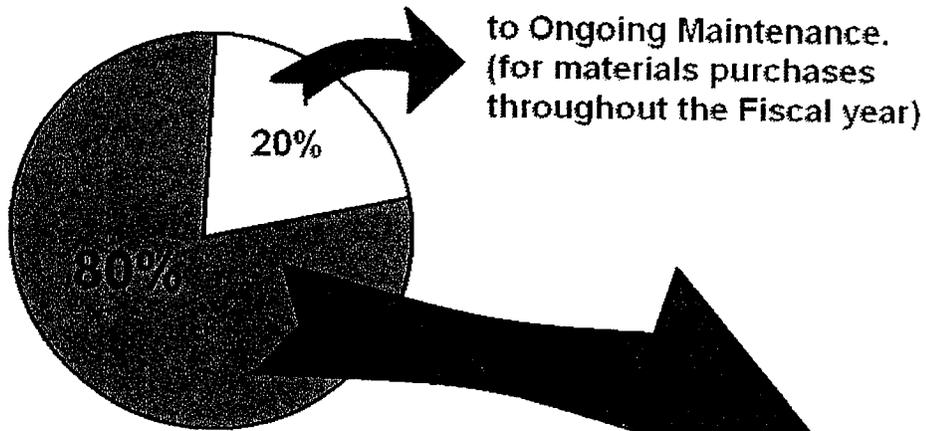


12,230 feet (2.32 mi.)

1695' 1510' 1090' 1340' 1270' 915' 1760' 1190' 1460'

