



CITY OF MERCED

Meeting Agenda

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

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

Monday, May 2, 2016

7:00 PM

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

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 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. CALL TO ORDER

A.1. Invocation - Pastor Robert Morris, Valley Harvest Church

A.2. Pledge of Allegiance to the Flag

B. ROLL CALL

C. CEREMONIAL MATTERS

C.1. Proclamation - Building Safety Month

C.2. Proclamation - Poppy Month

C.3. Proclamation - Bike Month

C.4. Proclamation - Municipal Clerks Week

C.5. Gift to Merced Police Department - Painting by Clint Cheatham

D. WRITTEN PETITIONS AND COMMUNICATIONS

E. 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.

F. 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.

F.1. [16-118](#) **SUBJECT:** "Information-Only" Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$28,000 and of Public Works contracts under \$63,054.

AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted 2015 threshold of \$63,054.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted 2015 threshold of \$28,000.00, the contracts listed on the attached table were entered into by the City.

F.2. [16-133](#) **SUBJECT:** Information Only- Recreation & Parks Commission
Minutes of September 28, 2015

REPORT IN BRIEF

For Information Only.

F.3. [16-151](#)

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.

F.4. [16-169](#)

SUBJECT: Boards and Commissions Annual Vacancies

REPORT IN BRIEF

Authorizes staff to seek applicants for vacancies due to terms expiring July 1, 2016.

RECOMMENDATION

City Council - Adopt a motion directing staff to notice:

- A. One upcoming vacancy on the Planning Commission and to seek applicants for the position; and,
- B. One upcoming vacancy on the Personnel Board and to seek applicants for the position; and,
- C. All other existing open seats on the City's Boards and Commissions and seek applicants for the positions.

F.5. [16-129](#)

SUBJECT: Distribution of Wahneta Hall Trust Funds

REPORT IN BRIEF

Consider approving the allocation of the 2016 Wahneta Hall Trust Funds.

RECOMMENDATION

City Council - Adopt a motion approving the recommendation by the Recreation and Parks Commission to allocate the 2016 Wahneta Hall Trust funds to the Kiwanis Club of Greater Merced; and authorizing the City Manager to execute the necessary documents.

F.6. [16-166](#) **SUBJECT:** Request to Lower Swim Lesson Fees

REPORT IN BRIEF

Consider temporarily lowering swim lesson fees.

RECOMMENDATION

City Council - Adopt a motion approving the temporary reduction in the fees charged for swimming lessons, from \$35 to \$10 for lessons during the summer of 2016; and, authorizing the City Manager to execute the necessary documents.

F.7. [16-160](#) **SUBJECT:** Contract with Badawi & Associates, Certified Public Accountants

REPORT IN BRIEF

Agreement for annual audit and related professional services with Badawi & Associates, Certified Public Accountants.

RECOMMENDATION

City Council - Adopt a motion approving the contract with Badawi & Associates, Certified Public Accountants; and authorizing the City Manager to execute all necessary documents.

F.8. [15-309](#) **SUBJECT:** Agreement with National Meter & Automation, Inc., DBA Badger Meter, for a Cloud Based Automatic Meter Reading System and Amendment with SunGard Public Sector as Part of the Water Meter Retrofitting Program Project 108068

REPORT IN BRIEF

Consider entering into a 10-year agreement with National Meter & Automation, Inc., DBA Badger Meter, for a Cloud Based Automatic Meter Reading System, and amending the contract with SunGard Public Sector to develop an interface and module as part of the Water Meter Retrofitting Project.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving the Master Agreement with National Meter & Automation, Inc., DBA Badger Meter, for the Cloud Based Automatic Meter Reading System as part of Project 108068; and,

B. Approving the contract amendment with SunGard Public Sector for interface and module development as part of Project 108068; and,

C. Authorizing the City Manager to execute the necessary documents.

F.9. [16-004](#)

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).

F.10. [16-170](#)

SUBJECT: Street Closure Request #16-07 for N Street During Construction of the UC Merced Downtown Center for Turner Construction on Behalf of UC Merced

REPORT IN BRIEF

Turner Construction, on behalf of UC Merced, is requesting the closure of N Street and adjacent sidewalks during the construction of the UC Merced Downtown Center from June 1, 2016, through November 30, 2017.

RECOMMENDATION

City Council - Adopt a motion approving the street and sidewalk closures as requested below by Turner Construction on behalf of UC Merced, from June 1, 2016, through November 30, 2017, subject to the conditions listed in the body of this report.

Requested street and sidewalk closures: Northbound lane (east side) of N Street between West 18th Street and West 19th Street; Sidewalk on north side of West 18th Street between N Street and Alley access into Merced Center Arcade; and Sidewalk on east side of N Street between West 18th Street and West 19th Street.

F.11. [16-171](#)

SUBJECT: Second Reading of Ordinance Dealing with Angle Parking, No Parking Zones, Freight and Passenger Loading Zones, and

Accessible Passenger Loading Zone on N Street between W. 18th
and W. 19th Streets

REPORT IN BRIEF

Second reading of previously introduced Ordinance.

RECOMMENDATION

City Council - Adopt **Ordinance 2458**, an Ordinance of the City Council of the City of Merced, California, amending Merced Municipal Code Sections 10.28.090, "Angle Parking Permitted Where," 10.28.230, "No Parking Zone," and 10.32.050, "Freight and Passenger Loading Zones - Locations," and adding Section 10.28.059, "Accessible Passenger Loading Zones," to the Merced Municipal Code.

F.12. [16-172](#)

SUBJECT: Second Reading of Ordinance Dealing with Cardrooms

REPORT IN BRIEF

Second reading of previously introduced Ordinance.

RECOMMENDATION

City Council - Adopt **Ordinance 2457**, an Ordinance of the City Council of the City of Merced, California, Amending Section 9.08.020, "Cards," of the Merced Municipal Code Relating to Cardrooms.

G. REPORTS

G.1. [16-181](#)

SUBJECT: Transportation Expenditure Plan Report - Presentation by Marjie Kirn, Executive Director, Merced County Association of Governments

REPORT IN BRIEF

Considers approval of the Transportation Expenditure Plan for Merced County.

RECOMMENDATION

City Council - Adopt **Resolution 2016-15**, A Resolution of the City Council of the City of Merced, California, approving the Transportation Expenditure Plan for Merced County and endorsing its approval as a ballot measure in November 2016.

G.2. [16-180](#)

SUBJECT: Revenue Sharing

REPORT IN BRIEF

The report describes the history of Revenue Sharing and latest

proposals between the City and County.

RECOMMENDATION

City Council - Provide direction to City Manager on next steps to be taken.

H. BUSINESS

H.1. [16-183](#)

SUBJECT: Citizens' Oversight Committee - Measure C Appointment

REPORT IN BRIEF

Accept recommendation to fill Citizens' Oversight Committee - Measure "C" vacancy.

RECOMMENDATION

City Council - Adopt a motion accepting recommendation from the Citizens' Oversight - Measure "C" Committee and re-appointing one individual to the Southern District to serve as a member of the Committee.

H.2. [16-182](#)

SUBJECT: Council Policy C-6

REPORT IN BRIEF

Council Policy C-6 is in response to City Council direction to staff to provide a yearly reviews of Charter Officers.

RECOMMENDATION

City Council - adopt a motion adding Council Policy C-6 to the City Council Administrative Policies and Procedures.

H.3. Council Member Lor Funding Request for Hmongstory 40 Exhibit

H.4. Presentation of Draft Budget for Fiscal Year 2016/2017

H.5. Request to Add Item to Future Agenda

H.6. City Council Comments

I. ADJOURNMENT



CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 16-118

Meeting Date: 5/2/2016

Report Prepared by: *Kirkland Greene, Records Clerk II*

SUBJECT: "Information-Only" Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$28,000 and of Public Works contracts under \$63,054.

AUTHORITY

Pursuant to the authority delegated to the City Manager on behalf of the City by Article XI, Section 1109, of the Merced City Charter to execute Public Works contracts under the adjusted 2015 threshold of \$63,054.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted 2015 threshold of \$28,000.00, the contracts listed on the attached table were entered into by the City.

ATTACHMENTS

1. "Information-Only" Contracts Table for April 2016

Exhibit 1 – Table of Contracts

5/2/2016 City Council Meeting

Department/Division	Vendor	Purpose/Location	Amount
0403 – Information Technology	JD Sanders Company, LLC	First Amendment to Video Production Services of Town Hall Meetings (beyond two per calendar year; \$420/mtg.).	\$ 0.00
0701 – Finance	Wells Fargo Bank, N.A.	Addendum No. 1 to Merchant Services Agreement (to lower card-processing rates & allow customer service fee).	\$ 0.00
0803 – Engineering	ARC Document Solutions, Inc.	Plotter Lease/Maintenance On-Site Services Agreement for Second-Floor KIP and Canon Plotters (per annum).	\$ 6,060.00
2006 – Welcome Center	Merced Art Hop (Kevin Hammon)	Agreement to Plan, Coordinate, and Execute the Quarterly Merced Art Hop Events for Calendar Year 2016.	\$10,800.00
0805 – Inspection Services	OP Development, Inc.	Deferral Agreement for 2166 Bristol Court at Colonial Acres 3 (APN: 033-254-001-000).	\$19,780.83

Copies of all of the contracts listed above are available in the City Clerk's Office.



CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 16-133

Meeting Date: 5/2/2016

SUBJECT: Information Only- Recreation & Parks Commission Minutes of September 28, 2015

REPORT IN BRIEF

For Information Only.

ATTACHMENTS

1. Recreation & Parks Commission minutes from September 28, 2015

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

**COUNCIL CHAMBERS ROOM
MERCED CIVIC CENTER
678 WEST 18TH STREET
MERCED, CA**

**MONDAY
September 28, 2015**

A. CALL TO ORDER

Commissioner Washington called the meeting to order at 5:34 PM.

B. PLEDGE OF ALLEGIANCE

C. ROLL CALL

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

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

D. CEREMONIAL MATTERS

-Commissioner Washington wanted to know why Commissioner Carey was not recognized by the City Council for her work as a Commissioner. He thinks that she should be recognized.

E. ORAL COMMUNICATIONS

F. CONSENT ITEMS

1. MINUTES OF JULY 27, 2015

M/S/C- Hassett/Jenkins motioned to approve the minutes of July 27, 2015.

G. BUSINESS

1. STEPHEN LEONARD RE-BIDDING DISCUSSION (JOHN SAGIN)

-John Sagin from the City's Engineering Department updated the Commission on the status of the bidding process for Stephen Leonard Park. They only received one bid that

was \$300,000 over budget, so they will be going back out to bid. They will have to cut back on some of the features that were originally planned for the park.

No action required-information only.

2. MCSD STEAM CENTER

(KEN TESTA)

Director of Facilities for MCSD, Ken Testa, gave a presentation to the Commission about a possible STEAM Center being located at Ada Givens School. He spoke about bettering their partnership with the City to make the STEAM Center a success.

No action required-information only.

3. BUDGET SUBCOMMITTEE

(COMMISSIONERS)

No action was taken

4. RECREATION PROGRAMMING

(COMMISSIONERS)

No action was taken

H. REPORTS

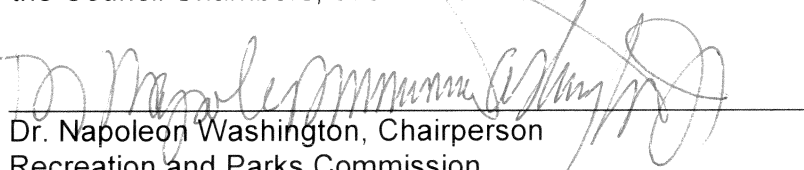
1. STAFF REPORTS

(CONWAY, JOHNSON)

No action required-information only

I. ADJOURNMENT

The Recreation and Parks Commission meeting was adjourned at 7:19 p.m. and will meet again on Monday, October 26, 2015 for their regularly scheduled meeting in the Council Chambers, 678 W. 18th Street.



Dr. Napoleon Washington, Chairperson
Recreation and Parks Commission



CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 16-151

Meeting Date: 5/2/2016

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.



CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 16-169

Meeting Date: 5/2/2016

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Boards and Commissions Annual Vacancies

REPORT IN BRIEF

Authorizes staff to seek applicants for vacancies due to terms expiring July 1, 2016.

RECOMMENDATION

City Council - Adopt a motion directing staff to notice:

- A. One upcoming vacancy on the Planning Commission and to seek applicants for the position; and,
- B. One upcoming vacancy on the Personnel Board and to seek applicants for the position; and,
- C. All other existing open seats on the City's Boards and Commissions and seek applicants for the positions.

ALTERNATIVES

- 1. Direct staff to notice the vacancies and to seek applicants for the positions; or
- 2. Give staff specific instructions regarding how to advertise for the vacancies.

AUTHORITY

City of Merced Charter Sections 700, 702, and 702.1.

CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget.

DISCUSSION

The Clerk's Office has conducted the annual review of appointments to the City Boards and Commissions to determine the terms of office expiring on July 1, 2016. Those board members and commissioners who have served two consecutive terms of office are not eligible to serve another term, with the exception of the Economic Development Advisory Committee, whose members serve one eight-year term of office.

Unless other directions are necessary, the vacancies will be posted in accordance with Government Code Section 54970, et seq., and the matter of appointment placed on a future City Council agenda. If Council Members have any direction regarding how to advertise for the vacancies other than the

usual notice to the newspaper, website, and Civic Center posting boards, and if Council feels certain areas of expertise and/or experience are necessary for these appointees, please advise. Attached are the current rosters for any Board or Commission with an open seat.

ATTACHMENTS

1. Building and Housing Board of Appeals Roster
2. Economic Development Advisory Committee Roster
3. Measure C Roster
4. Personnel Board Roster
5. Planning Commission Roster
6. Regional Airport Authority Roster



City of Merced, CA

BUILDING AND HOUSING BOARD OF APPEALS

BOARD ROSTER



ALFRED ALVAREZ

2 Term Jul 02, 2014 - Jul 02, 2018

Office Civil Engineer

Position Member

Appointed by City Council



TOM CLENDENIN

3 Term Jul 02, 2013 - Jul 02, 2017

Office General Contractor

Position Member

Appointed by City Council



DON SPIVA

2 Term Jul 02, 2014 - Jul 02, 2018

Office Property Inspector

Position Vice-Chair

Appointed by City Council



VACANCY



VACANCY



City of Merced, CA

ECONOMIC DEVELOPMENT ADVISORY COMMITTEE

BOARD ROSTER



DOUG FLUETSCH

1 Term Jul 19, 2012 - Jul 01, 2020

Office City Representative

Position Chair

Appointed by City Council



CHRISTIE HENDRICKS

1 Term Dec 05, 2011 - Jul 01, 2019

Office County Representative

Position Member

Appointed by City Council



VANESSA LARA

1 Term Dec 05, 2011 - Jul 01, 2019

Office County Representative

Position Member

Appointed by City Council



JOE RAMIREZ

1 Term Jul 02, 2012 - Jul 01, 2020

Office Chamber of Commerce Representative

Position Member

Appointed by City Council



STEVE ROUSSOS

1 Term Jun 21, 2010 - Jul 01, 2018

Office City Representative

Position Member

Appointed by City Council



JOHN SUNDGREN

1 Term Dec 06, 2010 - Jul 01, 2018

Office City Representative

Position Member

Appointed by City Council



VACANCY



VACANCY



VACANCY



VACANCY



VACANCY



City of Merced, CA

CITIZENS OVERSIGHT COMMITTEE - MEASURE C

BOARD ROSTER



DANIEL KAZAKOS

1 Term Apr 06, 2015 - Jan 01, 2019

Office Southern District
Position Member
Appointed by City Council



JEROME RASBERRY

1 Term Apr 21, 2014 - Jan 01, 2018

Office Southern District
Position Chair
Appointed by City Council



CHARLES REYBURN

1 Term Sep 02, 2014 - Jan 01, 2018

Office Central District
Position Member
Appointed by City Council



ISABEL SANCHEZ

1 Term Apr 02, 2012 - Jan 01, 2016

Office Southern District
Position Member
Appointed by City Council



FRANCISCO VARELA

1 Term Sep 02, 2014 - Jan 01, 2018

Office Central District
Position Member
Appointed by City Council



JACQUELINE WALTHER-PARNELL

1 Term Apr 21, 2014 - Jan 01, 2018

Office Northern District
Position Vice-Chair
Appointed by City Council



RICHARD H. WENDLING

1 Term Apr 18, 2016 - Jul 01, 2018

Office Northern District
Position Member
Appointed by City Council



VACANCY



VACANCY



City of Merced, CA

PERSONNEL BOARD

BOARD ROSTER



YOLANDA CHAVEZ

1 Term Sep 03, 2013 - Jul 01, 2017

Office Board Nominated
Position Member
Appointed by City Council



HELEN FLORES

1 Term Oct 20, 2014 - Jul 01, 2018

Office Direct Council Appointee
Position Member
Appointed by City Council



JACK LESCH

1 Term Aug 20, 2012 - Jul 01, 2016

Office Employee Nominated
Position Chair
Appointed by City Council



NOBIE REYNOLDS

2 Term Sep 03, 2013 - Jul 01, 2017

Office Direct Council Appointee
Position Member
Appointed by City Council



VACANCY



City of Merced, CA

PLANNING COMMISSION

BOARD ROSTER



WILLIAM BAKER

1 Term Jun 15, 2015 - Jul 01, 2019

Position Vice-Chair
Appointed by City Council



TRAVIS COLBY

2 Term Aug 04, 2014 - Jul 01, 2018

Position Chair
Appointed by City Council



ROBERT DYLINE

1 Term Jun 15, 2015 - Jul 01, 2017

Position Commissioner
Appointed by City Council



JILL T MCLEOD

Partial Term Oct 19, 2015 - Jul 01, 2016

Position Commissioner
Appointed by City Council



PETER PADILLA

2 Term Jul 06, 2015 - Jul 01, 2019

Position Commissioner
Appointed by City Council



KEVIN SMITH

1 Term Aug 05, 2013 - Jul 01, 2017

Position Commissioner
Appointed by City Council



KURT SMOOT

1 Term Aug 05, 2013 - Jul 01, 2017

Position Commissioner
Appointed by City Council



City of Merced, CA

REGIONAL AIRPORT AUTHORITY

BOARD ROSTER



MICHAEL BODINE

1 Term Dec 20, 2013 - Jul 01, 2017

Position Member
Appointed by City Council



DESMOND JOHNSTON

1 Term Jul 06, 2015 - Jul 01, 2019

Position Member
Appointed by City Council



ALVIN OSBORN, JR.

