

**AGREEMENT
CITY OF FRESNO, CALIFORNIA
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effect on March 1, 2020, by and between the CITY OF FRESNO, a California municipal corporation (City), and Fleming & Sons, LLC, a California Limited Liability Corporation (Consultant).

RECITALS

WHEREAS, City desires to obtain professional tree maintenance and removal services for Camp Fresno and Camp Fresno Jr. (the Project); and

WHEREAS, Consultant is engaged in the business of furnishing services as a professional tree service provider and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, Consultant acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, Consultant acknowledges that this Agreement is for "on demand" tree services; and

WHEREAS, this Agreement will be administered for City by its Parks, After School, Recreation and Community Services (PARCS) Director (Administrator) or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Scope of Services. Consultant shall perform to the satisfaction of City the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through December 31, 2022, subject to any earlier termination in accordance with this Agreement. The services of Consultant as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

3. Compensation.

(a) Consultant's sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee as determined and predicated on the mandated number and size of tree removal requirements of the U.S. Forestry Department and shall not exceed the per tree cost as

determined on **Exhibit D** – meaning total fee will vary each of the three years of the contract. Such fee includes all expenses incurred by Consultant in performance of the services.

Both parties understand and agree that the diameter of tree(s) will be measured at four foot (4') from ground level to determine cost per tree.

Both parties further agree that PARCS will be responsible for providing Consultant a list of number of trees per designated circumference range to determine the annual lump sum cost.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City business.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to Consultant's compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. Consultant shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of City to Consultant upon the earlier of: (i) Consultant's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Consultant; (ii) seven calendar days prior written notice with or without cause by CITY to Consultant; (iii) City's non-appropriation of funds sufficient to meet its obligations hereunder during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, Consultant shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to City any and all unearned payments and all properties and materials in the possession of Consultant that are owned by City. Subject to the terms of this Agreement, Consultant shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Consultant shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of Consultant to satisfactorily perform in accordance with the terms of this Agreement, City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, City's damages caused by such failure. In no event shall any payment by City pursuant to this Agreement constitute a waiver by City of any breach of this Agreement which may then exist on the part of Consultant, nor shall such payment impair or prejudice any remedy available to City with respect to the breach.

(d) Upon any breach of this Agreement by Consultant, City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be

available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) Consultant shall provide City with adequate written assurances of future performance, upon Administrator's request, in the event Consultant fails to comply with any terms or conditions of this Agreement.

(f) Consultant shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Consultant and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Consultant shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(a) Any reports, information, or other data prepared or assembled by Consultant pursuant to this Agreement shall not be made available to any individual or organization by Consultant without the prior written approval of the Administrator. During the term of this Agreement, and thereafter, Consultant shall not, without the prior written consent of City, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of City, including but not limited to business plans, marketing plans, financial information, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in City.

(b) Any and all writings and documents prepared or provided by Consultant pursuant to this Agreement are the property of City at the time of preparation and shall be turned over to City upon expiration or termination of the Agreement. Consultant shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(c) If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Consultant represents to City that Consultant and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services

agreed to be done by it under this Agreement, City relies upon the skill of Consultant and any subcontractors to do and perform such services in a skillful manner and Consultant agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by City shall not operate as a release of Consultant or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, Consultant shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees, agents, or volunteers in the performance of this Agreement.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

8. Insurance.

(a) Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, Consultant or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Consultant of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, agents, employees, persons under the supervision of Consultant, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Consultant and City prior to the commencement of any services by the subcontractor. Consultant and any subcontractor/sub-consultant shall establish additional insured status for City, its officers, officials, employees, agents, and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to City's execution of this Agreement, Consultant shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit C. During the term of this Agreement, Consultant shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Consultant in such statement.

(b) Consultant shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Consultant shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Consultant and the respective subcontractor(s) are in full compliance with all laws and regulations. Consultant shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Consultant shall immediately notify City of these facts in writing.

(c) In performing the work or services to be provided hereunder, Consultant shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee,

or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Consultant represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither Consultant, nor any of Consultant's subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project unless fully disclosed to and approved by the City Manager, in advance and in writing. Consultant and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Consultant shall remain responsible for complying with Section 9(b), above.

(f) If Consultant should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Consultant shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event Consultant maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Consultant at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Administrator or designee.