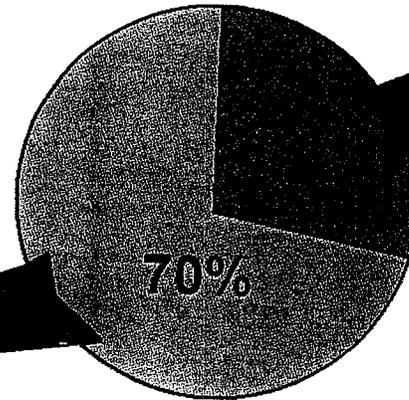
SOLANO STREET REPAVING PROJECT LONG TERM FUNDING PLAN

ANNUAL MATERIALS
AND ASPHALT FUNDS



ANNUAL
REPAVING
PROJECT

to repaving other
City streets



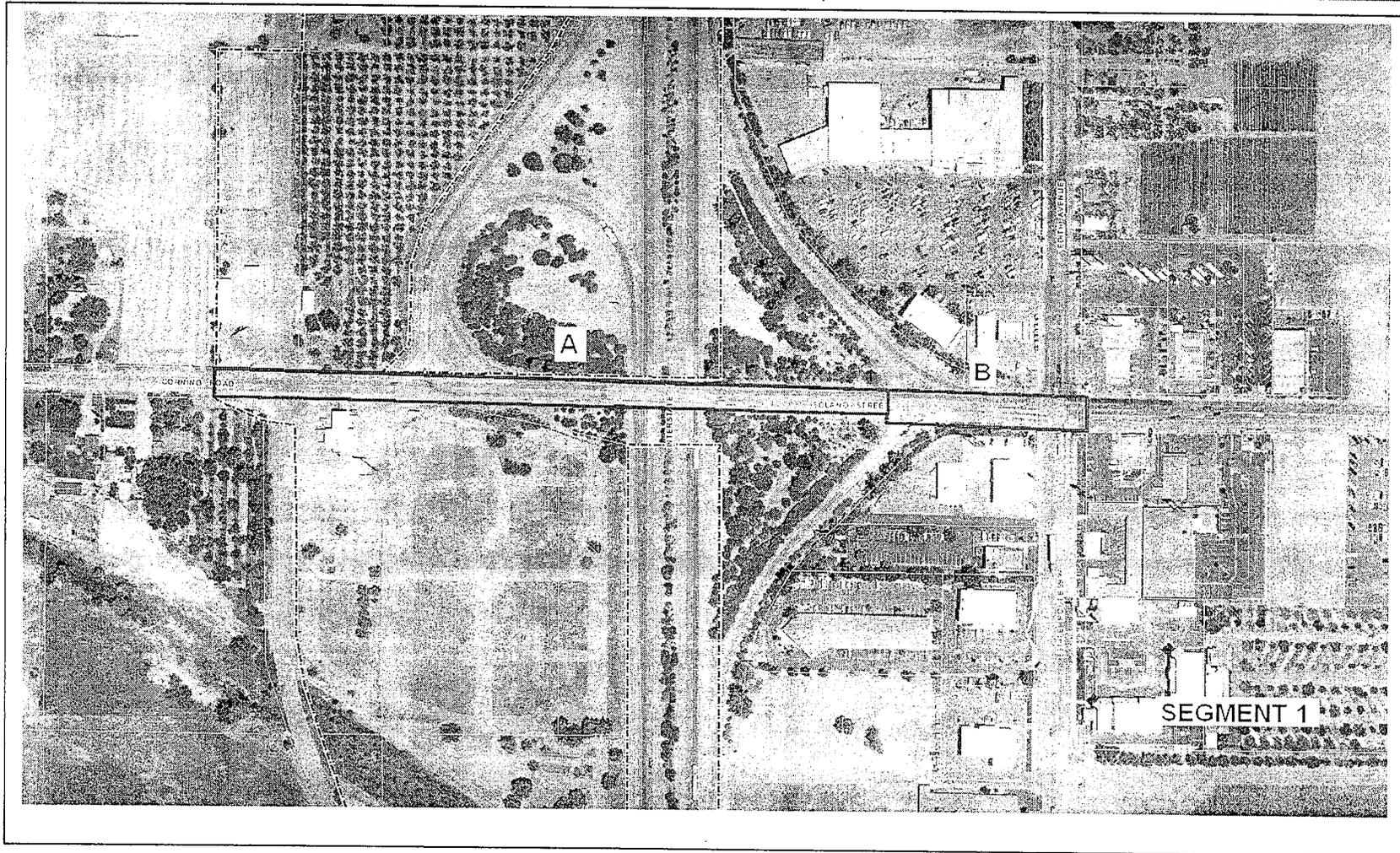
to Solano Street
Repaving Project

SOLANO STREET REPAVING PROJECT
Segment Plan and Cost Estimates

Segment	Sub-segment	Segment Description		Dimensions			Pavement Grinding					Asphalt				Valves & Manholes					Pavement Marking					Grand Total										
		From	To	Length	Width	Area	Grinding Length	Grinding Width	Grinding Area	Grinding Rate	Total Grinding Cost	Asphalt Thickness	Cubic Feet	feet/ton	Asphalt rate	Asphalt Material Cost	Asphalt Delivery Cost	Asphalt Delivery Cost	Total Asphalt Cost	Manhole Number	Manhole Rate	Manhole Cost	Valve Number	Valve Rate	Valve Cost		Total Manholes & Valves Cost	Striping Rate	Striping Cost	Crosswalk Length	Cost/ft	Crosswalk Total	Pavement Marking Total			
1	A	West City Limit	Edith Ave.	1320	35	46100	700	4	800	0.5	\$ 400.00	0.17	7854	13.3	590.53	66	\$ 38,974.74	6	\$ 3,543.16	\$ 42,517.89	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 1,188.00	0	3	\$ -	\$ 1,188.00	\$ 44,105.89	A	
	B	Northbound I-5 Ramps	Northbound I-5 Ramps	375	50	18750	620	4	2480	0.5	\$ 1,240.00	0.17	3187.5	13.3	238.66	66	\$ 15,817.67	6	\$ 1,437.97	\$ 17,255.63	1	200	\$ 200.00	3	100	\$ 300.00	\$ 500.00	0.3	\$ 337.50	300	3	\$ 900.00	\$ 1,237.50	\$ 20,493.14	B	
Segment Total:				1695		64950	1320	8	3280	0.5	\$ 1,640.00		11041.5	13.3	830.19	66	\$ 54,792.41	6	\$ 4,981.13	\$ 59,773.53						\$ 500.00	0.3	\$ 1,525.50	300	3	\$ 900.00	\$ 2,425.50	\$ 64,339.03	Check		
Check:																																				
2	A	Edith Avenue	Toomes Ave.	260	56	14560	520	4	2080	0.5	\$ 1,040.00	0.17	2475.2	13.3	186.11	66	\$ 12,282.95	6	\$ 1,116.63	\$ 13,399.58	2	200	\$ 400.00	1	100	\$ 100.00	\$ 500.00	0.3	\$ 234.00	0	3	\$ -	\$ 234.00	\$ 15,173.58	A	
	B	East side Liquor Cabinet	East end of Toomes Ave, Turn Lane	1250	56	70000	2540	4	10000	0.5	\$ 5,000.00	0.17	11900	13.3	898.74	66	\$ 59,052.83	6	\$ 5,368.42	\$ 64,421.25	5	200	\$ 1,000.00	2	100	\$ 200.00	\$ 1,200.00	0.3	\$ 1,125.00	700	3	\$ 1,200.00	\$ 2,325.00	\$ 72,946.05	B	
Segment Total:				1510		84560	3020	8	12080	0.5	\$ 6,040.00		14375.2	13.3	1080.84	66	\$ 71,335.58	6	\$ 6,485.05	\$ 77,820.63						\$ 1,700.00	0.3	\$ 1,359.00	700	3	\$ 1,200.00	\$ 2,559.00	\$ 84,119.63	Check		
Check:																																				
3	A	Toomes Avenue	Houghton Avenue	400	46	23540	980	4	3920	0.5	\$ 1,940.00	0.17	3831.8	13.3	288.11	66	\$ 19,014.95	6	\$ 1,738.63	\$ 20,753.58	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 441.00	0	3	\$ -	\$ 441.00	\$ 23,144.58	A	
	B	East end Toomes Ave, Turn lane	Lincoln Avenue	600	46	27600	1200	4	4800	0.5	\$ 2,400.00	0.17	4692	13.3	352.78	66	\$ 23,281.61	6	\$ 2,116.69	\$ 25,400.30	0	200	\$ -	1	100	\$ 100.00	\$ 100.00	0.3	\$ 240.00	220	3	\$ 1,320.00	\$ 1,460.00	\$ 27,160.30	B	
Segment Total:				1090		50140	2180	8	8720	0.5	\$ 4,340.00		8523.8	13.3	640.89	66	\$ 42,296.56	6	\$ 3,855.32	\$ 46,143.88						\$ 300.00	0.3	\$ 681.00	220	3	\$ 1,320.00	\$ 2,001.00	\$ 48,119.63	Check		
Check:																																				
4	A	Houghton Avenue	6th Street	760	56	42560	1520	4	6080	0.5	\$ 3,040.00	0.17	7235.2	13.3	544.00	66	\$ 35,904.00	6	\$ 3,264.00	\$ 39,168.00	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 484.00	500	3	\$ 3,000.00	\$ 3,484.00	\$ 45,692.00	A	
	B	X-walk at E. side Houghton Ave.	X-walk at E. side West St.	580	56	32480	1150	4	4640	0.5	\$ 2,320.00	0.17	5521.6	13.3	415.16	66	\$ 27,400.42	6	\$ 2,490.95	\$ 29,891.37	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 522.00	250	3	\$ 1,500.00	\$ 2,022.00	\$ 32,333.37	B	
Segment Total:				1340		75040	2670	8	10720	0.5	\$ 5,360.00		12756.8	13.3	959.16	66	\$ 64,304.42	6	\$ 5,754.95	\$ 70,059.37						\$ 100.00	0.3	\$ 1,004.00	750	3	\$ 2,250.00	\$ 3,254.00	\$ 73,313.37	Check		
Check:																																				
5	A	6th Street	Railroad X'ing	765	56	42840	1530	4	6120	0.5	\$ 3,060.00	0.17	7282.8	13.3	547.88	66	\$ 36,140.21	6	\$ 3,285.67	\$ 39,425.88	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 684.00	500	3	\$ 3,000.00	\$ 3,684.00	\$ 46,174.18	A	
	B	X-walk at E. side 6th St.	X-walk at E. side 4th St.	505	56	28280	1010	4	4040	0.5	\$ 2,020.00	0.17	4892.6	13.3	361.47	66	\$ 23,857.26	6	\$ 2,168.84	\$ 26,026.11	0	200	\$ -	1	100	\$ 100.00	\$ 100.00	0.3	\$ 584.00	500	3	\$ 3,000.00	\$ 3,584.00	\$ 46,174.18	B	
Segment Total:				1270		71120	2540	8	10160	0.5	\$ 5,080.00		12095.4	13.3	909.35	66	\$ 59,997.47	6	\$ 5,454.52	\$ 65,451.99						\$ 200.00	0.3	\$ 1,268.00	1000	3	\$ 3,000.00	\$ 4,268.00	\$ 76,974.79	Check		
Check:																																				
6	A	Railroad X'ing	East Street	600	56	33600	1200	4	4800	0.5	\$ 2,400.00	0.17	5712	13.3	429.47	66	\$ 28,345.26	6	\$ 2,576.64	\$ 30,921.91	0	200	\$ -	8	100	\$ 800.00	\$ 800.00	0.3	\$ 180.00	250	3	\$ 1,500.00	\$ 1,680.00	\$ 35,802.11	A	
	B	East side First Street	East side East Street	315	56	17640	630	4	2520	0.5	\$ 1,260.00	0.17	2998.8	13.3	225.47	66	\$ 14,881.26	6	\$ 1,352.84	\$ 16,234.11	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 94.50	250	3	\$ 1,500.00	\$ 1,594.50	\$ 19,368.61	B	
Segment Total:				915		51240	1830	8	7320	0.5	\$ 3,660.00		8710.8	13.3	654.95	66	\$ 43,226.53	6	\$ 3,929.48	\$ 47,156.01						\$ 1,100.00	0.3	\$ 274.50	500	3	\$ 1,500.00	\$ 2,274.50	\$ 55,190.71	Check		
Check:																																				
7	A	East Street	Marguerite Avenue	1140	56	63840	2280	4	9120	0.5	\$ 4,560.00	0.17	10852.8	13.3	816.00	66	\$ 53,856.00	6	\$ 4,896.00	\$ 58,752.00	0	200	\$ -	3	100	\$ 300.00	\$ 300.00	0.3	\$ 342.00	350	3	\$ 2,100.00	\$ 2,442.00	\$ 66,054.00	A	
	B	Prune Street	X-walk at E. side Marguerite Ave.	620	56	34720	1280	4	4960	0.5	\$ 2,480.00	0.17	5992.4	13.3	449.79	66	\$ 29,790.11	6	\$ 2,662.74	\$ 31,952.84	0	200	\$ -	4	100	\$ 400.00	\$ 400.00	0.3	\$ 186.00	300	3	\$ 1,800.00	\$ 2,186.00	\$ 36,818.84	B	
Segment Total:				1760		98560	3560	8	14080	0.5	\$ 7,040.00		16845.2	13.3	1265.79	66	\$ 83,146.11	6	\$ 7,558.74	\$ 90,704.84						\$ 700.00	0.3	\$ 528.00	650	3	\$ 1,800.00	\$ 2,308.00	\$ 93,012.84	Check		
Check:																																				
8	A	Marguerite Avenue	Fripp Avenue	550	50	27500	1100	4	4400	0.5	\$ 2,200.00	0.17	5510	13.3	421.80	66	\$ 27,830.10	6	\$ 2,454.34	\$ 30,284.44	0	200	\$ -	3	100	\$ 300.00	\$ 300.00	0.3	\$ 165.00	0	3	\$ -	\$ 165.00	\$ 33,034.92	A	
	B	X-walk at E. side Marguerite Ave.	NE Prop Cor Corning Med.	640	50	32000	270	4	1080	0.5	\$ 540.00	0.17	5440	13.3	409.02	66	\$ 26,955.49	6	\$ 2,454.34	\$ 29,409.83	0	200	\$ -	1	100	\$ 100.00	\$ 100.00	0.3	\$ 192.00	0	3	\$ -	\$ 192.00	\$ 30,181.83	B	
Segment Total:				1190		60000	1370	8	5480	0.5	\$ 2,740.00		10950	13.3	830.82	66	\$ 54,785.59	6	\$ 4,908.68	\$ 59,694.27						\$ 400.00	0.3	\$ 357.00	0	3	\$ -	\$ 357.00	\$ 60,216.55	Check		
Check:																																				
9	A	Fripp Avenue	East City Limit-Oren Avenue	700	42	29400	1125	4	4500	0.5	\$ 2,250.00	0.17	4998	13.3	375.79	66	\$ 24,807.11	6	\$ 2,254.74	\$ 27,061.84	0	200	\$ -	5	100	\$ 500.00	\$ 500.00	0.3	\$ 210.00	0	3	\$ -	\$ 210.00	\$ 30,216.84	A	
	B	E. side Frisp Ave.	E. side El Paso Ave.	760	42	31920	85	4	340	0.5	\$ 170.00	0.17	5426.4	13.3	408.00	66	\$ 26,928.00	6	\$ 2,448.00	\$ 29,376.00	0	200	\$ -	0	100	\$ -	\$ -	0.3	\$ 210.00	0	3	\$ -	\$ 210.00	\$ 30,216.84	B	
Segment Total:				1460		61320	1210	8	4940	0.5	\$ 2,420.00		10424.4	13.3	783.79	66	\$ 51,735.11	6	\$ 4,702.74	\$ 56,437.84						\$ 500.00	0.3	\$ 420.00	0	3	\$ -	\$ 420.00	\$ 59,790.84	Check		
Check:																																				
Totals:				12310	feet 3.73 miles	621,930	sq. ft. 14.28 acres													\$ 58,340.00	\$ 572,352.65					\$ 5,100.00	\$ 5,100.00	0.3	\$ 438.00	0	3	\$ -	\$ 438.00	\$ 59,790.84	Check	