1 Term Jul 06, 2015 - Jul 01, 2019

Position Vice-Chair
Appointed by City Council



RYAN SMITH

1 Term Aug 05, 2013 - Jul 01, 2017

Position Member
Appointed by City Council



JOHN SUNDGREN

1 Term Dec 06, 2010 - Jul 01, 2017

Position Chair
Appointed by City Council



VACANCY



VACANCY



ADMINISTRATIVE REPORT

File #: 16-129

Meeting Date: 5/2/2016

Report Prepared by: *Lindsey Johnson, Recreation Supervisor, Parks and Recreation*

SUBJECT: Distribution of Wahnnetta Hall Trust Funds

REPORT IN BRIEF

Consider approving the allocation of the 2016 Wahnnetta Hall Trust Funds.

RECOMMENDATION

City Council - Adopt a motion approving the recommendation by the Recreation and Parks Commission to allocate the 2016 Wahnnetta Hall Trust funds to the Kiwanis Club of Greater Merced; and authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve, as recommended by the Recreation and Parks Commission; or,
2. Approve, subject to other than recommended by the Recreation and Parks Commission; or,
3. Deny; or,
4. Refer to the Recreation and Parks Commission for reconsideration of specific items; or,
5. Continue to a future City Council meeting.

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget.

DISCUSSION

The Wahnnetta Hall Trust fund was established in 1995. The trust provisions require that the City of Merced use a specific portion of the trust for an endowment fund with income being used to establish and maintain a mini-train system and/or band concert program in Applegate Park. This year there is \$1,240 available.

On February 23, 2016, the Parks and Recreation Department mailed letters of invitation to apply for the 2016 Wahnnetta Hall Trust funds to recipients from previous years, which included the Merced County Arts Council, the Kiwanis Club of Greater Merced, the Merced Symphony Association, the Hispanic Chamber of Commerce, the Merced College Concert Band, Merced Marching 100 and Golden Valley High School Band. The department also sent a news release to the local media notifying the public of the pending trust distribution.

This year two groups submitted applications. The Kiwanis Club of Greater Merced applied for the full \$1,240 to be used to operate and maintain the train at Kiddieland in Applegate Park. The South Merced Community Council applied for \$1,200 to be used towards a Church in the Park Concert Event. The application was missing a financial statement, which is one of the requirements for application. Additionally, the application is for one event only and not for maintaining a band concert program, which is stated in the provisions of the trust.

At the March 28, 2016 Recreation and Parks Commission meeting, a representative from the Kiwanis Club of Greater Merced spoke on behalf of the Kiddieland train system and requested funds for the program to assist with operational costs of the popular park attraction. There was not a representative from the South Merced Community Council in attendance. The Commission unanimously approved the distribution of the entire amount available of \$1,240 to the Kiwanis Club of Greater Merced because they met the provisions of the trust, submitted a complete application, and had a representative in attendance at the meeting.

IMPACT ON CITY RESOURCES

Awarded funds will be paid out of account number 795-1903-592.29-00.

ATTACHMENTS

1. News Release
2. Kiwanis Club Request
3. South Merced Community Council Request

NEWS RELEASE

City of Merced
Parks and Community Services Department
678 W. 18th Street
Merced, CA 95340

February 23, 2016

Contact person: Lindsey Johnson 385-6298

WAHNETTA HALL TRUST FUND APPLICATIONS DUE

The Wahnetta Hall Trust Fund was established in 1995. The Trust provisions require that the City of Merced use a specific portion of the trust for an endowment fund with income being used to establish and maintain a mini-train system and/or a band concert program in Applegate Park.

The Merced City Council annually disburses these funds to organizations that meet eligibility criteria and can perform the services as described in the Trust. This year there is \$1,240 available for distribution. Past recipients have included the Kiwanis Club of Greater Merced for the mini-train operation, as well as the Merced County Regional Arts Council, Merced Symphony Association, and Merced Community Band for band concerts at the Merced Open Air Theater in Applegate Park.

The application deadline for 2016 funding is March 17, 2016. Non-profit organizations interested in applying for funding should submit their letters of request to Mike Conway, Director, Office of Recreation, 678 W. 18th Street, Merced, CA 95340. Please call 385-6298 for additional information on eligibility criteria and application requirements.

* * * * *

Received 3/14/16

KIWANIS CLUB OF GREATER MERCED

P. O. BOX 1450
MERCED, CA 95340

March 14, 2016

**City of Merced Recreation and
Parks Commission**
678 W. 18th Street
Merced, CA 95340

Re: Wahneta Hall Endowment Trust Fund

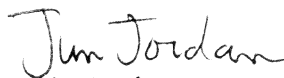
Dear Ms. Johnson:

We submit the following request and information with respect to the Wahneta Hall "Endowment Fund:

1. **Amount Requested:** Maximum of required distribution
2. **Purpose of Request:** To operate and maintain train in Applegate Park during 2016 season.
3. **Reasons Request Qualifies for Consideration:** Under the terms of the Wahneta Hall Trust, the income from the endowment fund has to be used to establish and maintain a mini train system and/or establish and maintain a band concert program at Applegate Park. Failure to use the funds in accordance with the trust terms is cause for the trust gift to lapse. The Kiwanis Club of Greater Merced has operated and maintained the train system in Applegate Park for almost 50 years.
4. **Reasons Request Should be Considered Favorably:** Operation of the train system in Applegate Park is operated as a community service to the children and parents of the City of Merced. The costs of operation exceed the revenues. Ticket costs are purposely low to serve all in the community. The train has been a popular feature of the park and has provided a memorable experience for the thousands of children and parents who have ridden it over the years.

Your kindest attention to this request is appreciated.

Very truly yours,
KIWANIS OF GREATER MERCED


Jim Jordan
President

11:31 AM
03/15/16
Accrual Basis

Kiwanis Club of Greater Merced
Balance Sheet
As of September 30, 2015

	Sep 30, 15
ASSETS	
Current Assets	
Checking/Savings	
Petty Cash - Club Meeting	150.00
Petty Cash - Kiddieland	200.00
West America - Admin. #8891	4,838.98
West America - Projects #3395	1,582.99
West America - Kiddieland	32,332.50
MERC0 CU - Kiddieland Savings	26.32
MCU - Premier Money Management	36,497.77
Total Checking/Savings	75,628.54
Accounts Receivable	
Accounts Receivable	-188.00
Total Accounts Receivable	-188.00
Other Current Assets	1,122.00
Total Current Assets	76,562.54
Fixed Assets	
Equipment and Machinery	133,574.63
Improvements	116,895.91
Less Accumulated Depreciation	-170,193.78
Total Fixed Assets	80,276.76
TOTAL ASSETS	156,839.30
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Other Current Liabilities	539.81
Total Current Liabilities	539.81
Total Liabilities	539.81
Equity	
Retained Earnings	141,311.54
Net Income	14,987.95
Total Equity	156,299.49
TOTAL LIABILITIES & EQUITY	156,839.30

11:32 AM

03/16/16

Accrual Basis

Kiwanis Club of Greater Merced
Profit & Loss
 October 2014 through September 2015

	Oct '14 - Sep 15
Ordinary Income/Expense	
Income	
Fundraisers	
Race to the Kiddieland Train	770.00
Total Fundraisers	770.00
Project	
Eliminate Maternal Neonatal	11.92
Total Project	11.92
Club Income	
Club Socials.	90.00
Donation	1,112.00
Drawing	981.85
Fines	1,274.25
Interest Income - Club Accounts	0.95
Meals	6,487.04
Membership Dues	3,660.00
Total Club Income	13,606.09
KiddieLand	
Sponsorships/Grants	
Wahnetta Hall Trust	1,426.00
Ride Sponsors	1,500.00
Sponsorships/Grants - Other	1,250.00
Total Sponsorships/Grants	4,176.00
Party Income	5,075.00
Public Donations	1,554.17
Ride Revenue	
Special Events	2,000.00
Elks Day at the Park	2,000.00
Ticket Sales	23,590.54
Wrist Band Sales	4,648.00
Total Ride Revenue	32,238.54
Concessions	4,834.64
Train Hat Sales	25.00
Interest Income - Kiddieland	48.29
Total KiddieLand	47,951.64
Total Income	62,339.65
Expense	
Club Expenses	
Cash Over & Short	-8.00
Club Socials	
Installation Night	355.00
DCM - Meeting Expense	351.67
100 Yr Anniversary Party	981.90
Club Socials - Other	120.90
Total Club Socials	1,809.47
Contributions	
El Capitan Key Club	650.00
Eliminate Maternal Neonatal	1,500.00
Livingston Key Club	900.00
Golden Valley Key Club	600.00
Kiwanis Family House	600.00
Merced High Key Club	600.00
Merced Police Explorers Post	600.00
Project Cherish	415.70
Scholarships	4,900.00

11:32 AM

03/15/16

Accrual Basis

Kiwanis Club of Greater Merced
Profit & Loss
 October 2014 through September 2015

	Oct '14 - Sep 15
Contributions - Other	250.00
Total Contributions	11,015.70
Dues	
District Dues	1,292.00
International Dues, Magazine	2,122.00
Total Dues	3,414.00
Fundraising Costs	
Race to the Kiddleland Train	
Advertising	500.00
Race to the Kiddleland Train - Other	281.00
Total Race to the Kiddleland Train	781.00
Total Fundraising Costs	781.00
Lt. Governor - Member Support	493.00
Meals - Guests	84.76
Meals - Members	6,524.84
Meals - Guarantee	220.32
Post Office Box Rental	130.00
Raffle Winnings	735.50
Supplies	
Marketing	9.49
Office	53.49
Supplies - Other	19.42
Total Supplies	82.40
Taxes - Non Profit Fee	75.00
Total Club Expenses	25,357.99
Kiddleland Expenses	
Cost of Sales	
Cups	75.17
Popcorn	56.48
Chips	24.68
Ice	30.90
Water	174.74
Ice Cream	254.59
Other Concession Exp	476.98
Pepsi Cola	523.35
Slushie Supplies	615.10
Cost of Sales - Other	774.97
Total Cost of Sales	3,006.96
Advertising/Marketing	
Signage - Sponsors	165.35
Total Advertising/Marketing	165.35
Bank Charges - Kiddleland	20.00
Cash Over & Short	-12.75
Club Website	330.00
Diesel and Gas	28.15
Easter Egg Hunt Expenses	554.88
Equipment	
Flag Pole Light	39.99
Ipod	40.00
Benches	321.84
Canopy for Picnic Tables	289.43
Total Equipment	691.26
Engraving	20.00

11:32 AM

03/15/16

Accrual Basis

Kiwanis Club of Greater Merced
Profit & Loss
 October 2014 through September 2015

	Oct '14 - Sep 15
Inspections and Permits	3,556.00
Insurance - Kiddieland	
Liability Insurance	3,058.12
Workers Comp Insurance	-9.60
Total Insurance - Kiddieland	3,048.52
Office Supplies - Kiddieland	27.30
Wages	
Train Operation	2,371.50
Total Wages	2,371.50
Payroll Taxes	360.72
Repairs and Maintenance	
Rides	
Car Ride	23.93
Go-Gater	30.19
Train	1,852.58
Rides - Other	237.58
Total Rides	2,144.28
Grounds & Facilities	
Gardening	2,353.28
Fire Extinguisher	95.36
Facility Lights	216.39
Grounds & Facilities - Other	78.00
Total Grounds & Facilities	2,742.03
Total Repairs and Maintenance	4,886.31
Security Alarm System	732.50
Supplies	870.92
Telephone	494.19
Volunteer Expenses	841.90
Total Kiddieland Expenses	21,993.71
Total Expense	47,351.70
Net Ordinary Income	14,987.95
Net Income	14,987.95

Received 3/17/16

South Merced Community Council

PO 1204 #19
Merced CA 95340

- 1 .Amount requested 1200.00
2. The Purpose of this event is to show our cultural treasures in our county by having Church in the Park Concert Event
- 3 .It should be considered favorably because children , families, and individuals of our community enjoy this fabulous day because of families friends and community groups getting together. This grant will help support every aspect of Concert in the Park and the perfect blend to bring the fun and festivities each year .We have talented musicians, clowns, entertainers, games and food.
4. The event qualifies for consideration because it was put on last year and it would be nice to continue this family event yearly. There is not a variety of family events where the entire family can go to enhance their social skills
- 5 This is newly formed organization and we do not have a financial statement at this time



ADMINISTRATIVE REPORT

File #: 16-166

Meeting Date: 5/2/2016

Report Prepared by: *Joey Chavez Recreation Supervisor*

SUBJECT: Request to Lower Swim Lesson Fees

REPORT IN BRIEF

Consider temporarily lowering swim lesson fees.

RECOMMENDATION

City Council - Adopt a motion approving the temporary reduction in the fees charged for swimming lessons, from \$35 to \$10 for lessons during the summer of 2016; 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 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.

CITY COUNCIL PRIORITIES

Youth Programs.

DISCUSSION

On June 16, 2008, the Merced City Council established the rate for swim lessons at \$35 a lesson. In order for the cost of a lesson to be decreased, the City Council must approve a rate change.

The City is offering water safety and swim lessons to the public this summer at McNamara Pool and Merced High School. Three sets of lessons are being offered from June 6 through June 16, June 20 through June 30 (in Fiscal Year 2015-16), and July 11 through July 21 (in Fiscal Year 2016-17).

For the past three summers, City staff has worked with Flip Hassett, on behalf of Swim 4 Jaylin

Scholarship Fund, to offer swim lessons at a reduced price. Mr. Hassett wanted to offer swim lessons and water safety instruction to as many youths in the community as possible. He donated \$6,000 each summer from the fund to offset the City's costs to operate swim lessons. In exchange, he is asked that the swim lesson fees be dropped to \$10 for those summers.

City staff has been in communication with Mr. Hassett throughout the year to secure the same donation again for the 2016 summer. Because staff was assured that the same arrangements would be made as in the previous two summers, they began advertising for \$10 swim lessons and are scheduled to begin taking registrations for the lessons on May 2. On April 19, 2016, staff was informed by Mr. Hassett that he would be unable to provide a donation to offset the cost for this summer.

Without the \$6,000 donation from the Swim 4 Jaylin Fund, all expenses will not be recouped, but the City has also partnered with First 5 of Merced County to assist with the funding of lessons for youngsters ages 5 and under. First 5 has up to \$3,000 available to help offset the cost of swim lessons.

The total cost for three sessions of swim lessons for this year is \$23,928. The donation of \$3,000.00 from First 5 of Merced County, combined with the revenue from \$10 swim lessons for approximately 1,000 children, will offset some, but not all, of the City's expenses. However, we are expecting a savings in several other Recreation expense accounts that will help offset the loss.

The lessons at McNamara are planned for during the day, from 10 a.m. to 2 p.m., prior to the start of recreational swimming. The sessions at Merced High would be in the late afternoon/evening hours from 4 p.m. to 7 p.m. Offering lessons at Merced High School and McNamara gives us the ability to offer lessons in different geographic locations and adds flexibility for working parents who can't make the earlier lesson times.

The program has increased participation every year since lowering the cost. Last year was the third year of offering lessons at a reduced price, and the Recreation Department was able to meet their goal of providing lessons to over 1,000 kids. In 2014, the lessons served 945 swimmers, 724 swimmers in 2013, and only 350 swimmers in 2010, when the price was \$35.

IMPACT ON CITY RESOURCES

There will be a \$6,000 loss of revenue in 024-1221-360.02-01.