(b) Records of Consultant's expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to City or its authorized representatives upon request during regular business hours throughout the

life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of Consultant pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to City until such action is resolved, or until the end of said time period whichever shall later occur. If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by City, Consultant shall have provided evidence to City that Consultant is licensed to perform the services called for by this Agreement (or that no license is required). If Consultant should subcontract all or any portion of the work or services to be performed under this Agreement, Consultant shall require each subcontractor to provide evidence to City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, Consultant shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Consultant agrees as follows:

(a) Consultant will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) Consultant will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Consultant shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to Consultant's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Consultant agrees to post in conspicuous

places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) Consultant will, in all solicitations or advertisements for employees placed by or on behalf of Consultant in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) Consultant will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Consultant's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, Consultant is acting solely as an independent contractor. Neither Consultant, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Consultant shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Consultant is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between Consultant and City. Consultant shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Consultant shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Consultant and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Consultant shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Consultant shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Consultant's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged

that during the term of this Agreement, Consultant may be providing services to others unrelated to City or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

16. Assignment.

(a) This Agreement is personal to Consultant and there shall be no assignment by Consultant of its rights or obligations under this Agreement without the prior written approval of the City Manager or designee. Any attempted assignment by Consultant, its successors or assigns, shall be null and void unless approved in writing by the City Manager or designee.

(b) Consultant hereby agrees not to assign the payment of any monies due Consultant from City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). City retains the right to pay any and all monies due Consultant directly to Consultant.

17. Compliance With Law. In providing the services required under this Agreement, Consultant shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

18. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

22. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

23. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both City and Consultant.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
[Name],
[Title]

ATTEST:
YVONNE SPENCE, CRM MMC
City Clerk

By: _____
Deputy

No signature of City Attorney required.
Standard Document #ALL-S 3.0 has
been used without modification, as
certified by
the undersigned.

By: _____
[City Certifier Name]
[City Certifier Title]

Addresses:

CITY:
City of Fresno
Attention: TJ Miller,
Interim PARCS Director
1515 E. Divisadero
Fresno, CA 93721-1115
Phone: (559) 621-2900
FAX: (559) 621-xxxx

FLEMING & SONS, LLC
a California Limited Liability Corporation

By: _____

Name: Grant Fleming

Title: President
(If corporation or LLC., Board
Chair, Pres. or Vice Pres.)

By: _____

Name: _____

Title: _____
(If corporation or LLC., CFO, Treasurer,
Secretary or Assistant Secretary)

Any Applicable Professional License:

Number: A-8923 LTO

Name: Fleming and Sons LLC

Date of Issuance: 4-17-19

CONSULTANT:
Fleming & Sons, LLC
Attention: Grant Fleming,
Owner/President
37370 Auberry Road
Auberry, CA 93602
Phone: (559) 260-5852
FAX: area code and #

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Certificates
3. Exhibit C - Conflict of Interest Disclosure Form
4. Exhibit D - Fee Schedule

Exhibit A – Scope of Services

[SCOPE OF SERVICES FOLLOW ON THE NEXT PAGE]

SCOPE OF SERVICES
Contract Service Agreement between City of Fresno (City)
and Fleming & Sons, LLC (Contractor)
Camp Fresno and Camp Fresno Jr. Tree Maintenance & Removal

INTRODUCTION

The primary scope of work relates to the removal of hazard trees located throughout Camp Fresno and Camp Fresno Jr. as mandated by the U.S. Forestry Department. The actual number of trees and related scope of work will be determined annually through a joint meeting of the City and Contractor and predicated by the requirement set forth by the U.S. Forestry Department. Therefore, all parties understand and agree that this agreement is for "on demand" tree removal and maintenance services.

The services requested will include all operations related to the safe, legal, efficient removal and hauling of dead and dying trees and processing related slash and debris.

Contractor shall furnish all labor, materials, tools and equipment necessary to safely perform the work assigned. This equipment may include, but is not limited to, dump trucks, water truck, wood chippers, aerial lifts, traffic control devices, chainsaws, personal safety gear, etc. Contractor is solely responsible for all related activities and expense including wood recycling fees and trucking.

All work performed, methods, and equipment used shall be in conformance with the Prevailing State and Federal Occupational Safety and Health Act (OSHA).

Contractor shall be responsible for obtaining and providing to the City proof of license, permits, and approval from both County of Fresno and U.S. Forest Service to conduct work.

The major activities include:

HAZARD TREE FELLING

1. Contractor shall perform all work to safely fell trees identified by the Forest Service for removal. The Contractor shall take all actions necessary to avoid damages caused by felling operations and must protect the Camp's water and sewer infrastructure, structures, roads/driveways, landowner belongings and other private property. Wherever possible, the Contractor shall avoid damaging or removing live trees that are not marked for removal. All work must be completed in a safe manner that prioritizes safety of the public, City, Forestry Department, and Contractor.
2. Hazard trees identified by the Forest Department for removal are marked with a blue line and a unique tree identification marker that corresponds to the Forestry staff who marked it.
3. Trees may be removed by conventional felling methods (hand felling), by climber, by bucket truck or by crane operations. All other methods shall first be approved

by the City. Tree removal methods chosen by the Contractor must both ensure safety of workers and public and maximize cost effectiveness.

4. Contractor shall limb all felled trees. Stumps shall be cut as close to the ground as is practical while avoiding damage to Contractor's equipment.

LOG REMOVAL

1. Contractor shall tractor, yard and haul away all log segments (6" diameter or greater) resulting from project felling operations. Note: log segment length may be dictated by hauling/trucking company Contractor has subcontracted for this work.

