



# CITY OF MERCED

City Council Chamber  
Merced Civic Center  
2nd Floor  
678 W. 18th Street  
Merced, CA 95340

## Meeting Agenda

Final Amended

### City Council/Public Finance and Economic Development Authority/Parking Authority

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Monday, May 16, 2016

7:00 PM

Council Chambers, 2nd Floor, Merced Civic  
Center, 678 W. 18th Street, Merced, CA 95340

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**Special Closed Session at 5:30 PM/Regular Meeting at 7:00 PM**

#### NOTICE TO PUBLIC

#### WELCOME TO THE MEETING OF THE MERCED CITY COUNCIL

At least 72 hours prior to each regular City Council meeting, a complete agenda packet is available for review on the City's website at [www.cityofmerced.org](http://www.cityofmerced.org) or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relating to an open session item that are distributed to a majority of the Council will be available for public inspection at the City Clerk's Office during regular business hours.

#### **PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK**

Members of the audience who wish to address the City Council are requested to complete a speaker card available at the podium against the right-hand side of the Council Chambers. Please submit the completed card to the City Clerk before the item is called, preferably before the meeting begins.

#### **INDIVIDUALS WITH DISABILITIES**

Accommodation for individuals with disabilities may be arranged by contacting the City Clerk at (209) 388-8650. Assisted hearing devices are available for meetings held in the Council Chambers

#### **A. CLOSED SESSION ROLL CALL**

#### **B. CLOSED SESSION**

**B.1. 16-215**      SUBJECT: PUBLIC EMPLOYEE PERFORMANCE EVALUATION -  
Title: City Attorney; Authority: Government Code Section 54957

**B.2. 16-216**      SUBJECT: PUBLIC EMPLOYEE DISCIPLINE - Public Employee  
Discipline/Dismissal/Release; Authority: Government Code Section  
54957

## **C. CALL TO ORDER**

C.1. Invocation - Chaplain James Sanders, Merced County Jail Ministry

C.2. Pledge of Allegiance to the Flag

## **D. ROLL CALL**

D.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority, and Public Financing and Economic Development Authority. City Council Members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority, and Public Financing and Economic Development Authority receive no compensation.

## **E. REPORT OUT OF CLOSED SESSION**

## **F. CEREMONIAL MATTERS**

F.1. Collections System Award for Sewer and Storm Drain - Presented by CWEA Members Phil Scott, Scott Jacobs, and Ken Merkle

F.2. Proclamation - Public Works Week

F.3. Habitat for Humanity Award to Housing Department

## **G. SPECIAL PRESENTATIONS**

G.1. Launch of City's New Website - Jeff Bennyhoff, Information Technology Director

## **H. WRITTEN PETITIONS AND COMMUNICATIONS**

## **I. ORAL COMMUNICATIONS**

Members of the public who wish to speak on any matter not listed on the agenda may speak during this portion of the meeting and will be allotted 5 minutes. State law prohibits the City Council from acting at this meeting on any matter raised during the public comment period. The Mayor may, at his discretion, decrease the time allotted to speakers in order to accommodate as many speakers as possible. Members of the public who wish to speak on a matter this is listed on the agenda will be called upon to speak during discussion of that item.

## **J. CONSENT CALENDAR**

Adoption of the Consent Calendar may be made by one motion of the City Council, provided that any Councilmember, individual, or organization may request removal of an item from the Consent Calendar for separate consideration. If a request for removal of an item from the Consent Calendar has been received, the item will be discussed and voted on separately.

- J.1. [16-184](#)      **SUBJECT:** Information Only- Recreation & Parks Commission Minutes of November 23, 2015 and March 28, 2016
- REPORT IN BRIEF**  
For Information Only.
- J.2. [16-200](#)      **SUBJECT:** Information Only-Bicycle Advisory Minutes of April 28, June 23, August 25, October 27, and December 8, 2015 and February 23, 2016
- RECOMMENDATION**  
For information only.
- J.3. [16-206](#)      **SUBJECT:** Information Only-Site Plan Review Minutes of November 12, 2015 and January 7, 2016
- RECOMMENDATION**  
For information only
- J.4. [16-198](#)      **SUBJECT:** Information Only-Planning Commission Minutes of December 9, 2015, and January 6, February 3 and 17, March 23, and April 6, 2016
- RECOMMENDATION**  
For information only
- J.5. [16-194](#)      **SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of December 7, 2015, December 21, 2015 and January 4, 2016.
- REPORT IN BRIEF**  
Official adoption of previously held meeting minutes.
- RECOMMENDATION**  
**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of December 7, 2015, December 21, 2015 and January 4, 2016.
- J.6. [16-193](#)      **SUBJECT:** Reading by Title of All Ordinances and Resolutions

**REPORT IN BRIEF**

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

J.7. [16-199](#)

**SUBJECT:** City School District Crossing Guard Agreement

**REPORT IN BRIEF**

Authorize a one-year agreement with the City School District to reimburse a portion of the cost associated with the School Crossing Guard Program.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the agreement with the Merced City School District for reimbursement of a portion of the cost associated with the School Crossing Guard Program and authorizing the City Manager to execute the necessary documents.

J.8. [16-179](#)

**SUBJECT:** Award Bid to D.A. Wood Construction, Inc., for the Sewer & Water Main Replacement In Alley Between 21st-22nd Street & W-U Street Project 116039

**REPORT IN BRIEF**

Consider awarding a construction contract in the amount of \$455,481 for the replacement of the sewer and water mains within the alley between 21st-22nd Streets and W-U Streets.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Awarding the bid for the Sewer & Water Main Replacement In Alley Between 21st-22nd Street & W-U Street Project 116039, to D. A. Wood Construction, Inc., in the amount of \$455,481; and,

B. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

J.9. [16-195](#)

**SUBJECT:** Merced Integrated Regional Water Management Authority (MIRWMA) Joint Powers Agreement

**REPORT IN BRIEF**

Considers approving a Joint Powers Agreement with local public agencies forming the Merced Integrated Regional Water Management Authority (MIRWMA) to coordinate on the goals and objectives outlined in the adopted 2013 Merced Integrated Regional Water Management Plan.

**RECOMMENDATION**

**City Council** - Adopt **Resolution 2016-14**, a Resolution of the City Council of the City of Merced, California, authorizing the execution of a Joint Powers Agreement with the County of Merced, City of Atwater, City of Livingston, Merced Irrigation District and Stevinson Water District Establishing the Merced Integrated Regional Water Management Authority (MIRWMA).

J.10. [16-061](#)

**SUBJECT:** Memorandum of Understanding Among Agencies Within the Merced Groundwater Sub-Basin Following the Sustainable Groundwater Management Act (SGMA)

**REPORT IN BRIEF**

An introduction to the Sustainable Groundwater Management Act (SGMA) and adoption of a Memorandum of Understanding with various water agencies within the Merced Groundwater Sub-Basin following the Sustainable Groundwater Management Act (SGMA).

**RECOMMENDATION**

**City Council** - Adopt a motion to enter into a Memorandum of Understanding with various water agencies within the Merced Groundwater Sub-Basin following the Sustainable Groundwater Management Act (SGMA) and authorize the City Manager to execute the necessary documents.

J.11. [16-178](#)

**SUBJECT:** Agreement for Professional Services with THOR, Inc. for AS/400 Programming Services

**REPORT IN BRIEF**

Authorizing a Professional Services Agreement with THOR, Inc. for \$165,000 for AS/400 programming services to support SunGard financial application suite.

**RECOMMENDATION**

**City Council** - Adopt a motion approving Professional Services Agreement with THOR, Inc.; and, authorizing the City Manager to

execute the necessary documents.

**J.12.** [16-186](#)

**SUBJECT:** Appropriation for the Merced Regional Airport Runway  
Remarking, Taxiway Center Line Remarking, and Holding Position  
Remarking

**REPORT IN BRIEF**

Merced Regional Airport is requesting Council's consideration in authorizing a transfer in the amount of \$50,000 from Fund 448 Airport Industrial Park CIP to Fund 461 Airport CIP and appropriating to cover costs for runway remarking, taxiway center line remarking, and holding position remarking.

**RECOMMENDATION**

**City Council** - Adopt a motion authorizing a transfer from Fund 448 Airport Industrial Park CIP Fund in the amount of \$50,000 to Fund 461 Airport CIP Fund and appropriating to Project #116047 Remark Runway/Taxiway.

**K. BUSINESS**

**K.1.** 16-217

**SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION -  
Title: City Attorney; Government Code 54957 (If Elected by Employee)

**K.2.** 16-218

**SUBJECT:** PUBLIC EMPLOYEE DISCIPLINE - Public Employee  
Discipline/Dismissal/Release; Authority: Government Code 54957 (If  
Elected by Employee)

**K.3.** [16-201](#)

**SUBJECT:** Approval of Letter to Adam Gray

**REPORT IN BRIEF**

Letter of support for funding the violence interruption/prevention emergency response (VIPER) program in Merced County.

**RECOMMENDATION**

**City Council** - Adopt a motion approving letter of support for funding the VIPER program in Merced County.

K.4. Request to Add Item to Future Agenda

K.5 City Council Comments

**L. ADJOURNMENT**





# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-215

**Meeting Date:** 5/16/2016

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**SUBJECT: PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney; Authority: Government Code Section 54957**



# CITY OF MERCED

Merced Civic Center  
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## ADMINISTRATIVE REPORT

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**File #:** 16-216

**Meeting Date:** 5/16/2016

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**SUBJECT: PUBLIC EMPLOYEE DISCIPLINE - Public Employee Discipline/Dismissal/Release;**  
**Authority: Government Code Section 54957**



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-184

**Meeting Date:** 5/16/2016

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**SUBJECT:** Information Only- Recreation & Parks Commission Minutes of November 23, 2015 and March 28, 2016

### **REPORT IN BRIEF**

For Information Only.

### **ATTACHMENTS**

1. Recreation & Parks Commission minutes from November 23, 2015
2. Recreation & Parks Commission minutes from March 28, 2016

**CITY OF MERCED  
RECREATION AND PARKS COMMISSION MINUTES**

COUNCIL CHAMBERS ROOM  
MERCED CIVIC CENTER  
678 WEST 18<sup>TH</sup> STREET  
MERCED, CA

**MONDAY  
November 23, 2015**

**A. CALL TO ORDER**

Commissioner Washington called the meeting to order at 5:30 PM.

**B. PLEDGE OF ALLEGIANCE**

**C. ROLL CALL**

Members Present: Washington, Lentz, Hassett, Jenkins  
Staff Present: Conway, Chavez

M/S/C- Jenkins/Hassett motioned to excuse Commissioner Nelson.

**D. CEREMONIAL MATTERS**

**E. ORAL COMMUNICATIONS**

-Josh Mereno, Zoo Keeper, will be on Chanel 47 on December 11 at 5:15am, to talk about Lights Before Christmas event.

**F. CONSENT ITEMS**

**1. MINUTES OF SEPTEMBER 28, 2015**

*M/S/C- Jenkins/Hassett motioned to approve the minutes of September 28, 2015.*

**G. BUSINESS**

**1. MERCED SWEETHEARTS PLAQUE IN MCNAMARA FROM SHIRLEY DAVIS BROWN (COMMISSIONER WASHINGTON)**

*Recommendation: Motion to reimburse Ms. Davis Brown for her expense for the commemorative plaque that was placed in McNamara Park.*

**3. BUDGET SUBCOMMITTEE**

**(COMMISSIONERS)**

*M/S/C- Hassett/Lentz motioned to have staff attend CPRS conference in March.*

**4. RECREATION PROGRAMMING**

**(COMMISSIONERS)**

-Hassett would like to know what staff's priorities are for next year.

**H. REPORTS**

**1. STAFF REPORTS**

**(CONWAY, CHAVEZ)**

*No action required-information only*

**I. ADJOURNMENT**

The Recreation and Parks Commission meeting was adjourned at 6:30 p.m. and will meet again on Monday, January 25, 2016 for their regularly scheduled meeting in the Council Chambers, 678 W. 18<sup>th</sup> Street.



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Dr. Napoleon Washington, Chairperson  
Recreation and Parks Commission

**CITY OF MERCED  
RECREATION AND PARKS COMMISSION MINUTES**

**COUNCIL CHAMBERS ROOM  
MERCED CIVIC CENTER  
678 WEST 18<sup>TH</sup> STREET  
MERCED, CA**

**MONDAY  
March 28, 2016**

**A. CALL TO ORDER**

Commissioner Washington called the meeting to order at 5:30 PM.

**B. PLEDGE OF ALLEGIANCE**

**C. ROLL CALL**

Members Present: Jenkins, Warren, Chavez, Nelson & Washington  
Staff Present: Conway, Chavez, Johnson

M/S/C- Jenkins/Nelson motioned to excuse Commissioners Lentz & Hassett

**D. CEREMONIAL MATTERS**

The Commission welcomed new Commissioners Warren and Chavez.

**E. ORAL COMMUNICATIONS**

Tatiana Vizcaino Stewart, from BHC, thanked the Commission for their service and requested to be placed on the April 25<sup>th</sup> agenda to present information from the "Creating a Roadmap for the Youth Council" event, scheduled for April 21.

**F. CONSENT ITEMS**

**G. BUSINESS**

**1. DISTRIBUTION OF WAHNETTA HALL TRUST FUNDS (JOHNSON)**

*M/S/C- Nelson/Jenkins motioned to approve the distribution of the funds to the Kiwanis Club of Greater Merced*

**2. STAFF PROGRAMMING IDEAS AND PLANS (CONWAY)**

Staff presented their programming ideas to the Commission.

**3. BUDGET SUBCOMMITTEE**

**(COMMISSIONERS)**

Mike Conway made a budget presentation to the Commission, highlighting previous year cuts and projected budget for FY 16/17.

**4. RECREATION PROGRAMMING**

**(COMMISSIONERS)**

No action was taken

**H. REPORTS**

**1. STAFF REPORTS**

**(CONWAY, JOHNSON)**

*No action required-information only*

**I. ADJOURNMENT**

The Recreation and Parks Commission meeting was adjourned at 7:37 p.m. and will meet again on Monday, April 25, 2016 for their regularly scheduled meeting in the Council Chambers, 678 W. 18<sup>th</sup> Street.



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Dr. Napoleon Washington, Chairperson  
Recreation and Parks Commission



# CITY OF MERCED

Merced Civic Center  
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Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-200

**Meeting Date:** 5/16/2016

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**Report Prepared by:** *Stephani Davis, Secretary I, Planning Division*

**SUBJECT:** Information Only-Bicycle Advisory Minutes of April 28, June 23, August 25, October 27, and December 8, 2015 and February 23, 2016

### RECOMMENDATION

For information only.

### ATTACHMENTS

1. Memo to Council
2. Minutes of 4-28-15
3. Minutes of 6-23-15
4. Minutes of 8-25-15
5. Minutes of 10-27-15
6. Minutes of 12-8-15
7. Minutes of 2-23-16

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*City of Merced*

**MEMORANDUM**

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**DATE:** May 5, 2016  
**TO:** City Council and the City Manager  
**FROM:** David Gonzalves, Director of Development Services   
**SUBJECT:** Minutes for Planning Commission, Bicycle Advisory Commission,  
and Site Plan Committee

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Due to transition in secretarial staff and miscommunication, Minutes for these Commissions for City Council review were delayed and have now been brought up to date. This delay will not happen in the future.

CITY OF MERCED  
BICYCLE ADVISORY COMMISSION

MINUTES

CITY COUNCIL CHAMBERS  
678 W 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA

TUESDAY  
April 28, 2015

Chairperson TYLER called the meeting of the Bicycle Advisory Commission to order at 3:02 p.m.

(B) ROLL CALL

Present: Robert Tyler (Chairperson)  
Jules Comeyne  
Justin Hicks  
Tom Hothem (Vice Chairperson)  
Lisa Kayser-Grant  
Patrick Bauer (Ex-Officio member)

Absent: Isai Palma (excused)  
(two vacancies)

Staff Present: Bill King, Principal Planner  
John Sagin, Jr. AIA, Principal Architect  
Maira Meza (Intern: Bike-Merced Website Coordinator)

(C) APPROVE MINUTES OF FEBRUARY 24, 2014

ON MOTION BY COMMISSIONER HOTHEM, SECONDED BY COMMISSIONER COMEYNE, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO APPROVE THE FEBRUARY 24, 2015, MINUTES WITH A CORRECTION TO READ: "ALL MERCED ROAD RIDE" AND NOT "MERCED ALL ROAD RIDE" IN ITEM "H".

(D) ORAL COMMUNICATIONS

There were no oral communications from the public.

(E) BICYCLE ADVISORY COMMISSION REQUESTS AND INFORMATION

Ex-Officio Commissioner BAUER informed the Commission that he was resigning that day, thanked all who worked with him, and then left the meeting. Commissioner HOTHEM commented about the Merced Sun-Star article on the upcoming Bike Month events.

(F) COMMISSION ATTENDANCE REPORT

Principal Planner KING presented a report providing an overview of the attendance report. The Commission accepted the report.

**IMPROVEMENT PROJECT RELATED ITEMS (Engineering Department)**

(G) “BIKE-ROUTE – USE SIDEWALK” SIGNS

Principal Architect SAGIN presented a report about actions of the Traffic Committee (TC), informing the Commission that the City Attorney’s Office is advising that the new signs should include the word “recommend” or “recommended.” The Commissioners expressed their concern about the use of these words and asked about the status of the project and when the next TC would take place. After a short break on the item, Mr. SAGIN returned with the meeting schedule for the TC and form to request that an item be placed on the TC agenda. Director of Development Services offered comments about the item and answered questions of the Commissioners. No action was taken by the Commission.

**POLICY PROJECT RELATED ITEMS (Planning Department)**

(H) DRAFT “BIKE MERCED” WEBPAGE

Intern MEZA presented a report about the draft “Bike-Merced” webpage, giving the Commission an overview of its form and content. The Commission offered several comments and ideas to improve its readability and utility.

(I) BIKE MONTH PROCLAMATION

The Commission accepted the report and attached proclamation. Chairperson TYLER volunteered to present this proclamation with the Mayor of the City of Merced at the May 4, 2015 City Council meeting.

(J) DRAFT ACTIVE TRANSPORTATION PLANNING GRANT

Principal Planner KING presented a report about the draft grant application to prepare an Active Transportation/Safe Routes to School Plan. The Commission commented and had questions about the extent of the planning effort, its effect on future bikeway improvement projects, and the role of the public to implement it.

(K) USE OF SHARROWS ON M STREET

Principal Planner KING presented a report about the use of sharrows on M Street, which included a recommendation to form a temporary subcommittee to identify and secure grant funding for the City to hire a consultant to develop a public education program together with installation of sharrows. The Commission discussed the topic, resulting in the following actions:

ON MOTION OF COMMISSIONER HOTHEM, SECONDED BY COMMISSIONER HICKS, AND CARRIED BY THE FOLLOWING VOTE, TO REQUEST THE PUBLIC WORKS DEPARTMENT TO REMARK THE SHARROWS ON MAIN STREET.

BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS KAYSER-GRANT, COMEYNE, HICKS,  
HOTHEM AND CHAIRPERSON TYLER  
NOES: NONE  
ABSENT: COMMISSIONER PALMA (ONE VACANCY)  
ABSTAIN: NONE

ON MOTION OF COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER HICKS, AND CARRIED BY THE FOLLOWING VOTE, TO FORM A SUBCOMMITTEE WHOSE MEMBERS INCLUDE COMMISSIONER KAYSER-GRANT AND COMMISSIONER COMEYNE, IN PARTNERSHIP WITH STAFF, THE DOWNTOWN BUSINESSES AND NEWLY FORMED DOWNTOWN NEIGHBORHOOD ASSOCIATION TO DEVELOP A PUBLIC EDUCATION APPROACH SO THAT CYCLISTS USE THE STREET AND NOT THE SIDEWALK, AND LET THAT PROGRESS SO THAT SHARROWS CAN BE INSTALLED ON M STREET WHERE CYCLISTS ARE PROHIBITED ON THE SIDEWALK.

BY THE FOLLOWING VOTE:

AYES: COMMISSIONERS KAYSER-GRANT, COMEYN, HICKS,  
HOTHEM AND CHAIRPERSON TYLER.  
NOES: NONE  
ABSENT: COMMISSIONER PALMA (ONE VACANCY)  
ABSTAIN: NONE

**OTHER**

(L) ADJOURN TO THE NEXT REGULARLY SCHEDULED MEETING OF  
TUESDAY, JUNE 23, 2015, AT 3:00 P.M. IN THE COUNCIL CHAMBERS

ON MOTION FROM COMMISSIONER KAYSER-GRANT, SECONDED BY  
COMMISSIONER HOTHEM, DULY CARRIED, CHAIRPERSON TYLER  
ADJOURNED THE MEETING AT 5:06 P.M. TO THE REGULARLY SCHEDULED  
BICYCLE ADVISORY COMMISSION MEETING ON TUESDAY, JUNE 23, 2015,  
AT 3:00 P.M. IN THE CITY COUNCIL CHAMBERS, 678 W. 18<sup>TH</sup> STREET,  
MERCED, CALIFORNIA.

BY:



BILL KING  
COMMISSION SECRETARY

APPROVED:



ROBERT TYLER, CHAIRPERSON  
BICYCLE ADVISORY COMMISSION

CITY OF MERCED  
BICYCLE ADVISORY COMMISSION  
MINUTES

CITY COUNCIL CHAMBERS  
678 W 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA

TUESDAY  
June 23, 2015

Acting Chairperson HOTHEM called the meeting of the Bicycle Advisory Commission to order at 3:09 p.m.

(B) ROLL CALL

Present: Jules Comeyne  
Tom Hothem (Vice Chairperson/Acting Chairperson)  
Lisa Kayser-Grant  
Isai Palma

Absent: Robert Tyler (Chairperson) (unexcused)  
Justin Hicks (excused)  
(three vacancies)

Staff Present: David B. Gonzalves, Director of Development Services  
Francisco Mendoza-Gonzalez, Planner  
Andre Matthews, Police Lieutenant  
Vance Walker, Police Officer

(C) APPROVE MINUTES OF APRIL 28, 2015

Commissioner KAYSER-GRANT advised that the minutes may contain an error. She questioned whether Item (K) should be in regards to the re-painting the sharrows on Main Street and not in regards to re-painting the sharrows on M Street. She would like staff to confirm the location of the sharrows at the next Bicycle Advisory Commission meeting.

ON MOTION BY COMMISSIONER KAYSER-GRANT, SECONDED BY COMMISSIONER COMEYNE, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO HAVE STAFF REVIEW AND REPORT THE ACTION TAKEN ON ITEM (K) PRIOR TO ACTING ON THE BAC MINUTES OF APRIL 28, 2015.

(D) ORAL COMMUNICATIONS

There were no oral communications from the public.

(E) BICYCLE ADVISORY COMMISSION REQUESTS AND INFORMATION

Commissioner KAYSER-GRANT distributed a survey regarding smart growth from the Merced County Association of Governments (MCAG).

Vice-Chairperson HOTHEM noted that various bike safety signs have recently been installed throughout the community. He would like staff to provide a presentation justifying the locations of the signs and the language used for those signs.

Commissioner KAYSER-GRANT asked Director of Development Services GONZALVES if the BAC could make specific recommendations for Capital Improvement Projects.

Director of Development Services GONZALVES replied that the Capital Improvement Projects for this year were discussed and budgeted for in January. The BAC still has the opportunity to make recommendations for future Capital Improvement Projects.

**IMPROVEMENT PROJECT RELATED ITEMS (Engineering Department)**

(F) No items presented.

**POLICY & BIKE PROMOTION RELATED ITEMS (Planning Department)**

(G) TRAFFIC SAFETY AWARENESS AND EDUCATIONAL MATERIALS

Director of Development Services GONZALVES presented the accident report used to apply for the Caltrans ATP Grant. He thanked Intern GUSTAVO CRUZ for creating City-wide maps and graphs showing bicycle/pedestrian-related accidents over the past five years.

Lieutenant MATTHEWS and Officer WALKER discussed various aspects of the accident report. They defined the accident types shown on the report and identified locations that exhibit high rates of accidents.

Director of Development Services GONZALVES explained that many accident types could have been prevented with community outreach on bike safety.

Commissioner PALMA noted that many accidents occurred at night, so visibility of bikers may be an issue (which could be addressed with reflective vests or flashing

lights). In addition, he suggested providing extensive outreach prior to the months when most accidents occur.

Commissioner COMEYNE asked about accidents involving intoxication, and Lieutenant MATTHEWS replied that he may be able to provide that information to Principal Planner KING.

(H) PLANNING FOR THE 2<sup>ND</sup> ANNUAL DIRECTOR'S RIDE

Director of Development Services GONZALVES introduced this item and discussed areas where the inaugural Director's Ride succeeded and areas where improvement is needed. Commissioner PALMA suggested improving outreach by collaborating with other non-profit organizations. Commissioner KAYSER-GRANT suggested moving the event from May to April.

OTHER

(I) ADJOURN TO THE NEXT REGULARLY SCHEDULED MEETING OF TUESDAY, AUGUST 25, 2015, AT 3:00 P.M. IN THE COUNCIL CHAMBERS

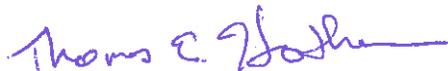
ON MOTION FROM COMMISSIONER COMEYNE, SECONDED BY COMMISSIONER PALMA, DULY CARRIED, ACTING CHAIRPERSON HOTHEM ADJOURNED THE MEETING AT 4:25 P.M. TO THE REGULARLY SCHEDULED BICYCLE ADVISORY COMMISSION MEETING ON TUESDAY, AUGUST 25, 2015, AT 3:00 P.M. IN THE CITY COUNCIL CHAMBERS, 678 W. 18<sup>TH</sup> STREET, MERCED, CALIFORNIA.

BY:



BILL KING  
COMMISSION SECRETARY

APPROVED:



TOM HOTHEM, ACTING CHAIRPERSON  
BICYCLE ADVISORY COMMISSION

CITY OF MERCED  
BICYCLE ADVISORY COMMISSION

MINUTES

CITY COUNCIL CHAMBERS  
678 W 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA

TUESDAY  
August 25, 2015

Chairperson TYLER called the meeting of the Bicycle Advisory Commission to order at 3:02 p.m.

(B) ROLL CALL

Present: Robert Tyler (Chairperson)  
Jules Comeyne  
Justin Hicks  
Tom Hothem (Vice Chairperson)  
Lisa Kayser-Grant  
Isai Palma

Absent: None. (Three vacancies, one voting member and two Ex-Officio)

Staff Present: Bill King, Principal Planner  
Joe Cardoso, Land Engineer  
Jose Palma, Transportation Planning Intern

(C) APPROVE MINUTES OF APRIL 28, 2015 AND JUNE 23, 2015

ON MOTION BY COMMISSIONER COMEYNE, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO APPROVE THE APRIL 28, 2015, MINUTES.

ON MOTION BY COMMISSIONER COMEYNE, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO APPROVE THE JUNE 23, 2015, MINUTES.

(D) ORAL COMMUNICATIONS

City Manager BRAMBLE gave an overview of the California High Speed Rail (HSR) project and the upcoming preparation by the City and consultant of a Station Area Plan. Mr. BRAMBLE requested the Bicycle Advisory Commission to appoint a representative

that would sit on the City's advisory HSR ad-hoc committee. A formal appointment will be made at the next Commission meeting of October 27, 2015.

(E) BICYCLE ADVISORY COMMISSION REQUESTS AND INFORMATION

Commissioner HOTHEM noted that the Class I Bear Creek Bike Path (under the M Street bridge) needs cleaning. Chairperson TYLER stated that bikeway maintenance-related comments can be made to Public Work's maintenance hotline number at 209-385-6800.

At a later time, though under this agenda item, various Commissioners gave reports on their work on public education and upcoming bike-related events.

IMPROVEMENT PROJECT RELATED ITEMS (Engineering Department)

(F) STATUS OF BIKE CORRAL

Land Engineer CARDOSO presented a report about the potential relocation of the bike parking corral near Merced Theater. The Commissioners asked questions and commented about the involved parties, its location, and stated their interest to be consulted prior to the possible relocation of the bike corral. The Commission restated its support for the current location of the bike corral.

(G) RECOMMENDED USE SIDEWALK SIGNS

Land Engineer CARDOSO presented a report about signs that recommend cyclists to use sidewalks in specific areas of the City. Commissioners asked questions and commented on a variety of issues concerning the use of sidewalks by cyclists and associated signage. Land Engineer CARDOSO recommended that a member of the Commission meet with the Engineering Department to convey the Commission's concerns and issues. Commissioner HICKS offered to represent the Bicycle Advisory Commission in a meeting with the City Engineer.

(H) BICYCLE ADVISORY COMMISSION INPUT TO CAPITAL IMPROVEMENT PROJECTS

Land Engineer CARDOSO inquired of the Commission how they could be more involved in bike-related projects. The Commission discussed a variety of ways that their input could be provided. Land Engineer CARDOSO stated that he would follow-up with the City Engineer on some of these ideas, namely increased participation in the Traffic

Committee, and involvement in the selection process of bike projects, whether grant-related or those listed in the City's Capital Improvement Plan.

**POLICY & BIKE PROMOTION RELATED ITEMS (Planning Department)**

(I) **BICYCLE EDUCATION AND SAFETY**

Intern PALMA presented a report about his work to create a business plan for public outreach, particularly as it could apply to understanding and using sharrows. Ideas included flyers, booths, video, events, challenges and social media.

**OTHER**

(J) **ELECTION OF CHAIRPERSON AND VICE-CHAIRPERSON**

The Commissioners discussed interests in the positions.

ON MOTION BY COMMISSIONER HICKS, SECONDED BY COMMISSIONER PALMA, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO ELECT CHAIRPERSON TYLER TO CONTINUE AS CHAIRPERSON, AND TO ELECT VICE-CHAIRPERSON HOTHEM TO CONTINUE AS VICE-CHAIRPERSON.

(K) **ADJOURN TO THE NEXT REGULARLY SCHEDULED MEETING OF TUESDAY, OCTOBER 27, 2015, AT 3:00 P.M. IN THE COUNCIL CHAMBERS**

ON MOTION FROM COMMISSIONER HOTHEM, SECONDED BY COMMISSIONER HICKS, DULY CARRIED, CHAIRPERSON TYLER ADJOURNED THE MEETING AT 4:43 P.M. TO THE REGULARLY SCHEDULED BICYCLE ADVISORY COMMISSION MEETING ON TUESDAY, OCTOBER 27, 2015, AT 3:00 P.M. IN THE CITY COUNCIL CHAMBERS, 678 W. 18<sup>TH</sup> STREET, MERCED, CALIFORNIA.

BY:



BILL KING  
COMMISSION SECRETARY

APPROVED:



ROBERT TYLER, CHAIRPERSON  
BICYCLE ADVISORY COMMISSION

CITY OF MERCED  
BICYCLE ADVISORY COMMISSION

MINUTES

CITY COUNCIL CHAMBERS  
678 W 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA

TUESDAY  
October 27, 2015

Chairperson TYLER called the meeting of the Bicycle Advisory Commission to order at 3:02 p.m.

(B) ROLL CALL

Present: Robert Tyler (Chairperson)  
Justin Hicks  
Lisa Kayser-Grant  
Isai Palma

Absent: Jules Comeyne  
Tom Hothem (Vice Chairperson)  
(Three vacancies, one voting member and two Ex-Officio)

Staff Present: Bill King, Principal Planner  
John Sagin, Principal Architect

(C) APPROVE MINUTES OF AUGUST 25, 2015

ON MOTION BY COMMISSIONER HICKS, SECONDED BY COMMISSIONER PALMA, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO APPROVE THE AUGUST 25, 2015, MINUTES, AS SUBMITTED.

(D) ORAL COMMUNICATIONS

There were no oral communications

(E) BICYCLE ADVISORY COMMISSION REQUESTS, INFORMATION ITEMS AND SUB-COMMITTEE REPORTS

Commissioner KAYSER-GRANT, on behalf of Commissioner HICKS, requested that Staff take action on the following items:

- For the City to commit funding and personnel regarding the 2nd Annual Director's Ride;
- List of active and pending infrastructure projects based on or related to the Bicycle Plan;
- Receive more active communication as to what input the City Council wishes to receive from the Bicycle Advisory Commission (BAC), and how they want it. Can the City Council more actively recruit for vacant positions? On a related note, the BAC meeting time is a major impediment to filling vacancies.
- Either do further expansion of the bikeway signs on Main Street, or do a pilot project strategically placed in the City to test the viability as signage as education.

### **CAPITAL PROJECT RELATED ITEMS (Engineering Department)**

#### **(F) ATP GRANT – MULTI-USE PATH PROJECT (BNSF RAILROAD AND HWY 59)**

Principal Architect SAGIN presented a report about the schedule and plan for the project, which adds a separate multi-use pathway across the BNSF rails at Highway 59, and answered questions from the Commission. Bicyclists and pedestrians currently share the vehicle travel lanes at this site. Construction of the project is likely to start in 2016.

#### **(G) BLACK RASCAL CREEK BIKE PATH**

Principal Architect SAGIN presented a report about the nearly completed project, noting that lighting will be added in the future.

#### **(H) BEAR CREEK BIKE PATH**

Principal Architect SAGIN presented a report about the project, noting that the segment between 16<sup>th</sup> Street and the BNSF Railroad right-of-way is no longer part of the project, but that the improvements to the north of the rails are still included. Commission members expressed interest in offering comments to Caltrans concerning bikeway needs after learning from Principal Architect SAGIN that Caltrans is working on design plans to upgrade the intersection of Highway 59 and Santa Fe/Olive Avenue with a large roundabout.

**POLICY/BIKE PROMOTION/DEVELOPMENT RELATED ITEMS (Planning Department)**

(I) DEVELOPMENT PROJECT: “THE MERCED GATEWAY PROJECT”

Principal Planner KING presented a report about the project and then invited the Commission and public to a workshop setting to review plans and offer recommendations to the project applicant and designer regarding inclusion of bikeway infrastructure. After the workshop, Staff collected the Commissioners’ recommendations.

(J) ACTIVE TRANSPORTATION GRANT UPDATE

Principal Planner KING announced that the California Transportation Commission awarded the City \$134,000 to prepare an Active Transportation Planning/Safe Routes to School (ATP/SRTS) Plan. If accepted by the City, work on the plan would begin in July 2016. In preparation for that work, and consistent with prior and independent needs expressed by the BAC, Staff requested members of the BAC to participate in data collection projects, namely: the frequency, type and location of pedestrian and cyclist accidents; counts of pedestrians and cyclists; and examining potential local benefits of actions by the Federal Highway Administration to reduce its vehicle travel lane width in cities.

ON MOTION OF COMMISSIONER KAYSER-GRANT, SECONDED BY CHAIRPERSON TYLER, DULY CARRIED BY UNANIMOUS VOICE VOTE (TWO VOTING MEMBERS ABSENT, ONE VACANCY), TO APPOINT COMMISSIONER PALMA AND COMMISSIONER KAYSER-GRANT TO PARTICIPATE IN A TEMPORARY ATP/SRTS CITIZEN FOCUS GROUP; AND FOR COMMISSIONER HICKS AND CHAIRPERSON TYLER TO BE PART OF A TEMPORARY SUB-COMMITTEE OF THE BICYCLE ADVISORY COMMISSION THAT WILL SCOPE NEEDS AND ALTERNATIVE METHODS TO CONDUCT A COUNT OF CYCLISTS AND PEDESTRIANS; AND FOR COMMISSIONER HICKS TO EXAMINE POTENTIAL RAMIFICATIONS OF REDUCED LANE WIDTH.

(K) AD-HOC HIGH-SPEED RAIL CITIZEN’S ADVISORY COMMITTEE APPOINTMENT

Principal Planner KING presented a request by the City for a member of the Bicycle Advisory Commission to be a member of the Ad-hoc High-Speed Rail Citizen’s Advisory Committee.

ON MOTION OF CHAIRPERSON TYLER AND SECONDED BY COMMISSIONER HICKS, DULY CARRIED BY UNANIMOUS VOICE VOTE (TWO VOTING MEMBERS ABSENT, ONE VACANCY), TO SEND CHAIRPERSON TYLER TO THE FIRST MEETING OF HIGH-SPEED RAIL CITIZEN'S ADVISORY COMMITTEE.

**OTHER**

- (L) CANCELLATION OF THE DECEMBER 22, 2015, MEETING (TO BE HELD DECEMBER 8, 2015)
- (M) ADJOURN TO THE NEXT REGULARLY SCHEDULED MEETING OF TUESDAY, DECEMBER 8, 2015, AT 3:00 P.M. IN THE COUNCIL CHAMBERS

Chairperson TYLER opted to seek actions on items L and M concurrently.

ON MOTION FROM COMMISSIONER GRANT, SECONDED BY COMMISSIONER HICKS, DULY CARRIED BY UNANIMOUS VOICE VOTE (TWO ABSENT, ONE VACANCY), TO CANCEL THE REGULARLY SCHEDULED DECEMBER 22, 2015, BICYCLE ADVISORY COMMISSION MEETING AND SCHEDULE IT TO BE HELD ON DECEMBER 8, 2015, AND TO ADJOURN THE MEETING AT 5:07 P.M. TO THE REGULARLY SCHEDULED BICYCLE ADVISORY COMMISSION MEETING ON TUESDAY, DECEMBER 8, 2015, AT 3:00 P.M. IN THE CITY COUNCIL CHAMBERS, 678 W. 18<sup>TH</sup> STREET, MERCED, CALIFORNIA.

BY:



BILL KING  
COMMISSION SECRETARY

APPROVED:



ROBERT TYLER, CHAIRPERSON  
BICYCLE ADVISORY COMMISSION

CITY OF MERCED  
BICYCLE ADVISORY COMMISSION

MINUTES

CITY COUNCIL CHAMBERS  
678 W 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA

TUESDAY  
December 8, 2015

Chairperson TYLER called the meeting of the Bicycle Advisory Commission to order at 3:00 p.m.

(B) ROLL CALL

Present: Robert Tyler (Chairperson)  
Justin Hicks  
Lisa Kayser-Grant  
Isai Palma  
Jules Comeyne  
Tom Hothem (Vice Chairperson)

Absent: (Three vacancies, one voting member and two Ex-Officio)

Staff Present: Bill King, Principal Planner  
John Sagin, Principal Architect

(C) APPROVE MINUTES OF OCTOBER 27, 2015

ON MOTION BY COMMISSIONER COMEYNE, SECONDED BY COMMISSIONER HICKS, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VACANCY), TO APPROVE THE OCTOBER 27, 2015, MINUTES, AS SUBMITTED.

(D) ORAL COMMUNICATIONS

There was no oral communication.

(E) BICYCLE ADVISORY COMMISSION REQUESTS, INFORMATION ITEMS AND SUB-COMMITTEE REPORTS

Commissioner KAYSER-GRANT shared her findings with the other commissioners about a records request review she made concerning the Bear Creek Pathway project. She also asked questions about a possible transportation sales tax she said is being considered by

the Merced County Association of Governments. The Commissioners discussed both topics and took action to share the Bear Creek Bike Path findings with the City Council.

ON MOTION OF COMMISSIONER HICKS, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY A 5-0-1-1 VOICE VOTE (ONE VACANCY, COMMISSIONER KAYSER-GRANT ABSTAINING), TO FORM A TEMPORARY “BEAR CREEK PATHWAY INFORMATION SHARING SUB-COMMITTEE” TO GATHER AND SHARE INFORMATION WITH THE CITY COUNCIL AT THEIR DECEMBER 21, 2015 MEETING AND WHOSE FINAL ACTION IS TO REPORT BACK TO THE BICYCLE ADVISORY COMMISSION ON FEBRUARY 23, 2016.

Principal Architect SAGIN came into the meeting chambers after this action, and provided an update to the Commissioners concerning the City Council interest to pursue completion of the entire “Bear Creek Pathway” project.

#### **CAPITAL PROJECT RELATED ITEMS (Engineering Department)**

(F) NO ITEMS

#### **POLICY/BIKE PROMOTION/DEVELOPMENT RELATED ITEMS (Planning Department)**

(G) ACTIVE TRANSPORTATION PLAN/SAFE ROUTES TO SCHOOL PLANNING PROCESS

Principal Planner KING presented a report about the planning project and invited the Commission to comment. The Commissioners discussed the schedule and activities. Commissioner KAYSER-GRANT, who had left the meeting, provided her comments through an email to Principal Planner KING.

(H) DEVELOPMENT PROJECT: THE MERCED GATEWAY PROJECT

Principal Planner KING presented a report about the proposed development project, notably about the inclusion of bikeway-related features, and invited the Commission to comment. Commissioner KAYSER-GRANT, who had left the meeting, provided her comments through an email to Principal Planner KING. The Commissioners expressed interest for staff to consult with Caltrans about design and operation-related features on the Mission Avenue Interchange that may present a barrier to the planned Class I bikeway that

extends west from Campus Parkway into South Merced. Mr. KING affirmed the need for such consultation.

(I) HIGHWAY 59 & OLIVE AVENUE/SANTA FE AVENUE CALTRANS ROUNDABOUT

Principal Planner KING presented a report about Caltrans plans for an improvement at this intersection, and invited the Commission to comment. The Commissioners expressed their opposition to Alternative 1, the roundabout.

ON MOTION OF COMMISSIONER HOTHEM AND SECONDED BY COMMISSIONER COMEYNE, DULY CARRIED BY UNANIMOUS VOICE VOTE (ONE VOTING MEMBER ABSENT, ONE VACANCY), TO RECOMMEND THAT ALTERNATIVE 2 (OTHER VIABLE STRATEGIES) BE UTILIZED IN THE REDESIGN OF THE INTERSECTION.

**OTHER**

(J) ADJOURN TO THE NEXT REGULARLY SCHEDULED MEETING OF TUESDAY, FEBRUARY 23, 2016, AT 3:00 P.M. IN THE COUNCIL CHAMBERS

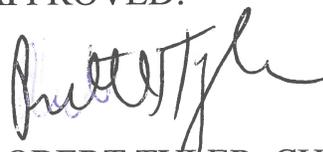
ON MOTION FROM COMMISSIONER HOTHEM, SECONDED BY COMMISSIONER COMEYNE, DULY CARRIED, CHAIRPERSON TYLER ADJOURNED THE MEETING AT 5:00 P.M. TO THE REGULARLY SCHEDULED BICYCLE ADVISORY COMMISSION MEETING ON TUESDAY, FEBRUARY 23, 2016, AT 3:00 P.M. IN THE CITY COUNCIL CHAMBERS, 678 W. 18<sup>TH</sup> STREET, MERCED, CALIFORNIA.

BY:



BILL KING  
COMMISSION SECRETARY

APPROVED:



ROBERT TYLER, CHAIRPERSON  
BICYCLE ADVISORY COMMISSION

CITY OF MERCED  
BICYCLE ADVISORY COMMISSION

MINUTES

CITY COUNCIL CHAMBERS  
678 W 18<sup>TH</sup> STREET  
MERCED, CALIFORNIA

TUESDAY  
February 23, 2016

Chairperson TYLER called the meeting of the Bicycle Advisory Commission to order at 3:01 p.m.

(B) ROLL CALL

Present: Robert Tyler (Chairperson)  
Justin Hicks  
Lisa Kayser-Grant  
Isai Palma  
Jules Comeyne  
Tom Hothem (Vice Chairperson)  
Katy Oestman

Absent: (Two vacancies, two Ex-Officio)

Staff Present: Bill King, Principal Planner  
John Sagin, Principal Architect  
Joel Svendsen, Associate Engineer  
Nicholas Fong and Thomas Dumas, Caltrans District 10

(C) APPROVE MINUTES OF DECEMBER 8, 2015

ON MOTION BY COMMISSIONER COMEYNE, SECONDED BY COMMISSIONER HICKS, DULY CARRIED BY UNANIMOUS VOICE VOTE (NO VACANCY), TO APPROVE THE DECEMBER 8, 2015, MINUTES, AS SUBMITTED.

(D) ORAL COMMUNICATIONS

There was no oral communication.

(E) PLANNING FOR BIKEWAYS ON THE MISSION AVENUE INTERCHANGE

Principal Planner KING presented the report noting the importance that the Mission Avenue Interchange plays in connecting the City's planned Class I Bikeway in South

Merced on either side of the Mission Avenue/Campus Parkway interchange, and introduced Thomas Dumas and Nicholas Fong of Caltrans District 10. Both Caltrans representatives and City Staff noted that although there is room for bikeways on the overpass, that they were not installed because of the lack of bikeways in the area at the time the interchange was constructed. The Commission voiced their support for bikeways on the overpass with connections to the nearby growing urban neighborhoods. Discussion continued about need to restripe and associated costs and funding sources. The Commission concluded their discussion by discussing the importance of knowing what road projects are occurring and how they can be involved during the early design phase of the process, emphasizing that all roads in the City are important for bicycle transportation.

### **CAPITAL PROJECT RELATED ITEMS (Engineering Department)**

#### **(F) ROUND III ATP APPLICATIONS**

1. SAFE ROUTES TO SCHOOL GRANT
2. MOTEL DRIVE SIDEWALK GRANT

Principal Architect SAGIN presented a report about two draft Active Transportation Planning (ATP) Grant applications to: 1) fill in approximately 7,000 feet of missing sidewalk gaps around John Muir School; and, 2) to install approximately 2,000 linear feet of sidewalk and bikeways on Motel Drive (between Merced Avenue and Carol Avenue), and invited the Commission to comment. The Commissioners discussed the projects, and for the Motel Drive project recommended the use of either bike lanes or sharrows (whichever fits best), emphasizing that: 1) both sides of the road should be treated with the same type of bikeway facility; 2) use of signage on roadway and poles (which includes “bikes may use full lane,” if sharrows are installed, 3) a multiuse pathway is not an appropriate facility along this road and generally not used except in very limited circumstances; and, 4) that Staff include proposals to add bikeway-related signage and marking improvements as necessary at the intersection of Motel Drive and State Highway 140 in the ATP application.

#### **(G) BEAR CREEK BIKEWAY PROJECT - ALTERNATIVE DESIGNS**

Principal Architect SAGIN presented a report about the draft application to compete for Caltrans Active Transportation funds to install bikeway features in the area just east of Bear Creek between 16<sup>th</sup> Street and 25<sup>th</sup> Street Plan, connecting to the Class I Bike Path that exists along the northeast side of the BNSF Railroad corridor near the Merced Marketplace Shopping Center. The Commission offered several ideas, notably the need to improve the exiting pathway crossing of Bear Creek at the BNSF rail line. Staff asked for

additional comments from the Commission to be provided at or before the regularly scheduled April 26, 2016, Bicycle Advisory Commission meeting.

(H) REVIEW OF DRAFT CITY OF MERCED STANDARD BIKEWAY-RELATED DESIGNS

Principal Architect SAGIN presented a report about the draft City of Merced Standard Bikeway-related Designs. The Commission requested additional time to review and comment, to which Staff granted, noting that Commission comments can be provided at or before the regularly scheduled April 26, 2016, Bicycle Advisory Commission meeting.

**POLICY/BIKE PROMOTION/DEVELOPMENT RELATED ITEMS (Planning Department)**

(I) BIKE MONTH AND 2<sup>ND</sup> ANNUAL DIRECTOR'S RIDE

Principal Planner KING presented the report, identifying April 23, 2016, as the date of the event. The Commission and City Staff assigned tasks in order to put on a successful event similar to last year.

(J) ANNUAL BICYCLE ADVISORY COMMISSION REPORT TO THE CITY COUNCIL

Principal Planner KING presented the effort to prepare an "Annual Bicycle Advisory Commission Report to the City Council" in the Spring of 2016, in order that the City Council may be kept abreast of the activities of the Bicycle Advisory Commission (BAC) and the roles City Staff play in the attainment of the purpose of Ordinance 2323, which created the BAC as an advisory body to the City Council on matters having to do with bicycle transportation within the City of Merced. The Commissioners discussed the topic and expressed their support for it, and then took action to establish a sub-committee.

ON MOTION OF COMMISSIONER HICKS, SECONDED BY COMMISSIONER HOTHEM, DULY CARRIED BY A 7-0-0-0 VOICE VOTE (NO VACANCY, COMMISSIONER NO ABSTAININGS), TO FORM A TEMPORARY "ANNUAL BICYCLE ADVISORY COMMISSION REPORT TO THE CITY COUNCIL SUBCOMMITTEE" WHOSE MEMBERS ARE COMMISSIONERS GRANT, HOTHEM AND HICKS IN ORDER TO, WITH PLANNING STAFF, MEET WITH CITY DEPARTMENT HEADS; REVIEW THE DRAFT REPORT; ASSIST IN STAFF

PRESENTATION TO CITY COUNCIL; AND, WHOSE FINAL ACTION IS TO REPORT BACK TO THE BICYCLE ADVISORY COMMISSION ON JUNE 28, 2016.

**OTHER**

(K) BICYCLE ADVISORY COMMISSION REQUESTS, INFORMATION ITEMS AND SUB-COMMITTEE REPORTS

1. BEAR CREEK PROJECT ALTERNATIVE AND REPORT TO COUNCIL

Chairperson TYLER described the positive experience he had with the City Council stating that presenting the Commission's recommendation assisted the City Council in deciding their action to focus on the northern portion of the project.

(L) ADJOURN TO THE NEXT REGULARLY SCHEDULED MEETING OF TUESDAY, APRIL 26, 2016, AT 3:00 P.M. IN THE COUNCIL CHAMBERS

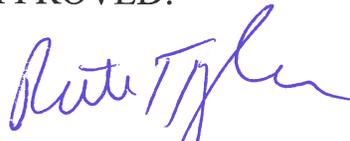
ON MOTION FROM COMMISSIONER HOTHEM, SECONDED BY COMMISSIONER GRANT, DULY CARRIED, CHAIRPERSON TYLER ADJOURNED THE MEETING AT 5:05 P.M. TO THE REGULARLY SCHEDULED BICYCLE ADVISORY COMMISSION MEETING ON TUESDAY, APRIL 26, 2016, AT 3:00 P.M. IN THE CITY COUNCIL CHAMBERS, 678 W. 18<sup>TH</sup> STREET, MERCED, CALIFORNIA.

BY:



BILL KING  
COMMISSION SECRETARY

APPROVED:



ROBERT TYLER, CHAIRPERSON  
BICYCLE ADVISORY COMMISSION



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-206

**Meeting Date:** 5/16/2016

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**Report Prepared by:** *Stephani Davis, Secretary I, Planning Division*

**SUBJECT:** Information Only-Site Plan Review Minutes of November 12, 2015 and January 7, 2016

### RECOMMENDATION

For information only

### ATTACHMENTS

1. Memo to Council
2. Minutes of 11-12-15
3. Minutes of 1-7-16

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*City of Merced*

**MEMORANDUM**

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**DATE:** May 5, 2016  
**TO:** City Council and the City Manager  
**FROM:** David Gonzalves, Director of Development Services   
**SUBJECT:** Minutes for Planning Commission, Bicycle Advisory Commission,  
and Site Plan Committee

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Due to transition in secretarial staff and miscommunication, Minutes for these Commissions for City Council review were delayed and have now been brought up to date. This delay will not happen in the future.

**CITY OF MERCED**  
**Site Plan Review Committee**

**MINUTES**

Planning Conference Room  
2<sup>nd</sup> Floor Civic Center  
Thursday, November 12, 2015

Chairperson GONZALVES called the meeting to order at 1:30 p.m.

**ROLL CALL**

Committee Members Present: Director of Development Services Gonzalves, Land Engineer Cardoso (for City Engineer Elwin), and Assistant Chief Building Official Stephenson

Committee Members Absent: None

Staff Present: Planning Manager Espinosa, Associate Planner Nelson, Planner/Recording Secretary Mendoza-Gonzalez, and Economic Development Associate Mendoza

1. **MINUTES**

M/S STEPHENSON-CARDOSO, and carried by unanimous voice vote, to approve the Minutes of October 8, 2015, with changes to the motions on pages 2, 3, and 4 to show action by “Cardoso” instead of “Elwin.”

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 Site Plan Application #389, submitted by Roberto Martinez on behalf of NorCal Foods Merced, LH LLC, property owners, to modify the exterior of an existing building at 1798 W. Olive Avenue within Planned Development (P-D) #16, with a General Plan designation of Regional/Community Commercial (RC).

Planner MENDOZA-GONZALEZ reviewed the application for this item. For further information, refer to Draft Site Plan Review Committee Resolution #389.

M/S STEPHENSON-GONZALVES, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-29, and approve Site Plan Application #389, subject to the Findings and eight (8) conditions set forth in the Draft Resolution #389:

AYES: Committee Members Cardoso, Stephenson, and Chairperson Gonzalves

NOES: None

ABSENT: None

4.2 Site Plan Application #390, submitted by Halferty Development, on behalf of KIF, LLC, property owner, to construct a 3,730-square-foot retail building to include a 1,800-square-foot coffee shop with a drive-thru and a future retail space at the southwest corner of West 16<sup>th</sup> Street and Martin Luther King, Jr. Way, within a Central Commercial (C-C) zone.

Associate Planner NELSON reviewed the application for this item. For further information, refer to Draft Site Plan Review Committee Resolution #390. A memorandum was distributed before the meeting showing that the Refuse Department would like to revise Condition #9 to improve their access to the trash enclosure. The proposed location and orientation of the trash enclosure is not appropriate and should be modified during the building permit stage.

M/S STEPHENSON-CARDOSO, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-31, and approve Site Plan Application #390, subject to the Findings and twenty-six (26) conditions set forth in the Draft Resolution #390 with a modification to Condition #9:

(Note: ~~Strikethrough~~ deleted language, underline added language.)

"9. The City Refuse Department does not approve the trash enclosure as shown on the Site Plan at Exhibit 2. The trash enclosure shall be

located in an area and oriented in such a way that allows sufficient access for the City's Refuse trucks. The developer shall work with the City's Refuse Department staff at the Building Permit stage to determine the best location and orientation for the refuse enclosure. If this requires significant modification to the site plan, the changes may be approved by the Development Services Director or referred back to the Site Plan Review Committee at the discretion of the Development Services Director ~~rotated approximately 120 degrees to be angled facing northwest. Details of the location and orientation of the enclosure shall be worked out with the City Refuse Department at Building Permit stage."~~

AYES: Committee Members Cardoso, Stephenson, and Chairperson Gonzalves

NOES: None

ABSENT: None

4.3 Site Plan Application #391, submitted by David McGhee on behalf of himself, Suzanne McGhee, Timothy Reusch, and Anita Reusch, property owners, to allow the construction of a 10,000-square-foot automotive shop, a future 4,750-square-foot shell building, and associated parking on a 1.1-acre vacant parcel located at 1535 W. 14th Street, within a General Commercial (C-G) Zone.

Planner MENDOZA-GONZALEZ reviewed the application for this item. For further information, refer to Draft Site Plan Review Committee Resolution #391.

The applicants informed the Committee that they would like to obtain design approval for the proposed shell building with this request. Initially, the applicants wanted design approval for the automotive shop only, but recent financing opportunities may allow them to construct the shell building sooner than expected. The shell building would be consistent with the proposed automotive shop using the same materials and a similar design.

The Committee had no issues with this request. They recommended adding Condition #30 so that Planning staff can review the design of the shell building during the building permit stage.

Site Plan Review Committee Minutes

Page 4

November 12, 2015

Chairperson GONZALVES mentioned that Condition #15 should be corrected to show that the "Fire Department" will be responsible for reviewing the fire service water line, not the "Public Works Department."

Moreover, Committee Member CARDOSO noted that the subject site may not have a sidewalk easement along 14<sup>th</sup> Street. He recommended adding Condition #31 so that a sidewalk easement would be created if there wasn't one there.

Committee Member CARDOSO was concerned that W. 14<sup>th</sup> Street may not be wide enough to accommodate driving lanes and on-site parking (on both sides of the street). Chairperson GONZALVES recommended adding Finding G so that the Traffic Committee can review these matters and consider prohibiting parking on the south side of W. 14<sup>th</sup> Street (as the south side of the street is adjacent to an on-ramp for Highway 99 while the north side is adjacent to businesses) if needed.

M/S STEPHENSON-GONZALVES, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-32, and approve Site Plan Application #391, subject to the Findings and twenty-nine (29) conditions set forth in the Draft Resolution #391 with the additions of Finding G, Condition #30, and Condition #31 and a modification to Condition #15:

(Note: ~~Strikethrough~~ deleted language, underline added language.)

"G) The Site Plan Committee shall refer the consideration for no parking on the south side of W. 14<sup>th</sup> Street to the Traffic Committee.

"15. A fire service water line shall be installed on-site as required by the ~~Building~~ Fire Department.

"30. The proposed shell building shall be similar in design and materials to the auto shop building. Details to be worked out with Planning staff at the building permit stage.

"31. If the sidewalk is not already in an easement, then the developers shall dedicate an easement to the City for sidewalk purposes."

AYES: Committee Members Cardoso, Stephenson, and Chairperson Gonzalves

NOES: None

ABSENT: None

- 4.4 Site Plan Application #392, submitted by Des Johnston, on behalf of the Transit Joint Powers Authority for Merced County, property owner, to construct a bus maintenance and operations yard to include a modular office building, metal maintenance building, a bus wash, employee and bus parking, and parking covers with future solar panels on top, at 1950 Wardrobe Avenue within a Light Industrial (I-L) zone.

Associate Planner NELSON reviewed the application for this item. For further information, refer to Draft Site Plan Review Committee Resolution #392.

The applicant informed the Committee that he would like to reconfigure the site plan to create additional parking spaces. The applicant provided a conceptual sketch showing the relocation and reorientation of the maintenance building (relocated towards the eastern portion of the parcel and rotated 180 degrees) and the new vehicular circulation pattern.

The Committee recommended modifying Condition #1 and adding Condition #26 so that the applicant can revise his site plan prior to submitting a building permit application. During the building permit stage, staff can review the project for compliance with both development and engineering standards.

M/S STEPHENSON-CARDOSO, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-34, and approve Site Plan Application #392, subject to the Findings and twenty-five (25) conditions set forth in the Draft Resolution #392 with a modification to Condition #1 and the addition of Condition #26:

(Note: ~~Strikethrough~~ deleted language, underline added language.)

- "1. The site shall be constructed as shown on Revised Exhibit B (revised site plan), Exhibits C, D, and E (conceptual elevations), except as modified by the conditions of approval within this resolution.

"26. The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure and to determine if a recycling container would be required."

AYES: Committee Members Cardoso, Stephenson, and Chairperson  
Gonzalves

NOES: None

ABSENT: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. **ADJOURNMENT**

There being no further business, Chairperson GONZALVES adjourned the meeting at 3:20 p.m.