ADMINISTRATIVE REPORT

File #: 16-160

Meeting Date: 5/2/2016

Report Prepared by: Teri Albrecht, Deputy Finance Officer

SUBJECT: Contract with Badawi & Associates, Certified Public Accountants

REPORT IN BRIEF

Agreement for annual audit and related professional services with Badawi & Associates, Certified Public Accountants.

RECOMMENDATION

City Council - Adopt a motion approving the contract with Badawi & Associates, Certified Public Accountants; and authorizing the City Manager to execute all necessary documents.

ALTERNATIVES

1. Adopt the motion as recommended by staff; or
2. Modify the action (*specify in motion*); or
3. Deny the action.

AUTHORITY

Section 1118 of Article XI of the Charter of the City of Merced.

CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget.

DISCUSSION

The City Charter requires an annual audit to be performed on the City of Merced's financial records by an independent auditor selected by the City Council. An independent audit is also required by Federal and State agencies, due to the receipt of grant funding, and to comply with covenants of several outstanding bond issues.

The five-year auditing contract with Gallina, LLP has expired and the Finance Department has solicited proposals from independent audit firms to perform the work. The work includes auditing the financial statements; and performing additional auditing and related services for the fiscal year ended June 30, 2016, with four subsequent fiscal year options.

Five firms submitted proposals for the engagement. The proposals were analyzed and ranked according to the evaluation criteria, which included mandatory elements, technical qualifications and cost/hours. The technical qualifications, which include expertise, experience, and audit approach, have a maximum of 60 points. The cost/hours has a maximum of 40 points. The proposals have been evaluated and scored for both

technical qualifications and cost/hours, as follows:

<u>Firm</u>	<u>Technical Qualifications Score</u>	<u>Cost/Hours Score</u>	<u>Total Score</u>	<u>5 Year Cost</u>
1. Badawi & Associates	55	40	95	\$189,585
2. Gallina, LLP	58	35	93	240,500
3. JJCPA, Inc.	53	33	86	311,000
4. Paige, Price & Company	55	34	89	299,856
5. Patel & Associates	48	30	78	158,525

Based on technical qualifications and cost/hours, Badawi & Associates, Certified Public Accountants, has the highest score.

Badawi & Associates, Certified Public Accountants' office is located in Oakland. The firm provides a full range of accounting services, including financial and compliance auditing service to governmental agencies throughout California.

Badawi & Associates, Certified Public Accountants' fee to perform the engagement is \$35,980, \$35,265, \$39,370, \$38,200, and \$40,770 per year for the years ending June 30, 2016 through June 30, 2020. The services include the financial audit, single audit, and biennial compliance report on the Abandoned Vehicle program. Funds will be allocated for the engagement in the Annual Budgets.

The audit fee for the year ended June 30, 2015 was \$36,100.

IMPACT ON CITY RESOURCES

Funds are allocated for the engagement in the Annual Budget.

ATTACHMENTS

1. Contract

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Badawi & Associates, a California Corporation, whose address of record is 180 Grand Avenue, Suite 1500, Oakland, California 94612 (hereinafter referred to as "Consultant").

WHEREAS, City is required to employ a qualified independent auditor to perform annual audits of the City of Merced; and

WHEREAS, City desires to hire an independent auditor in good standing to prepare the audits for the fiscal year ending June 30, 2016, with an option to continue for four (4) additional years to be exercised annually by the City; and

WHEREAS, Consultant represents that it possesses the professional skills to provide the auditing services.

NOW, THEREFORE, the parties hereto, in consideration of the mutual covenants hereinafter recited, hereby agree as follows:

1. **SCOPE OF SERVICES.** The Consultant shall furnish the following services: Consultant shall provide the auditing services described in Exhibit "A" attached hereto.

No additional services shall be performed by Consultant unless approved in advance in writing by the City, stating the dollar value of the services, the method of payment, and any adjustment in contract time. All such services are to be coordinated with City and the results of the work shall be monitored by the Finance Officer or his designee. However, the means by which the work is accomplished shall be the sole responsibility of the Consultant.

2. **TIME OF PERFORMANCE.** All of the work outlined in the Scope of Services shall be completed in accordance with the Schedule outlined in Exhibit "B" attached hereto and incorporated herein by reference. By mutual agreement and written addendum to this Agreement, the City and the Consultant may change the requirements in said Schedule.

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "C" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "C". For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Forty Thousand Seven Hundred Seventy Dollars (\$40,770.00).

5. **METHOD OF PAYMENT.** Compensation to Consultant shall be paid by the City after submission by Consultant of an invoice delineating the services performed.

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Audit documentation is the property of the auditor. The Consultant may make available to the City at the Consultant's discretion copies of the audit documentation, provided such disclosure does not undermine the effectiveness and integrity of the audit process.

7. **CONSULTANT'S BOOKS AND RECORDS.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the City.

8. **INDEPENDENT CONTRACTOR.** It is expressly understood that Consultant is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Consultant shall be responsible for the payment of all taxes, workers' compensation insurance and

unemployment insurance. Should Consultant desire any insurance protection, the Consultant is to acquire same at its expense.

In the event Consultant or any employee, agent, or subcontractor of Consultant 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, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant 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.

9. INDEMNITY. Consultant shall indemnify, protect, defend (with legal counsel selected by the City), save and hold City, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Consultant or Consultant's officers, employees, volunteers, and agents during performance of this Agreement, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Consultant or its employees, subcontractors, or agents, or by the quality or character of Consultant's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence or willful misconduct of the City or its officers, employees, volunteers or agents. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Agreement and 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, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

10. INSURANCE. During the term of this Agreement, Consultant shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars

(\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

- (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.
- (ii) Consultant shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage.
- (iii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects liability arising out of work or operations performed by or on behalf of the Consultant.
- (iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.
- (v) Consultant shall maintain its commercial general liability coverage for three (3) years after completion of the work and shall add an additional insured endorsement form acceptable to the City naming the City of Merced, its officers, employees, agents and volunteers for each year thereafter for at least three (3) years after completion of the work. Copies of the annual renewal and additional insured endorsement form shall be sent to the City within thirty (30) days of the annual renewal.

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

d. Professional Liability Insurance. Consultant shall carry professional liability insurance appropriate to Consultant's profession in the minimum amount of One Million Dollars (\$1,000,000). Architects and engineers' coverage is to be endorsed to include contractual liability.

e. Qualifications of Insurer. The insurance shall be provided by an acceptable insurance provider, as determined by City, which satisfies all of the following minimum requirements:

- (i) An insurance carrier admitted to do business in California and maintaining an agent for service of process within this State; and,
- (ii) An insurance carrier with a current A.M. Best Rating of A:VII or better (except for workers' compensation provided through the California State Compensation Fund).

f. Certificate of Insurance. Consultant shall complete and file with the City prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation—including cancellation for nonpayment of premium.

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City

may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. **ASSIGNABILITY OF AGREEMENT.** It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

12. **TERMINATION FOR CONVENIENCE OF CITY.** The City may terminate this Agreement any time by mailing a notice in writing to Consultant that the Agreement is terminated. Said Agreement shall then be deemed terminated, and no further work shall be performed by Consultant. If the Agreement is so terminated, the Consultant shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.

13. **CONFORMANCE TO APPLICABLE LAWS.** Consultant shall comply with its standard of care regarding all applicable Federal, State, and municipal laws, rules and ordinances. No discrimination shall be made by Consultant in the employment of persons to work under this contract because of race, color, national origin, ancestry, disability, sex or religion of such person.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act (8 U.S.C.A. 1101 *et seq.*), as amended; and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should any agency or instrumentality of the federal or state government, including the courts, impose sanctions against the City for such use of unauthorized aliens, Consultant hereby agrees to, and shall, reimburse City for the cost of all such sanctions imposed, together with any and all costs, including attorneys' fees, incurred by the City in connection therewith.

14. **WAIVER.** In the event that either City or Consultant shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

15. **INCONSISTENT OR CONFLICTING TERMS IN AGREEMENT AND EXHIBITS.** In the event of any contradiction or inconsistency between any attached document(s) or exhibit(s) incorporated by reference herein and the provisions of the Agreement itself, the terms of the Agreement shall control.

Any exhibit that is attached and incorporated by reference shall be limited to the purposes for which it is attached, as specified in this Agreement. Any contractual terms or conditions contained in such exhibit imposing additional obligations on the City are not binding upon the City unless specifically agreed to in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

16. **AMBIGUITIES.** This Agreement has been negotiated at arms' length between persons knowledgeable in the matters dealt with herein. Accordingly, any rule of law, including, but not limited to, Section 1654 of the Civil Code of California, or any other statutes, legal decisions, or common-law principles of similar effect, that would require interpretation of any ambiguities in this Agreement against the party that drafted this Agreement is of no application and is hereby expressly waived.

17. **VENUE.** This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this agreement shall be held exclusively in a state court in the County of Merced.

18. **AMENDMENT.** This Agreement shall not be amended, modified, or otherwise changed unless in writing and signed by both parties hereto.

19. **INTEGRATION.** This Agreement constitutes the entire understanding and agreement of the parties and supersedes all previous and/or contemporaneous understanding or agreement between the parties with respect to all or any part of the subject matter hereof.

20. **AUTHORITY TO EXECUTE.** The person or persons executing this Agreement on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall

be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

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/Deputy City Clerk

APPROVED AS TO FORM:

BY: Ken Ryland 4/13/16
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
BADAWI & ASSOCIATES
A California Corporation

BY: A
(Signature)

Ahmed Badawi
(Typed Name)

Its: President
(Title)

BY: A
(Signature)

Ahmed Badawi
(Typed Name)

Its: Treasurer
(Title)

Taxpayer I.D. No. 45-4555509

ADDRESS: 180 Grand Ave, Suite 1500
Oakland, CA 94612

TELEPHONE: (510) 768-8244

FAX: (510) 768-8249

E-MAIL: abadawi@b-acpa.com

EXHIBIT A

SERVICES

1. The City of Merced desires the Contractor to express an opinion on the fair presentation of its basic financial statements in conformity with generally accepted accounting principles. However, the Contractor is to provide an "in relation to" report on the combining and individual fund financial statements and supporting schedules based on the auditing procedures applied during the audit of the basic financial statements. The Contractor is not required to audit the introductory section or the statistical section of the report.
2. The Contractor shall also be responsible for performing certain limited procedures involving required supplementary information required by the Governmental Accounting Standards Board as mandated by generally accepted auditing standards.
3. The Contractor is to issue an opinion as to whether the schedule of expenditures of federal awards is fairly stated, in all material respects, in relation to the financial statements as a whole.
4. The financial audit shall be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, the standards applicable to financial audits contained in government Auditing Standards issued by the Comptroller General of the United States; and audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance).
5. Compliance audits and related services will be performed in accordance with applicable standards.
6. Following the completion of the audit of the fiscal year's financial statements, the Contractor shall issue:
 - a. A report on the fair presentation of the financial statements in conformity with generally accepted accounting principles.
 - b. A report on compliance and on internal control over financial reporting based on an audit of financial statements performed in accordance with Government Auditing Standards for the City of Merced.
 - c. A report on compliance and internal control over financial reporting based on an audit of financial statements performed in accordance with Government Auditing Standards. (Single Audit).
 - d. A report on compliance with requirements applicable to each major program and internal control over compliance and any additional reports required in accordance with the standards applicable to Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) (Single Audit).

- e. Additional reports as may be required by Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) (Single Audit).
 - f. Biennially, a report on compliance with requirements of California Vehicle Code (VC) Sections 9250.7 and 22710 (Abandoned Vehicle Abatement Program). The City of Merced's Abandoned Vehicle Abatement Program was created in July, 2008 as a party to the Merced County Abandoned Vehicle Abatement Service Authority that was established pursuant to Section 22710 of the California Vehicle Code (VC). The Code allows for the abatement, removal or disposal as a public nuisance of any abandoned, wrecked, dismantled, or inoperative vehicle from private or public property. The City's Abandoned Vehicle Abatement Program requires a biennial audit to report on the compliance with VC Sections 9250.7 and 22710. A biennial audit is required in Fiscal Years 2016 and 2018.
 - g. A report on agreed-upon procedures applied to the Appropriation Limit (GANN Limit).
 - h. The reports on compliance and internal controls shall include all instances of non-compliance.
 - i. Contractor shall make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware of to the Director of Support Services.
- 7. The City of Merced determines the cognizant agency in accordance with the provisions of the audit requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). The schedule of expenditures of federal awards and related Auditor's report, as well as the reports on the internal controls and compliance are not to be included in the comprehensive annual financial report, but are to be issued separately.
 - 8. The Contractor shall prepare a comfort letter required for the Wastewater and Water loan with California Infrastructure and Economic Development Bank.
 - 9. The City of Merced will be required to implement Government Accounting Standards Board (GASB) pronouncements that take effect during the term of the contract. The level of assistance to be provided will be discussed on a case by case basis and mutually agreed upon by Contractor and the Finance Officer.
 - 10. During the term of the agreement, the City of Merced may prepare comprehensive annual financial report to the Government Finance Officer Association of the United States and Canada for review in their Certificate of Achievement for Excellence in Financial Reporting program. It is anticipated that the Auditor will be required to provide assistance to the City of Merced to meet the requirements of the program at some point during the term of the engagement
 - 11. The City of Merced is intending to issue the financial statements no later than mid-December of each year.

EXHIBIT B

TIME OF PERFORMANCE

Schedule of the 2016-2020 Fiscal Year Audit

1. Each of the following shall be completed by the contractor no later than the dates indicated.

- A. Interim Work

The contractor shall complete the interim work by May 31, except in the first year of the contract the date will be extended to June 30.

- B. Detailed Audit Plan

The Contractor shall provide the City of Merced, by May 15, both a detailed audit plan and a list of all schedules to be prepared by the City of Merced. In the first year of contract the date will be extended to June 10.

- C. Fieldwork

The contractor shall complete all fieldwork by the third week of October.

- D. Draft Reports

The contractor shall have drafts of the audit report(s) and recommendations to management available for review by the Deputy Finance Officer by October 31.

2. Entrance Conferences, Progress Reporting, and Exit Conferences

At a minimum, the following conferences should be held by the dates indicated on the schedule.

Entrance conference with the Finance Officer, Deputy Finance Officer and key personnel by May 30, except in the first year of contract the date will be extended to June 30.

- The purpose of this meeting will be to discuss prior audit problems and the interim work to be performed. This meeting will also be used to establish overall liaison for the audit and to make arrangements for workspace and other needs of the auditor.

Progress conference with the Finance Officer, Deputy Finance Officer and key Finance Department personnel June 15, except in the first year of contract the date will be extended to June 30.

- The purpose of this meeting will be to summarize the results of the preliminary review and to identify the key internal controls or other matters to be tested. This meeting will also be to discuss the year-end work to be performed.

Exit conference with the Finance Officer, Deputy Finance Officer and key Finance Department personnel October 31

- The purpose of this meeting will be to summarize the results of the fieldwork and to review significant findings.

In addition, the auditor shall provide written reports on the progress of the audit.

3. Draft and Final Reports are Due

The Contractor shall prepare the draft financial statements by October 31. The Deputy Finance Officer shall provide all recommendations, revisions, notes and suggestions for improvements to the Auditor by November 15.

The Contractor shall prepare the financial statements, notes, required supplementary schedules, supplementary schedules and statistical schedules, if applicable by November 30. The Finance Officer will review the final draft report as expeditiously as possible. It is not expected that this process should exceed two weeks. During the review periods, the Auditor should be available for any meetings that may be necessary to discuss the audit reports. Once all issues for discussion are resolved, the camera ready reports shall be delivered to the Finance Officer for publication within five (5) workdays.

4. The Single Audit Report for the City of Merced shall be completed on the same schedule as the financial statement timeline noted above.