STUMP GRINDING

1. All tree stumps of felled trees shall be ground down to a minimum of 3" below surface. Grindings shall be spread out and not left piled.

SLASH TREATMENT

1. Contractor shall treat all slash resulting from project felling operations by chipping and spreading it on site for erosion control and site restoration. Mastication is also an acceptable method of slash treatment. The Contractor may also choose to haul slash to:

The Forestry Department's designated area or the Granite Disposal Landing site.

SITE RESTORATION

1. Contractor shall make every reasonable effort to restore disturbed sites to their original condition. All temporary access routes or significantly disturbed areas shall be graded to blend back with natural original terrain. Erosion control measures shall be applied to blend with surroundings consistent with standard timber removal practices. Wood chips may be used as suitable erosion control. Contractor shall ensure that treated slash does not cover any at-grade Camp facilities (i.e. water meters and sewer manholes) and shall make reasonable efforts to clear drainage culverts and structures of treated slash.
2. Contractor shall restore, replace or re-install any fences, private belongings, structures, etc. that have been temporarily moved or damaged during Contractor's operations.

TRAFFIC CONTROL

1. Contractor shall be responsible for providing all necessary traffic control to ensure the safety of property owners, motorists and the public. Contractor must be knowledgeable and capable of providing traffic control systems and measures that meet the requirements of local ordinances, codes and regulations.
2. Personal vehicles of the Contractor's employees shall not be parked on the traveled way or shoulders. Vehicular access to Camp shall not be restricted during

evening hours and Contractor shall provide access to Camp during construction operations, so long as it is safe. Contractor shall be responsible for maintaining safe emergency exiting for Contractor, City, Forestry and Camp staff at work site(s).

3. The Contractor must inform the Forest Department, County of Fresno and the emergency dispatcher of all road closures prior to closure.

In addition to the scope of work listed above, City may request Contractor to conduct additional "on demand" services, such as tree trimming/thinning, stump grinding of pre-existing tree stumps, clearing of pre-existing logs and debris, and related general maintenance services of tree management.

Contractor and City acknowledge said additional work will be predicated on available funding and as negotiated between the two parties.

Exhibit B – Insurance Requirements

[INSURANCE CERTIFICATES FOLLOW ON THE NEXT PAGE]

Exhibit C – Conflict of Interest

[COMPLETED CONFLICT OF INTEREST FORM FOLLOWS ON THE NEXT PAGE]

EXHIBIT C
DISCLOSURE OF CONFLICT OF INTEREST

RFQ: Logging Activities for Camp Fresno & Camp Fresno Jr.

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners, or investors in a business that does business with the City of Fresno, or in a business that is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____


Signature

1-26-20
Date

Grant Fleming
(name)

Fleming and Sons LLC
(company)

37370 Auberry Rd.
(address)

Auberry, CA 93602
(city state zip)

☐ Additional page(s) attached.

Exhibit D – Fee Schedule Per Tree Cost

[ILLUSTRATED MAXIMUM PRICE PER TREE FOLLOWS ON THE NEXT PAGE]

EXHIBIT D FEE SCHEDULE

This proposal price is for the entire work required for providing all labor, equipment, tools, materials and incidentals affiliated with the removal of hazard trees. Please note actual tree counts based on actual sizes will change as the Forestry Department has not conducted their inspection as of the time of this RFQ solicitation. The number of trees listed below are estimates only and will be used for general illustration of anticipated work performed in year 1 of 3.

Number of Trees (by Diameter)				Total Trees
10"-24" DBH	25"-36" DBH	37"-48" DBH	49"-52" DBH	
15	15	20	5	55

TOTAL LUMP SUM FEE: \$ 43,686.00

**TOTAL LUMP SUM FEE
INCLUDING STUMP GRINDING:** \$ 58,186.00

FEE SCHEDULE FOR ADDITION / DELETION OF TREES

Proposal price adjustments for any hazard trees that are added to or deleted from the scope of work after a contract is awarded will be negotiated and not finalized unless agreed to in writing. The starting negotiation price for all such added or deleted trees shall be as set forth by the proposer below, based on tree diameter size (DBH) and type of felling required. Prices should closely reflect the proposal price(s) provided above. Proposer and District agree that proposal price adjustments for added/deleted hazard trees will be at the prices set forth below unless reasonably unique circumstances exist.

The prices set forth below include all work required to provide all labor, equipment, tools, materials and incidentals affiliated with the complete removal of each hazard tree as specified in this RFQ.

Type of Tree Felling	Tree Removal Price Per Tree			
	10"-24" DBH	25"-36" DBH	37"-48" DBH	> 48" DBH
Directional Felling by Hand	\$ 420	\$ 613	\$ 831	\$1,006
Piece Felling by Climber/Bucket/Rope Rigging	\$ 567	\$ 819	\$1,116	\$1,350
Stump Grinding	\$125	\$ 225	\$350	\$ 450



Secretary of State
Articles of Organization
Limited Liability Company (LLC)

LLC-1

201715910446

IMPORTANT — Read Instructions before completing this form.