Respectfully submitted,



Kim Espinosa, Secretary  
Merced City Site Plan Review Committee

APPROVED:



David B. Gonzalves,  
Chairperson/  
Director of Development Services,  
Merced City Site Plan Review Committee

CITY OF MERCED  
SITE PLAN REVIEW COMMITTEE  
RESOLUTION #389

<u>Roberto Martinez</u> APPLICANT	<u>Exterior remodel (Del Taco)</u> PROJECT
<u>3421 Tully Road, Ste. G1</u> ADDRESS	<u>1798 W. Olive Avenue</u> PROJECT SITE
<u>Modesto, CA 95350</u> CITY/STATE/ZIP	<u>058-220-045</u> APN
<u>(209) 521-9201</u> PHONE	<u>Planned Development (P-D) #16</u> ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and administratively approved Site Plan Application #389 on November 12, 2015, submitted by Roberto Martinez on behalf of NorCal Foods Merced, LH LLC, property owners, to modify the exterior of an existing building at 1798 W. Olive Avenue within Planned Development (P-D) #16, with a General Plan designation of Regional/Community Commercial (RC). Said property being more particularly described as Parcel A as shown on the map entitled "Parcel Map No. 98-03 for Zelman Merced, LLC," recorded in Volume 91, Page 47 of Merced County Records; also known as Assessor's Parcel Number (APN) 058-220-045.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15301 (a) (Exhibit E); and,

WHEREAS, the Merced City Site Plan Review Committee makes the following Findings:

- A) The proposal complies with the General Plan designation of Regional/Community Commercial (RC) and the Zoning classification of Planned Development (P-D) #16.
- B) The proposal does not include any modifications to the site plan.
- C) The proposal does not include any modifications to the number of indoor or outdoor seats. Additional parking will not be required.
- D) In 2009, the subject site obtained Administrative Conditional Use Permit approval (#AS-124) to increase the allowable logo area from 25% to 50% of the total sign area allowed for this building.
- E) The proposed exterior art panels shall be considered signage if they depict any items sold by the restaurant (e.g. tacos, hamburgers, french fries, etc.). Art panels depicting abstract objects or objects not associated with the restaurant

shall not count as signage, as determined by Planning staff. The total sign area allowed for this site is 63 square feet.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #389 subject to the following conditions:

- 1) The site shall be constructed as shown on Exhibit B (site plan), Exhibit D (proposed elevations), and as modified by the conditions of approval within this resolution.
- 2) All conditions contained in Site Plan Review #79-1 – Amended (“Standard Conditions for Site Plan Review Application”) shall apply.
- 3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including, but not limited to, the California Building Code and Fire Codes.
- 4) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- 5) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- 6) Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced.

- 7) All signing shall comply with the North Merced Sign Ordinance. Building permits shall be obtained prior to installing any permanent signing. A Temporary Sign Permit shall be obtained prior to installing any temporary signs or banners. Temporary freestanding or A-frame signs are not allowed.
- 8) The premises shall remain clean and free of debris and graffiti at all times

If there are any questions concerning these conditions and recommendations, please contact Francisco Mendoza-Gonzalez at (209) 385-6858.

11-12-15

DATE



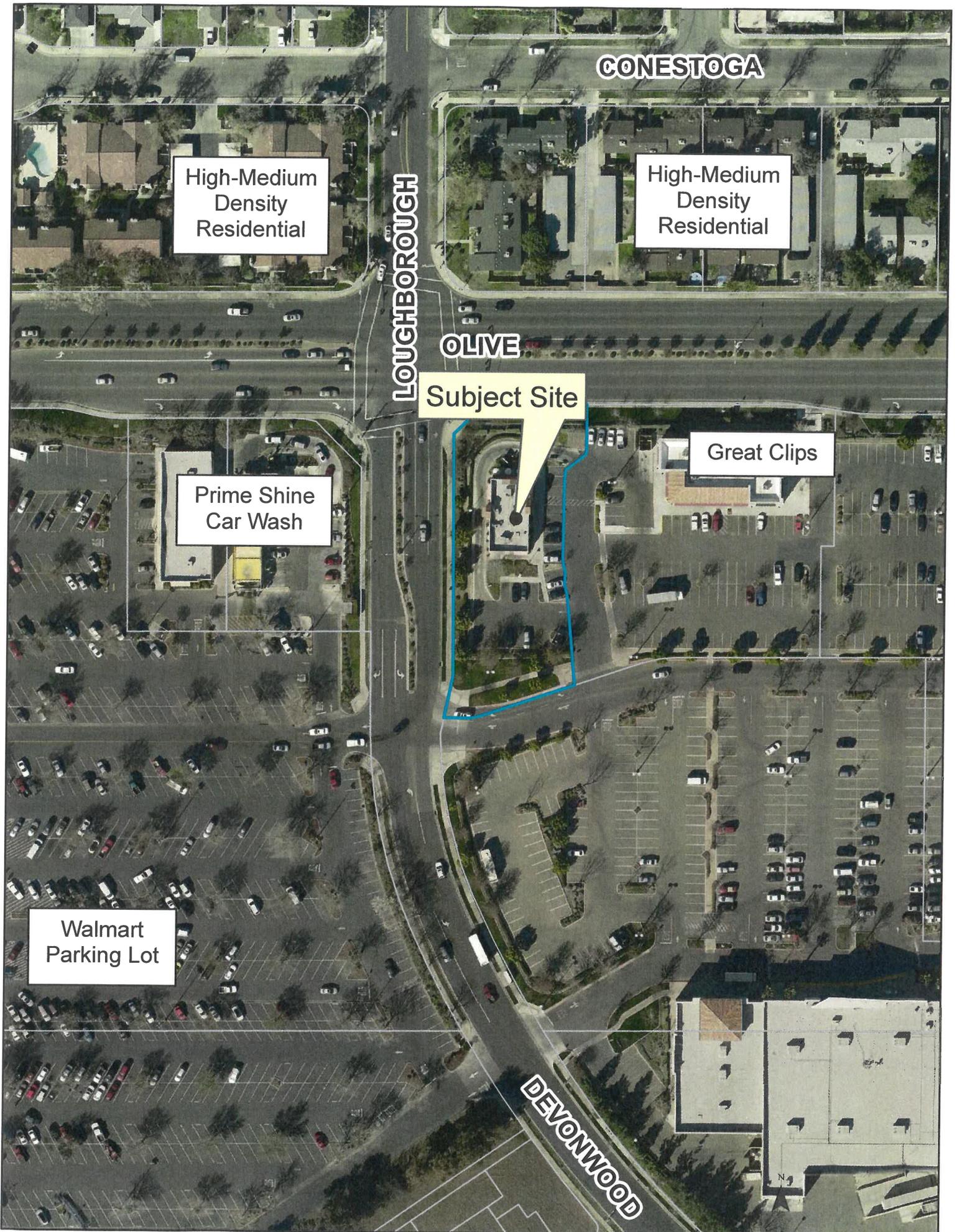
Francisco Mendoza-Gonzalez

Planner

TITLE

Exhibits

- A) Location Map
- B) Site Plan
- C) Existing Elevations
- D) Proposed Elevations
- E) Categorical Exemption



**EXHIBIT A**





Owens Design Consultants  
 2200 McHenry Avenue, Suite C  
 Modesto, CA 95350  
 (209) 522-8831 - fax: (209) 522-4738 - www.odcengr.com



THOMAS J. OWENS  
 R.C.E. 53530

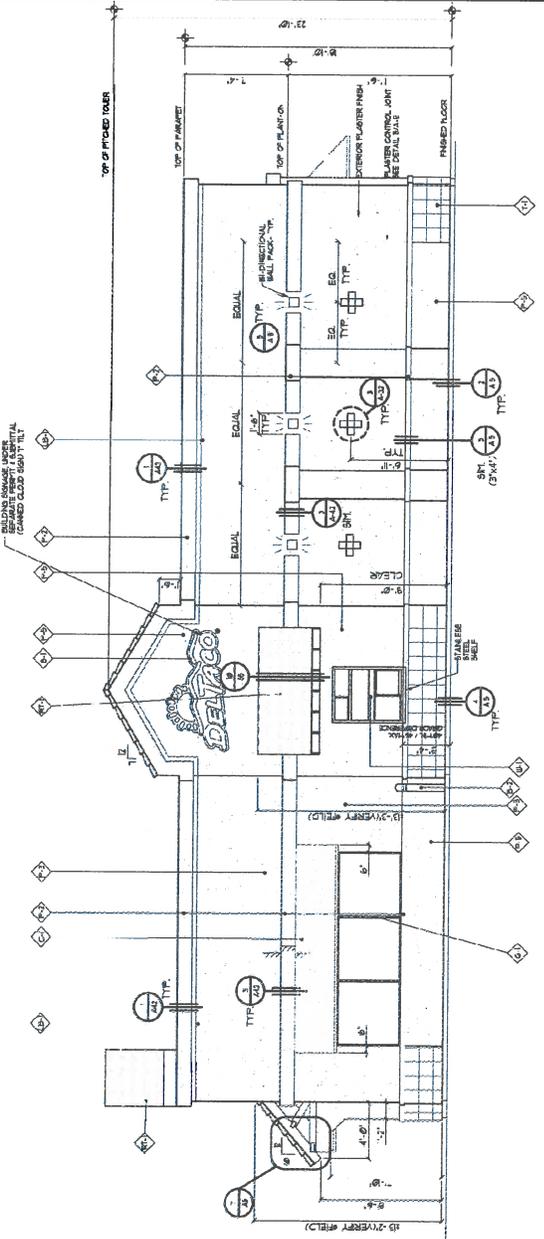
NEW RESTAURANT FOR  
**DEL TACO**

MERCED MARKET PLACE  
 MERCED CALIFORNIA

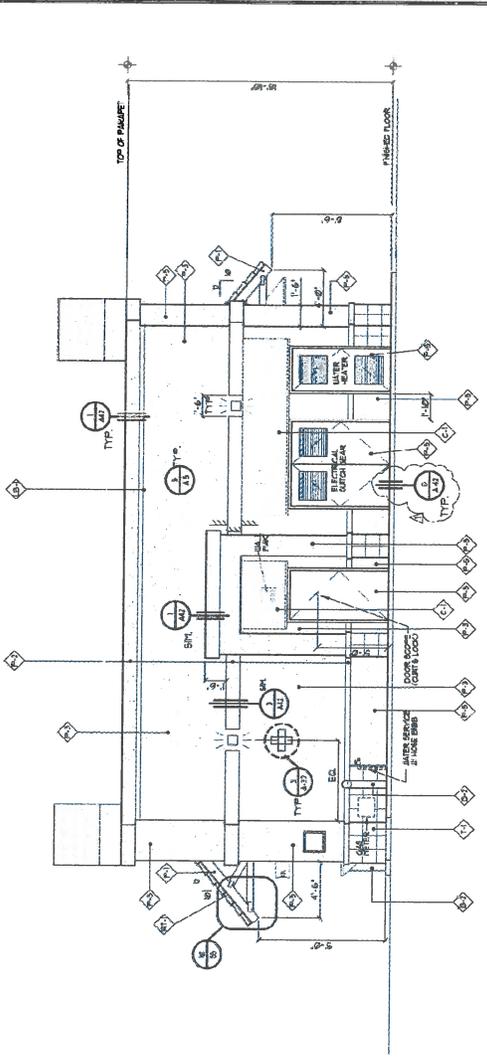
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EXTERIOR ELEVATIONS

Drawn By: AR  
 Checked By: TO  
 Scale: AS NOTED  
 Job No: 2490  
 Date: APRIL 2004  
 CMT File Name: 2490BAS2.dwg  
 Sheet No. **A3.2**



**B** DRIVE THRU ELEVATION  
 SCALE: 1/8" = 1'-0"



**A** ELEVATION  
 SCALE: 1/8" = 1'-0"







**NOTICE OF EXEMPTION**

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To: \_\_\_\_\_ Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

From: (Public Agency)  
City of Merced  
678 West 18th St.  
Merced, CA 95340

X County Clerk  
County of Merced  
2222 M Street  
Merced, CA 95340

**Project Title:** Site Plan Review #389 (Environmental Review #15-29)

**Project Applicant:** Roberto Martinez

**Project Location (Specific):** 1798 W. Olive Avenue **APN:** 058-220-045

**Project Location - City:** Merced **Project Location - County:** Merced

**Description of Nature, Purpose, and Beneficiaries of Project:**

**Name of Public Agency Approving Project:** City of Merced

**Name of Person or Agency Carrying Out Project:** Roberto Martinez

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: 15301 (a)
- Statutory Exemptions. State Code Number: \_\_\_\_\_.
- General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:** As defined under the above referenced Section, the proposed project consists of minor interior and exterior alterations only, such as replacing canopies and repainting exterior walls, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

**Lead Agency:** City of Merced

**Contact Person:** Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

**Signature:**  **Date:** 11-03-2015 **Title:** Planner

X Signed by Lead Agency **Date Received for Filing at OPR:** \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED  
 SITE PLAN REVIEW COMMITTEE  
 RESOLUTION #390

Halferty Development Co.	Construct a 3,730-square-foot retail building to include an 1,800-square-foot coffee shop with a drive-thru and a future retail space.
APPLICANT	PROJECT
199 S. Los Robles Ave., #840	360 W. 16 <sup>th</sup> Street
ADDRESS	PROJECT SITE
Pasadena, CA 91101	031-360-079
CITY/STATE/ZIP	APN
626-405-0956	Central Commercial (C-C)
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and administratively approved Site Plan Application #390 on November 12, 2015, submitted by Halferty Development, on behalf of KIF, LLC, property owner, to construct a 3,730-square-foot retail building to include a 1,800-square-foot coffee shop with a drive-thru and a future retail space at the southwest corner of West 16<sup>th</sup> Street and Martin Luther King, Jr. Way, within a Central Commercial (C-C) zone. Said property being described as Parcel 3 as shown on the Map entitled “Parcel Map for Family Dollar Store,” recorded in Book 113, Page 40 of Merced County Records; also known as Assessor’s Parcel Number (APN) 031-360-079.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15332 (Exhibit D); and,

WHEREAS, the Merced City Site Plan Review Committee makes the following Findings:

- A) The proposal complies with the General Plan designation of Regional Community Commercial (RC) and the Zoning classification of Central Commercial (C-C).
- B) The site is part of a group of three parcels located at the southwest corner of West 16<sup>th</sup> Street and Martin Luther King, Jr. Way. The site is governed by Covenants, Conditions, and Restrictions (CC&R’s) recorded as Document No. 2015-033809, Merced County Records that provide cross-access and reciprocal easements for all three parcels. These CC&R’s shall be amended to reflect any changes made by this project (see Condition #20).
- C) The site shares vehicle access, parking, and some utility access with the entire shopping center.

- D) The coffee shop would occupy 1,800 square feet of the proposed building and provide 46 seats. The future retail tenant space would occupy the remainder of the building (1,930 square feet).
- E) The project site provides 24 parking spaces (including 2 handicap parking stalls). Refer to Exhibit B for the site plan.
- F) Based on the number of seats proposed for the coffee shop (46 seats), a minimum of 18 parking spaces are required (1 space for each 2.5 seats).
- G) Parking for the future retail space would be calculated at a rate of one space for each 300 square feet of floor area (except retail food stores). Using this ratio, the future retail use would require 6 parking spaces.
- H) Based on the information provided in Findings F and G above, sufficient parking is provided for the coffee shop and future retail use. However, if a use that requires parking at a ratio higher than 1 space for each 300 square feet of floor area occupies the retail space, additional parking may be required.
- I) No outdoor seating is proposed with this application. Any future outdoor seating proposed for the site must be approved by the Planning Department.
- J) The building exterior consists of a cement plaster finish with a cornice-type trim at the top and brick veneer along the bottom 6' 6" of the building (refer to Exhibit C).
- K) The materials and design are of a quality that complies with the requirements of the Design Review Area.
- L) The project complies with the 16<sup>th</sup> Street Design Guidelines.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #390 subject to the following conditions:

- 1) The site shall be constructed as shown on Exhibit B (site plan) and Exhibit C (elevations), except as modified by the conditions of approval within this resolution.
- 2) All conditions contained in Site Plan Review #79-1 – Amended (“Standard Conditions for Site Plan Review Application”) shall apply.
- 3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including, but not limited to, the California Building Code and Fire Codes.
- 4) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or

- instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- 5) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
  - 6) All plans and support documentation submitted for building permit review shall comply with the requirements of the 2013 California Code Set or most recently adopted codes.
  - 7) Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced.
  - 8) Building colors shall be submitted at the Building Permit stage for approval by the Planning Department staff.
  - 9) The City Refuse Department does not approve the trash enclosure as shown on the Site Plan at Exhibit 2. The trash enclosure shall be located in an area and oriented in such a way that allows sufficient access for the City's Refuse trucks. The developer shall work with the City's Refuse Department staff at the Building Permit stage to determine the best location and orientation for the refuse enclosure. If this requires significant modification to the site plan, the changes may be approved by the Development Services Director or referred back to the Site Plan Review Committee at the discretion of the Development Services Director.
  - 10) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
  - 11) The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and state regulations.

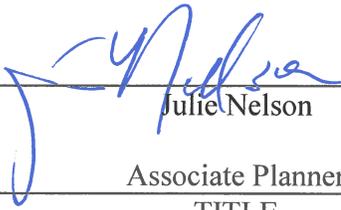
- 12) The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 13) Parking lot trees are required at a minimum rate of one tree per each six parking spaces. The type of trees used for parking lot trees shall be selected from the City's approved tree list.
- 14) All landscaping in the public right-of-way and on-site shall comply with State Water Resources Control Board Resolution No. 2015-0032 "To Adopt an Emergency Regulation for Statewide Urban Water Conservation" and the City's Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
- 15) All landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be replaced immediately.
- 16) Detailed landscape plans, including irrigation plans, shall be submitted at the building permit stage.
- 17) Planning Department approval is required prior to any outdoor seating area being installed. This includes the addition of tables and/or chairs outdoors for patron use.
- 18) A grease interceptor shall be installed for the coffee shop and shall comply with all City standards and requirements.
- 19) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- 20) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
- 21) Bicycle racks shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
- 22) The existing Covenants, Conditions, and Restrictions (CC&R's) shall be modified as needed to ensure all cross-access and reciprocal easements are maintained and any new ownership is added. At time of building permit review, the developer shall provide documentation of all cross access and parking agreements for shared access and parking. In addition, documentation shall be provided confirming the joint use of the water, sewer, and storm drain lines on the property.
- 23) All mechanical equipment shall be screened from public view.

- 24) All signing shall comply with the City's Sign Ordinance. Signing on the building shall be calculated based on the tenant's primary and secondary building frontage. Each tenant shall be allowed 1-square-foot of signing for each lineal foot of primary frontage and ½ square-foot of signing for each lineal foot of secondary frontage. The maximum sign area for the site shall not exceed 500 square feet. The existing monument sign at the corner of parcel may be used for tenant signing, but no other free-standing signs shall be allowed.
- 25) A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
- 26) The premises shall remain clean and free of debris and graffiti at all times.

If there are any questions concerning these conditions and recommendations, please contact Julie Nelson at (209) 385-6858.

11-12-15

DATE

  
Julie Nelson  
Associate Planner  
TITLE

Exhibits

- A) Location Map
- B) Site Plan
- C) Elevations
- D) Categorical Exemption



Future Les Schwab Tire

Family Dollar

KFC

SUBJECT SITE

EXHIBIT A

In 'n Out

16TH

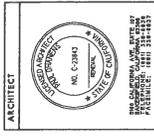
15TH

MARTIN LUTHER KING JR





PAUL DHANENS ARCHITECT



**PROJECT**

MERCED RETAIL BUILDING  
1616 AND 16TH ST  
MERCED, CA

**DATE ISSUED FOR**  
1/15/18

**NO. REVISIONS**

**SITE PLAN**

**FILE NAME** 131378

**SHEET** SPR-10

**MERCED RETAIL BUILDING**

1616 AND 16TH ST  
MERCED, CA

**PROJECT ANALYSIS**

ADDRESS: PARCEL NUMBER: OR360-04

ZONES: C-C

ZONING REGULATIONS: 16.00

PERMITTED USES: 16.00

REAR YARD: 16.00

CONSTRUCTION TYPE: V-B

PROPOSED: H

OCCUPANCY: H

BUILDING AREA: 8700 SF

PROPOSED BUILDING: 6000 SF

ALLOWABLE AREA: 6000 SF

PER GROUND FLOOR: 6000 SF

PARKING REQUIRED: 18 STALLS

OFF-PAVEMENT: 18 STALLS

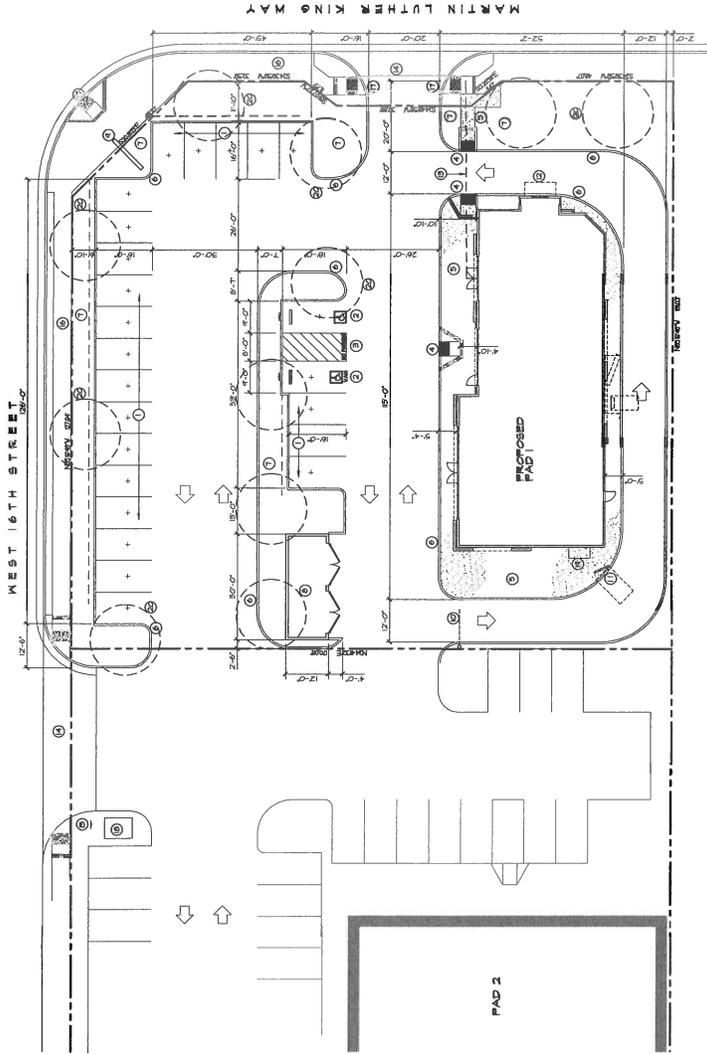
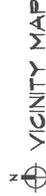
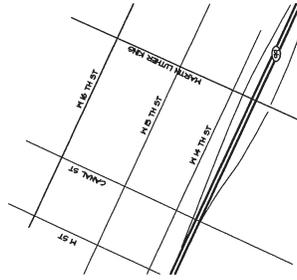
ON-PAVEMENT: 24 STALLS

TOTAL: 42 STALLS

PARKING PROVIDED: 28 SPACES

STANDARD: 24 SPACES

TOTAL: 24 SPACES



1/16"

16TH ST AND MLK SHOPPING CENTER PAD 1

- KEYNOTES**
- 1 4'-0" PER PARKING STALL PER CITY STANDARDS
  - 2 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 3 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 4 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
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  - 17 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 18 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 19 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 20 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 21 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 22 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 23 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 24 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 25 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 26 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 27 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 28 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 29 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE
  - 30 4'-0" PER 16' HORIZONTAL PARKING STALL WITH 5'-0" X 2'-0" DRIVE THRU ENTRY WITH HEIGHT REQUIREMENT SIGNAGE



**NOTICE OF EXEMPTION**

To: \_\_\_\_\_ Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

From: (Public Agency)  
City of Merced  
678 West 18th St.  
Merced, CA 95340

X  County Clerk  
County of Merced  
2222 M Street  
Merced, CA 95340

**Project Title:** Site Plan Review #390 (Environmental Review #15-31)

**Project Applicant:** Halferty Development, Co. for KIF, LLC, property owner

**Project Location (Specific):** 360 W. 16<sup>th</sup> St. **APN: 031-360-079**

**Project Location - City:** Merced **Project Location - County:** Merced

**Description of Nature, Purpose, and Beneficiaries of Project:**

The project involves the construction of an approximately 3,730-square-foot retail building to include a coffee shop with a drive-thru and a future retail space.

**Name of Public Agency Approving Project:** City of Merced

**Name of Person or Agency Carrying Out Project:** Cassie Yee for Halferty Development on behalf of the property owner

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: Section 15332
- Statutory Exemptions. State Code Number: \_\_\_\_\_.
- General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:** As defined under the above referenced Section, the proposed project is considered an in-fill project. The project location is within the City limits on an approximately 1.32-acre parcel surrounded by urban uses. The site can be served by all required utilities and public services, and the project site has no value as habitat for endangered, rare or threatened species. No significant effects resulting from traffic, noise, air quality, or water quality will result from construction of the building. The project is consistent with the City of Merced General Plan and Zoning regulations.

**Lead Agency:** City of Merced

**Contact Person:** Julie Nelson, Planner

**Area Code/Telephone:**(209) 385-6858

**Signature:**  **Date:** 11-2-15 **Title:** Associate Planner

X  Signed by Lead Agency Date Received for Filing at OPR: \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED  
SITE PLAN REVIEW COMMITTEE  
RESOLUTION #391

<u>David McGhee</u> APPLICANT	<u>New 10,000-s.f. automotive shop and a 4,750-s.f. shell building for Super Shop Automotive.</u> PROJECT
<u>932 Martin Luther King Jr. Way</u> ADDRESS	<u>1535 W. 14th Street</u> PROJECT SITE
<u>Merced, CA 95341</u> CITY/STATE/ZIP	<u>031-181-010</u> APN
<u>(209) 726-0182</u> PHONE	<u>General Commercial (C-G)</u> ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and administratively approved Site Plan Application #391 on November 12, 2015, submitted by David McGhee on behalf of himself, Suzanne McGhee, Timothy Reusch, and Anita Reusch, property owners, to allow the construction of a 10,000-square-foot automotive shop and a 4,750-square-foot shell building on a 1.1-acre vacant parcel located at 1535 W. 14th Street, within a General Commercial (C-G) Zone. Said property being more particularly described as Parcel 2 as shown on the Map entitled "Parcel Map for Bernice Duffus," recorded in Volume 30, Page 21 of Merced County Records; also known as Assessor's Parcel Number (APN) 031-181-010.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15332 (Exhibit E); and,

WHEREAS, the Merced City Site Plan Review Committee makes the following Findings:

- A) The proposal complies with the zoning designation of General Commercial (C-G) and with the General Plan designation of General Commercial (CG).
- B) As shown in Merced Municipal Code Section 20.86.140.B.7 – City Staff Functions, the Design Review Commission has delegated certain minor projects to City staff for review and approval or denial if the project is considered minor in nature at the discretion of the Director of Development Services. The Director of Development Services has determined that this request will not cause great impact to the area and could be reviewed by the Site Plan Review Committee.
- C) The proposal has thirty-seven parking spaces. The parking requirement for an automotive repair shop is one space for each four hundred square feet of floor area and one space for each vehicle used in the conduct of business. Based on this formula, twenty-five parking spaces are required for the automotive shop.

Additional parking may be required for future uses within the proposed 4,750-square-foot shell building. Future land uses may be limited by parking availability.

- D) The adjacent gas station located east of the subject site (1411 V Street) is overseen by the State Regional Water Quality Control Board and is considered a gasoline contaminated site. Until that site is remediated, the proposed 4,750-square-foot shell building may be limited to uses whose main occupants are not sensitive human receptors (children, elderly, etc.), at the discretion of the Director of Development Services.
- E) The applicant is requesting to paint the stucco panels "Charcoal Gray" and to paint the panel channels and the exposed metal framing "Crimson Red" (color samples shown on Exhibit D).
- F) Water service will be connected to the existing 2-inch water line. According the Public Works Department, a fire service water line does not exist on site (see Condition #15).
- G) The Site Plan Committee shall refer the consideration for no parking on the south side of W. 14<sup>th</sup> Street to the Traffic Committee.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #391 subject to the following conditions:

- 1) The site shall be constructed as shown on Exhibit B (site plan), Exhibit C (elevations), and as modified by the conditions of approval within this resolution.
- 2) All conditions contained in Site Plan Review #79-1 – Amended ("Standard Conditions for Site Plan Review Application") shall apply.
- 3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply including, but not limited to, the California Building Code and Fire Codes.
- 4) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including the Post Construction Standards for Storm Water that became effective July 1, 2015.
- 5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the

City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

- 6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- 7) Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced.
- 8) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, driveway approaches, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
- 9) All parking lot and building lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
- 10) Bicycle parking spaces shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
- 11) The developer shall work with the City Engineer to determine the requirements for storm drainage on the site and the method used to move the storm water to the City's storm drainage system. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and State regulations.
- 12) The applicant shall contact the City's Water Quality Control Division and comply with all requirements for this type of business and obtain all proper permits prior to opening for business, which may include obtaining an Industrial Storm Water Permit issued by the State Water Board. Certain containers shall be covered 100% and they shall be located on secondary containments as required by the Water Quality Control Division.
- 13) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access. The developer shall work with the Fire

Department and Refuse Department at the building permit stage to ensure proper access is provided.

- 14) The developer shall work with the Fire Department to ensure that the gate contains a "Click-2-Enter" and a Knox override switch. Fire sprinklers shall contain a sprinkler monitoring system and the automotive shop shall contain a Knox box (as required by the Fire Department).
- 15) A fire service water line shall be installed on-site as required by the Fire Department.
- 16) All driveways into the site shall comply with City Standards and all handicap accessibility requirements.
- 17) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
- 18) The applicant shall work with the City's Refuse Department to determine the exact location for a refuse enclosure. In addition, the applicant shall work with the City's Refuse Department to determine if a recycling container will be required to comply with AB 341. If it is required, the container shall be enclosed within a refuse enclosure built to City Standards. Prior to pouring the concrete for the refuse enclosure, the contractor shall contact the Refuse Department at 209-385-6800 to arrange an inspection by Refuse Department staff to verify the location and angle of the enclosure.
- 19) The parking lot layout shall comply with all applicable City Standards. Parking lot trees shall be provided at a ratio of one tree for every six parking spaces. These trees shall be installed per the City's Parking Lot Landscape Standards, shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Irrigation to these trees shall be provided through a drip irrigation or micro-spray system.
- 20) Street trees shall be provided per City Standards. Tree species shall be selected from the City's approved street tree list.
- 21) All landscaping shall comply with State Water Resources Control Board Resolution No. 2015-0032 "To Adopt an Emergency Regulation for Statewide Urban Water Conservation" and the City's Water Conservation Ordinance (Merced Municipal Code Section 15.42). Xeriscape or artificial turf shall be used in place of natural sod or other living ground cover. If turf is proposed to be installed in park-strips or on-site, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees, parking lot trees, or other landscaping shall be provided with a drip irrigation or micro-spray system.
- 22) Detailed landscape and irrigation plans shall be submitted at the building permit stage. These plans shall include all on-site landscaping and all required landscaping in the public right-of-way.

Site Plan Review Resolution #391

November 12, 2015

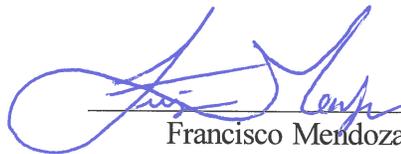
Page 5

- 23) All mechanical equipment shall be screened from public view.
- 24) The outdoor storage area shall remain enclosed inside a fenced area and screened from public view.
- 25) It is recommended that the exterior building walls be treated with an anti-graffiti coating to make graffiti removal easier. In any case, graffiti removal shall take place within 24 hours of appearing and shall be painted over with a paint color that matches the existing color of the building wall.
- 26) All signing shall comply with the Merced Sign Ordinance. Sign permits shall be obtained prior to installing any permanent signing. A Temporary Sign Permit shall be obtained prior to installing any temporary signs or banners. Temporary freestanding or A-frame signs are not allowed.
- 27) The premises shall remain clean and free of debris and graffiti at all times.
- 28) The north and west elevations shall either contain stucco panels that match the south and east elevations or be shielded with landscaping as required by Planning staff.
- 29) The metal stucco panel channels shall be painted "Charcoal Gray" to match the color of the stucco panels, instead of "Crimson Red." "Crimson Red" is approved for the canopy.
- 30) The proposed shell building shall be similar in design and materials to the auto shop building. Details to be worked out with Planning staff at the building permit stage.
- 31) If the sidewalk is not already in an easement, then the developers shall dedicate an easement to the City for sidewalk purposes.

If there are any questions concerning these conditions and recommendations, please contact Francisco Mendoza-Gonzalez at (209) 385-6858.

November 12, 2015

DATE



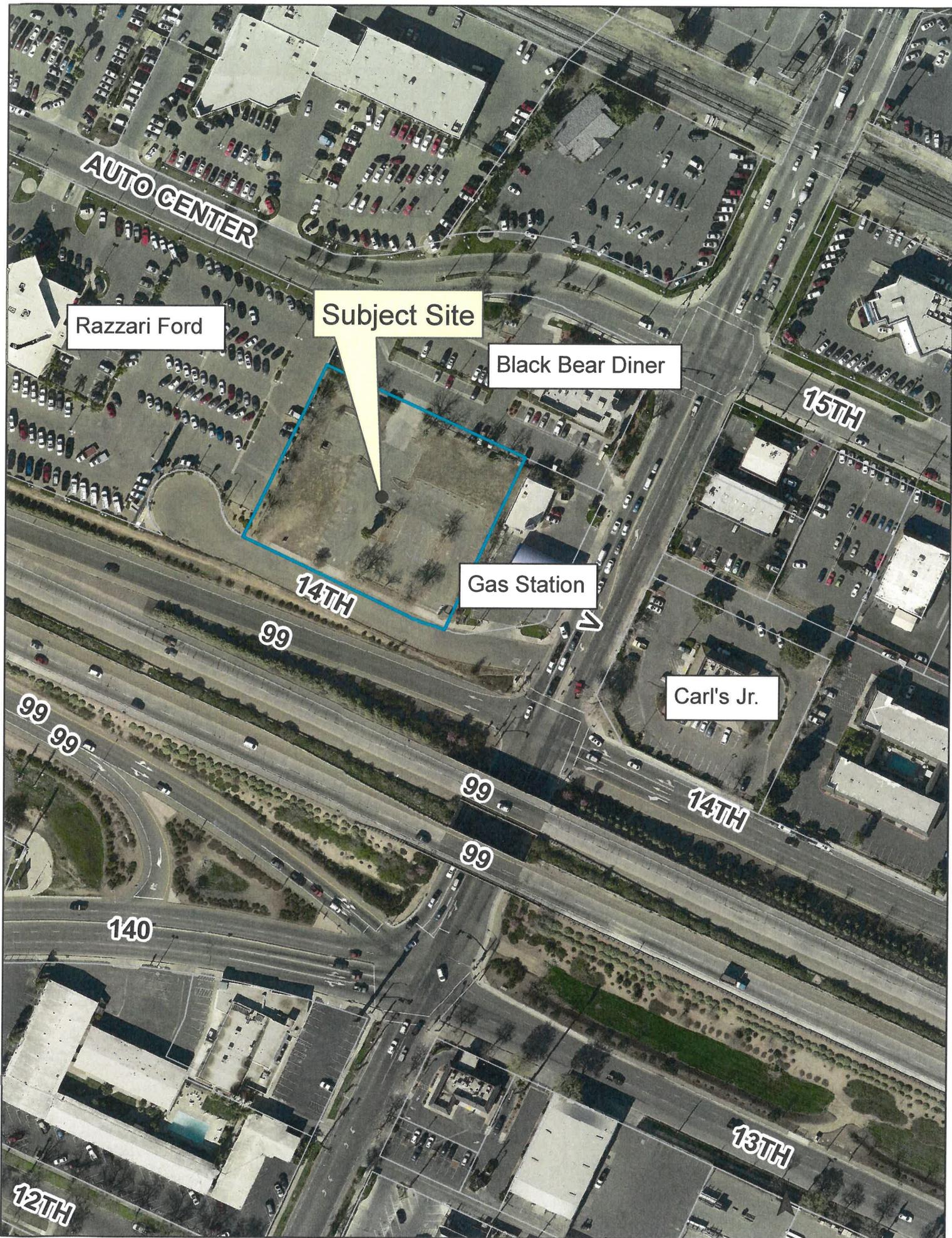
Francisco Mendoza-Gonzalez

Planner

TITLE

Exhibits

- A) Location Map
- B) Site Plan
- C) Floor Plan and Elevations
- D) Color Samples
- E) Categorical Exemption

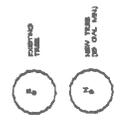
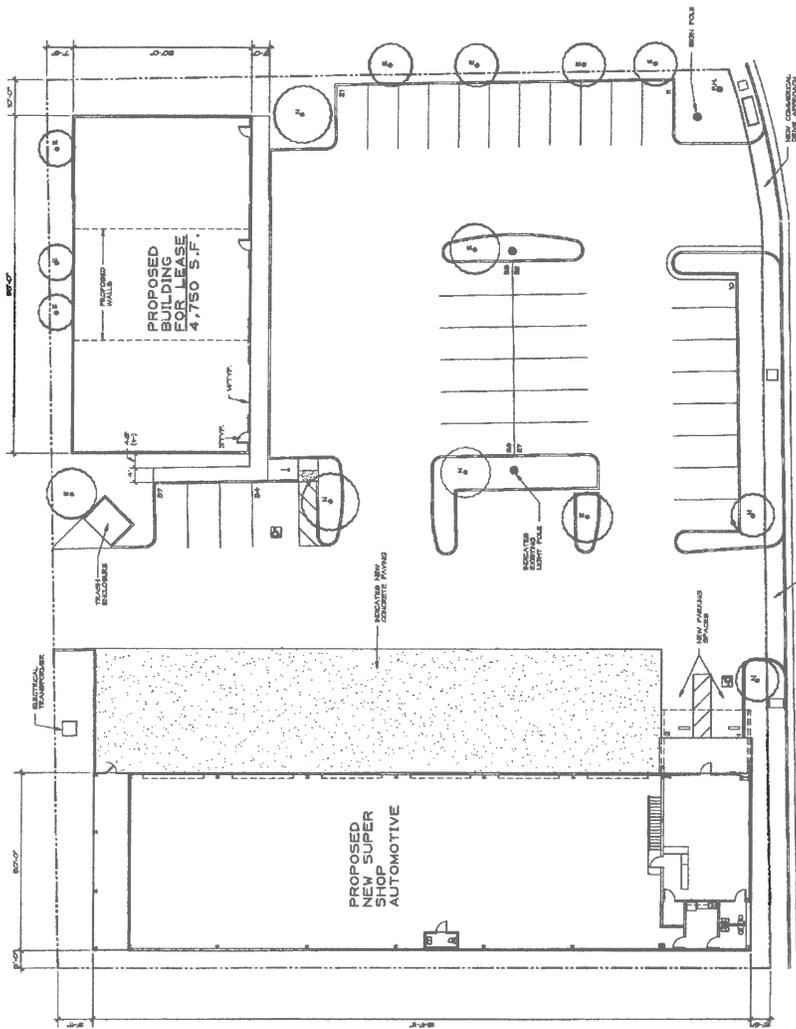


**EXHIBIT A**

MORGAN ARCHITECTS  
 2825 SAN JUAN COURT  
 MERCED, CALIFORNIA 95340  
 PHONE/FAX (209) 383-3060

1888 WEST 14TH STREET  
 SUPER SHOP AUTOMOTIVE  
 MERCED, CALIFORNIA 95340

DATE:	REVISIONS:	SHEET NO.:	SHEET 1/1
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W.14TH STREET

**SITE PLAN**

APN 031-181-010

**EXHIBIT B**



# Signature® 200

Siliconized Polyester



26 gauge material available in all colors • 29 gauge material only available in Polar White • 20 year limited warranty available upon written request except for Crimson Red (3/5 year warranty) • For warranty information outside the continental United States, please inquire. \*Polar White is a Straight Polyester.

# Signature® 300\* \*\*

Kynar 500® / Hylar 5000® - \*26 Gauge Material - \*\* PBR, PBU, PBA, PBC, PBD Panels Only



20 year limited warranty available upon written request. For warranty information outside the continental United States, please inquire.



## Commercial – Industrial Colors

All products available in smooth or embossed finish.

Trim available in all colors. Final selection should be made from actual color chips.

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 Indianapolis, IN 800-735-6224

Lubbock, TX 800-758-6224  
 Memphis, TN 800-206-6224  
 Oklahoma City, OK 800-597-6224  
 Omaha, NE 800-458-6224  
 Phoenix, AZ 888-533-6224  
 Richmond, VA 800-729-6224

Rome, NY 800-559-6224  
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 800-359-6224

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All colors shown except Crimson Red contain not more than .06 percent lead. Use this color only for applications which comply with federal, state and local regulations for lead-based paint.

05-06/120M

**NOTICE OF EXEMPTION**

To: \_\_\_\_\_ Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

From: (Public Agency)  
City of Merced  
678 West 18th St.  
Merced, CA 95340

X  County Clerk  
County of Merced  
2222 M Street  
Merced, CA 95340

**Project Title:** Site Plan Review #391 (Environmental Review #15-32)

**Project Applicant:** David McGhee

**Project Location (Specific):** 1534 W. 14th Street APN: 031-181-010

**Project Location - City:** Merced **Project Location - County:** Merced

**Description of Nature, Purpose, and Beneficiaries of Project:**

**Name of Public Agency Approving Project:** City of Merced

**Name of Person or Agency Carrying Out Project:** David McGhee

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: 15332
- Statutory Exemptions. State Code Number: \_\_\_\_\_.
- General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:**

As defined under the above referenced Section, the proposed project is considered an in-fill project. The project location is within the City limits on an approximately 1.1-acre parcel surrounded by urban uses. The site can be served by all required utilities and public services, and the project site has no value as habitat for endangered, rare or threatened species. No significant effects resulting from traffic, noise, air quality, or water quality will result from the construction of the building. The project is consistent with the City of Merced General Plan and Zoning regulations.

**Lead Agency:** City of Merced

**Contact Person:** Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

**Signature:**  **Date:** 11-03-2015 **Title:** Planner

X  Signed by Lead Agency **Date Received for Filing at OPR:** \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

CITY OF MERCED  
 SITE PLAN REVIEW COMMITTEE  
 RESOLUTION #392

Transit Joint Powers Authority for Merced County	Construct a bus maintenance and operations yard including 2 buildings, a bus wash, and associated parking.
APPLICANT	PROJECT
369 W. 18 <sup>th</sup> St.	1950 Wardrobe Ave.
ADDRESS	PROJECT SITE
Merced, CA 95340	059-300-059
CITY/STATE/ZIP	APN
209-723-3153	Light Industrial (I-L)
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and administratively approved Site Plan Application #392 on November 12, 2015, submitted by Des Johnston, on behalf of the Transit Joint Powers Authority for Merced County, property owner, to construct a bus maintenance and operations yard to include a modular office building, metal maintenance building, a bus wash, employee and bus parking, and parking covers with future solar panels on top at 1950 Wardrobe Avenue, within a Light Industrial (I-L) zone. Said property being described as Lot 5 according to map entitled “Map of Grogan’s Merced Tract No. 2,” January 10, 1912, in Book 5 of Official Plats at Page 18, Merced County Records, excepting therefrom that portion lying within the boundaries as shown on the map entitled “Merced Airport Industrial Park” recorded October 16, 1982, in Volume 20 of Official Plats at Pages 49, 50, 51, 52, 53, and 54, Merced County Records; also known as Assessor’s Parcel Number (APN) 059-300-059.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15332 (Exhibit F); and,

WHEREAS, the Merced City Site Plan Review Committee makes the following Findings:

- A) The proposal complies with the General Plan designation of Industrial and the Zoning classification of Light Industrial (I-L).
- B) The proposed project would be constructed in two phases. Phase One would consist of a 5,760-square-foot operations building, 10,560-square-foot maintenance building, two fuel islands with a canopy (approximately 6,300 square feet), 112 parking stalls, and a drainage basin. Phase Two would consist of the addition of an approximately 2,400-square-foot bus wash, 77 bus parking

stalls, and canopy covers for the bus parking spaces. Solar panels may be added to the canopy covers in Phase Two or at a later date.

- C) The facility would employ approximately 80 people. The largest shift would consist of 59 employees on routes, 8 maintenance employees, and 13 general/office staff.
- D) Prior to the bus parking being constructed with Phase Two, the buses would be parked at 880 Thornton Road.
- E) The facility would operate 24 hours/day. Mechanical operations currently end at midnight, but could extend beyond that time.
- F) Mechanical work done onsite would primarily consist of general maintenance. However, replacement of transmissions, engines, and other large vehicle parts would take place as needed. No body work would be performed on site.
- G) The site would be fenced to prevent access beyond the operations building and employee parking lot.
- H) The operations building is proposed to be a modular-type building. The maintenance building would be a metal building. Elevations provided are conceptual plans only. Detailed plans would be submitted at the Building Permit stage.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #392 subject to the following conditions:

- 1) The site shall be constructed as shown on Revised Exhibit B (revised site plan), Exhibits C, D, and E (conceptual elevations), except as modified by the conditions of approval within this resolution.
- 2) All conditions contained in Site Plan Review #79-1 – Amended (“Standard Conditions for Site Plan Review Application”) shall apply.
- 3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including, but not limited to, the California Building Code and Fire Codes.
- 4) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against

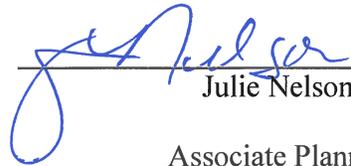
- any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
- 5) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
  - 6) Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced.
  - 7) All plans and supporting documents submitted for Building Permit review shall comply with the 2013 California Code set or most recently adopted codes.
  - 8) Fire sprinklers shall be provided in the operations and maintenance buildings. The fuel canopy may require fire sprinklers as well. Staff will make a final determination on this at the Building Permit stage. A fire hydrant may also be needed onsite. This will also be determined at the Building Permit stage.
  - 9) Monitoring systems shall be installed for the fire alarm and fire sprinkler systems. A Knox Box shall be provided to allow Fire Department access beyond the gated entrance.
  - 10) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
  - 11) Prior to obtaining a building permit or business license, all required Fire Permits shall be obtained from the City of Merced Fire Department.
  - 12) Building Commissioning as required by the California Green Code is required for any building over 10,000 square feet in size.
  - 13) Bicycle racks shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
  - 14) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
  - 15) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they

comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.

- 16) All mechanical equipment shall be screened from public view.
- 17) The premises shall remain clean and free of debris and graffiti at all times.
- 18) A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).
- 19) The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards and state regulations.
- 20) The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
- 21) The operator of the facility shall obtain an Industrial Storm Water Permit from the California State Water Board and shall comply with all state and local requirements for storm water.
- 22) If in the future any communication equipment or towers are needed on the site, approval from the City of Merced shall be obtained prior to installation. No such equipment shall interfere with the Merced Regional Airport's communication equipment or the City's public safety radio frequencies.
- 23) All landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be replaced immediately.
- 24) The premises shall remain clean and free of debris and graffiti at all times.
- 25) Final building elevations, colors, and signing shall be approved by the Planning Department at the building permit stage.
- 26) The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure and to determine if a recycling container would be required.

If there are any questions concerning these conditions and recommendations, please contact Julie Nelson at (209) 385-6858.

11-12-15  
DATE

  
Julie Nelson

Associate Planner  
TITLE

Exhibits

- A) Location Map
- B) Site Plan
- C) Conceptual Elevations - Operations
- D) Conceptual Elevations – Maintenance
- E) Conceptual Design/Elevations – Bus Canopy
- F) Categorical Exemption



Merced City  
School District

BEECHCRAFT

WARDROBE

SUBJECT  
SITE

Label  
Tech

RTS  
Packaging

EXHIBIT A

GROGAN

First  
Student

Fine Line  
Industries

O'Keeffe's





CONCEPTUAL ELEVATIONS FOR  
THE OPERATIONS BUILDING

EXHIBIT C











CONCEPTUAL ELEVATIONS FOR  
THE MAINTENANCE BUILDING

EXHIBIT D





CONCEPTUAL DESIGN OF BUS CANOPIES.



EXHIBIT E



165  
City of SANTA CLARA  
Valley of Good Jobs & Quality  
www.santa-clara.org

163  
City of SANTA CLARA  
Valley of Good Jobs & Quality  
www.santa-clara.org

**NOTICE OF EXEMPTION**

To: \_\_\_\_\_ Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

From: (Public Agency)  
City of Merced  
678 West 18th St.  
Merced, CA 95340

X County Clerk  
County of Merced  
2222 M Street  
Merced, CA 95340

**Project Title:** Site Plan Review #392 (Environmental Review #15-34)

**Project Applicant:** Transit Joint Powers for Merced County, property owner

**Project Location (Specific):** 1950 Wardrobe Avenue . **APN: 059-300-059**

**Project Location - City:** Merced **Project Location - County:** Merced

**Description of Nature, Purpose, and Beneficiaries of Project:**

The project involves the construction of an approximately 5,760-square-foot operations building, an approximately 10,560-square-foot maintenance building, a bus wash, and parking facilities (including parking covers with solar panels) to serve as the maintenance and operations yard for the bus transit system.

**Name of Public Agency Approving Project:** City of Merced

**Name of Person or Agency Carrying Out Project:** Des Johnston for Quad Knopf on behalf of the property owner

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: Section 15332
- Statutory Exemptions. State Code Number: \_\_\_\_\_.
- General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:** As defined under the above referenced Section, the proposed project is considered an in-fill project. The project location is within the City limits on an approximately 6.2-acre parcel surrounded by urban uses. However, because the development does not encompass the entire parcel, but covers 5 acres or less, this exemption applies. The site can be served by all required utilities and public services, and the project site has no value as habitat for endangered, rare or threatened species. No significant effects resulting from traffic, noise, air quality, or water quality will result from construction of the building. The project is consistent with the City of Merced General Plan and Zoning regulations.

**Lead Agency:** City of Merced

**Contact Person:** Julie Nelson, Planner

**Area Code/Telephone:**(209) 385-6858

**Signature:**  **Date:** 11-5-15 **Title:** Associate Planner

X Signed by Lead Agency Date Received for Filing at OPR: \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code

**CITY OF MERCED**  
**Site Plan Review Committee**

**MINUTES**

Planning Conference Room  
2<sup>nd</sup> Floor Civic Center  
Thursday, January 7, 2016

Acting Chairperson KING called the meeting to order at 1:32 p.m.

ROLL CALL

Committee Members Present: Principal Planner King (for Director of Development Services Gonzalves), Land Engineer Cardoso (for City Engineer Elwin), and Plan Examiner England (for Assistant Chief Building Official Stephenson)

Committee Members Absent: None

Staff Present: Planning Manager Espinosa and Planner/Recording Secretary Mendoza-Gonzalez

1. MINUTES

M/S CARDOSO-ENGLAND, and carried by unanimous voice vote, to approve the Minutes of November 12, 2015, as submitted.

3. COMMUNICATIONS

None.

4. ITEMS

- 4.1 Site Plan Application #393, submitted by Melissa Hernandez, on behalf of AJEM Properties, LLC, property owner, to allow a retail store to locate within a 710-square-foot tenant space inside an existing building located at 535 W. 26<sup>th</sup> Street within an Office Commercial (C-O) Zone.

Site Plan Review Committee Minutes

Page 2

January 07, 2016

Planner MENDOZA-GONZALEZ reviewed the application for this item. For further information, refer to Draft Site Plan Review Committee Resolution #393.

M/S CARDOSO-ENGLAND, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-39 (Categorical Exemption), and approve Site Plan Application #393, subject to the Findings and nine (9) conditions set forth in the Draft Resolution #393:

AYES: Committee Members England, Cardoso, and Acting Chairperson King

NOES: None

ABSENT: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

There was no discussion regarding the calendar of meetings/events.

6. **ADJOURNMENT**

There being no further business, Acting Chairperson KING adjourned the meeting at 1:45 p.m.

Respectfully submitted,



Kim Espinosa, Secretary  
Merced City Site Plan Review Committee

APPROVED:



BILL KING, Acting Chairperson/  
Principal Planner Merced City Site Plan  
Review Committee

CITY OF MERCED  
SITE PLAN REVIEW COMMITTEE  
RESOLUTION #393

<u>Melissa Hernandez</u> APPLICANT	<u>Locate a retail store inside an existing tenant space.</u> PROJECT
<u>1283 Weaver Road</u> ADDRESS	<u>535 W. 26<sup>th</sup> Street</u> PROJECT SITE
<u>Merced, CA 95341</u> CITY/STATE/ZIP	<u>030-013-018</u> APN
<u>(209) 261-9664</u> PHONE	<u>Office Commercial (C-O)</u> ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Merced City Site Plan Review Committee considered and approved Site Plan Review Application #393 on January 7, 2016, submitted by Melissa Hernandez, on behalf of AJEM Properties, LLC, property owner, to allow a retail store to locate within a 710-square-foot tenant space inside an existing building located at 535 W. 26<sup>th</sup> Street within an Office Commercial (C-O) Zone. Said property being more particularly described as Block 12 as shown on that Map entitled "Supplemental Map to Town of Merced Secs. 24 & 25, T. 7S. R. 13 E., Secs. 19 & 30, T. 7S. R. 14 E., Merced Co. Cal., on Line of Visalia Division Central Pacific Railroad," recorded in Volume 2 of Page 12 of Parcel Maps, Merced County Records; also known as Assessor's Parcel Number (APN) 030-013-018.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA), and is in accordance with Section 15301 (a) (Exhibit D); and,

WHEREAS, the Merced City Site Plan Review Committee makes the following Findings:

- A) The Office Commercial (C-O) Zone is designated for professional offices and medical/dental clinics. Because the applicant will conduct sales by appointment only (similar to some professional businesses), staff has determined that this request will not cause a great impact to the area and could be reviewed by the Site Plan Review Committee. Subject to the conditions of approval, the project would comply with the C-O zoning for the site (see Conditions #6, #7, and #8).
- B) There are no changes proposed for the exterior or interior of the building.
- C) There are no changes proposed for the site plan.
- D) The subject site has adequate parking for this use and the existing businesses. However, additional parking may be required for future use within the building if more parking-intensive uses are proposed.

January 7, 2016

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Review Application #393, subject to the following conditions:

1. All applicable conditions contained in Site Plan Approval Resolution #79-1-Amended (“Standard Conditions for Site Plan Application”) shall apply.
2. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply including, but not limited to, the California building code and fire codes.
3. The site shall be constructed as shown on Exhibit B (site plan), Exhibit C (floor plan), and as modified by the conditions of approval within this resolution.
4. Notwithstanding all other conditions, all construction and improvements shall be in strict accordance with Zoning, Building, and all other codes, ordinances, standards, and policies of the City of Merced.
5. All signing shall comply with the City’s Sign Ordinance. Sign permits shall be obtained prior to installing any permanent signing. A Temporary Sign Permit shall be obtained prior to installing any temporary signs or banners. Freestanding or A-frame signs are not allowed.
6. Any future requests of this nature at this site (retail businesses, other than those considered a “permitted” use in a C-O zone) may not be eligible to be reviewed through the Site Plan Review process, but may require Conditional Use Permit approval, at the discretion of the Director of Development Services.
7. Sales shall be conducted by appointment only. No drop-ins or days open to the general public allowed.
8. Merchandise sales shall consist of new merchandise.
9. All existing landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be replaced immediately.
10. The premises shall remain clean and free of debris and graffiti at all times.

If there are any questions concerning these conditions and recommendations, please contact Francisco Mendoza-Gonzalez at (209) 385-6858.