Exhibit C – Fee Schedule

FINANCIAL AUDITING AND REPORT PREPARATION SERVICES

SCHEDULES OF PROFESSIONAL FEES AND EXPENSES (2016)

I. Financial Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	29	\$ 200	130	\$ 3,770
Managers	58	\$ 150	90	5,220
Supervisory Staff	85	\$ 125	80	6,800
Staff	180	\$ 100	70	12,600
IT Specialist	4	\$ 150	100	400
Admin	7	\$ 75	60	420
Subtotal				\$ 29,210

II. Single Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	6	\$ 200	130	\$ 780
Managers	12	\$ 150	90	1,080
Supervisory Staff	15	\$ 125	80	1,200
Staff	20	\$ 100	70	1,400
IT Specialist	0	\$ 150	100	-
Admin	1	\$ 75	60	60
Subtotal				\$ 4,520

III. Biennial Vehicle Abatement Report

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	3	\$ 200	130	\$ 390
Managers	5	\$ 150	90	450
Supervisory Staff	9	\$ 125	80	720
Staff	9	\$ 100	70	630
IT Specialist	0	\$ 150	100	-
Admin	1	\$ 75	60	60
Subtotal				\$ 2,250

IV. TOTAL FOR SERVICES DESCRIBED IN SECTION II-E OF THE REQUEST FOR PROPOSAL

\$ 35,980

V. OUT-OF-POCKET EXPENSES

Meals and Lodging

-

Transportation

-

VI. TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR AUDIT

\$ 35,980

EXHIBIT C



BADAWI & ASSOCIATES
CERTIFIED PUBLIC ACCOUNTANTS

Exhibit C – Fee Schedule

SCHEDULES OF PROFESSIONAL FEES AND EXPENSES (2017)

I. Financial Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	27	\$ 200	150	\$ 4,050
Managers	53	\$ 150	105	5,565
Supervisory Staff	80	\$ 125	90	7,200
Staff	155	\$ 100	80	12,400
IT Specialist	4	\$ 150	105	420
Admin	7	\$ 75	65	455
Subtotal				\$ 30,090

II. Single Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	6	\$ 200	150	\$ 900
Managers	12	\$ 150	105	1,260
Supervisory Staff	15	\$ 125	90	1,350
Staff	20	\$ 100	80	1,600
IT Specialist	0	\$ 150	105	-
Admin	1	\$ 75	65	65
Subtotal				\$ 5,175

III. Biennial Vehicle Abatement Report

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	0	\$ 200	150	\$ -
Managers	0	\$ 150	105	-
Supervisory Staff	0	\$ 125	90	-
Staff	0	\$ 100	80	-
IT Specialist	0	\$ 150	105	-
Admin	0	\$ 75	65	-
Subtotal				\$ -

IV. TOTAL FOR SERVICES DESCRIBED IN SECTION II-E OF THE REQUEST FOR PROPOSAL

\$ 35,265

V. OUT-OF-POCKET EXPENSES

Meals and Lodging

Transportation

-

-

VI. TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR AUDIT

\$ 35,265



BADAWI & ASSOCIATES

Exhibit C – Fee Schedule

SCHEDULES OF PROFESSIONAL FEES AND EXPENSES (2018)

I. Financial Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	24	\$ 200	170	\$ 4,080
Managers	48	\$ 150	115	5,520
Supervisory Staff	75	\$ 125	95	7,125
Staff	160	\$ 100	85	13,600
IT Specialist	4	\$ 150	120	480
Admin	7	\$ 75	70	490
Subtotal				\$ 31,295

II. Single Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	6	\$ 200	170	\$ 1,020
Managers	12	\$ 150	115	1,380
Supervisory Staff	15	\$ 125	95	1,425
Staff	20	\$ 100	85	1,700
IT Specialist	0	\$ 150	120	-
Admin	1	\$ 75	70	70
Subtotal				\$ 5,595

III. Biennial Vehicle Abatement Report

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	3	\$ 200	170	\$ 510
Managers	4	\$ 150	115	460
Supervisory Staff	8	\$ 125	95	760
Staff	8	\$ 100	85	680
IT Specialist	0	\$ 150	120	-
Admin	1	\$ 75	70	70
Subtotal				\$ 2,480

IV. TOTAL FOR SERVICES DESCRIBED IN SECTION II-E OF THE REQUEST FOR PROPOSAL

\$ 39,370

V. OUT-OF-POCKET EXPENSES

Meals and Lodging
Transportation

-
-

VI. TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR AUDIT

\$ 39,370



Exhibit C – Fee Schedule

SCHEDULES OF PROFESSIONAL FEES AND EXPENSES (2019)

I. Financial Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	24	\$ 200	180	\$ 4,320
Managers	48	\$ 150	110	5,280
Supervisory Staff	75	\$ 125	100	7,500
Staff	160	\$ 100	90	14,400
IT Specialist	4	\$ 150	110	440
Admin	7	\$ 75	70	490
Subtotal				\$ 32,430

II. Single Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	6	\$ 200	180	\$ 1,080
Managers	12	\$ 150	110	1,320
Supervisory Staff	15	\$ 125	100	1,500
Staff	20	\$ 100	90	1,800
IT Specialist	0	\$ 150	110	-
Admin	1	\$ 75	70	70
Subtotal				\$ 5,770

III. Biennial Vehicle Abatement Report

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	0	\$ 200	180	\$ -
Managers	0	\$ 150	110	-
Supervisory Staff	0	\$ 125	100	-
Staff	0	\$ 100	90	-
IT Specialist	0	\$ 150	110	-
Admin	0	\$ 75	70	-
Subtotal				\$ -

IV. TOTAL FOR SERVICES DESCRIBED IN SECTION II-E OF THE REQUEST FOR PROPOSAL

\$ 38,200

V. OUT-OF-POCKET EXPENSES

Meals and Lodging

-

Transportation

-

VI. TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR AUDIT

\$ 38,200



Exhibit C – Fee Schedule

SCHEDULES OF PROFESSIONAL FEES AND EXPENSES (2020)

I. Financial Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	24	\$ 200	180	\$ 4,320
Managers	48	\$ 150	110	5,280
Supervisory Staff	75	\$ 125	100	7,500
Staff	160	\$ 100	90	14,400
IT Specialist	4	\$ 150	110	440
Admin	7	\$ 75	70	490
Subtotal				\$ 32,430

II. Single Audit

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	6	\$ 200	180	\$ 1,080
Managers	12	\$ 150	110	1,320
Supervisory Staff	15	\$ 125	100	1,500
Staff	20	\$ 100	90	1,800
IT Specialist	0	\$ 150	110	-
Admin	1	\$ 75	70	70
Subtotal				\$ 5,770

III. Biennial Vehicle Abatement Report

	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partners	3	\$ 200	180	\$ 540
Managers	4	\$ 150	110	440
Supervisory Staff	8	\$ 125	100	800
Staff	8	\$ 100	90	720
IT Specialist	0	\$ 150	110	-
Admin	1	\$ 75	70	70
Subtotal				\$ 2,570

IV. TOTAL FOR SERVICES DESCRIBED IN SECTION II-E OF THE REQUEST FOR PROPOSAL

\$ 40,770

V. OUT-OF-POCKET EXPENSES

Meals and Lodging

-

Transportation

-

VI. TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR AUDIT

\$ 40,770



BADAWI & ASSOCIATES

Exhibit C – Fee Schedule

Our fees are firm fixed prices that are based on an estimate of 444 hours to perform procedures necessary to provide the requested services. In determining our fees, we understand that the City's records will be in condition to be audited ; that is, transactions will be properly recorded in the general ledger and subsidiary records, these accounting records and the original source documents will be readily available to use, we will be furnished with copies of bank reconciliations, and other reconciliations and analyses prepared by the City and The City personnel will be reasonably available to explain procedures, prepare audit correspondence and obtain files and records.

Circumstances may arise during the engagement that may significantly affect the targeted completion dates and our fee estimate. As a result, additional fees may be necessary, which we will communicate and discuss with the City. Such circumstances include but are not limited to the following:

1. Changes to the timing of the engagement at your request. Changes to the timing of the engagement usually require reassignment of personnel used by Badawi & Associates ("the Firm") in the performance of services hereunder. However, because it is often difficult to reassign individuals to other engagements, the Firm may incur significant unanticipated costs
2. All requested schedules are not (a) provided by the accounting personnel on the date requested, (b) completed in a format acceptable to the Firm (c) mathematically correct, or (d) in agreement with the appropriate underlying records (e.g., general ledger accounts). The Firm will provide the accounting personnel with a separate listing of required schedules and deadlines.
3. Weaknesses in the internal control structure.
4. Significant new issues or unforeseen circumstances as follows:
 - a. New accounting issues that require an unusual amount of time to resolve.
 - b. Changes or transactions that occur prior to the issuance of our report.
 - c. Changes in the City's accounting personnel, their responsibilities, or their availability.
 - d. Changes in auditing requirements set by regulators. Significant delays in the accounting personnel's assistance in the engagement or delays by them in reconciling variances as requested by the Firm. All invoices, contracts and other documents which we will identify for the City, are not located by the accounting personnel or made ready for our easy access.
5. A significant level of proposed audit adjustments is identified during our audit.
6. Changes in audit scope caused by events that are beyond our control.
7. Untimely payment of our invoices as they are rendered.



Exhibit C – Fee Schedule

Rates for Additional Professional Services:

Any services outside the scope of our engagement will be promptly identified before the services are rendered. Upon mutual agreement, the out-of-scope services will be separately billed at our standard hourly rates. While it can be difficult to simply state hourly rates, as often times the needs of the client and the specific tasks directly impact the billing rates for our services, we want to provide the following information regarding our published billing rates:

Position	Hourly Rate
Partner	\$ 200
EQR	200
Manager	150
Senior	125
Staff	100
IT	150
Admin.	75

Our Standard Hourly Rates are adjusted annually by 3% for Cost of Living and Inflation Adjustments





CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 15-309

Meeting Date: 5/2/2016

Report Prepared by: Leah Brown, Water Conservation Specialist, Public Works - Water

SUBJECT: Agreement with National Meter & Automation, Inc., DBA Badger Meter, for a Cloud Based Automatic Meter Reading System and Amendment with SunGard Public Sector as Part of the Water Meter Retrofitting Program Project 108068

REPORT IN BRIEF

Consider entering into a 10-year agreement with National Meter & Automation, Inc., DBA Badger Meter, for a Cloud Based Automatic Meter Reading System, and amending the contract with SunGard Public Sector to develop an interface and module as part of the Water Meter Retrofitting Project.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Master Agreement with National Meter & Automation, Inc., DBA Badger Meter, for the Cloud Based Automatic Meter Reading System as part of Project 108068; and,
- B. Approving the contract amendment with SunGard Public Sector for interface and module development as part of Project 108068; and,
- C. Authorizing the City Manager to execute the necessary documents.

ALTERNATIVES

1. Approve the Master Agreement with Badger Meter and contract amendment with SunGard Public Sector, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by City Council; or,
3. Refer to staff for reconsideration of specific items; or,
4. Deny and reject all agreements.

AUTHORITY

Charter of the City of Merced, Section 200, et seq. and Section 3.04.120 of the Merced Municipal Code.

CITY COUNCIL PRIORITIES

As provided for in the 2015-16 Adopted Budget.

DISCUSSION

Background

In January 2014, the Governor of California declared a drought state of emergency, calling for all Californians to reduce water consumption by 25%. Following another exceptionally dry year, the Governor extended his declaration and made an Executive Order calling for more stringent water conservation efforts and imparting the State Department of Water Resources with the authority to implement needed measures to assure that Californians reduced water usage by 25%. In May 2015, the State placed the City of Merced in a 36% mandatory water reduction tier.

The City convened an Ad Hoc committee to discuss water conservation and recommend changes to achieve the 36% reduction. It was decided a necessary component to achieve the mandated reduction would be the City's conversion from unmetered water utility accounts to metered accounts. The Director of Public Works - Water Resources and Reclamation received the approval of the City Manager to make an emergency purchase of 10,800 Badger Water Meters to expedite the City's conversion to water meters. On June 1, 2015, City Council confirmed the emergency purchase and affirmed the facts constituting such urgency to meet the State Emergency Drought and Water Conservation Executive Orders.

Concurrent with these efforts, the City applied for a grant from the State Department of Water Resources for the 2014 Water-Energy Grant. The City's proposal was aimed at a high water savings through the conversion to water meters, and a high Green House Gas (GHG) emissions reduction by upgrading the existing drive by meter reading system to a Cloud Based Automatic Meter Reading/Infrastructure (AMI/AMR) system. Upgrading to an AMI/AMR system allows for cellular collection of water meter usage data and eliminates the need for staff to physically drive a meter route each month to collect data, causing a net GHG emissions reduction. On June 25, 2015, staff was notified the City of Merced had been awarded the \$2.5 million Water-Energy Grant.

Since June, City crews have installed approximately 10,500 meters as part of the Water Meter Retrofitting Project, with about 300 meters remaining to be installed. It is anticipated that this phase of the project will be completed in the very near future. The next phase of the project includes installing the AMR transmitters to each of the 20,675 meters throughout the City, which includes the newly installed meters as well as the older meters already integrated into our current billing system.

Once the transmitters have been fully installed and integrated with the meters we can "turn the switch" and begin to read meters and bill customers at the metered rate. "Turning the switch" involves some software interface development on the part of our billing system vendor, SunGard Public Sector, to allow a mass integration of data.

Cloud Based AMI/AMR System Selection Process

City staff prepared a Request for Proposals (RFP) for a Cloud Based AMI/AMR System. The RFP was advertised on the City's website and a total of 3 proposals were received.

In August 2015, an evaluation team composed of staff from Public Works and Engineering reviewed and scored the proposals. One proposal did not meet the RFP specifications, as it was for a Fixed Based Star Network AMI/AMR. Below are the scores out of a possible 160 points:

Cloud Based AMI/AMR

- National Meter & Automation (Santa Rosa, CA) 149 points
- Mentron-Farnier (Boulder, CO) 113 points

Fixed Network

- Delta Engineering Sales/Aclara (Downingtown, PA) 89 points
 **Did not meet bid specifications and requirements. A fixed network requires additional infrastructure and hardware that would need to be purchased and maintained by the City. A fixed network depends upon line of sight between collector and meter; requiring annual clearance and would need to be expanded as the City grows.

Not including the initial costs of meters already purchased, both companies that can provide a Cloud Based AMI/AMR have built in on-going maintenance/hosted software fees. National Meter's on-going charges amount to \$0.82 per month per account verses Mentron-Farnier's ongoing charges of \$1.00 per month per account. National Meter uses all cell carriers for transmitting data, Mentron-Farnier is tied to only one carrier.

Staff noted that National Meter was the only company to reach out to SunGard, our billing system vendor, to explore how their data could integrate with our current system. National Meter even got a quote for the software interface needed to modify the SunGard product for ease of entry of initial data and billing meter reads. This work amounts to a one-time payment of \$8000 to SunGard for either National Meter's or Mentron-Farnier's AMI/AMR system. SunGard estimates that there will be a \$600 annual cost for this interface.

Staff from the Water, Finance, and IT departments also met with SunGard to determine the feasibility of a mass upload module to upload and change all flat rate accounts to meter rate accounts at one time. SunGard's quote for the development of this product is a one-time \$20,000 charge.

IMPACT ON CITY RESOURCES

Funds 556-1118 and 557-1106 contain sufficient funding to over the project costs to completion. Additionally, the \$2.5 million Water-Energy Grant from the Department of water Resources can be used to reimburse the City for purchasing the meters, professional services, and other implementation expenses incurred.

Capital Improvement Project -108068

Budget - Water Meter Installation

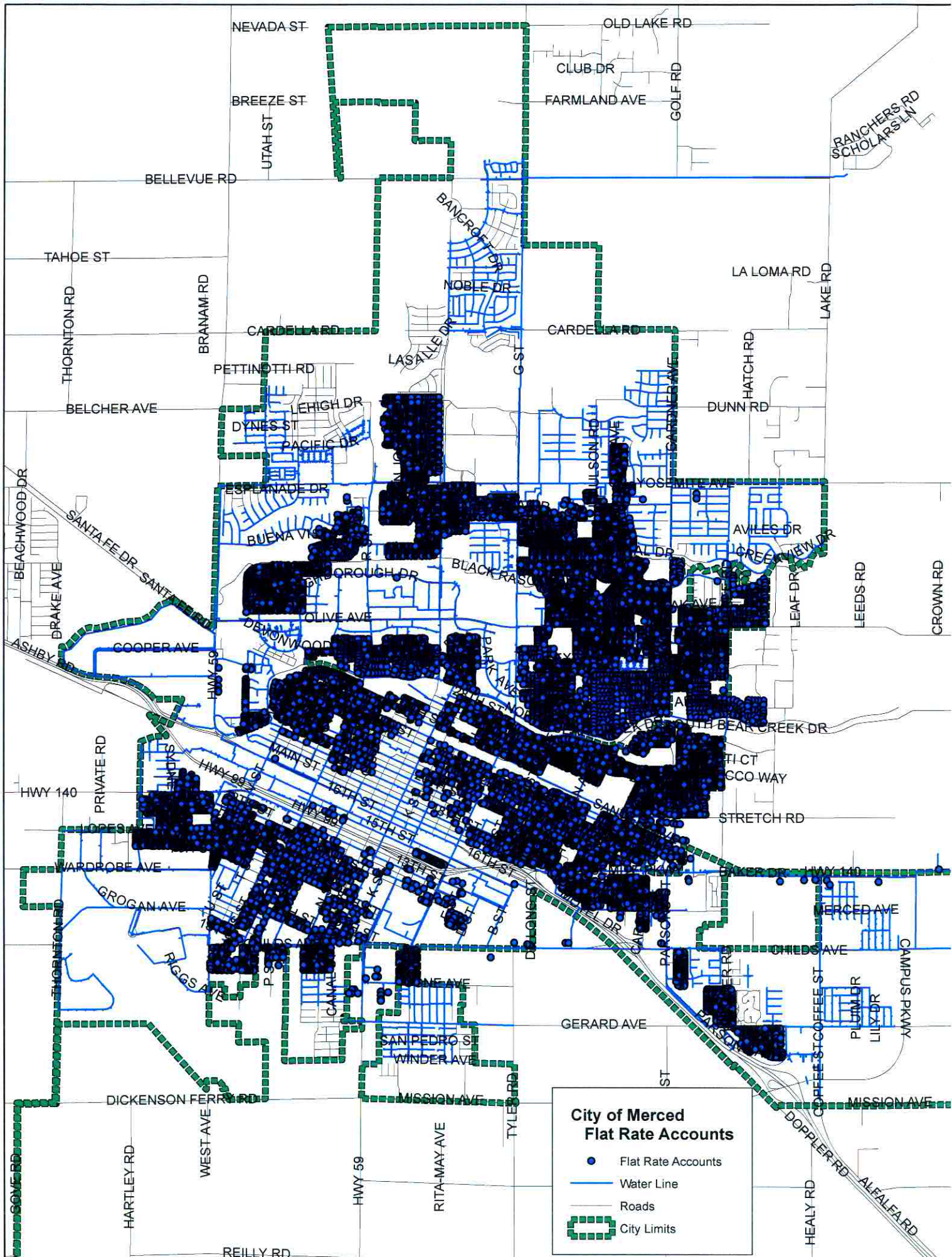
Original Project Estimate	\$5,000,000
Expenses from 2015-2016	\$2,824,384
Reimbursable Grant Funds	\$2,500,000
SunGard Charges	\$28,000
Badger Meter Cost	
Training	\$1,470