Filing Fee - \$70.00

Copy Fees - First plain copy free; Additional copies: First page \$1.00 & .50 for each attachment page; Certification Fee - \$5.00

Important! LLCs may have to pay an annual minimum \$800 tax to the California Franchise Tax Board. For more information, go to <https://www.ftb.ca.gov>.

FILED (PS) SEC
Secretary of State
State of California

JUN 01 2017

IPC This Space For Office Use Only

1. Limited Liability Company Name (See Instructions — Must contain an LLC ending such as LLC or L.L.C. "LLC" will be added, if not included.)

FLEMING AND SONS, LLC

2. Business Addresses

a. Initial Street Address of Designated Office in California - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
37370 Auberry Road	Auberry	CA	93602
b. Initial Mailing Address of LLC, if different than item 2a	City (no abbreviations)	State	Zip Code

3. Agent for Service of Process

Item 3a and 3b: If naming an individual, the agent must reside in California and Item 3a and 3b must be completed with the agent's name and complete California street address.

Item 3c: If naming a California Registered Corporate Agent, a current agent registration certificate must be on file with the California Secretary of State and Item 3c must be completed (leave Item 3a-3b blank).

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
Richard		Mechikoff	
b. Street Address (if agent is not a corporation) - Do not list a P.O. Box	City (no abbreviations)	State	Zip Code
1533 7th Street #104	Sanger	CA	93657
c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete Item 3a or 3b			

4. Management (Select only one box)

The LLC will be managed by:

☐ One Manager

☐ More than One Manager

☒ All LLC Member(s)

5. Purpose Statement (Do not alter Purpose Statement)

The purpose of the limited liability company is to engage in any lawful act or activity for which a limited liability company may be organized under the California Revised Uniform Limited Liability Company Act.

6. The Information contained herein, including in any attachments, is true and correct.

Organizer sign here

Ch

By: Cheyenne Moseley, Assistant Secretary, LegalZoom.com, Inc.

Print your name here



Secretary of State
Statement of Information
 (Limited Liability Company)

LLC-12

115

FILED
 Secretary of State
 State of California
 JUN 19 2017

IMPORTANT — Read instructions before completing this form.

Filing Fee — \$20.00

Copy Fees — First page \$1.00; each attachment page \$0.50;
 Certification Fee — \$5.00 plus copy fees

21/201PC
This Space For Office Use Only

1. Limited Liability Company Name (Enter the exact name of the LLC. If you registered in California using an alternate name, see instructions.)

FLEMING AND SONS, LLC

2. 12-Digit Secretary of State File Number

201715910446

3. State, Foreign Country or Place of Organization (only if formed outside of California)

4. Business Addresses

a. Street Address of Principal Office - Do not list a P.O. Box

37370 Auberry Road

City (no abbreviations)

Auberry

State

CA

Zip Code

93602

b. Mailing Address of LLC, if different than Item 4a

City (no abbreviations)

State

Zip Code

c. Street Address of California Office, if Item 4a is not in California - Do not list a P.O. Box

37370 Auberry Road

City (no abbreviations)

Auberry

State

CA

Zip Code

93602

5. Manager(s) or Member(s)

If no managers have been appointed or elected, provide the name and address of each member. At least one name and address must be listed. If the manager/member is an individual, complete Items 5a and 5c (leave Item 5b blank). If the manager/member is an entity, complete Items 5b and 5c (leave Item 5a blank). Note: The LLC cannot serve as its own manager or member. If the LLC has additional managers/members, enter the name(s) and addresses on Form LLC-12A (see instructions).

a. First Name, if an individual - Do not complete item 5b

Grant

Middle Name

Last Name

Fleming

Suffix

b. Entity Name - Do not complete Item 5a

c. Address

37370 Auberry Road

City (no abbreviations)

Auberry

State

CA

Zip Code

93602

6. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL — Complete Items 6a and 6b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation)

Richard

Middle Name

Last Name

Mechikoff

Suffix

b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box

1533 7th Street #104

City (no abbreviations)

Sanger

State

CA

Zip Code

93657

CORPORATION — Complete Item 6c only. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) — Do not complete Item 6a or 6b

7. Type of Business

a. Describe the type of business or services of the Limited Liability Company

Timber Harvesting, Tree Services, & Construction

8. Chief Executive Officer, if elected or appointed

a. First Name

Middle Name

Last Name

Suffix

b. Address

City (no abbreviations)

State

Zip Code

9. The information contained herein, including any attachments, is true and correct.

06/14/2017

Date

Cheyenne Moseley

Type or Print Name of Person Completing the Form

Ast. Secretary, LegalZoom.com.
 Inc., on behalf of the filing entity

Title

Signature

Return Address (Optional) (For communication from the Secretary of State related to this document, or if purchasing a copy of the filed document enter the name of a person or company and the mailing address. This information will become public when filed. SEE INSTRUCTIONS BEFORE COMPLETING.)