Check: \$ 643,236.65

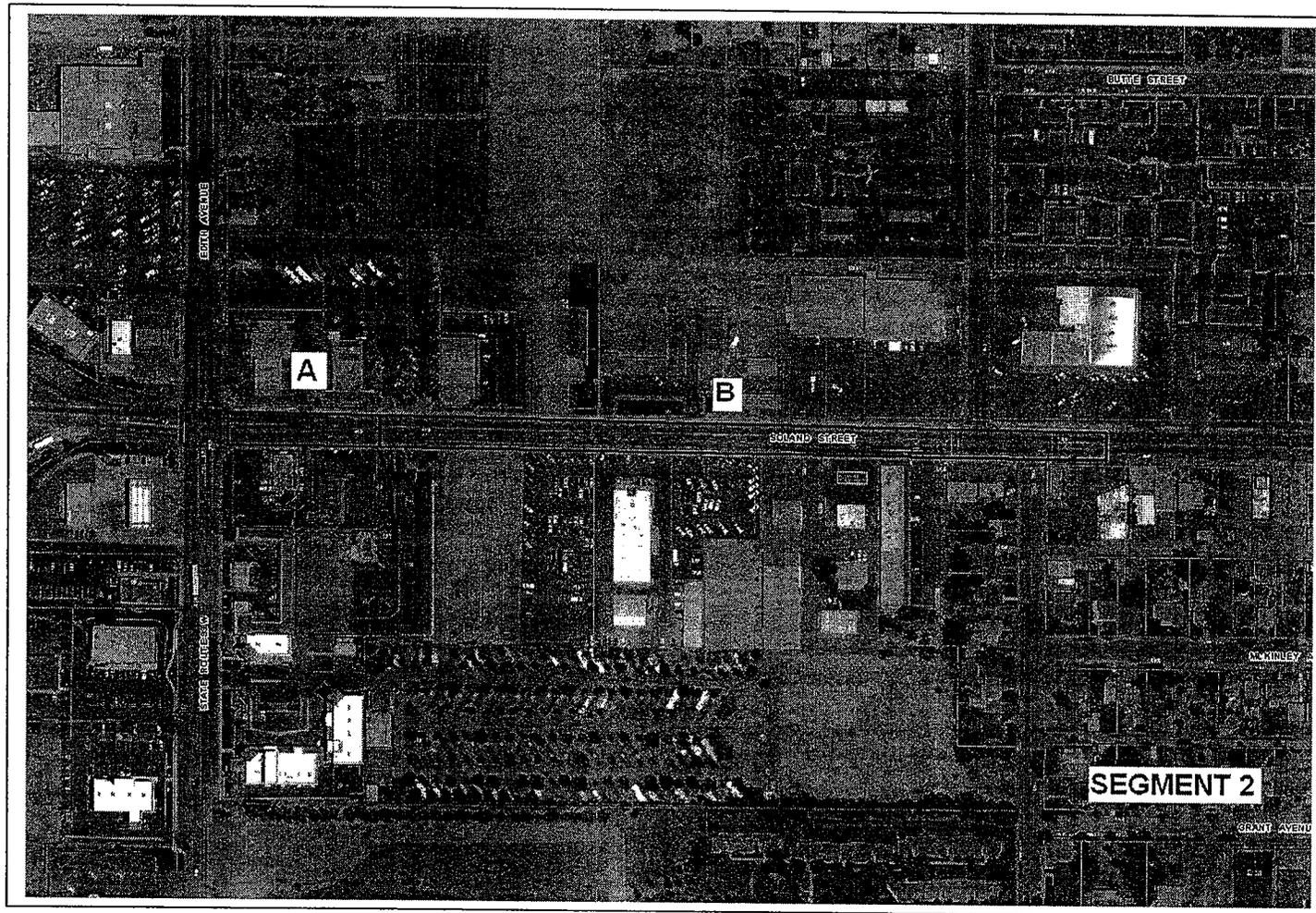
SOLANO STREET REPAVING PROJECT-SEGMENT NO. 1



Sub-segment 1A-Length: 1,320 feet
 Sub-segment 1B: 375 feet
 Segment 1-Overall 1,695 feet