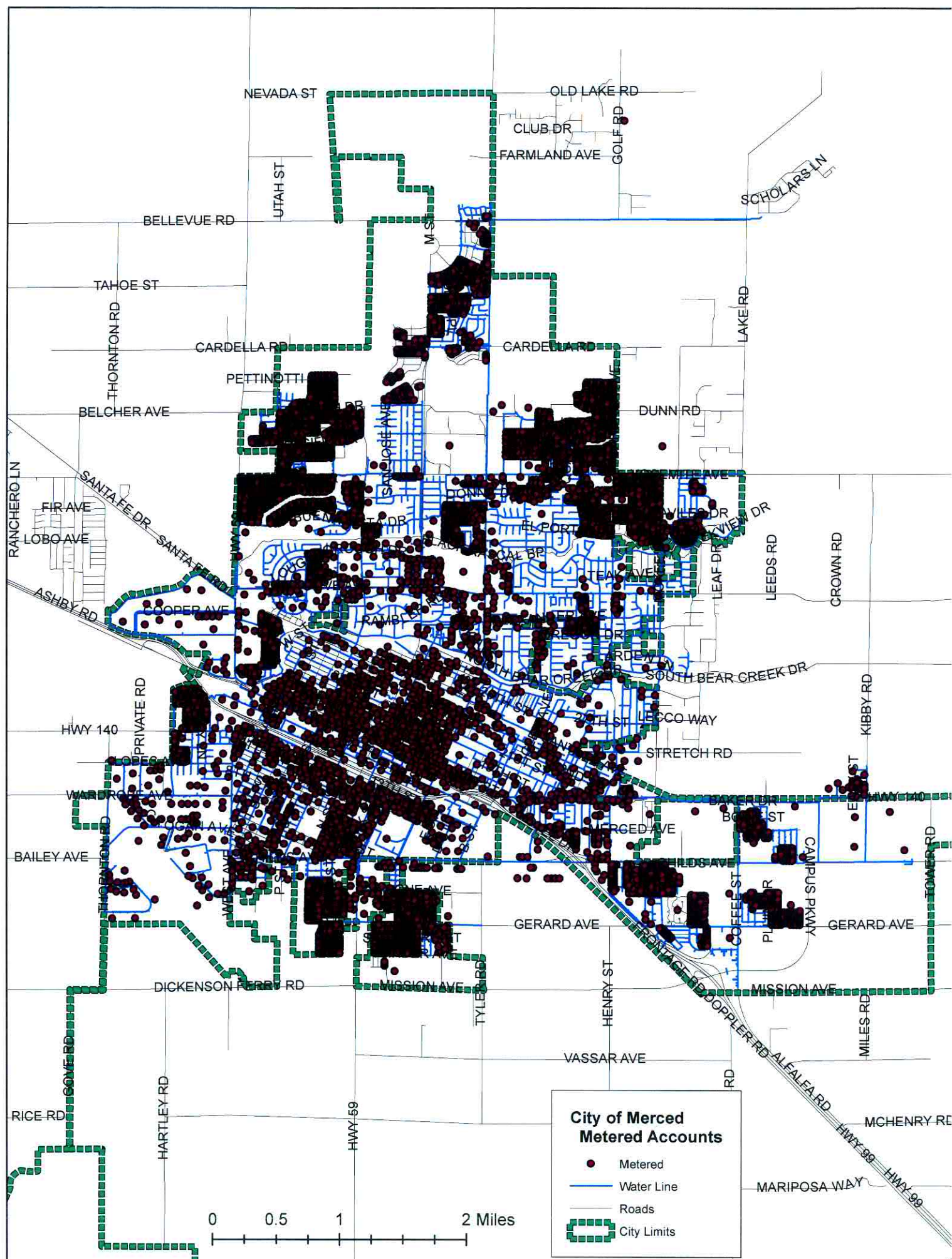
AMI Network Installation	\$3,950
AMI/AMR transmitters for 20,675 (@ \$85.86)	\$1,775,156
Total One-Time Costs	\$1,808,576
<hr/>	
Estimated Annual Charges*	
SunGard	\$600
Badger -Hosted AMI Reading Data Management Software at \$0.82/per month per account for 20,675 accounts	\$203,442
<hr/>	

* Grant eligible expense

ATTACHMENTS

1. Map of Flat Rate Accounts
2. Map of Existing Metered Accounts
3. RFP Final Scoring
4. SunGard's Development of Meter Interface Quote
5. SunGard's Mass Import Quote
6. Price Proposal National Meter
7. Badger Meter Master Agreement





September 4, 2015
City of Merced

RFP - CLOUD BASED AUTOMATIC METER READING SYSTEM

		Net Total Score (JS)	Net Total Score (JB)	Net Total Score (LB)	Net Total Score (KE)	Net Total Score All
Company						
1	Aclara	22	19	25	23	89
2	Mentron-Farnier	27	31	26	29	113
3	National	34	40	37	38	149

Quote Prepared By:

Jakea Simons
1000 Business Center Drive
Lake Mary, FL 32746
Phone: Fax:
Email: jakea.simons@sungardps.com

Quote Prepared For:

John Cardoza
City of Merced
678 West 18th Street
Merced, CA 95344
(209) 385-6227

Quote	Date	Valid Until
Q-00011865	03/07/2016	06/03/2016

Professional Services

Services

Product Code	Product Name	Proj Mgmt	Install/Tech	Training	Impl Svcs	Consulting	Development	Total Services
PS-CD	Development	-	-	-	-	-	8,000.00	8,000.00
Ext Price:		-	-	-	-	-	8,000.00	8,000.00
Totals:		-	-	-	-	-	\$8,000.00	\$8,000.00

Product & Services

Professional Services:	\$8,000.00
Subtotal:	\$8,000.00
Total:	\$8,000.00

Comments:

Client is migrating to the Badger BEACON meter reading system. This system is fairly new and SunGard does not yet have an interface specifically designed for it. SunGard will do the following:

- 1) Provide a new base SunGard Badger BEACON meter reading download/upload interface for routine meter readings per specifications document titled "BEACON Data & mapping 031215.xlsx" plus the companion document titled "BEACON Layout Additional Data.docx". While the BEACON file layout has fields for exchanged meters, the SunGard enhancements for this System Change Request will pertain to routine meter readings only, and will not support using this file layout for uploading meter exchanges to CIS.
- 2) Using the same Badger documentation, provide a new base SunGard BEACON sync file that will be a full dump of installed meters, and set this module up so that this sync file is refreshed at the end of each CIS update process. This file can be imported into the Badger system at will to populate their database with current CIS information.

NOTES:

- Client agrees to test this modification within 30 days of delivery. Failure to test within 30 days may require an additional quote.
- Client is responsible for the creation and maintenance of a Test environment when the mod requires file updates or 3rd party interfaces. This is to ensure that an agreeable outcome is reached before impeding their daily business activities or their live data. Failure to test the modification in a Test environment may require an additional quote for any additional services.
- Quote assumes that the client is running Extranet or SSH. If the client's system is not running Extranet/SSH or is only accessible through SecureLink,

an additional quote may be required.

- Client is responsible for providing Extranet or SSH access to any and all environments that modifications may need to be loaded to. Client is also responsible for providing TELNET access to any Test environment(s).
- This work will be based on the current version (9.1) and may require that the client load this version as part of the SCR.
- Any additional work, not included in the scope of this agreement, may require an additional quote.
- Services will not be scheduled until a signed quote has been received. Based on current backlog, work signed today is expected to start May 9th, 2016
- If Custom Modification, then the estimated future cost for retrofitting this work is \$100.00 per object.

FDI #: 1 004 437

TOTAL COST: \$8,000.00

Payment terms as follows, unless otherwise notated below for Special Payment Terms by Product:

License, Project Planning, Project Management, Consulting, Conversion, Custom Modification, Third Party Product Software and Hardware Fees are due upon execution of this Quote. Training fees and Travel & Living expenses are due as incurred monthly. Installation is due upon completion. Implementation and Third Party Product Services fees are due 50% on execution of this Quote and 50% due upon invoice, upon completion. Unless otherwise provided, other Professional Services are due monthly, as such services are delivered. Additional services, if requested, will be invoiced at then-current rates. Any shipping charges shown are estimated only and actual shipping charges will be due upon invoice, upon delivery.

Annual Subscription Fee(s): Initial annual subscription fees are due 100% on the Execution Date. The initial annual subscription term for any subscription product(s) listed above shall commence on the Execution Date of this Agreement and extend for a period of one (1) year. Thereafter, the subscription terms shall automatically renew for successive one (1) year terms, unless either party gives the other party written notice of non-renewal at least sixty (60) days prior to expiration of the then-current term. The then-current fee will be specified by SunGard Public Sector in an annual invoice to Customer thirty (30) days prior to the expiration of then-current annual period.

SunGard Public Sector Application Annual Support: Customer is committed to the initial term of Maintenance and Support Services for which the support fee is included in the License fee(s) and begins upon execution of this Quote and extends for a twelve (12) month period. Subsequent terms of support will be for twelve (12) month periods, commencing at the end of the prior support period. Support fees shown are for the second term of support for which SunGard Public Sector is committed and which shall be due prior to the start of that term. Fees for subsequent terms of support will be due prior to the start of each term at the then-prevailing rate. Subsequent terms will renew automatically until such time SunGard Public Sector receives written notice from the Customer thirty (30) days prior to the expiration of the then current term. Notification of non-renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal.

Third Party Product Annual Support Fees: The support fee for the initial annual period is included in the applicable Third Party Product License fees(s) unless otherwise stated. Subsequent terms invoiced by SunGard Public Sector will renew automatically at then-prevailing rates until such time SunGard Public Sector receives written notice of non-renewal from the Customer ninety (90) days in advance of the expiration of the then-current term. Notification of non-renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal. As applicable for certain Third Party Products that are invoiced directly by the third party to Customer, payment terms for any renewal term(s) of support shall be as provided by the third party to Customer.

Additional Terms:

This Quote constitutes an Amendment to the Software License & Services Agreement and the Maintenance/Support Agreement (together, the "Contract and Agreement") by and between the parties hereto. The product and pricing information detailed above comprises the "Exhibit 1" schedule or "Supplement" attached to this Amendment. Except as otherwise provided herein, all terms and conditions of the Contract and Agreement shall remain in full force and effect.

Any interfaces listed above are interfaces only. Customer shall be responsible for obtaining the applicable software, hardware and system software from the appropriate third party vendor.

The Component Systems identified above are "Licensed Programs" or "Licensed Systems" licensed by SunGard Public Sector and are provided in and may be used in machine-readable object code form only.

SunGard Public Sector

Page 2 of 3

Applicable taxes are not included, and, if applicable, will be added to the amount in the payment of invoice(s) being sent separately. Travel and living expenses are in addition to the prices quoted above and shall be governed by the SunGard Public Sector Corporate Travel and Expense Reimbursement Policy.

The date of delivery is the date on which SunGard Public Sector delivers, F.O.B. SunGard Public Sector's place of shipment, the Component Systems to Customer.

The SunGard Public Sector application software warranty shall be for a period of one (1) year after delivery. There is no Testing and Acceptance period on the Licensed System(s) herein.

Preprinted conditions and all other terms not included in this Quote or in the Contract and Agreement, stated on any purchase order or other document submitted hereafter by Customer are of no force or effect, and the terms and conditions of the Contract and Agreement and any amendments thereto shall control unless expressly accepted in writing by SunGard Public Sector to Customer.

Third party hardware/software maintenance and/or warranty will be provided by the third party hardware and software manufacturer(s). SunGard Public Sector makes no representations as to expected performance, suitability, or the satisfaction of Customer's requirements with respect to the hardware or other third party products specified in this Quote. The return and refund policy of each individual third party hardware/software supplier shall apply.

This Agreement is based on the current licensing policies of each third party software manufacturer as well as all hardware manufacturers. In the event that a manufacturer changes any of these respective policies or prices, SunGard Public Sector reserves the right to adjust this proposal to reflect those changes.

Should Customer terminate this agreement per any "Term of Contract" Section of the Contract and Agreement, as may be applicable for certain customers, Customer agrees to pay, immediately upon termination, the remaining balance for all hardware, software, and services delivered prior to the termination date together with travel reimbursements, if any, related to the foregoing. Notwithstanding any language in the Contract and Agreement to the contrary, the purchase of support services is NOT necessary for the continuation of Customer's License.

Pricing for professional services provided under this quote is a good faith estimate based on the information available to SunGard Public Sector at the time of execution of this Quote. The total amount that Customer will pay for these services will vary based on the actual number of hours of services required to complete the services. If required, additional services will be provided on a time and materials basis at hourly rates equal to SunGard Public Sector's then-current rates for the services at issue.

For training and on-site project management sessions which are cancelled at the request of Customer within fourteen (14) days of the scheduled start date, Customer is responsible for entire price of the training or on-site project management plus incurred expenses.

City of Merced

Authorized Signature: _____ Date: _____ Printed Name: _____
SunGard Public Sector

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APPROVED AS TO FORM:


KENNETH ROZELL
Senior Deputy City Attorney

Quote Prepared By:

Jakea Simons
1000 Business Center Drive
Lake Mary, FL 32746
Phone: Fax:
Email: jakea.simons@sungardps.com

Quote Prepared For:

John Cardoza
City of Merced
678 West 18th Street
Merced, CA 95344
(209) 385-6227

Quote	Date	Valid Until
Q-00013523	03/01/2016	06/01/2016

Professional Services

Services

Product Code	Product Name	Proj Mgmt	Install/Tech	Training	Impl Svcs	Consulting	Development	Total Services
PS-CD	Development	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	20,000.00	20,000.00
		\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$20,000.00	\$20,000.00

SunGard Public Sector Products & Services

Subtotal:	\$0.00
Professional Services:	20,000.00
Total:	\$20,000.00

Comments:

The City of Merced requires an automated module to mass import meter change-out and first-time meter install data into CIS.

An extraction file will be provided to the group performing the exchanges and installations. This extraction will contain meter information if there is already a meter installed; otherwise all meter-related fields will be blank, and simply the premises and customer data will be provided.

An upload module will be provided that will process vendor new-install/exchange data into CIS. Vendor will provide a code in the file indicating which activity occurred, or alternatively, leave the old-meter-number blank for new installs. When old meter number is blank, if process finds the location already has a meter, the transaction will be rejected. Meter inventory will be automatically created through this module, radio added, and the new meter will be set at the location. For meter exchanges, old meter will be moved back to warehouse. For brand new metered service, program will create new location/service, meter service info, and customer/service records. If no active customer exists at the location, the customer/service record will not be added. If upload file does not contain a meter reading walk sequence for brand new installs, then a default value of 99999 will be applied. Acceptance and exception reports will be provided as well as assistance in utilizing those reports to resolve any warnings and errors. Merced personnel will provide any default values that are required for adding master file data to CIS. A questionnaire for meter inventory will be provided so that Merced personnel will know which meter attributes need default information to be provided.

For brand new meter installs, the service will be immediately transitioned from flat rate billing to metered service billing. The termination date for flat rate

and initiation date for metered will be equal to the install date provided in the upload file. It is expected that since the install data will be held back until some future date, that the new meter's SET reading in the file and install date will be updated to the actual reading/date values as of the provided install date, and this install date will be later in time than the date the meter was actually installed at the premises.

Merced has also stated they wish to have the upload process reassign the location to a new cycle/route. Merced will provide the SunGard programmer with a table that describes from-to values for cycle/route reassignments. Merced will also decide and notify SunGard programmer whether the cycle/route reassignment applies ONLY to new installs, or to all records passing through this upload module.