January 7, 2016

DATE



SIGNATURE

Planner

TITLE

Site Plan Approval #393

Page 3

January 7, 2016

Exhibits:

- A) Location Map
- B) Site Plan
- C) Floor Plan
- D) Categorical Exemption



**EXHIBIT A**

IMPROVEMENTS LAYOUT

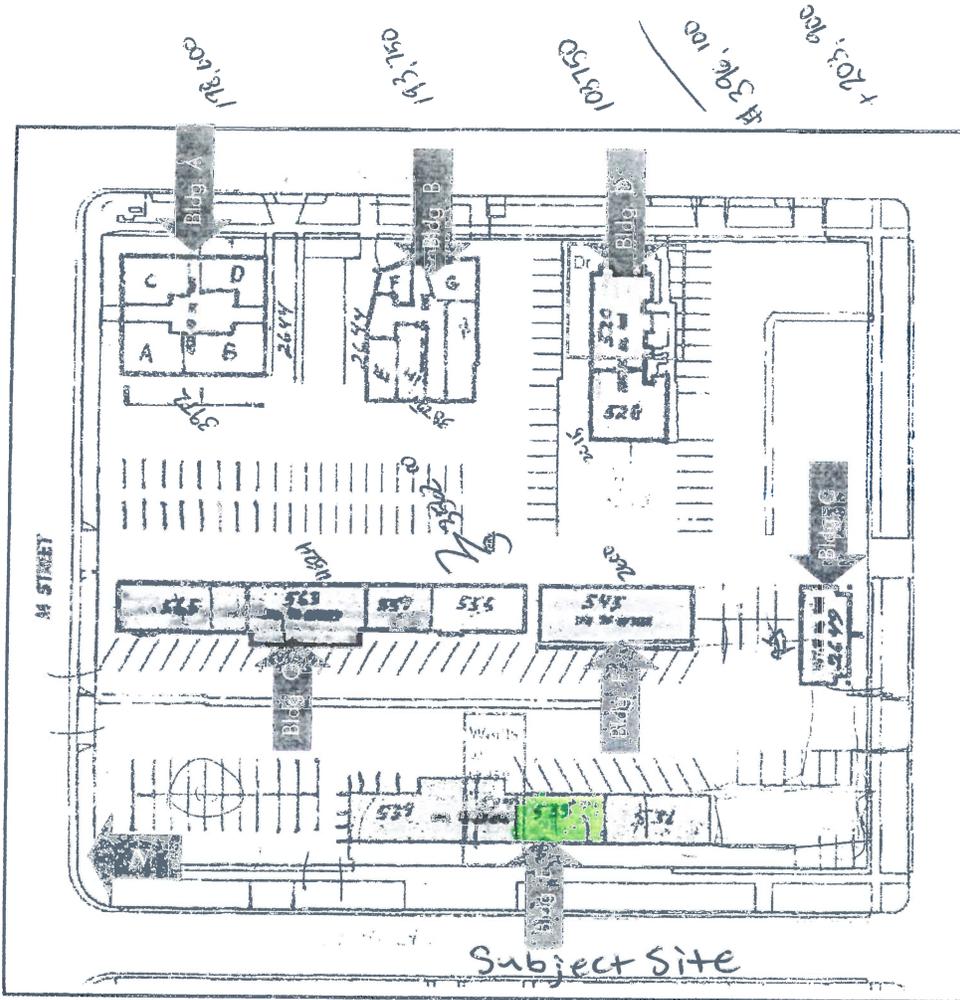


EXHIBIT B

FLOOR PLAN  
535 W. 26th Street Merced Ca 95340

2 REAR EXIT POINTS

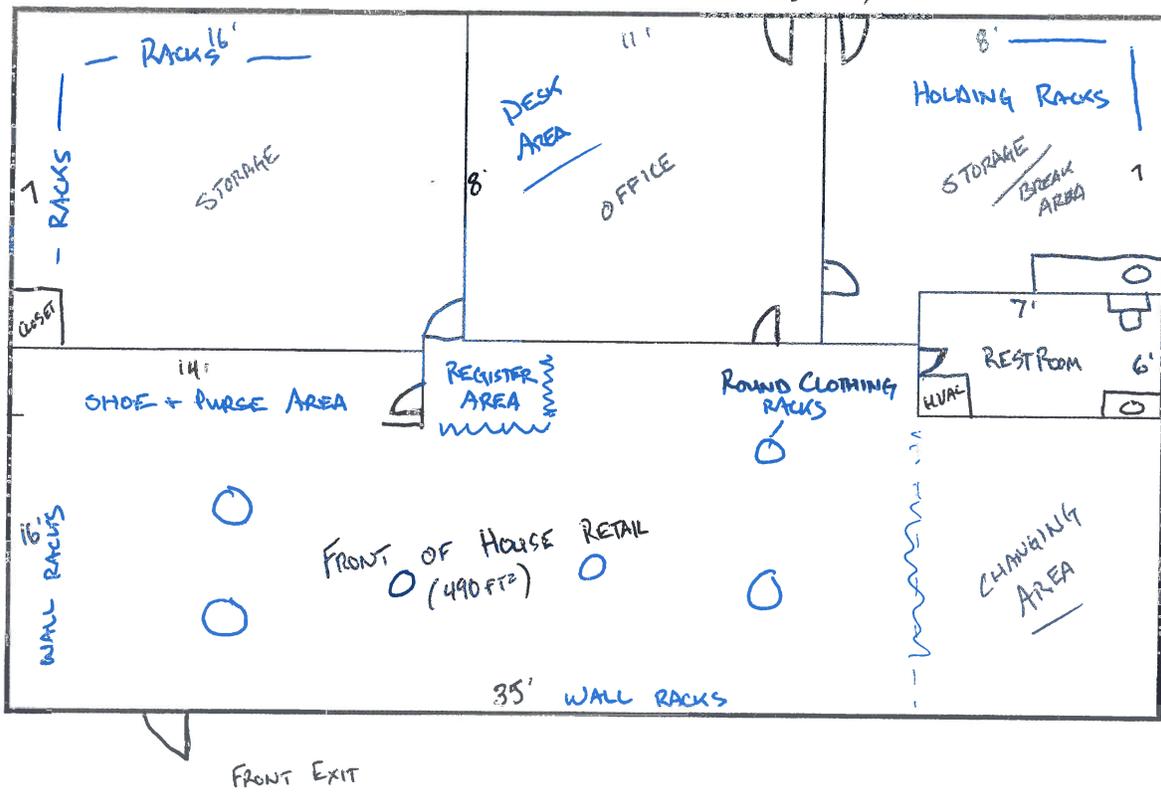


EXHIBIT C

**NOTICE OF EXEMPTION**

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**To:** \_\_\_\_\_ Office of Planning and Research  
P.O. Box 3044  
Sacramento, CA 95812-3044

**From: (Public Agency)**  
City of Merced  
678 West 18th St.  
Merced, CA 95340

X County Clerk  
County of Merced  
2222 M Street  
Merced, CA 95340

**Project Title:** Site Plan Review #393 (Environmental Review #15-39)

**Project Applicant:** Melissa Hernandez

**Project Location (Specific):** 535 W. 26<sup>th</sup> Street APN: 030-013-018

**Project Location - City:** Merced **Project Location - County:** Merced

**Description of Nature, Purpose, and Beneficiaries of Project:**

**Name of Public Agency Approving Project:** City of Merced

**Name of Person or Agency Carrying Out Project:** Melissa Hernandez

**Exempt Status:** (check one)

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State Type and Section Number: 15301 (a)
- Statutory Exemptions. State Code Number: \_\_\_\_\_.
- General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:** As defined under the above referenced Section, the proposed project consists of minor interior and exterior alterations only, such as new flooring, which are considered to be exempt under the CEQA Guidelines per Section 15301 (a).

**Lead Agency:** City of Merced

**Contact Person:** Francisco Mendoza-Gonzalez **Area Code/Telephone:** (209) 385-6858

**Signature:**  **Date:** 12-22-2015 **Title:** Planner

X Signed by Lead Agency **Date Received for Filing at OPR:** \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083 and 21110. Public Resources Code  
Reference: Sections 21108, 21152, and 21152.1. Public Resources Code



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-198

**Meeting Date:** 5/16/2016

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**Report Prepared by:** *Stephani Davis, Secretary II*

**SUBJECT:** Information Only-Planning Commission Minutes of December 9, 2015, and January 6, February 3 and 17, March 23, and April 6, 2016

### RECOMMENDATION

For information only

### ATTACHMENTS

1. Memo to Council
2. Minutes 12-9-15
3. Minutes 1-6-16
4. Minutes 2-3-16
5. Minutes 2-17-16
6. Minutes 3-23-16
7. Minutes 4-6-16

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*City of Merced*

**MEMORANDUM**

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**DATE:** May 5, 2016  
**TO:** City Council and the City Manager  
**FROM:** David Gonzalves, Director of Development Services   
**SUBJECT:** Minutes for Planning Commission, Bicycle Advisory Commission,  
and Site Plan Committee

---

Due to transition in secretarial staff and miscommunication, Minutes for these Commissions for City Council review were delayed and have now been brought up to date. This delay will not happen in the future.

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, December 9, 2015

Vice Chairperson BAKER called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Kurt Smoot, Kevin Smith, \*Robert Dylina, Peter Padilla, \*Jill McLeod, and Vice Chairperson Bill Baker

\*Commissioners Dylina and McLeod arrived at 7:08 p.m.

Commissioners Absent: Chairperson Colby (unexcused)

Staff Present: Planning Manager Espinosa, Planner Mendoza-Gonzalez, Senior Deputy City Attorney Rozell, and Recording Secretary Nelson

1. **APPROVAL OF AGENDA**

M/S SMITH-PADILLA, and carried by unanimous voice vote (one absent), to approve the Agenda as submitted.

2. **MINUTES**

M/S SMOOT-SMITH, and carried by unanimous voice vote (one absent), to approve the Minutes of November 18, 2015, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Adoption of Resolution of Denial of Conditional Use Permit #1206, initiated by Sound Life International Ministries on behalf of the Merced Lodging Corporation, property owners. This application involves a request to convert an existing 100-unit motel to a worship center and a rehabilitation facility with up to 200 beds at 1213 V Street, generally located 150 feet south of the intersection at Highway 140 and V Street, within a Thoroughfare Commercial (C-T) zone. (Continued from November 18, 2015)

Commissioner PADILLA recused himself due to the fact that he had previously done business with the applicant and left the dais.

Planner MENDOZA-GONZALEZ reviewed the report on this item. He explained that there had been no changes in the project since the meeting on November 18, 2015. Planner MENDOZA-GONZALEZ also explained that staff had prepared a resolution for denial based on the Commission's direction at the last meeting. For further information, refer to Staff Report #15-22-Addendum.

There was no one present wishing to speak regarding the project; therefore, public testimony was opened and closed at 7:12 p.m.

M/S SMITH-SMOOT, deny and carried by the following vote, to deny Environmental Review #15-30, and deny Conditional Use Permit #1206, subject to the Findings set forth in Staff Report #15-22 Addendum (RESOLUTION #3058).

AYES: Commissioners Smoot, Smith, McLeod, Dylina, and Vice Chairperson Baker

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: Commissioner Padilla

Commissioner PADILLA returned to the dais.

- 4.2 Zoning Ordinance Amendment #15-01, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would add Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana/cannabis uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced and prohibiting the cultivation of any amount of marijuana/cannabis for medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced.

Planning Manager ESPINOSA reviewed the report on this item. For further information, refer to Staff Report #15-21.

Public testimony was opened at 7:20 p.m.

No one spoke in favor of the adoption of the proposed ordinance.

Speakers from the Audience in Opposition:

CHRISTINE MERUSEL (aka: Sister Kate) of the Sisters of the Valley, Merced, who provided a handout to the Commission regarding medical marijuana products sold online and reviews of these products.

CHARLES VEILLEAX, Merced

LANDAN DEMRO, Merced

JUSTIN VIGARDT, Snelling

ROLAND ROJAS, Merced

SUSAN BOUSCARA, Merced

EMERY SILBERMAN, Merced, who presented a PowerPoint presentation entitled “Defense of Medical Marijuana in the County of Merced.”

KEVIN BAUER, Merced, who presented a PowerPoint presentation regarding the chemical traits of cannabis and the repercussions of not allowing medical marijuana within the City of Merced.

CHRIS GONZALEZ, Merced

AARON JENKINS, II, Merced

JO JENKINS, Merced

LYNDSEY SEXTON, Empire, CA  
DR. LAKISHA JENKINS, Merced  
NATHAN LOPEZ, Merced  
DIANA WESTMORELAND, Merced  
DWIGHT LARKS, Merced  
SHARON HOFFMAN, Mariposa

Public Testimony was completed at 8:32 p.m.

There was a discussion among the Commissioners regarding modifying the ordinance to provide regulations on the use of medical marijuana rather than prohibiting it. They also discussed the timing required for the adoption of the ordinance due to the state regulations (Assembly Bill 243) being enacted by March 1, 2016.

M/S PADILLA-SMOOT, to recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #15-33, and approval of Zoning Ordinance Amendment #15-01, subject to modifications to the ordinance to allow medical marijuana dispensaries in certain commercial zones (they deferred to staff to determine which zones), allow deliveries to begin at dispensaries within those commercial zones and to end in any zone within the City, and allow the cultivation of up to 12 medical marijuana plants for personal use (equivalent to Merced County's regulations), with no commercial cultivation of marijuana (RESOLUTION #3059).

There was further discussion among the Commission regarding the types of regulations and dispensaries to be allowed.

Commissioner SMOOT withdrew his second to the motion due to concerns with the possibility of walk-up dispensaries being allowed. After further discussion, Commissioner SMOOT, reinstated his second to Commissioner PADILLA's motion.

The motion carried by the following vote:

AYES: Commissioners Smoot, Smith, McLeod, Dylina, Padilla,  
and Vice Chairperson Baker  
NOES: None

ABSENT: Commissioner Colby

ABSTAIN: None

4.3 Cancellation of December 23, 2015, Planning Commission Meeting due to the Holidays

M/S PADILLA-SMOOT, and carried by the following vote, to cancel the Planning Commission meeting of December 23, 2015.

AYES: Commissioners Smoot, Smith, McLeod, Dylina, Padilla, and Vice Chairperson Baker

NOES: None

ABSENT: Commissioner Colby

ABSTAIN: None

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

6. ADJOURNMENT

There being no further business, Vice Chairperson BAKER adjourned the meeting at 9:18 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



<sup>FOR</sup> BILL BAKER, Vice Chairperson  
Merced City Planning Commission

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3058**

**WHEREAS**, the Merced City Planning Commission at its regular meetings of November 18 and December 9, 2015, held a public hearing and considered **Conditional Use Permit #1206**, initiated by Sound Life International Ministries on behalf of the Merced Lodging Corporation, property owners. This application involves a request to convert an existing 100-unit motel to a worship center and a rehabilitation facility with up to 200 beds at 1213 V Street, generally located 150 feet south of the intersection at Highway 140 and V Street, within a Thoroughfare Commercial (C-T) zone; also known as Assessor's Parcel No. 031-271-017; and,

**WHEREAS**, the Merced City Planning Commission hereby adopts modified Findings A, F, and J of Staff Report #15-22 and additional Findings K through O as follows (Staff Report #15-22 – Addendum):

**General Plan/Zoning Compliance and Policies Related to This Application**

- A) The subject site has a zoning designation of Thoroughfare Commercial (C-T) and a General Plan designation of Thoroughfare Commercial (CT). The project complies with the C-T zone if a Conditional Use Permit is approved. However, as shown below, the project conflicts with the following land use policies from the General Plan:

**Land Use Policy L-1.4:**

“Conserve residential areas that are threatened by blighting influences.”

**Land Use Policy L-1.5:**

“Protect existing neighborhoods from incompatible developments.”

**Neighborhood Impact/Interface**

- F) The project site is surrounded by both commercial and residential uses. There is a commercial plaza to the north of the subject site containing a

November 18 and December 9, 2015

grocery store, a hair salon, and an automobile insurance company. There are single-family residential properties to the south (across 12<sup>th</sup> Street) and to the west (across W Street) of the subject site. There are fast food restaurants and other general retail uses to the east of the subject site. Gracey Elementary School is located approximately three blocks southwest of the subject site (1,100 feet away).

The applicant hosted two neighborhood meetings prior to the public hearing, inviting residents who live within three-hundred feet of the subject site. One meeting was held at the Merced Salvation Army and the other at Stephen Leonard Park, with fifteen to thirty people in attendance at each meeting. City staff did not attend those meetings; however, staff did receive several questions and comments from residents who were in attendance. The most common questions and concerns with this project were in regards to blight, increase in crime rates, and decrease in property values for both residential and commercial properties. Subsequent to the staff report being distributed, staff received a letter and an e-mail from residents in opposition to the project (Attachment B). In addition, staff received phone calls from representatives from the Merced City School District who were in opposition to the project because of reasons concerning student safety (as described in Finding L). One additional letter was received at the Planning Commission meeting (also see Attachment B).

### **Environmental Clearance**

- J) Planning staff conducted an environmental review (Environmental Review #15-30) of the project in accordance with the requirements of the California Environmental Quality Act (CEQA). Because the Planning Commission is electing to deny CUP #1206 (based on the Findings in this staff report), they are also electing to deny Environmental Review #15-30 (Categorical Exemption).

### **Additional Findings/Consideration for Denial:**

- K) During the November 18, 2015, Planning Commission hearing, the Planning Commission received testimony from a representative from the Merced Police Department who explained that past experiences with similar projects in Merced (i.e. a homeless support facility at 14<sup>th</sup> Street

November 18 and December 9, 2015

and R Street that is no longer open) have placed significant demands on City Police resources and led to increased crime rates in the area. Refer to Finding G and Attachment D from Staff Report #15-22 for information about crime rates provided by the Police Department.

- L) During the public hearing, the Planning Commission received testimony from representatives from the Merced City School District who were opposed to this project because of concerns regarding student safety. They explained that both Gracey Elementary School and Margaret Sheehy Elementary School are located within a half-mile radius of the subject site. Many of their students walk near or along the subject site to get to and from school, because bus services are provided only to students who reside outside a one-mile radius from school property or live across from a major barrier (such as a highway). The testimony indicated that students may be harmed or harassed by rehabilitation participants who relapse, leave the facility, or wander throughout the neighborhood.
- M) During the public hearing, the Planning Commission received testimony from business owners from the neighborhood who were opposed to this project because it could have significant economic impacts on their businesses. They were concerned that rehabilitation participants will wander from the rehabilitation facility and loiter on their property, discouraging customers from entering the site and conducting business. These comments were based on previous experiences with people who have drug dependencies or who are homeless within the neighborhood.
- N) During the public hearing, the Planning Commission received testimony from several residents from the neighborhood who were opposed to this project. They expressed concerns regarding blight and increased crime rates. They were also concerned about the program not being able to control their clients if they drop-out of the program and were concerned they would stay in the community instead of going back to their original city of residence. They also expressed concerns about the lack of fingerprinting as part of the background checks and incompatibility between the program and the existing land uses (i.e. a liquor store is located across the street) in the area.

PLANNING COMMISSION RESOLUTION #3058

Page 4

November 18 and December 9, 2015

- O) Although the Planning Commission felt that the goals of the proposed project were commendable and that the proposed project could work at an alternative location, there are significant factors that make the proposed project incompatible with the existing neighborhood, as shown in Findings A, F, K, L, M, and N. Therefore, the Planning Commission is denying Conditional Use Permit #1206 based on the Findings in this staff report.

**NOW THEREFORE**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby deny Environmental Review #15-30 and Conditional Use Permit #1206.

Upon motion by Commissioner Smith, seconded by Commissioner Smoot, and carried by the following vote:

- AYES: Commissioners Smoot, Smith, McLeod, Dylina, and Acting Chairperson Baker
- NOES: None
- ABSENT: Commissioner Colby
- ABSTAIN: Commissioner Padilla

PLANNING COMMISSION RESOLUTION # 3058

Page 5

November 18 and December 9, 2015

Adopted this 9<sup>th</sup> day of December 2015

  
\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

  
\_\_\_\_\_  
Secretary

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3059**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of December 9, 2015, held a public hearing and considered **Zoning Ordinance Amendment #15-01**, initiated by the City of Merced. This application involves changes to the Merced Zoning Ordinance (Title 20 of the Merced Municipal Code) which would add Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana/cannabis uses and activities, including delivery, in all zones and all specific plan areas in the City of Merced and prohibiting the cultivation of any amount of marijuana/cannabis for medical use by a qualified patient or primary caregiver in all zones and specific plan areas in the City of Merced; and,

**WHEREAS**, the Merced City Planning Commission considered Findings A through E of Staff Report #15-23; and,

**NOW THEREFORE**, after reviewing the City’s Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Categorical Exemption regarding Environmental Review #15-33, and approval of Zoning Ordinance Amendment #15-01, modified as follows:

Allow medical marijuana dispensaries in certain commercial zones (they deferred to staff to determine which zones), allow deliveries to begin at dispensaries within those commercial zones and to end in any zone within the City, and allow the cultivation of up to 12 medical marijuana plants for personal use (equivalent to Merced County’s regulations), with no commercial cultivation of marijuana.

Upon motion by Commissioner Padilla, seconded by Commissioner Smoot, and carried by the following vote:

- AYES: Commissioners Smoot, Smith, McLeod, Dylina, Padilla, and Acting Chairperson Baker  
NOES: None  
ABSENT: Commissioner Colby  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #3059

Page 2

December 9, 2015

Adopted this 9<sup>th</sup> day of December 2015



\_\_\_\_\_  
Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



\_\_\_\_\_  
Secretary

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, January 6, 2016

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Kurt Smoot, Kevin Smith, Bill Baker, Robert Dylina, Peter Padilla, Jill McLeod, and Chairperson Travis Colby

Commissioners Absent: None

Staff Present: Planning Manager Espinosa, Associate Planner Nelson, Senior Deputy City Attorney Rozell, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

M/S PADILLA-SMITH, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S PADILLA-SMITH, and carried by unanimous voice vote, to approve the Minutes of December 9, 2015, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1208, initiated by Golden Valley Engineering, on behalf of LJ Steiner, LLC, property owner. This application involves a request to construct a 128-unit apartment complex with 1, 2, and 3 bedroom units on a portion of a 10.42 acre parcel, generally located at the southeast corner of Pacific Drive and Horizons Avenue. This parcel is located within Planned Development (P-D) #46 and has a Village Residential (VR) General Plan designation.

Associate Planner NELSON reviewed the report on this item. She noted a memo from staff, which was provided to the Commission prior to the meeting, which clarified an issue regarding additional parking spaces. For further information, refer to Staff Report #16-01.

Public testimony was opened at 7:15 p.m.

Speakers from the Audience in Favor:

JOHN HINCHEY, Steiner Development, Modesto, on behalf of the applicant

ASHLEY MCCOMB THANADABOUTH, Golden Valley Engineering, Merced, on behalf of the applicant

DOUG BOYER, Merced

JIM XU, Golden Valley Engineering, Merced, on behalf of the applicant

RICK SEYMOUR, Merced

Both JOHN HINCHEY, ASHLEY MCCOMB THANADABOUTH, and JIM XU requested modifications to Condition #13 since this is part of the Merced Storm Drain Master Plan, a conversation had already taken place with the City Engineer, and metering was not required.

No one spoke in opposition to the project.

Public testimony was completed at 7:41 p.m.

After the Commissioners discussed the parking issues and Condition #13 regarding storm water, they re-opened the public hearing to get further clarification from the applicant regarding the potential extra parking spaces.

Public testimony was re-opened at 7:50 p.m.

JOHN HINCHEY, Steiner Development, Modesto, spoke on behalf of the applicant. He clarified that with 272 total bedrooms and 263 parking spaces, the ratio of spaces to bedrooms was almost 1 to 1 already without adding in the potential extra 59 parking spaces that could be added if that was deemed necessary by the Planning Commission. He added that if that land was not needed for parking, it would be landscaped and would add to the aesthetics of the property.

Public testimony was completed at 7:52 p.m.

M/S PADILLA-DYLINA, and carried by the following vote, to find that the previous environmental review [Initial Study #14-26 (Mitigated Negative Declaration) for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46] remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Conditional Use Permit #1208, subject to the Findings and thirty-one (31) Conditions set forth in Staff Report #16-01, amending Condition #13 as follows (RESOLUTION #3060):

“13. At the building permit stage, proper documentation shall be provided to the satisfaction of the City Engineer, showing how storm water will be managed on the site and directed to the City’s storm water system. ~~Storm water shall be collected on site and metered into the City’s system. The developer shall provide calculations to confirm there is capacity in the existing storm water system to serve the proposed project. If there is not sufficient capacity, the developer shall provide an alternative to using the existing lines and drainage basin.~~”

AYES: Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod, and Chairperson Colby

NOES: None

ABSENT: None

ABSTAIN: None

- 4.2 Conditional Use Permit #1207, initiated by Boos Development on behalf of SEW Enterprises, LLC, property owners. This application involves a request to demolish two existing three-story office buildings and construct a new 12,900-square-foot CVS Pharmacy (with alcohol sales for off-site consumption) and a 4,000-square-foot future retail pad on two parcels containing approximately 2.19 acres, located on the north side of Olive Avenue, approximately 120 feet west of M Street (625 and 645 West Olive Avenue). These parcels are located within Planned Development (P-D) #1 and have a Regional/Community Commercial (RC) General Plan designation.

Associate Planner NELSON reviewed the report on this item. She noted a memo from staff, which was provided to the Commission prior to the meeting, which modified Finding H-1, modified Condition #11, and deleted Condition #30, to reflect that the existing alcohol license would be transferred to the new location rather than the applicant obtaining an additional license. For further information, refer to Staff Report #16-02.

Public testimony was opened at 8:21 p.m.

Speaker from the Audience in Favor:

RICH RADOYCIS, Rocklin, representing the applicant

No one spoke in opposition to the project.

Public testimony was completed at 8:22 p.m.

The Commission discussed the driveway on Olive Avenue becoming both an ingress and egress driveway instead of just an ingress. Ms. ESPINOSA noted that if that was to happen, the applicant would need to obtain a letter of approval from the adjacent property owner.

Chairperson COLBY noticed that there was someone in the audience wishing to speak.

Public testimony was re-opened at 8:26 p.m.

Speaker from the Audience in Favor:

YASSER SADEK, Merced, property owner, confirmed that he had spoken to Loren Gonella and would secure the required letter agreeing to the ingress/egress driveway change.

Public testimony was completed at 8:27 p.m.

M/S SMITH-PADILLA, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-35, and approve Conditional Use Permit #1207, subject to the Findings and thirty-seven (37) Conditions set forth in Staff Report #16-02, amending Finding H-1, amending Condition #11, and deleting Condition #30 as follows (RESOLUTION #3061):

“Finding H-1

The project site is located within Census Tract 10.04. According to the California Department of Alcoholic Beverage Control, three licenses for the sale of alcohol for off-site consumption are allowed within this census tract. Currently, there are four licenses in the census tract. CVS will be transferring their existing Type 21 License from their existing location within the Merced Mall (also within Census Tract 10.04). The California Department of Beverage Control does not require a Finding of Public Convenience or Necessity (PCN) when a license is transferred within the same census tract even if the census tract is considered to be over-concentrated. Therefore, this census tract is considered over-concentrated and a Finding of Public Convenience or Necessity would be required to be issued by the City Council (Condition #30). It should be noted, however, that one of the four existing licenses belongs to the CVS located within the Merced Mall. This license will eventually be moved to another location. Therefore, once that is done, the number of licenses within this census tract would not be increased over what is

~~currently existing, although it would still be considered over-concentrated.~~

~~“11. Approval of alcohol sales shall not become effective until such time as the transfer of the existing ABC License has been finalized. All alcohol sales shall cease at the existing location prior to alcohol sales beginning at the new location. ~~the City Council makes a Finding of Public Convenience or Necessity to allow the sale of alcoholic beverages at this location. If no such finding is made, the approval for alcohol sales with this Conditional Use Permit becomes null and void.~~~~

~~“30. Prior to obtaining a license from the Alcoholic Beverage Control to sell alcohol, each business shall obtain approval for a Finding of Public Convenience or Necessity from the Merced City Council.”~~

AYES: Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod, and Chairperson Colby

NOES: None

ABSENT: None

ABSTAIN: None

4.3 Conditional Use Permit #1209, initiated by MT2 Telecom, on behalf of SEW Enterprises, LLC, property owners. This application involves a request to construct an 85-foot tall wireless communication tower in the form of a mono-pine tree to allow the relocation of the existing wireless communication towers currently located on top of the existing three-story buildings located at 625 and 645 West Olive Avenue. These parcels are located within Planned Development (P-D) #1 and have a Regional/Community Commercial (RC) General Plan designation.

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #16-03.

Public testimony was opened at 8:40 p.m.

Speaker from the Audience in Favor:

SALOMON MARTINEZ, JR. Rio Vista, representing the applicant

No one spoke in opposition to the project.

Public testimony was completed at 8:43 p.m.

M/S PADILLA-SMITH, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-38, and approve Conditional Use Permit #1209, subject to the Findings and twenty-three (23) Conditions set forth in Staff Report #16-03 (RESOLUTION #3062):

AYES: Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod, and Chairperson Colby

NOES: None

ABSENT: None

ABSTAIN: None

4.4 Cancellation of January 20, 2016, Planning Commission Meeting due to Lack of Items

M/S BAKER-DYLINA, and carried by unanimous voice vote, to cancel the Planning Commission meeting of January 20, 2016.

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 8:46 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3060**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 6, 2016, held a public hearing and considered **Conditional Use Permit #1208**, , initiated by Golden Valley Engineering, on behalf of LJ Steiner, LLC, property owner. This application involves a request to construct a 128-unit apartment complex with 1, 2, and 3 bedroom units on a portion of a 10.42 acre parcel, generally located at the southeast corner of Pacific Drive and Horizons Avenue. This parcel is located within Planned Development (P-D) #46 and has a Village Residential (VR) General Plan designation; also known as Assessor's Parcel No. 206-070-006; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through K of Staff Report #16-01; and,

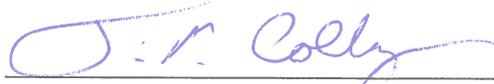
**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby find that the previous environmental review [Initial Study #14-26 (Mitigated Negative Declaration) for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46] remains sufficient and no further documentation is required (CEQA Section 15162 Findings), and approve Conditional Use Permit #1208, subject to the Conditions set forth in Exhibit A and the Mitigation Monitoring Program adopted for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46, set forth in Exhibit B, both attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Padilla, seconded by Commissioner Dylina, and carried by the following vote:

AYES: Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod,  
and Chairperson Colby  
NOES: None  
ABSENT: None  
ABSTAIN: None

January 6, 2016

Adopted this 6<sup>th</sup> day of January 2016



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

**Conditions of Approval**  
**Planning Commission Resolution #3060**  
**Conditional Use Permit #1208**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (elevations), and Exhibit 3 (floor plans) -- Attachments B, C, and D of Staff Report #16-01, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with the conditions set forth in Resolution #3050 for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46 previously approved for this project, including all mitigation measures required by the Mitigation Monitoring Program for General Plan Amendment #14-04 and the Fahrens Creek Annexation (Attachment G of Staff Report #16-01 and Exhibit B of Planning Commission Resolution).
5. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to

that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map approval or the issuance of the first building permit. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
9. At the time of building permit submittal, a hydrology study prepared by a registered professional engineer or hydrologist shall be submitted showing the impacts of and any required mitigation measures for development within the area designated as a Floodway on the Flood Insurance Rate Map (FIRM). Any development of this area is subject to approval of the City Engineer and Development Services Director (Mitigation Measure H-9 of the Mitigation Monitoring Program for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46 previously approved for this project). In addition, sufficient documentation and plans shall be provided to demonstrate to the satisfaction of the City Engineer and Development Services Director/Chief Building Official that all structures on the site are located outside the Floodway area.

10. All missing public improvements along the property frontage shall be installed. This includes, but is not limited to, streets, sidewalks, curbs, gutters, street lights, and water and sewer lines. All improvements shall be constructed per City Standards.
11. The developer shall pay for any improvements installed by prior developments that are eligible for reimbursement by this development.
12. All landscaping shall comply with State Water Resources Control Board Resolution No. 2015-0032 “To Adopt an Emergency Regulation for Statewide Urban Water Conservation” or the most recent water regulations adopted by the State and City addressing water conservation measures. If turf is proposed to be installed in park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees or other landscaping shall be provided with a drip irrigation or micro-spray system.
13. At the building permit stage, proper documentation shall be provided to the satisfaction of the City Engineer, showing how storm water will be managed on the site and directed to the City’s storm water system.
14. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site. Refuse containers or other items shall not be permitted to be placed in the required clear space of the turning area.
15. Bicycle parking shall meet the minimum requirements of the California Green Building Code.
16. All driveways shall comply with the City of Merced Standard for commercial driveways and are to be reviewed by the Fire Department as part of the review of the improvement plan submittals. A minimum of 20-feet of stacking room outside the gate shall be provided at all driveway entrances.
17. Prior to any demolition work, the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District and a demolition permit from the City of Merced Inspection Services Division if required.
18. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.

19. Concurrent with or prior to the submittal of a Building Permit Application, the applicant shall submit to the Development Services Department a detailed landscape plan that is consistent with the City's Water Efficient Landscaping & Irrigation Ordinance (Merced Municipal Code 17.60) and all state-mandated drought restrictions.
20. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of at least one tree for each six parking spaces. The documentation provided to allow parking within the flood area shall address the use of trees in the flood area. If trees are not allowed because they may have a negative effect on the floodway, the requirement for parking lot trees shall not apply within the floodway area only.
21. All buildings shall be designed to include commercial fire sprinklers ("13-system") as required by the California Fire Code. Eight-foot wide access-ways to the buildings through the parking lots shall be provided; handicapped loading zones may not be used for this purpose. Details will be worked out with Staff at the building permit review stage.
22. A Knox-box with "click-to-enter" technology for the Fire Department shall be provided at all entrance driveways. Details to be reviewed by the Fire Department as part of the review of the building permit submittals.
23. The project shall comply with all requirements of the California Building Code and the Federal Emergency Management Agency (FEMA). All necessary documentation related to the construction of the residential uses shall be provided at the building permit stage (Mitigation Measure H-8 of the Mitigation Monitoring Program adopted for General Plan #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46 previously approved for this project).
24. All mechanical equipment shall be screened from public view.
25. Containers for refuse and recycled goods shall be stored in enclosures that are designed with colors compatible with the buildings and shall be constructed to meet City Standards. At the Building Permit stage, the developer shall work with the City's Refuse Department to determine the

best location for these enclosures to ensure proper access is provided for City Refuse Trucks.

26. The project shall comply with the City's Multi-Family Design Standards in Merced Municipal Code Section 20.54.290.
27. The project shall comply with the North Merced Sign Ordinance and requirements of Merced Municipal Code Section 17.36.572 regarding signing for apartments and condominiums.
28. Sufficient lighting shall be provided throughout the parking area to provide a safe environment for tenants and visitors. If lighting cannot be provided in the floodway area and sufficient parking cannot be provided elsewhere on the site, the number of units would need to be reduced to comply with the parking requirements. Based on 135 parking spaces, 85 units could be constructed. All lighting shall comply with Mitigation Measure G-1 of the Mitigation Monitoring Program for the Fahrens Creek Annexation.
29. Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city mandated water regulations dealing with the current drought conditions.
30. All private outdoor walking and vehicle and bicycle parking areas shall be properly lighted with ground-mounted lights.
31. Pedestrian access gates shall be provided along each street frontage to allow residents access to the public sidewalk as well as to the City's bike path system.

n:\shared\planning\PC Resolutions: CUP#1205 Exhibit A

**ENVIRONMENTAL REVIEW #14-26**  
**Mitigation Monitoring Program**

**MITIGATION MONITORING CONTENTS**

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

**LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM**

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own “Mitigation Monitoring and Reporting Program” (MMC 19.28). The City’s program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor’s Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for the General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

**MITIGATION MONITORING PROCEDURES**

In most cases, mitigation measures can be monitored through the City’s construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

## **GENERAL PLAN MITIGATION MEASURES**

As a second tier environmental document, Initial Study #14-26 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

## **NONCOMPLIANCE COMPLAINTS**

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the Director of Development Services in written form providing specific information on the asserted violation. The Director of Development Services shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the Director of Development Services shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

## **MONITORING MATRIX**

**The following pages provide a series of tables identifying the mitigation measures proposed specifically for General Plan Amendment #14-04, Revision #2 to the Fahrens Creek Specific Plan, and Site Utilization Plan Revision #4 to Planned Development (P-D) #46. The columns within the tables are defined as follows:**

<b>Mitigation Measure:</b>	Describes the Mitigation Measure (referenced by number).
<b>Timing:</b>	Identifies at what point in time or phase of the project that the mitigation measure will be completed.
<b>Agency/Department Consultation:</b>	This column references any public agency or City department with which coordination is required to satisfy the identified mitigation.
<b>Verification:</b>	These columns will be initialed and dated by the individual designated to verify adherence to the project specific mitigation.

**General Plan Amendment #14-04/Revision 32 to the Fahrens Creek Specific Plan/  
 Site Utilization Plan Revision #4 to Planned Development (P-D) #46  
 Mitigation Monitoring Checklist**

**Project Name:** \_\_\_\_\_ **File Number:** \_\_\_\_\_  
**Approval Date:** \_\_\_\_\_ **Project Location** \_\_\_\_\_  
**Brief Project Description** \_\_\_\_\_

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced’s Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

<b>C) Air Quality</b>				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
C-1	C-1) The project applicant shall submit an Indirect Source Review (ISR) to the San Joaquin Air Pollution Control Board in compliance with District Rule 9510 and shall comply with all other applicable District Rules. The San Joaquin Valley Air Pollution Control District recommends this application be submitted as early as possible or prior to the final discretionary approval.	Prior to Conditional Use Permit (CUP) approval	Planning Department	
C-1	C-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A)	Building Permit Issuance / CUP approval	Inspection Services / Planning Department	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
C-2	C-3) Compliance with Mitigation Measures C-1 and C-2 above would reduce this impact to a less than significant level.	Building Permit Issuance / CUP approval	Inspection Services / Planning Department	
<b>D) Biological Resources</b>				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
D1	D-1) If any development takes place during the Swainson's Hawk nesting season (late March through July), a pre-construction survey shall be conducted by a qualified biologist to determine whether nesting activities are taking place within the area. If it is found that nesting activities are taking place, the project shall take necessary actions, including delaying the start of construction, to ensure the species is not disturbed.	Building Permit	Planning Department  CA. Dept. of Fish and Wildlife	
D1	D-2) With regard to the Giant Garter Snake, for any development taking place in proximity to Fahrens Creek corridor, from the west edge of R Street to the north edge of Yosemite Avenue the following actions shall be taken:  a) Provide environmental awareness training to contractors doing work in this area;  b) Restrict construction along the Creek to only the snake's active season (May 1 through September 30); and,  c) Have a qualified biologist conduct pre-construction surveys 24 hours in advance of construction activities.	Building Permit	Planning Department  CA. Dept. of Fish and Wildlife	

<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
D1	D-3) No development shall occur within 50 feet of the centerline of the creek (or 25 feet from the crown, whichever is greater).	Building Permit	Planning Department	
D1	D-4) The project shall comply with all applicable mitigation measures for Expanded Initial Study (EIS) #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09. Refer to the Mitigation Monitoring Program prepared for EIS #00-31 at Attachment A.	Building Permit	Planning Department	
D2	D-5) Compliance with Mitigation Measures D-1 through D-4 would reduce this impact to a less than significant level.	Building Permit	Planning Department	
D4	D-6) Compliance with Mitigation Measures D-1 through D-4 would reduce this impact to a less than significant level.	Building Permit	Planning Department	
D5	D-7) Compliance with Mitigation Measures D-1 through D-4 would reduce this impact to a less than significant level.	Building Permit	Planning Department	
<b>E) Biological Resources</b>				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
E1	E-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Planning Department	
E2	E-2) Compliance with Mitigation Measure E-1 would make this impact less than significant.	Building Permit	Planning Department	

<i><b>Impact No.</b></i>	<i><b>Mitigation Measures</b></i>	<i><b>Timing</b></i>	<i><b>Agency or Department</b></i>	<i><b>City Verification (date and initials)</b></i>
E3	E-3) Compliance with Mitigation Measure E-1 would make this impact less than significant.	Building Permit	Planning Department	
E4	E-4) Compliance with Mitigation Measure E-1 would make this impact less than significant.	Building Permit	Planning Department	
<b>F) Geology and Soils</b>				
<i><b>Impact No.</b></i>	<i><b>Mitigation Measures</b></i>	<i><b>Timing</b></i>	<i><b>Agency or Department</b></i>	<i><b>City Verification (date and initials)</b></i>
F2	F-1) The project shall comply with all requirements of the State Water Resources Board (SWRCB) and obtain a General Construction Activity Stormwater Permit.	Building Permit	Inspection Services	
<b>H) Hydrology and Water</b>				
<i><b>Impact No.</b></i>	<i><b>Mitigation Measures</b></i>	<i><b>Timing</b></i>	<i><b>Agency or Department</b></i>	<i><b>City Verification (date and initials)</b></i>
H-1	H-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
H-2	H-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
H-3	H-3) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
H-4	H-4) The project developer shall provide calculations to the City Engineer verifying the capacity of the existing storm drain line as well as the capacity of the basin into which the water would ultimately drain.	Building Permit	Engineering	
H-4	H-5) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
H-5	H-6) The project developer shall provide calculations to the City Engineer verifying the capacity of the existing storm drain line as well as the capacity of the basin into which the water would ultimately drain.	Building Permit	Engineering	
H-5	H-7) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	

<b><i>Impact No.</i></b>	<b><i>Mitigation Measures</i></b>	<b><i>Timing</i></b>	<b><i>Agency or Department</i></b>	<b><i>City Verification (date and initials)</i></b>
H-7	H-8) The project shall comply with all requirements of the California Building Code and the Federal Emergency Management Agency (FEMA). All necessary documentation related to the construction of the residential uses shall be provided at the building permit stage.	Building Permit	Inspection Services / Engineering	
H-7	H-9) At the time of submittal for a Conditional Use Permit (CUP), the developer shall provide a hydrology study demonstrating the effects of constructing a portion of the parking area within the flood way. This document shall be reviewed and approved by the Development Services Director.	Building Permit	Inspection Services / Planning Department / Engineering	
<b>K) Noise</b>				
<b><i>Impact No.</i></b>	<b><i>Mitigation Measures</i></b>	<b><i>Timing</i></b>	<b><i>Agency or Department</i></b>	<b><i>City Verification (date and initials)</i></b>
K-1	K-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	
K-2	K-2) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	

<b>O. Transportation/Traffic</b>				
<i>Impact No.</i>	<i>Mitigation Measures</i>	<i>Timing</i>	<i>Agency or Department</i>	<i>City Verification (date and initials)</i>
O-1	O-1) The project shall comply with all applicable mitigation measures for Expanded Initial Study #00-31 for Pending Annexation #00-03, Pre-zoning #00-03, and General Plan Amendment #00-09 (Attachment A).	Building Permit	Inspection Services / Planning Department / Engineering	

**Certificate of Completion:**

By signing below, the environmental coordinator confirms that the required mitigation measures have been implemented as evidenced by the Schedule of Tasks and Sign-Off Checklist, and that all direct and indirect costs have been paid. This act constitutes the issuance of a *Certificate of Completion*.

\_\_\_\_\_  
 Environmental Coordinator

\_\_\_\_\_  
 Date

**EXPANDED INITIAL STUDY #00-31  
for  
FAHRENS CREEK ANNEXATION  
TO THE CITY OF MERCED**

*Appendix C*  
**Mitigation Monitoring Program**

**MITIGATION MONITORING CONTENTS**

This mitigation monitoring program includes a brief discussion of the legal basis and purpose of the mitigation monitoring program, a key to understanding the monitoring matrix, a discussion of noncompliance complaints, and the mitigation monitoring matrix itself.

**LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM**

Public Resource Code (PRC) 21081.6 requires public agencies to adopt mitigation monitoring or reporting programs whenever certifying an environmental impact report or mitigated negative declaration. This requirement facilitates implementation of all mitigation measures adopted through the California Environmental Quality Act (CEQA) process.

The City of Merced has adopted its own "Mitigation Monitoring and Reporting Program" (MMC 19.28). The City's program was developed in accordance with the advisory publication, *Tracking CEQA Mitigation Measures*, from the Governor's Office of Planning and Research.

As required by MMC 19.28.050, the following findings are made:

- 1) The requirements of the adopted mitigation monitoring program for the Fahrens Creek Annexation shall run with the real property that is the subject of Annexation Application #00-31 to the City of Merced. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

**MITIGATION MONITORING PROCEDURES**

In most cases, mitigation measures can be monitored through the City's construction plan approval/plan check process. When the approved project plans and specifications, with mitigation measures, are submitted to the City Development Services Department, a copy of the monitoring checklist will be attached to the submittal. The Fahrens Creek Annexation Mitigation Monitoring Checklist will be filled out upon project approval with mitigation measures required. As project plans and specifications are checked, compliance with each mitigation measure can be reviewed.

In instances where mitigation requires on-going monitoring, the Mitigation Monitoring Checklist will be used until monitoring is no longer necessary. The Development Services Department will be required to file periodic reports on how the implementation of various mitigation measures is progressing or is being maintained. Department staff may be required to conduct periodic inspections to assure compliance. In some instances, outside agencies and/or consultants may be required to conduct necessary periodic inspections as part of the mitigation monitoring program. Fees may be imposed per MMC 19.28.070 for the cost of implementing the monitoring program.

## Fahrens Creek Annexation to the City of Merced Expanded Initial Study #00-31: Mitigation Monitoring Program (2)

### GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, the *Expanded Initial Study for the Fahrens Creek Annexation to the City of Merced* incorporates some mitigation measures adopted as part of the *Merced Vision 2015 General Plan Program Environmental Impact Report* (SCH# 95082050), as mitigation for potential impacts of the Project. Therefore, following the Fahrens Creek Annexation Mitigation Monitoring Checklist (starting on page A-15) is a list of these relevant General Plan mitigation measures along with the General Plan Mitigation Monitoring Checklists (Forms A and B) to be used to verify that the General Plan mitigation measures have been met.

### NONCOMPLIANCE COMPLAINTS

Any person or agency may file a complaint asserting noncompliance with the mitigation measures associated with the project. The complaint shall be directed to the City Planner in written form providing specific information on the asserted violation. The City Planner shall cause an investigation and determine the validity of the complaint. If noncompliance with a mitigation measure has occurred, the City Planner shall cause appropriate actions to remedy any violation. The complainant shall receive written confirmation indicating the results of the investigation or the final action corresponding to the particular noncompliance issue. Merced Municipal Code (MMC) Sections 19.28.080 and 19.28.090 outline the criminal penalties and civil and administrative remedies which may be incurred in the event of noncompliance. MMC 19.28.100 spells out the appeals procedures.

### MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for the Fahrens Creek Annexation. The columns within the tables are defined as follows:

**Mitigation Measure:** Summarizes the Mitigation Measure (referenced by number) identified in Expanded Initial Study #00-31.

**Timing:** Identifies at what point in time or phase of the project that the mitigation measure will be completed.

**Agency/Department Consultation:** This column references any public agency or City department with which coordination is required to satisfy the identified mitigation.

**Verification:** These columns will be initiated and dated by the individual designated to verify adherence to the project specific mitigation.

## Fahrens Creek Annexation Mitigation Monitoring Checklist

Project Name: \_\_\_\_\_  
 File Number: \_\_\_\_\_  
 Approval Date: \_\_\_\_\_  
 Project Location: \_\_\_\_\_

Brief Project Description: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The following environmental mitigation measures were incorporated into the Conditions of Approval for this project in order to mitigate identified environmental impacts to a level of insignificance. A completed and signed checklist for each mitigation measure indicates that this mitigation measure has been complied with and implemented, and fulfills the City of Merced's Mitigation Monitoring Requirements (MMC 19.28) with respect to Assembly Bill 3180 (Public Resources Code Section 21081.6).

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
A. EARTH			
A-1 Grading and excavation shall be conducted according to City of Merced standards to reduce the effects of disruptions, displacement, compactions, and over-covering of soils.	Building Permits	City Inspection Services, Engineering, & Public Works	
A-2 The Project applicants shall prepare grading plans for individual projects for review and approval by the City of Merced Inspection Services, Engineering, and Public Works Departments prior to approval of building permits. The grading plans shall include the nature and extent of work proposed, phasing, and minimize the effects of disruptions, displacement, compaction, and over-covering of soils.	Building Permits	City Inspection Services, Engineering, & Public Works	
A-3 Prior to approval of any improvement or building plans, the City shall review plans for drainage and storm water run-off control systems and their component facilities, as required, to ensure that these systems are non-erosive in design.	Tentative Map Building Permit	City Engineering & Public Works	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
A-4 Upon completion of construction, subsequent Projects shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to re-vegetation may be employed, especially during peak high temperature periods, subject to the approval of the City.	Certificate of Occupancy	City Inspection Services	
A-5 Projects under review shall be required to submit temporary erosion control plans for construction activities.	Building Permits	City Inspection Services	
A-6 Prior to the issuance of a building permit, the applicant shall design all structures according to the Uniform Building Code Seismic Section 3.	Building permits	City Inspection Services	
A-7 A soils report shall be prepared by a qualified soils or civil engineer, consistent with the provisions of the State Subdivision Map Act, prior to approval of a final subdivision map or building permit, if applicable as required by Merced Municipal Code.	Final Maps	City Engineering & Public Works	
A-8 Building plans shall be reviewed by a registered engineer specializing in geo-technical assessments to ensure that the soils can support the load.	Building Permits	City Inspection Services, Engineering, & Public Works	
B. AIR			
B-1 All active portions of construction sites, earthen access roads, and material excavated or graded shall be sufficiently watered to prevent excessive amounts of dust. Watering shall occur at least twice a day with complete coverage, preferably in the late morning and after work is done for the day. Where feasible, reclaimed water shall be used.	Building Permits	City Inspection Services	
B-2 All clearing, grading, earth moving, or excavation activities shall cease during periods of winds greater than 20 miles per hour averaged over one hour.	Building Permits	City Inspection Services	
B-3 All material transported off site shall be either sufficiently watered or securely covered to prevent excessive amounts of dust.	Building Permits	City Inspection Services	
B-4 The area disturbed by clearing, earth moving, or excavation activities shall be minimized at all times. This can be accomplished by mowing instead of disking for weed control and seeding and watering inactive portions of the construction site until grass is evident, if construction time frames warrant.	Building Permits	City Inspection Services	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
B-5 Construction site vehicle speeds shall be limited to 15 miles per hour.	<i>Building Permits</i>	<i>City Inspection Services</i>	
B-6 If used, petroleum-based dust palliatives shall meet the road oil requirements of the District's rule regarding Cutback Asphalt Paving Materials.	<i>Building Permits</i>	SJVUAPCD	
B-7 Streets adjacent to the Project site shall be swept as needed to remove silt and/or mud that may have accumulated from construction activities. The streets are required to be wet prior to or in conjunction with rotary sweeping.	<i>Building Permits</i>	<i>City Inspection Services</i>	
B-8 All internal combustion engine-driven equipment shall be properly maintained and well tuned according to the manufacturer's specifications.	<i>Building Permits</i>	<i>City Inspection Services</i>	
B-9 When reasonably available and economically feasible, diesel powered or electric equipment shall be utilized in lieu of gasoline powered engines.	<i>Building Permits</i>	<i>City Inspection Services</i>	
B-10 Construction activities shall minimize obstruction of through traffic lanes adjacent to the site and a flag person shall be retained to maintain safety adjacent to existing roadways.	<i>Building Permits</i>	<i>City Inspection Services</i>	
B-11 Prior to issuance of a grading permit, the project will be required to comply with District Regulation VIII. Specifically, the rules that apply to this project are: Rule 8010 (Administrative Requirements) and Rule 8020 (Construction, Demolition, Excavation, and Extraction Activities). Additional rules that may apply to this project depending on construction practices employed are: Rule 8030 (Handling and Storage of Bulk Materials), Rule 8060 (Paved and Unpaved Roads), and Rule 8070 (Parking, Shipping, Receiving, Transfer, Fueling, and Service Areas).	<i>Building Permits</i>	SJVUAPCD	
B-12 At the City Planner's discretion, subsequent projects within the Project boundaries may be required to submit an air quality analysis to the City prior to construction. Such studies shall outline any impacts associated with specific processes or activities to be present on-site.	<i>Site Plan Approval</i>	<i>City Planning</i>	
(B-13) (General Plan I-d) Development construction activity shall implement appropriate dust (PM10) suppression techniques as required by the SJVRAPCD.	<i>Building Permit/Construction</i>	<i>City Inspection Services</i>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>C. WATER</p>			
<p>C-1 Prior to approval of a Final Map or subsequent development projects, the applicant shall demonstrate to the City that storm drainage facilities are adequate to meet Project demands and that improvements are consistent with the Merced County Critical Area Flooding and Drainage Plan and any updates.</p>	<p>Tentative Maps</p>	<p>City Engineering &amp; Public Works</p>	
<p>C-2 Prior to alteration or removal of the existing elevated YVRR roadbed in the eastern portion of the project area, the property owner shall demonstrate, through competent analysis acceptable to the City of Merced, what effect removal of the roadbed will have on area flood waters delineated in the Special Flood Hazard Area identified on the east side of the roadbed, including impacts to other properties.</p>	<p>Tentative Maps Building Permits Conditional Use Permits/Site Plan Approvals</p>	<p>City Engineering &amp; Public Works</p>	
<p>C-3 Prior to approval of subsequent development projects, the applicants shall demonstrate to the City that temporary erosion control measures will be followed during construction.</p>	<p>Building Permits</p>	<p>City Inspection Services</p>	
<p>C-4 As individual projects are determined, the applicants shall provide detailed information to the City regarding projected water usage. The applicants shall provide all water system needs (including wells, water mains, etc.) for individual projects or pay equivalent fees to insure the construction of the necessary water infrastructure.</p>	<p>Building Permits/ Parcel Maps</p>	<p>City Engineering &amp; Public Works</p>	
<p>C-5 Industrial users shall recycle their own water if feasible and implement water conservation measures and techniques as determined for individual projects.</p>	<p>Building Permits</p>	<p>City Engineering &amp; Public Works</p>	
<p>C-6 Areas within 100-year flood plains will be required to comply with all pertinent provisions of the City's Flood Damage Prevention Ordinance (MMC 17.48) and all updates.  (C-7) (General Plan 2-a) When site-specific development proposals with direct discharge into the area's surface water system are submitted to the City for review and action, Best Management options should be evaluated to determine need and feasibility.</p>	<p>Building Permits  Subdivision maps/Parcel maps/ Building permits</p>	<p>City Inspection Services &amp; Engineering Engineering</p>	
<p>(C-8) (General Plan 2-b) Water conservation policy of the City should be periodically reviewed to determine need, appropriateness, and feasibility of implementing conservation practices suggested in the Merced Water Supply Plan.</p>	<p>Subdivision maps/Parcelmaps/ Conditional Use Permits</p>	<p>Engineering/Public Works/City Planning</p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>E. ANIMAL LIFE</p>			
<p>E-1 If any future development takes place during the Swainson's Hawk nesting season (late March through July), a pre-construction survey should be conducted by a qualified biologist to determine whether nesting activities are taking place within appropriate portions of the project area covered by this species assessment (Appendix A) (Fahrens Creek corridor from the west edge of "R" Street to the north edge of Yosemite Avenue).</p>	<p>Final Maps Building Permits</p>	<p>City Planning CA Dept of Fish &amp; Game</p>	
<p>E-2 With regard to the Giant Garter Snake, for any development taking place in proximity to the Fahrens Creek corridor, from the west edge of "R" Street to the north edge of Yosemite Avenue: a) provide environmental awareness training to contractors doing work in this area; b) restrict construction along the Creek to only the snake's active season (May 1 through September 30); and c) have a qualified biologist conduct pre-construction surveys 24 hours in advance of construction activities.</p>	<p>Final Maps Building Permits</p>	<p>City Planning CA Dept of Fish &amp; Game</p>	
<p>F. NOISE</p>			
<p>F-1 A 6 foot or higher sound wall or earthen berm (or combination of both), or some other acceptable method for achieving comparable noise reduction, may need to be constructed to meet the City's outdoor noise level standards of DNL 60dB for new residential development adjacent to perimeter arterials (Yosemite Avenue and "R" Street). Depending upon the DNLs and the acoustical shielding provided by the first row of buildings (if any), existing and new residential development located a greater distance from the perimeter arterials may require lower sound walls or a combination of sound attenuation measures. As an alternative to sound walls, new dwelling units may be oriented so that the outdoor use areas would be shielded by the building.</p> <p>As necessary detailed noise projections should be prepared to corroborate earlier noise studies/projections and actual height requirements for sound walls, prior to recordation of final maps for each phase of residential development falling within applicable noise zones.</p>	<p>Final Maps Building Permits</p>	<p>City Planning</p>	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
<p>F-2 Project residential developments constructed within pertinent noise zones in proximity to Yosemite Avenue and "R" Street would require sound-rated windows, as well as sound-rated exterior wall assemblies where necessary, or other acceptable methods of sound attenuation to achieve comparable noise reductions, to be consistent with the 45 dB interior noise level maximum.</p>	<p><i>Final Maps</i> <i>Building Permits</i></p>	<p><i>City Planning</i></p>	
<p>F-3 Trucks used for the development of Fahrens Creek will be required to use the City's designated truck routes, to be demonstrated by the project applicant through the submittal of a construction traffic plan to the City Engineer prior to the issuance of grading permits.</p>		<p><i>City Planning</i> <i>City Inspection Services</i></p>	
<p>F-4 All construction activity shall be conducted in accordance with City of Merced standards for times of operation.</p>	<p><i>Building Permits</i></p>	<p><i>City Inspection Services</i></p>	
<p>F-5 Grading and construction activity shall be limited to daylight hours (between 7 a.m. and 7 p.m.) in areas where noise sensitive receptors are located.</p>	<p><i>Building Permits</i></p>	<p><i>City Inspection Services</i></p>	
<p>F-6 In noise sensitive areas, construction equipment, compressors, and generators shall be fitted with heavy duty mufflers specifically designed to reduce noise impacts.</p>	<p><i>Building Permits</i></p>	<p><i>City Inspection Services</i></p>	

Mitigation Measure	Timing	Agency or Department Consultation	City Verification (date and initials)
<p>G. LIGHT AND GLARE</p> <p>G-1 The applicants shall utilize lighting fixtures of minimal wattage necessary to provide adequate lighting for security, industrial operations, and circulation. Light spill shall be controlled by baffles, cut-off lenses, and fixture height necessary to minimize spill-over onto adjacent properties. Prior to building permit approvals, lighting plans shall be submitted for review by the City which specifies lighting type, location, and methods for minimizing spill.</p>	<p>Building Permits</p>	<p>City Planning</p>	
<p>M. TRANSPORTATION /CIRCULATION</p>			
<p>M-1 The Project shall pay all fees as required under the City's Public Facilities Impact Fees (Chapter 17.62 of the Merced Municipal Code).</p>	<p>Certificate of Occupancy</p>	<p>City Planning &amp; City Engineer</p>	
<p>M-2 The developer shall construct all collector, local, or cul-de-sac streets within the Project boundaries to their ultimate right-of-way with full frontage improvements as defined by the City of Merced Standard Designs for all Engineering Structures and the Merced Vision 2015 General Plan and any amendments thereto. This will include its proportional share of the proposed Reverse Frontage Road North-South Collector to be located along the west boundary of AREA A/east boundary of AREA B (and, if included, along the east boundary of AREA C), and any new interior streets within the Project boundaries. The timing of construction of the improvements is to be governed by the Subdivision Map Act and/or local ordinance.</p>	<p>Tentative Maps/ Parcel Maps/ Site Plan Reviews</p>	<p>City Planning &amp; Engineering</p>	
<p>M-3 The developer shall dedicate half the required right-of-way for all arterial and higher order streets adjacent to the Project boundaries as defined in the Merced Vision 2015 General Plan. This includes both Yosemite Avenue and "R" Street (each adjacent to AREA A), as well as Highway 59 (currently several design concepts are under study/evaluation by Caltrans) adjacent to AREA B (and, if included, AREA C). Consistent with Mitigation Measure 7.b of the Merced Vision 2015 General Plan EIR, where the extent of right-of-way dedication exceeds the City's development standards for a collector street (currently 74 feet for a collector street located entirely within the Project and 37 feet for a collector abutting the Project), then the developer is eligible for reimbursements in accordance with the City's Public Facilities Impact Fee Ordinance and guidelines, unless a traffic study determines that the Project's traffic impacts require additional dedication.</p>	<p>Tentative Maps/Site Plan Reviews</p>	<p>City Planning &amp; Engineering</p>	

<i>Mitigation Measure</i>	<i>Timing</i>	<i>Agency or Department Consultation</i>	<i>City Verification (date and initials)</i>
<p>M-4 The developer shall construct the "collector equivalent" (74 feet) portion of the right-of-way, along with full frontage improvements along the Project boundaries and at least one travel lane in each direction, for all arterial and higher order streets within the Project boundaries. Consistent with Mitigation Measure 7b of the Merced Vision 2015 General Plan EIR, where the extent of street improvements exceeds one-half of a "collector equivalent" street for a project fronting only one side of the street, the project is eligible for reimbursement for the cost of improvements exceeding the one-half "collector equivalent" in accordance with the City's Public Facilities Impact Fee Ordinance and guidelines, unless a traffic study determines that the Project's traffic impacts require additional improvements.</p>	<p>Tentative Maps/ Parcel Maps/ Site Plan Reviews</p>	<p>City Planning &amp; Engineering</p>	
<p>M-5 The owner of each adjacent corner within AREA A shall be responsible for one-quarter of the cost of a traffic signal, to City standards and the satisfaction of the City Engineer, at each quarter mile/half-mile collector intersection with Yosemite Avenue, as well as the intersection of Lehigh Drive (extended) with "R" Street, whenever warrants are met in the judgment of the City Engineer. In such a case, installation of an intersection traffic signal by one developer could even be required at any of these locations by the City Engineer prior to full build-out and adjacent properties, if warrants are met, subject to adopted reimbursement requirements. Security shall be determined at the time of first subdivision map or other discretionary action.</p>	<p>Tentative Maps/ Parcel Maps/ Site Plan Reviews</p>	<p>City Planning &amp; Engineering</p>	
<p>(M-6) (General Plan 7a) Appropriate traffic studies shall be prepared for all development projects which can be expected to reduce a road segment or intersection level of service below "D." (Note: Studies are not anticipated, based upon current projections, but could be required in the event of future changes).</p>	<p>Subdivision Map/ Conditional Use Permit</p>	<p>Engineering</p>	
<p>(M-7) (General Plan 7b) The City shall require all development proposals to contribute, based on their proportionate share of impact, to circulation system improvements necessary to maintain at least a level of service "D" on all road segments and intersections impacted by the development project.</p>	<p>Subdivision Map/ Conditional Use Permit</p>	<p>Engineering/PIanning/ Finance</p>	

N. PUBLIC SERVICES				
FIRE				
N-1	The applicants shall be required to provide a level of accessibility and rangeland management (firebreaks and/or disking) for fire suppression that is acceptable to the City of Merced.	Tentative Maps/ Parcel Maps Building Permits	City Planning & Fire	
SCHOOLS				
N-2	Careful coordination is required between City, developer(s), and School District regarding phasing of infrastructure improvements within the general area, to achieve safe, adequate access for both school construction and operation.	Tentative Maps/ Parcel Maps Building Permits	Planning staff, City Engineer, and City School District	
N-3	Prior to the issuance of building permits, the applicant shall be responsible for the payment of school facility impact fees as adopted by the Merced City School District and Merced Union High School District.	Building Permits	City School District and MUHSD	
(N-4)	(General Plan 8-c) Site designs will need to be reviewed to assure that development does not hinder efficient and cost-effective public services delivery.	Tentative Maps/ Parcel Maps/ Conditional Use Permits	Planning staff, City Engineer, and City School District	
(N-5)	(General Plan 8-d) Development projects will be required to pay public facilities impact fees as established by the City in accordance with the requirements of State law.	Building Permit	Planning Staff/ Finance	

Mitigation Measure		Timing	Agency or Department Consultation	City Verification (date and initials)
T. CULTURAL RESOURCES				
T-1	If evidence of archaeological artifacts is discovered during construction, all operations within an area at and adjacent to the discovered site shall halt until a qualified archaeologist determines the extent of significance of the site.	Building Permits	City Inspection Services	
T-2	On-site preservation of a resource is the preferred alternative. Preserving a cultural deposit maintains the artifacts in context and may prevent inadvertent discovery of, or damage to, human burials. Preservation may be accomplished through a number of means such as capping or covering the site with a layer of soil, fencing the site area, and/or incorporation of the resource in a park area.	Building Permits	City Inspection Services	

**Copies of This Form Distributed To:**

\_\_\_\_ City Council \_\_\_\_\_ City Manager \_\_\_\_\_ City Planner \_\_\_\_\_ Public Works Dir. \_\_\_\_\_ City Engineer \_\_\_\_\_ Fire Chief  
\_\_\_\_ Police Chief \_\_\_\_\_ Leisure Serv. Dir. \_\_\_\_\_ County of Merced (Dept. \_\_\_\_\_) \_\_\_\_\_ Other (List \_\_\_\_\_)  
\_\_\_\_ Responsible Agency: (List \_\_\_\_\_)

**I hereby certify that I have inspected the project site and that the above information is true to the best of my knowledge.**

Name: (Print) \_\_\_\_\_ Representing: (Agency/Firm) \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3061**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 6, 2016, held a public hearing and considered **Conditional Use Permit #1207**, initiated by Boos Development on behalf of SEW Enterprises, LLC, property owners. This application involves a request to demolish two existing three-story office buildings and construct a new 12,900-square-foot CVS Pharmacy (with alcohol sales for off-site consumption) and a 4,000-square-foot future retail pad on two parcels containing approximately 2.19 acres, located on the north side of Olive Avenue, approximately 120 feet west of M Street (625 and 645 West Olive Avenue). These parcels are located within Planned Development (P-D) #1 and have a Regional/Community Commercial (RC) General Plan designation.; also known as Assessor's Parcel No. 236-220-019 and -020; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through K of Staff Report #16-02; with Finding H-1 amended as follows:

H-1) The project site is located within Census Tract 10.04. According to the California Department of Alcoholic Beverage Control, three licenses for the sale of alcohol for off-site consumption are allowed within this census tract. Currently, there are four licenses in the census tract. CVS will be transferring their existing Type 21 License from their existing location within the Merced Mall (also within Census Tract 10.04). The California Department of Beverage Control does not require a Finding of Public Convenience or Necessity (PCN) when a license is transferred within the same census tract even if the census tract is considered to be over-concentrated.