Estimated Sub-segment Imp. Cost: \$44,105.89
 Estimated Sub-segment Imp. Cost: \$20,233.14
 Estimated Segment 1Improvement Cost: \$64,339.03

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 2

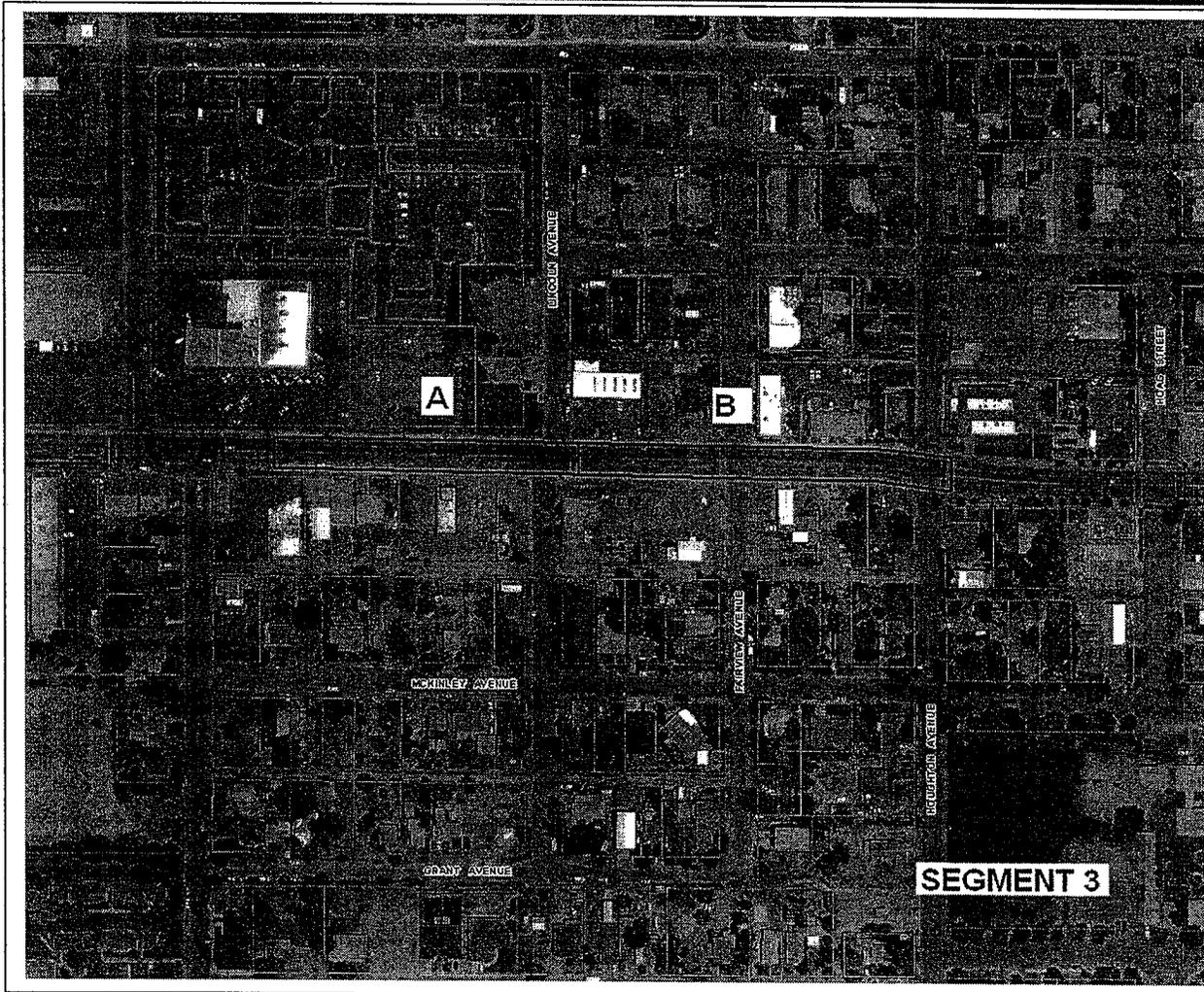


Sub-segment 2A-Length: 260 feet
Sub-segment 2B: 1,250 feet
Segment 2-Overall 1,510 feet

Estimated Sub-segment Imp. Cost: \$15,173.58
Estimated Sub-segment Imp. Cost: \$72,946.05
Estimated Segment 2 Improvement Cost: \$88,119.63