NOTES:

- Client agrees to test this modification within 30 days of delivery. Failure to test within 30 days may require an additional quote.
- Client is responsible for the creation and maintenance of a Test environment when the mod requires file updates or 3rd party interfaces. This is to ensure that an agreeable outcome is reached before impeding their daily business activities or their live data. Failure to test the modification in a Test environment may require an additional quote for any additional services.
- Quote assumes that the client is running Extranet or SSH. If the client's system is not running Extranet/SSH or is only accessible through SecureLink, an additional quote may be required.
- Client is responsible for providing Extranet or SSH access to any and all environments that modifications may need to be loaded to. Client is also responsible for providing TELNET access to any Test environment(s).
- This work will be based on the current version (9.1.15.3) and may require that the client load this version as part of the SCR.
- Any additional work, not included in the scope of this agreement, may require an additional quote.
- Services will not be scheduled until a signed quote has been received. Based on current backlog, work signed today is expected to start May 2nd 2016.

FDI #: 1 004 438

TOTAL COST: \$20,000.00

Payment terms as follows, unless otherwise notated below for Special Payment Terms by Product:

License, Project Planning, Project Management, Consulting, Technical Services, Conversion, Third Party Product Software and Hardware Fees are due upon execution of this Quote. Training fees and Travel & Living expenses are due as incurred monthly. Installation is due upon completion. Custom Modifications, Conversions, System Change Requests or SOW's for customization, and Third Party Product Implementation Services fees are due 50% on execution of this Quote and 50% due upon invoice, upon completion. Unless otherwise provided, other Professional Services are due monthly, as such services are delivered. Additional services, if requested, will be invoiced at then-current rates. Any shipping charges shown are estimated only and actual shipping charges will be due upon invoice, upon delivery.

Annual Subscription Fee(s): Initial annual subscription fees are due 100% on the Execution Date. The initial annual subscription term for any subscription product(s) listed above shall commence on the Execution Date of this Agreement and extend for a period of one (1) year. Thereafter, the subscription terms shall automatically renew for successive one (1) year terms, unless either party gives the other party written notice of non-renewal at least sixty (60) days prior to expiration of the then-current term. The then-current fee will be specified by SunGard Public Sector in an annual invoice to Customer thirty (30) days prior to the expiration of then-current annual period.

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Third Party Product Annual Support Fees: The support fee for the initial annual period is included in the applicable Third Party Product License fees(s) unless otherwise stated. Subsequent terms invoiced by SunGard Public Sector will renew automatically at then-prevailing rates until such time SunGard Public Sector receives written

notice of non-renewal from the Customer ninety (90) days in advance of the expiration of the then-current term. Notification of non-renewal is required prior to the start of the renewal term. Customer will be invoiced, and payment is due, upon renewal. As applicable for certain Third Party Products that are invoiced directly by the third party to Customer, payment terms for any renewal term(s) of support shall be as provided by the third party to Customer.

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Applicable taxes are not included, and, if applicable, will be added to the amount in the payment of invoice(s) being sent separately. Travel and living expenses are in addition to the prices quoted above and shall be governed by the SunGard Public Sector Corporate Travel and Expense Reimbursement Policy.

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Third party hardware/software maintenance and/or warranty will be provided by the third party hardware and software manufacturer(s). SunGard Public Sector makes no representations as to expected performance, suitability, or the satisfaction of Customer's requirements with respect to the hardware or other third party products specified in this Quote. The return and refund policy of each individual third party hardware/software supplier shall apply.

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Should Customer terminate this agreement per any "Term of Contract" Section of the Contract and Agreement, as may be applicable for certain customers, Customer agrees to pay, immediately upon termination, the remaining balance for all hardware, software, and services delivered prior to the termination date together with travel reimbursements, if any, related to the foregoing. Notwithstanding any language in the Contract and Agreement to the contrary, the purchase of support services is NOT necessary for the continuation of Customer's License.

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City of Merced

SunGard Public Sector

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APPROVED AS TO FORM:


KENNETH ROZELL
Senior Deputy City Attorney

Authorized Signature: _____

Date: _____

Printed Name: _____

Public Sector

ATTACHMENT A – PRICE PROPOSAL

Supply and Delivery of an Automatic Meter Reading System

Quantities here are assumed for comparison of proposals and are not guarantees.

Each Technical proposal will be evaluated independently.

Name, of Firm or Individual Submitting Proposal: National Meter & Automation, Inc.

Address: 2250 Apollo Way, #300, Santa Rosa, CA 95407

Telephone / Fax / E-mail address: Phone: 707-575-0700; Fax: 707-575-3786 E:krichards@nmaai.com

QUANTITY	PRODUCT	UNIT PRICE	TOTAL	Comments
1	AMI Endpoint	\$ <u>85.86</u>	\$ <u>85.86</u>	1
1	AMI Endpoint w/ Absolute Encoder	\$ <u>153.36</u>	\$ <u>153.36</u>	1
1	Hosted AMI Reading Data Management Software	\$ <u>0.82</u>	\$ <u>0.82</u>	2
1	AMI Network Data Collector	\$ <u>N/A</u>	\$ <u>N/A</u>	
1	AMI Endpoint Programming Handheld	\$ <u>N/A</u>	\$ <u>N/A</u>	
1	2 Days Training (Installation, Hardware, and Software)	\$ <u>1,470.00</u>	\$ <u>1,470.00</u>	
1	AMI Network Installation	\$ <u>3,950.00</u>	\$ <u>3,950.00</u>	
1	Hosted Consumer Portal	\$ <u>included</u>	\$ <u>included</u>	
AMI TOTAL			\$ <u>5,660.04</u>	

Comments

1. Includes 8% Merced sales tax
2. With executed Master Agreement



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



This BEACON AMA MANAGED SOLUTION MASTER AGREEMENT ("**Agreement**") is entered into as of the _____ day of _____, 201__ (the "**Effective Date**") by and between Badger Meter, Inc. , a Wisconsin corporation with offices located at 4545 W. Brown Deer Road, Milwaukee, Wisconsin 53223 ("**Badger Meter**") , and The City of Merced, CA, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("**Customer**").

(1) **SERVICE.** Badger Meter and its cellular service aggregator and data-hosting service providers ("**Suppliers**") have developed a hosted, on-demand, web-based service website ("**Portal**") accessible to its customers to provide metering and water usage service information, communicated through a cellular network, for its customers ("**Service**"), and documentation to assist customers in using the Portal and the Service ("**Documentation**").

(2) **RIGHT TO ACCESS AND USE THE PORTAL AND SERVICE.** In consideration of the payment of the Service Fees as set forth in Section (5), Badger Meter grants to Customer, its employees and contractors that Customer approves as users of the Service ("**Authorized User**") and Customer's approved end-user water customers ("**Authorized Consumer**") the right to remotely access and use the Service from the Portal (as currently configured) for Customer's internal business use and for the benefit of its Authorized Consumers in accordance with this Agreement.

(3) **OWNERSHIP OF PORTAL AND SERVICE.**

(a) **Badger Meter Service.** Badger Meter owns all rights, title and interest in the Portal, Service and Documentation, including all associated intellectual property rights. Neither Customer, nor its Authorized Users or Authorized Consumers will obtain any rights, title or interest in the Portal, Service, or Documentation or any associated intellectual property rights, other than the right to access and use the Portal, Service and Documentation, subject to the terms of this Agreement.

(b) **Suggestions.** If Customer provides Badger Meter any suggested improvements ("**Suggestions**") to the Portal, Service or Documentation, Customer agrees that Badger Meter will own all rights, title and interest in and to the Suggestions, even if Customer has designated the Suggestions as confidential. Badger Meter will be entitled to use the Suggestions without restriction. By entering into this Agreement, Customer irrevocably assigns, conveys and transfers to Badger Meter all right, title and interest in and to the Suggestions and agrees to provide Badger Meter with commercially reasonable assistance to document, perfect and maintain Badger Meter's rights in the Suggestions.

(4) **TERM.** The term of this Agreement begins on the Effective Date and continues for a ten (10) year term unless earlier terminated in accordance with Section (16) of the Agreement (the "**Term**").



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(5) FEES.

(a) Service Fees. In consideration for the right to access and use the Portal, Service and Documentation, Customer agrees to pay Badger Meter certain fees ("**Service Fees**") to obtain enterprise-wide access to the Portal, Service and Documentation, authorizing all of its Authorized Users and Authorized Consumers to use the Portal and Service and Documentation in accordance with the terms of this Agreement, pursuant to the pricing set forth in **Exhibit 1 - Fees**.

(b) Taxes and Surcharges. Customer will be responsible to pay any sales, use, value added or excise taxes or surcharges resulting from use of the Portal, Service and Documentation by Customer, its Authorized Users or Authorized Consumers, excluding taxes due on Badger Meter's income. Customer will not be responsible for payment of taxes or surcharges resulting from its use of the cellular service included as part of the Service, as those charges are included in the Service Fees.

(c) Updated Schedule of Fees. At least one hundred and twenty (120) days prior to the expiration date of the Term ("**Anniversary Date**"), Badger Meter will provide Customer with an updated Schedule of Fees for the Service for the upcoming contract term.

(6) RESTRICTIONS ON RIGHT TO USE. Customer agrees that Customer, its Authorized Users and Authorized Consumers will not use or permit or assist another to use the Portal, Service or Documentation in violation of this Agreement and will not:

(a) Sell, license, resell, sublicense, or otherwise permit any third parties other than Authorized Users or Authorized Consumers to access or use the Portal, Service, or Documentation.

(b) Remove patent, copyright, trademark or other intellectual property markings from the Portal, Service or Documentation.

(c) Modify, alter, tamper with, repair or otherwise create derivatives from the Portal, Service or Documentation.

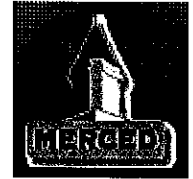
(d) Copy, reverse engineer, disassemble or decompile the Portal, Service or Documentation or apply any other process or procedure to derive the source code from any software included in the Portal or Service.

(e) Provide Customer Content that infringes on the intellectual rights of any person or entity or use the Portal, Service or Documentation in violation of the intellectual property rights of Badger Meter, its Suppliers or any third party.



Badger Meter

**BADGER METER
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- (f) Use the Portal or Service in a manner that violates any applicable international, federal, state or local laws, rules or regulations.
- (g) Assert or authorize, assist or encourage any third party to assert against Badger Meter, its affiliates, customers, vendors, business partners, Servicers or licensors any intellectual property infringement Claim regarding the Portal, Service or Documentation.
- (h) Transmit content or messages that are illegal, fraudulent, threatening, abusive, defamatory, or obscene.
- (i) Make any unauthorized connection to Badger Meter's information technology architecture ("Network")
- (j) Communicate any unsolicited commercial, voice, SMS, or other message.
- (k) Upload or transmit any "virus," "worm," or malicious code or access, alter, or interfere with the communications of and/or information about another customer.
- (l) Take actions that could cause damage to or adversely affect Badger Meter, the Service, Portal, Suppliers, Network or the property or reputation of Badger Meter or its Suppliers.

Customer and Badger Meter agree to make good faith efforts to minimize abuse or fraudulent use of the Portal and Service, to promptly report to each other any such abuse or fraudulent use of which they become aware, and to fully cooperate in any investigation or prosecution initiated by Badger Meter, its Suppliers or Customer related to abuse or fraudulent use of the Portal and Service.

(7) CUSTOMER SUPPORT. Badger Meter will provide Customer the support services described in Exhibit 2 - Service Level Agreement.

(8) CUSTOMER CONTENT.

- (a) **Customer Content Defined.** Customer, its Authorized Users and Authorized Consumers will provide Badger Meter and its Suppliers certain text, audio, video, images, Customer Data, customer billing information, personally identifiable information or other content ("**Customer Content**").
- (b) **Ownership.** The Parties agree that the Customer Content is and shall remain the sole and exclusive property of Customer and/or its licensors or Authorized Consumers, including but not limited to any intellectual rights in the Customer Content.



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(c) **Use of Customer Content by Badger Meter.** Customer, its Authorized Users and Authorized Consumers consent to Badger Meter and its Suppliers' right to host, access, store, copy and use the Customer Content as reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation. Badger Meter may disclose certain Customer Content only to provide the Service to Customer, its Authorized Users and Authorized Consumers or to comply with the law or request of a governmental or regulatory body (including subpoenas or court orders.) Badger Meter will give Customer reasonable notice of a request from a governmental entity to allow Customer to seek a protective order or other appropriate remedy (except to the extent such notice would violate a court order or other legal requirement).

(d) **Customer Responsibilities.** Customer is solely responsible for the development, content, operation and maintenance of the Customer Content, including but not limited to the technical operation of the Customer Content, and ensuring that calls made to the Service from Customer's network are compatible with then-current API's for the Service. Customer is responsible to ensure that Customer, its Authorized Users and Authorized Consumers comply with the Badger Meter Terms of Use Policy, the Badger Meter Privacy Policy or any other policies referenced in this Agreement and the law. Customer will respond to any Claims related to the Customer Content and is responsible for properly handling and processing notices sent to Customer by any person claiming that the Customer Content violates such person's legal rights, including notices pursuant to the Digital Millennium Copyright Act.

(9) CONFIDENTIALITY.

(a) **Confidential Information Defined.** For purposes of this Agreement, Confidential Information means all nonpublic information disclosed by one party to the other that is designated as confidential or that given the nature of the information or circumstances surrounding its disclosure, reasonably should be understood to be confidential, including but not limited to: (a) nonpublic information related to Badger Meter or its affiliates, Suppliers, business partners, technology, customers, business plans, intellectual property, promotional and marketing activities, finances and other business affairs; (b) third party information Badger Meter is obligated to keep confidential; (c) the content and existence of any discussions or negotiations between the parties; (d) Badger Meter's intellectual property used in providing the Portal, Service or Documentation; (e) the Customer Content, but only to the extent that Customer Content contains proprietary information, billing information or other personally identifiable information ("**Customer Data**"); and (f) Traffic Data.

(b) **Protection of Confidential Information.** To the extent permitted by law, the parties agree to hold the other party's Confidential Information in strict confidence and will not copy, reproduce, give, sell, assign, license, market, transfer or otherwise dispose of the Confidential Information of the other party to any third parties or use the Confidential Information for any



BADGER METER
BEACON AMA MANAGED SOLUTION
MASTER AGREEMENT



purposes whatsoever other than as contemplated by this Agreement. The Parties will take commercially reasonable steps to avoid disclosure, dissemination or unauthorized access to or use of the Confidential Information during the Term and for a period of five (5) years after the end of the Term, except that Confidential Information which is designated as a trade secret which shall continue to be subject to these confidentiality obligations in perpetuity. The Parties will not issue any press release or make any other public communication with respect to this Agreement or Customer's use of the Portal or Service. Customer agrees it will not misrepresent or embellish the relationship between the Parties (including by expressing or implying that Badger Meter supports, sponsors, endorses or contributes to Customer or its business endeavors) or express or imply any relationship or affiliation between Badger Meter and Customer or any other person or entity except as expressly permitted by this Agreement.

(c) Ownership of Customer Data. All Customer Data pertaining to Customer or its Authorized Consumers is considered Confidential Information of Customer and owned by Customer. Customer grants Badger Meter and its Suppliers the right to host, access, store, copy, and use the Customer Data as is reasonably necessary to provide, maintain, repair and enhance the Portal, Service and Documentation.

(d) Traffic Information. All de-identified data generated or collected by Badger Meter through operation of the Portal and Service is referred to as the "Traffic Data." All Traffic Data shall be the Confidential Information of and owned exclusively by Badger Meter.

(e) Third Party Requests for Confidential Information. Neither party may disclose the other party's Confidential Information except to a Supplier subject to the restrictions in this Agreement or an Authorized User or Authorized Consumer except as otherwise required by law. If a party receives a request for access to the other party's Confidential Information from a third party, the receiving party agrees to inform the disclosing party in writing within three (3) business days of receipt of the request unless prohibited by law.

(f) Exclusions from Confidential Information. Confidential Information of a party shall not include information which: (i) is in or becomes part of the public domain through no fault of the receiving party; (ii) the receiving party can prove was known to it prior to its receipt from the disclosing party without reference to the Confidential Information; (iii) is independently developed by the receiving party outside of this Agreement without use of the disclosing party's Confidential Information; or (iv) is obtained by the receiving party from a third party which had no obligation of confidentiality to the disclosing party.

(10) CUSTOMER'S REPRESENTATIONS AND WARRANTIES. Customer represents and warrants to Badger Meter that Customer:



**BADGER METER
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- (a) **Authority.** Has the right and authority to enter into this Agreement and to meet its financial and legal obligations under this Agreement.
- (b) **Ownership.** Customer, its licensors or its Authorized Consumers, own all rights, title and interest in and to the Customer Content, including but not limited to the Customer Data. Customer has all rights in the Customer Content necessary to grant the rights to Badger Meter contemplated under this Agreement.
- (c) **Compliance with Badger Meter Policies.** None of the Customer Content or the use of the Customer content, the Portal or Service by Customer, its Authorized Users or its Authorized Consumers will violate Badger Meter's Terms of Use Policy or Privacy Policy.
- (d) **No Infringement.** To Customer's knowledge, none of the Customer Content infringes the Intellectual Property Rights of any third party or is the subject matter of any pending or threatened lawsuit, legal proceeding or Claim.
- (e) **Compliance with the Law.** Neither Customer, the Authorized Users nor the Authorized Consumers will access or use the Portal, Service or Documentation in any manner that violates any applicable international, federal, state or local laws and/or regulations, including but not limited to all applicable data protection, intellectual property and privacy laws.