Name: [Cheyenne Moseley]

Company: LegalZoom.com, Inc.

Address: 101 N Brand Blvd., 11th Floor

City/State/Zip: [Glendale CA 91203]

Operating Agreement

FLEMING AND SONS, LLC, a California Limited Liability Company

THIS OPERATING AGREEMENT of FLEMING AND SONS, LLC (the "Company") is entered into as of the date set forth on the signature page of this Agreement by each of the Members listed on Exhibit A of this Agreement.

A. The Members have formed the Company as a California limited liability company under the California Revised Uniform Limited Liability Company Act. The purpose of the Company is to conduct any lawful business for which limited liability companies may be organized under the laws of the state of California. The Members hereby adopt and approve the articles of organization of the Company filed with the California Secretary of State.

B. The Members enter into this Agreement to provide for the governance of the Company and the conduct of its business, and to specify their relative rights and obligations.

ARTICLE 1: DEFINITIONS

Capitalized terms used in this Agreement have the meanings specified in this Article 1 or elsewhere in this Agreement and if not so specified, have the meanings set forth in the California Revised Uniform Limited Liability Company Act.

"Agreement" means this Operating Agreement of the Company, as may be amended from time to time.

"Capital Account" means, with respect to any Member, an account consisting of such Member's Capital Contribution, (1) increased by such Member's allocated share of income and gain, (2) decreased by such Member's share of losses and deductions, (3) decreased by any distributions made by the Company to such Member, and (4) otherwise adjusted as required in accordance with applicable tax laws.

"Capital Contribution" means, with respect to any Member, the total value of (1) cash and the fair market value of property other than cash and (2) services that are contributed and/or agreed to be contributed to the Company by such Member, as listed on Exhibit A, as may be updated from time to time according to the terms of this Agreement.

"Exhibit" means a document attached to this Agreement labeled as "Exhibit A," "Exhibit B," and so forth, as such document may be amended, updated, or replaced from time to time according to the terms of this Agreement.

"Member" means each Person who acquires Membership Interest pursuant to this Agreement. The Members are listed on Exhibit A, as may be updated from time to time according to the terms of this Agreement. Each Member has the rights and obligations specified in this Agreement.

"Membership Interest" means the entire ownership interest of a Member in the Company at any particular time, including the right to any and all benefits to which a Member may be entitled as provided in this Agreement and under the California Revised Uniform Limited Liability Company Act, together with the obligations of the Member to comply with all of the terms and provisions of this Agreement.

"Ownership Interest" means the Percentage Interest or Units, as applicable, based on the manner in which relative ownership of the Company is divided.

"Percentage Interest" means the percentage of ownership in the Company that, with respect to each Member, entitles the Member to a Membership Interest and is expressed as either:

- A. If ownership in the Company is expressed in terms of percentage, the percentage set forth opposite the name of each Member on Exhibit A, as may be adjusted from time to time pursuant to this Agreement; or
- B. If ownership in the Company is expressed in Units, the ratio, expressed as a percentage, of:
 - (1) the number of Units owned by the Member (expressed as "MU" in the equation below) divided by

- (2) the total number of Units owned by all of the Members of the Company (expressed as "TU" in the equation below).

$$\text{Percentage Interest} = \frac{MU}{TU}$$

"Person" means an individual (natural person), partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

"Units" mean, if ownership in the Company is expressed in Units, units of ownership in the Company, that, with respect to each Member, entitles the Member to a Membership Interest which, if applicable, is expressed as the number of Units set forth opposite the name of each Member on Exhibit A, as may be adjusted from time to time pursuant to this Agreement.

ARTICLE 2: CAPITAL CONTRIBUTIONS, ADDITIONAL MEMBERS, CAPITAL ACCOUNTS AND LIMITED LIABILITY

2.1 Initial Capital Contributions. The names of all Members and each of their respective addresses, initial Capital Contributions, and Ownership Interests must be set forth on Exhibit A. Each Member has made or agrees to make the initial Capital Contribution set forth next to such Member's name on Exhibit A to become a Member of the Company.

2.2 Subsequent Capital Contributions. Members are not obligated to make additional Capital Contributions unless unanimously agreed by all the Members. If subsequent Capital Contributions are unanimously agreed by all the Members in a consent in writing, the Members may make such additional Capital Contributions on a pro rata basis in accordance with each Member's respective Percentage Interest or as otherwise unanimously agreed by the Members.

2.3 Additional Members.

A. With the exception of a transfer of interest (1) governed by Article 7 of this Agreement or (2) otherwise expressly authorized by this Agreement, additional Persons may become Members of the Company and be issued additional Ownership Interests only if approved by and on terms determined by a unanimous written agreement signed by all of the existing Members.

B. Before a Person may be admitted as a Member of the Company, that Person must sign and deliver to the Company the documents and instruments, in the form and containing the information required by the Company, that the Members deem necessary or desirable. Membership Interests of new Members will be allocated according to the terms of this Agreement.