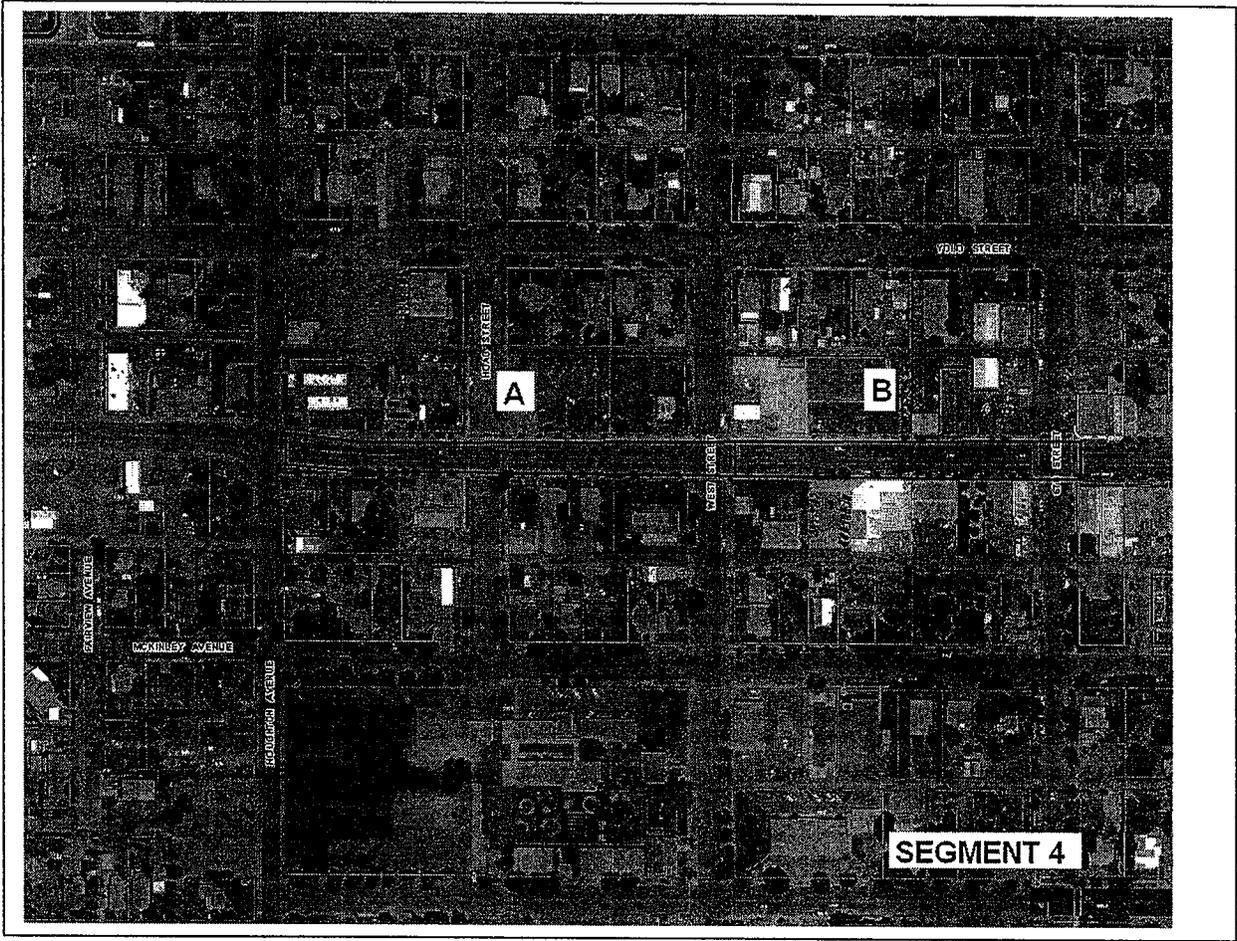
Printed: 6/23/2011

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 3



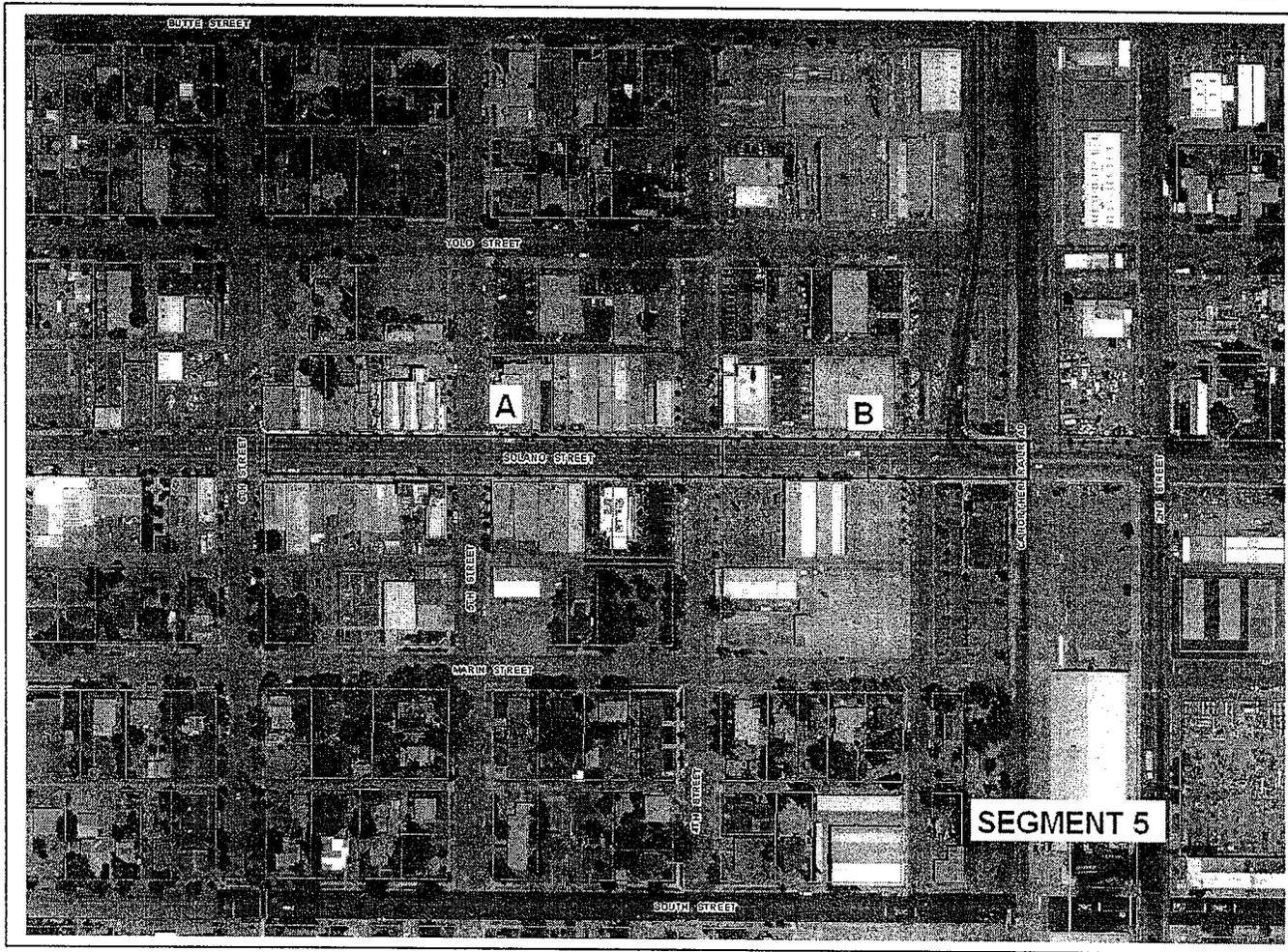
Sub-segment 3A-Length:	490 feet	Estimated Sub-segment Imp. Cost:	\$23,144.58
Sub-segment 3B:	<u>600 feet</u>	Estimated Sub-segment Imp. Cost:	<u>\$29,760.30</u>
Segment 3-Overall	1090 feet	Estimated Segment 3 Improvement Cost:	\$52,904.88

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 4



Sub-segment 4A-Length:	760 feet	Estimated Sub-segment Imp. Cost:	\$45,892.00
Sub-segment 4B:	<u>580 feet</u>	Estimated Sub-segment Imp. Cost:	<u>\$34,233.37</u>
Segment 4-Overall	1,140 feet	Estimated Segment 4 Improvement Cost:	\$80,125.37