PLANNING COMMISSION RESOLUTION # 3061

Page 2

January 6, 2016

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #15-35, and approve Conditional Use Permit #1207, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Smith, seconded by Commissioner Padilla, and carried by the following vote:

AYES: Commissioner(s) Smoot, Smith, Baker, Dylina, Padilla, McLeod and Chairperson Colby

NOES: Commissioner(s) None

ABSENT: None

ABSTAIN: None

Adopted this 6<sup>th</sup> day of January 2016

Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:

Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution #3061**  
**Conditional Use Permit #1207**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (elevations), -- Attachments C and D of Staff Report #16-02, except as modified by the conditions.
2. All conditions contained in *Resolution #1249-Amended* (“Standard Conditional Use Permit Conditions” shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. Prior to the issuance of a building permit, a Lot Line Adjustment shall be approved modifying the existing property lines and ensuring no building is constructed on top of a property line.
8. All driveways into the site shall meet City Standards. The easternmost driveway on Fairfield Drive shall be modified to meet City Standards. All driveways shall meet handicap accessibility requirements.
9. The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. All storm water shall be captured on-site and metered into the City's storm water system. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards.
10. The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
11. Approval of alcohol sales shall not become effective until such time as the transfer of the existing ABC License has been finalized. All alcohol sales shall cease at the existing location prior to alcohol sales beginning at the new location.
12. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
13. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire).

14. Parking lot and building lighting shall be shielded or oriented in a way that does not allow “spill-over” onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent properties.
15. Parking lot trees shall be installed per the City’s Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City’s approved tree list). Trees shall be installed at a ratio of at least one tree for each six parking spaces.
16. Concurrent with or prior to the submittal of a Building Permit Application, the applicant shall submit to the Development Services Department a detailed landscape plan that is consistent with the City’s Water Efficient Landscaping & Irrigation Ordinance (Merced Municipal Code 17.60) and all state-mandated drought restrictions.
17. The proposed signing at Attachment H is not approved. All signing shall comply with the North Merced Sign Ordinance. Based on the proposed building design, the southern elevation would be allowed 53 square feet of signing and the eastern elevation is allowed 42 square feet of signing. A monument sign is approved subject to compliance with the North Merced Sign Ordinance Section 17.36.665. Signing allotted to a monument sign is deducted from the amounts calculated above for wall-mounted signs. The monument sign shall be located outside the ten-foot visual triangle at the driveway entrance.
18. A temporary banner permit shall be obtained prior to installing any temporary signs. Free-standing temporary signs (i.e., sandwich boards, A-frame signs, etc.) are prohibited.
19. The property owner shall ensure the business occupying the site complies with the City’s “Shopping Cart Ordinance.” (Merced Municipal Code Chapter 8.30) This includes marking all shopping carts, posting all required signs, and implementing a cart retrieval system.
20. Prior to any demolition work being done (interior or exterior), the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District and a demolition permit from the City of Merced Inspection Services Department if required.
21. All mechanical equipment shall be screened from public view.

22. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
23. Bicycle racks shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
24. No sales of alcoholic beverages shall be allowed between the hours of 2:00 a.m. and 6:00 a.m.
25. No beer or wine shall be displayed or stored outside of the cooler area and shall not be displayed within 5-feet of the cash register or front door.
26. The proprietor and/or successors in interest and management shall be prohibited from externally advertising or promoting beer and wine and/or distilled spirits including, but not limited to, window and wall signs, banners or free-standing signs (sandwich boards, A-frames, etc.).
27. Employees on duty between the hours of 10 p.m. and 2 a.m. shall be at least 21 years of age to sell beer and wine.
28. The proprietor and/or successors in interest and management shall comply with all Municipal Codes relating to loitering, open container laws and other nuisance-related issues.
29. No display or sale of beer or wine shall be made from an ice tub.
30. No single-serving containers shall be sold separately unless authorized by the City of Merced Police Department. All single-serving beer and wine containers shall be sold as part of a pack or carton.
31. This approval is subject to the business owner being in good standing with all laws of the State of California, including the Alcohol Beverage Control (ABC), City of Merced, and other regulatory agencies.
32. The City reserves the right to periodically review the area for potential problems. If problems (on-site or within the immediate area) including, but not limited to, public drunkenness, the illegal sale or use of narcotics, drugs or alcohol, disturbing the peace and disorderly conduct result from the proposed land use, the conditional use permit may be subject to review and revocation by the City of Merced after a public hearing and following the procedures outlined in the Merced Municipal Code.
33. If the City Engineer determines a Public Utilities Easement (PUE) is needed along the property frontage on Olive Avenue or Fairfield Drive,

the applicant shall dedicate the area needed for the PUE prior to building permit issuance.

34. The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure. The enclosure shall be constructed per City Standards.
35. Conditions, Covenants, and Restrictions (CC&R's) shall be recorded prior to the issuance of a building permit providing cross access to all property owners served by the existing driveways on Olive Avenue and Fairfield Drive and providing a joint parking agreement between the existing parcels (APN: 236-220-019 and -020) and the parcel to the east (El Pollo Loco, APN: 236-220-018).
36. If the westernmost driveway on Olive Avenue is to be modified from entrance only to allow both entering and exiting, a letter signed by the adjacent property owner, Doris M. Gonella, Trustee, shall be provided acknowledging and agreeing to the change prior to building permit issuance.
37. The premises shall remain clean and free of debris and graffiti at all times.

n:shared:planning:PC Resolutions: CUP#1207 Exhibit A

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3062**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of January 6, 2016, held a public hearing and considered **Conditional Use Permit #1209** initiated by MT2 Telecom, on behalf of SEW Enterprises, LLC, property owners. This application involves a request to construct an 85-foot-tall wireless communication tower in the form of a mono-pine tree to allow the relocation of the existing wireless communication towers currently located on top of the existing three-story buildings located at 625 and 645 West Olive Avenue. These parcels are located within Planned Development (P-D) #1 and have a Regional/Community Commercial (RC) General Plan designation; also known as Assessor's Parcel No. 236-220-019 and -020; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through J of Staff Report #16-03; and,

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #15-38, and approve Conditional Use Permit #1209, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Padilla, seconded by Commissioner Smith, and carried by the following vote:

**AYES:** Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod, and Chairperson Colby

**NOES:** None

**ABSENT:** None

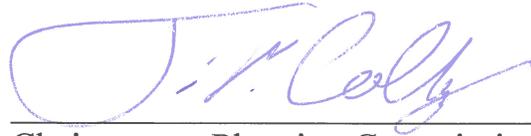
**ABSTAIN:** None

PLANNING COMMISSION RESOLUTION # 3062

Page 2

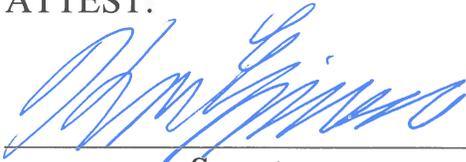
January 6, 2016

Adopted this 6<sup>th</sup> day of January 2016



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

**Conditions of Approval**  
**Planning Commission Resolution #3062**  
**Conditional Use Permit #1209**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan), Exhibit 2 (elevations), and Exhibit 3 (photo simulations), - - Attachments C, D, and E of Staff Report #16-03, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. In coordination with the Police Department and Fire Department, a frequency/inter-modulation study shall be prepared. Service may not be initiated until these departments have reviewed and have found the study to be acceptable.
8. At the time of building permit submittal, the applicant shall provide certification by a Radio Frequency Engineer, stating the RFR measurements and that they meet FCC radio frequency radiation standards.
9. All landscaping shall comply with State Water Resources Control Board Resolution No. 2015-0032 “To Adopt an Emergency Regulation for Statewide Urban Water Conservation” or the most recent water regulations adopted by the State and City addressing water conservation measures. If turf is proposed to be installed in park strips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed. All irrigation provided to street trees or other landscaping shall be provided with a drip irrigation or micro-spray system.
10. The maximum overall height of the “Mono-Pine” stealth facility shall not exceed 85 feet. The maximum height of the mono-pole shall not exceed 80 feet. Antennas mounted to the stealth facility shall not be mounted higher than 80 feet in height.
11. The design of the mono-pine shall closely resemble the appearance of a real pine tree. At a minimum, the branch pattern on the “Mono-Pine” stealth facility shall have a maximum of 18 inches of height between each other and the lowest branch on the “tree” shall be a maximum of 20 feet above the ground.
12. The “Mono-Pine” stealth facility shall not have any form of steps, ladder, or pegs protruding from its side.

13. The color of the Mono-Pine shall match that of a real pine tree. These colors tend to be green (leaves) and brown (bark) and shall be consistently maintained. The antennas and any mounting equipment shall be painted to match the colors of the “tree.”
14. The Mono-Pine stealth facility shall be maintained at all times. At no time shall the Mono-Pine be faded or worn down to a state that would be considered unacceptable to City standards for a Stealth Facility. Should the natural weather elements (wind, rain, etc.) deteriorate any portion of the tree, new items of similar likeness shall be installed, replacing the deteriorated items.
15. No signs, other than warning and safety signage, shall be located on a support tower or ancillary facility.
16. Other than lighting required by the FAA or other regulatory agency for the purpose of safety, lights are not permitted on the “Mono-Pine” pole. Any lighting used on the equipment shelter shall be appropriately “down-shielded” to keep light within the boundaries of the site and not impact surrounding properties.
17. Projections or appendages of any sort are not permitted, except for those related to a common Stealth Telecommunications Tower. If there are antennas projecting outward, they shall be screened behind the branches and shall be painted a color similar to the branches (green).
18. All ancillary equipment shall be contained inside the area enclosed by a solid fence. All ancillary equipment shall be screened from view from the public right-of-way.
19. The proposed 8-foot-tall CMU wall proposed to enclose the cell facility and ancillary equipment is approved as proposed. The gate providing access to the facility shall be of solid material or other approved material that would screen the equipment inside the facility from public view. The CMU wall shall be integrated into the site with landscaping consistent with other landscaping on the site.
20. The site shall be provided with landscaping consistent with the other developments on the site. If the other developments on the site have not been landscaped at the time the cell facility is complete, landscaping for the cell facility may be deferred for a period not to exceed 6 months unless an extension of time is granted by the Development Services Director.

21. Any noise generated by the facility from the equipment or the tower shall be kept to a minimum, so as not to cause a nuisance to the neighborhood.
22. All equipment, fencing, and other surfaces shall be maintained free of graffiti.
23. In order to allow the existing buildings on the site to be demolished in a timely manner and make way for the remainder of the site to be developed, temporary cell towers (C.O.W. – cells on wheels) may be used for a period not to exceed 6 months. The C.O.W.'s shall be located on the project site. Every effort shall be made to locate them in an area that is not highly visible from Olive Avenue. The location of the C.O.W.'s shall be approved by the Planning staff prior to installation.

n:shared:planning:PC Resolutions: CUP#1209 Exhibit A

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, February 3, 2016

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Kurt Smoot, Kevin Smith, Bill Baker, Robert Dylina, Peter Padilla, Jill McLeod, and Chairperson Travis Colby

Commissioners Absent: None

Staff Present: Planning Manager Espinosa, Associate Planner Nelson, Senior Deputy City Attorney Rozell, Secretary Davis, and Recording Secretary Lane

1. **APPROVAL OF AGENDA**

M/S PADILLA-SMITH, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S BAKER-PADILLA, and carried by unanimous voice vote, to approve the Minutes of January 6, 2016, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit #1210, initiated by ALC Architecture on behalf of SEW Enterprises, LLC, property owners. This application involves a request to construct a new 2,200-square-foot drive-thru coffee business on an approximately 1-acre parcel, located on the north side of Olive Avenue, approximately 120 feet west of M Street (645 West Olive Avenue). This parcel is located within Planned Development (P-D) #1 and has a Regional/Community Commercial (RC) General Plan designation.

Associate Planner NELSON reviewed the report on this item. For further information, refer to Staff Report #16-05.

Public testimony was opened at 7:26 p.m.

Speaker from the Audience in Favor:

GREG AGUIRRE, El Dorado Hills, on behalf of the applicant

No one spoke in opposition to the project.

Public testimony was completed at 7:39 p.m.

After the Commissioners discussed some issues regarding the width of one of the driveways and possible elimination of a parking space to enable some widening, the Commission re-opened the public hearing to get the applicant's response to the proposed change.

Public testimony was re-opened at 7:57 p.m.

GREG AGUIRRE, El Dorado Hills, spoke on behalf of the applicant. He was concerned that the loss of any parking spaces would reduce the seating capacity. He stated it was critical to the project that the seating capacity remain at its current level. Mr. AGUIRRE also observed that a smaller driveway would have a choking effect and would keep down the speed of the traffic entering and exiting the site.

Public testimony was completed at 8:03 p.m.

M/S PADILLA-COLBY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-40, and approve Conditional Use Permit #1210, subject to the Findings and twenty-nine (29) Conditions set forth in Staff Report #16-05 (RESOLUTION #3063):

AYES: Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod, and Chairperson Colby

NOES: None

ABSENT: None

ABSTAIN: None

5. **INFORMATION ITEMS**

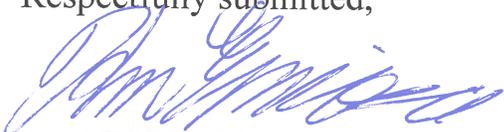
5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 8:09 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3063**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of February 3, 2016, held a public hearing and considered **Conditional Use Permit #1210**, initiated by ALC Architecture on behalf of SEW Enterprises, LLC, property owners. This application involves a request to construct a new 2,200-square-foot drive-thru coffee business on an approximately 1-acre parcel, located on the north side of Olive Avenue, approximately 120 feet west of M Street (645 West Olive Avenue). This parcel is located within Planned Development (P-D) #1 and has a Regional/Community Commercial (RC) General Plan designation.; also known as Assessor's Parcel No. 236-220-019 and -020; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through I of Staff Report #16-05; and,

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #15-40, and approve Conditional Use Permit #1210, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Padilla, seconded by Chairperson Colby, and carried by the following vote:

**AYES:** Commissioners Smoot, Smith, Baker, Dylina, Padilla, McLeod,  
and Chairperson Colby

**NOES:** None

**ABSENT:** None

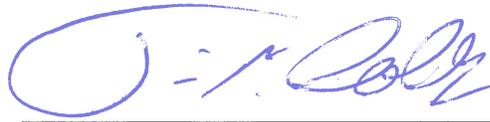
**ABSTAIN:** None

PLANNING COMMISSION RESOLUTION #3063

Page 2

February 3, 2016

Adopted this 3<sup>rd</sup> day of February 2016



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



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Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions: CUP#1210 Starbucks Drive thru

**Conditions of Approval**  
**Planning Commission Resolution #3063**  
**Conditional Use Permit #1210**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (overall site plan), Exhibit 2 (focused site plan), Exhibit 3 (building elevations), and Exhibit 4 (trellis elevations) -- Attachments B, C, D, and E of Staff Report #16-05, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. The developer shall work with the City Engineer to determine the requirements for storm drainage on the site. All storm water shall be captured on-site and metered into the City's storm water system. The developer shall provide all necessary documentation for the City Engineer to evaluate the storm drain system. All storm drain systems shall be installed to meet City Standards.
8. All driveways into the site shall meet City Standards, including handicap accessibility requirements.
9. The project shall comply with all the Post Construction Standards required to comply with state requirements for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
10. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
11. A backflow prevention device shall be provided for all water services (i.e., domestic, irrigation, and fire) with appropriate screening of those devices installed. Details to be worked out with staff.
12. Parking lot and building lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent properties.
13. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected

from the City's approved tree list). Trees shall be installed at a ratio of at least one tree for each six parking spaces.

14. Concurrent with or prior to the submittal of a Building Permit Application, the applicant shall submit to the Development Services Department a detailed landscape plan that is consistent with the City's Water Efficient Landscaping & Irrigation Ordinance (Merced Municipal Code 17.60) and all state-mandated drought restrictions.
15. Prior to any demolition work being done (interior or exterior), the applicant shall obtain all necessary approvals from the San Joaquin Valley Air Pollution Control District and a demolition permit from the City of Merced Inspection Services Department if required.
16. Bicycle racks shall be provided at a minimum ratio equal to 5% of the vehicular parking spaces.
17. All signing shall comply with the North Merced Sign Ordinance. As proposed, the eastern elevation would be allowed 29 square feet of signing and 24.25 square feet of signing on the southern elevation for a total of 53.25 square feet of sign area. The maximum amount of signing allowed on any building side shall not exceed 50% of the total allowable sign area or the maximum amount of sign area allowed for that side, whichever is greater, except by approval of an Administrative Conditional Use Permit. No signage (temporary or permanent) shall be allowed on the trellis over the outdoor seating area.
18. If a monument sign is proposed, any sign area allotted to the monument sign shall be deducted from the overall allowable sign area described in Condition #17. Monument signs shall comply with requirements of Merced Municipal Code Section 17.36.665. A monument sign shall not be located within the 10-foot visual corner at any driveway entrance.
19. If sufficient parking cannot be provided on the site, additional parking may be provided within 400 feet of the site. A joint parking agreement, as required by Merced Municipal Code (MMC) Section 20.58.370, shall be entered into by all parties involved and shall be recorded with the Merced County Recorder's Office per the requirements of MMC Section 20.58.400 E. If said parking agreement cannot be provided, the number of seats provided on site shall be reduced to meet the number of parking spaces provided.

20. All parking spaces shall meet City Standards. If a vehicle overhangs onto a pedestrian area, the pedestrian area shall have a minimum 4-foot clear width.
21. A Public Utilities Easement (PUE) shall be granted along the property frontage on Olive Avenue or Fairfield Drive, the applicant shall dedicate the area needed (as determined by the City Engineer) for the PUE prior to building permit issuance.
22. Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city mandated water regulations dealing with the current drought conditions.
23. The on-site landscape design shall include the use of xeriscape landscaping and avoid the use of turf as much as possible.
24. The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure. The enclosure shall be constructed per City Standards.
25. Conditions, Covenants, and Restrictions (CC&R's) shall be recorded prior to the issuance of a building permit providing cross access to all property owners served by the existing driveways on Olive Avenue and Fairfield Drive.
26. The "order point" as shown on the site plan (Exhibit 2 – Attachment C of Staff Report #16-05) shall be moved to the west to allow more stacking room in the drive-thru aisle prior to reaching the order point.
27. The developer shall work with the City Engineering Department to design a striping plan to create two right turn lanes from Fairfield Drive onto M Street to help guide traffic into the through lanes rather than into the left turn lane at M Street and Olive Avenue as well as "Keep Clear" or "Do Not Block" markings as shown on Attachment F of Staff Report #16-05.
28. All mechanical equipment shall be screened from public view.
29. The premises shall remain clean and free of debris and graffiti at all times.

n:shared:planning:PC Resolutions: CUP#1210 Exhibit A

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, February 17, 2016

Acting Chairperson PADILLA called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Kurt Smoot, Robert Dylina, Peter Padilla, Jill McLeod, and \*Chairperson Travis Colby

\*Chairperson Colby arrived at 7:11 p.m., Commissioner Padilla acted as Chairperson until his arrival.

Commissioners Absent: Bill Baker and Kevin Smith

Staff Present: Planning Manager Espinosa, Planner Mendoza-Gonzalez, Senior Deputy City Attorney Rozell, Secretary Lane, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

M/S SMOOT-DYLINA, and carried by unanimous voice vote (two absent), to approve the Agenda as submitted.

2. **MINUTES**

M/S SMOOT-DYLINA, and carried by unanimous voice vote (two absent), to approve the Minutes of February 3, 2016, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 Conditional Use Permit #1211, initiated by Juan M. Rosas, applicant for Robert L. Bartak, Jr., property owner. This application involves a request to allow an automotive repair shop (for major repairs) at 100 W. Main Street and a used car dealership at 50, 52, 62, and 101 W. Main Street, generally located at the southwest, southeast, and northwest corners of H Street and Main Street, within a Central Commercial (C-C) Zone.

Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #16-04.

Public testimony was opened at 7:25 p.m.

Speaker from the Audience in Favor:

DANNY GARCIA, Hayward, CA, the applicant

No one spoke in opposition to the project.

Public testimony was completed at 7:29 p.m.

M/S PADILLA-COLBY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #15-41, and approve Conditional Use Permit #1211, subject to the Findings and thirty (30) Conditions set forth in Staff Report #16-04 (RESOLUTION #3064):

AYES: Commissioners Smoot, Dylina, Padilla, McLeod, and Chairperson Colby

NOES: None

ABSENT: Commissioners Baker and Smith

ABSTAIN: None

4.2 Cancellation of March 9, 2016, Planning Commission Meeting due to Lack of Items

M/S PADILLA-DYLINA, and carried by unanimous voice vote (two absent), to cancel the Planning Commission meeting of March 9, 2016.

5. INFORMATION ITEMS

5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

6. ADJOURNMENT

There being no further business, Chairperson COLBY adjourned the meeting at 7:36 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED**  
**Planning Commission**

**Resolution #3064**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of February 17, 2016, held a public hearing and considered **Conditional Use Permit #1211**, initiated by Juan M. Rosas, applicant for Robert L. Bartak, Jr., property owner. This application involves a request to allow an automotive repair shop (for major repairs) at 100 W. Main Street and a used car dealership at 50, 52, 62, and 101 W. Main Street, generally located at the southwest, southeast, and northwest corners of H Street and Main Street, within a Central Commercial (C-C) Zone; also known as Assessor's Parcel Numbers 031-162-007, 031-164-001, -002, -003, and 031-161-021; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through I of Staff Report #16-04; and,

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #15-41, and approve Conditional Use Permit #1211, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner Padilla, seconded by Chairperson Colby, and carried by the following vote:

AYES: Commissioners Dylina, McLeod, Padilla, Smoot and  
Chairperson Colby

NOES: None

ABSENT: Commissioners Baker and Smith

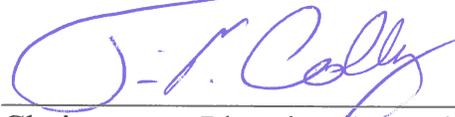
ABSTAIN: None

PLANNING COMMISSION RESOLUTION #3064

Page 2

February 17, 2016

Adopted this 17<sup>th</sup> day of February 2016



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:\shared\planning\PC Resolutions: CUP#1211 Bartak-Rosas Auto Body Repair

**Conditions of Approval**  
**Planning Commission Resolution #3064**  
**Conditional Use Permit #1211**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (Floor Plan) and Exhibit 2 (Site Plan) – Attachments B and C of Staff Report #16-04, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”)—except for Condition #16 which has been superseded by Code.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any

agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

6. As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, and street corner ramp(s), so that they comply with ADA standards and other relevant City of Merced/State/Federal standards and regulations.
7. Fire lanes shall be kept clear at all times. (A fire lane with a 25-foot width as referenced on the site plan may require striping at the building permit stage, if deemed necessary by the City's Fire Department.)
8. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
9. All signing shall comply with the City's Sign Ordinance. Design Review approval and sign permits shall be obtained prior to installing any permanent signing. A Temporary Sign Permit shall be obtained prior to installing any temporary signs or banners. Flags, pennants, temporary freestanding signs, inflatable signs, or A-frame signs are not allowed. Should the applicant/business owner violate these signing restrictions, the City reserves the right to revoke the Conditional Use Permit for a used car lot and major repairs on this site per the revocation procedures in the Merced Municipal Code.
10. The applicant shall provide sufficient lighting for the parking lot and vehicle display areas. Lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent parcels.
11. Auto service repairs shall include services needed to prepare vehicles for sale and the labor shall be conducted away from the public view, inside a screened or enclosed structure. Repair activities shall be limited to those found in the City's "Minor Repair" and "Major Repair" categories (as defined by Merced Municipal Code Section 20.04.060 – Automobile

EXHIBIT A

of Planning Commission Resolution #3064

repair, minor and Merced Municipal Code Section 20.04.050 – Automobile repair, major) and shall be subject to Building, Fire, and Health Department (Environmental Department) requirements. All storage of auto-related waste products shall be located away from the public view within a structure.

12. Plans for Building Permits shall be drawn by a licensed professional (e.g. an architect or engineer). The exterior and interior of the building shall show compliance with ADA requirements.
13. The applicant shall work with the Building Department to ensure that the bent columns under the canopy at the southeast corner of H and Main Street are replaced or repaired.
14. The applicant shall work with the Building and Fire Departments to ensure that an appropriate number of exits are provided for the building at 100 W. Main Street.
15. The proposed wall separating the automotive shop and the existing karate studio shall have a 1-hour fire rating. Details to be reviewed by the Building Department during the building permit stage.
16. The proposed paint booth shall have a fire sprinkler system and be UL approved. Details to be reviewed by the Building Department during the building permit stage.
17. All necessary permits shall be obtained from the San Joaquin Valley Air Pollution Control District prior to obtaining a business license.
18. The applicant shall work with the City's Water Quality Control Division (and other pertinent departments as determined by the WQC Division) and comply with all requirements for this type of business and obtain all proper permits prior to opening for business. Said requirements may include, but are not limited to, ensuring that all items are stored in secondary containments, installing sand separators, installing grease interceptors, and installing floor drains.
19. The applicant shall work with the Merced County Health Department and comply with all requirements for this type of business prior to obtaining a business license or building permit.
20. The applicant shall work with the City's Fire Department to ensure that a Hot Permit is obtained for welding activities. A list of hazardous chemicals used in the conduct of business shall be provided to the Fire Department prior to opening for business.

21. Non-operable vehicles shall require a No Exposure Certificate from the State Water Resource Control Board. Non-operable vehicles shall either be stored inside the automotive repair shop (at 100 W. Main Street) or enclosed within a non-transparent fenced area. Should the applicant choose to install a fenced area, the materials, colors, and location of the fence shall be reviewed and approved by the Planning Department.
22. Display vehicles shall not be located on the sidewalk and shall comply with the City's visual corner triangle regulations.
23. The applicant shall work with the City's Refuse Department to determine the exact location for a refuse enclosure. In addition, the applicant shall work with the City's Refuse Department to determine if a recycling container will be required to comply with AB 341. If it is required, the container shall be enclosed within a refuse enclosure built to City Standards. Prior to pouring the concrete for the refuse enclosure, the contractor shall contact the Refuse Department at 209-385-6800 to arrange an inspection by Refuse Department staff to verify the location and angle of the enclosure.
24. The parking lot layouts shall comply with all applicable City Standards.
25. A total of 34 parking spaces shall be provided for the automotive repair shop (requires 28 parking spaces) and used car dealership (requires 6 parking spaces). If a portion of these spaces are to be provided on Assessor's Parcel Numbers 031-164-001, -002, -003, and 031-161-021, a joint parking agreement shall be signed by all property owners and shall be irrevocable as long as this tenant or similar type use remains at 100 W. Main Street.
26. The parking spaces located within the subject site shall be re-painted with a fresh coat of paint prior to opening for business.
27. Parking lot trees shall be provided at a ratio of one tree for every 6 parking spaces (for customer parking only, not applicable to auto display parking). These trees shall be installed per the City's Parking Lot Landscape Standards, shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list).
28. The applicant shall install street trees and an irrigation system within the right-of-way adjacent to the project site, as required by the Engineering Department. A landscape and irrigation plan shall be submitted to the

Engineering Department for approval prior to the issuance of Building/Fire permits. All landscaping shall be installed prior to the business opening. Details to be worked out on the above requirements with the Engineering Department to ensure compliance with water conservation regulations based on recent State directives.

29. All display vehicles shall be washed and cleaned periodically to maintain a clean appearance, but in a manner that reduces the amount of water used and recycles as much water as possible, such as using automated car washes or other such facilities.
30. The premises shall remain clean and free of debris and graffiti at all times.

n:shared:planning:PC Resolutions: CUP#1211 Exhibit A

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, March 23, 2016

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Kurt Smoot, Kevin Smith, Bill Baker, Jill McLeod, Robert Dylina, Peter Padilla, and Chairperson Travis Colby

Commissioners Absent: None

Staff Present: Development Services Director Gonzalves, Planning Manager Espinosa, Associate Planner Nelson, Senior Deputy City Attorney Rozell, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

M/S SMITH-DYLINA, and carried by unanimous voice vote, to approve the Agenda as submitted.

2. **MINUTES**

M/S SMOOT-SMITH, and carried by unanimous voice vote, to approve the Minutes of February 17, 2016, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Vesting Tentative Subdivision Map #1304 (“Bellevue Ranch West, Village 12”), initiated by Benchmark Engineering, applicant for Baxter Ranches, LLC, property owner. This application involves the subdivision of approximately 55 acres of an 89.6-acre parcel into 242 single-family lots and dedicating approximately 6.4 acres of land for a future park. This property is generally located at the southwest corner of M Street and Arrow Wood Drive (extended), within Planned Development (P-D) #42 and has a General Plan Designation of Low Density Residential (LD).

Associate Planner NELSON reviewed the report on this item. She noted a memo from staff resulting from discussion with the applicant, modifying Conditions #12, #17, #21, #26, and adding Condition #47. This item was provided to the Commission prior to the meeting. For further information, refer to Staff Report #16-06.

Public testimony was opened at 7:24 p.m.

Speakers from the Audience in Favor:

RICK MUMMERT, Benchmark Engineering, Modesto, the applicant  
DAVID GONZALVES, Development Services Director, Merced  
GREG HOSTETLER, property owner, Los Banos

In response to Commissioner PADILLA’s inquiry on the land dedication towards the park, Mr. MUMMERT clarified that the developer was required to dedicate the land for the park, but it was the city’s responsibility to build it. He went on to mention future intentions of working with the nearby school and the City of Merced to create a dual use facility between the school and the park.

Development Services Director GONZALVES remarked on the school’s willingness to work with the developer in creating a dual-use

facility, but also advised the Commission that it was not a confirmed agreement at this time.

Speakers from the Audience in Opposition:

ERIN STACY, neighborhood resident, Merced, CA

ERIC MOORE, neighborhood resident, Merced, CA

GREG HOSTETLER, Los Banos, spoke in rebuttal to comments made during the public testimony.

Public testimony was completed at 8:04 p.m.

Commissioners SMOOT and BAKER both voiced a concern regarding the need for new developments given the number of existing developments that require attention and maintenance. Both were also concerned with the size of a majority of the lots that were being proposed.

M/S PADILLA-DYLINA, and carried by the following vote, find that the previous environmental review [Environmental Impact Report (EIR) for the Bellevue Ranch Master Development Plan (SCH#9212055)] remains sufficient and no further documentation is required (subsequent EIR/ND 15162 Findings), and approve Vesting Tentative Subdivision #1304, subject to the Findings and forty-six (46) Conditions set forth in Staff Report #16-06, adding Condition #47, and amending Conditions #12, #13, #17, #21, and #26 as follows (RESOLUTION #3065):

(Note: ~~Strikethrough~~ and deleted language, underline added language.)

“12. This development shall be responsible for the installation of the traffic signal at M Street and Cardella Road with the first phase of construction per Table 6.1 of the BRMDP. The developer’s portion of the cost of the traffic signal is equal to \$141 per lot. The developer shall either pay this amount at the time of ~~permit~~ certificate of occupancy issuance for each lot or the total amount

(\$141 x 242 lots = \$34,122) may be deducted from the amount eligible for reimbursement from the Public Facilities Financing Program (PFFP).

- “13. Prior to ~~building permit~~ certificate of occupancy issuance, a fee of \$861 per dwelling unit shall be collected to fund the future construction of the bridge at Fahrens Creek and Bellevue Road. This fee is in addition to all other permit and impact fees.
- “17. Prior to the recording of a final map, ~~proper documentation shall be provided to the satisfaction of the City Engineer~~ the developer shall conform to the Bellevue Ranch Master Storm Drain Plan and showing how storm water will be managed on the site and directed to the City’s storm water system. Storm water shall be collected on site and metered into the City’s system. The developer shall provide calculations to confirm there is capacity in the existing storm water system to serve the proposed project and that the basin will drain within 48 hours. If there is not sufficient capacity, the developer shall provide an alternative to using the existing lines and drainage basin. If the basin does not drain within 48 hours, the developer shall provide a plan to address mosquitoes and vector issues.
- “21. The Developer has agreed to pay \$100 per lot at the time of issuance of certificates of occupancy Concurrent with submittal of the first building permit applications for Village 12, as payment towards the developer shall provide developer’s proportionate share of: 1) funds to cover the full cost of the future extension of the Class I Bikeway to the future undercrossing; and, 2) funds to cover one-half the cost to design, permit, and construct the bikeway undercrossing of the Arrow Wood Bridge over Fahrens Creek (refer to Attachment H of Staff Report #16-06). Prior to the issuance of the 121<sup>st</sup> certificate of occupancy for Village 12, the Developer and the City agree to establish through their best efforts the actual fee (based on the total number of units in the currently undeveloped Bellevue Ranch West and based on an engineer’s estimate) and the Developer

shall pay that adjusted fee. If the actual fee has not been established by the 121<sup>st</sup> building permit, the Developer agrees to pay \$200 per lot. The preceding requirements apply unless said bikeway improvements are modified or eliminated through subsequent City approvals. If said improvements are eliminated, any monies paid shall be refunded to the developer.

“26. All garages shall have a minimum setback of 20 feet measured from the property line or back of sidewalk, whichever is closest to the front of the garage. Per the BRMDP, the setback for the living area portion of the house may be reduced to 15 feet per the BRMDP and shall be measured from the property line or back of sidewalk, whichever is closest to the living area portion of the house. Lot coverage shall not exceed ~~45%~~ 55% for all lots. ~~6,000 square feet or larger or 55% for lots less than 6,000 square feet.~~

“47. If required by state law, prior to the approval of subdivision improvement plans, the developer shall provide documentation that all lots affected by the 200-year floodplain comply with the requirements of the Urban Level of Flood Protection.”

AYES: Commissioners Dylina, Padilla, Smith, and Chairperson Colby

NOES: Commissioners Baker, McLeod, and Smoot

ABSENT: None

ABSTAIN: None

## 5. **INFORMATION ITEMS**

### 5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings and the likely cancellation of the April 20, 2016 meeting.

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 9:24 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED  
Planning Commission**

**MINUTES**

Merced City Council Chambers  
Wednesday, April 6, 2016

Chairperson COLBY called the meeting to order at 7:00 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Kurt Smoot, Kevin Smith, Bill Baker, Robert Dylina, and Chairperson Travis Colby

Commissioners Absent: Jill McLeod (excused) and Peter Padilla (excused)

Staff Present: Planning Manager Espinosa, Senior Deputy City Attorney Rozell, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

M/S SMITH-DYLINA, and carried by unanimous voice vote (two absent), to approve the Agenda as submitted.

2. **MINUTES**

M/S BAKER-SMITH, and carried by unanimous voice vote (two absent), to approve the Minutes of March 23, 2016, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Modification to Conditional Use Permit #1086, initiated by Van Sinvongsa, applicant for Promenade Center, Limited Partnership, property owners. This application involves a request to modify an existing beer and wine ABC License to include the sale of liquor for Thai Cuisine II, located at 779 E. Yosemite Avenue, Suite G, within the Promenade Shopping Center in Planned Development (P-D) #48 with a Neighborhood Commercial (CN) designation.

Planning Manager ESPINOSA reviewed the report on this item and noted the addition of Conditions #10 and #11. For further information, refer to Staff Report #16-07.

There was no one present wishing to speak regarding this item; therefore, public testimony was opened and closed at 7:09 p.m.

M/S DYLYNA-COLBY, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #16-06, and approve a Modification of Conditional Use Permit #1086, subject to the Findings set forth in Staff Report 16-07, the nine (9) Conditions set forth in Staff Report # 06-22, and Conditions #10 and #11 set forth in Staff Report #16-07 (RESOLUTION #2864):

(Note: New language underlined, deleted language ~~strikethrough~~)

AYES: Commissioners Baker, Dylina, Smoot, and Chairperson Colby

NOES: Commissioner Smith

ABSENT: Commissioners McLeod and Padilla

ABSTAIN: None

4.2 2015-2016 Annual Planning Commission Attendance Report

M/S COLBY-SMITH, and carried by the following vote, to approve the Annual Planning Commission Attendance Report as submitted.

AYES: Commissioners Baker, Dylina, Smith, Smoot, and Chairperson Colby

NOES: None

ABSENT: Commissioners McLeod and Padilla

ABSTAIN: None

4.3 Cancellation of April 20, 2016, Planning Commission Meeting due to a conflict with the City Council study session

M/S COLBY-SMITH, and carried by the following vote, to cancel the Planning Commission meeting of April 20, 2016.

AYES: Commissioners Baker, Dylina, Smith, Smoot, and Chairperson Colby

NOES: None

ABSENT: Commissioners McLeod and Padilla

ABSTAIN: None

5. **INFORMATION ITEMS**

5.1 Calendar of Meetings/Events

Planning Manager ESPINOSA briefed the Planning Commission on items for the next few Planning Commission meetings.

6. **ADJOURNMENT**

There being no further business, Chairperson COLBY adjourned the meeting at 7:12 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



TRAVIS COLBY, Chairperson  
Merced City Planning Commission

**CITY OF MERCED**  
**Planning Commission**

Amended by PC on 4/6/2016. See pg. 4.
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**Resolution #2864**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of March 8, 2006, held a public hearing and considered **Conditional Use Permit #1086**, initiated by Angela Peng, applicant for Promenade Center, Limited Partnership, property owners. This application involves a request to allow on-site sale of beer and wine within the Asian Express Restaurant, located at 779 E. Yosemite Avenue, Suite G, within the Promenade Shopping Center in Planned Development (P-D) #48 with a Neighborhood Commercial (C-N) designation; also known as Assessor's Parcel No. 231-040-009; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through D of Staff Report #06-22; and,

**WHEREAS**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #06-10 and approve Conditional Use Permit #1086, subject to the following conditions:

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (floor plan) - Attachments C and D of Staff Report #06-22.
2. All conditions contained in Resolution #1249 ("Standard Conditional Use Permit Conditions") shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. The Project shall comply with the conditions set forth in Resolution #2685 for Conditional Use Permit #1033 previously approved for the *Promenade Shopping Center*.

PLANNING COMMISSION RESOLUTION #2864

Page 2 of 4

March 8, 2006/April 6, 2016

5. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
6. The developer/applicant shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.
7. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
8. The City reserves the right to periodically review the area for potential problems. Should excessive calls for service or violation of these conditions of approval occur, the City may consider revocation

PLANNING COMMISSION RESOLUTION #2864

Page 3 of 4

March 8, 2006 / April 6, 2016

of the Conditional Use Permit (CUP) after a public hearing and following the procedures spelled out in the Merced Municipal Code.

9. Separate sign permits are required and shall comply with the North Merced Sign Ordinance and the Master Sign Program for the Promenade Shopping Center.

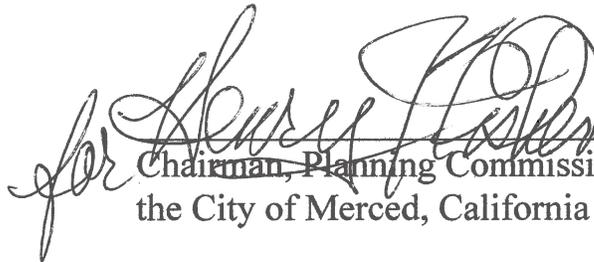
Upon motion by Commissioner Burr, seconded by Commissioner Ward, and carried by the following vote:

AYES: Commissioners Fisher, Acheson, Burr, Conte, Ward, and  
Chairman Shankland

NOES: Commissioner Amey

ABSENT: None

Adopted this 8<sup>th</sup> day of March, 2006

  
Chairman, Planning Commission of  
the City of Merced, California

ATTEST:

  
Secretary

PLANNING COMMISSION RESOLUTION #2864

Page 4 of 4

March 8, 2006/April 6, 2016

**April 6, 2016:** At their regularly scheduled meeting of April 6, 2016, the Merced City Planning Commission considered Modification to Conditional Use Permit#1086 and Environmental Review #16-06.

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through E of Staff Report #16-07; and,

**NOW THEREFORE**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #16-06, and approve a Modification of Conditional Use Permit #1086 with the addition of Conditions #10 and #11 as follows:

10. Alcohol sales shall cease at 11:00 p.m. regardless of the business hours for the restaurant.
11. In addition to beer and wine, the restaurant shall now be allowed to sell liquor if they meet all applicable Alcoholic Beverage Control (ABC) requirements.

Upon motion by Commissioner Dylina, seconded by Chairperson Colby, and carried by the following vote:

AYES: Commissioners Baker, Dylina, Smoot, and Chairperson Colby

NOES: Commissioner Smith

ABSENT: Commissioners McLeod and Padilla

ABSTAIN: None



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-194

**Meeting Date:** 5/16/2016

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**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of December 7, 2015, December 21, 2015 and January 4, 2016.

### REPORT IN BRIEF

Official adoption of previously held meeting minutes.

### RECOMMENDATION

**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of December 7, 2015, December 21, 2015 and January 4, 2016.

### ALTERNATIVES

1. Approve as recommended; or,
2. Approve, subject to amendments.

### ATTACHMENTS

1. Minutes of December 7, 2015
2. Minutes of December 21, 2015
3. Minutes of January 4, 2016



# CITY OF MERCED

City Council Chamber  
Merced Civic Center  
2nd Floor  
678 W. 18th Street  
Merced, CA 95340

## Minutes

### City Council/Public Finance and Economic Development Authority/Parking Authority

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Monday, December 7, 2015

7:00 PM

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#### A. STUDY SESSION ROLL CALL

Mayor THURSTON called the Study Session to order at 5:30 PM.

Planning Commissioners in attendance - PADILLA, SMOOT, DYLINEA,  
McLEOD, BAKER

**Present:** 6 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, and Council Member Mike Murphy

**Absent:** 1 - Council Member Noah Lor

#### B. STUDY SESSION

**B.1.** SUBJECT: Joint Planning Commission/City Council Study Session on the Public Review Draft of the Zoning Ordinance

##### REPORT IN BRIEF

The City Council will meet in a joint study session with the Planning Commission to discuss the Public Review Draft of the Updated Merced Zoning Ordinance, released in September 2015.

##### RECOMMENDATION

No action needed. Questions and discussion only.

Development Services Director Dave GONZALVES gave an overview of the Zoning Ordinance presentation.

Planning Manager Kim ESPINOSA gave a presentation on the existing Zoning Ordinance and the need to bring it into modern times to make it easier to understand and to streamline the processes.

Mayor THURSTON expressed concern over the "Urban Villiage" concept in the Bellevue Corridor Plan.

Director GONZALVES stated the Bellevue Corridor Plan was a separate document.

Council Member BELLUOMINI suggested several changes to the draft Zoning Ordinance. He was concerned with lot sizes for subdivisions, awnings for connected businesses, industrial zone building setbacks, and common areas for apartment complexes.

A brief discussion on apartment common areas ensued.

Council Member BELLUOMINI also expressed concern with the number of parking spaces versus bedrooms in apartment complexes. He also questioned the balance needed in regards to solar parking structures and landscaping.

Mayor THURSTON questioned the flexibility of the Ordinance with constantly changing solar systems.

Council Member BELLUOMINI suggested requiring house numbers for safety reasons.

Council Member MURPHY questioned whether the number of dollar type stores could be regulated.

Director GONZALVES stated that Council could not regulate dollar type stores.

There was a general discussion on whether the changes suggested should be made or to take it back to the focus group to re-evaluate them.

Kenra BRAGGONIER, Merced - stated that she was part of the focus group and would like to get more input.

Council and the Planning Commission requested that staff reconvene the focus group to discuss the proposed changes and return in approximately 90 days.

**Clerk's Note:** The Study Session adjourned at 6:44 pm.

## C. CLOSED SESSION ROLL CALL

**Present:** 6 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, and Council Member Mike Murphy

**Absent:** 1 - Council Member Noah Lor

## D. CLOSED SESSION

**Clerk's Note:** Council adjourned to Closed Session at 6:44 pm.

D.1. **SUBJECT:** PUBLIC EMPLOYEE APPOINTMENT - Title: City Manager;  
Authority: Government Code Section 54957

**Clerk's Note:** Council adjourned from Closed Session at 6:54 pm.

## E. CALL TO ORDER

Mayor THURSTON called the Regular Meeting to order at 7:01 pm.

E.1. Invocation - Pastor Stephen Eastwood, Olive East 7th Day Adventist Church

The invocation was delivered by Pastor Steven Eastwood of Olive East 7th Day Adventist Church.

E.2. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority, and Public Financing and Economic Development Authority. City Council Members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority, and Public Financing and Economic Development Authority receive no compensation.

## F. ROLL CALL

**Present:** 7 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, Council Member Noah Lor, and Council Member Mike Murphy

**Absent:** 0

## G. REPORT OUT OF CLOSED SESSION

Mayor THURSTON reported that Council voted to employ Steve CARRIGAN as the new City Manager of the City of Merced. The Mayor also moved agenda item N.1. Approval of Employment Agreement with New City Manager in order to vote on the contract.

N.1. **SUBJECT:** Approval of Employment Agreement with New City Manager

### REPORT IN BRIEF

Consider approving the employment agreement with the new City Manager.

### RECOMMENDATION

**City Council - Adopt a motion:**

- A. Approving the Employment Agreement and announcing the new City Manager/City Clerk; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

Council welcomed the new City Manager Steve CARRIGAN.

Steve CARRIGAN spoke about his new appointment.

**A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Blake, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

## **H. CEREMONIAL MATTERS**

### H.1. Award - Project of the Year for McNamara Park

Principal Architect John SAGIN accepted an award for the McNamara Park Project from Walt PLATT, American Public Works Association.

### H.2. Certificates of Recognition for David Soto and Mikel Schlessinger

Interim Public Works Director Ken ELWIN presented awards to Mike SCHLESSINGER and David SOTO for their quick actions in aiding a Merced citizen in need.

## **I. WRITTEN PETITIONS AND COMMUNICATIONS**

There were none.

## **J. ORAL COMMUNICATIONS**

Acting Recreation and Parks Director Mike CONWAY - introduced new zookeeper Josh MORENO and spoke on the programs being offered at the Zoo.

Josh MORENO, Merced Zookeeper - spoke on the new programs being

implemented at the Zoo.

Rick McMILLION, Merced - spoke on downtown issues.

## K. CONSENT CALENDAR

Agenda items K.5. City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of June 15, 2015, July 6, 2015, and July 20, 2015, K.7. Agreement with Lao Community Inc. for Police Services at the 2015 Hmong New Year Festival, K.8. Cooperative Work Agreement (CWA) Cycle 13 Funds Subject to Lapsing on June 30, 2016, K.9. Third Amendment with Quad Knopf, Inc., for the Preparation of Environmental Technical Studies for the Bear Creek Bike Path Project 111066, and K.14. Allocation of Fiscal Year 2015-16 Community Block Grant (CDBG) Funds for a Warming Center with Merced County Rescue Mission were pulled for separate consideration.

### Approval of the Consent Agenda

**A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, to approve the Consent Agenda. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

**K.1. SUBJECT: Information Only Contracts**

**This Consent Item was approved.**

**K.2. SUBJECT: Information Only-Planning Commission Minutes of September 9, September 23, and October 21, 2015**

**This Consent Item was approved.**

**K.3. SUBJECT: Economic Development Advisory Committee Minutes of August 25, 2015.**

This Consent Item was approved.

- K.4. **SUBJECT:** Information Only - Traffic Committee Minutes of September 8, 2015

This Consent Item was approved.

- K.6. **SUBJECT:** Reading by Title of All Ordinances and Resolutions

**REPORT IN BRIEF**

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

This Consent Item was approved.

- K.10. **SUBJECT:** First Amendment to the Purchase and Sale Agreement for 2322 G Street

**REPORT IN BRIEF**

Amend the Purchase and Sale Agreement for 2322 G Street to allow additional time to complete Phase One of the Pro Lube construction project.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the First Amendment to the Purchase and Sale Agreement for 2322 G Street allowing additional time for the project to be completed and authorizing the City Manager to execute the necessary documents.

This Consent Item was approved.

- K.11. **SUBJECT:** Agreement with Merced Zoological Society

**REPORT IN BRIEF**

Agreement with Merced Zoological Society to contribute at least \$85,000 of the total operating budget for Fiscal Year 2015/2016.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the agreement with the Merced Zoological Society for payment of at least \$85,000, (approximately 30%) of the total operating budget at the Zoo and authorizing the City Manager to execute the necessary documents.

**This Consent Item was approved.**

**K.12.**

**SUBJECT:** Minimum Wage Increase

**REPORT IN BRIEF**

Approve minimum wage in accordance with Minimum Wage Order MW-2014 and salaries tied to minimum wage.

**RECOMMENDATION**

**City Council** - Adopt **Resolution 2015-46**, a Resolution of the City Council of the City of Merced, California, amending the salary ranges for the temporary classifications of Lifeguard I, Lifeguard II, Pool Manager, Recreation Coordinator, Recreation Leader, and Recreation Specialist; and, authorizing the City Manager to execute the necessary documents.

**This Consent Item was approved.**

**K.13.**

**SUBJECT:** Revise Personnel Allocation in Engineering Division of the Development Services Department by Deleting One Engineering Technician III/IV position and Adding One Senior Engineer Position to the Engineering Division of the Development Services Department.

**REPORT IN BRIEF**

The action requested is to staff the department appropriately for the planned upcoming projects in the City.

**RECOMMENDATION**

**City Council** - Adopt **Resolution 2015-44**, A Resolution of the City Council of the City of Merced, California, Amending the Classification Plan by Amending the Personnel Allocation in the Engineering Division of the Development Services Department by Deleting One Engineering Technician III/IV and Adding One Senior Engineer.

**This Consent Item was approved.**

**K.5.**

**SUBJECT:** City Council/Public Financing and Economic

Development/Parking Authority Meeting Minutes of June 15, 2015, July 6, 2015, and July 20, 2015.

**REPORT IN BRIEF**

Official adoption of previously held meeting minutes.

**RECOMMENDATION**

**City Council/Public Financing and Economic**

**Development/Parking Authority** - Adopt a motion approving the meeting minutes of June 15, July 6, and July 20, 2015.

Council Member BELLUOMINI introduced corrections he would like see be made to the minutes.

Council discussed changing the minutes.

**A motion was made by Council Member Belluomini, seconded by Council Member Lor to approve the minutes of June 15, 2015 with amendments. The motion failed by the following vote:**

**Aye:** 2 - Council Member Belluomini and Council Member Lor

**No:** 7 - Mayor Thurston, Mayor Pro-Tempore Pedrozo, Council Member Blake, Council Member Dossetti, and Council Member Murphy.

**A motion was made by Council Member Belluomini, seconded by Council Member Lor to approve the minutes of July 6, 2015 with amendments. The motion failed by the following vote:**

**Aye:** 2 - Council Member Belluomini and Council Member Lor

**No:** 7 - Mayor Thurston, Mayor Pro-Tempore Pedrozo, Council Member Blake, Council Member Dossetti, and Council Member Murphy.

**A motion was made by Council Member Belluomini, seconded by Council Member Lor to approve the minutes of July 20, 2015 with amendments. The motion passed by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro-Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor and Council Member Murphy.

**No:** 0

**Clerk's Note:** Following the vote on item K.7., Council returned to this item to vote on approving the July 6 and July 20 minutes as presented.

**A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, that the minutes of June 15, 2015 and July 6, 2015 be approved as written. The motion carried by the following vote:**

**Aye:** 5 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Blake, Council Member Dossetti, and Council Member Murphy

**No:** 2 - Council Member Belluomini, and Council Member Lor

**Absent:** 0

**K.7.** **SUBJECT: Agreement with Merced Lao Community Inc. for Police Services at the 2015 Hmong New Year Festival**

**REPORT IN BRIEF**

Consider authorizing an agreement for the Merced Police Department to provide security and crowd control services.

**RECOMMENDATION**

**City Council** - Adopt a motion approving an agreement in the amount of \$4,000 with Merced Lao Community to provide security and crowd control services for the annual Hmong New Year Festival held at the Merced County Fairgrounds on December 18th, 19th and 20th 2015; and authorizing the City Manager to execute the necessary documents.

Council Member LOR pulled this item to highlight the Hmong New Year Celebration.

**A motion was made by Council Member Lor, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

**K.8.** **SUBJECT: Cooperative Work Agreement (CWA) Cycle 13 Funds Subject to Lapsing on June 30, 2016**

**REPORT IN BRIEF**

Considers a submittal to the California Department of Transportation (Caltrans) requesting an extension for preliminary funds subject to lapsing for the Bear Creek Bike Path Project and acknowledging completion of the preliminary phase for the Black Rascal Creek Bike Path.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the CWA Cycle 13 Submittal, and authorizing the City Manager to execute the necessary documents.

Council Member MURPHY pulled this item for a brief report from staff on the removal of a section of the bike path from the plan.

Principal Architect John SAGIN reported that due to the lack of an environmental clearance and grant funding expiring, this portion had to be left out at this time.

Council Member MURPHY requested this item be brought back to the next meeting after consulting with the State.

Council Member BELLUOMINI questioned the specifics for the denial of the environmental document.

Mr. SAGIN commented that the native bird habitat would need to be removed to build the path.

**A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be tabled. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

**K.9.**

**SUBJECT:** Third Amendment with Quad Knopf, Inc., for the Preparation of Environmental Technical Studies for the Bear Creek Bike Path Project 111066

**REPORT IN BRIEF**

Considers approving a \$27,054 amendment with Quad Knopf, Inc., to complete required environmental documents for the future construction of a Class I Bike Path along State Route 59.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the Third Amendment to Professional Services Agreement with Quad Knopf, Inc., in the amount of \$27,054 for the Preparation of Environmental Technical Studies; and, authorizing the City Manager to execute the necessary documents.

**A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

**K.14.**

**SUBJECT:** Allocation of Fiscal Year 2015-16 Community Development Block Grant (CDBG) Funds for a Warming Center with Merced County Rescue Mission

**REPORT IN BRIEF**

Contract authorization between the City of Merced and Merced County Rescue Mission for the operation of a community Warming Center.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the allocation of \$13,000 of Community Development Block Grant funds to assist with the cost of operating a warming center; and authorizing the City Manager to execute the necessary documents.

Council Member MURPHY pulled this item for a brief staff report.

Housing Manager Mark HAMILTON informed Council that a new solution had been found this year for the use of a local Church as a warming center as needed during the winter. He stated that unused funds would be returned to the CDBG funding.