2.4 Capital Accounts. Individual Capital Accounts must be maintained for each Member, unless (a) there is only one Member of the Company and (b) the Company is exempt according to applicable tax laws. Capital Accounts must be maintained in accordance with all applicable tax laws.

2.5 Interest. No interest will be paid by the Company or otherwise on Capital Contributions or on the balance of a Member's Capital Account.

2.6 Limited Liability; No Authority. A Member will not be bound by, or be personally liable for, the expenses, liabilities, debts, contracts, or obligations of the Company, except as otherwise provided in this Agreement or as required by the California Revised Uniform Limited Liability Company Act. Unless expressly provided in this Agreement, no Member, acting alone, has any authority to undertake or assume any obligation, debt, or responsibility, or otherwise act on behalf of, the Company or any other Member.

ARTICLE 3: ALLOCATIONS AND DISTRIBUTIONS

3.1 Allocations. Unless otherwise agreed to by the unanimous consent of the Members any income, gain, loss, deduction, or credit of the Company will be allocated for accounting and tax purposes on a pro rata basis in proportion to the respective Percentage Interest held by each Member and in compliance with applicable tax laws.

3.2 Distributions. The Company will have the right to make distributions of cash and property to the Members on a pro rata basis in proportion to the respective Percentage Interest held by each Member. The timing and amount of distributions will be determined by the Members in accordance with the California Revised Uniform Limited Liability Company Act.

3.3 Limitations on Distributions. The Company must not make a distribution to a Member if, after giving effect to the distribution:

A. The Company would be unable to pay its debts as they become due in the usual course of business; or

B. The fair value of the Company's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of Members, if any, whose preferential rights are superior to those of the Members receiving the distribution.

ARTICLE 4: MANAGEMENT

4.1 Management.

A. **Generally.** Subject to the terms of this Agreement and the California Revised Uniform Limited Liability Company Act, the business and affairs of the Company will be managed by the Members.

B. **Approval and Action.** Unless greater or other authorization is required pursuant to this Agreement or under the California Revised Uniform Limited Liability Company Act for the Company to engage in an activity or transaction, all activities or transactions must be approved by the Members, to constitute the act of the Company or serve to bind the Company. With such approval, the signature of any Members authorized to sign on behalf of the Company is sufficient to bind the Company with respect to the matter or matters so approved. Without such approval, no Members acting alone may bind the Company to any agreement with or obligation to any third party or represent or claim to have the ability to so bind the Company.

C. **Certain Decisions Requiring Greater Authorization.** Notwithstanding clause B above, the following matters require unanimous approval of the Members in a consent in writing to constitute an act of the Company:

- (i) A material change in the purposes or the nature of the Company's business;
- (ii) With the exception of a transfer of interest governed by Article 7 of this Agreement, the admission of a new Member or a change in any Member's Membership Interest, Ownership Interest, Percentage Interest, or Voting Interest in any manner other than in accordance with this Agreement;
- (iii) The merger of the Company with any other entity or the sale of all or substantially all of the Company's assets; and

- (iv) The amendment of this Agreement.

4.2 Officers. The Members are authorized to appoint one or more officers from time to time. The officers will have the titles, the authority, exercise the powers, and perform the duties that the Members determine from time to time. Each officer will continue to perform and hold office until such time as (a) the officer's successor is chosen and appointed by the Members; or (b) the officer is dismissed or terminated by the Members, which termination will be subject to applicable law and, if an effective employment agreement exists between the officer and the Company, the employment agreement. Subject to applicable law and the employment agreement (if any), each officer will serve at the direction of Members, and may be terminated, at any time and for any reason, by the Members.

ARTICLE 5: ACCOUNTS AND ACCOUNTING

5.1 Accounts. The Company must maintain complete accounting records of the Company's business, including a full and accurate record of each Company transaction. The records must be kept at the Company's principal executive office and must be open to inspection and copying by Members during normal business hours upon reasonable notice by the Members wishing to inspect or copy the records or their authorized representatives, for purposes reasonably related to the Membership Interest of such Members. The costs of inspection and copying will be borne by the respective Member.

5.2 Records. The Members will keep or cause the Company to keep the following business records.

- (i) An up to date list of the Members, each of their respective full legal names, last known business or residence address, Capital Contributions, the amount and terms of any agreed upon future Capital Contributions, and Ownership Interests, and Voting Interests;
- (ii) A copy of the Company's federal, state, and local tax information and income tax returns and reports, if any, for the six most recent taxable years;
- (iii) A copy of the articles of organization of the Company, as may be amended from time to time ("Articles of Organization"); and

- (iv) An original signed copy, which may include counterpart signatures, of this Agreement, and any amendments to this Agreement, signed by all then-current Members.

5.3 Income Tax Returns. Within 45 days after the end of each taxable year, the Company will use its best efforts to send each of the Members all information necessary for the Members to complete their federal and state tax information, returns, and reports and a copy of the Company's federal, state, and local tax information or income tax returns and reports for such year.