(11) REPRESENTATIONS AND WARRANTIES OF BADGER METER.

- (a) **Authority.** Badger Meter represents and warrants to Customer that it has the right and authority to enter into this Agreement and to perform its obligations under this Agreement.
- (b) **Service Warranty.** Badger Meter represents and warrants to Customer that the Portal and Service will be provided pursuant to Exhibit 2 - Service Level Agreement. In providing the Portal and Service, Badger Meter will maintain sufficient data storage capacity to satisfy the technical requirements and required storage capacity to host the Portal and Service, in its reasonable discretion. If Customer allows unauthorized users to access the Portal, Service or Documentation, this express limited warranty will immediately become null and void.
- (c) **Remedy for Breach of the Express Limited Warranty.** If the Portal, Service or Documentation fail to meet the terms of the express limited warranty set forth in Section 11(b), Customer is required to notify Badger Meter promptly and in no event later than thirty (30) days from the date of the breach, in writing, of any alleged failure and provide information to support its warranty claim. Customer's exclusive remedy for a breach of the express limited warranty is a Service credit to be calculated in accordance with Exhibit 2 - Service Level Agreement.

(d) DISCLAIMER OF IMPLIED WARRANTIES. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 11(b), BADGER METER MAKES NO OTHER



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EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES AS TO THE PORTAL, SERVICE OR DOCUMENTATION. BADGER METER EXPRESSLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED WARRANTIES WITH REGARD TO THE PORTAL, SERVICE OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, OR IMPLIED WARRANTIES ARISING FROM A COURSE OF DEALING, INDUSTRY PRACTICE OR USAGE OF TRADE.

BADGER METER EXPRESSLY DISCLAIMS THAT THE PORTAL AND SERVICE WILL BE UNINTERRUPTED, ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND EXPRESSLY DISCLAIMS ANY WARRANTIES AS TO THE RELIABILITY, QUALITY, SECURITY, CONDITION, DESIGN, SUITABILITY, INTER-OPERABILITY, AVAILABILITY, COMPLETENESS OF THE PORTAL OR SERVICE OR THAT ANY CONTENT, INCLUDING THE CUSTOMER CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

(e) ESSENTIAL TERMS. THE ENFORCEABILITY OF THIS SECTION (11) IS ESSENTIAL TO BADGER METER'S WILLINGNESS TO ENTER INTO THIS AGREEMENT WITH CUSTOMER.

(12) LIMITATION OF LIABILITY. IF ANY PARTY DEFAULTS IN ITS OBLIGATIONS UNDER THIS AGREEMENT AND SUBJECT TO THE LIABILITY CAP SET FORTH IN SECTION (13):

(a) DIRECT DAMAGES. THE NON-BREACHING PARTY WILL BE ENTITLED TO RECOVER FROM THE BREACHING PARTY ONLY THE ACTUAL AND DIRECT DAMAGES THAT THE NON-BREACHING PARTY MAY INCUR AS A RESULT OF SUCH BREACH. CUSTOMER'S ACTUAL AND DIRECT DAMAGES WILL BE LIMITED TO THE RECOVERY OF FEES ACTUALLY PAID TO BADGER METER BY CUSTOMER FOR THE PREVIOUS THREE MONTH PERIOD.

(b) LIMITS ON DAMAGES. EXCEPT FOR PAYMENT OBLIGATIONS (i) ARISING UNDER SECTIONS (14) AND (15) (INDEMNIFICATION), (ii) DAMAGES FOR GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT OR CLAIMS FOR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, NEITHER PARTY NOR ANY OF ITS RESPECTIVE AFFILIATES, SUPPLIERS OR LICENSORS WILL BE LIABLE TO THE OTHER PARTY, AN AUTHORIZED USER, AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR ANY CLAIMS, DEMANDS, ACTIONS, LOSSES, DAMAGES, FINES, JUDGMENTS SETTLEMENTS, COSTS, EXPENSES, ATTORNEY'S FEES, AND COURT COSTS OR ANY OTHER LIABILITIES OF ANY NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO THE PORTAL, SERVICE, DOCUMENTATION OR THE SUBJECT MATTER OF THIS AGREEMENT ("CLAIM").



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(c) **NO CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL BADGER METER BE LIABLE TO CUSTOMER, AN AUTHORIZED USER, AN AUTHORIZED CONSUMER OR ANY THIRD PARTY FOR (A) ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF; (B) ANY CLAIMS RESULTING FROM LOSS OF DATA, CUSTOMER CONTENT, CUSTOMER DATA, BREACH OF CONFIDENTIALITY, LOST REVENUE, LOST PROFITS, LOSS OF CONTRACT OR OF OTHER ECONOMIC ADVERSITY; OR (C) ANY CLAIM ARISING IN CONTRACT, TORT, OR OTHERWISE.

NEITHER BADGER METER NOR ANY OF ITS AFFILIATES, SUPPLIERS OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT OR DAMAGES ARISING IN CONNECTION WITH: (A) CUSTOMER'S INABILITY TO USE THE PORTAL OR SERVICE, INCLUDING AS A RESULT OF ANY: (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE ; OR (ii) WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICE FOR ANY REASON, INCLUDING BUT NOT LIMITED TO AS A RESULT OF A POWER OUTAGE, SYSTEM FAILURE OR OTHER INTERRUPTION; (B) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES; (C) ANY INVESTMENTS, EXPENDITURES OR COMMITMENTS MADE BY CUSTOMER IN CONNECTION WITH THIS AGREEMENT OR CUSTOMER'S USE OF OR ACCESS TO THE SERVICE OR (D) ANY UNAUTHORIZED ACCESS TO, ALTERATION OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF CUSTOMER'S CONTENT OR OTHER DATA.

(d) **INDEPENDENT LIMITATIONS.** THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND WILL APPLY NOTWITHSTANDING THAT A REMEDY FAILS OF ITS ESSENTIAL PURPOSE AND IRRESPECTIVE OF THE MANNER IN WHICH THE CLAIM IS MADE.

(13) CAP ON DAMAGES. Notwithstanding anything to the contrary contained in this Agreement, Badger Meter's total liability during the previous twelve month period from the date of the Claim for Claims made by Customer or any third party against Badger Meter arising from or related to the Portal, Service or Documentation, except for a Claim for an intellectual property dispute, may not exceed the amount charged by Badger Meter to Customer for the previous (12) month period.

(14) CUSTOMER'S INDEMNIFICATION OBLIGATIONS.

(a) **Generally.** To the extent permitted by law, Customer agrees to defend, indemnify, and hold harmless Badger Meter as well as its parents, subsidiaries, affiliates, officers, employees, agents, licensors, Suppliers, representatives and customers and each of their respective employees, officers, directors, members and representatives (the "**Badger Meter Parties**"),



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against any and all Claims made against the Badger Meter Parties by any third party arising out of or related to: (i) Customers, Authorized Users or Authorized Consumers access and use of the Portal, Service, or Documentation; (ii) the subject matter of this Agreement ; (iii) violation of applicable law by Customer, its Authorized Users or Authorized Consumers; (iv) the Customer Content or the combination of the Customer Content with other applications, content or processes, including any claim involving alleged infringement or misappropriation of third party rights related to the Customer Content or by the use, development, design, producing, advertising or marketing of Customer Content; or (v) a dispute between Customer and any Authorized User or Authorized Consumer.

(b) Procedure for Indemnification. Upon receipt of a Claim, Badger Meter will provide prompt written notice to Customer of the Claim for which the Badger Meter Parties seek indemnification. Badger Meter's failure to promptly notify Customer will only affect Customer's obligation to indemnify the Badger Meter Parties to the extent such failure causes actual prejudice to Customer's ability to defend the Claim. The notice must include a description of the Claim with reasonable detail of the facts giving rise to the Claim. Upon receipt of notice of a Claim, Customer shall be obligated to assume and control the defense of such Claim at its own expense. The Badger Meter Parties may retain their own counsel to cooperate in defending the Claim, at their own expense. The Badger Meter Parties agree to cooperate with Customer in defending the Claim and in making available to Customer all witnesses, records, materials and information in their possession or control to assist in the defense of the Claim, as is reasonably requested by Customer. Customer may not settle or compromise any Claim or consent to the entry of any judgment unless Badger Meter provides prior written consent and the Badger Meter Parties are given an unconditional written release from Customer with respect to the Claim. In the event Customer fails to defend, indemnify, and hold the Badger Meter Parties harmless, after notice of a request for indemnification, the Badger Meter Parties shall be entitled to assume the defense and seek reimbursement from Customer for all losses with regard to the Claim and all attorneys' fees and litigation costs expended by the Badger Meter Parties in defending the Claim.

(15) BADGER METER'S INDEMNIFICATION OBLIGATIONS.

(a) Generally. Badger Meter agrees to indemnify, defend and hold harmless Customer, and as applicable its officers, directors, members, board members, governing members, trustees, commissioners, elected and appointed officials, employees, agents, consultants and other representatives ("**Customer Parties**") from and against any legal proceedings filed against the Customer Parties by a third party based upon the allegations that the Portal, Service or Documentation infringes or violates a third party's patent, copyright or other intellectual property rights ("**Intellectual Property Dispute**").

(b) Mitigation. If the Portal, Service or Documentation becomes the subject of an Intellectual Property Dispute and is enjoined, Badger Meter will have the right to (i) procure for Customer



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the right to continue using the Portal and Service; (ii) modify the Portal and Service to avoid allegations of infringement, provided the modification does not materially change the functionality of the Portal and Service; (iii) replace the Portal and Service with an equally suitable, functionally equivalent, non-infringing Portal and Service.

(c) **Exclusions.** Badger Meter assumes no liability for and Customer will not be entitled to receive indemnification from Badger Meter for any Intellectual Property Dispute which results directly or indirectly from (i) Customer's failure to use the Portal or Service in conformity with the Documentation; (ii) Customer's actions in combining the Service with any third party software, technology, hardware or data; or (iii) Customer's violation of access granted in Section (2).

(d) **Procedure for Indemnification.** Upon receipt of an Intellectual Property Dispute, Customer will provide prompt written notice to Badger Meter of the Intellectual Property Dispute for which the Customer Parties seek indemnification. Customer's failure to promptly notify Badger Meter will only affect Badger Meter's obligation to indemnify the Customer Parties to the extent such failure causes actual prejudice to Badger Meter's ability to defend the Claim. The notice must include a description of the Intellectual Property Dispute with reasonable detail of the facts giving rise to the Intellectual Property Dispute. Upon receipt of notice of an Intellectual Property Dispute, Badger Meter shall be obligated to assume and control the defense of such Intellectual Property Dispute at its own expense. Customer may retain its own counsel to cooperate in defending the Intellectual Property Dispute, at its own expense. Customer agrees to cooperate with Badger Meter in defending the Intellectual Property Dispute and in making available to Badger Meter all witnesses, records, materials and information in Customer's possession or control to assist in the defense of the Intellectual Property Dispute as is reasonably requested by Badger Meter. Badger Meter may not settle or compromise any Intellectual Property Dispute or consent to the entry of any judgment unless Customer provides prior written consent and the Customer is given an unconditional written release from Badger Meter with respect to the Intellectual Property Dispute. In the event Badger Meter fails to defend, indemnify, and hold the Customer Parties harmless, after notice of a request for indemnification, Customer shall be entitled to assume the defense and seek reimbursement from Badger Meter for all losses with regard to the Intellectual Property Dispute and all attorneys' fees and litigation costs expended by Customer in defending the Intellectual Property Dispute.

(16) TERMINATION.

(a) **Termination for Convenience.** Customer may terminate this Agreement for any reason by providing Badger Meter written notice of termination at least sixty (60) days in advance of the effective date of such termination. Badger Meter shall be entitled to receive just and equitable compensation for any services performed hereunder through the date of the termination and the liabilities associated with the cancellation of any related commitments required under this



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section. After receipt of a notice of termination for convenience, Badger Meter will exercise reasonable diligence to accomplish the cancellation or diversion of related services and settle all outstanding liabilities associated with the cancellation of such commitments.

(b) Termination for Cause. A party is in default under this Agreement if it materially breaches or materially fails to perform its obligations under this Agreement, which includes any failure to make payment pursuant to Section (5) ("**Event of Default**").

(c) Opportunity to Cure. Upon the occurrence of an Event of Default, the non-defaulting party shall deliver a written notice describing the Event of Default (the "**Cure Notice**"). If the receiving party has not cured the Event of Default within thirty (30) days after receipt of the Cure Notice, then the non-defaulting party shall have the right to terminate this Agreement, at its option, by delivering to the defaulting party a written notice of termination (the "**Termination Notice**").

(d) Immediate Right to Terminate. Badger Meter shall have the right to immediately terminate this Agreement: (i) in order to protect its Confidential Information, or its Intellectual Property Rights in the Portal or Service; (ii) in order to comply with applicable law (iii) if Customer makes any representation or warranty which is materially untrue as of the Effective Date or at any time during the Term; or (iv) upon an assignment for the benefit of creditors, if Customer suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under any statute relating to insolvency or for the protection of creditor rights or if a party becomes insolvent or technically bankrupt.

(e) Termination. Upon delivery of the Termination Notice to Customer by Badger Meter: (i) Badger Meter may cease providing Services to Customer, its Authorized Users and Authorized Consumers; (ii) Customer, its Authorized Users and Authorized Consumers will have no further right to use the Portal, Service or Documentation, will immediately cease using the Portal, Service and Documentation, and will receive no further Service; (iii) Customer will deliver to Badger Meter any Confidential Information of Badger Meter's in its possession or control, and (iv) Badger Meter may cease gathering data from Customer's endpoints, within a reasonable time, up to one hundred twenty (120) days after termination. Within a reasonable time after termination, at Badger Meter's discretion, Badger Meter will scrub the personally identifiable information from the Customer Data. Customer must immediately return, or at Badger Meter's option, destroy all Documentation provided to Customer by Badger Meter. Customer will remain liable for any Service Fees incurred prior to termination.

(f) Post - Termination Assistance. At either the expiration of the Term without renewal, or upon a default by Customer and subsequent termination, Badger Meter will provide post-termination data retrieval assistance to Customer for an additional fee, which shall be invoiced at the rate of \$200/hour, with the number of hours required determined by the amount of data



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Customer wishes to extract from the Service. Any additional post-termination assistance from Badger Meter is subject to mutual agreement by the parties.

(g) Reinstatement Fee. If Customer desires to reinstate access to the Portal and Service after termination, a reinstatement fee of \$7.50 per endpoint reinstated will apply.

(17) SUSPENSION OF SERVICES.

(a) Nonpayment. Badger Meter may suspend the Service and access to the Portal and shall not be obligated to provide access to the Portal and Service to Customer, its Authorized Users or Authorized Consumers until all outstanding invoices for the Service have been paid in full, including any fees associated with suspension of the Service.

(b) Network Protection. Customer acknowledges that Badger Meter (and any of its Suppliers) may restrict, or suspend all or a portion of the Service or limit the Service as may be reasonably necessary to prevent or limit suspected fraud or any problem that materially and adversely affects the performance of the Service and/or is likely to do substantial damage to Badger Meter, Badger Meter's customers or Suppliers. Some of these actions may interrupt or prevent legitimate communications and usage. Such situations may arise: (a) if a device deployed on the Service is materially out of compliance with the technical requirements; (b) in case of actual or suspected fraudulent use; or (c) in case of disruptive or damaging operation.

(c) Notification. In the event that Badger Meter or one of its Suppliers restricts, suspends or cancels any portion of the Service or limits the operation of the Service, Badger Meter shall use reasonable efforts to (i) promptly notify Customer in advance; (ii) provide reasonable information regarding its identification of the issue that resulted in the actions taken; and (iii) reinstate Service upon resolution of the issue as soon as practicable and in any case within a reasonable timeframe.

(d) Immediate Suspension. Badger Meter may suspend Customer's or an Authorized Users or Authorized Consumers right to access or use the Service immediately upon notice to Customer if Badger Meter determines:

- (i)** Use of the Service poses a security risk to the Service, the Network or any third party, adversely impacts the Service, the Network or content of any other Badger Meter customer, or subjects Badger Meter or any third party to liability or fraud.
- (ii)** Customer or one of its Authorized Users or Authorized Customers is in breach of this Agreement or is delinquent on its payments for more than forty-five (45) days.



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(iii) Badger Meter ceases to operate in the ordinary course, has an assignment for the benefit of creditors or similar disposition of its assets or becomes the subject of any bankruptcy, reorganization, liquidation dissolution or similar proceeding.

(e) **Reinstatement.** Badger Meter will use commercially reasonable efforts to restore Customer's rights to use and access those portions of the Service or accounts that gave rise to the suspension promptly after Customer has resolved the problem giving rise to the suspension.

(f) **Effect of Suspension.** If Badger Meter suspends Customer's right to access or use all or any portion of the Service or the Portal:

(i) Customer remains responsible for all Service Fees and charges incurred through the date of suspension.