**A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, that this agenda item be approved. The motion carried by**

the following vote:

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

## L. PUBLIC HEARINGS

L.1. **SUBJECT: Public Hearing - Vacation 15-01 to Abandon a Portion of a Public Utilities Easement Located Along the East Property Line of 2936 Crestwood Court**

### REPORT IN BRIEF

The City Council will consider the abandonment of approximately 620 square feet of an existing public utilities easement along the eastern property line of the property located at 2936 Crestwood Court.

### RECOMMENDATION

**City Council** - Adopt a motion approving **Resolution 2015-45, A** Resolution of the City Council of the City of Merced, California ordering the vacation of a portion of a public utilities easement located along the east property line of the property located at 2936 Crestwood Court (Vacation #15-01).

Council Member BELLUOMINI recused himself from this item due to the proximity of his residence to this location.

Development Services Director David GONZALVES reported that the easement for utilities would not be used.

Mayor Pro-Tempore PEDROZO praised staff for working with the homeowners.

Mayor THURSTON opened the Public Hearing at 8:03 PM. No audience members wished to speak and the Public Hearing subsequently closed.

**A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Blake, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 6 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

**Abstain:** 1 - Council Member Belluomini

**L.2.**

**SUBJECT:** Public Hearing Regarding Proposed Changes to the  
Massage Establishment Regulations and Specific Zoning Provisions  
Relating to Massage Uses

**REPORT IN BRIEF**

Consider amendments to the Chapter 5.44 of the Merced Municipal Code relating to massage establishments and amendments to the Zoning Ordinance (Title 20) relating to massage uses.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving Environmental Review #14-25 (Categorical exemption); and,

B. Introducing **Ordinance 2451**, an Ordinance of the City Council of the City of Merced, California Amending Chapter 5.44, "Massage Establishments," of the Merced Municipal Code; and,

C. Introducing **Ordinance 2452**, an Ordinance of the City Council of the City of Merced, California Amending Sections 20.20.020, "Permitted Uses," 20.20.040, "Conditional Uses," 20.22.020, "Permitted Uses," 20.22.050, "Conditional Uses," 20.24.020, "Permitted Uses," 20.24.040, "Conditional Uses," 20.26.040, "Conditional Uses," and 20.28.040, "Conditional Uses," of the Merced Municipal Code Regarding the Zoning of Massage Establishments as Conditional Uses Subject to Specific Conditions.

Senior Deputy City Attorney Ken ROZELL gave a report on the proposed changes to the City's Massage Ordinance and zoning requirements for massage establishments. He reported on the changes the State Legislature had implemented to help local entities control massage establishments and their location. He reported on the State license now required and how that would help streamline the process. He also mentioned a Conditional Use Permit process that would now be required.

Council questioned Mr. ROZELL on zoning locations for the establishments, and how the businesses would be inspected by Police.

Mr. ROZELL stated that the massage businesses would be allowed in

commercial zones only and that Police would be able to do regular inspections to ensure that all employees were licensed by the State.

Mayor THURSTON opened the Public Hearing at 8:17 PM.

Carol HIGGINS, Merced - spoke on the licensing process and requested the City not use the State license due to the expense involved.

Mayor THURSTON questioned whether a person with an existing City license could be "grandfathered in" without having to go through all of the schooling required.

Mr. ROZELL stated the Ordinance could be modified as such.

Victoria HANSON, Merced - spoke in favor of the State license.

Mayor THURSTON closed the Public Hearing at 8:26 PM.

Lt. Matt WILLIAMS, Merced Police Department - addressed the law enforcement issues with unlawful massage establishments.

Mayor THURSTON requested a 10-year grandfather clause for existing massage practitioners in the City.

**A motion was made by Mayor Thurston, seconded by Council Member Dossetti, that this agenda item be continued to the next meeting so that language could be added to the Ordinance grandfathering existing massage practitioners for 10 years. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

## M. REPORTS

**M.1.** SUBJECT: Approval of Employment Agreement for Position of Interim City Manager and Adoption of Resolution Approving Appointment of John M. Bramble to Interim City Manager Pursuant to California Government Code Sections 21221(h) and 7522.56

### REPORT IN BRIEF

Authorization request to fill vacant City Manager position with a California Public Employee's Retirement System (CalPERS) Retired Annuitant.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving the terms of an employment agreement with John M. Bramble to serve as Interim City Manager; and,
- B. Authorizing the Mayor to execute an employment agreement with Mr. Bramble after his official retirement date; and,
- C. Adopting **Resolution 2015-47**, a Resolution of the City Council of the City of Merced, California, making a determination of special need for an Interim City Manager pursuant to California Government Code sections 21221(h) and 7522.56.

Finance Director Brad GRANT gave a brief report.

**A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Blake, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

**M.2.**

**SUBJECT:** Follow up Reports Regarding Downtown Discussion

**REPORT IN BRIEF**

This follow up session provides reports on the Downtown Discussion requested at the November 16, 2015 City Council Meeting.

**RECOMMENDATION**

Staff is seeking direction from Council to form a Downtown/Central Merced Ad Hoc Group. Staff would return to Council with recommendations on the Group's composition and purpose.

Carol BOWMAN gave a report on a program that was being used in Stanislaus County called the "Homeless Van Service". She stated the project was not sustainable due to lack of funding.

Council briefly discussed the program and what items may work to help

Downtown Merced. There was a general concern for aggressive panhandling and loitering.

Director of Economic Development Frank QUINTERO asked Council to consider an ad hoc committee to address Downtown issues.

Main Street Association representative Joey ESSIG gave a report on the projects the Association has been working on. He reported on the facade improvement grant program they created to help beautify store fronts. He highlighted the "Celebrate Downtown" program. He also spoke on the holiday events and decorations they were working on. He stated that Downtown should do a needs assessment for the different blocks of downtown. He listed several action items they were working on.

Council discussed the different events that have been held in the past and which events they would like to see in the future.

Director of Economic Development Frank QUINTERO gave a report on the items the City could help with in regards to Downtown. He spoke of partnerships formed in regards to events and funding. He suggested that a more positive message should be put out versus the negative talk that has been transpiring. He also spoke of updating the Downtown plan. He highlighted several items such as new lighting and High Speed Rail coming to the area.

Chief of Police Norm ANDRADE gave statistics on the crime rate in Downtown. He suggested that putting officers downtown full time would be detrimental to the already depleted police force. He offered options to help the situation downtown including outreach programs, citizen arrests, private security and implementing an ambassador program.

Council liked the idea of implementing the programs highlighted by the Chief.

Council Member MURPHY suggested more Code Enforcement in the Downtown area.

Dwight LARKS, Gustine - spoke about the building he owned downtown and suggested cameras to watch the area.

**A motion was made by Mayor Pro Tempore Pedrozo, seconded by Council Member Murphy, that staff form an ad hoc downtown central Merced committee to look at the ambassador program, other programs that cities the size of Merced are doing and the 14 point list provided by Carol Bowman. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0

## **N. BUSINESS**

### **N.2. Request to Add Item to Future Agenda**

Council Member BELLUOMINI requested to add a discussion on the City Manager Evaluation Form at the January 4th meeting.

Mayor Pro-Tempore PEDROZO requested to add a report about the progress of the High Speed Rail planning and possibly forming a task force to get the word out.

Council Member MURPHY spoke on a meeting with High Speed Rail and some extra funding that was given to Merced. He requested an official Resolution of support for the A.C.E. train extension to Merced.

### **N.3. City Council Comments**

Mayor Pro-Tempore PEDROZO gave congratulations to recently promoted firefighters and the new hires as well.

Mayor THURSTON commented on the great Christmas parade this year.

## **O. ADJOURNMENT**

**Clerk's Note:** The meeting adjourned at 10:02 PM.

**A motion was made by Mayor Thurston, seconded by Mayor Pro Tempore Pedrozo, to adjourn the meeting in memory of those that lost their lives in the tragic San Bernadino shootings. The motion carried by the following vote:**

**Aye:** 7 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 0



# CITY OF MERCED

City Council Chamber  
Merced Civic Center  
2nd Floor  
678 W. 18th Street  
Merced, CA 95340

## Minutes

### City Council/Public Finance and Economic Development Authority/Parking Authority

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Monday, December 21, 2015

7:00 PM

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#### A. CLOSED SESSION ROLL CALL

Mayor Pro-Tempore PEDROZO called the Closed Session to order at 6:30 PM.

**Present:** 6 - Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, Council Member Noah Lor, and Council Member Mike Murphy

**Absent:** 1 - Mayor Stanley P. Thurston

#### B. CLOSED SESSION

**B.1.** SUBJECT: CONFERENCE WITH LEGAL COUNSEL - Significant Exposure to Litigation: (1) Case; Authority: Government Code Section 54956.9(d)(2)

#### C. CALL TO ORDER

Mayor Pro-Tempore PEDROZO called the Regular Meeting to order at 7:00 PM.

C.1. Invocation - Lamar Henderson, Human Services Agency

The Invocation was delivered by Lamar HENDERSON of the Human Services Agency.

C.2. Pledge of Allegiance to the Flag

#### D. ROLL CALL

**Present:** 6 - Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, Council Member Noah Lor, and Council Member Mike Murphy

**Absent:** 1 - Mayor Stanley P. Thurston

D.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority, and Public Financing and Economic Development Authority. City Council Members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority, and Public Financing and Economic Development Authority receive no compensation.

## E. REPORT OUT OF CLOSED SESSION

There was no report.

## F. WRITTEN PETITIONS AND COMMUNICATIONS

There were no written petitions or communications.

## G. ORAL COMMUNICATIONS

Mayor Pro-Tempre PEDROZO thanked retiring Police Captain Tom TRINDAD for his service.

Police Captain Tom TRINDAD voiced his thanks.

Robert TYLER, Merced - read a statement from the Bicycle Advisory Commission.

Monica VILLA, Merced - spoke on the upcoming homeless count.

Joey ESSIG, Merced - thanked the City for helping put up Christmas decorations for the Merced Main Street Association.

## H. CONSENT CALENDAR

Items H.2. Supplemental Appropriation for a Public Safety Person to Staff the Aircraft Rescue and Firefighting (ARFF) Vehicle at the Merced Regional Airport and for On-Call Airport Security Coordinator Costs as Required by the U.S. Code of Federal Regulations and H.6. Award Bid to Avison Construction, Inc. for CMAQ Sidewalk Infill on Buena Vista Drive Project 114048 (5085-042) were pulled for separate consideration.

### Approval of the Consent Agenda

**A motion was made by Council Member Blake, seconded by Council Member Dossetti, to approve the Consent Agenda. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 1 - Mayor Thurston

**H.1. SUBJECT: Reading by Title of All Ordinances and Resolutions**

**REPORT IN BRIEF**

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

**This Consent Item was approved.**

**H.3. SUBJECT: Temporary Encroachment Permit 15-01 - Request by the Merced Downtown Association to Allow the Certified Farmer's Market to Place Banners Advertising the Certified Farmer's Market on Multiple Light Poles Within the Downtown Area Near the Location of the Certified Farmer's Market.**

**REPORT IN BRIEF**

This is a request to allow the installation of banners advertising the Merced Farmers Market on City-owned light poles in the downtown area.

**RECOMMENDATION**

**City Council** - Adopt a motion approving a Temporary Encroachment Permit to allow the installation of ten banners on eight light poles in the downtown area bounded by M Street, Canal Street, 16th Street, Main Street, and in City Parking Lot #9; and, authorizing the City Manager to execute the necessary documents.

**This Consent Item was approved.**

**H.4. SUBJECT: Award Bid to Nor-Cal Pump and Well Drilling for Well Site No. 20 - Well Construction, Project No. 107033**

**REPORT IN BRIEF**

Consider awarding a contract in the amount of \$594,892 to Nor-Cal Pump and Well Drilling to construct a new municipal groundwater well at the Well 20 site.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Awarding the bid for the Well Site No. 20 - Well Construction Project 107033, to Nor-Cal Pump and Well Drilling, in the amount of \$594,892; and,

B. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

**This Consent Item was approved.**

**H.5.**

**SUBJECT:** Award Bid to Taylor Backhoe Service, Inc., for the Stephen Leonard Park Renovation - Rebid, Project 115045

**REPORT IN BRIEF**

Consider awarding a construction contract in the amount of \$639,976.22 for the rehabilitation of Stephen Leonard Park in Merced.

**RECOMMENDATION**

**City Council** - Adopt a motion awarding the bid for the Stephen Leonard Park Renovation Project 115045, to Taylor Backhoe Service, Inc., in the amount of \$639,976.22; and, authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

**This Consent Item was approved.**

**H.7.**

**SUBJECT:** Introduction of an Ordinance Dealing with No Parking Zones and Two-Hour Parking Zones

**REPORT IN BRIEF**

Consider recommendations from the Traffic Committee approving the addition of no parking zones adjacent to multiple driveway entrances along East Alexander Avenue, bounded by Oleander Avenue and Tahoe Drive, and the addition of two-hour parking zones along Barclay Way, bounded by Mandeville Lane and Gilmore Drive.

**RECOMMENDATION**

**City Council** - Adopt a motion introducing **Ordinance 2453**, an Ordinance of the City Council of the City of Merced, California, Amending Section 10.28.230, "No Parking Zones" and Section 10.28.300, "Two-Hour Parking Zones" of the Merced Municipal Code.

This Consent Item was approved.

H.8.

**SUBJECT:** 2015 California Department of Alcoholic Beverage Control Mini Grant

**REPORT IN BRIEF**

Accept grant funds for costs associated with conducting enforcement operations to reduce underage drinking and alcohol related crimes.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Accepting and increasing the revenue budget in account 001-1002-324.02-0 by \$24,738, and appropriating the same amount in Police Operations Division 001-1002; and,

B. Authorizing the use of pooled cash until reimbursement from the grant is received; and,

C. Authorizing the City Manager, Chief of Police, and/or Finance Director to execute the necessary documents.

This Consent Item was approved.

H.2.

**SUBJECT:** Supplemental Appropriation for a Public Safety Person to Staff the Aircraft Rescue and Firefighting (ARFF) Vehicle at the Merced Regional Airport and for On-Call Airport Security Coordinator Costs as Required by the U.S. Code of Federal Regulations, §1542.3(6)(2)

**REPORT IN BRIEF**

Authorizing a Supplemental Appropriation up to \$54,994 for a Firefighter or Fire Engineer or Fire Captain to staff the ARFF vehicle at the Merced Regional Airport and for \$8,154.80 for on-call service by the Airport Operations Technician to serve as Security Coordinator from August 27, 2015, through December 31, 2015.

**RECOMMENDATION**

**City Council** - Adopt a motion authorizing the supplemental appropriation from the General Fund up to \$54,994 for a Firefighter or Fire Engineer or Fire Captain to staff the ARFF vehicle at the Airport; \$8,154.80 for the on-call cost for service of the Airport Operations Technician as Airport Security Coordinator as required by TSA; and

authorizing the Finance Officer to make budget adjustments as necessary.

Council Member BELLUOMINI pulled this item to receive a report from staff.

Fire Chief Shawn HENRY gave a report on the need for additional funds. He explained FAA rules that require a fire safety vehicle during certain times related to the number of flights coming into and leaving the Merced Municipal Airport.

Council Member BELLUOMINI questioned how the City was paying for this item. He wondered that if in the future the Airport turned a profit, if the fire service could be paid from that money.

Interim City Manager BRAMBLE explained that the Airport has been subsidized by the General Fund for years. He spoke of the possibility of a landing fee at the Airport to help pay for this service.

Council Member MURPHY questioned if this appropriation would be through the fiscal year.

Chief HENRY stated this would carry through to the end of the fiscal year.

**A motion was made by Council Member Belluomini, seconded by Council Member Blake, that this agenda item be approved with the condition that if and when the Airport turned a profit, that this service would be paid for from the Airport fund. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 1 - Mayor Thurston

**H.6.**

**SUBJECT:** Award Bid to Avison Construction, Inc., for CMAQ Sidewalk Infill on Buena Vista Drive Project 114048 (5085-042)

**REPORT IN BRIEF**

Consider awarding a construction contract in the amount of \$136,558 for sidewalk infill on portions of Buena Vista Drive.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Awarding the bid for the CMAQ Sidewalk Infill on Buena Vista Drive Project 114048 (5085-042), to Avison Construction, Inc., in the amount of \$136,558; and,

B. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

Council Member MURPHY pulled this item to ask about sidewalk priorities.

Principal Architect John SAGIN stated that this project was part of a grant that was applied for in 2012.

Interim City Manager BRAMBLE interjected that the list of sidewalk priorities was in progress.

**A motion was made by Council Member Murphy, seconded by Council Member Dossetti, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 1 - Mayor Thurston

## I. PUBLIC HEARINGS

### I.1.

**SUBJECT:** Public Hearing - Assembly Bill 1600 (AB 1600) Annual Compliance Report for Development Impact Fees

#### REPORT IN BRIEF

Consider adopting a Resolution of the City Council of the City of Merced accepting AB 1600 Annual Compliance Report for Development Impact Fees.

#### RECOMMENDATION

**City Council** - Adopt a motion:

A. Accepting the Annual Compliance Report for AB1600 Development Fees for Fiscal Year 2014/2015 and make findings related to unexpended balances as required by California Government Code Section 66001; and,

B. Adopting **Resolution 2015-48**, a Resolution of the City Council of the City of Merced, California, accepting the Development Impact Fees Fiscal Year 2014/2015 Annual Report and making findings related to unexpended

developer deposits for public improvements as required by California Government Code Section 66001.

Interim Public Works Director Ken ELWIN gave a report to Council on the AB1600 requirement to report impact fees collected from developers for the City's future growth. He gave a brief background on the fees and spoke on the various requirements.

Council Member BELLUOMINI questioned why the Park Fund balance was negative.

Interim City Manager BRAMBLE stated that most of the funds were used for City Park 42, and with the amount of funds per household it, would take approximately 12-15 years to repay the fund.

Director of Finance Brad GRANT expanded on the statement to clarify that the Park Fund monies were only spent on parks.

Council Member MURPHY asked about the restricted Water Well Fund and how the money would be spent.

Mr. ELWIN stated that most of the money would be used for wells and wellsites.

Interim City Manager BRAMBLE stated a new Water Master Plan would guide how the money would be spent.

Council Member BELLUOMINI asked for specific dollar amounts for the budgeted projects.

Mr. ELWIN reviewed the figures for several projects.

Mayor Pro-Tempore PEDROZO opened the Public Hearing at 7:50 PM and subsequently closed it when no audience members wished to speak.

**A motion was made by Council Member Dossetti, seconded by Council Member Lor, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 1 - Mayor Thurston

I.2. **SUBJECT: Continued Public Hearing Regarding Proposed Changes to the Massage Establishment Regulations and Specific Zoning Provisions Relating to Massage Uses**

**REPORT IN BRIEF**

Consider amendments to Chapter 5.44 of the Merced Municipal Code relating to massage establishments and amendments to the Zoning Ordinance (Title 20) relating to massage uses.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving Environmental Review #14-25 (Categorical exemption); and,

B. Introducing **Ordinance 2451**, an Ordinance of the City Council of the City of Merced, California Amending Chapter 5.44, "Massage Establishments," of the Merced Municipal Code; and,

C. Introducing **Ordinance 2452**, an Ordinance of the City Council of the City of Merced, California Amending Sections 20.20.020, "Permitted Uses," 20.20.040, "Conditional Uses," 20.22.020, "Permitted Uses," 20.22.050, "Conditional Uses," 20.24.020, "Permitted Uses," 20.24.040, "Conditional Uses," 20.26.040, "Conditional Uses," and 20.28.040, "Conditional Uses," of the Merced Municipal Code Regarding the Zoning of Massage Establishments as Conditional Uses Subject to Specific Conditions.

Senior Deputy City Attorney Ken ROZELL gave a brief report on the modified Ordinance.

Mayor Pro-Tempore PEDROZO opened the Public Hearing at 7:52 PM and subsequently closed the hearing with no audience members wishing to speak.

**A motion was made by Council Member Dossetti, seconded by Council Member Blake, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 1 - Mayor Thurston

**J. BUSINESS**

J.1. Request to Add Item to Future Agenda

There were no requests.

J.2. City Council Comments

Council Member DOSSETTI wished everyone a Merry Christmas.

Council Member MURPHY noticed the Milliken Institute report ranking Merced in several categories. He also noted the wage growth occurring in Merced.

Mayor Pro-Tempore PEDROZO reported on being at the toy giveaway coordinated by Fernando Aguilera. He thanked the Hmong community for the New Year celebration.

Council Member BELLUOMINI stated that he also enjoyed the Hmong New Year festival.

**K. ADJOURNMENT**

**Clerk's Note:** The meeting adjourned at 8:00 PM.

**A motion was made by Council Member Lor, seconded by Council Member Blake, that the meeting be adjourned to January 4, 2016 at 5:15 PM. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, Council Member Lor, and Council Member Murphy

**No:** 0

**Absent:** 1 - Mayor Thurston



# CITY OF MERCED

City Council Chamber  
Merced Civic Center  
2nd Floor  
678 W. 18th Street  
Merced, CA 95340

## Minutes

### City Council/Public Finance and Economic Development Authority/Parking Authority

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Monday, January 4, 2016

7:00 PM

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#### A. STUDY SESSION ROLL CALL

**Clerk's Note:** Council Member MURPHY arrived at 5:16 PM and Council Member BELLUOMINI arrived at 5:19 PM.

**Present:** 6 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, and Council Member Mike Murphy

**Absent:** 1 - Council Member Noah Lor

#### B. STUDY SESSION

Mayor THURSTON called the Study Session to order at 5:15 PM.

##### B.1. Study and Discussion on Proposed Marijuana Ordinance

Senior Deputy City Attorney Ken ROZELL provided Council with a report on existing Medical Marijuana regulations in place. He stated the latest Assembly Bills that have been introduced would take away local control unless the City adopted an Ordinance by January 29, 2016 due to a March 1, 2016 deadline imposed by the State.

Council posed questions to Mr. ROZELL regarding taxation, zone locations, enforcement and reasons for the quick turnaround needed to pass an Ordinance.

Mr. ROZELL explained that taxation would need voter approval, Council could decide on the locations for dispensaries and that Police would be able to do inspections as needed. He stated that because of deadline of March 1, 2016 written into the Bill, Council would need to act quickly to get an Ordinance in place due to the need for a first and second reading and 30-day wait for it to go into full effect. He emphasized the need to get an ordinance in place so the City can maintain control over this item.

Merced County Sheriff Sergeant Ray FRAMSTEAD, explained how the County deals with the Medical Marijuana issues. He gave information on the yield of marijuana plants and gave a brief slide presentation. He also gave a report on the crime that is involved in marijuana trade.

**Speakers in favor of Medical Marijuana**

Jim GREENWOOD, Merced  
Karen ANN, Merced  
Christopher GONZALES, Merced  
Charles VEILLEUX, Merced  
Arturo DERAZO, Merced

**Clerk's Note:** The Study Session adjourned at 6:30 PM.

**C. CLOSED SESSION ROLL CALL**

**Present:** 6 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, and Council Member Mike Murphy  
**Absent:** 1 - Council Member Noah Lor

**D. CLOSED SESSION**

**Clerk's Note:** Council adjourned to Closed Session at 6:31 PM.

**D.1.**

**SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - Significant Exposure to Litigation: (1) Case; Authority: Government Code Section 54956.9(d)(2)

**Clerk's Note:** Council adjourned from Closed Session at 6:50 PM.

**E. CALL TO ORDER**

Mayor THUSTON called the Regular Meeting to order at 7:00 PM.

E.1 Invocation - Pastor Doss, Merced Baptist Church

The invocation was presented by Pastor Andy Doss of Merced Baptist Church.

E.2. Pledge of Allegiance to the Flag

**F. ROLL CALL**

**Present:** 6 - Mayor Stanley P. Thurston, Mayor Pro Tempore Joshua Pedrozo, Council Member Michael Belluomini, Council Member Kevin Blake, Council Member Tony Dossetti, and Council Member Mike Murphy  
**Absent:** 1 - Council Member Noah Lor

F.1. In accordance with Government Code 54952.3, it is hereby announced that the City Council sits either simultaneously or serially as the Parking Authority, and Public Financing and Economic Development Authority. City Council Members receive a monthly stipend of \$20.00 by Charter for sitting as the City Council; and the Mayor receives an additional \$50.00 each month as a part of the adopted budget and Resolution 1975-37. The members of the Parking Authority, and Public Financing and Economic Development Authority receive no compensation.

## G. REPORT OUT OF CLOSED SESSION

There was no report.

## H. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

## I ORAL COMMUNICATIONS

Doug WHITE, Sacramento - provided Council with a proposal for attorney services.

Karen ANN, Merced - spoke about conflict of interest issues and thanked former Code Enforcement Officer Roberta MEDINA.

## J. CONSENT CALENDAR

### Approval of the Consent Agenda

**A motion was made by Council Member Murphy, seconded by Mayor Pro Tempore Pedrozo, to approve the Consent Agenda. The motion carried by the following vote:**

**Aye:** 6 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, and Council Member Murphy

**No:** 0

**Absent:** 1 - Council Member Lor

J.1. **SUBJECT:** Information Only Contracts

J.2. **SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of August 17, 2015

### REPORT IN BRIEF

Official adoption of previously held meeting minutes.

### RECOMMENDATION

**City Council/Public Financing and Economic**

**Development/Parking Authority** - Adopt a motion approving the meeting minutes of August 17, 2015.

**This Consent Item was approved.**

**J.3.**

**SUBJECT:** Reading by Title of All Ordinances and Resolutions

**REPORT IN BRIEF**

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.

**This Consent Item was approved.**

**J.4.**

**SUBJECT:** First Amendment to Agreement with National Demographics Corporation for Districting Consulting Services

**REPORT IN BRIEF**

Consider approving an amendment to the agreement with National Demographics Corporation in the amount of \$4,750.

**RECOMMENDATION**

**City Council** - Adopt a motion approving an amendment to the agreement with National Demographics Corporation in the amount of \$4,750; and, authorizing the City Manager to execute the necessary documents.

**This Consent Item was approved.**

**J.5.**

**SUBJECT:** Request to Release Interest in Property Located at 1036 W. 10th Street to Allow a Short Sale

**REPORT IN BRIEF**

Request by the Estate of Manuel Valle to release the City's interest in property that was provided a Homeowner Rehabilitation Loan to allow for a short sale.

**RECOMMENDATION**

**City Council** - Adopt a motion authorizing the City of Merced Housing Division, second lien holder, to release interest in the property at 1036

W. 10th Street in order to allow a for short sale; and, authorizing the City Manager to execute the necessary documents.

This Consent Item was approved.

**J.6.**                    **SUBJECT: Second Reading - Ordinance Dealing with No Parking Zones and Two-Hour Parking Zones**

**REPORT IN BRIEF**

Second reading of previously introduced Ordinance.

**RECOMMENDATION**

**City Council** - Adopt **Ordinance 2453**, an Ordinance of the City Council of the City of Merced, California, Amending section 10.28.230, "No Parking Zones" and Section 10.28.300, "Two-Hour Parking Zones" of the Merced Municipal Code.

This Consent Item was approved.

**J.7.**                    **SUBJECT: Second Reading - Ordinances Dealing with Changes to the Massage Establishment Regulations and Specific Zoning Provisions Relating to Massage Uses**

**REPORT IN BRIEF**

Second reading of previously introduced Ordinance.

**RECOMMENDATION**

**City Council** - Adopt **Ordinance 2451**, an Ordinance of the City Council of the City of Merced, California, Amending Chapter 5.44, "Massage Establishments," of the Merced Municipal Code; and, adopt **Ordinance 2452**, an Ordinance of the City Council of the City of Merced, California Amending Sections 20.20.020, "Permitted Uses," 20.20.040, "Conditional Uses," 20.22.020, "Permitted Uses," 20.22.050, "Conditional Uses," 20.24.020, "Permitted Uses," 20.24.040, "Conditional Uses," 20.26.040, "Conditional Uses," and 20.28.040, "Conditional Uses," of the Merced Municipal Code Regarding the Zoning of Massage Establishments as Conditional Uses Subject to Specific Conditions.

This Consent Item was approved.

**K. PUBLIC HEARINGS**

**K.1.**                    **SUBJECT: Public Hearing Regarding Proposed Amendments to the**

City of Merced's Zoning Ordinance Relating to Medical Marijuana,  
Medical Marijuana Dispensaries, Delivery of Medical Marijuana and  
Cultivation of Medical Marijuana

**REPORT IN BRIEF**

Consider the adoption of an ordinance relating to medical marijuana that would either allow or ban medical marijuana dispensaries, allow or ban the delivery of medical marijuana under specific circumstances, and either allow the cultivation of small amounts of medical marijuana under specific circumstances or ban the cultivation of all medical marijuana within the City's boundaries.

**RECOMMENDATION**

**City Council** - Adopt a motion approving one of the three following options:

A. Adopt a Categorical Exemption and Introduce **Ordinance 2455** (as recommended by the Planning Commission) that would allow medical marijuana dispensaries in specific commercial zones, allow delivery of medical marijuana under specific circumstances and allow limited growth of medical marijuana (12 plants or less per lot) for a qualified patient:

"An Ordinance of the City Council of the City of Merced, California, Adding Chapter 20.84, "Medical Marijuana and Cultivation" and amending Sections 20.20.040 "Conditional Uses," 20.24.040 "Conditional Uses," and 20.28.040, "Conditional Uses," of the Merced Municipal Code regarding the zoning of medical marijuana dispensaries as conditional uses".

**OR**

B. Adopt a Categorical Exemption and Introduce **Ordinance 2454** (originally presented to the Planning Commission on December 9, 2015) that would prohibit all commercial medical marijuana uses and activities, including delivery, within the City of Merced and prohibit the cultivation of any amount of marijuana for medical use by a qualified patient or primary caregiver in the City of Merced:

"An Ordinance of the City Council of the City of Merced, California, adding Chapter 20.84, "Medical Marijuana and Cultivation" to the Merced Municipal Code prohibiting all commercial medical marijuana uses in the City and prohibiting cultivation for medical use by a qualified patient or primary caregiver"

**OR**

C. Adopt a Categorical Exemption and Introduce **Ordinance 2454** (originally presented to the Planning Commission on December 9, 2015) that (like Option B) would prohibit all commercial medical marijuana uses and activities and prohibit the cultivation of any amount of marijuana for medical use:

“An Ordinance of the City Council of the City of Merced, California, adding Chapter 20.84, “Medical Marijuana and Cultivation” to the Merced Municipal Code prohibiting all commercial medical marijuana uses in the City and prohibiting cultivation for medical use by a qualified patient or primary caregiver;”

**AND**

Direct staff to schedule multiple study sessions after the effective date of the ordinance to consider the City’s options relating to medical marijuana within the City (including dispensaries, delivery and cultivation).

Planning Manager Kim ESPINOSA gave a presentation on the current zoning code that prohibits marijuana dispensaries under federal law. She gave Council three options, including adopting an Ordinance as proposed by the Planning Commission, adopting an Ordinance totally banning marijuana, or adopting an ordinance that bans medical marijuana and to continue discussion on the matter at future meetings.

Ms. ESPINOSA gave a brief report on the Planning Commission meeting when this item was heard and offered their recommendation to the Council.

Council asked questions about appropriate zones to locate dispensaries.

Ms. ESPINOSA stated that most medical offices are located in Commercial Office Zones. She also noted that the Planning commission specifically stated that Residential Zones would not be allowed. Commercial Thoroughfare Zones also were deemed inappropriate.

Mayor THURSTON questioned once a number of dispensaries was decided upon, what the selection process would look like.

Sr. Deputy Attorney Ken ROZELL stated the Council could decide by lottery or other means, such as first come first serve, to select the businesses.

Council Member MURPHY questioned how a person with a Medical Marijuana card could obtain it in the City.

Mr. ROZELL stated that marijuana could not be obtained legally in the City of Merced.

Mayor THURSTON asked if this item could be placed on the November ballot for voter approval.

Mr. ROZELL stated that it could.

Mayor THURSTON opened the Public Hearing at 7:42 PM.

**Speakers in favor of Medical Marijuana**

Dr. Lakisha JENKINS, Merced

Sister KATE, Merced County

Adam COX, Merced Chamber of Commerce

Morgan, Merced

Roland, Merced

Kevin BAUER, Merced

Patrick WOODBURY, Merced

Arturo DERAZO, Merced

Christopher GONZALES, Merced

Dwight LARKS, Gustine

Sister DARCY, Merced County

Ryan, Merced

John MURRAY, Merced

Nathan LOPEZ, Merced

Ricky BROWNING, Merced

Chad, Merced County

Susan BOUSCAREN, Merced County

Shawnessa, Merced

Chelsea TAITANO, Atwater

Daniel PULIDO, Merced

Amanda HOUSEWRIGHT, Merced

Daniel KAZAKOS, Merced

Roland ROJAS, Merced

Victor CALDERON, Merced

Eric MOORE, Merced

Rex PETERSON, Merced

Angel DELIMAN, Merced

Daniel SABZEHZAR, Merced

Jesus SERRANO, Delhi

Janessa JUAREZ, Delhi  
Stephanie PEREZ, Merced  
Jim GREENWOOD, Merced  
Karen ANN, Merced  
Jerilyn ROGERS, Merced  
Miguel CHAVEZ  
Mauricio TRUJILLO, Merced

**Speakers against Medical Marijuana**

Susana SALDANA, Merced - spoke against backyard grows.

**Neutral Speakers**

Betty HUEY, Merced - asked Council to consider both sides.  
Zac FOSTER, Merced - spoke on the Marijuana industry.

Mayor THURSTON called for a 10 minute recess at 9:01 PM. The meeting re-convened at 9:10 PM.

Mayor THURSTON closed the Public Hearing at 9:50 PM.

Mayor THURSTON favored a total ban until further study could be done.

Council Member BELLUOMINI stated he was in favor of medical marijuana although he had reservations as far as outdoor growing and dispensary locations.

Council Member BLAKE said he was in favor of regulation in the number of plants grown, location and number of dispensaries.

Mayor Pro-Tempore PEDROZO felt the Council needed more time to make the right decision. He stated more research should be done.

Council Member MURPHY stated that the Ordinance as written needed refining. He had concerns with backyard grows.

Council Member DOSSETTI agreed with some speakers that the Council did not have enough information to make a decision tonight and stated he liked option three.

**A motion was made by Council Member Dossetti, seconded by Mayor Thurston, to approve option C as presented by staff. The motion carried by the following vote:**

**Aye:** 6 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, and Council Member Murphy

**No:** 0

**Absent:** 1 - Council Member Lor

## L. BUSINESS

Mayor THURSTON called for a 10 minute break before continuing to the Business portion of the Agenda.

### L.1.

**SUBJECT:** Confirmation of the Use of Action Minutes as the Official Record of City Council

#### REPORT IN BRIEF

Considers the confirmation of action minutes as the official record of City Council for regular meetings and brief summary minutes for meetings such as town halls and budget sessions where Council policy direction may be given but no official actions are taken.

#### RECOMMENDATION

**City Council** - Adopt a motion confirming action minutes as the official record of City Council for regular meetings and brief summary minutes for City Council meetings when no official actions are taken; and, adding section C-5 City Council Minutes to the City Council Administrative Policies.

City Manager BRAMBLE stated this item was to confirm the use of action minutes per a previous Council discussion.

Council Member MURPHY asked if the turnaround time would improve.

Interim Assistant City Clerk John TRESIDDER said he hoped to have a one-month turnaround time for minutes approval.

Council Member BELLUOMINI stated several reasons he felt the Summary Style Minutes should be used instead of the Action Style as written in the Policy. He stated that he believed the minutes are one of the most important functions of the City Clerk.

Council Member MURPHY stated that he liked the way the video was now

indexed for easy access.

Council Member DOSSETTI was in favor of action minutes.

Council Member BELLUOMINI made a motion to approve Summary Style minutes for all Council Meetings, which failed for lack of a second.

**A motion was made by Council Member Dossetti, seconded by Council Member Murphy, that action minutes be used for City Council Meeting minutes and that a free copy of the DVD video be provided to citizens requesting one. The motion carried by the following vote:**

**Aye:** 5 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Blake, Council Member Dossetti, and Council Member Murphy

**No:** 1 - Council Member Belluomini

**Absent:** 1 - Council Member Lor

#### L.2. City Council Seating Arrangement (Requested by Mayor Thurston)

Mayor THURSTON stated that the following meeting he would like Council to have a new seating arrangement.

#### L.3. Request to Add Item to Future Agenda

Council Member BELLUOMINI requested an agenda item for the February 16, 2016 meeting to have an item regarding the fostering of industrial development in the City.

#### L.4. City Council Comments

There were no Council comments.

### M. ADJOURNMENT

**Clerk's Note:** The meeting was adjourned to January 19, 2016 at 5:30 PM. The time of adjournment was 11:08 PM.

**A motion was made by Council Member Belluomini, seconded by Mayor Thurston, that the meeting be adjourned. The motion carried by the following vote:**

**Aye:** 6 - Mayor Thurston, Mayor Pro Tempore Pedrozo, Council Member Belluomini, Council Member Blake, Council Member Dossetti, and Council Member Murphy

**No:** 0

**Absent:** 1 - Council Member Lor



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-193

**Meeting Date:** 5/16/2016

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**SUBJECT:** Reading by Title of All Ordinances and Resolutions

### REPORT IN BRIEF

Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and a summary title may be read with further reading waived.

### RECOMMENDATION

**City Council** - Adopt a motion waiving the reading of Ordinances and Resolutions, pursuant to Section 412 of the Merced City Charter.



**ADMINISTRATIVE REPORT**

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**File #:** 16-199

**Meeting Date:** 5/16/2016

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**Report Prepared by:** *Matt Williams, Captain, Merced Police Department*

**SUBJECT:** City School District Crossing Guard Agreement

**REPORT IN BRIEF**

Authorize a one-year agreement with the City School District to reimburse a portion of the cost associated with the School Crossing Guard Program.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the agreement with the Merced City School District for reimbursement of a portion of the cost associated with the School Crossing Guard Program and authorizing the City Manager to execute the necessary documents.

**ALTERNATIVES**

1. Approve, as recommended by staff; or
2. Approve, subject to other than recommended by City Council; or
3. Deny; or
4. Refer to staff for reconsideration of specific items; or
5. Continue to a future meeting.

**AUTHORITY**

Charter of the City of Merced, Section 200.

**CITY COUNCIL PRIORITIES**

Public Safety.

**DISCUSSION**

Since the City of Merced implemented the neighborhood schools program, students who live within a one-mile radius of the school are required to walk to school. As a result, the Merced City School District has been required to increase the number of school crossing guards to assist the students walking to school. The City of Merced has always provided funding for four (4) school crossing guards at a cost of \$20,000. In 2009, at the request of the School District, the City negotiated a three-year contract with increases each year based on the annual "cost of living adjustments" (COLA).

This year the City of Merced is proposing a one-year contract.

The agreement states that the City of Merced shall reimburse the School District for a portion of the

cost of the crossing guard program, from July 1, 2015 through June 30, 2016, not to exceed \$26,024.00.

Under this agreement the school district will be the employer of the crossing guards. The City of Merced will coordinate with the school district to plan and coordinate an annual training for district crossing guards.

**IMPACT ON CITY RESOURCES**

Funds in the amount of \$26,024.00 for fiscal year 2015 - 2016 are listed in the 2015 - 2016 police budget under account number 001-1008-522-17-00.

**ATTACHMENTS**

1. Copy of Crossing Guard Contract.

**AGREEMENT FOR PARTIAL REIMBURSEMENT FOR  
CROSSING GUARDS**

THIS AGREEMENT entered into on the \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Merced, a California Charter Municipal Corporation, whose address of records of 678 W. 18th Street, Merced, California (hereinafter referred to as “City”), and the Merced City School District, a public school district of the State of California, whose address of records is 444 W. 23rd Street, Merced, California (hereinafter referred to as “District”).

W I T N E S S E T H

WHEREAS, the District and the City recognize the importance of crossing guards to the safety of students walking to and from school; and

WHEREAS, the District is willing to hire, employ and pay Crossing Guards for the provision of such services; and

WHEREAS, the City is willing to reimburse the District for a portion of the Crossing Guard expense; and

WHEREAS, the Crossing Guard program is essential for the safety of students in the Merced area.

NOW THEREFORE, the parties hereto in consideration of the mutual covenants herein cited agree as follows:

SECTION 1.       Scope of Services. This Agreement defines the cost reimbursement and specific responsibilities for the School Crossing Guard Program. The funds provided by the City to the District shall be used to provide school crossing guard services at the locations and times determined by the District for the geographic areas described in Attachment A, which is attached hereto and incorporated herein.

SECTION 2.       Term. The term of this Agreement shall be from July 1, 2015 through June 30, 2016.

SECTION 3.       Employment. The school crossing guards shall be employees of the District. Except as provided for in Section 4 below, the District

shall be solely responsible for the Crossing Guard program, including, but not limited to the hiring, supervision, scheduling, and day-to-day management of the employees within its Crossing Guard program. The District shall establish the wages, hours and working conditions of said crossing guards. District shall also be responsible for providing appropriate supplies, equipment and uniforms for crossing guards.

SECTION 4. Training. The City and the District shall share responsibility for training Crossing Guards under this program. The City and the District will share responsibility for developing a training plan. Each year, the City and the District shall each provide an employee to facilitate and conduct an annual crossing guard training.

SECTION 5. Cost Reimbursement. The City shall reimburse the District for a portion of the cost of the Crossing Guard Program in the amount not to exceed Twenty-Six Thousand and Twenty Four Dollars (\$26,024) per fiscal year (July 1 to June 30) during the term of this Agreement.

Upon receipt of a request for payment and any supporting documentation requested or required by the City's Finance Department, the City will process the request for payment.

SECTION 6. Indemnification. District agrees to defend, indemnify, protect and hold City and its agents, officers, and employees harmless from and against any and all claims asserted or liability established for damages or injuries to any person or property, including injury to District's employees, agents, or officers which arise from or are connected with or are caused or claimed to be caused by the acts or omissions of District and its agents, officers, and employees, in conducting school crossing guard services.

SECTION 7. Assignment. Assignment of this Agreement will only be permitted upon receipt of the express written consent of the City and District.

SECTION 8. Alterations. No alteration or variation of 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.

SECTION 9. Notices. All notices required to be sent pursuant to this

Agreement shall be delivered by either first class mail, return receipt requested, and properly addressed with the correct postage fully paid thereon, or by personal delivery to the individuals designated below at the address designated below.

City: City Clerk  
City of Merced  
678 West 18th Street  
Merced, California 95340

District: Greg Spicer, Assistant Superintendent  
Merced City School District  
444 West 23rd Street  
Merced, California 95340

SECTION 10. Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Venue shall be in a state court in the County of Merced. The use of the singular herein includes the plural, and the use of the neuter herein includes the masculine and/or feminine, as the context may require. The captions of the Sections and Subsections of this Agreement are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

SECTION 11. No Presumption Re Drafter. The parties hereto acknowledge and agree that the terms and provisions of this Agreement have been negotiated and discussed between the parties and their attorneys, and this document reflects their mutual agreement regarding the same. Because of the nature of such negotiations and discussions, it would be inappropriate to deem any party to be the drafter of this Agreement, and therefore no presumption for or against validity or as to any interpretations hereof, based upon the identity of the drafter, shall be applicable in interpreting or enforcing this document.

SECTION 12. Relationship of Parties. Nothing contained in this Agreement shall be interpreted or understood by any of the parties, or by any third person, as creating the relationship of employer and employee, principal and agent, limited or general partnership, or joint venture between City and District or their agents, employees or contractors. It is expressly understood that the Crossing Guards are not employees of the City and do not have any contractual relationship with the City. Except as either party may specify in writing, neither party shall have the authority to act as an agent of the other party or to bind the

other party to any obligation.

SECTION 13. Non-Liability of Officials. No member, official, employee or agent of City or District shall be personally liable to the other party in the event of any default or breach by City or District or for any amount which may become due to City or District or their successor or on any obligation under the term of this Agreement.

SECTION 14. No Third Party Beneficiaries. The parties hereto intend not to create rights in, or to grant to any third party as a beneficiary of the Agreement.

SECTION 15. Invalidity. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

SECTION 16. Entire Agreement. This Agreement is a fully integrated agreement that contains the complete, final, and entire agreement and understanding of the parties hereto. This Agreement supersedes and replaces all negotiations, and all proposed agreements, whether oral or written, between the parties hereto regarding, arising out of, or relating to the subject matter hereof. Each party acknowledges that it has read this Agreement and has signed it freely and voluntarily without reliance on any representations or promises made by any of the other, or their attorneys or its representatives, other than as expressly set forth within this Agreement.

SECTION 17. Waiver. Any waiver by either party of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by either party to take action on any breach or default of the other party or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to either party to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligation under this Agreement. Consent by either party to any act or omission by the other party shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for the other party's written consent to future waivers.

SECTION 18. Counterparts. This Agreement may be executed in counterparts and when each party has signed and delivered at least one such

counterpart to the other parties hereto, each counterpart shall be deemed an original, and all counterparts taken together will constitute one and the same Agreement, which will be binding and effective as to the City and District. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

SECTION 19. Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant City Clerk

APPROVED AS TO FORM:

BY: Betty Fincher 4/26/16  
City Attorney Date

ACCOUNT DATA:

*[To be entered by Requesting Department]:*

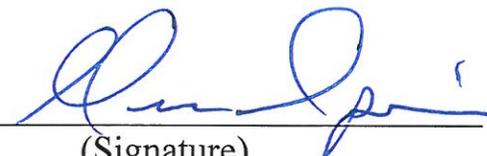
Account No.: 001-1008-522-17-00

Amount: \$26,024.00

VERIFIED:

BY: \_\_\_\_\_  
Finance Officer

“DISTRICT”  
MERCED CITY SCHOOL DISTRICT,  
A public school district

BY:   
(Signature)

\_\_\_\_\_  
Greg Spicer  
Assistant Superintendent  
District Representative

Taxpayer I.D. No. 77-0572124

ADDRESS: 444 W. 23rd Street  
Merced, California 95340

TELEPHONE: (209) 385-6376

**Attachment A**  
**Agreement for Crossing Guards**

**2015-2016 Crossing Guards**

School Site	Total	Locations		
Burbank Elementary	1	Alexander & G		
Chenoweth Elementary	3	Olive & Parsons	Teak & Parsons	Brookdale & Parsons
Gracey Elementary	3	V & 11th	W & 11th	W & Lopes
Franklin Elementary	3	Franklin Rd & Lucich Dr	Loading Zone	Turn around
Fremont Elementary	2	R & 22nd	S Street	
Givens Elementary	2	27th & Parsons	Loading Zone	
Muir Elementary	1	21st & K		
Sheehy Elementary	0			
Wright Elementary	3	Yosemite Pkwy & Laura	Glen and 20th	
Stowell Elementary	1	11th & G		
Peterson Elementary	3	Donna Dr & Cardova Ave	Paulson & Donna	Loading Zone
Reyes Elementary	1.5	Childs & N	N Street	
Stefani Elementary	1	Beachwood Dr & Fir Ave		
Hoover Middle	0			
Rivera Elementary	1	Buena Vista & R		
Rivera Middle	2	Buena Vista & R	Buena Vista	
Tenaya Middle	0.5	8th St		
Cruickshank Middle	1	Mercy and Camerot		



**ADMINISTRATIVE REPORT**

**File #:** 16-179

**Meeting Date:** 5/16/2016

**Report Prepared by:** John C. Sagin Jr., AIA, Principal Architect - Engineering Department

**SUBJECT:** Award Bid to D.A. Wood Construction, Inc., for the Sewer & Water Main Replacement In Alley Between 21<sup>st</sup>-22<sup>nd</sup> Street & W-U Street Project 116039

**REPORT IN BRIEF**

Consider awarding a construction contract in the amount of \$455,481 for the replacement of the sewer and water mains within the alley between 21<sup>st</sup>-22<sup>nd</sup> Streets and W-U Streets.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Awarding the bid for the Sewer & Water Main Replacement In Alley Between 21st-22nd Street & W-U Street Project 116039, to D. A. Wood Construction, Inc., in the amount of \$455,481; and,
- B. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

**ALTERNATIVES**

- 1. Approve, as recommended by staff; or,
- 2. Approve, subject to conditions other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
- 5. Continue to a future meeting (date and time to be specified in the motion).

**AUTHORITY**

Charter of the City of Merced, Article XI, Section 1109 - Contracts on Public Works, and Merced Municipal Code Chapter 3.04, Article IV - Public Works Contracts. Every project involving an expenditure of more than sixty-three thousand fifty-four dollars (\$63,054) for the construction or improvements of public buildings, works, streets, drains, sewers, utilities, park, and playgrounds shall be let by contract to the lowest responsive and responsible bidder after notice by publication in the official newspaper by one or more insertions, the first of which shall be at least ten days before the time for opening bids.

**CITY COUNCIL PRIORITIES**

As provided for in the 2015-16 Adopted Budget.

## DISCUSSION

The work to be done consists, in general, of the removal of the existing sewer main and laterals, installing a new 8" sewer main, new 8" water main, fire hydrants, sewer manhole, reconnecting all existing water mains and services, sewer laterals, abandoning the 6" water main in place, and alley reconstruction including new asphalt pavement, concrete alley approaches, and valley gutters. The project is located in the area bounded by 21<sup>st</sup> - 22<sup>nd</sup> Streets and W - U Streets, all within the City of Merced.

City staff prepared plans and specifications, and the project was advertised for bids. Bids were opened on April 7, 2016, with the following results:

1. D.A. Wood Construction, Inc. (Empire, CA) \$455,481
2. Rolfe Construction (Atwater, CA) \$503,209
3. MidCal Pipeline & Utilities (Merced, CA) \$534,693
4. Lawrence Backhoe Service (Atwater, CA) \$547,218

The engineers estimate was \$450,000.

The following is the proposed budget for the project:

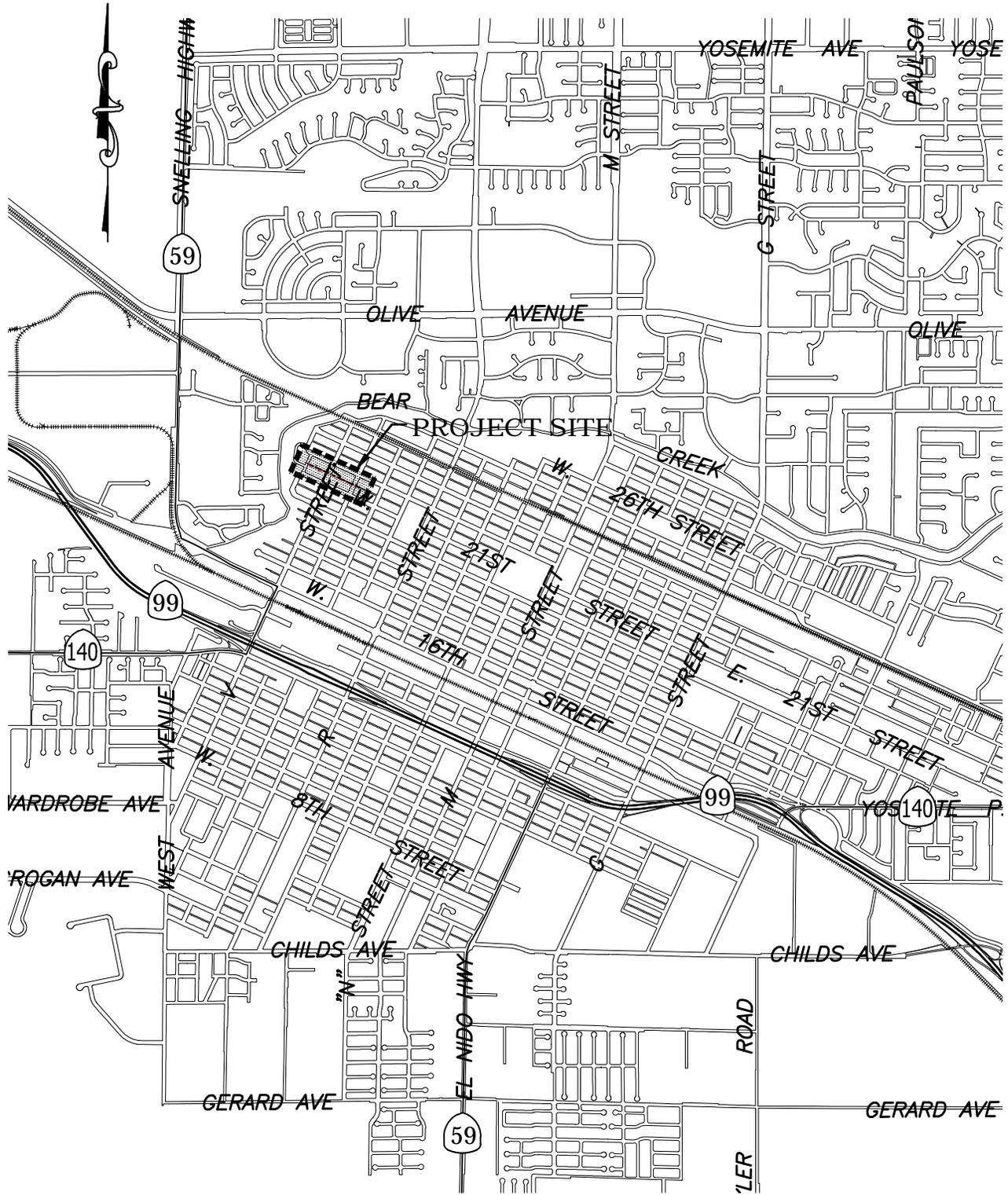
Construction	\$ 455,481.00
Contingency	\$ 45,548.00
Engineering, Testing, Inspection	\$ 68,322.00
Total	\$ 569,351.00

## IMPACT ON CITY RESOURCES

This project was established as a Capital Improvement Project and accounts 553-1107-637.65-00-116039 and 557-1106-637.65-00-116039 contain sufficient funding to complete the project.

## ATTACHMENTS

1. Location Map
2. Bid Results
3. Construction Contract



# LOCATION MAP

SCALE: 1"=.5 MI.