5.4 Subchapter S Election. The Company may, upon unanimous consent of the Members, elect to be treated for income tax purposes as an S Corporation. This designation may be changed as permitted under the Internal Revenue Code Section 1362(d) and applicable Regulations.

5.5 Tax Matters Member. Anytime the Company is required to designate or select a tax matters partner pursuant to Section 6231(a)(7) of the Internal Revenue Code and any regulations issued by the Internal Revenue Service, the Members must designate one of the Members as the tax matters partner of the Company and keep such designation in effect at all times.

5.6 Banking. All funds of the Company must be deposited in one or more bank accounts in the name of the Company with one or more recognized financial institutions. The Members are authorized to establish such accounts and complete, sign, and deliver any banking resolutions reasonably required by the respective financial institutions in order to establish an account.

ARTICLE 6: MEMBERSHIP - VOTING AND MEETINGS

6.1 Members and Voting Rights. The Members have the right and power to vote on all matters with respect to which the Articles of Organization, this Agreement, or the California Revised Uniform Limited Liability Company Act requires or permits. Unless otherwise stated in this Agreement (for example, in Section 4.1(c)) or required under the California Revised Uniform Limited Liability Company Act, the vote of the Members holding at least a majority of the Voting Interest of the Company is required to approve or carry out an action.

6.2 Meetings of Members. Annual, regular, or special meetings of the Members are not required but may be held at such time and place as the Members deem necessary or desirable for the reasonable management of the Company. Meetings may

be called by any Member or Members, holding 10% or more of the Percentage Interests, for the purpose of addressing any matters on which the Members may vote. A written notice setting forth the date, time, and location of a meeting must be sent at least ten (10) days but no more than sixty (60) days before the date of the meeting to each Member entitled to vote at the meeting. A Member may waive notice of a meeting by sending a signed waiver to the Company's principal executive office or as otherwise provided in the California Revised Uniform Limited Liability Company Act. In any instance in which the approval of the Members is required under this Agreement, such approval may be obtained in any manner permitted by the California Revised Uniform Limited Liability Company Act, including by conference call or similar communications equipment. Any action that could be taken at a meeting may be approved by a consent in writing that describes the action to be taken and is signed by Members holding the minimum Voting Interest required to approve the action. If any action is taken without a meeting and without unanimous written consent of the Members, notice of such action must be sent to each Member that did not consent to the action.

ARTICLE 7: WITHDRAWAL AND TRANSFERS OF MEMBERSHIP INTERESTS

7.1 Withdrawal. Members may withdraw from the Company prior to the dissolution and winding up of the Company (a) by transferring or assigning all of their respective Membership Interests pursuant to Section 7.2 below, or (b) if all of the Members unanimously agree in a written consent. Subject to the provisions of Article 3, a Member that withdraws pursuant to this Section 7.1 will be entitled to a distribution from the Company in an amount equal to such Member's Capital Account, which must be paid by the Company to such Member within ninety (90) days of the withdrawal date unless otherwise agreed in writing.

7.2 Restrictions on Transfer; Admission of Transferee. A Member may transfer Membership Interests to any other Person without the consent of any other Member. A person may acquire Membership Interests directly from the Company upon the written consent of all Members. A Person that acquires Membership Interests in accordance with this Section 7.2 will be admitted as a Member of the Company only after the requirements of Section 2.3(b) are complied with in full.

ARTICLE 8: DISSOLUTION

8.1 Dissolution. The Company will be dissolved upon the first to occur of the following events:

- (i) The vote of the Members holding at least a majority of the Voting Interest of the Company to dissolve the Company;
- (ii) Entry of a decree of judicial dissolution under Section 17707.01 of the California Revised Uniform Limited Liability Company Act;
- (iii) The sale or transfer of all or substantially all of the Company's assets;
- (iv) A merger or consolidation of the Company with one or more entities in which the Company is not the surviving entity; or
- (v) The Company has no members during 90 consecutive days, except on the death of a natural person who is the sole member of the Company, the status of the member, including Membership Interest, may pass to the heirs, successors, and assigns of the member by will or applicable law.

8.2 No Automatic Dissolution Upon Certain Events. Unless otherwise set forth in this Agreement or required by applicable law, the death, incapacity, disassociation, bankruptcy, or withdrawal of a Member will not automatically cause a dissolution of the Company.

ARTICLE 9: INDEMNIFICATION

9.1 Indemnification. The Company has the power to defend, indemnify, and hold harmless any Person who was or is a party, or who is threatened to be made a party, to any Proceeding (as that term is defined below) by reason of the fact that such Person was or is a Member, officer, employee, representative, or other agent of the Company, or was or is serving at the request of the Company as a director, Governor, officer, employee, representative or other agent of another limited liability company, corporation, partnership, joint venture, trust, or other enterprise (each such Person is referred to as a "Company Agent"), against Expenses (as that term is defined below), judgments, fines, settlements, and other amounts (collectively, "Damages") to the maximum extent now or hereafter permitted under California law. "Proceeding," as

used in this Article 9, means any threatened, pending, or completed action, proceeding, individual claim or matter within a proceeding, whether civil, criminal, administrative, or investigative. "Expenses," as used in this Article 9, includes, without limitation, court costs, reasonable attorney and expert fees, and any expenses incurred relating to establishing a right to indemnification, if any, under this Article 9.