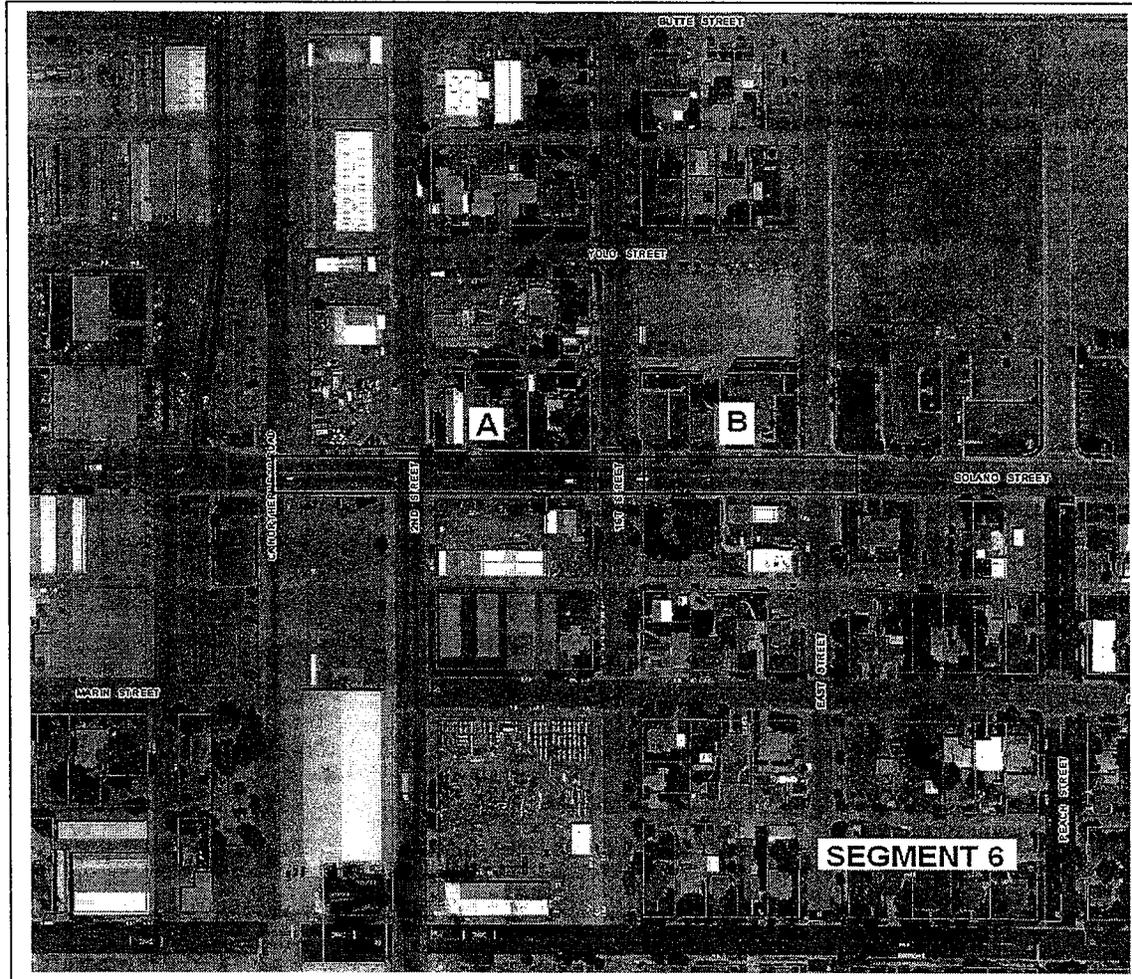
SOLANO STREET REPAVING PROJECT-SEGMENT NO. 5



Sub-segment 5A-Length: 765 feet
 Sub-segment 5B: 505 feet
 Segment 5-Overall 1,270 feet

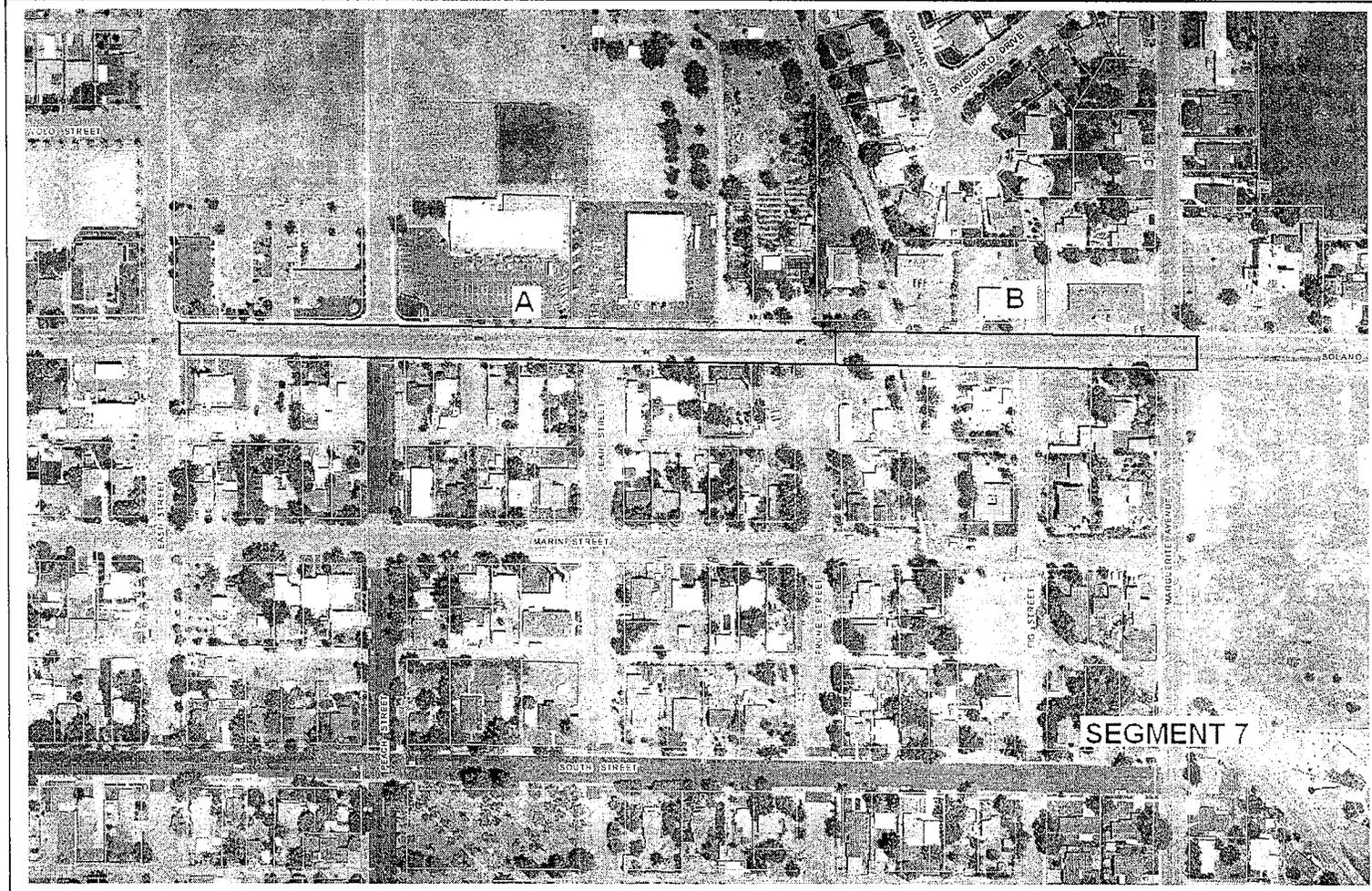
Estimated Sub-segment Imp. Cost: \$46,174.18
 Estimated Sub-segment Imp. Cost: \$30,400.61
 Estimated Segment 5 Improvement Cost: \$76,574.79

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 6



Sub-segment 6A-Length:	600 feet	Estimated Sub-segment Imp. Cost:	\$35,802.11
Sub-segment 6B:	<u>315 feet</u>	Estimated Sub-segment Imp. Cost:	<u>\$19,388.61</u>
Segment 6-Overall	915 feet	Estimated Segment 6 Improvement Cost:	\$55,190.71

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 7



Sub-segment 7A-Length: 1,140 feet
 Sub-segment 7B: 620 feet
 Segment 7-Overall 1,760 feet

Estimated Sub-segment Imp. Cost: \$66,054.00
 Estimated Sub-segment Imp. Cost: \$36,818.84
 Estimated Segment 7 Improvement Cost: \$102,872.84

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 8



Sub-segment 8A-Length: 550 feet
 Sub-segment 8B: 640 feet
 Segment 8-Overall 1,760 feet

Estimated Sub-segment Imp. Cost: \$33,034.92
 Estimated Sub-segment Imp. Cost: \$30,281.62
 Estimated Segment 8 Improvement Cost: \$63,316.55

SOLANO STREET REPAVING PROJECT-SEGMENT NO. 9



Sub-segment 9A-Length:	700 feet	Estimated Sub-segment Imp. Cost:	\$30,016.84
Sub-segment 9B:	<u>760 feet</u>	Estimated Sub-segment Imp. Cost:	<u>\$29,774.00</u>
Segment 9-Overall	1,460 feet	Estimated Segment 9 Improvement Cost:	\$59,790.84

ITEM NO: K-17
ADOPT RESOLUTION NO. 06-28-2011-04
AND APPROVE 2011-2012 PROGRAM OF
SERVICE AND ANNUAL BUDGET
JUNE 28, 2011

TO: HONORABLE MAYOR AND COUNCIL MEMBERS
OF THE CITY OF CORNING



FROM: STEPHEN J. KIMBROUGH CITY MANAGER

SUMMARY:

The Annual Budget for 2011-2012 is being presented to the City Council for adoption tonight following review and work by the City Council and City Staff.