I:\1 Current Projects\116039 - Sewer & Water Main Replacement in Alley 21st&22nd\Dwg\0944.dwg



**City of Merced**  
 "Gateway to Yosemite"  
 DEVELOPMENT SERVICES  
 ENGINEERING PROJECTS AND STANDARDS  
 678 W. 18th Street (209) 385-6846

PROJECT NO. 116039  
 SEWER & WATER MAIN REPLACEMENT  
 IN ALLEY BETWEEN  
 21ST-22ND STREET & W-U STREET

DR. BY: SER
DATE: 12/14/15
CH. BY: JSAGIN
DATE: 12/14/15
File No. 0944
SCALE: AS SHOWN

**CITY OF MERCED  
PROJECT NO. 116039  
SEWER WATER REPLACEMENT IN ALLEY  
BETWEEN 21ST-22ND W-U STREET**

Bid Opening 4/7/2016

Bid Schedule 1				D.A. Wood Construction (Empire, CA)		MidCal Pipeline & Utilities (Merced, CA)		Rolfe Construction (Atwater, CA)		Lawrence Backhoe Service (Atwater, CA)	
NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL
1	Permits, Bonds, Licenses, & Insurance	LS	1	\$ 11,912.00	\$ 11,912.00	\$ 10,000.00	\$ 10,000.00	\$ 5,850.00	\$ 5,850.00	\$ 9,600.00	\$ 9,600.00
2	Public Convenience & Safety	LS	1	\$ 3,245.00	\$ 3,245.00	\$ 3,000.00	\$ 3,000.00	\$ 6,656.00	\$ 6,656.00	\$ 4,800.00	\$ 4,800.00
3	Surveying Services	LS	1	\$ 2,750.00	\$ 2,750.00	\$ 3,000.00	\$ 3,000.00	\$ 3,380.00	\$ 3,380.00	\$ 3,600.00	\$ 3,600.00
4	Asphalt Pavement Removal	SF	6400	\$ 1.60	\$ 10,240.00	\$ 0.60	\$ 3,840.00	\$ 1.25	\$ 8,000.00	\$ 1.60	\$ 10,240.00
5	Remove Concrete Alley Approach	SF	1370	\$ 2.60	\$ 3,562.00	\$ 2.00	\$ 2,740.00	\$ 2.50	\$ 3,425.00	\$ 11.00	\$ 15,070.00
6	Alley Excavation	CY	210	\$ 8.00	\$ 1,680.00	\$ 20.00	\$ 4,200.00	\$ 55.00	\$ 11,550.00	\$ 30.00	\$ 6,300.00
7	Concrete Alley Approach	SF	1,210	\$ 21.00	\$ 25,410.00	\$ 17.00	\$ 20,570.00	\$ 13.00	\$ 15,730.00	\$ 18.00	\$ 21,780.00
8	Concrete Valley Gutter	LF	430	\$ 38.00	\$ 16,340.00	\$ 42.00	\$ 18,060.00	\$ 33.00	\$ 14,190.00	\$ 41.00	\$ 17,630.00
9	Hot Mix Asphalt (Type B)	TN	155	\$ 146.00	\$ 22,630.00	\$ 200.00	\$ 31,000.00	\$ 175.00	\$ 27,125.00	\$ 148.00	\$ 22,940.00
10	Aggregate Base	TN	330	\$ 80.00	\$ 26,400.00	\$ 40.00	\$ 13,200.00	\$ 54.00	\$ 17,820.00	\$ 37.00	\$ 12,210.00
11	8" DIP Water Main	LF	1,010	\$ 67.50	\$ 68,175.00	\$ 73.00	\$ 73,730.00	\$ 53.00	\$ 53,530.00	\$ 92.00	\$ 92,920.00
12	8" Gate Valve	EA	4	\$ 1,407.00	\$ 5,628.00	\$ 1,700.00	\$ 6,800.00	\$ 1,140.00	\$ 4,560.00	\$ 2,950.00	\$ 11,800.00
13	Fire Hydrant Assembly	EA	3	\$ 6,720.00	\$ 20,160.00	\$ 7,000.00	\$ 21,000.00	\$ 8,300.00	\$ 24,900.00	\$ 9,850.00	\$ 29,550.00
14	Water Service Connection	EA	29	\$ 994.00	\$ 28,826.00	\$ 1,000.00	\$ 29,000.00	\$ 2,015.00	\$ 58,435.00	\$ 1,250.00	\$ 36,250.00
15	Pressure Testing and Disinfection	LS	1	\$ 2,210.00	\$ 2,210.00	\$ 5,000.00	\$ 5,000.00	\$ 7,300.00	\$ 7,300.00	\$ 5,000.00	\$ 5,000.00
16	Connection to Existing Water System	LS	1	\$ 19,800.00	\$ 19,800.00	\$ 20,000.00	\$ 20,000.00	\$ 31,670.00	\$ 31,670.00	\$ 19,000.00	\$ 19,000.00
17	Remove Existing Water Structure	LS	1	\$ 1,950.00	\$ 1,950.00	\$ 3,000.00	\$ 3,000.00	\$ 2,496.00	\$ 2,496.00	\$ 4,500.00	\$ 4,500.00
18	Adjust Existing Utility Covers to Grade	EA	29	\$ 260.00	\$ 7,540.00	\$ 300.00	\$ 8,700.00	\$ 475.00	\$ 13,775.00	\$ 250.00	\$ 7,250.00
19	Restoration	LS	1	\$ 1,370.00	\$ 1,370.00	\$ 5,000.00	\$ 5,000.00	\$ 10,634.00	\$ 10,634.00	\$ 4,100.00	\$ 4,100.00
20	Engineered Fill	CY	30	\$ 183.00	\$ 5,490.00	\$ 100.00	\$ 3,000.00	\$ 133.00	\$ 3,990.00	\$ 160.00	\$ 4,800.00
				\$ 285,318.00		\$ 284,840.00		\$ 325,016.00		\$ 339,340.00	

Bid Schedule 2				D.A. Wood Construction (Empire, CA)		MidCal Pipeline & Utilities (Merced, CA)		Rolfe Construction (Atwater, CA)		Lawrence Backhoe Service (Atwater, CA)	
NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL
1	Permits, Bonds, Licenses, & Insurance	LS	1	\$ 7,021.00	\$ 7,021.00	\$ 10,000.00	\$ 10,000.00	\$ 5,900.00	\$ 5,900.00	\$ 7,900.00	\$ 7,900.00
2	Public Convenience & Safety	LS	1	\$ 3,250.00	\$ 3,250.00	\$ 3,000.00	\$ 3,000.00	\$ 3,328.00	\$ 3,328.00	\$ 4,400.00	\$ 4,400.00
3	Surveying Services	LS	1	\$ 2,750.00	\$ 2,750.00	\$ 3,000.00	\$ 3,000.00	\$ 3,380.00	\$ 3,380.00	\$ 3,600.00	\$ 3,600.00
4	Asphalt Pavement Removal	SF	4255	\$ 1.60	\$ 6,808.00	\$ 0.60	\$ 2,553.00	\$ 1.20	\$ 5,106.00	\$ 1.60	\$ 6,808.00
5	Remove Concrete Alley Approach	SF	910	\$ 2.60	\$ 2,366.00	\$ 2.00	\$ 1,820.00	\$ 11.50	\$ 10,465.00	\$ 11.00	\$ 10,010.00
6	Alley Excavation	CY	140	\$ 8.00	\$ 1,120.00	\$ 20.00	\$ 2,800.00	\$ 80.50	\$ 11,270.00	\$ 30.00	\$ 4,200.00
7	Concrete Alley Approach	SF	800	\$ 21.00	\$ 16,800.00	\$ 17.00	\$ 13,600.00	\$ 17.50	\$ 14,000.00	\$ 18.00	\$ 14,400.00
8	Concrete Valley Gutter	LF	290	\$ 38.00	\$ 11,020.00	\$ 42.00	\$ 12,180.00	\$ 45.50	\$ 13,195.00	\$ 41.00	\$ 11,890.00
9	Hot Mix Asphalt (Type B)	TN	105	\$ 146.00	\$ 15,330.00	\$ 200.00	\$ 21,000.00	\$ 200.00	\$ 21,000.00	\$ 148.00	\$ 15,540.00
10	Aggregate Base	TN	220	\$ 80.00	\$ 17,600.00	\$ 40.00	\$ 8,800.00	\$ 71.50	\$ 15,730.00	\$ 37.00	\$ 8,140.00
11	8" PVC Sewer Main	LF	900	\$ 55.00	\$ 49,500.00	\$ 63.00	\$ 56,700.00	\$ 33.50	\$ 30,150.00	\$ 95.00	\$ 85,500.00
12	Sewer Manhole	EA	1	\$ 3,200.00	\$ 3,200.00	\$ 2,000.00	\$ 2,000.00	\$ 3,666.00	\$ 3,666.00	\$ 4,300.00	\$ 4,300.00
13	Manhole Tie-In	EA	2	\$ 1,030.00	\$ 2,060.00	\$ 1,000.00	\$ 2,000.00	\$ 962.00	\$ 1,924.00	\$ 1,200.00	\$ 2,400.00
14	Reconnect Existing Sewer Lateral	EA	29	\$ 592.00	\$ 17,168.00	\$ 1,000.00	\$ 29,000.00	\$ 785.00	\$ 22,765.00	\$ 550.00	\$ 15,950.00
15	Remove Existing Sewer Manhole	EA	1	\$ 1,660.00	\$ 1,660.00	\$ 800.00	\$ 800.00	\$ 1,000.00	\$ 1,000.00	\$ 1,500.00	\$ 1,500.00
16	Sewer Pump Bypass System	LS	1	\$ 5,800.00	\$ 5,800.00	\$ 3,000.00	\$ 3,000.00	\$ 4,628.00	\$ 4,628.00	\$ 2,500.00	\$ 2,500.00
17	Adjust Existing Utility Covers to Grade	EA	2	\$ 474.00	\$ 948.00	\$ 300.00	\$ 600.00	\$ 950.00	\$ 1,900.00	\$ 750.00	\$ 1,500.00
18	Restoration	LS	1	\$ 1,370.00	\$ 1,370.00	\$ 5,000.00	\$ 5,000.00	\$ 8,138.00	\$ 8,138.00	\$ 3,500.00	\$ 3,500.00
19	Engineered Fill	CY	24	\$ 183.00	\$ 4,392.00	\$ 3,000.00	\$ 72,000.00	\$ 27.00	\$ 648.00	\$ 160.00	\$ 3,840.00
				\$ 170,163.00		\$ 249,853.00		\$ 178,193.00		\$ 207,878.00	

	D.A. Wood Construction (Empire, CA)	MidCal Pipeline & Utilities (Merced, CA)	Rolfe Construction (Atwater, CA)	Lawrence Backhoe Service (Atwater, CA)
<b>TOTAL BID SCHEDULE 1 + 2</b>	\$ 455,481.00	\$ 534,693.00	\$ 503,209.00	\$ 547,218.00

## GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT made on \_\_\_\_\_, by and between the CITY OF MERCED, a municipal corporation of the State of California, hereinafter called the Owner, and D.A. WOOD CONSTRUCTION, INC., hereinafter called the Contractor:

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. **CONTRACT DOCUMENTS.** The complete contract consists of the following documents, to wit:

- (1) This General Construction Contract;
- (2) Faithful Performance Bond;
- (3) Laborers and Materialmens Bond;
- (4) Guaranty;
- (5) Special Provisions for **PROJECT NUMBER 116039**;
- (6) Amendments to the Standard Specifications;
- (7) Project Plans;
- (8) Standard Specifications;
- (9) City Standards;
- (10) Proposal;
- (11) Instructions to Bidders;
- (12) Notice Inviting Bids;
- (13) Bidder's Bond;
- (14) Notice of Determination of Prevailing Wages;
- (15) List of Subcontractors and Material Dealers; and
- (16) Safety Provisions.

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract are sometimes hereinafter referred to as the Contract Documents. In case of conflict between any of the documents, the order of documents first listed above shall be the order of precedence's, with the first item listed having the highest precedence.

2. **THE WORK.** Said Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner all work of improvement in accordance with Contract Documents in the manner designated in, and in strict conformity with, the Plans and Specifications for **PROJECT NUMBER 116039**, which said Plans and Specifications are entitled, "**SEWER & WATER MAIN REPLACEMENT IN ALLEY BETWEEN 21ST-22ND & W-U STREET,**" for construction in Merced County in Merced, and which were included in the award of bid made by the City Council of the City of Merced on \_\_\_\_\_, 2016.

It is understood and agreed that said tools, equipment, apparatus, facilities, labor, transportation and material, except materials to be supplied by the City as designated in the Contract Documents, shall be furnished and said work performed and completed as required in said Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner or its representative. The Owner hereby designates the City Engineer as its representative for the purpose of this Contract.

3. **CONTRACT PRICE.** The Owner agrees to pay, and the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and doing all work contemplated and embraced in this agreement to wit:

**BID SCHEDULE: No. 1 (Water Main Replacement)**

<b>NO</b>	<b>ITEM</b>	<b>UNIT OF MEASURE</b>	<b>ESTIMATED QUANTITY</b>	<b>UNIT PRICE</b>	<b>ITEM TOTAL</b>
1	Permits, Bonds, Licenses, & Insurance	LS	1	\$ 11,912.00	\$ 11,912.00
2	Public Convenience & Safety	LS	1	\$ 3,245.00	\$ 3,245.00
3	Surveying Services	LS	1	\$ 2,750.00	\$ 2,750.00
4	Asphalt Pavement Removal	SF	6400	\$ 1.60	\$ 10,240.00
5	Remove Concrete Alley Approach	SF	1370	\$ 2.60	\$ 3,562.00
6	Alley Excavation	CY	210	\$ 8.00	\$ 1,680.00
7	Concrete Alley Approach	SF	1,210	\$ 21.00	\$ 25,410.00
8	Concrete Valley Gutter	LF	430	\$ 38.00	\$ 16,340.00
9	Hot Mix Asphalt (Type B)	TN	155	\$ 146.00	\$ 22,630.00
10	Aggregate Base	TN	330	\$ 80.00	\$ 26,400.00
11	8" DIP Water Main	LF	1,010	\$ 67.50	\$ 68,175.00
12	8" Gate Valve	EA	4	\$ 1,407.00	\$ 5,628.00
13	Fire Hydrant Assembly	EA	3	\$ 6,720.00	\$ 20,160.00
14	Water Service Connection	EA	29	\$ 994.00	\$ 28,826.00
15	Pressure Testing and Disinfection	LS	1	\$ 2,210.00	\$ 2,210.00
16	Connection to Existing Water System	LS	1	\$ 19,800.00	\$ 19,800.00
17	Remove Existing Water Structure	LS	1	\$ 1,950.00	\$ 1,950.00
18	Adjust Existing Utility Covers to Grade	EA	29	\$ 260.00	\$ 7,540.00
19	Restoration	LS	1	\$ 1,370.00	\$ 1,370.00
20	Engineered Fill	CY	30	\$ 183.00	\$ 5,490.00

**Total of Items 1 Through 20 \$ 285,318.00**

**BID SCHEDULE: No. 2 (Sewer Main Replacement)**

NO	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL
1	Permits, Bonds, Licenses, & Insurance	LS	1	\$ 7,021.00	\$ 7,021.00
2	Public Convenience & Safety	LS	1	\$ 3,250.00	\$ 3,250.00
3	Surveying Services	LS	1	\$ 2,750.00	\$ 2,750.00
4	Asphalt Pavement Removal	SF	4255	\$ 1.60	\$ 6,808.00
5	Remove Concrete Alley Approach	SF	910	\$ 2.60	\$ 2,366.00
6	Alley Excavation	CY	140	\$ 8.00	\$ 1,120.00
7	Concrete Alley Approach	SF	800	\$ 21.00	\$ 16,800.00
8	Concrete Valley Gutter	LF	290	\$ 38.00	\$ 11,020.00
9	Hot Mix Asphalt (Type B)	TN	105	\$ 146.00	\$ 15,330.00
10	Aggregate Base	TN	220	\$ 80.00	\$ 17,600.00
11	8" PVC Sewer Main	LF	900	\$ 55.00	\$ 49,500.00
12	Sewer Manhole	EA	1	\$ 3,200.00	\$ 3,200.00
13	Manhole Tie-In	EA	2	\$ 1,030.00	\$ 2,060.00
14	Reconnect Existing Sewer Lateral	EA	29	\$ 592.00	\$ 17,168.00
15	Remove Existing Sewer Manhole	EA	1	\$ 1,660.00	\$ 1,660.00
16	Sewer Pump Bypass System	LS	1	\$ 5,800.00	\$ 5,800.00
17	Adjust Existing Utility Covers to Grade	EA	2	\$ 474.00	\$ 948.00
18	Restoration	LS	1	\$ 1,370.00	\$ 1,370.00
19	Engineered Fill	CY	24	\$ 183.00	\$ 4,392.00

**Total of Items 1 Through 19 \$ 170,163.00**

**Total of Items Bid Schedule 1 & 2 \$ 455,481.00**

4. **TERMINATION.** If the Contractor should be adjudged as bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract Documents, the Owner may serve written notice upon him and his surety of its intention to terminate the Contract; such notice to contain the reasons for such intention to terminate the Contract, and, unless within ten (10) days after serving of such notice such violation shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that if the surety within fifteen (15) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) days from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his

surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

5. NOTICE AND SERVICE THEREOF. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice, or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, (a) if the notice is given to the Owner, per personal delivery thereof to the City Engineer of said Owner, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to the Owner, postage prepaid and registered; (b) if the notice is given to the Contractor, by personal delivery thereof to said Contractor or to his duly authorized representative at the site of the project, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to said Contractor at PO BOX 1810, EMPIRE, CA 95319, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to such surety or person, as the case may be, at the address of such surety or person last communicated by him to the party giving the notice, postage prepaid and registered.

6. ASSIGNMENT OF CONTRACT. Neither the Contract nor any part thereof, nor moneys due, or to become due thereunder, may be assigned by the Contractor without the prior written approval of the Owner.

7. CONTRACT SECURITY. The Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. The Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

8. INSURANCE. The Contractor shall not commence work under this Contract until he has obtained all insurance required by Section 7-3 of the Standard Specifications, as amended, and such insurance has been approved by the City Attorney of Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract, and particularly paragraph 9 hereof. Said insurance obtained by the Contractor shall be primary and noncontributory as to any insurance maintained by owner. **Endorsement for additional insured shall be submitted on standard form CG 20101185. Endorsement forms CG 20101001 and CG 20371001, when used together, are acceptable in lieu of CG 20101185 for Public Works projects.** Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy. All insurance required by this section shall be from a California admitted insurance company.

9. **HOLD HARMLESS.** The Contractor will indemnify, defend with counsel selected by the Owner, save, keep, and hold harmless, the Owner and all officers, employees, and agents thereof from all damages, costs, or expenses, in law or in equity, that may at any time arise or be set up because of personal injury or damage to property sustained by any person or persons by reason of, or in the course of the performance of said work, or by reason of any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation, in consequence of the use in, on, or about said work, of any article or material supplied or installed under this Contract. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Notwithstanding the above, the Contractor shall, wherever it is necessary, keep and maintain at his sole cost and expense during the course of his operations under this Contract such warnings, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the Owner and are for the express benefit of the general public.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire such protection at its expense.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

10. **ACCIDENT PREVENTION.** Precaution shall be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

11. **PAYMENT.** The Owner will make partial and final payment to the Contractor in accordance with Section 9-3.2 of the Standard Specifications, as amended, except that the Owner will retain the five percent (5%) of the final payment amount until the expiration of thirty-five (35) days from the date of recording by Owner of notice of acceptance of completion of all work covered by this Contract, if such notice be recorded within ten (10) days after the acceptance of completion of such Contract; or, if such notice be not so recorded within ten (10) days, until the expiration of ninety-five (95) days after the acceptance of completion of such work of improvement, at which time and not before, Owner shall pay to Contractor the whole of the remaining five percent (5%) of said contract price so held back as provided.

The payment of progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments, but the entire work is to be subjected to the inspection and approval of the Owner and subject to whatever inspection and approval may be required by law.

12. CALIFORNIA LABOR CODE. The Contractor is aware of, and hereby agrees to comply with Sections 1770, 1773, 1776, and 1777.5 of the California Labor Code.

13. SUBSTITUTION OF SECURITIES FOR WITHHELD AMOUNTS. Pursuant to Section 22,300 of the Public Contracts Code of the State of California, securities may be substituted for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a State or Federally-chartered bank as the escrow agent, who shall pay such moneys to the Contractor upon satisfactory completion of the Contract.

Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code of the State of California, or bank or savings and loan certificate of deposit.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Any escrow agreement entered into pursuant to this section shall contain, as a minimum, the following provisions:

- (a) The amount of securities to be deposited;
- (b) The terms and conditions of conversion to cash in case of the default of the Contractor; and
- (c) The termination of the escrow upon completion of the Contract.

14. TRENCHES AND EXCAVATIONS. Should the Contractor be required to dig trenches or other excavations that extend deeper than four (4) feet below the surface, then the following clauses shall apply:

- (a) The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:
  - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
  - (2) Subsurface or latent physical conditions at the site differing from those indicated;
  - (3) Unknown physical conditions at the site of any unusual nature different materially from those ordinarily encountered, and generally recognized as inherent in work of the character provided for in the contract.
- (b) The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in this contract.
- (c) In the event that a dispute arises between the City and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either

by contract or by law which pertain to the resolution of disputes and protests between the contracting parties.

15. CLAIMS. This clause applies to all Contractor claims of three hundred seventy-five thousand dollars (\$375,000), or less, which arise out of this contract.

- (a) "Claim" means a separate demand by the Contractor for (1) a time extension, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract, and payment of which is not otherwise expressly provided for or the Contractor not otherwise entitled to, or (3) an amount the payment of which is disputed by the City.
- (b) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing herein shall extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (c) For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within forty-five (45) days of receipt of the claim or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.
  - (1) If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the City and the Contractor.
  - (2) The City's written response to the claim as further documented shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- (d) For claims of over fifty thousand dollars (\$50,000) and less than, or equal to, three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within sixty (60) days of receipt of the claim or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim, or relating to defenses or claims the City may have against the Contractor.
  - (1) If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the City and the Contractor.
  - (2) The City's written response to the claim as further documented shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater
- (e) If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within fifteen (15) days of receipt of the City's response, or within fifteen (15) days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule a meet and confer conference within thirty (30) days for settlement of the dispute.

- (f) If, following the meet and confer conference, the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title I of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits its written claim pursuant to Subdivision (b) until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- (g) The following procedures shall be followed for all civil actions filed to resolve claims subject to this clause:
  - (1) Within sixty (60) days, but no earlier than thirty (30) days following the filing or responsive pleadings, the court shall submit the matter to nonbinding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.
  - (2) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
  - (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- (h) The City shall not fail to pay money as to any portion of a claim which is undisputed, except as otherwise provided in this contract.
- (i) In any suit filed under Section 20104.4, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

ATTEST:

CITY OF MERCED, a Municipal Corporation  
(Herein called Owner)

By: \_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

D.A. WOOD CONSTRUCTION, INC.  
(Herein called Contractor)

By: \_\_\_\_\_  
City Attorney

By:  \_\_\_\_\_  
Contractor

ACCOUNT DATA:

TAXPAYER I.D. NO: **36-4496279**

**Project No. 116039**

VENDOR NUMBER: \_\_\_\_\_

Project Account Number(s) / Amount:

ADDRESS: **PO BOX 1810  
EMPIRE, CA 95319**

**553-1107-637.65-00-116039**      \$ 170,163.00

PHONE:      **(209) 491-4970**

**557-1106-637.65-00-116039**      \$ 285,318.00

FAX:      **(209) 491-4971**

Total:      **\$ 455,481.00**

EMAIL: **DAWOOD@WAWOODINC.COM**

By: \_\_\_\_\_  
Finance Officer Verification

(SEAL)



**ADMINISTRATIVE REPORT**

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**File #:** 16-195

**Meeting Date:** 5/16/2016

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**Report Prepared by:** Ken F. Elwin, PE, Director of Public Works / Interim City Engineer

**SUBJECT:** Merced Integrated Regional Water Management Authority (MIRWMA) Joint Powers Agreement

**REPORT IN BRIEF**

Considers approving a Joint Powers Agreement with local public agencies forming the Merced Integrated Regional Water Management Authority (MIRWMA) to coordinate on the goals and objectives outlined in the adopted 2013 Merced Integrated Regional Water Management Plan.

**RECOMMENDATION**

**City Council** - Adopt **Resolution 2016-14**, a Resolution of the City Council of the City of Merced, California, authorizing the execution of a Joint Powers Agreement with the County of Merced, City of Atwater, City of Livingston, Merced Irrigation District and Stevinson Water District Establishing the Merced Integrated Regional Water Management Authority (MIRWMA).

**ALTERNATIVES**

1. Approve, as recommended by staff; or,
2. Approve, subject to conditions other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

**AUTHORITY**

Charter of the City of Merced, Section 200.

Joint Exercise of Powers Act established in Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code.

**CITY COUNCIL PRIORITIES**

Addresses FY 15/16 City Council Priority #6 - Prepare for the implementation of a capital improvement plan for the University Industrial Park.

**DISCUSSION**

California SB 1672 was passed into law in 2002 and established the Integrated Regional Water

Management Planning (IRWMP) process in an effort to optimize the local management of water resources and to streamline state grants and funds to various regions of the State. Through the IRWMP program, the State of California has offered funding for projects and encouraged collaboration amongst water supply and wastewater agencies, flood control and stormwater protection districts, resource and regulatory agencies, non-governmental organizations, local governments, and volunteer groups to enhance integration in water management planning - all at the regional level.

On November 4, 2013, City Council adopted Resolution No. 2013-48 (see attached resolution) adopting the Merced Integrated Regional Water Management Plan of 2013 (MIRWMP). Adoption of the MIRWMP represented the completion of work that started in 2008 and involved a lengthy stakeholder process and cooperation between a variety of local agencies, the City of Merced, various stakeholders, and the public at large. In addition to coordinating the activities of established stakeholder groups, the MIRWMP engages and educates all interested parties in local and regional water management activities. All residents have a stake in the future of their region's water resources, and as such all members of the general public are considered stakeholders in the IRWMP process.

The Merced Integrated Regional Water Management Region (Region) was approved as an IRWMP region in 2011 by the California Department of Water Resources (DWR). The Region encompasses roughly 607,000 acres in the northeast portion of Merced County. Its boundaries are defined by the Merced Groundwater Sub-basin to the east, the San Joaquin River to the west, the Dry Creek watershed (a tributary to the Merced River) to the north, and the Chowchilla River to the south.

More than 70 projects were identified through the preparation process for the 2013 plan. The list has expanded since then and can be visited at [www.mercedirwmp.org](http://www.mercedirwmp.org) under the heading "Projects". Since the passage of SB 1672, various bonds, passed by California voters, generated funds that were dispersed to "regions" with approved IRWMPs in the form of competitive grants to implement local multi-purpose water projects. The Merced Region made three attempts to receive Proposition 84 funds, and received a total of \$6M in grant funding, which is currently being used to implement various projects. These projects have benefitted Merced County, the City of Merced, Merced Irrigation District, UC Merced, East Merced Resources Conservation District, Planada Community Services District, and Le Grand Community Services District. Proposition 1 lists \$31M designated to the San Joaquin Region, where the Merced Region would compete with Madera County, Fresno County, Stanislaus County, San Joaquin County, and East Contra Costa. The solicitation package is expected to be issued by May of 2016.

The MIRWMP is expected to be updated regularly to keep up with significant water management changes in the area. More importantly, the plan is expected to be implemented as approved by the stakeholders. Since DWR approval of the Merced Region in 2011, the MIRWMP has been managed by the Regional Water Management Group, which is comprised of the City of Merced, Merced Irrigation District (MID), and Merced County.

As part of the presentation to the Council, leading to adoption of plan, Staff presented the recommended structure for governance in the proposed plan as approved by the interim Regional Advisory Committee. The approved MIRWMP outlines the structure of its permanent governance in

Chapter 3 of the adopted plan (attached) and generally maintains an open stakeholder process represented by an appointed Regional Advisory Committee. The interim governance composition of the MIRWMP was constituted of the following:

- A Regional Water Management group made of Merced County, the City of Merced, and Merced Irrigation District.
- An Interim Regional Advisory Committee appointed by MID Board of Directors as the lead agency, a list of the members is shown Exhibit "F" of the adopted IRWMP (attached). The interim committee was comprised of 24 members, in addition to 14 alternates representing public and private interests in water resources and water management, urban, business, water industry, environmental, institutions, disadvantaged community, local government, recreation and various types of agriculture.
- The plan objectives and components of the plan, as outlined by DWR, were discussed and approved by the committee leading to the 2012 proposed IRWMP that was adopted by various agencies, including: Merced County, City of Merced, City of Atwater, City of Livingston, East Merced Resources Conservation District, Planada CSD, Le Grand CSD, Winton Water and Sanitary District, and UC Merced.

The approved interim governance structure still meets DWR's general interest in stakeholder representation and public involvement, comprised of:

1. A Policy Committee made of one elected official from the City of Merced, the City of Livingston, the City of Atwater, Merced County, Merced Irrigation District and Stevinson Water District.
2. A Regional Advisory Committee (RAC) nominated by the Policy Committee. The RAC is expected to reflect different water interests in the region including urban, agricultural and environmental, and related interests that best serves the mission of the Merced IRWMP. It is anticipated that the new RAC will amount to a similar combination in numbers and diversity to the interim RAC discussed above.
3. A Management Committee comprised of local agency staff providing support to the Policy Committee and undertake the operation and implementation of activities undertaken by the governance assembly.

In addition to these core elements, the JPA can opt to include Technical Work Groups to help in making decisions, such as: Merced Area Groundwater Pool Interests (MAGPI), Merced Streams, Project Review Group, etc. The Policy Committee may elect to accept input for other liaisons such a representative for the public community services district, and agricultural water districts.

Moving forward however, a more formal governance structure is required. Staff from the proposed Policy Committee have already begun initial meetings to formulate the shape and the authority of the committee. During the development of the governance structure, there was a real interest in maintaining a balance between an open inclusive and transparent process for making decision, while also the need to have a body that is ready and willing to help make decisions in an expedient and efficient manner to keep the region competitive and viable in both setting plans and winning grants.

Although there are other options, a joint powers authority (JPA) governance model was selected for the following reasons:

1. A JPA is considered a separate agency that can generate and allocate funds if needed to promote the plan and projects identified in the plan. As such the region can partner, if needed, on projects and funding not related to the State IRWM program funding.
2. A JPA may capitalize on using the same elected official chosen by various communities and interests in the area to guide policy for these communities and interests.
3. A JPA provides an umbrella for various water activities where the State and Federal agencies look for a local partner in regional. For example, DWR is looking for a regional flood control agency to partner with on small community projects such as protecting the Franklin-Beachwood area. The MIRWMP JPA is recognized as a fitting agency in the absence of a flood control district in Merced County.

Staff for each of the agencies who will be partners in the new JPA have worked cooperatively to draft a JPA document, which is designed to be flexible, efficient and provides a vehicle to represent disciplines such as flood control, surface and groundwater monitoring etc. The draft was vetted by staff and legal counsels representing the proposed Policy Committee.

Aside from the City of Merced, each of the governing boards who expect to become partners in the new JPA will consider authorizing execution of the document. Staff recommends adopting **Resolution 2016-14** approving the JPA document entitled Merced Integrated Regional Water Management Authority Joint Powers Agreement (attached).

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed at this time. Staff time may be required in the future and cost sharing on projects as they arise in the future.

### **ATTACHMENTS**

1. Joint Powers Agreement
2. Resolution 2016-14
3. Resolution 2013-48
4. MIRWMP Chapter 3 - Governance
5. MIRWMP Appendix F
6. Exhibit F

**Merced Integrated Regional Water Management Authority  
Joint Powers Agreement**

THIS JOINT POWERS AGREEMENT (“Agreement”) is dated and made effective as of \_\_\_\_\_, 2016 (the “Effective Date”) pursuant to the Joint Exercise of Powers Act (Government Code Sections 6500, *et seq.*) by and between the public agencies listed on the attached Exhibit “A”, in order to form the Merced Integrated Regional Water Management Authority (MIRWMA)

WHEREAS, it is in the interests of the Members, and the region served by the Members, that the water resources the Members share in common are responsibly managed, protected, and conserved to the extent feasible; and,

WHEREAS, the Members desire to enter into a Joint Powers Agreement (JPA) forming the MIRWMA to provide governance and implement components of the Integrated Regional Water Management Planning Act of 2002, Division 6, Part 2.2 of the California Water Code, as it may be amended from time to time.

WHEREAS, one of the purposes of the MIRWMA is to coordinate and collaborate on supporting goals and objectives outlined in the adopted 2013 Merced Integrated Regional Water Management Plan, and any subsequent version of the plan to optimize available regional water resources.

WHEREAS, each of the members to this Agreement has various oversight and active roles relative to water resources within the Plan Area described below, including, but not limited to, drought preparedness, water use and reuse, climate change, flood management, protection of surface and groundwater quality, water supply and reliability.

WHEREAS, the members agree that the creation of and participation in the MIRWMA does not create any right or authority over a Members’ own internal matters or resources, including, but not limited to, each Member’s right to exercise its sole discretion in managing its surface water supplies, groundwater supplies, facilities, operations, water management, or water supply projects.

WHEREAS, MIRWMA’s role in groundwater management will be limited to technical support and the development of implementing projects per the adopted plan as it may be amended from time to time, in addition to activities currently undertaken by the Merced Area Groundwater Pool Interests which functions under AB3030 and SB1938.

WHEREAS, the members to this Agreement agree that the MIRWMA is not intended to be and does not create a Groundwater Sustainability Agency (GSA), as referenced in the three-bill package, including SB 1168 (Pavley), SB 1319 (Pavley), and AB 1739 (Dickinson), signed into law on September 16, 2014, or any other current or future regulatory entity.

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions hereinafter set forth, it is agreed by and among the members hereto as follows:

In all respects as set forth in the foundational and material facts set forth in the recitals, inclusive, above, which are hereby incorporated by reference and able to be relied upon for all purposes.

## **Article I: Definitions**

### **Section 1.01 – Definitions.**

As used in this Agreement, unless the context requires otherwise, the meaning of the terms hereinafter set forth shall be as follows:

(a) “Agency” shall mean a city, county, or an entity eligible to hold an AB 3030 plan, compliant with SB 1938, and participate as a member of a Joint Powers Authority pursuant to Government Code Section 6500, *et seq.* of the Government Code.

(b) “Authority” shall mean the MIRWMA, being the separate entity created by the Members through this Agreement pursuant to the provisions of Government Code sections 6500, *et seq.*

(c) “Board of Directors” or “Board” shall mean the governing body of the Authority as established by Section 3.01 of this Agreement.

(d) “Committee” shall mean any committee established pursuant to Section 3.03 of this Agreement.

(e) “Fiscal Year” shall mean that period of 12 months established as the Fiscal Year of the Authority pursuant to Section 4.01 of this Agreement.

(f) “Days” shall mean calendar days.

(g) “Members” shall mean those members of the Authority more particularly identified on Exhibit A, and any members that shall hereafter become members in accordance with the terms and provisions of this Agreement. All members shall also be an Agency. Upon the admission of any new member, Exhibit A shall be immediately amended and recirculated to each of the members to reflect the updated membership. Agencies requesting membership after the Effective Date of this Agreement must be voted in by the members and may then be designated members.

(h) "Members" or "party" shall mean the members that have executed this Agreement and any subsequent members that have joined in accordance with this Agreement.

(i) "Special Activities" shall mean activities undertaken by the Authority, but are undertaken by fewer than all the members, in the name of the Authority pursuant to Section 3.07.

(j) "Plan Area" shall mean those lands located within the Member boundaries that are within the Merced Sub-Basin, (Bulletin 118 Basin 5-22.04) and are depicted in Exhibit B and in subsequent amendments/modifications.

## **Article II: Creation of Authority**

### **Section 2.01 – Creation.**

The members, pursuant to their joint exercise of powers under the provisions of Government Code sections 6500 *et seq.*, hereby create a public entity to be known as the Merced Integrated Regional Water Management Authority.

### **Section 2.02 – Term.**

This Agreement shall become effective without further action by any party, upon execution by all of the members hereto. This Agreement shall remain in effect until terminated by the Members consistent with the provisions of Section 6.03. Unless it is terminated, this Agreement shall remain in effect and be binding upon the members hereto and upon all subsequent members joined herein for such a period as the Authority engages in any activities under this Agreement. Except as specifically provided in this Agreement, the foregoing provision shall not apply to any party that withdraws from, or is terminated from, its participation in the Authority in accordance with this Agreement.

Any monies collected that have not been expended as of the date of this Agreement shall be credited towards each Member's financial commitment as identified herein.

### **Section 2.03 – Purpose.**

The purpose of this Agreement is to provide for the joint exercise of powers common to each of the Members, through the Authority, to cooperatively carry out the purposes in the adopted Merced Integrated Regional Water Management Plan within the Plan Area in a manner that does not additionally limit a respective Members' rights and authorities over their own water supply matters, including, but not limited to, a Member's surface water supplies, groundwater supplies, facilities, operations, water management, and water supply projects. The Authority is formed solely to coordinate and carry out such activities related to integrated regional water management. Activities

unrelated to such activities concerning integrated regional water management shall not be undertaken by the Authority.

### **Section 2.04 – Powers.**

(a) The Authority shall have the power to take any action to carry out the purposes of this Agreement. The Authority is authorized, in its own name, to do all acts necessary for the exercise of said powers provided that said acts are duly adopted by the Board of Directors and are consistent with this Agreement.

(b) Notwithstanding anything in this Agreement, the Authority shall not have the power to control or limit a Member's rights and authorities over its internal matters or resources, including but not limited to surface water supplies, ground water supplies, facilities, operations, water management, or water supply projects. Likewise, the Authority shall have no power to interfere with a Member's rights, use, or management of a Member's water or water supply.

(c) The Authority shall be prohibited from filing suit against a California Environmental Quality Act ("CEQA") or National Environmental Policy Act ("NEPA") review prepared by any Member, unless required by law to do so. The Authority shall be prohibited from commenting on any CEQA and NEPA document from any Member.

(d) The Authority shall have no power to regulate land use or any regulatory power accorded to the Members.

## **Article III: Internal Organization**

### **Section 3.01 – Governing Body.**

Except to the extent certain powers are delegated to a Committee pursuant to Section 3.03, the Authority shall be governed by a Board of Directors, that is hereby established and that shall be initially composed of one representative from each of the Members. Without amending this Agreement, the Board of Directors composition may be altered from time to time to reflect the termination and/or admission of any new Members. The term of the Board of Directors shall be for two (2) years.

Each Member shall select a representative, a first alternate, and a second alternate from its governing body, or an appointment from the governing body to serve as their Board Director.

The role of each alternate Director shall be to assume the duties of the Director appointed by his/her Member entity in case of the absence or unavailability of such Director, including, without limitation, such Director's duties as a member of any

Committee established pursuant to Section 3.03. The Directors and alternates so named shall continue to serve until their respective successors are appointed.

**Section 3.02. – Officers.**

The Board shall select a Chair from among the Board of Directors who shall be the presiding officer of the Board meetings. The Board shall select a Vice Chair from among the Board of Directors who shall serve as the presiding officer in the absence of the Chair. The Board shall also select a Secretary, who need not be a member of the Board of Directors. The Board shall also select a Treasurer, who need not be a member of the Board of Directors. The terms of such Officers shall be established by the Board of Directors annually with each Officer being able to serve a maximum of two consecutive terms. The Board may, with cause, alter the appointments, from time to time, at its sole discretion. 'Cause' for purposes of this Agreement means the conviction of a crime of moral turpitude or violation of a conflict of interest law as set forth in either the California Political Reform Act (Government Code section 87100, et. seq.) or Government Code section 1090, the failure of a Board of Director to participate in more than 3 consecutive meetings of the Authority, or such other act or omission of a Board of Director that the remaining Directors determine by unanimous vote is unbecoming of the position and reflects poorly upon the Authority such that his or her removal from the Board is appropriate.

**Section 3.03 – Committees.**

There shall be established Committees as the Board of Directors shall determine from time to time. Each such Committee shall be comprised of less than a quorum of representatives of Members, shall exist for the term specified in the action establishing the Committee, shall meet as directed by the Board of Directors, and shall make recommendations to the Board of Directors on the activity(ies) of the Authority for which the Committee was established. When the Board of Directors establishes a Committee, each Member shall identify its representative on a Committee, and may alter its appointment, from time to time, at its sole discretion.

**Section 3.04 – Seal; Bylaws.**

The Board may (but need not) adopt an official seal for the Authority and adopt such bylaws as it may deem necessary to regulate the affairs of the Authority in accordance with this Agreement. The bylaws may be amended from time to time by the Board of Directors as it may deem necessary and may address any matter, including, but not limited to financing, personnel and management of the Authority or any committee therein.

**Section 3.05 – Voting; Quorum.**

(a) A quorum for the transaction of Authority Business shall be consistent with Exhibit C. Each Board of Director (or in his/her absence alternate Director) shall be entitled to one vote. Any Board member abstaining from a vote shall be counted for

purposes of determining the existence of a quorum, but shall not be deemed to be voting.

(b) Any action by the Board of Directors shall require a vote consistent with Exhibit C.

**Section 3.06 – Meetings.**

Meetings of the Board of Directors and Committees (to the extent applicable) shall be conducted in accordance with the Ralph M. Brown Act, California Government Code Sections 54950, *et seq.*, as amended from time to time.

**Section 3.07 – Special Activities.**

With a prior approval of the Board of Directors granted at a noticed public meeting, Members may undertake Special Activities in the name of the Authority. Prior to undertaking a Special Activity, the Members electing to participate in the Special Activity shall enter into an activity agreement. Such activity agreement shall provide that (i) no Special Activity undertaken pursuant to such agreement shall conflict with the terms of this Agreement and (ii) the Members to the activity agreement shall indemnify, defend and hold the Authority, and the Authority's other Members, employees, and agents harmless from and against any liabilities, costs or expenses of any kind arising as a result of the Special Activity described in the activity agreement. All assets, rights, benefits, debts, liabilities and obligations attributable to a Special Activity shall be assets, rights, benefits debts, liabilities and obligations solely of the Members that have entered into the activity agreement for that Special Activity, in accordance with the terms of the activity agreement, and shall not be the assets, rights, benefits, debts, liabilities and obligations of those Members that have not executed the activity agreement. Members not electing to participate in the Special Activity shall have no rights, benefits, debts, liabilities or obligations attributable to such Special Activity.

**Article IV: Financial Provisions**

**Section 4.01 – Fiscal Year.**

The Fiscal Year of the Authority shall be from July 1 through June 30 of each year.

**Section 4.02 – Funds Accounts.**

(a) The Treasurer shall serve as the Fiscal Agent for the Authority unless otherwise directed by the Board. The Fiscal Agent shall be responsible for all money of the Authority from whatever source.

(b) All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements at least quarterly

during the Fiscal Year. The books and records of the Authority shall be open to inspection by the Members during normal business hours.

(c) The Authority shall contract with a certified public accountant to make an audit or review of the accounts and records of the Authority, which shall be conducted in compliance with Section 6505 of the California Government Code. The Fiscal Agent shall have the right to reject any proposed certified public accountant. All costs associated with this Audit shall be the full responsibility of the Authority.

#### **Section 4.03 – Property.**

The Board of Directors shall from time to time designate the officers and persons, in addition to those specified in Section 4.02 above, who shall have charge of, handle, or have access to any property of the Authority.

#### **Section 4.04 – Budget.**

The Board of Directors shall approve a budget at its initial meeting and before the beginning of each fiscal year thereafter. Funding for the budget shall be provided in equal proportion by each Party, except as to specific projects or litigation matters in which a Member has not elected to participate. Each Member's Governing Body shall authorize its funding contribution before the beginning of the fiscal year.

- (a) Each of the Members may, but are not required to contribute additional money, office space, furnishings, equipment, supplies or services as their respective Governing Boards may deem appropriate.
- (b) Funds may also be derived through State and Federal grants, or other available sources. The Authority may also apply for available State and Federal funds and shall make new and additional applications from time to time as appropriate. The Authority may also establish and collect various fees, leases, or rents as may be authorized by law under the common powers of all Members.
- (c) The Authority may accept and expend funds from public or private sources subject to the legal restrictions which are set forth in the common powers of the Members for the purpose of carrying out its powers, duties, responsibilities, and obligations specified in this Agreement.
- (d) The Authority shall be limited to the making of expenditures or incurring of liabilities in the amount of the appropriations allowed by the budget as adopted and revised by the Authority.
- (e) No Member shall be bound, financially or otherwise, by any obligation, contract, or activity undertaken by the Authority unless and except to the

extent agreed upon in writing by the Member, except that each Member shall be obligated to fund its then current annual share of the general basic budget of the Authority, provided such budgets are otherwise approved as provided herein. Funding of other matters shall be through Special Activity agreements, or as otherwise agreed to by the Members in writing. The Members expressly intend that the Authority be solely liable for all debts, awards, judgments, penalties, claims, or other demands for money, action or inaction, regardless of how denominated, characterized, or accrued.

## **Article V: Management**

### **Section 5.01 – Management.**

In addition to, or in lieu of, hiring employees, the Authority may engage one or more members to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors. A party so engaged may, but need not, be a Member. Any party so engaged shall have such responsibilities as set forth in the contract for such party's services. All benefits, wages, salary, retirement, taxes or other obligation, economic or otherwise, shall be the sole obligation of the Authority.

## **Article VI: Relationship of Authority And Its Members**

### **Section 6.01 – Separate Entity; Property.**

In accordance with California Government Code Sections 6506 and 6507, and in furtherance of the terms of this Agreement, the Authority shall be a public entity separate and apart from the members to this Agreement. Unless otherwise agreed herein, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the Member entities. The Authority shall own and hold title to all funds, property, and works acquired by it during the term of this Agreement.

### **Section 6.02 – Admission, Withdrawal and Termination of Members.**

(a) Additional Agencies may join in this Agreement and become Members upon the approval of the Board of Directors, subject to terms and conditions as may be established by the Board of Directors. Prior to being admitted as a new Member, an entity shall execute an agreement to be bound by the terms of this Agreement and any amendments or supplements hereto, as if such entity had been an original signatory hereto.

Any Member may withdraw from this Agreement by giving written notice of its election to the Chairman. The termination is effective on the 30th day following the notice of withdrawal, the "Effective Date of Withdrawal." A Member may not withdraw from this Agreement if said Member is actively participating in an Authority activity or special activity agreement that otherwise requires the Member's continued participation. In such

event, the Member may withdraw from this Agreement only upon the unanimous consent of the Board of Directors, which may be conditioned as appropriate.

(b) Upon withdrawal, the Member shall not be relieved of all obligations for assessments to pay costs or liabilities of the Authority that were incurred prior to the Effective Date of Withdrawal, and the same shall survive until satisfied in full.

(c) In the event one Member refuses further participation under the Agreement, or is in breach of its obligations under this Agreement, such Member may be terminated by a vote of the Board of Directors consistent with Exhibit C, and upon termination it shall no longer be a member of the Authority, but will be subject to surviving duties and obligations.

(d) Upon the termination, of a Member's participation under Section 6.02(d), such former Member shall have no further obligations to the Authority, except that such Member shall not be relieved of any obligations for assessments to pay costs, obligations or liabilities of the Authority, that were incurred prior to the vote terminating that Member's participation under Section 6.02(d) such as obligations arising out of a special activity agreement.

(e) Any provision of this Agreement which imposes an obligation on any Member after the termination of this Agreement shall survive such termination.

**Section 6.03 – Termination and Disposition of Property Upon Termination or Determination By Board of Directors of Surplus.**

(a) This Agreement may be terminated upon the vote of 2/3 of the Members.

(b) Upon termination of this Agreement, or upon determination by the Board of Directors that any surplus money is on hand, such surplus money shall be returned to the Members of the Authority that contributed such monies in proportion to their contributions. The distribution of the said surplus shall be proportionate to the prior documented contributions of the Members. The Authority shall prepare an accounting that describes the contributions recognized as being subject to distribution.

(c) The Board of Directors shall first offer any surplus properties, works, rights, and interests of the Authority for sale to the Member entities, and the sale shall be based on the highest bid. If no such sale is consummated, then the Board of Directors shall offer the surplus properties, works, rights, and interests of the Authority for sale in accordance with applicable law to any governmental agency, private entity or persons for good adequate consideration.

Each Member shall have the right, but not the duty, to participate in the defense of any action that may result in liability under this section. If a Member that is a party in an action that may cause liability under this section does not give notice to the other Members within five (5) business days of the service of the complaint that may result in

liability, then the other Members will not be subject to contribution under this section unless each individually chooses to accept such liability, in full or part.

**Section 6.04 – Liability for Debts.**

The Members do not hereby intend to be obligated, either jointly or severally, for the debts, liabilities, or obligations of the Authority, except as may be specifically provided for in California Government Code Section 895.2 as amended or supplemented. Provided, however if any Member(s) of the Authority is, under such applicable law, held liable for the acts or omissions of the Authority caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement, such Member shall be entitled to contribution from the other Members so that after said contributions each Member shall bear an equal share of such liability.

**Article VII: Miscellaneous Provisions**

**Section 7.01 – Amendment.**

This Agreement may be amended from time to time in performance with Exhibit C. To provide non-concurring Members an opportunity to withdraw from the Authority as provided herein, an amendment shall be binding on all Members sixty (60) days after the required concurrence has been obtained.

**Section 7.02 – Severability and Validity of Agreement.**

Should the participation of any party to this Agreement, or any part, term, or provision of this Agreement, be determined in a court of law to be illegal, in excess of that party's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each party hereby agrees it would have entered into this Agreement upon the remaining terms and provisions.

**Section 7.03 – Assignment.**

Except as otherwise provided in this Agreement, the rights and duties of the members to this Agreement may not be assigned or delegated without the advance written consent of the Authority, and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Authority then in effect. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the members hereto. This section does not prohibit a party from entering into an independent agreement with another agency regarding the financing of that party's contributions to the Authority or the disposition of process that party receives under this

Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the members under this Agreement.

#### **Section 7.04 – Notices under Agreement.**

Notices authorized or required to be given pursuant to this Agreement shall be in writing, and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the members hereto on Exhibit A of this Agreement, or to such other changed addresses communicated to the Authority and the Member entities in writing, and to such other entities that become Members.

#### **Section 7.05 - Insurance.**

The Authority shall procure, carry and maintain commercial general liability insurance to include coverage for all operations of the Authority under this Agreement, including, but not limited to the following: (a) premises, operations and mobile equipment liability; (b) completed operations and products liability; (c) blanket contractual liability; (d) explosion, collapse, and underground hazards; (e) personal injury liability; and (f) protective liability for impacts on the Members' operations. The Authority shall provide the Commercial General Liability Insurance with limits not less than the following: (i) \$3,000,000.00 each occurrence, or for a combined occurrence of bodily injury and property damage; (ii) \$1,000,000.00 completed operations and products liability; and (iii) \$1,000,000.00 personal and advertising injury. The Authority shall provide the policy with an endorsement for a general aggregate limit per project.

#### **Section 7.06 – Defense and Indemnity.**

The Members expressly intend that the Authority be solely liable for all debts, awards, judgments, penalties, claims, or other demands for money, action or inaction, regardless of how denominated, characterized, or accrued. In addition, all personnel, labor, benefits, contract liability, and tort liability shall be the sole liability of the Authority and not of one or more Members.

Except for Special Activities as provided in Section 3.07 and disputes arising Section 6.03, the Authority shall assume the defense of, and indemnify, and hold harmless each Party to this Agreement and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the Authority undertaken pursuant to this Agreement, except to the extent the liability arises from the gross negligence or willful misconduct of the members seeking indemnity.

#### **Section 7.07 – Dispute Resolution.**

In the event there are disputes and/or controversies relating to the interpretation, construction, performance, termination, breach of, or withdrawal from this Agreement,

the members involved shall in good faith meet and confer amongst themselves in an attempt to informally resolve such matter(s). If the members are unsuccessful in resolving such matter(s) through an informal meeting process within sixty (60) days of the accrual of the dispute, they shall attempt to resolve such matter(s) through mediation utilizing a commercially recognized alternative dispute resolution provider. If the members are unable to resolve such matter(s) through mediation within ninety (90) days of having contacted the mediator, they may attempt to settle such issue(s) through binding arbitration under the rules and regulations of the American Arbitration Association. Any party requesting arbitration under this Agreement must make a request on the other members by registered or certified mail, with a copy of such request provided to the American Arbitration Association.

The cost of the Arbitrator shall be deposited with the Arbitrator, and shall be borne equally by the members agreeing to arbitration, based on the Arbitrator's estimate, and shall be paid either in advance or as agreed prior to the date set for Arbitration. Each party shall bear their own attorneys' fees and costs.

All costs related to undertaking the rights set forth in this section shall be borne equally by the members involved, and shall be paid either in advance or as agreed. If a party does not pay as required, the non-paying party shall lose its rights under this section.

#### **Section 7.08 – Execution In Parts Or Counterparts.**

This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the members hereto. Facsimile or electronic signatures shall be binding. The Authority shall hold all the executed versions of this Agreement and make them available as requested. The Authority shall maintain all public records as required by law.

IN WITNESS WHEREOF, the members hereto, pursuant to resolutions duly and regularly adopted by their respective board of directors or governing board, have caused their names to be affixed by their proper and respective officers as of the day and year first above written.

Name of Member: County of Merced

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Counsel Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Member: City of Atwater

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Counsel Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Member: City of Livingston

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Counsel Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Member: City of Merced

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: *Kenn Rozell*  
[Signature]

Date: *1/11/16*

Counsel Name: *KENNETH ROZELL*  
Title: *Senior Deputy City Attorney*

Name of Member: Merced Irrigation District

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Counsel Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Name of Member: Stevinson Water District

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
[Signature]

Date: \_\_\_\_\_

Counsel Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Exhibit A**

**Members**

County of Merced

City of Atwater

City of Livingston

City of Merced

Merced Irrigation District

Stevinson Water District



**Exhibit C**  
**Voting Matrix**

	<b>Action</b>	<b>Voting Requirement</b>
1	Meeting Quorum	Majority
2	Acceptance of Members	2/3
3	Termination of Members	2/3
4	Legal authorities provided to JPA	Unanimous
5	Fiscal Actions – Budget Approvals	2/3
6	Budget Expenditures	Majority
7	Joint Powers Agreement Amendments	2/3
8	Termination of Agreement	2/3
9		
10		

**RESOLUTION NO. 2016-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AUTHORIZING THE EXECUTION OF A JOINT  
POWERS AGREEMENT WITH THE COUNTY OF  
MERCED, CITY OF ATWATER, CITY OF  
LIVINGSTON, MERCED IRRIGATION DISTRICT  
AND STEVINSON WATER DISTRICT  
ESTABLISHING THE MERCED INTEGRATED  
REGIONAL WATER MANAGEMENT  
AUTHORITY (MIRWMA)**

WHEREAS, the City of Merced (“City”) has adopted the Merced Integrated Regional Water Management Plan; and

WHEREAS, in order to coordinate and collaborate on supporting goals and objectives outlined in the adopted 2013 Merced Integrated Regional Water Management Plan, the affected public agencies wish to enter into a joint powers authority;

WHEREAS, to that end the City wishes at this time to approve the execution of a Joint Exercise of Powers Agreement establishing the Merced Integrated Regional Water Management Authority (MIRWMA) as a joint powers authority under Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code; and,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council hereby approves the Joint Powers Agreement establishing the Merced Integrated Regional Water Management Authority (MIRWMA) and authorizes the City Manager to execute all necessary documents.

SECTION 2. The City Manager and Assistant City Clerk are authorized to sign and attest all documents necessary on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2016, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Ken Boyd 3/9/16  
City Attorney Date

**RESOLUTION NO. 2013- 48**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
ADOPTING THE MERCED INTEGRATED  
REGIONAL WATER MANAGEMENT PLAN**

WHEREAS, The State electorate approved multiple statewide bond measures since 2000 to fund Integrated Regional Water Management (IRWM) Planning and Implementation for water resource projects and programs; and,

WHEREAS, The benefits of IRWM Plans for water management activities include improved effectiveness, efficiencies, collaboration and responsiveness across local districts and agencies, stakeholders, and community participants; and,

WHEREAS, The Merced IRWM Region (Merced Region) comprised of the hydrologic areas that include the entire Merced Groundwater Basin area in addition to the watershed area north of and including the Merced River and contiguous with the Merced Groundwater basin; and,

WHEREAS, A partnership between at least three agencies in the Merced Region having water or land use authority was collaboratively formed for IRWM planning as the Merced Regional Water Management Group (RWMG) between the Merced Irrigation District (MID) as the lead agency, the County of Merced (County) and the City of Merced (City) as grant participants and contributors; and,

WHEREAS, The Merced Region designation and RWMG grant application for IRWM Planning funded by the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84) was approved by the State Department of Water Resources (DWR) and affirmed by the Merced Area Groundwater Pool Interests (MAGPI); and,

WHEREAS, Regional coordination and integrated water management through local districts, agencies, stakeholders, and disadvantaged community-based processes for the identification of needs and priorities, basic data and information collection, and conducting planning studies that identify potential projects, programs and policies for possible future actions can help the Merced Region meet long-term needs for water supply, water quality, flood management, ecosystem protection and enhancement , and recreation; and,

WHEREAS, The RWMG advertised and invited a widespread comprehensive stakeholder and community-based citizenry to participate on the Regional Advisory Committee (RAC) for the Merced Region that was duly appointed by the MID Board of Directors; and,

WHEREAS, The RAC met over 14 times over a 14 month period to advise development of the IRWMP; and,

WHEREAS, The RWMG held at least 6 public meetings throughout the region and 8 technical workshops for public comment and input in the development of the IRWMP; and,

WHEREAS, The IRWMP was revised following the comment period to address comments received and was subsequently considered final as by report dated August, 2013; and,

WHEREAS, The RAC by resolution No. 2013-01 dated June 25, 2013 asked MID, the County and City to adopt the Merced IRWM Plan; and,

WHEREAS, As a condition of funding the DWR IRWM Planning Grant requires MID, the County and City as the grant participants to adopt the Merced IRWMP; and,

WHEREAS, IRWM Plan adoption is required for future implementation grant funding by the state and recommended for the formation of a future Merced Region governance structure; and,

WHEREAS, The City Council held a public workshop on September 3, 2013 and all those interested in the matter were provided opportunity to speak or provide written or oral comments regarding the presentation and review of the draft Merced Integrated Regional Water Management Plan; and,

WHEREAS, The City Council held a noticed public hearing on November 4, 2013 at which time all those interested in the matter were provided opportunity to speak or to provide written or oral testimony regarding the final Merced Integrated Regional Water Management Plan.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. Based upon the evidence and testimony in the record at the City Council public hearing, the City Council, exercising its independent judgment and review, hereby approves the Merced Integrated Regional Water Management Plan dated August 30, 2013.

SECTION 2. By approving the Merced Integrated Regional Water Management Plan, the City Council directs the City Manager to assist in obtaining implementation grant funding opportunities and carrying out the implementation intentions, goals and guidelines presented in the Merced Integrated Regional Water Management Plan within the financial constraints and priorities of the City to further water resource projects and programs for the benefit of the City and the Merced Region.

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PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 4th day of November 2013, by the following vote:

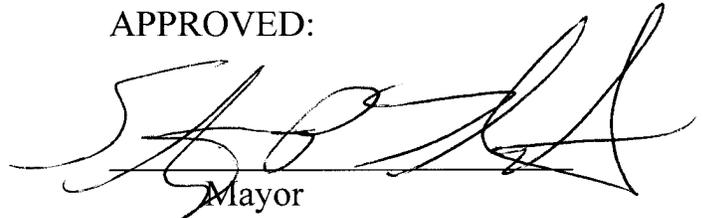
AYES: Council Members: BLAKE, MURPHY, RAWLING, LOR, PEDROZO, THURSTON

NOES: Council Members: NONE

ABSENT: Council Members: DOSSETTI

ABSTAIN: Council Members: NONE

APPROVED:

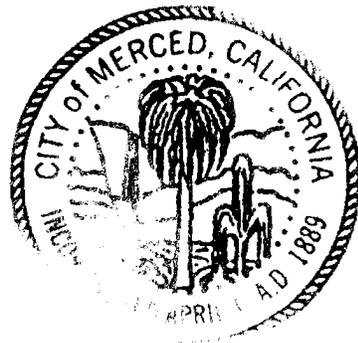


Mayor

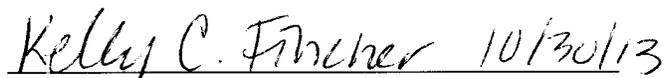
ATTEST:  
JOHN M. BRAMBLE, CITY CLERK

BY:   
Assistant/Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:

  
City Attorney      Date



This chapter addresses the Integrated Regional Water Management (IRWM) Governance Plan Standard, which requires IRWM Plans to:

- ✓ Document a governance structure that ensures the IRWM Plan will be updated and implemented beyond existing State grant programs
- ✓ Describe the RWMG responsible for development and implementation of the Plan and explain how the RWMG meets the California Water Code definition
- ✓ Identify the RWMG and individual project proponents who adopted the Plan
- ✓ Describe how the chosen governance addresses public involvement, effective decision making, balanced access and opportunity for participation, effective communication, long-term implementation, coordination with neighboring IRWM regions and State and federal agencies, collaboration and process for updating the Plan.

The California Water Code (CWC) defines a Regional Water Management Group as: “a group in which three or more local agencies, at least two of which have statutory authority over water supply or water management, as well as other persons who may be necessary for the development and implementation of a plan that meets the requirements of CWC §10540 and §10541, participate by means of a joint powers agreement, Memorandum of Understanding (MOU), or other written agreement, as appropriate, that is approved by the governing bodies of those local agencies.”

The Merced IRWM planning process was initiated in 2008 by a RWMG consisting of MAGPI - a consortium of municipal and agricultural water purveyors and other interest groups that includes most of the agencies with water supply, water quality and water management authority in the Region. MAGPI has been meeting since 1997 to develop technical data and management strategies to improve the health of the Region’s groundwater basin. In 2008, MAGPI established a subcommittee to encourage cooperative planning among additional aspects of water resources management beyond groundwater management and to lay the groundwork for development of the MIRWMP. This subcommittee completed the IRWM program RAP application in April 2009, which resulted in the approval of the MIRWMP regional boundary. In February 2012, MAGPI secured a DWR IRWM Planning Grant to develop the first Merced IRWM Plan.

In 2012, MAGPI transferred responsibility for the Region’s IRWM planning to an interim RWMG, comprised of MID, Merced County, and the City of Merced, responsible for overseeing the development of the MIRWMP. In coordination with a 39-member interim RAC, the interim RWMG developed this MIRWMP, which includes a long-term governance structure for continued planning and implementation of the plan.