9.2 Mandatory. The Company must defend, indemnify and hold harmless a Company Agent in connection with a Proceeding in which such Company Agent is involved if, and to the extent, California law requires that a limited liability company indemnify a Company Agent in connection with a Proceeding.

9.3 Expenses Paid by the Company Prior to Final Disposition. Expenses of each Company Agent indemnified or held harmless under this Agreement that are actually and reasonably incurred in connection with the defense or settlement of a Proceeding may be paid by the Company in advance of the final disposition of a Proceeding if authorized by a vote of the Members that are not seeking indemnification holding a majority of the Voting Interests (excluding the Voting Interest of the Company Agent seeking indemnification). Before the Company makes any such payment of Expenses, the Company Agent seeking indemnification must deliver a written undertaking to the Company stating that such Company Agent will repay the applicable Expenses to the Company unless it is ultimately determined that the Company Agent is entitled or required to be indemnified and held harmless by the Company (as set forth in Sections 9.1 or 9.2 above or as otherwise required by applicable law).

ARTICLE 10: GENERAL PROVISIONS

10.1 Notice. (a) Any notices (including requests, demands, or other communications) to be sent by one party to another party in connection with this Agreement must be in writing and delivered personally, by reputable overnight courier, or by certified mail (or equivalent service offered by the postal service from time to time) to the following addresses or as otherwise notified in accordance with this Section: (i) if to the Company, notices must be sent to the Company's principal executive office; and (ii) if to a Member, notices must be sent to the Member's last known address for notice on record. (b) Any party to this Agreement may change its notice address by sending written notice of such change to the Company in the manner specified above. Notice will be deemed to have been duly given as follows: (i) upon delivery, if delivered personally or by reputable overnight carrier or (ii) five days after the date of posting if sent by certified mail.

10.2 Entire Agreement; Amendment. This Agreement along with the Articles of Organization (together, the "Organizational Documents"), constitute the entire agreement among the Members and replace and supersede all prior written and oral understandings and agreements with respect to the subject matter of this Agreement, except as otherwise required by the California Revised Uniform Limited Liability Company Act. There are no representations, agreements, arrangements, or undertakings, oral or written, between or among the Members relating to the subject matter of this Agreement that are not fully expressed in the Organizational Documents. This Agreement may not be modified or amended in any respect, except in a writing signed by all of the Members, except as otherwise required or permitted by the California Revised Uniform Limited Liability Company Act.

10.3 Governing Law; Severability. This Agreement will be construed and enforced in accordance with the laws of the state of California. If any provision of this Agreement is held to be unenforceable by a court of competent jurisdiction for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement (including without limitation, all portions of any provisions containing any such unenforceable provision that are not themselves unenforceable) will not in any way be affected or impaired thereby, and (ii) to the fullest extent possible, the unenforceable provision will be deemed modified and replaced by a provision that approximates the intent and economic effect of the unenforceable provision and the Agreement will be deemed amended accordingly.

10.4 Further Action. Each Member agrees to perform all further acts and execute, acknowledge, and deliver any documents which may be reasonably necessary, appropriate, or desirable to carry out the provisions of this Agreement.

10.5 No Third Party Beneficiary. This Agreement is made solely for the benefit of the parties to this Agreement and their respective permitted successors and assigns, and no other Person or entity will have or acquire any right by virtue of this Agreement. This Agreement will be binding on and inure to the benefit of the parties and their heirs, personal representatives, and permitted successors and assigns.

10.6 Incorporation by Reference. The recitals and each appendix, exhibit, schedule, and other document attached to or referred to in this Agreement are hereby incorporated into this Agreement by reference.

10.7 Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all of the Members signed the same copy. All counterparts will be construed together and will constitute one agreement.

[Remainder Intentionally Left Blank.]

IN WITNESS WHEREOF, the parties have executed or caused to be executed this Operating Agreement and do each hereby represent and warrant that their respective signatory, whose signature appears below, has been and is, on the date of this Agreement, duly authorized to execute this Agreement.

Dated: _____

Signature of Grant Fleming

EXHIBIT A
MEMBERS

The Members of the Company and their respective addresses, Capital Contributions, and Ownership Interests are set forth below. The Members agree to keep this Exhibit A current and updated in accordance with the terms of this Agreement, including, but not limited to, Sections 2.1, 2.3, 2.4, 7.1, 7.2, and 10.1.

Members	Capital Contribution	Percentage Interest
Grant Fleming Address: 37370 Auberry Road Auberry, California 93602		100%