The Budget is, of course, important to the City; it represents the financial plan that supports the "Program of Service" defining the City Council's policies for the delivery of service in the Community.

THREE FUNDING RECOMMENDATIONS INCLUDED:

Please refer to the report dated June 23, 2011 in the Budget Book. This provides a full review of the proposed Budget and the financial situation based upon information available as of this date.

The three funding recommendations for the Public Works Department, the fire Department and the Police Department are added to the Fund amounts in the Resolution.

Also in the General Fund, the Sewer Fund and the Water Fund is \$20,931; this will fund the transition training period for the new Assistant Director of Public Works if the City Council approves the funding of the transition.

ACTION NEEDED AT THIS TIME:

Immediately following this Staff Report is the Resolution of the City Council adopting the Budget for the Program of Service for the coming year, 2011-2012. Only the General Fund, 001, is discretionary in its use. All of the other Funds listed are special purpose Funds dedicated by the city code or state law to a particular use like road maintenance or sewer maintenance.

The Budget Resolution sets the Appropriation of expected Revenue for each Fund. A Fund represents a specific revenue source such as "Sec. 2106 Gas Tax" or group of revenues as found in the General Fund. Then the Resolution establishes the limit on Expenditures as reflected in the budget. The last column shows the amount of reserve funds to be expended or the balance of the year's revenue to be returned to the Reserve for future use. Actual Fund balances are shown in the Annual Audit.

RECOMMENDATION

MAYOR AND COUNCIL ADOPT RESOLUTION 06-28-2011-04 SETTING THE APPROPRIATION AND EXPENDITURE LIMITS FOR ALL CITY FUNDS TO IMPLEMENT THE 2011-2012 PROGRAM OF SERVICE AND ANNUAL BUDGET.

RESOLUTION NO. 06-28-2011-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CORNING ADOPTING THE ANNUAL PROGRAM OF SERVICES AND CITY BUDGET FOR FISCAL YEAR 2011-2012

WHEREAS, the City Council received the proposed Budget and Program of Service on June 17, 2011 to read and review and a special public meeting was held on June 23, 2011 and met again on June 28, 2011 for public discussion.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Corning approves the Annual Program of Service and Budget, with changes, by adopting the Appropriations and Expenditures for each City Fund as listed in the following table:

<u>FUND DESCRIPTION</u>	<u>ESTIMATED REVENUE AND TRANSFERS</u>	<u>APPROPRIATED EXPEND. & TRANS</u>	<u>RESERVE USED / CARRY OVER</u>
001 General Fund	\$3,828,430	\$4,192,570	\$(364,140) ¹
071 PD Equip. Replace. Fund	\$ -0-	\$ -0-	\$(-0-)
072 ACO F & A	\$ 3,100	\$ 5,500	\$ (2,400)
076 Fire Equip. Replace. Fund	\$ 48,808	\$ 47,375	\$ 1,433
078 PW Equip Replace. Fund	\$ -0-	\$ -0-	\$ -0-
105 Rural Planning	\$ 29,000	\$ 34,850	\$ (5,850)
107 Prop. One B Close June 30, 2011	\$ -0-	\$ -0-	\$ -0-
108 Federal Programs	\$ 500	\$ 29,300	\$ (28,800)
109 Gas Tax	\$ 38,555	\$ 56,222	\$ (17,667)
110 Gas Tax / 2106	\$ 40,000	\$ 64,988	\$ 24,988
111 Gas Tax / 2107	\$ 53,500	\$ 156,300	\$ (102,800)
112 Gas Tax	\$ 2,000	\$ 2,000	\$ -0-
114 Tr. Sales Tax	\$ 500	\$ 32,500	\$ (32,500)
115 Gas Tax 2103	\$ 82,500	\$ 101,600	\$ (19,100)
116 Traffic Mitigation Fees	\$ 20,000	\$ 24,618	\$ (4,618)
117 Loleta Ave Close Fund June 30, 2010	\$ -0-	\$ -0-	\$ -0-
130 Rodger's T. Restoration	\$ 25,000	\$ 25,000	\$ -0-
130 Energy Grant	\$ 8,946	\$ 8,946	\$ -0-
150 Planning Envir. Review	\$ -0-	\$ -0-	\$ -0-
152 Flood Mitigation Grant	\$ 59,000	\$ 59,000	\$ -0-
164 Office/Traffic Safety 2	\$ 24,285	\$ 24,285	\$ -0-
170 Abandoned Vehicles	\$ 4,300	\$ 12,431	\$ (8,131)
188 SAFE Grant Close Fund June 30, 2011	\$ -0-	\$ -0-	\$ -0-
308 Housing Element Close Fund June 30, 2011	\$ 800,000	\$ 867,000	\$ (67,000)