### 3.1 Long-Term Governance Structure

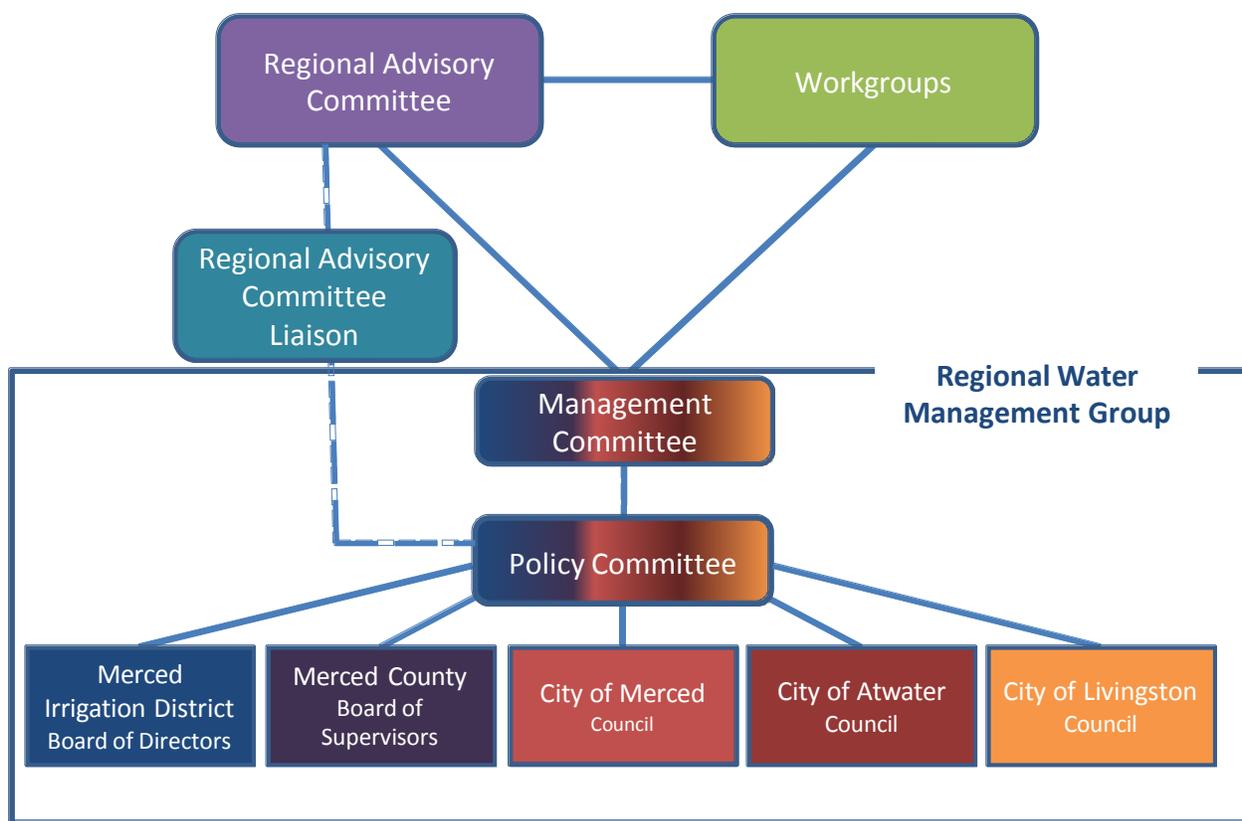
The interim RAC identified a preferred long-term governance structure for the Merced IRWM planning process, to be implemented following adoption of the MIRWMP. This recommended long-term governance structure, illustrated in Figure 3-1, consists of the following entities.



- A long-term RAC that represents the broad water-related interests of the Region and reviews regional water management issues and needs, plans, projects and work products developed through the ongoing planning process
- Workgroups formed on an as-needed basis to address specific IRWM planning needs at the request of the RAC
- A long-term RWMG, including MID, Merced County, the City of Merced, the City of Livingston, and the City of Atwater, that is responsible for overall direction, funding and approval for the IRWM planning process; the governing bodies of the RWMG member agencies collectively form the governing body of the RWMG, and elected officials and staff members from each of the RWMG member agencies coordinate through the committees of the RWMG
- A Management Committee, comprised of staff from each RWMG member agency, responsible for managing the day-to-day business of the IRWM planning program
- A Policy Committee, comprised of one official from each RWMG member agency, tasked with advising the RWMG governing bodies on IRWM-related business and policy based on recommendations of the RAC and Management Committee

Each of these entities is described further in the following sections.

**Figure 3-1: Merced IRWM Recommended Governance Structure**



### 3.1.1 Regional Water Management Group

The RWMG administers and manages the IRWM planning process with the RAC in an advisory role. The RWMG is described in this section along with an explanation of its relationship with the RAC. The RAC is described in greater detail in Section 3.2.

The recommended long-term governance structure includes a RWMG that includes MID, the City of Merced, the County of Merced, the City of Atwater, and the City of Livingston. Collectively, these agencies have jurisdiction over all of the incorporated and unincorporated areas of the Region and associated interests of both urban and agricultural communities in the Region. All five of these entities have statutory authority over water supply and management.

Water management responsibilities of each of the proposed RWMG member agencies are described below:

- Merced Irrigation District – MID manages various water facilities in eastern Merced County. The district was formed in 1919 pursuant to the Irrigation District Law contained in California Water Code §20500 et. seq and is governed by a five-member, elected Board of Directors. Each director is elected from the district in which he or she resides. MID’s water management responsibilities include water supply, storm drainage, flood management on the Merced River, environmental uses of water and recreational uses of water. MID is also negotiating a recycled water exchange proposal with the City of Merced.
- Merced County – As described in Chapter 2 Region Description, the Merced Region is comprised of the northeastern portion of Merced County. Merced County is a general-law county that operates under the provisions of California State law and is governed by a five-member, elected Board of Supervisors. Each supervisor is elected from the district in which he or she resides. The County’s water management responsibilities include storm drainage, flood management, and recreational uses of water.
- City of Merced – The City of Merced is the largest of the three incorporated cities in the Region, serving a population of approximately 79,000 people. Incorporated in 1889, Merced is a charter city that operates under the Council-Manager form of government in which the elected City Council is responsible for legislation. The Merced City Council consists of a mayor and six City Council members who are elected at large. The City of Merced’s water management responsibilities include water supply, wastewater collection and treatment, storm drainage, flood management, environmental uses of water and recycled water.
- City of Atwater – The City of Atwater is the second largest of the three incorporated cities in the Region, serving a population of approximately 28,000 people. Incorporated August 16, 1922, Atwater is a general-law city that operates under California State law and is governed by an elected City Council, which consists of a mayor and four council members. The mayor is directly elected by the voters and the council members are elected at large. The City of Atwater’s water management responsibilities include water supply, wastewater collection and treatment, storm drainage, flood management and recycled water.
- City of Livingston – The City of Livingston is the third largest of the incorporated cities in the Region, serving a population of approximately 13,000 people. Incorporated September 11, 1922, Livingston is a general-law city that is governed by an elected City Council, consisting of a mayor and four council members. The City of Livingston’s water management responsibilities include water supply, wastewater collection and treatment and storm drainage.



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The organization of the RWMG may evolve based on advisement by the long-term RAC and discussion among the proposed RWMG member agencies. However, the RWMG member agencies are envisioned to be equal partners in management of the MIRWMP and will be responsible for managing the Merced IRWM program indefinitely or until a revised governance structure is developed and adopted. The RWMG’s commitment to the implementation of this MIRWMP will be formalized through the adoption of the MIRWMP by each of the RWMG member agencies. The RWMG will organize itself either through execution of an MOU to manage the ongoing IRWM planning process, or through development of a Joint Powers Authority (JPA). The preferred organization will be identified by the RWMG member

agencies on implementation of the long-term governance structure (following Plan adoption).

The East Merced Resource Conservation District (EMRCD) has also expressed interest in becoming a member of the RWMG in order to more fully represent landowner interests and natural resources management. The interim RAC recommended that the RWMG should be initially limited to the five-member group of MID, the City of Merced, the County of Merced, the City of Atwater, and the City of Livingston, with the 30-member RAC serving as the working arm of the MIRWMP and providing the balance between the diverse interests of the Region. However, recognizing the need to have a process to allow for modifications to RWMG membership in the future, the long-term RAC will be responsible for developing a process by which additional agencies can apply and be considered for membership and a process to follow should existing members choose to leave the RWMG. It was also recommended that the long-term RAC consider recommending the addition of the EMRCD to the RWMG.

### 3.1.2 Management Committee

During development of the MIRWMP, one staff member from each of the interim RWMG member agencies participated on a Work Plan Management Committee. As its name suggests, the WPMC was responsible for establishing and implementing a work plan for completing the MIRWMP and managing day-to-day IRWM program business. Throughout MIRWMP development, the WPMC coordinated via biweekly conference calls and occasional in-person meetings. The standing biweekly conference calls provided a forum for WPMC members to discuss IRWM business (e.g. invoicing, progress of technical studies being completed by consultants, on-going public outreach efforts, etc.) and to coordinate preparation of monthly RAC meetings and periodic public workshops, which were integral to the IRWM planning process.

Following adoption of the MIRWMP, the WPMC will be replaced by a Management Committee. Similar to the WPMC, the Management Committee will be comprised of staff from each of the RWMG member agencies, which is proposed to include MID, Merced County and the Cities of Merced, Atwater and Livingston.

The Management Committee will serve as a bridge between the management and planning sides of the IRWM program. The Management Committee will meet approximately monthly, or as needed, to discuss the status of the IRWM program, coordinate day-to-day business needs, organize meetings of the Policy Committee and address coordination needs for the quarterly RAC meetings.



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Management Committee members, while responsible for attending and supporting Policy Committee and RAC meetings, will not be members of either of these committees. The role of the Management Committee members is to facilitate meetings and to provide their respective governing bodies with the information and recommendations needed to make informed program decisions. Management Committee members will support RAC meetings by providing information to support RAC decision-making and share RWMG member agency perspectives. As nonvoting participants at RAC meetings, the Management Committee members will be in a position to provide suggestions and offer feedback related to the feasibility of RAC recommendations; however, recommendations of the Management Committee remain independent from recommendations of the RAC.

### 3.1.3 Policy Committee

During MIRWMP development, the interim RAC noted that improved coordination among the elected representatives of the RWMG was needed. Furthermore, the interim RAC indicated a need for direct connection to elected officials as opposed to relying on the Management Committee to communicate the perspective of the RAC to the RWMG governing bodies. The outcome of the interim RAC's recommendation was the formation of a Policy Committee.

The recommended structure for the Policy Committee includes one elected official from each RWMG member agency. Each RWMG member agency will have sole discretion to appoint its own representative

to the Policy Committee; however, the intent is for each Policy Committee member to be an elected member of the RWMG agency's governing board or council. The Merced County Board of Supervisors representative on the Policy Committee should be a Supervisor that represents a community within the Region (Districts 1 through 4). While the ultimate composition of the Policy Committee will be determined by the RWMG member agencies and may differ from the structure initially proposed, the RWMG shall ensure that the Policy Committee structure meets the original intents of improving coordination among elected representatives and providing a forum for coordination with the RAC.

The Policy Committee will be responsible for maintaining coordination among the RAC and RWMG agency governing bodies regarding the IRWM program, providing feedback to the Management Committee and RAC, making critical IRWM-related policy decisions based on recommendations from the RAC, and reporting to their respective Boards or Councils on the status of the IRWM program. Additionally, in the future, should changes to the governance structure be desired, the Policy Committee will be responsible for evaluating potential changes. To fulfill these duties, the Policy Committee will meet approximately twice per year or as necessary.

Meetings of the Policy Committee will be open to the public and will include participation from each Policy Committee member, Management Committee members, and a RAC member appointed by the RAC to serve as a liaison to the Policy Committee. In addition to facilitating the Policy Committee meetings, Management Committee members will participate in Policy Committee meetings to provide staff recommendations as appropriate. The RAC liaison will also participate, communicating RAC recommendations directly to the Policy Committee.



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## 3.2 Regional Advisory Committee

The interim RAC was formed in May 2012 to assist in completing the MIRWMP. Members of the RAC were recruited through an open invitation process that was publicly advertised by MID, Merced County and the City of Merced. All parties that applied for inclusion on the RAC were formally appointed by the MID Board of Directors as either full or alternate members of the RAC. The interim RAC includes 23 full members and 16 alternates representing broad interests and perspectives in the Region related to water management, land use, natural resources and community stewardship. The interests represented by the interim RAC include:

- Water Supply Interests
- Wastewater Interests
- Stormwater Interests
- Flood Control Interests
- Local Government
- Agricultural Interests
- Other Business Interests (non-agriculture)
- Environmental Interests
- Other Institutional Interests (e.g. UC Merced)
- Disadvantaged Community and Environmental Justice Interests
- Recreational Interests
- Community / Neighborhood Interests

During development of the MIRWMP, the interim RAC met on a monthly basis to review progress and

provide comments and guidance on key plan elements, including recommendations for the MIRWMP long-term governance structure. The recommended long-term governance structure includes a reformulated RAC that will meet on an approximately quarterly basis, or as needed, to provide guidance on upcoming IRWM planning and funding activities and educate participants on water resources-related topics.



*The RAC met regularly throughout MIRWMP development to provide guidance on IRWM planning and funding activities and to educate participants on water resources-related topics.*



The purpose of reformulating the RAC following adoption of the MIRWMP is to provide for continued representation of the broad interests of the Region in long-term water resources planning. Participants from the interim RAC are encouraged to participate in the long-term RAC; however, current participants are not obligated to continue participation.

A succession policy was developed by the interim RAC and endorsed by the interim RWMG to dictate how RAC replacements will be appointed, should a RAC member need to step down for any reason. This policy is described in the draft RAC charter, provided as Appendix F.

When the new RAC is formed, one of its first tasks will be developing an application and acceptance process for expanding the RWMG to include other interested members, as discussed in Section 3.1.1  
3.1.1 Regional Water Management Group,

### 3.3 Workgroups

Two types of workgroups may be established: standing workgroups and ad-hoc workgroups.

Standing workgroups may be convened to deal with ongoing RAC business. In contrast, ad-hoc workgroups will be formed, as needed, to carry out discrete tasks such as project selection for funding opportunities, review of proposed legislation, and other actions. The purpose of ad-hoc workgroups is to enable participants in the IRWM program to work through topics requiring intensive discussions and evaluation to develop recommendations for the larger group. The process for convening and managing workgroups is described in the draft RAC charter, provided as Appendix F.



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### 3.4 Entities Adopting the MIRWMP

Adoption of the MIRWMP is the formal acceptance of the plan and indicates support of the Merced IRWM program. At a minimum, the governing body of each RWMG agency must adopt the MIRWMP. Other agencies that desire to formally indicate their support for the MIRWMP are also encouraged to adopt the plan.

The entities that have indicated their intent to adopt this first MIRWMP include:

- City of Merced
- East Merced Resource Conservation District
- Merced County
- Merced Irrigation District
- Planada Community Services District
- Stevinson Water District
- University of California, Merced

Adoption of the MIRWMP by additional agencies may occur at later dates. Prior to becoming members of the long-term RWMG, the Cities of Atwater and Livingston will be required to adopt the plan just as any other RWMG Member.

### 3.5 Public Involvement

Engagement of stakeholders and members of the general public, in addition to RAC members, is integral to the IRWM planning and implementation process. Stakeholder outreach began early in the development of the MIRWMP. The MIRWMP has benefitted from the legacy of MAGPI's established relationships with various stakeholders such as water purveyors; wastewater agencies; flood management agencies; municipal, county government and special districts; land use authorities; self-supplied water users; environmental stewardship organizations; community and landowner organizations; industry organizations; state, federal and regional agencies; colleges and universities; DACs; and other interests in the area. The MAGPI stakeholder list was used as a starting point for MIRWMP public outreach, and that list was expanded during the Merced IRWM RAP by circulating an invitation letter to organizations throughout the Region. During development of the MIRWMP, the RWMG continued to reach out to interested parties by personally contacting potential project proponents and hosting six public workshops. The workshops were advertised through multiple outlets including public service announcements, newspaper advertisements, web postings and e-mail distribution lists, and personal communication with potential project proponents.





Stakeholder involvement in key program decisions will remain a priority for ongoing IRWM planning and implementation. The RWMG will continue to host public workshops at critical junctures in the program (e.g. plan updates, calls for projects), and news and events related to the program will continue to be posted on the Merced IRWMP website ([www.mercedirwmp.org](http://www.mercedirwmp.org)) and the websites of RWMG member agencies.

### 3.6 Decision-Making Process

The RWMG maintains overall decision-making authority for the MIRWMP and planning process. IRWM activities requiring legislation or policy decisions will be brought before each RWMG member agency's governing body for approval. Before bringing the action before the RWMG Boards or Councils, Policy Committee representatives will be responsible for discussing relevant issues with the Management Committee members and the RAC liaison at the Policy Committee level (Policy Committee meetings discussed in Section 3.1.3 provide a forum for these discussions).

Day-to-day management will be accomplished by the Management Committee, and the RAC will be the primary forum for discussion and information exchange on regional water management topics among community representatives.

The RAC decision-making process is described in the draft RAC charter, provided as Appendix F.



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### 3.7 Communication

Key IRWM program decisions will be made following thorough discussion and vetting by all interested

parties. At RAC meetings, members and alternates assume responsibility for raising issues, concerns, and ideas from their communities and constituents who are not able to attend the meetings. RAC members are also expected to inform and educate constituents of the information and discussions from each meeting.

Information will continue to be conveyed to the general public through the Merced IRWMP website ([www.mercedirwmp.org](http://www.mercedirwmp.org)), RWMG partner agency websites and media releases, as appropriate.

### 3.8 Coordination

The Merced Region is bordered by five other IRWM regions: Madera, Yosemite-Mariposa Region, East Stanislaus Region, Tuolumne-Stanislaus and Westside-San Joaquin Region. While cooperation with the adjacent regions has not been formalized, representatives of the Merced Region routinely attend meetings of the Yosemite-Mariposa Region to maintain ongoing communication and coordination. Additionally, staff members from Merced County and MID routinely meet with members of the Turlock Groundwater Basin Association which manages groundwater activities in the East Stanislaus Region.

### 3.9 Plan Updates

The MIRWMP is intended to be a living document, requiring periodic updates. The current MIRWMP provides guidance for developing and refining water resources projects at the local level for a 20-year planning horizon based on current regional objectives, priorities, and water management strategies. Recognizing that regional conditions will change within the Plan's 20-year timeframe, the RWMG and RAC appreciate the need to continue to hold regular meetings. Through these meetings, MIRWMP stakeholders will continue to discuss and coordinate on critical water-related needs to determine whether shifts in regional objectives or priorities are needed to maintain currency with local conditions and needs. When changes are dictated, the RWMG in consultation with the RAC will prepare amendments or full updates to the MIRWMP, as appropriate. Changes to the State's IRWM planning framework may also necessitate updates to the MIRWMP, and continuation of the RWMG and RAC collaboration will ensure the Region is prepared to respond to future changes. The project list is a living document, and the current project list can be accessed through the project website. The project list can be updated in real-time without requiring a full Plan update or re-adoption.

## Appendix F - Draft RAC Charter

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**Merced IRWM Program  
DRAFT Regional Advisory Committee (RAC) Charter**

*May 2013*

This document is intended to establish rules and guidelines for the Regional Advisory Committee (RAC), for the period following adoption of the Merced Integrated Regional Water Management (IRWM) Plan (expected fall 2013). The RAC is a fundamental component of governance for the Merced IRWM Program.

## **Table of Contents**

<b>1. PURPOSE .....</b>	<b>2</b>
<b>2. ROLE OF THE REGIONAL ADVISORY COMMITTEE (RAC) .....</b>	<b>2</b>
<b>3. MEETINGS .....</b>	<b>2</b>
<b>4. RAC MEMBER COMPOSITION .....</b>	<b>3</b>
<b>5. RAC MEMBER ATTRIBUTES AND DUTIES .....</b>	<b>4</b>
<b>6. RAC MEMBER AND ALTERNATE TERMS .....</b>	<b>4</b>
<b>7. 2013 RAC MEMBER SELECTION .....</b>	<b>5</b>
<b>8. RAC MEMBER REPLACEMENT .....</b>	<b>5</b>
<b>9. MEMBER AND ALTERNATE ATTENDANCE .....</b>	<b>6</b>
<b>10. MEMBER TERMINATION .....</b>	<b>6</b>
<b>11. RAC CHAIR AND VICE CHAIR ROLES .....</b>	<b>7</b>
<b>12. RAC LIAISON TO THE POLICY COMMITTEE .....</b>	<b>7</b>
<b>13. RAC DECISION PROCESS .....</b>	<b>8</b>
<b>14. WORKGROUP MEMBER SELECTION .....</b>	<b>8</b>
<b>15. WORKGROUP DECISION PROCESS .....</b>	<b>9</b>
<b>16. PUBLIC COMMENTS AT RAC MEETINGS .....</b>	<b>10</b>
<b>ATTACHMENT A RAC MEMBERSHIP COMPOSITION .....</b>	<b>11</b>
<b>ATTACHMENT B MERCED INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) PROGRAM REGIONAL ADVISORY COMMITTEE (RAC) MEMBERSHIP APPLICATION .....</b>	<b>13</b>
<b>ATTACHMENT C MERCED INTEGRATED REGIONAL WATER MANAGEMENT (IRWM) PROGRAM REGIONAL ADVISORY COMMITTEE (RAC) ATTENDANCE POLICY .....</b>	<b>15</b>
<b>ATTACHMENT D DECISION PROCESS FOR RAC WORKGROUPS .....</b>	<b>16</b>

## 1. Purpose

The Merced IRWM Program was established in 2009 by the Regional Water Management Group (RWMG), comprised of the Merced Irrigation District, City of Merced, and Merced County. In February 2011, the RWMG was awarded a grant by the Department of Water Resources (DWR) to prepare an IRWM Plan for the Merced Region. The RAC is an advisory body which provides recommendations to the RWMG on topics related to the IRWM Program. The RWMG gives primary consideration to the recommendations of the RAC and incorporates the RAC's recommendations into documents prepared for presentation to the RWMG governing bodies.

The RAC was originally formed in April 2012 to assist the RWMG with completion of the Merced IRWM Plan and prioritization of projects for a Proposition 84 funding application. The IRWM Plan is expected to be complete 2013, and the Merced Region has applied for \$3.2 million to fund projects under Proposition 84. After completion and approval of the Merced IRWM Plan in 2013, the RAC will continue to serve as an advisory body providing recommendations to the RWMG governance structure on key issues related to IRWM planning and funding applications. The RAC and the RWMG have established the following purpose for the RAC:

- Represent the broad interests and perspectives in the region.
- Assist in the implementation and revision of the Merced IRWM Plan.
- Encourage cooperative planning among various aspects of water resources management in the Merced Region.
- Foster constructive, meaningful discussion of regional water management issues and needs, goals and objectives, plans and projects, and future funding and governance.
- Advise the RWMG and the governing bodies on these topics.

This charter continues the establishment of the RAC, sets forth RAC member composition, duties, and responsibilities, and outlines organization and operation of the group.

## 2. Role of the Regional Advisory Committee (RAC)

As an advisory body to the RWMG, the RAC will work closely with the RWMG to develop recommendations for the following:

- a. Adopting updates to the IRWM Plan for the Merced Region.
- b. Establishing criteria for prioritizing projects to be submitted for IRWM grant programs.
- c. Reevaluating projects submitted for grant funding, when necessary.
- d. Approving and submitting grant applications.
- e. Transitioning responsibility for implementation of the IRWM Plan to a new institutional structure.

When necessary, workgroups will be formed to meet separately and work on an issue or topic that cannot readily be resolved in the broader RAC setting.

## 3. Meetings

### RAC Meetings

There will be four scheduled quarterly RAC meetings per year. All RAC meetings shall be noticed in accordance with the Brown Act. If desired by RAC Members, additional RAC meetings may be scheduled and noticed at least one week in advance.

Meetings shall be conducted in accordance with this Charter. The RAC Chair or Vice Chair will determine if a quorum exists at any RAC meeting. Formal voting may not occur without a quorum of RAC members; however, presentations and discussion of agenda topics may occur.

The definition of a quorum shall be determined at the first meeting of the RAC, when the number of RAC members has been established. The expectation is that a quorum shall be at least 50% of the RAC membership.

**Workgroup Meetings**

Workgroups are convened as needed by the Management Committee with input and participation by the RAC. Workgroup meetings shall be conducted in accordance with this Charter. The Workgroup Chair will determine if a quorum exists at any Workgroup meeting. Formal voting may not occur without a quorum of Workgroup members; however, presentations and discussion of agenda topics may occur. Workgroups are not subject to Brown Act requirements and may not be publicly noticed in advance. Every effort will be made to post workgroup meetings in advance on the Merced IRWM website ([www.merцейrwm.org](http://www.merцейrwm.org)).

Results of Workgroup meetings will be reported to the RAC at the next scheduled RAC meeting.

**4. RAC Member Composition**

There are ten membership categories (herein referred to as caucuses) for voting members of the RAC. These caucuses include Agriculture, Business (non-agricultural), Natural Resources/Watersheds, Disadvantaged Communities/Environmental Justice, Land Use, Water/Wastewater Management, Academic/Educational, Civic, Recreation, and At Large. The RWMG representatives participate as ex officio (non-voting) members of the RAC. State, federal, and regional agencies and organizations may also participate as non-voting members. The following is a general overview of the composition of each caucus. **Attachment A** provides a detailed description of the RAC Member Composition.

<b><u>Membership Categories (Caucuses)</u></b>	<b><u>Maximum Number of Representatives</u></b>
1. <u>Agriculture</u> : Representatives of dairy, ranching, and commodity farming, including large and small operations, row and tree crops.	<u>4</u>
2. <u>Business</u> : Representatives of food processing and other industrial activities, commercial enterprises, institutions (e.g. college and university administrations), and building and real estate, including chambers of commerce and business associations (banking participation is important).	<u>4</u>
3. <u>Natural Resources and Watersheds</u> : Organizations focused on preserving, enhancing, and managing natural resources and watersheds, including fisheries and wetlands.	<u>4</u>
4. <u>Disadvantaged Communities/Environmental Justice</u> : Representatives of disadvantaged neighborhoods and small communities with water management challenges (rural and urban).	<u>2</u>
5. <u>Land Use</u> : Representatives of land planners (or assessor), planning commissions, and land use advocates.	<u>3</u>
6. <u>Water/Wastewater Management</u> : Public agencies and private entities that are not members of the RWMG and have statutory authority to supply municipal or irrigation water, manage wastewater, or provide flood control in the region.	<u>3</u>
7. <u>Academic/Educational</u> : Representatives of K-12 and college/university educators and academics.	<u>2</u>
8. <u>Civic</u> : Representatives of community organizations, including community service, good government, and taxpayer interests.	<u>2</u>
9. <u>Recreation</u> : Representatives of fishing, boating, birding, and park interests.	<u>2</u>
10. <u>At Large Members</u> : Other agencies and entities with interest in and/or impact on water resource management.	<u>4</u>

11. <u>Non-Voting Members</u> : RWMG members and State, Federal, and regional agencies and organizations who are interested parties.	<u>5 RWMG, plus other agencies</u>
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All RAC members must be knowledgeable in the field or interest that they represent. As such, RAC members must represent a public agency, non-governmental organization, professional organization, or academia. In addition, the overarching goals for RAC membership are for the RAC to be geographically diverse, to represent multiple stakeholders, and to be approximately balanced between public agencies and non-profits.

**5. RAC Member Attributes and Duties**

The following are desired attributes for RAC members and their alternates:

1. Have knowledge and experience in water resources management.
2. Represent an agency, organization, tribe, academia, or interests that are under-represented in the region.
3. Have the ability and desire to objectively articulate the perspective of his/her RAC seat and caucus at a level beyond that of his/her individual organization.
4. Provide recommendations with the best interests of the entire Merced IRWM region in mind.

In relation to attribute 3 listed above, RAC members are grouped into ten caucuses, each of which has specific seats that are outlined in **Attachment A**.

The following are general duties for which RAC members and their alternates are responsible:

1. Attend meetings consistently – participation in 75% of the meetings annually is the minimum expectation.
2. Come prepared – review materials ahead of time and provide comments as appropriate.
3. Be responsive to requests between meetings.
4. Act as a point of contact within his/her individual organization for collection and dissemination of information related to the IRWM Program.
5. Disseminate information about the IRWM Program to his/her contacts, as appropriate.
6. Designate an alternate to attend and participate in RAC meetings in his/her absence.
7. Recuse him/herself from discussion and voting if he/she has a personal interest or stake in the outcome.

RAC members and their alternates are subject to recusal due to conflicts of interest in accordance with *Government Code Title 9, Political Reform; Chapter 7, Conflicts of Interest*. A conflict of interest is defined as a RAC member using his/her position to influence IRWM program decisions in which he/she has a financial interest (§87100). Recusal will occur per the discretion of the RWMG, in consultation with the RAC Membership Workgroup described in Section 8.

All Workgroup members are also expected to display the attributes and duties listed above. The recusal policy also applies to ad-hoc Workgroup members.

**6. RAC Member and Alternate Terms**

Once the RAC is established, members and their alternatives will serve three-year terms, with one-third of the RAC membership terms ending in each year. RAC member and alternate terms do not apply to the non-voting members (including the RWMG). Upon selection of the RAC membership in fall 2013, the members (and their alternates) will be randomly selected for one, two, or three year terms. Ten members will serve one-year terms, ten will serve two-year terms, and ten will serve three-year terms. All subsequent RAC

members will serve three year terms with one-third of the RAC membership terms ending each year. There is no limit to the number of terms served (consecutive or otherwise).

Beginning in 2015, RAC member terms will begin and end on March 1 each year. The RAC member selection process will typically occur in January and February.

## 7. 2013 RAC Member Selection

At the (date) RAC meeting, the new RAC members will be selected from the applications received from the application process described below.

The following RAC selection process will be implemented by December 2013:

1. The RWMG will solicit applications from all interested IRWM stakeholders, including current RAC members. Applications will be held to a firm deadline, after which applicants will no longer be considered. **Attachment B** of this document contains the RAC Application that will be accepted from (dates).
2. A RAC Membership Workgroup will be convened to develop recommendations for the 2013 RAC selection. The Workgroup will be comprised of 7 members of the existing RAC (composition TBD) as recommended by the RAC and confirmed by the Management Committee (RWMG managers).
3. The RWMG, in coordination with the existing RAC members, will conduct an application solicitation process to identify potential RAC members in all categories (dates).
4. The Membership Workgroup will review the RAC member applicants to confirm that they meet the RAC Member Composition stipulated in **Attachment A**, as well as other selection criteria recommended by the RAC.
5. If the RWMG does not receive applications to fill each open seat on the RAC, it will reopen the application period for one week and the Workgroup meeting will be delayed.
6. In (month), the Workgroup will meet to review the applicants and provide a recommendation to the RWMG Policy Committee on the RAC membership (except non-voting members). The recommendation must be specific enough to ensure that RAC membership is retained as specified in the RAC Member Composition in Attachment A. If the Workgroup cannot reach a consensus recommendation, it will inform the existing RAC of this situation to develop a RAC recommendation.
7. The RWMG Policy Committee will review the recommendation. If the RAC membership recommendation is not approved, the Policy Committee will refer it back to the RAC Membership Workgroup with specific requests for revision. Applicants will be notified by the RWMG of their appointment to the RAC, and at that time will be asked to appoint a permanent alternate who is suitable to participate on the RAC under the member composition guidelines described in Attachment A.
8. New RAC members selected will be randomly assigned to one-, two-, and three-year terms.
9. The new RAC membership will be effective on (date).

RAC member selection as established within this section only applies to the 2013 RAC member selection process. All future member replacement will be completed as described in Section 8.

The newly appointed RAC would establish a Membership Workgroup to address any membership issues that arise, including replacement of a member who retires or resigns.

## 8. RAC Member Replacement

A portion of the RAC membership will be replaced each year in February. As outlined in Section 6, terms for one-third of the RAC membership shall expire every year. RAC member replacement shall occur via the process outlined below:

1. The RWMG will solicit applications from all IRWM stakeholders, including RAC members whose terms are expiring. Applications will be held to a firm deadline, after which applicants will no longer be considered. **Attachment B** of this document contains the RAC Application that will be accepted from January 1<sup>st</sup> through 31<sup>st</sup>.
2. A RAC Membership Workgroup will be convened to develop recommendations for RAC member replacement. The Workgroup will be comprised of 8 members of the RAC whose terms are not expiring (to avoid self-appointments), with no more than one representative of each voting caucus. The full RAC shall identify the 8 members of the Membership Workgroup at a regular RAC meeting, no later than December of each year. Members of the Management Committee may participate as non-voting members of the Membership Workgroup.
3. The Membership Workgroup will establish the application solicitation process with support from the Management Committee, which will receive and distribute the applications for the Membership Workgroup. The Workgroup will review the RAC member applicants to confirm that they meet the RAC Member Composition stipulated in **Attachment A**.
4. If the RWMG does not receive applications to fill each open seat on the RAC, the Management Committee will reopen the application period for one week and the Workgroup meeting will be delayed.
5. The Workgroup representatives may distribute the list of applicants to the voting caucuses and work with the caucus members to develop a recommendation for the new members of their caucus, if desired.
6. In February, the Workgroup will meet to review the applicants and provide a recommendation to the Policy Committee on the RAC membership. The recommendation must be specific enough to ensure that RAC membership is retained as specified in the RAC Member Composition in Attachment A. If the Workgroup cannot reach a consensus recommendation, it will inform the Policy Committee of this situation.
7. The Policy Committee will review the recommendation. If the RAC membership recommendation is not approved, the Policy Committee will refer it back to the RAC Membership Workgroup with specific requests for revision. Applicants will be notified by the RWMG of their appointment to the RAC, and at that time will be asked to appoint a permanent alternate who is suitable to participate on the RAC under the member composition guidelines described in Attachment A. RAC members selected by the Workgroup will be assigned a three-year term.
8. The new RAC membership will be effective on March 1<sup>st</sup>.

Each RAC Membership Workgroup will remain in place throughout the year to address any membership issues that arise over those two years, including replacement of a member who retires or resigns.

## **9. Member and Alternate Attendance**

All RAC members and their alternates are required to sign the RAC Attendance Policy document (refer to **Attachment C**), which stipulates that members are expected to participate in at least 75% of the RAC meetings each year. If RAC members cannot be present during a meeting or meetings, their alternates are expected to fill the RAC member's position without interruption to the RAC.

At the end of each calendar year, the RAC Membership Workgroup will review attendance of each RAC member and their alternates over the past 12 months to determine if they are in compliance with the RAC Attendance Policy. At the last RAC meeting of each calendar year, the RAC Membership Workgroup will present its attendance findings to the RAC, which will be responsible for deciding if members are in violation of the RAC Attendance Policy and therefore should be replaced as stipulated in Section 8.

## **10. Member Termination**

In the event that the RWMG and RAC determine that a RAC member is not complying with the RAC member attributes and duties in Section 5, termination of that person's membership will be discussed by the

RAC Membership Workgroup in closed session. The RAC Membership Workgroup may recommend termination and replacement to the full RAC, which will review the recommendation and inform the person of their termination. Replacement of that person will also be recommended by the RAC Membership Workgroup and approved by the Policy Committee.

## **11. RAC Chair and Vice Chair Roles**

The RAC Chair and Vice Chair must be RAC members.

Although not required, the following attributes are desirable for the Chair and Vice Chair:

- Chair: prior experience working in the role of a Chair of a committee.
- Vice Chair: attributes and ability to assume Chair role and responsibilities, but not necessarily as much experience as the Chair.
- Chair and Vice Chair should come from different caucus groups (refer to Section 4).
- Should have already served at least 2 years on RAC, so they are familiar with the purpose, structure, and content of meetings.
- Willing and able to attend each RAC meeting during 3-year term.
- Ability to even-handedly articulate all interests.
- Consensus-builder.

The role of the Chair and Vice Chair will vary between RAC meetings; however, the Vice Chair's primary role is to take on Chair responsibilities in the absence of the Chair and/or at the discretion of the Chair. General responsibilities for the Chair are as follows:

1. Review RAC agenda prior to finalization and distribution to stakeholders (one week prior to RAC meetings).
2. Meet with the Management Committee prior to each RAC meeting to go over the RAC agenda and presentation(s) so that the RAC meeting runs smoothly and without interruption.
3. Manage the RAC agenda, select members to speak in turn, and keep the RAC on task and on time.
4. Convene each RAC meeting and initiate introductions.
5. Organize and call on public speakers during appropriate agenda items (if applicable), and determine public comment procedures (refer to Section 15).
6. Identify when the RAC has reached an impasse and needs to move forward with formal voting to resolve an issue (refer to Section 12).
7. Summarize key decisions and action items at the end of each RAC meeting.
8. Close meetings.
9. Ensure that notes are prepared summarizing discussion, agreements, and decisions.
10. Review and provide comments on RAC meeting notes.

The Chair and Vice Chair will serve for a period of two (2) years, concurrently. There is no limit to the number of terms served.

## **12. RAC Liaison to the Policy Committee**

The RAC shall select a member of the RAC to serve as liaison to the RWMG Policy Committee. The RAC Liaison will serve the following functions on behalf of the RAC.

1. Represent the interests, discussion, conclusions, and recommendations of the RAC.
2. Enlist other RAC members as necessary to represent RAC expertise and perspectives.
3. Report to the RAC on Policy Committee discussions, deliberations, and actions.

The RAC Liaison could be the Chair, Vice Chair, or other member of the RAC.

### **13. RAC Decision Process**

The RAC, as an advisory body to the RWMG, will strive to achieve consensus to the maximum extent possible. If consensus is not achievable, the Chair or Vice Chair shall call for a vote. All financial matters require a vote.

#### **Decision Making by Consensus**

The RAC will strive to achieve consensus through discussion and debate at RAC meetings. For purposes of the RAC, consensus is defined as Level 1-4 on the list of consensus levels provided below:

1. I can say an **unqualified ‘yes’** to the decision. I am satisfied that the decision is an expression of wisdom of the group.
2. I find the decision **perfectly acceptable**. It is the best of the real options we have available to us.
3. I can **live with** the decision. However, I’m not especially enthusiastic about it.
4. I do not fully agree with the decision and need to register my view about it. However, I do not choose to block the decision and will **stand aside**. I am willing to support the decision because I trust the wisdom of the group.
5. I do not agree with the decision and feel the need to **block** the decision being accepted as consensus.
6. I feel that we have no clear sense of unity in the group. We need to do more work before consensus can be achieved.

During discussion, the RAC Chair shall ask for a show of hands indicating each member’s “consensus level” for the specific decision at hand. If all RAC members are a “consensus level” 1-4, the decision may proceed as a consensus decision. The Chair will provide an opportunity for those who are at “consensus level” 4 to express their concerns. If not all the RAC members are in consensus (one or more members are at “consensus level” 5 or 6), the RAC shall continue discussions to try to reach consensus. The RAC Chair is responsible for deciding when the RAC is at an impasse, and will call for a vote at that point.

#### **Voting Procedures**

The RAC will make non-consensus decisions by vote:

- For approving all non-financial matters, if a vote is necessary due to the lack of consensus, a simple majority vote will be sufficient.
- For approving all financial matters (e.g., submission of projects for a grant application), a super majority (2/3 vote) of the RAC will be required.
- In any case where the RAC is at a formal voting impasse and cannot make a decision, it will be up to the RWMG’s discretion to decide how to resolve the issue.

Once the RAC Chair has determined that the RAC is at an impasse and a vote is necessary, he/she will ask for a motion and a second. After the motion has been seconded, the RAC members will be given an opportunity for further discussion on the specific components of the motion. Following this discussion, the RAC Chair will call for a show of hands to pass or fail that motion.

### **14. Workgroup Member Selection**

Periodically, the RAC will request the organization of an ad-hoc Workgroup to meet separately and work on an issue or topic that cannot readily be resolved in the broader RAC setting. Workgroups have historically been convened to provide direction to the RAC on matters such as project selection for grant funding. Note that the role of Workgroups is to provide a recommendation to the RAC; Workgroups are not charged with making decisions for the IRWM Program.

The RWMG may include a non-voting, non-RAC member to any Workgroup, if deemed appropriate for transparency and to provide expert knowledge.

### **Ad-Hoc Workgroups**

The following process shall be followed when convening ad-hoc Workgroups:

1. The Management Committee and the RAC will jointly determine that a Workgroup is necessary, the number of members, and the topics. The RAC will identify the RAC representation for each Workgroup. Workgroups can also include representatives who are not RAC members.
2. If the RAC determines that representation from each caucus is preferred for a Workgroup, each caucus will deliberate and inform the RAC of their chosen representative(s) to the Workgroup. Workgroup members do not have to be current RAC members, but can be other stakeholders representing the caucus. If the caucus cannot reach a consensus recommendation, it will inform the RAC of this situation.
3. The RAC will review the proposed Workgroup members and provide a recommendation to the Management Committee. If the RAC cannot reach a consensus recommendation, it will inform the Management Committee of this situation.
4. The Management Committee will review the recommendation. Applicants will be notified by the Management Committee of their appointment to the Workgroup.

### **Project Selection Workgroup**

The following process shall be followed when convening a Project Selection Workgroup to review and select projects for inclusion within a funding application:

1. The Project Selection Workgroup will be comprised of 5 RWMG (one from each agency) and one representative from each voting caucus, for a total of 15 members.
2. The RAC caucuses will deliberate and inform the RAC of their chosen primary representative and alternate to the Workgroup. Project Selection Workgroup members must be current RAC members. If the caucus cannot reach a consensus recommendation, it will inform the RAC of this situation.
3. The RAC will review the proposed Workgroup members and provide a recommendation to the Policy Committee. If the RAC cannot reach a consensus recommendation, it will inform the Policy Committee of this situation.
4. The Policy Committee will review the recommendation. Applicants will be notified by the Management Committee of their appointment to the Workgroup.

## **15. Workgroup Decision Process**

Workgroups, as advisory bodies to the RAC, will strive to achieve consensus to the maximum extent possible. If consensus is not achievable, the Chair or Vice Chair shall call for a vote. All financial matters require a vote. **Attachment D** provides a summary of the Workgroup Decision Process.

### **Project Selection Workgroup Decision Process**

Because they address financial matters, the Project Selection Workgroups have a unique decision process. In addition to the ground rules, consensus definitions, and Chair selection process provided in Attachment D, the following policies shall be followed when convening Project Selection Workgroups:

- Workgroup discussion will be limited to primary members, not alternates. Agenda will include multiple scheduled breaks so primary and alternate members have a chance to caucus and discuss progress of meeting. Alternates must still attend to hear the discussion should they need to serve in primary capacity at a later meeting.
- Any Workgroup member with a personal financial interest in a submitted project (see conflict of interest definition in Section 6) must step down from the Workgroup. If this arises, the Workgroup member will be replaced by his/her alternate and a new alternate will be selected.

- Primary members only should vote, even in informal polling (otherwise representation is skewed). If a primary member abstains for any reason, their alternate may vote.
- Workgroup members may vote on packages that contain projects submitted by their agency or organization; however, they will recuse themselves from discussing and/or advocating for projects.

## **16. Public Comments at RAC Meetings**

All RAC meetings are open to the public, and public comments are welcomed and encouraged. To ensure that members of the public have an adequate chance to provide comments the RAC Chair will invite public comments on any agenda item in which the RAC is making a decision or formulating a recommendation. An open public comment period will be offered at the end of each RAC meeting to allow members of the public to speak to non-agenda topics.

If there is substantial public interest or comment on a topic, the RAC Chair or Vice Chair may implement the following procedures to ensure that such comments are received in a timely manner:

- Members of the public will be asked to fill out a speaker card to indicate their name, affiliation, contact, and the specific agenda item they wish to speak to (if applicable).
- Speaker cards will be limited to one per person per agenda item. Participants may submit multiple speaker cards to address multiple agenda items.
- The RAC Chair or Vice Chair will invite those who submitted speaker cards to address the agenda item prior to calling for a consensus decision and/or vote on that item.
- Speaker cards will generally allow three minutes of public speaking time per speaker. However, in the event that there are a large number of public speaker comments, it will be up to the discretion of the RAC Chair or Vice Chair to reduce the time for each public speaker to ensure that all agenda items are addressed and that the RAC meeting closes on time.

# Attachment A – RAC Membership Composition

## Attachment A RAC Membership Composition

The following are the ten voting categories (caucuses) and invited non-voting participants in the Merced Regional Advisory Committee. The caucuses represent the diverse interests of the Merced Region. Within each caucus, the subcategories (numbered lists) identify the types of interests to be represented, however the RAC and Policy Committee will maintain the flexibility to identify and appoint RAC members who best represent regional interests of the category, without a rigid adherence to the subcategories listed.



### Voting Categories (Caucuses)

#### Agriculture (4)

*Representatives of farming and ranching operations, including large and small farms/ranches, irrigated and non-irrigated agriculture, and tree and row crops.*

1. Commodity farming
2. Dairy ranching
3. Non-irrigated ranching or farming
4. Other (at-large) agriculture

#### Business (4)

*Representatives of non-farm business activities in the region, including business associations.*

1. Food processing and industrial operations
2. Commercial businesses
3. Institutions (e.g. college/university administration)
4. Building and real estate

#### Natural Resources and Watersheds (4)

*Agencies and entities focused on preserving, enhancing, and managing natural resources and watersheds, including fisheries and wetlands.*

1. Fisheries
2. Wetlands
3. Habitat/land preservation
4. Conservation

#### Disadvantaged Communities/Environmental Justice (2)

*Representatives of disadvantaged neighborhoods and small communities with water management challenges.*

1. Urban DAC
2. Rural DAC

#### Land Use (3)

*Representatives with land planning expertise, including land planners (assessor), planning commissioners, and land use advocates.*

1. Incorporated
2. Unincorporated
3. Advocacy

#### Water/Wastewater Management (3)

*Public agencies and private entities that are not members of the RWMG and have statutory authority to supply municipal or irrigation water, manage wastewater, or provide flood control in the region.*

1. Agricultural water supply
2. Wastewater

## Attachment A – RAC Membership Composition

3. Flood management

### Academic/Educational (2)

*Representatives of K-12 and college/university educators and academics.*

1. K-12
2. College/university

### Civic (2)

*Representatives of community organizations, including community service, good government, and taxpayer interests.*

### Recreation (2)

*Representatives of fishing, boating, birding, and park interests.*

### Other (At Large) Members (4)

*Other agencies and entities with interest in and/or impact on water resource management.*

Total voting members: 30

## **Non-Voting Members**

*RWMG members and state, federal, and regional agencies who are interested parties*

### Regional Water Management Group (5)

1. County of Merced
2. Merced Irrigation District
3. City of Merced
4. City of Atwater
5. City of Livingston

### Others

1. Department of Water Resources
2. Regional Water Quality Control Board
3. U.S. Fish and Wildlife Service
4. California Department of Fish and Wildlife
5. U.S. Army Corps of Engineers
6. Adjacent IRWM Regions

## Attachment B – RAC Membership Application

### Attachment B Merced Integrated Regional Water Management (IRWM) Program Regional Advisory Committee (RAC) Membership Application



The Merced Regional Advisory Committee (RAC) was originally formed in April 2012 to assist the Regional Water Management Group (RWMG) with completion of the Merced IRWM Plan and prioritization of projects for a Proposition 84 funding application. The IRWM Plan is expected to be adopted by the RWMG governing bodies (Merced Irrigation District, City of Merced, and Merced County) along with new RWMG governing bodies (City of Atwater and City of Livingston) in fall 2013. The RWMG submitted a Proposition 84 Implementation Grant Proposal in March 2013. The RAC will continue to serve as an advisory body providing recommendations to the RWMG on key issues related to IRWM planning and funding applications.

Thank you for your interest in serving on the RAC. Having an involved and dedicated RAC is vital to successful ongoing IRWM planning efforts in the Merced Region. RAC meetings are held **quarterly** and are posted for the entire calendar year at [www.mercedirwmp.org](http://www.mercedirwmp.org).

The following are desired attributes for RAC members and their alternates:

1. Have knowledge and experience in water resources management.
2. Represent an agency, organization, tribe, academia, or interests that are under-represented in the region.
3. Have the ability and desire to objectively articulate the perspective of his/her RAC seat and caucus at a level beyond that of his/her individual organization.
4. Provide recommendations with the best interests of the entire Merced IRWM region in mind.

In relation to criterion 3 listed above, RAC members are grouped into ten caucuses, each of which has a specified number of seats as outlined in **Attachment A**.

The following are general duties for which RAC members and their alternates are responsible:

1. Attend meetings consistently – participation in 75% of the meetings annually is the minimum expectation.
2. Come prepared – review materials ahead of time and provide comments as appropriate.
3. Be responsive to requests between meetings.
4. Act as a point of contact within his/her individual organization for collection and dissemination of information related to the IRWM Program.
5. Disseminate information about the IRWM Program to his/her contacts, as appropriate.
6. Designate an alternate to attend and participate in RAC meetings in his/her absence.
7. Recuse him/herself from discussion and voting if he/she has a personal interest or stake in the outcome.

The RAC has a formal charter (see [www.mercedirwmp.org](http://www.mercedirwmp.org)) which contains a the rules and guiding principles established for the RAC. Please review the RAC Charter before submitting your application to ensure that you are able and willing to serve on the RAC and follow the guidelines and rules established in the RAC Charter.

If you have any questions about the Merced IRWM Program or the RAC, please contact the Merced IRWM Program Manager Hicham EITal ([heltal@mercedid.org](mailto:heltal@mercedid.org)), (209) 722-5761.

# Attachment B – RAC Membership Application

## Merced Integrated Regional Water Management (IRWM) Program Regional Advisory Committee (RAC) Membership Application



Please return this form to Hicham ElTal ([heltal@mercedid.org](mailto:heltal@mercedid.org)) by <date>. Selected RAC members will be notified by <date>; their first RAC meeting will be <date>.

Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Email: \_\_\_\_\_ Phone Number: \_\_\_\_\_

**Please indicate which specific seat within the RAC you are applying for (refer to Attachment A for detailed descriptions).**

1st Choice: \_\_\_\_\_

Caucus

Interest

2nd Choice: \_\_\_\_\_

Caucus

Interest

**Please indicate if you meet the eligibility criteria:**

- Represent an agency, organization, tribe, academia, or interests that are under-represented in the region.

Describe your knowledge and experience related to water management, including participation in the IRWM Program or other water resource policy, planning, outreach, or implementation efforts:

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**Describe how your experience and knowledge allows you to:**

1. Have the ability and desire to objectively articulate the perspective of your interest and caucus at a level beyond that within your individual organization.
2. Provide recommendations with the best interests of the entire Merced IRWM region in mind.

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**Describe how your position within your organization allows you to:**

1. Act as a point of contact within your individual organization for collection and dissemination of information related to the IRWM Program.
2. Disseminate information about the IRWM Program to your contacts, as appropriate.

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# Attachment C – RAC Attendance Policy



## Attachment C Merced Integrated Regional Water Management (IRWM) Program Regional Advisory Committee (RAC) Attendance Policy

Thank you for your commitment to being an active member of the Merced IRWM RAC. Having an involved and dedicated RAC is vital to successful ongoing IRWM planning efforts in the Merced region. The RAC meetings are held quarterly and are posted for the entire calendar year at [www.mercedirwmp.org](http://www.mercedirwmp.org).

To that end, the RAC has established an attendance policy that expects participation in at least 75% of the RAC meetings annually. The RAC recognizes that you may occasionally be unavailable due to schedule conflicts, sickness, or other emergencies. In such case, an alternate may attend in your place to ensure that the RAC benefits from the water resources perspective you represent. Please document your alternate below.

If neither you nor your alternate can attend, absences should be communicated to the Merced IRWM Program Manager Hicham ElTal ([heltal@mercedid.org](mailto:heltal@mercedid.org), (209) 722-5761). When your absence is foreseeable, please provide as much notice as possible. When you are absent from RAC meetings, your participation is truly missed.

Excessive absences may lead the RAC to request your resignation. If you fail to respond, the RAC will consider that you have voluntarily resigned your position. We appreciate your support, understanding, and acknowledgement of your time commitment to the RAC by your signature below.

**I acknowledge and agree by my signature below to abide by this policy to the fullest extent practicable.**

### RAC Member

Print Name \_\_\_\_\_

Signature \_\_\_\_\_ Date \_\_\_\_\_

### RAC Alternate

Print Name \_\_\_\_\_

# Attachment D – RAC Workgroup Decision Process



## Attachment D Decision Process for RAC Workgroups

### Ground Rules

1. Treat everyone with respect and courtesy.
2. Provide everyone an opportunity to participate: all perspectives are valued.
3. Listen actively and openly.
4. Focus on new input; avoid redundancy.
5. Be concise and constructive.
6. Have fun.

### Levels of Consensus

Consensus is achieved if all participants indicate that they are at Levels 1 through 4 (not Levels 5 or 6). The Levels of Consensus are:

1. I can say an **unqualified ‘yes’** to the decision. I am satisfied that the decision is an expression of wisdom of the group.
2. I find the decision **perfectly acceptable**. It is the best of the real options we have available to us.
3. I can **live with** the decision. However, I’m not especially enthusiastic about it.
4. I do not fully agree with the decision and need to register my view about it. However, I do not choose to block the decision and will **stand aside**. I am willing to support the decision because I trust the wisdom of the group.
5. I do not agree with the decision and feel the need to **block** the decision being accepted as consensus.
6. I feel that we have no clear sense of unity in the group. We need to **do more work** before consensus can be achieved.

### Considerations for Voting Rules

- Workgroups should strive to achieve consensus, which is defined as all Workgroup members voting at Consensus Levels 1 through 4.
- If Workgroup members are not in consensus (one or more members vote at Consensus Level 5 or 6), the Workgroup should continue discussion in an attempt to reach consensus.
- The Workgroup Chair will be responsible for deciding when the group is at an impasse, and is responsible for calling a vote at that point.
- For approving all non-financial matters, if a vote is necessary due to the lack of consensus, a simple majority vote will be sufficient.
- For approving all financial matters (e.g. submission of projects for a grant application), a super majority (2/3 vote) of the Workgroup will be required.
- When voting, Workgroup members only will vote. Alternates will only vote if the Workgroup member is absent or abstains.

# Attachment D – RAC Workgroup Decision Process

## **Chair and Vice Chair Selection Process**

1. Determine who is eligible: RAC members and alternates, preferably not RWMG members.
2. Provide an overview of preferred Chair/Vice Chair attributes:
  - Chair: prior experience in chair role
  - Vice Chair: attributes and ability to assume Chair role and responsibilities, but not as much experience as the Chair
  - Chair and Vice-chair should come from different categories (caucuses), e.g., agriculture, business, natural resources
  - Willing and able to serve
  - Ability to even-handedly articulate all interests
  - Consensus-builder
3. Outline responsibilities (see below).
4. Nominate and/or volunteer members to be the Chair and Vice Chair.
5. Reach consensus and/or vote.

## **Responsibilities of Workgroup Chair and Vice-Chair**

### *General*

- Oversight of Workgroup meetings and planning topics.
- Vice-Chair will be responsible in the absence of Chair and/or at the discretion of Chair.

### *Responsibilities Applicable to Workgroup Meetings*

- Coordinate with the RWMG or Consultant on elements of the agenda prior to Workgroup meetings to understand overall goals, outcomes, and purpose.
- Convene meetings and initiate introductions.
- Ensure that someone is assigned to record notes of discussion, conclusions, agreements, and action items.
- Review and provide feedback on draft notes from meetings.
- Identify when the Workgroup has reached an impasse and needs to move forward with formal voting to resolve an issue.
- Summarize key decisions and action items at the end of each Workgroup meeting.
- Close meetings.

### *Responsibilities Applicable to RAC Meetings*

- Report back to the RAC on Workgroup progress at RAC meetings.
- Coordinate with RWMG or Consultant on presentation materials for RAC meetings.
- Coordinate with Workgroup members from various caucuses to ensure that all perspectives are incorporated into presentations.

## **Responsibilities of Workgroup Members**

1. Attend meetings consistently.
2. Come prepared (review materials ahead of time).
3. Be responsive to requests between meetings.
4. Follow the Ground Rules.
5. Represent RAC members within your caucus and keep them informed.



# Merced Integrated Regional Water Management Plan Regional Advisory Committee

Project Charter

Date: 5/4/16

Rev. #2

## Project Purpose

The Merced Regional Advisory Committee (RAC) represents the broad interests and perspectives in the region to assist in the completion of the Merced Integrated Regional Water Management Plan (IRWM) Plan, which will encourage cooperative planning among various aspects of water resources management in the Merced Region. The RAC reviews regional water management issues and needs, goals and objectives, plans and projects, and future funding and governance and advises the Regional Water Management Group (RWMG), and ultimately the governing bodies, on these topics.

## Benefits

Improved understanding, analysis, coordination, and cooperation on regional water management challenges and opportunities.

## Objectives/Focus

- Review water management issues and needs
- Develop near- and long-term goals and objectives
- Identify information needs
- Identify and evaluate actions and projects to improve regional water management
- Identify and recommend governance structures and funding sources for implementation
- Review and comment on draft IRWMP

## Core Topics

- Water Supply – Reviewing, discussing, and understanding historical and future water supply resources and needs for agricultural, urban, recreation, and environmental purposes.
- Water Quality – Reviewing, discussing, and understanding historical and future water quality issues.
- Flood and Stormwater Management – Reviewing, discussing, and understanding historical and future flooding and stormwater management needs and integrated flood and stormwater management strategies.
- Wastewater Management – Reviewing, discussing, and understanding historical and future wastewater management needs and resources.
- Water-related needs of disadvantaged communities – Identifying and understanding critical water-related needs of disadvantaged communities.
- Water-related needs of environmental resources - Reviewing, discussing, and understanding water-related needs of environmental resources and sensitive ecological areas.
- Water-related needs for recreation – Identifying and understanding water needs for recreational activities in the region.
- Watershed management – Reviewing and understanding best practices to manage water supply and water quality in the region's watersheds.

## Related Topics

The following topics are related to the core discussions of the Regional Advisory Committee. These topics will not be discussed in the group except as they may be relevant to informing and advancing the purpose and outcomes of the discussions regarding Integrated Regional Water Management.



# Merced Integrated Regional Water Management Plan Regional Advisory Committee

- Land Development – Topics and issues related to General Plans in the region, except as they relate to the IRWMP. The IRWMP is an umbrella document intended to identify how the region can best meet water management and water quality needs of the land uses identified in the General Plans.
- Claims or Lawsuits Related to Past Incidents – The Regional Advisory Committee is not the forum for addressing or resolving individual landowner’s claims or other legal actions related to past flooding, water supply, water quality, or other issues. To the extent that information from past impacts can help inform future monitoring, thresholds, and impact avoidance, they will be discussed.
- Assumptions used in local planning documents – The IRWM Plan is an umbrella document which builds upon and coalesces information contained within local planning documents. The Regional Advisory Committee is not the forum for revisiting technical analyses performed in support of local documents. To the extent there is discomfort with assumptions used in local planning documents, those issues will be discussed and documented.

## Deliverables and Major Milestones

When	What
June 2012	<ul style="list-style-type: none"> <li>• Draft Plan Inventory TM</li> <li>• Draft Land Use Planning TM</li> </ul>
July 2012	<ul style="list-style-type: none"> <li>• Draft Goals and Objectives TM</li> <li>• Resource Management Strategies TM</li> </ul>
Aug 2012	<ul style="list-style-type: none"> <li>• Draft Project Solicitation and Review Process</li> </ul>
Sep 2012	<ul style="list-style-type: none"> <li>• Draft Planning Process Governance TM</li> <li>• Call for projects</li> </ul>
Oct 2012	<ul style="list-style-type: none"> <li>• List of prioritized projects</li> </ul>
Dec 2012	<ul style="list-style-type: none"> <li>• Draft CEQA/NEPA TM</li> <li>• Draft Tech Analysis section</li> </ul>
Jan 2013	<ul style="list-style-type: none"> <li>• Draft Plan Performance and Monitoring section</li> <li>• Draft Data Management section</li> </ul>
Feb 2013	<ul style="list-style-type: none"> <li>• Draft Finance section</li> <li>• Draft Implementation Governance Section</li> </ul>
Mar 2013	<ul style="list-style-type: none"> <li>• Draft IRWM Plan</li> </ul>
Apr 2013	<ul style="list-style-type: none"> <li>• Draft Highlights Document</li> </ul>
May 2013	<ul style="list-style-type: none"> <li>• Final IRWM Plan</li> </ul>

## Meetings & Process

- Approximately 12 monthly meetings of 2 to 4 hours between May 2012 and June 2013.
- Technical work groups and conference calls between meetings as necessary to exchange specific topical information.
- Stakeholder and public workshops at key milestones to inform and engage the broader community.