RESOLUTION NO. 06-28-2011-04, page 2

<u>FUND DESCRIPTION</u>	<u>ESTIMATED REVENUE AND TRANSFERS</u>	<u>APPROPRIATED EXPEND. & TRANS</u>	<u>RESERVE USED / CARRY OVER</u>
322 CDBG '08 Blackburn	\$ -0-	\$ -0-	\$ -0-
323 Prog. Income Unrestricted	\$ -0-	\$ -0-	\$ -0-
324 Prog. Housing - Restricted	\$ -0-	\$ -0-	\$ -0-
325 Program Income ED	\$ 1,500	\$ 1,500	\$ -0-
326 Program Income General	\$ 500	\$ -0-	\$ 500
327 Housing Acquisition RLF	\$ -0-	\$ -0-	\$ -0-
328 Housing Rehab. RLF	\$ -0-	\$ -0-	\$ -0-
329 Housing New Const. RLF	\$ -0-	\$ -0-	\$ -0-
341 Park Acquisition	\$ 12,200	\$ 17,677	\$ (5,477)
344 Salado Wall	\$ 500	\$ 92,000	\$ (91,500)
345 Drainage	\$ 11,000	\$ 10,263	\$ 736
346 Water Capital Improve.	\$ 6,500	\$ 35,000	\$ (606,500)
347 Sewer Capital Improve.	\$ 2,500	\$ 2,000	\$ 500
348 WWTP Sewer	\$ 234,000	\$ 234,160	\$ (160)
352 Park & Rec. Revolving Fund	\$ -0-	\$ -0-	\$ -0-
353 Park Volunteer Fund Close Fund June 30, 2011	\$ -0-	\$ -0-	\$ -0-
354 State Prop. 84 Park Grant	\$4,276,800	\$3,755,800	\$ 521,000
355 Parkland Acquisition	\$ 2,600	\$ -0-	\$ (2,600)
356 Trail Development	\$ -0-	\$ -0-	\$ -0-
365 Curb/Gutter-Revolving	\$ -0-	\$ -0-	\$ -0-
380 WWTP Capital Replace	\$ 60,000	\$ 70,000	\$ (10,000)
381 Sewer Capital Replace.	\$ 20,400	\$ 72,000	\$ (51,600)
383 Water Capital Replace.	\$ 75,500	\$ 22,500	\$ 53,000
384 Clark Park Well	\$ 613,000	\$ 613,000	\$ -0-
401 J. T. Levy	\$ 500	\$ 500	\$ -0-
402 Rodgers Theatre Trust	\$ 500	\$ 22,000	\$ (21,850)
403 Ridell Library Trust	\$ 500	\$ 11,000	\$ (10,500)
610 Sewer Enterprise	\$ 1,549,200	\$1,354,021	\$ 295,185
611 Sewer Rate Coven. Fund	\$ -0-	\$ -0-	\$ -0-
615 Solid Waste	\$ 406,000	\$ 406,000	\$ -0-
620 Airport	\$ 23,979	\$ 22,500	\$ 1,479
621 Airport CIP Close Fund June 30, 2011	\$ 1,215,000	\$ 1,215,000	\$ -0-
625 Transportation Center	\$ 18,220	\$ 16,500	\$ 1,720
630 Water Enterprise	\$ 1,262,274	\$ 1,264,251	\$ (1,977)
701 Lighting & Landscape Dist.	\$ 1,090	\$ 900	\$ 190

RESOLUTION NO. 06-28-2011-04, page 3

<u>FUND DESCRIPTION</u>	<u>ESTIMATED REVENUE AND TRANSFERS</u>	<u>APPROPRIATED EXPEND. & TRANS</u>	<u>RESERVE USED / CARRY OVER</u>
703 Lighting & Landscape Dist.	\$ 3,000	\$ 3,800	\$ (800)
704 Lighting & Landscape Dist.	\$ 4,825	\$ 4,300	\$ 525

BE IT FURTHER RESOLVED, that the City Council hereby maintains the following policies:

1. The Annual System Replacement commitment from the Sewer Enterprise Fund as mandated in the Federal Wastewater Treatment Plant Construction Grant is committed to pay debt service for Sewer Replacement Bonds.
2. Public Safety Sales Tax, approved by the voters in Prop. 172, is distributed between the Police Equipment Replacement Fund 071 and Fire Equipment Replacement Fund 076. Upon receipt, funds shall be deposited into the General Fund Revenue Account #001-4122, and become a part of the annual transfer in support of the Fire Equipment Replacement Fund #076.
3. Should the State Indian Gaming money be received this year, it shall be deposited in the General Fund Revenue Acct. 001-4160 to be used for the funding of front-line law enforcement personnel costs.
4. From the General Fund 001, transfer \$-0- to the Police Equipment Replacement Fund 071.
5. From the General Fund 001, transfer \$22,000 to the Fire Equipment Replacement Fund 076.
6. Deposit Fire Dispatch Contract income into the General Fund revenue account #001-4671 to support the Fire dispatch center.
7. From the General Fund 001, transfer \$-0- to Public Works Equipment Replacement Fund 078.
8. \$55,000 per year for Equipment Replacement shall be transferred annually from the Sewer Enterprise Fund 610 to the Wastewater Treatment Plant Capital Replacement Fund #380.
9. \$18,800 per year for Equipment Replacement shall be transferred annually from the Sewer Enterprise Fund #610 to the Sewer Capital Replacement Fund #381.
10. \$103,000 per year shall be transferred annually from the Water Enterprise Fund #630 to the Water Capital Replacement Fund #383.
11. The \$5,000 Annual rent for PAL Program Use shall be paid to the Transportation Center Fund #625 by the General Fund #001.
12. Authorize City Manager to make annual year end transfer of Unrestricted CDBG Program Income into its separate Fund, Fund #323, in order to segregate funds available for use.
13. Transfer to the General Fund #001, prior to June 30, 2011, the excess interest earned from the Solid Waste Fund 615, equal to the June 30, 2011, Fund #615 balance less the amount payable to Waste Management, Inc.

RESOLUTION NO. 06-28-2011-04, page 4

The foregoing Resolution was adopted at a regular meeting of the City Council of the City of Corning, held on June 28, 2011, by the following vote:

AYES:

NOES:

ABSTAINING:

ABSENT:

Gary R. Strack, Mayor

ATTEST:

Lisa M. Linnet, City Clerk

General Fund Summary

June 28, 2011

Here is this year's **2010 - 2011 Budget** as amended during the year.

	Approved Budget	June 1 Actual	June 2011 Year End "Guess"
Budgeted Revenue	\$3,543,311	\$3,798,922	\$4,000,000
Budgeted Expenditures	<u>3,955,664</u>	<u>3,753,746</u>	<u>4,125,000</u>
Budget Net	\$ (412,353)	\$ 45,175	\$ (125,000)

General Fund Beginning Balance July 1, 2010 ¹	\$ 793,588
Less Actual net revenue or (deficit) for Year End	\$ (125,000)
Estimated Reserve at Year End June 30, 2011	\$ 668,588
Set-aside Operating Reserve of \$500,000 leaves a balance available of	\$ 168,588

Next Year's 2011 - 2012 Annual Budget

Projected Revenue	\$ 3,828,430
Proposed Expenditures <i>Includes Furlough savings, full-time Planning Director, half-time City Manager and Police Chief</i>	<u>\$ 4,117,758</u>
General Fund Operating Deficit	\$ (289,328)
Projects Added on June 23, 2011 By City Council	
Public Works Truck	<i>no cost to General Fund</i>
Fire Hall Painting and Floor	\$18,000
Police Vehicle	\$15,000
Police Radio Repeater	\$ 8,000
Police Dispatch Software and Server	<u>\$31,719</u>
	\$72,719
Total Proposed General Fund Expenditures	<u>\$ 4,190,477</u>
Funds Needed from Reserve	\$ 362,047
Known but not received Funds to support the Budget	
NCCSIF Insurance Rebate ² (arrive June 2011)	\$ 132,839
Planning Director County Contract Income ³	\$ 25,675
Recovery of Sales Tax Annual Income ⁴	\$ 150,000
Total one-time Funds	\$ <u>308,514</u>
Net Funds Needed from Available Reserve	\$ 53,533
Estimated Available Reserve at Year End June 30, 2012	\$ 115,055

¹ Source: Annual Audit

² Corning is a member city of the Northern California Cities Self Insurance Fund. Continued low Liability and Workers' Compensation claims have led to rebates of deposits (or premiums).

³ \$25,675 is 44.7% of the City General Fund share of half of the Planning Director cost. The City provides Tehama County with half time Planning Director services through contract during the economic recession.

⁴ The projected additional Sales Tax income returning to the City after misallocation is estimated to average \$50,000 per Tax Quarter for the 4th Qtr 2009, 1st Qtr and 2nd Qtr 2010.