# Merced Integrated Regional Water Management Plan Regional Advisory Committee

- Technical support from the Merced Irrigation District, City of Merced, Merced County, and the consulting team as needed.

## Communications & Decision-making

- Communications – The meeting participants will maintain responsibility for bringing forward issues, concerns, and ideas from their communities and constituents who are not able to attend the meetings. RAC members are also expected to inform and educate constituents of the information and discussions from each meeting.
- Decision-making – The three governing bodies (the Merced Irrigation District, City of Merced, Merced County) maintain overall decision authority for the IRWMP Plan and planning process. The governing bodies have delegated day-to-day management and decision-making to the Regional Water Management Group. The Regional Advisory Committee is a forum for discussion and information exchange on regional water management topics among community representatives. The RWMG representatives will participate in RAC meetings. Joint recommendations of the RAC to the RWMG and governing bodies are encouraged, but not required.

The RAC Governing Procedures provide additional details on the communications and decision-making agreements of the RAC and RWMG.

## Participants

The Regional Advisory Committee meetings are open to the public and will be announced on the IRWMP website ([www.mercedirwmp.org](http://www.mercedirwmp.org)). The following are the members and alternates for the Regional Advisory Committee.

Name	Organization	Category
Members		
Hicham ElTal	Merced Irrigation District	RWMG, Flood control
Mike Wegley	City of Merced	RWMG, Stormwater
Ron Rowe	Merced County	RWMG
Constance Farris	Meadowbrook Water Co.	DACs, EJ Interests
Jim Marshall	(Retired) City Manager	Local Government
Jean Okuye	Merced County Farm Bureau	Environment
Lydia Miller	San Joaquin Raptor / Wildlife Rescue	Environment
Cynthia "Cindy" Lashbrook	East Merced RCD	Environment
Kathleen M. Crookham	Retired Supervisor, owner of a cattle ranch	Local Government
Gordon Gray	Snelling MAC	Recreation
Paul van Warmerdam	PH Ranch	Agriculture
Thomas Grave	Merced Alliance / Responsible Growth	Environment
Larry S. Thompson	Thompson Insurance Agency	Other Business
Terry Rolfe	Phase I Construction	Other Business
Johnnie Baptista	Winter Water & Sanitary District	Community
Kole Upton	La Grand WD Dir, Chowchilla WD Dir, SOI Merced County Dir, Farmer	Agriculture



# Merced Integrated Regional Water Management Plan Regional Advisory Committee

Name	Organization	Category
Bob Giampoli	Live Oak Farms	Agriculture
Daniel De Wees	Grazing lands	Agriculture
Martha Conklin	UC Merced	Other Institutional
Jose Antonio Ramirez	City of Livingston	Water supply
Robert D. Kelly	James J. Stevinson, a Corporation	Water supply
Craig Smith	Former Assistant City Manager	Community
Jim Cunningham	Cunningham Ranch	Agriculture
Alternates		
Irene De La Cruz	Between Friends / Entre Amigos Publication	DACs, EJ Interests
Marjorie Kirn	Merced County Assoc. of Govts	Local Government
Bill Hatch	Protect Our Water	Environment
Bill Spriggs	Self-employed	Local Government
Dena Traina	Resident / Provost & Pritchard	Recreation
Gino Pedretti, III	Pedretti Ranches	Agriculture
Jerry Shannon	Shannon Pump Co.	Other Business
William (Skip) George	Commercial Construction Co. of Merced	Other Business
Brad Samuelson	Fagundes Bros. Dairy	Community
Walt Adams	Licensed Pest Control Advisor	Agriculture
Tom Roduner	Roduner Farms	Agriculture
Scott Magnuson	Riparian Land Owner	Agriculture
Thomas Harmon	UC Merced	Other Institutional

## Completion Criteria

- Complete Draft and Final IRWMP
- Prioritized list of regional water management projects
- Governance process description

## Charter Update

- Review and update Charter in January 2013



**ADMINISTRATIVE REPORT**

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**File #:** 16-061

**Meeting Date:** 5/16/2016

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**Report Prepared by:** Ken F. Elwin, Director of Public Works / Interim City Engineer

**SUBJECT:** Memorandum of Understanding Among Agencies Within the Merced Groundwater Sub-Basin Following the Sustainable Groundwater Management Act (SGMA)

**REPORT IN BRIEF**

An introduction to the Sustainable Groundwater Management Act (SGMA) and adoption of a Memorandum of Understanding with various water agencies within the Merced Groundwater Sub-Basin following the Sustainable Groundwater Management Act (SGMA).

**RECOMMENDATION**

**City Council** - Adopt a motion to enter into a Memorandum of Understanding with various water agencies within the Merced Groundwater Sub-Basin following the Sustainable Groundwater Management Act (SGMA) and authorize the City Manager to execute the necessary documents.

**ALTERNATIVES**

1. Approve, as recommended by staff; or,
2. Modify the action (specify in motion); or,
3. Deny; or,
4. Continue item to a future City Council meeting (date and time to be specified in the City Council motion).

**AUTHORITY**

Charter of the City of Merced, Article II, Section 200.

**CITY COUNCIL PRIORITIES**

Not applicable.

**DISCUSSION**

In September 2014, Governor Edmund G. Brown, Jr. signed a three-bill package known as the **Sustainable Groundwater Management Act (SGMA)**. The legislation allows local agencies to customize groundwater sustainability plans to their regional economic and environmental needs. SGMA creates a framework for sustainable, local groundwater management for the first time in California history. Sustainable groundwater management means managing our precious water for future generations, while balancing the more immediate needs of our economy, environment and essential human health and safety.

In September 2015, Governor Brown signed SB 13 by Senator Fran Pavley. The Bill makes various technical, clarifying changes to SGMA, including requirements for groundwater sustainability agency formation, the process for State Water Board intervention if no responsible agency is specified for a basin, guidelines for high- and medium-priority basins, and participation of mutual water companies in a groundwater sustainability agency.

#### The Sustainable Groundwater Management Act:

- Provides for sustainable management of groundwater basins
- Enhances local management of groundwater consistent with rights to use or store groundwater
- Establishes minimum standards for effective, continuous management of groundwater
- Provides local groundwater agencies with the authority, technical, and financial assistance needed to maintain groundwater supplies
- Avoids or minimizes impacts for land subsidence
- Improves data collection and understanding of groundwater resources and management
- Increases groundwater storage and removes impediments to recharge
- Empowers local agencies to manage groundwater basins, while minimizing state intervention

SGMA requires local agencies to establish a new governance structure, known as Groundwater Sustainability Agencies (GSA's) prior to developing groundwater sustainability plans (GSP's) for groundwater basins or sub-basins that are designated as medium or high priority. A core principle of the legislation is that groundwater should be managed at the local and regional level through cooperation and common interest.

GSA's are required to be formed by June 30, 2017, or the state can take over as the primacy agency for groundwater management. The legislation prioritizes its attention on over-drafted basins, as the Merced Groundwater Basin is categorized (see attachment). The SGMA establishes a timeline for adoption of GSP's:

- By 2017, local groundwater sustainability agencies must be identified
- By 2020, over-drafted basins must be covered by a groundwater sustainability plan
- By 2040, each high- and medium-priority basin must achieve sustainability. (This can be extended by 10 years for good cause.)

Core principles of SGMA reflect a long-term, balanced approach to groundwater management:

- Groundwater is best managed at the local or regional level. Every basin is different and solutions must be tailored to the basin and its users. While the legislation sets minimum standards, it gives local agencies maximum flexibility to meet them. It is essential that local and regional agencies exercise leadership and implement locally-appropriate solutions to groundwater challenges.
- That state should complement and support the goal of local sustainable management. The legislation supports local control by providing local agencies with the necessary authority and technical support. The water bond provides \$100 million for planning and implementing groundwater solutions.

- The State's ability to intervene should be limited and temporary. The State should step in only when local agencies are unable or unwilling to manage their groundwater sustainably - to ensure protection of the basin and its users from overdraft, subsidence, and other serious problems. When the State does so, however, it should transfer management to local authorities when they are prepared to assume responsibility.
- Water rights should be protected. The legislation expressly preserves water rights, gives local agencies the ability to minimize conflicts through good planning and will protect the value of water rights by stabilizing groundwater levels.
- The legislation prioritizes those groundwater basins at risk for harm. The Brown Administration will work closely with local agencies and stakeholders to support local efforts and ensure the effective implementation of the legislation.

**HISTORY:**

Back in 1997, Merced Irrigation District (MID) and the City of Merced prepared a draft Groundwater Management Plan (GWMP) to comply with AB 3030. Merced Area Groundwater Pool (MAGPI) was formed then under an MOU and adopts the 1997 GWMP.

In 2008, an updated plan was prepared that supersedes the 1997 plan and responds to SB 1938. The 2008 update was prepared with a Technical Working Group that included MAGPI members, non-MAGPI agencies, technical experts, and members of the public. The 2008 update includes Basin Management Goals and Objective (BMO); BMO 4.2 asserts local control over groundwater resources, which is consistent with the SGMA preferred approach. The GWMP states that MAGPI, "should form a JPA to facilitate regional planning and management of water resources within the Merced Groundwater Basin."

MAGPI is an association without enforceable regulatory authority, it serves as the regional groundwater management planning group and is the focus for public involvement. Individual MAGPI members are responsible for developing local priorities and completing activities or projects within their jurisdictions. MAGPI's MOU anticipates the potential future need for a more robust entity with significant authority. MAGPI is characterized as generally open and accessible to the public. MAGPI has developed an integrated water resources model with Department of Water Resources (DWR) support that has the potential to serve as a unifying tool for GSP development.

This background brings us to the Memorandum of Understanding attached. This MOU sets forth items of agreement among agencies within the Merced Groundwater Subbasin following the SGMA. The agencies involved include Black Rascal Water Company, Chowchilla Water District, City of Atwater, City of Livingston, City of Merced, County of Merced, East Merced Resource Conservation District, Le Grand Community Service District, Le Grand-Athlone Water District, Lone Tree Mutual Water Company, Lower San Joaquin Levee District, Meadowbrook Water Company, Merced Irrigation District, Merquin Water District, Planada Community Service District, San Luis Resource Conservation District, Stevinson Water District, Turner Island Water District, and Winton Water and Sanitation District.

The MOU is simply put an agreement to meet and cooperate to find the best management practices to continue to provide groundwater in a sustainable manner. Formation of at least one GSA is required by June 30, 2017, in order for this Subbasin to avoid being placed on a probationary status.

After formation of at least one GSA, the group or GSAs must collectively establish one GSP, if there are more than one, a coordinated implementation plan must be in place. The agencies agree to cooperate, to use MAGPI as a forum for discussion and although there is no governance structure at this time, they agree to work towards formation of one or more GSA's by seeking consensus and meeting deadlines to be in compliance with SGMA.

The parties are agreeing to work individually and collectively to support the development of a SGMA compliant single GSP. A groundwater model is nearing completion, which simulates the interactions between groundwater and surface water. The model will assist the agencies with SGMA requirements, but more features will need to be refined to develop tools to assist in developing a GSP that is SGMA compliant.

The MOU will have no effect on water rights or replace any existing MOU. There is no financial commitment intended through this MOU. There is no creation of a joint powers authority with this MOU. Entering into this MOU is completely voluntary but it shows a good faith effort to the state. The MOU is an agreement to cooperate and work together towards the common collective goal of a GSP that meets state SGMA targets.

Staff recommends that the City Manager be allowed to sign the MOU and that we continue to work in good faith towards the goal and objectives of the MOU and planning for the future of our Sub-Basin, meeting the goals of the SGMA.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

### **ATTACHMENTS**

1. Over-drafted regions in Central CA
2. Merced Sub-Basin SGMA MOU

# Critically Overdrafted Groundwater Basins – January 2016 — North Central and South Central Regions



**MEMORANDUM OF UNDERSTANDING  
SETTING FORTH CERTAIN ITEMS OF AGREEMENT  
AMONG AGENCIES WITHIN THE MERCED GROUNDWATER SUBBASIN  
FOLLOWING THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

**1. Parties**

The Parties (“Parties”) to this *Memorandum of Understanding Setting Forth Certain Items of Agreement among agencies within the Merced Groundwater Subbasin Following the Sustainable Groundwater Management Act* (“Post-SGMA MOU”) include the following: Chowchilla Water District, City of Atwater, City of Livingston, City of Merced, County of Merced, East Merced Resource Conservation District, Le Grand Community Services District, Le Grand-Athlone Water District, Lone Tree Mutual Water Company, Merced Irrigation District, Merquin County Water District, Planada Community Services District, Stevinson Water District, Turner Island Water District, and Winton Water and Sanitary District. Each of the entities and districts named above may be referred to herein singularly as a Party, or collectively as the Parties.

**2. Recitals**

This MOU is entered into with regard to the following facts and circumstances:

- 2.1.** The Parties share common groundwater resources in that each of the Parties are located above the Merced Groundwater Subbasin (Subbasin), as defined by the Department of Water Resources (DWR) Bulletin 118, 2003 Update, and have managed those resources in the best interests of their respective constituents in compliance with applicable state laws.
- 2.2.** The enactment of the Sustainable Groundwater Management Act of 2014 (“SGMA”) will change many conditions and requirements under which groundwater resources are managed within the Subbasin.

- 2.3. One purpose of SGMA is to promote and encourage local control of groundwater management, provided that groundwater is managed in a sustainable manner.
- 2.4. SGMA requires certain deadlines be met by local agencies within the Subbasin. These deadlines must be met in order to avoid intervention of local groundwater management by the State Water Resources Control Board (“State Water Board”).
- 2.5. Relevant to the Parties, the first SGMA deadline requires the formation of at least one Groundwater Sustainability Agency (“GSA”) by June 30, 2017 in order to avoid the Subbasin being placed on probationary status (California Water Code §10735.2). To the extent that multiple GSA’s may be organized within the Subbasin, DWR will be informed of the formation of GSA(s) in order to assess the adequacy of coordination agreements. Absent the formation of GSA(s), SGMA allows the State Water Board to develop an enforceable interim plan to manage local groundwater resources.
- 2.6. SGMA also requires the adoption of a Groundwater Sustainability Plan (“GSP”), describing how the local GSA(s) plans to achieve groundwater sustainability within the Subbasin. A GSP for the Subbasin must be submitted and approved by DWR by January 31, 2020. The Subbasin must be covered by at least one GSP. If more than one GSP is established, a coordination agreement must be in place to ensure the coordinated implementation of the GSP(s) to achieve sustainability.

### **3. Agreement**

The Parties agree as follows:

- 3.1. **Cooperation:** The Parties agree to cooperate and work together in a civil and professional manner in an effort to move toward groundwater sustainability within the Subbasin and SGMA compliance during the term hereof.

**3.2. Groundwater governance:** While it is unknown at this time what governance structure will be agreed upon during the development of GSA(s), the Parties agree to work individually and collectively to seek formation of one or more GSA(s) to provide SGMA-compliant groundwater management governance within the Subbasin prior to June 30, 2017. The ultimate governance structure within the Subbasin is not the subject of this MOU. As such, this MOU does not form a GSA or multiple GSAs, but rather begins a consensus-seeking discussion process towards GSA(s) adoption and SGMA compliance.

**3.3. MAGPI is a forum for discussion:** The Parties intend that the meetings of the Merced Area Groundwater Pool Interests (MAGPI) may provide one of several forums to discuss possible groundwater governance structures. However, it is the Parties to this MOU (as defined in Water Code §10721(m)) that have ultimate decision-making authority on groundwater governance within the Subbasin.

**3.4. Coordination:** SGMA requires that the entire Subbasin be covered by one or more GSP(s). If more than one GSP is established, SGMA requires that a coordination agreement be established between the different GSA(s) and approved by DWR. The Parties understand and agree that continued coordination and collaboration will be essential to complying with SGMA requirements, therefore and regardless whether a single or multiple GSAs are formed covering the Subbasin, the parties agree to work together in cooperation to meet the requirements of SGMA.

**3.5. Groundwater Sustainability Plan:** To facilitate the coordination required by SGMA, the Parties agree to work individually and collectively to pursue developing a single GSP or coordinated GSPs to manage groundwater within the Subbasin.

**3.6. Groundwater Model and Other Data Coordination:** Development of a SGMA-compliant GSP or coordinated GSPs for the Subbasin will likely require a groundwater model and/or other tools. The Parties agree to cooperatively support the development of a modeling tool or tools to satisfy SGMA and to serve the Parties in identifying and developing strategies to sustainably manage groundwater in the Subbasin. The Merced Water Resources Model (Model) is an integrated water resources model nearing completion for the Subbasin, and simulates the interactions between groundwater and surface water. The Model is funded jointly by the City of Merced, County of Merced, Merced Irrigation District, and DWR. The Merced Area Groundwater Pool Interest (MAGPI) member agencies oversee the development of the Model. While the Model may provide significant capabilities for SGMA compliance, there may be a need for additional features and refinements, or a need to develop or use other models to assist the Parties in developing a SGMA compliant GSP or GSPs. The Parties agree to cooperatively evaluate the Merced Water Resources Model and other existing tools that may be needed to support basin analysis needed for SGMA compliance.

**3.7. No effect on water rights:** The Parties agree that the creation of and participation in this MOU does not create any right or authority over any other Party's own internal matters or resources whatsoever, including, but not limited to, each Party's right to exercise its sole discretion in managing its surface water supplies, conjunctively managed water supplies, groundwater supplies, facilities, operations, water management decisions including groundwater recharge activities, or water supply/conservation projects.

**3.8. No replacement of existing MOU:** The Parties do not intend for this MOU to replace or otherwise alter the existing MAGPI MOU, or any other agreement to which any party hereto may be party.

**3.9. No creation of financial commitment:** This MOU does not create, either expressly or by implication, any financial commitment of the Parties.

**3.10. No creation of joint powers:** This MOU is not intended to create a GSA(s) or any other agency or entity which is separate from the Parties pursuant to Chapter 5 (commencing with §6500) of Division 7 of Title 1 of the Government Code, relating to the joint exercise of powers.

**3.11. Term:** The Parties have entered into this MOU voluntarily. This MOU shall become effective upon signature by an authorized official from each one of the Parties. Any Party may withdraw from this MOU at any time upon providing written notice signed by an authorized official to the other Parties. Notwithstanding the withdrawal of a party to this MOU, this MOU will remain in effect with the remaining Parties unless such remaining Parties decide to terminate the MOU. Unless earlier terminated, this MOU shall expire upon approval by DWR of a GSP(s) that covers the Subbasin.

**3.12. Good faith efforts:** Each Party should use its best efforts and work wholeheartedly and in good faith for the expeditious completion of the objectives of this MOU and the satisfactory performance of the terms and provisions contained herein.

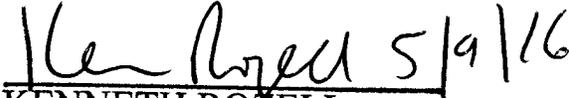
**4. Counterparts:**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This MOU may not be modified except by mutual consent of the authorized officials from the Parties.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed, each signatory hereto represents that he has been appropriately authorized to enter into this MOU on behalf of the Party for whom he/she signs.

*{Signature page to follow}*

**APPROVED AS TO FORM:**

Handwritten signature of Kenneth Rozell, dated 5/9/16.

**KENNETH ROZELL**

**Senior Deputy City Attorney**

**MEMORANDUM OF UNDERSTANDING  
SETTING FORTH CERTAIN ITEMS OF AGREEMENT  
AMONG AGENCIES WITHIN THE MERCED GROUNDWATER SUBBASIN  
FOLLOWING THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

As authorized by motion of the City Council of the City of Merced, California on May 16, 2016.

Signed: \_\_\_\_\_  
Steven S. Carrigan, City Manager

Attest: \_\_\_\_\_  
John Tresidder, Assistant City Clerk



## ADMINISTRATIVE REPORT

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**File #:** 16-178

**Meeting Date:** 5/16/2016

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**Report Prepared by:** *Jeff Bennyhoff, Director of Information Technology*

**SUBJECT:** Agreement for Professional Services with THOR, Inc. for AS/400 Programming Services

### REPORT IN BRIEF

Authorizing a Professional Services Agreement with THOR, Inc. for \$165,000 for AS/400 programming services to support SunGard financial application suite.

### RECOMMENDATION

**City Council** - Adopt a motion approving Professional Services Agreement with THOR, Inc.; and, authorizing the City Manager to execute the necessary documents.

### ALTERNATIVES

1. Approve as recommended by Staff; or
2. Deny; or,
3. Refer to Staff for further evaluation.

### AUTHORITY

Charter of the City of Merced, Section 200.

### CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget.

### DISCUSSION

The Information Technology Department had two staff members recently retire. These two employees supported the City's SunGard software suite. This software suite runs on technology created in the late 1960s, called RPG, which requires a very unique skillset. Currently the department has no one with these skills in-house. All recruitment efforts have failed to find an applicant with these unique skills.

The SunGard software suite has run many of the City's critical business operations, including payroll, utility billing, GMBA, business licenses, building permits, and more, for over the past 25 years. The retired staff members modified the existing programs provided by SunGard to fit the needs of the departments over that period of time.

Although the SunGard system is dated, it is still a highly functional system. A modern day technology

replacement to the SunGard system that would provide all the same functionality for departments would cost approximately \$750,000. As the professional community of people that support this type of older technology is currently experiencing mass gentrification, it will become increasingly important to start the process to move to modern-day technology in future fiscal years.

Currently the City uses the Thor Group to support these custom modifications to the SunGard software suite. The Thor Group is a professional staffing agency which specializes in this type of older technology. We utilize a Thor employee that was formerly a programmer for SunGard through the 1990's. This contract will allow the City to continue to utilize this person on a time-and-material basis of \$109/hour to support our modified SunGard software suite.

The City has found only one other vendor that was interested in performing this work on the time and material basis and had the qualification and knowledge that we require. This vendor pricing was \$150/hr.

Professional services from this fiscal year and from the proposed FY16/17 budget will be used to fund this contract.

### **IMPACT ON CITY RESOURCES**

Funding is available in the following fund: 672-0404-512-1700; \$165,000.

### **ATTACHMENTS**

1. Thor Client Services Master Agreement

# THOR

## CLIENT SERVICES MASTER AGREEMENT

(Time and Materials)

Client # 437414  
Client Purchase Order#:  
Master Agreement #:  
Date: 2/8/2016

TGI: THOR, INC.  
840 Apollo St., Suite 225  
El Segundo, CA 90245  
Tel: (310) 727-1777  
Fax: (310) 727-1770  
E-Mail: davidr@thorgroup.com

Client: City of Merced  
Address: 678 W. 18<sup>th</sup> St  
Merced, CA 95340

The Client has requested that Thor, Inc. (TGI), utilizing TGI's Consultants, fulfill various consultant requirements on an on going basis. With each new consultant requested from client, a client services agreement attachment referencing this Master Agreement number and/or purchase order number is to be done. Each client services agreement attachment provides:

- a. contractor's name
- b. scope of work
- c. under the direction of name
- d. start date
- e. approximate length of assignment
- f. Standard Service Bill Rate
- g. Overtime Service Bill Rate
- h. Double-time Service Bill Rate
- i. Travel expense:
- j. Special Instructions:

TGI may change the Scope of Work upon mutual written agreement with Client of such changes.

### Standard Terms and Conditions

1. Client Fees and Conditions:
  - a) Fee: In consideration for the services provided by TGI to Client under this Agreement, Client hereby agrees to pay to TGI the fee, on a time and materials basis, at the rate of per hour upon submission of a TGI Consultant Verification Record signed by Client, plus any expenses which have been pre-approved by both TGI and Client.
  - b) Consultant Verification Record: Each week Consultant will submit to Client a four-part Consultant Verification Record with the hours Consultant worked in that particular week. For each week TGI's Consultant works, a separate Consultant Verification Record should be used. The week ending date is always Saturday. Client shall verify the hours worked, sign the Consultant Verification Record, and retain the client copy for Client's records. Client's signature on the Consultant Verification Record legally binds Client to pay TGI for those hours. If there are any changes or corrections marked on the face of the Consultant Verification Record, Client must initial them to indicate Client's approval.
  - c) Fees: The services of TGI's Consultant will be paid in accordance with each individual Consultant Agreement. The services are billed on a weekly basis for actual hours. Client agrees to pay all TGI net upon receipt of invoice. In the event that payment is extended past forty-five (45) days, Client will be subject to, and agrees to pay, a 1.0% per month late payment charge on the unpaid balance. The Consultant Verification Record signed by Client will detail and act as satisfaction of all work performed.
  - d) Cancellation: If Client cancels Consultant's services on the day of engagement prior to Consultant beginning such services, then Client shall pay a four (4) hour minimum charge.
  - e) Performance Satisfaction: If client is not satisfied with TGI's performance of the services under this Agreement, then Client must notify TGI in writing, within fourteen (14) days after the completion of the services, specifying in detail the reasons for the dissatisfaction.
2. Consultant's Work Parameters: Client may set the working hours of TGI's Consultant depending upon Client's requirements. An acceptable schedule and work place must be agreed upon between TGI and Client prior to the Consultant starting work. Consultants must be flexible in their work schedule to meet the Client's/Government's training requirement/schedule. It is Client's responsibility to make any computer system usage time or Client's personnel available to meet the demands of the Scope of Work.
3. Confidentiality:
  - a) TGI shall keep confidential and not disclose any of Client's confidential or proprietary information. TGI agrees to take the same reasonable steps to safeguard Client's confidential information as TGI uses to safeguard its own confidential or proprietary information. The confidentiality obligations in this Agreement shall not apply to; (1) any information which is, or becomes, available in the public domain through no wrongful act of TGI or its representatives; (2) any information lawfully in the possession of TGI or its representatives prior to their receipt of such information from Client; (3) any information independently developed by TGI or its representatives; (4) any information received by TGI or its

2/9/16 9:51 AM

Initials:  
Date:

THOR's Initials:  
Date: 2/8/2016



representatives from a third party lawfully in possession of such information and having the right to disclose such information; and (5) any information required to be disclosed by law or court order.

b) TGI shall, at no time, have the right to use the trademarks, trade names or service marks of Client, whether existing pursuant to common law or state or federal statutes, without the prior written approval of an executive officer of Client.

c) TGI's Consultant shall not discuss their rate of pay with any member of Client's staff.

d) Client agrees not to discuss TGI's fees or any of the incurred costs charged to TGI by the Consultant with anyone other than a TGI Manager.

e) TGI's Consultants are instructed to abide by the licensing agreements that accompany Client's software.

4. **Ownership and Intellectual Property Rights:** All work produced pursuant to this Agreement shall be the property of Client, and all intellectual property rights, including but not limited to copyrights, patents and trade secrets, arising from any existing Client-owned or newly created work developed by TGI's Consultants while performing work for Client under this Agreement shall remain Client's property. However, Client is responsible for taking all steps necessary to protect said intellectual property rights including but not limited to affixing appropriate copyright notices, registering copyrights, and applying for patents.

5. **Liability:** The parties hereto hereby agree that (a) TGI is only providing individual Consultants to Client under the terms of this Agreement, (b) TGI is not warranting or guaranteeing the work performance or work product of such Consultants, (c) Client is solely responsible for defining the Scope of Work, overseeing the work performed by such Consultants, and utilizing and implementing the work produced by such Consultants, (d) TGI has no liability for such Consultants' work product or for such Consultants' errors or omissions present in such work product, (e) TGI shall not be liable for any direct, indirect, incidental, special, punitive, exemplary, or consequential damages (including any loss of profits or loss of business), whether in an action or claim arising in contract, tort or otherwise, resulting from or related to this Agreement or any work performed by Consultant or any work product of Consultant, (f) any claim by Client for damages against TGI must be brought against TGI within six (6) months after the expiration or termination of this Agreement, (g) TGI's maximum liability under this Agreement shall be limited to the aggregate sum accumulated separately by each contractor paid by Client to TGI under this Agreement, specifically applicable to the individual consultant in question. (h) except for the express warranties in this Agreement, TGI DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, and (i) TGI has no responsibility or liability for any computer software developed, written, amended or revised by Consultant, including but not limited to whether or not such computer software performs in accordance with Client's specifications or performs without interruption or error. TGI assumes no liability for consequential, direct or indirect damages resulting from work performed by a TGI Consultant.

6. **Performance:** TGI and its staff shall use their best efforts to complete the Scope of Work as specified to TGI by Client. In the event that the Client perceives a lack of performance of the Consultant, Client has the right to terminate this Agreement upon written notice to TGI, or to have TGI replace said Consultant, as soon as possible, with another consultant of "like" capabilities.

7. **Hiring of Consultant:**

a) During the period from the date of this Agreement to the later of one (1) year after the completion of the tasks in the Scope of Work or two (2) years after the date of this Agreement, Client hereby agrees not to solicit or accept for employment (other than through TGI) the TGI Consultant on a permanent, temporary, or contract basis. This applies to any position within Client or its affiliates.

b) Should Client breach Section 7(a), since it would be difficult to determine the amount of damage, Client hereby agrees to pay TGI, as liquidated damages, the greater of an amount equal to 20% of the dollars being earned by Consultant services on a contract basis or 20% of Consultant's first year's full-time permanent employee or consulting compensation if Consultant is hired.

c) Any referrals of additional employment on a permanent, temporary, or contract basis, whether with Client or any other entity, which is made known, directly or indirectly, to TGI's Consultant are deemed referrals to TGI. Therefore, TGI will be entitled to compensation based upon an amount equal to 20% of the first year's compensation of the Consultant hired through such a referral. If the entity to whom that person is referred has not compensated TGI, Client shall be obligated for such charges. This applies for any position in Client's company, division of Client's company or to another company for a period of one (1) year after the completion of tasks in the Scope of Work or two (2) years after the date of this Agreement, whichever is the later.

8. **No Assurance:** Client acknowledges that it understands that TGI's ability to provide the services hereunder with regard to the Scope of Work is dependent upon many factors outside the control of TGI.

9. **Miscellaneous:**

a) **Entire Agreement:** This Agreement constitutes the entire agreement among the parties hereto with regard to the subject matter hereof, and supersedes any and all other agreements, oral or written, among the parties hereto with regard to the subject matter hereof.

b) **Amendments:** Except as otherwise provided in this Agreement, this Agreement shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

c) **Successors; Assignment:** This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. Neither this Agreement nor any interest herein may be transferred, directly or indirectly, or assigned by Client, in whole or in part, without the prior written consent of TGI. Any such transfer or assignment by Client without such TGI prior written consent shall be null and void.

d) **Waiver:** Any waiver of a provision of this Agreement must be in writing signed by the party waiving its rights and shall apply only in the specific instance and for the specific purpose given. The giving of a waiver in one instance or for one purpose shall not create any implied obligation to give a waiver in another instance or for another purpose.

e) **Headings:** The headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision of this Agreement.

f) **Severability; Enforceability:** If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

g) **Applicable Law:** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California (other than principles of conflict of laws). No provision of this Agreement shall be construed against any party by reason of that party having drafted the same.

h) **Attorney's Fees:** In the event of any dispute among the parties hereto relating to the subject matter of this Agreement, the out-of-pocket costs and reasonable attorney's fees of the prevailing party shall be paid by the other party in addition to any other relief.

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Initials:  
Date:

THOR's Initials:  
Date: 2/8/2016

- i) Arbitration: Any equitable relief sought by either party hereto (including injunctive relief) for breach of this Agreement by the other party hereto may be sought by judicial action in a court of competent jurisdiction. Except as set forth in the preceding sentence, any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration held in Merced, CA before one (1) arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association then existing, and judgment on the arbitration may be entered in any court having jurisdiction over the subject matter of the controversy. The arbitrator shall not have the power to amend or modify this Agreement. If Client has any dispute, claim, or controversy relating to this Agreement, then Client must notify TGI in writing of such dispute, claim, or controversy within fourteen (14) days after the completion of the Scope of Work or the termination of this Agreement (whichever is earlier), and any such dispute, claim or controversy which is not so presented is barred and waived.
- j) Not an Agent: The parties hereto understand and agree that this Agreement does not make either party hereto an agent or legal representative of the other party hereto for any purpose whatsoever. Consultant does not have, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of TGI or Client or to bind TGI or Client in any manner whatsoever. Both parties expressly acknowledge that Consultant is retained by TGI and not by Client, and that the parties hereto are not partners or joint ventures.
- k) Notices: All notices and other communications required under this Agreement shall be in writing and shall be sufficient in all respects if personally delivered or sent by registered or certified mail, postage prepaid, or by telecopy (with confirmed receipt), and addressed to the parties at the addresses first listed above. Any notice shall be deemed to have been delivered on the earlier of actual receipt or seventy-two (72) hours after the date it was mailed in the manner described above. Any party may change its address by a notice given to the other party in the manner set forth above.
- l) Expenses: Each party hereto will bear its own expenses incurred in connection with entering into this Agreement, unless otherwise agreed to.
- m) When requested by the Government, Consultants must show proof of a physical exam, Immunization Record or TITER lab results. Cost incurred for these requirements is the responsibility of TGI.

Date: February 8, 2016

Date: \_\_\_\_\_

THOR, INC.  
California Corporation  
TGI

Client: City of Merced

By:   
(Signature)

By: \_\_\_\_\_  
(Signature)

David Rains  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

General Manager  
(Title)

\_\_\_\_\_  
(Title)

**APPROVED AS TO FORM:**

  
**KENNETH ROZELL**  
Senior Deputy City Attorney

# THOR

## Client Services Agreement Consultant Attachment

Reference Master Agreement between THOR, INC. and Client  
For Each Consultant

Client #: 437414  
Client Purchase Order #:

Job Order # 31515  
Master Agreement #

Date: February 8, 2016

TGI: THOR, INC.  
840 Apollo St, Suite 225  
El Segundo, CA 90245  
Tel: (310) 727-1777  
Fax: (310) 727-1770  
E-mail: [davidr@thorgroup.com](mailto:davidr@thorgroup.com)

Client: City of Merced  
678 W 18<sup>th</sup> St  
Merced, CA 95340

- a. Contractors Name: Ms. Elizabeth Berg
- b. Scope of Work: Assistance with Sungard Naviline System
- c. Under the Direction of: Mr. Jeff Bennyhoff, Director of IT
- d. Approximate Start Date: TBD
- e. Approximate Length of Assignment: To be determined by City of Merced
- f. Standard Service Bill Rate: \$109/hour
- g. Overtime Service Bill Rate: \$109/hour
- h. Double-time Service Bill Rate: \$109/hour
- i. Travel Expense: Client agrees to pay airfare, hotel, rental car and per diem when consultant is required to be onsite.
- j. Special Instructions: Upon execution of this THOR Client Services Master Agreement and Client Services Agreement Consultant Attachment, Thor suggests the execution of Task Vetting and Support Guidelines with City of Merced as well as cover how City of Merced will use the Consultant Verification Record management tool.

### Signatures:

Authorized Client Representative

THOR, INC. Representative

Signature

Signature

Name

David Rains

Name

Title

General Manager

Title

Date

February 8, 2016

Date



**ADMINISTRATIVE REPORT**

**File #:** 16-186

**Meeting Date:** 5/16/2016

**Report Prepared by:** Ken Elwin, Director of Public Works, Merced Regional Airport

**SUBJECT:** Appropriation for the Merced Regional Airport Runway Remarking, Taxiway Center Line Remarking, and Holding Position Remarking

**REPORT IN BRIEF**

Merced Regional Airport is requesting Council's consideration in authorizing a transfer in the amount of \$50,000 from Fund 448 Airport Industrial Park CIP to Fund 461 Airport CIP and appropriating to cover costs for runway remarking, taxiway center line remarking, and holding position remarking.

**RECOMMENDATION**

**City Council** - Adopt a motion authorizing a transfer from Fund 448 Airport Industrial Park CIP Fund in the amount of \$50,000 to Fund 461 Airport CIP Fund and appropriating to Project #116047 Remark Runway/Taxiway.

**ALTERNATIVES**

1. Adopt the motion as recommended by the Airport Authority.
2. Modify the action (specify in motion).
3. Deny the action.

**AUTHORITY**

Merced Municipal Code Article II, Sec. 200.

14 CFR Part 139: §139.311(a)(1) - Runway Markings; §139.311(a)(2) - Taxiway Markings; §139.311(a)(4) - Holding Position Markings.

**CITY COUNCIL PRIORITIES**

Not Applicable.

**DISCUSSION**

The Federal Aviation Administration (FAA) conducted a periodic certification inspection of the Merced Regional Airport/Macready Field in November 2014. The inspection revealed that the airport is not being operated in compliance with 14 CFR Part 139: §139.311(a)(1) - Runway Markings; §139.311(a)(2) - Taxiway Markings; §139.311(a)(4) - Holding Position Markings. The Merced Regional Airport, under direction from FAA, is required to maintain runway remarking, taxiway centerline remarking, and holding position remarking.

To date, City staff has worked diligently and has been able to remark the runway centerline according

to specifications of AC 150/5340-1 current edition. Ten of the 12 threshold bars for RWY12 have been completed. This work was accomplished with the internal funding available through Fiscal Year 2015/2016 and resulted in the exhaustion of all available budgeted funds for maintenance and supplies for the Airport. The remaining RWY12/30 remarking along with the runway designator markings will be completed when the funding is available for additional paint and glass beads.

The remaining RWY12/30 remarking along with the runway designator markings will be completed when funding is available for additional paint and glass beads. Similarly, once additional funding is secured, the taxiway centerline, taxiway leadoff/lead on lines and the red background of some of the surface painted holding position sign markings (SPHPS) that appear pink will be remarked in accordance with specifications of AC 150/5340-1 current edition.

The Airport is currently working with the FAA San Francisco Airports District Office to secure Airport Capital Improvement Plan (ACIP) funding for the remarking project and reimbursement for specified costs incurred to date. The Airport recently submitted two grant applications and we are optimistic based on conversations with the FAA that funding could be awarded and secured through the FY 2016 grant process.

It is staff's recommendation that a transfer from Fund 448 in the amount of \$50,000 to Fund 461 and appropriation be approved for the remarking project prior to the grant process in order to bring the Airport back into compliance with the FAA.

### **IMPACT ON CITY RESOURCES**

There is no General Funds being utilized.

### **ATTACHMENTS**

1. FAA Letter of Correction



U.S Department  
of Transportation

**Federal Aviation  
Administration**

Western-Pacific Region  
Office of the Regional Administrator

P.O. Box 92007  
Los Angeles, CA 90009-2007

December 2, 2014

EIR: 2015WP800019

Ms. Janet Young  
Merced Regional/Macready Field  
20 Macready Drive  
Merced, CA 95341

**RECEIVED**

**DEC 08 2014**

Merced Regional/Macready Field  
Merced California  
Letter of Correction

Dear Ms. Young:

The periodic certification inspection of the Merced Regional/Macready Field (MCE) was conducted 17-19 Nov 2014. The inspection revealed that the airport is not being operated in compliance with 14 CFR Part 139, the Airport Certification Manual (ACM), and the Airport Operating Certificate.

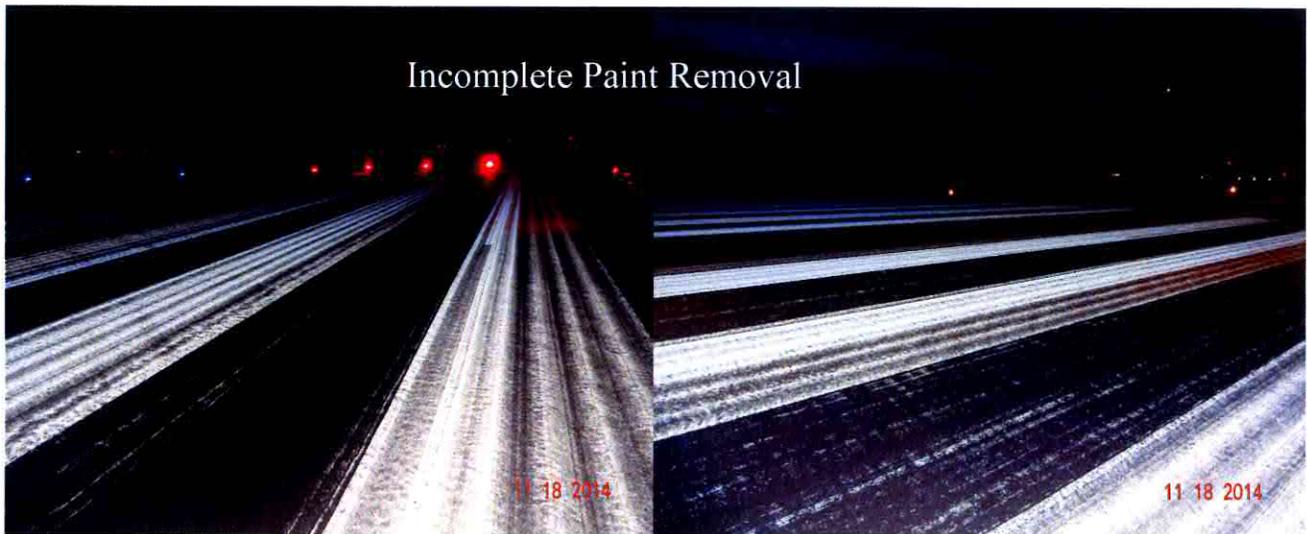
**§139.201(a) – Airport Certification Manual.** The certificate holder is not operating in compliance with the Airport Certification Manual (ACM) as related to the 11 discrepancies identified in the 2014 Part 39 Annual Inspection.

**Correction Date:** Feb 17, 2015

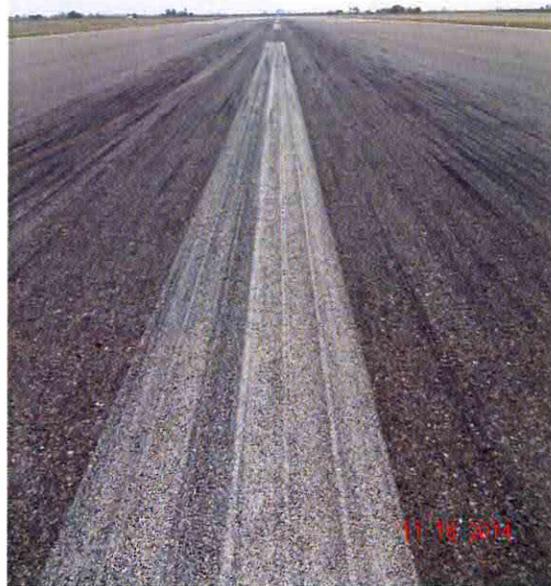
**§139.201(b) - Airport Certification Manual.** The certificate holder failed to ensure the ACM is current. For example, ARFF is not included in the distribution. Section 303 contact information for key personnel is outdated. Section 309 has the incorrect dimensions of the Runway Safety Area (RSA) as well as the information regarding the location of the localizer. It also incorrectly indicates that service roads are located in the RSA. Section 311 does not include an approved Sign and Marking Plan. Section 315 identifies the airport as Index C capable; however, the information does not match what's published on the Airport Master Record or in the Airport/Facility Directory. The Emergency Alerting System information in Section 319 does not accurately capture the how ARFF personnel are alerted of impending emergencies. Section 327 does not include inspection of the safety areas. Section 329 references an outdated advisory circular. Section 337 should be updated to reflect a wildlife hazard assessment was recently completed. Appendix A, the Part 139 Training Event Record does not include all training required under §139.319. Additionally, this training record is not being used by ARFF personnel. Appendix K has outdated information regarding persons authorized to issue NOTAMS. The certificate holder must conduct a thorough review of the ACM for accuracy and update as required.

**Correction Date:** Dec 19, 2014

**§139.311(a)(1) – Runway Markings.** The certificate holder failed to maintain runway markings. Runway 12-30 centerline markings were found badly faded. Runway designation and threshold markings exhibited both white and beige hues. Where the threshold markings width was decreased, remnants of the white paint is still visible during daytime and hours of darkness. Also, in some areas of the markings, the paint appeared to be missing beads. The certificate holder must ensure all runway markings meets the standards outlined in AC 150/5340-1, *Standards for Airport Markings*, current edition. Pavement markings that are no longer needed are not to be painted over but instead are to be physically removed. Physical removal of markings is achieved by water blasting, shot blasting, sand blasting, chemical removal, or other acceptable means that do not harm the pavement. The physical removal of any old marking(s) must include a pre-determined larger size and shape of a removal area that encompasses the old marking(s) and by grouping adjacent markings together into a larger rectangular removal area.



Faded Runway Centerline



**Correction Date:** Feb 17, 2015

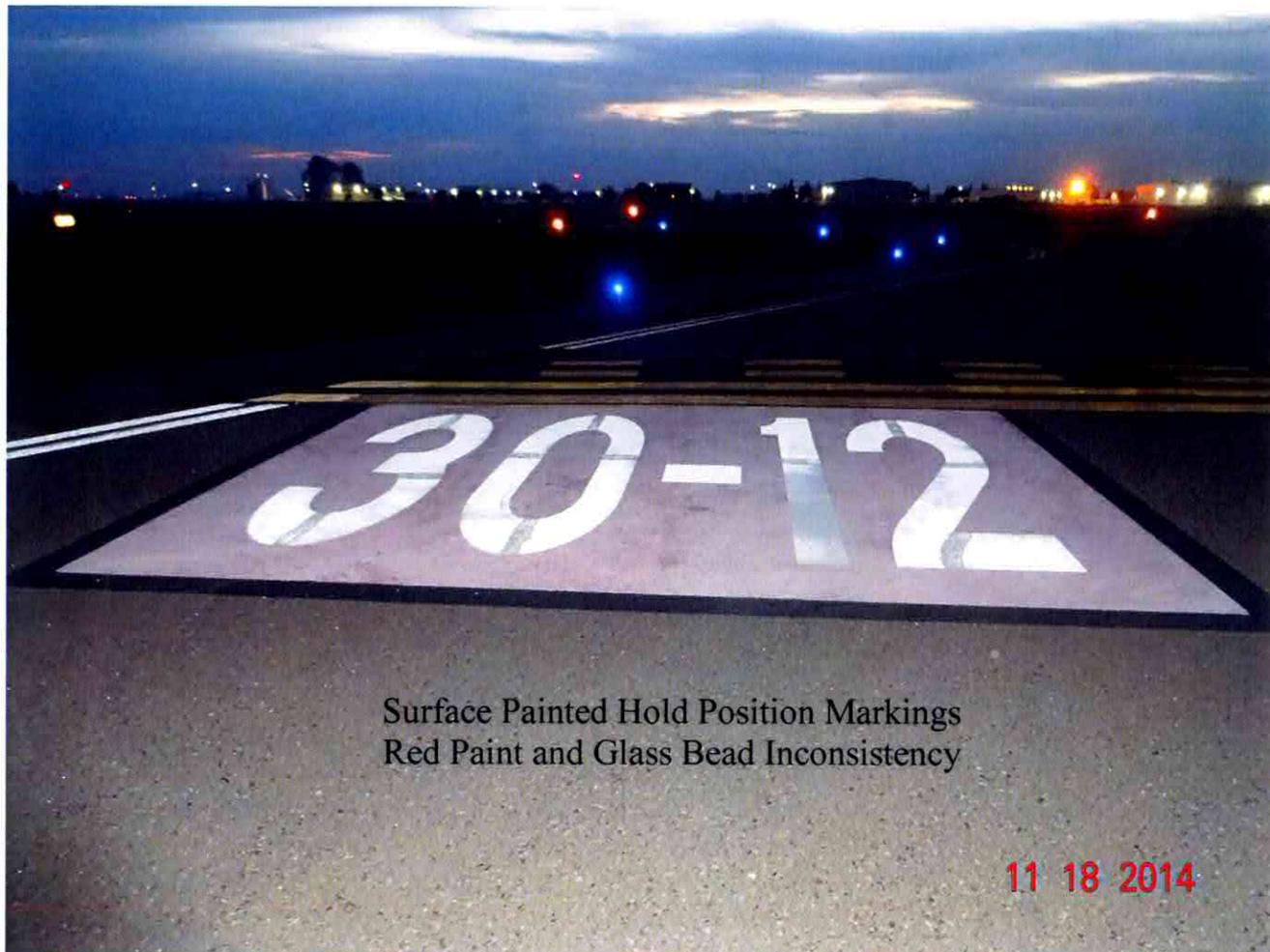
**§139.311(a)(2) – Taxiway Markings.** The certificate holder failed to maintain taxiway centerline markings. Taxiway centerlines were found badly faded. Additionally, not all lead-on/off lines that lead to the runway were visible. The certificate holder must ensure all taxiway markings meets the standards outlined in AC 150/5340-1, *Standards for Airport Markings*, current edition.

Faded Lead on/off line



**Correction Date:** Feb 17, 2015

**§139.311(a)(4) – Holding Position Markings.** During hours of darkness, the red background of some surface painted holding position sign (SPHPS) markings appears pink. Additionally, the glass beads distribution appears to be inconsistent. The certificate holder must ensure all SPHPS markings meets the standards outlined in AC 150/5340-1, *Standards for Airport Markings*, current edition and provide the required supplemental visual cues that alert pilots and vehicle drivers of an upcoming holding position location.



**Correction Date:** Feb 17, 2015

**§139.311(d) – Signs.** The certificate holder failed to maintain signs identifying taxiing routes on the movement area. Due to direct sunlight on some parts of the airfield, some direction sign panels were found faded and require replacement. Non-standard inbound destination signs were also found. Common names and abbreviations used for inbound destinations are: APRON - general parking, servicing, and loading areas; RAMP -synonymous with APRON; FUEL -areas where aircraft are fueled or serviced; TERM -gate positions at which aircraft are loaded or unloaded; CIVIL-areas set aside for civil aircraft; MIL -areas set aside for military aircraft; PAX -areas set aside for passenger handling; CARGO -areas set aside for cargo handling; INTL -areas set aside for handling international flights; and FBO -fixed-base operator. The certificate holder must conduct a thorough inventory of all signs, ensure compliance with A/C 150/5340-18F, *Standards for Airport Sign Systems*, and replace as required.



Non-Standard Inbound Destination Signs

Faded Direction Sign Panels

**Correction Date:** Feb 17, 2015

**§139.319(i)(2) - Aircraft rescue and firefighting: Operational requirements.** Records indicate that two ARFF personnel failed to complete recurrent instruction every 12 consecutive calendar months in application of the types of extinguishing agents and adapting and using structural rescue and firefighting equipment for ARFF. One individual failed to complete recurrent training in airport familiarization, including airport signs, marking, and lighting as well as rescue and firefighting personnel safety. A Letter of Investigation (LOI) will be issued.

**§139.319(i)(3) - Aircraft rescue and firefighting: Operational requirements.** Records indicate that one ARFF personnel failed to complete live-fire training prior to performing ARFF duties. A LOI will be issued.

**§139.321(c) – Hazardous Materials.** The fueling agent, TDL Aero Enterprises was found in non-compliance with the local Fire Safety Standards. For example, one tire on a mobile fueler was found to have worn treads. Additionally, an ABC extinguisher was found on a mobile fueler.

**Correction Date:** Dec 19, 2014

**§139.321(e)(1) – Hazardous Materials.** Documentation provided by the fueling agent indicates the supervisor failed to complete recurrent instruction at least every 24 consecutive calendar months. Although the company that provided the training is on a list of approved companies offering courses of instruction in line service training as well as supervisory training that are acceptable to the Administrator, the certificate provided does not meet the requirements. The certificate does not contain the following wording: (1) The individual completed the “Fuel Safety Supervisor” training and (2) “Has successfully completed all classroom and practical application for the requirements of 14 CFR §139.321(b)(1) through (b)(6) and §139.321(e) (1)”. A LOI will be issued.



**Correction Date:** Dec 19, 2014

**§139.323 - Traffic and wind direction indicators.** Runway 30 supplemental wind cone was found in the Runway Object Free Area (ROFA). The wind cone is located approximately 275 feet from the runway centerline, not fixed-by function, and must be moved out of the ROFA. The supplemental wind cone must be located near the runway end so that pilots have an unobstructed view during either landing or takeoff operations. The preferred location is on the left side of the runway when viewed from a landing aircraft. However, it may be located on the right side of the runway where conditions such as the existence of another runway, taxiway, apron, terrain problems, or navigational aids preclude its installation on the left side. The certificate holder must work with the SFO Airport District Office to address this 139 violation and correct at the earliest opportunity.



**Correction Date:** Feb 17, 2015

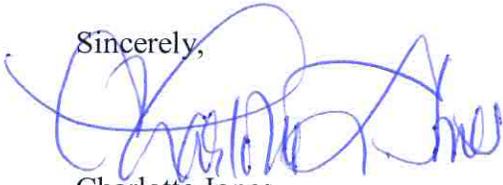
**Recommendations:**

1. Although the current 2000 E-One apparatus is operational, the airport has only one ARFF vehicle. If the vehicle should become unserviceable a replacement is not available. Recommend the airport plan for a new truck in order to have a reserve capable of maintaining its index.
2. Keeping records is crucial to Part 139 certification. A comprehensive record keeping system makes it possible to develop accurate and timely reports that show the progress and current status of individual training. Recommend simplifying ARFF training records for (a) easy review; (b) monitoring and measuring the progress of individual training; (c) a comparative analysis of training across periods of time (month, quarter or year); and(d) future planning/scheduling.
3. The asphalt on Taxiway Echo appears to be exhibiting a high degree of weathering. Recommend the airport plan for and conduct an immediate Pavement Management Program (PMP) to find optimum strategies for maintaining pavements in a safe serviceable condition. The PMP is also needed to publish the gross weight and pavement condition number in accordance with Advisory Circular 150/5335-5C, *Standardized Method of Reporting Airport Pavement Strength – PCN* by August 14, 2015.
4. The airport does not own any snow removal equipment or have continuous friction measuring equipment that can be used for conducting friction surveys on runways during winter

operations. As a result, braking action is reported based on pilot reports (PIREPs). However, while PIREPs of braking action provide valuable information, these reports may not apply to the full length of the runway as such evaluations are limited to the specific sections of the runway surface in which the airplane wheel braking was used. Recommend the airport review its procedures, A/C 150-5200-30, *Airport Winter Safety and Operation*, and A/C 150-5200-28, *Notices to Airmen for Airport Operators*, to ensure PIREP braking action includes all thirds of the runway and update as required.

We have given consideration to all available facts and concluded that this matter does not warrant legal enforcement. In lieu of such action, we are issuing this letter which will be made a matter of record. We will expect your future compliance with the regulations. Please advise in writing when the unresolved discrepancies are corrected within 15 days of the correction date.

Sincerely,



Charlotte Jones  
Airport Certification Safety Inspector  
FAA Western-Pacific Region



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-217

**Meeting Date:** 5/16/2016

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**SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Attorney;  
Government Code 54957(If Elected by Employee)



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-218

**Meeting Date:** 5/16/2016

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**SUBJECT: PUBLIC EMPLOYEE DISCIPLINE - Public Employee Discipline/Dismissal/Release;**  
**Authority: Government Code 54957 (If Elected by Employee)**



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
Merced, CA 95340

## ADMINISTRATIVE REPORT

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**File #:** 16-201

**Meeting Date:** 5/16/2016

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**SUBJECT:** Approval of Letter to Adam Gray

### REPORT IN BRIEF

Letter of support for funding the violence interruption/prevention emergency response (VIPER) program in Merced County.

### RECOMMENDATION

**City Council** - Adopt a motion approving letter of support for funding the VIPER program in Merced County.

### ATTACHMENTS

1. Letter to Assemblyman Adam Gray

# CITY OF MERCED

"Gateway to Yosemite"



May 6, 2016

The Honorable Adam Gray  
California Assembly  
California State Capitol  
PO Box 942849  
Sacramento, CA 94249-0021

Dear Mr. Gray,

I am writing to strongly endorse your effort to include desperately needed funding to address an epidemic of homicides and gang related violence in Merced County. For the last couple of years, Merced County has earned the unwanted distinction of being the murder capital of California. This designation is based on the state Attorney General's annual report on Homicide in California. In 2014, the last year for which statistics are available, Merced County reported 10.9 homicides per 100,000 people, the highest for any county with a population of 100,000 or greater.

Merced County was number two in this category in 2013, and after another 31 homicides in 2015 we are bracing for news that we are first in the state again in this most unwelcome category. In the last three calendar years, 2013-15, Merced County recorded 93 homicides, an alarming increase over previous years and a grim statement of escalating gang violence in our communities.

The reasons for this dramatic upswing in homicides are rooted primarily in gang violence, often directed by gang leaders incarcerated in state prison. Two major undercover operations undertaken in the last three years in Merced County, Operation Red Eye and Operation Red Right Hand, coordinated by the state Bureau of Investigations out of Fresno, resulted in the arrests of more than a hundred gang members and revealed a sophisticated network of gang communication originating in state prison and directing gang violence and narcotics sales on the streets of Merced County.

Because of systemic poverty in Merced County, and the lingering effects of the recession, law enforcement resources have been decimated at a time they are needed most. Some of the local law enforcement agencies that have participated in Merced County's gang task force in past years have been compelled to withdraw their personnel because of financial crises in their own jurisdictions.

Of particular note and concern is that the spiraling murder rate in Merced comes at a time when homicide numbers are falling dramatically across California.

According to the gang suppression experts in the Attorney General's Fresno office, the most essential need is extensive and accurate intelligence gathering regarding gang activities. Accordingly, we have fashioned a new strategy that is less reliant on after the fact criminal investigation and more focused on identifying and interrupting gang violence before it occurs. This violence interruption/prevention emergency response, or VIPER, program would utilize information management to direct enforcement and prosecution resources. It is well understood that much of the gang violence is coordinated by a few key players, both in state prison and in the local community. By identifying and targeting those individuals, we believe we can substantially bring down the activities that are resulting in epidemic violence.

An integral part of the VIPER strategy is developing new community initiatives and relationships which have been shown to be effective in persuading current and potential gang members to abandon the gang life.

Intelligence information that has been obtained in previous undercover operations underscores the fact that Merced County is in the epicenter of a transnational narcotics distribution network and thus our problem is, in fact, a state problem. Consequently, we believe it is a necessary and appropriate use of state resources to target one of California's festering gang violence centers.

The funds requested in the state budget will be targeted exclusively to identifying and interdicting the wave of gang violence that is currently swamping a county of 260,000 people. We believe this will require a multi-year commitment consistent with the funds requested.

On behalf of the citizens of Merced County, we are extraordinarily grateful for the consideration of this request.

Sincerely,

Stanley P. Thurston, Mayor  
City of Merced