(ii) Customer remains responsible for any applicable Service Fees and charges for any Services to which Customer has continued access as well as applicable fees and charges.

(iii) Customer will not be entitled to any service credits under the Service Level Agreement for any period of suspension.

(iv) Badger Meter's right to suspend the Services is in addition to Badger Meter's right to terminate this Agreement.

(18) COMPLIANCE WITH REGULATIONS; DATA PRIVACY. Each party is responsible for complying with industry standards and such applicable laws and regulations, including, but not limited to, the generally accepted practices in the information technology service management industry for providing secure data handling and management, including meeting or exceeding Information Technology Infrastructure Library (ITIL) standards for logical and physical security and all requirements regarding the protection of data in its possession or under its control. A party will not be liable for any failure of the other party to comply with this requirement.

(19) DATA SECURITY AND RECOVERY.

(a) **Data Security.** In order to protect the Customer Content and prevent unauthorized access to or use of the Customer Content, Portal or Service, Badger Meter has implemented commercially reasonable internal procedures and systems designed to protect the privacy and security according to the requirements set forth in Exhibit 3 – BEACON AMA Managed Solution Security Policy ("Security Standards"), consistent with applicable international, federal, state and local laws. The purpose of the security policy is to identify reasonably foreseeable and internal risks to security and unauthorized access to Badger Meter's Network and minimize security risks, including through risk assessment and regular testing. Badger



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Meter will designate one or more employees to coordinate and be accountable for the security program.

(b) Protection of Customer Content. Badger Meter will implement reasonable and appropriate measures for the Badger Meter Network designed to help Customer secure the Customer Content against accidental or unlawful loss, access or disclosure in accordance with Badger Meter's Security Standards. Badger Meter may modify its Security Standards from time to time but will continue to provide at least the same level of security as described in the Security Standards as of the Effective Date. The security and data privacy provisions in this Section contain Badger Meter, and its Suppliers entire obligation regarding the security, privacy and confidentiality of the Customer Content.

(c) Data Storage. Badger Meter will employ commercially reasonable storage (including backup, archive and redundant data storage) and commercially reasonable precautions to prevent the loss of or alteration of Customer Content, but does not guarantee against any such loss or alteration. Badger Meter will not serve as Customer's official record keeper. Customer will maintain source documents of the Confidential Information (such as billing information) hosted by Badger Meter under this Agreement.

(d) Customer Responsibilities. Customer is responsible for properly configuring and using the Service and taking steps to maintain appropriate security, protection and backup of the Customer Content, including but not limited to the use of encryption technology to protect Customer Content from unauthorized access and will perform routine archiving of the Customer Content. Further, Customer is responsible for regularly auditing its Authorized Users, and will enact internal procedures to remove Authorized Users from the Service if their job duties change and access is no longer appropriate, or if an Authorized User separates from Customer.

(e) Data Transmission Risks.

(i) Cellular Transmissions. Badger Meter cellular endpoints conform to the AES256 encryption standards or the latest AES standard in effect. Customer acknowledges that neither Badger Meter nor its Suppliers can guarantee the privacy or security of any cellular transmissions as part of the Service. Customer acknowledges that cellular transmissions are capable of being intercepted by third parties without the knowledge or permission of Badger Meter or its Suppliers. Badger Meter and its Suppliers shall not be liable to Customer, the Authorized Users, the Authorized Consumers or any third party for interception or unauthorized use of any data transmitted through the cellular network, as part of the Service.

(ii) Internet Transmissions. Customer acknowledges that security of transmissions over the Internet cannot be guaranteed. Badger Meter is not responsible for: (i) Customer's



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access to the Internet; (ii) interception, unauthorized use or interruptions of communications through the Internet; or (iii) changes or losses of data through the Internet, in each case other than to the extent caused solely by Badger Meter. In order to protect Customer Content, Badger Meter may suspend Customer, Customer's Authorized Users or Authorized Consumers access to or use of the Badger Meter Portal or Service via the Internet immediately, without prior notice, pending an investigation of any potential security breach.

(f) Coverage Availability. The Service is provided using a wireless network. Actual signal availability in the Service Area will depend on the device used to access the Service as well as coverage for the applicable wireless network provided in specific geographic regions. Coverage may be refused, interrupted or limited by environmental factors such as signal strength, buildings, weather, geography, topography, or by factors affecting the Suppliers, such as usage concentration or by facilities changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of the Supplier's facilities. Any such factors may result in dropped and blocked connections or slower data speeds. Neither Badger Meter nor any of its Suppliers will be responsible to Customer or any of Customer's Authorized Users or Authorized Consumers for any such lapses in or obstructions to coverage. The Service Area is subject to change from time to time. Should Badger Meter receive notice from its Supplier that such Supplier intends to discontinue its support for the Badger Meter Service in all or part of the Service Area, Badger Meter will provide Customer with as much advance notice as practicable under the circumstances.

(g) Password Protection. Customer, its Authorized Users and Authorized Consumers will be required to select and use certain user names, passwords or codes to access and use the Service and Portal. Customer assumes sole responsibility for the selection, management and use of any codes or passwords as may be permitted or required for the access to and use of the Portal and Service by Customer, its Authorized Users and its Authorized Consumers. Customer agrees to maintain the privacy of usernames and passwords associated with the Badger Meter Portal and Service. Customer shall remain responsible for all activities that occur under Customer's password or Internet account. Customer will immediately notify Badger Meter of any unauthorized use of Customer's password or Internet account or any other breach of security, and ensure that Customer exits from Customer's Internet account at the end of each session. Badger Meter shall not be liable for any damages incurred by Customer or any third party arising from Customer's failure to comply with this Section.

(h) Third Party Access. To the extent that Customer requests that Badger Meter provide any Customer Content to Authorized Users, Authorized Consumers or third parties or any non-U.S. location, Customer represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.



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(i) **Security Breach.** If Badger Meter becomes aware of a security breach or any other event that compromises the security, confidentiality or integrity of the Customer Content ("Incident"), Badger Meter will promptly notify Customer in writing and take appropriate actions to resolve the Incident. Badger Meter will reasonably cooperate with Customer to investigate the nature and scope of any Incident. In its initial notification to Customer, Badger Meter will provide Customer with: (i) a description of the Incident; (ii) the estimated impact of the Incident on Customer's Content; (iii) the name and contact information of the person at Badger Meter who will be primarily responsible for resolving the issues for Customer; and (iv) the investigation taken and the suggested corrective action. Badger Meter will provide commercially reasonable cooperation to Customer in investigating, assisting with notification of the Incident and taking corrective action as requested by Customer.

(j) **Notification of Breach.** In the event that applicable law requires notification to individuals of an Incident or if requested by Customer, Badger Meter will take additional mitigation steps for the benefit of Customer, including, but not limited to, providing reasonable assistance with drafting and sending of required notifications.

(k) **Disclosure of Customer Content.** Badger Meter will only use the Customer Content to provide the Service to Customer and its Authorized Users and Authorized Consumers in accordance with this Agreement or to comply with the law or any governmental or regulatory body (including subpoenas or court orders). Badger Meter will give Customer reasonable notice of the request to allow Customer to seek a protective order or seek any other appropriate relief except to the extent required for Badger Meter to comply with a court order or other legal requirement.

(20) EMERGENCY CHANGES/SYSTEM IMPROVEMENT.

To the extent necessary to comply with changes in Federal (including international treaties and conventions to which the United States of America is a party), State, or local laws, rules and/or regulations relating to data privacy and security during the term of this Agreement, Badger Meter may from time to time, without Customer's approval, amend the Terms of Use, the Privacy Policy, the Portal or the Service, provided that such changes (i) do not increase Customer's total costs of accessing and using the Portal and Service during the term of this Agreement; (ii) do not require Customer to make any material changes to its systems, software, equipment, policies or procedures; (iii) do not have a material adverse impact on the functionality, interoperability, performance, reliability, security or resource efficiency of the Portal and Service; (iv) do not materially reduce the scope of the Portal and Service; and (v) are otherwise consistent with this Agreement. Badger Meter will publicize any changes by a notice given to Customer or by a prominent announcement on the BEACON Portal. Any such changes will not take effect until thirty (30) days after posting on the BEACON Portal. By continuing to use the Service after the effective date of the modification to the Terms of Use or Privacy Policy



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made pursuant to this Section (20), Customer agrees to be bound by the amended Terms of Use or Privacy Policy. Customer shall be responsible for checking the BEACON Portal regularly for modifications to the Terms of Use and/or Privacy Policy. Badger Meter and its Suppliers may make temporary changes to the Portal and Service required by an emergency or threat to the security or integrity of the Portal or Service to respond to claims, litigation or loss of license rights related to third party intellectual property rights or to comply with the law or requests of a government entity, as well as take actions deemed reasonably necessary to protect or optimize its Services. Some of these actions may interrupt or prevent legitimate communications and usage, including, for example, use of message filtering/blocking software to prevent SPAM or viruses, limitations on throughput, scheduled maintenance and the like. Badger Meter will provide notice by sending a message to the email address then associated with Customer's account, CityATTORNEYNOTICE@cityofmerced.org and by posting it on Badger Meter's Website. Badger Meter will provide Customer with: (i) at least thirty (30) days' advance written notice of planned maintenance by Badger Meter; and (ii) as much advance notice as reasonably possible of emergency changes or maintenance by Badger Meter Suppliers. Any actions resulting in permanent changes shall be only in compliance with this Section (20).

(21) PRIVACY POLICY. When accessing and using the Service, Customer agrees that Customer, its Authorized Users and Authorized Consumers will comply with the Badger Meter Privacy Policy located at <https://beaconama.net/privacy/privacy.html>.

(22) RIGHT TO SUBCONTRACT. Badger Meter may subcontract the performance of any of its duties or obligations under this Agreement, and will use commercially reasonable efforts to subcontract only with subcontractors that have the requisite skills to perform any subcontracted obligations in accordance with the terms of this Agreement.

(23) GENERAL.

(a) Binding Agreement. This Agreement is binding upon and will inure to the benefit of the parties and their respective successors and assigns.

(b) Affiliates. This Agreement covers only the employees and agents of Customer. If Customer wishes to have any entity that directly or indirectly controls, is controlled by or is in common control with Customer to access the Portal and use the Service, Customer's Affiliate must execute a separate agreement with Badger Meter.

(c) Assignment. Either party may assign its rights and obligations under this Agreement with the express written consent of the other party, which consent will not be unreasonably withheld or delayed. Any purported assignment or transfer in violation of this Section will be null and void. Notwithstanding the foregoing, Badger Meter may assign its rights and obligations under



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this Agreement without the consent of Customer: (i) upon a sale of a majority of its outstanding capital stock to an affiliate or third party; (ii) if it sells all or substantially all of its assets; (iii) in the event of a merger; or (iv) in the event of a similar change of control.

(d) No Waiver. The waiver or failure of either party to exercise any right or remedy provided under this Agreement will not be deemed a waiver of any further right or remedy. All waivers must be in writing to be effective.

(e) Severability. If any portion of this Agreement is held to be invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable portions of this Agreement will be interpreted to effectuate the intent of the original Agreement. If such construction is not possible, the invalid or unenforceable portion of the Agreement will be severed from this Agreement, and the remainder of the Agreement will remain in full force and effect.

(f) Independent Contractors. The Parties agree that they are independent contractors and that neither party nor any of their respective affiliates, is an agent of the other for any purpose or has the authority to bind the other.

(g) Savings Clause. The invalidity of any provision of this Agreement shall not affect the validity and binding effect of the remaining provisions.

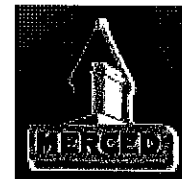
(h) No Third Party Beneficiaries. Nothing express or implied in this Agreement shall confer any rights, remedies, obligations or liabilities whatsoever to third parties which are not signatories to this Agreement.

(i) Governing Law. The terms of this Agreement are governed by the laws of the State of Wisconsin, without reference to its conflict of laws principles. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

(j) No Claims Against or Liability of Badger Meter Suppliers. Customer acknowledges that the Service utilizes services that are furnished to Badger Meter and one or more Suppliers pursuant to agreements between Badger Meter and its Suppliers. Neither Customer nor any Authorized Users or Authorized Consumers has a contractual relationship with Badger Meter's Suppliers and neither Customer nor its Authorized Users or Authorized Consumers is a third party beneficiary of or will have any claim against Badger Meter's Suppliers in the event any such agreement expires or is terminated. Customer further acknowledges that the Suppliers disclaim all liability of any nature, whether legal or equitable, to Customer, its Authorized Users or Authorized Consumers, whether direct, indirect, incidental or consequential, arising out of the use of Badger Meter Portal or Service by Customer, its Authorized Users or Authorized Consumers, including any liability for personal injury or death, failure to be able to use the



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Service or otherwise. Customer agrees that neither it nor any Authorized Users or Authorized Consumers shall have any Claim against the Supplier of any kind with respect thereto, whether arising out of breach of contract, warranty, negligence, and tort or otherwise.

(k) Dispute Resolution.

(i) Initial Resolution Efforts. The parties shall act in good faith and use commercially reasonable efforts to promptly resolve any claim, dispute, controversy or disagreement (each a "**Dispute**") between the parties or any of their respective subsidiaries, affiliates, successors and assigns under or related to this Agreement or any document executed pursuant to this Agreement or any of the transactions contemplated hereby.

(ii) Mediation. If the parties cannot resolve the Dispute within ten (10) days after initial notice of the Dispute, the Dispute shall be submitted for resolution to the Judicial Arbitration and Mediation Services ("**JAMS**"), or its successor ("**Mediation**") in the JAMS Center closest to the Customer. If the mediator is unable to amicably resolve the Dispute, then the mediator will refer the matter to a JAMS arbitrator to resolve the Dispute. Neither party shall seek, nor shall be entitled to seek, binding outside resolution of the Dispute unless and until the parties have been unable to amicably resolve the dispute as set forth in this Section, and then only in compliance with the procedures set forth in this Section. Except for Disputes relating to issues of (i) proprietary rights, including, but not limited to, intellectual property and confidentiality, and (ii) any provision of this Agreement which expressly or implicitly provides for the parties to reach mutual agreement as to certain terms, any Dispute not resolved by amicable resolution as set forth in this Section shall be governed exclusively and finally by arbitration described below.

(iii) Arbitration. Either party may initiate arbitration with respect to a Dispute by submitting a written demand at any time following Mediation.

- Arbitration shall be administered by JAMS, or its successor, pursuant to the Comprehensive Arbitration Rules and Procedures.
- Either party may commence arbitration by notifying the other in writing that arbitration is desired and setting forth the topics to be arbitrated. Within thirty (30) days of mailing a notice of arbitration, the party receiving the notice may specify additional topics of arbitration in writing to the other party. Within forty-five (45) days of the mailing of the notice of arbitration, the parties will confirm and attempt to identify an arbitrator associated with JAMS to resolve the Dispute. If the parties cannot agree, JAMS will appoint an arbitrator who is a lawyer familiar with software as a service and information technology support services agreements.



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- Except to the extent, if any, that law applicable to the dispute requires that arbitrators retain authority to award punitive damages, the arbitrators shall not have such authority.
- Each party will bear its own costs of the arbitration. The resulting award may be confirmed and reduced to judgment in any court of competent jurisdiction. With respect to any such post-arbitral judicial proceedings, the parties consent to the exercise of personal jurisdiction over them by the state and federal courts sitting in California and waive any objection that they would otherwise have to venue in such courts.
- The duty to arbitrate does not preclude either party from pursuing interlocutory or provisional relief pending arbitration in any court of competent jurisdiction if such relief is necessary in order to preserve the practical ability of the arbitrator to make an effective award or to avoid a genuine and substantial risk of injury that cannot be adequately remedied by an eventual arbitral award. Neither the pursuit of nor the failure to provide any such interlocutory or provisional remedy in court, however, shall relieve either party of the duty to pursue ultimate resolution of the dispute through arbitration as provided for herein.
- The arbitration shall be governed by and construed and interpreted in accordance with the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

(24) INJUNCTIVE RELIEF: Notwithstanding the provisions of Section 23, Badger Meter shall have the right to pursue injunctive, declaratory or other relief by the state and federal courts sitting in California nearest the Customer's location and waive any objection that they would otherwise have to venue in such courts.

(25) NOTICES. All notices shall be in writing and delivered to the other party by means of: (a) personal delivery set forth below; (b) courier (signature required upon delivery); (c) recognized overnight courier, at the following address; or (d) fax with proof of delivery. All notices must be provided in the English language.

If to Badger Meter:

Legal Department, Attn: Assistant General Counsel
4545 W. Brown Deer Road
Milwaukee, WI 53223



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If to Customer:

With a copy to:

City Attorney, City of Merced
678 West 18th Street
Merced, CA 95340

(26) SURVIVABILITY. Any provision of this Agreement which by its nature should survive termination or expiration of this Agreement shall survive its expiration or termination.

(27) LIMITATION OF CLAIMS. No action arising under or in connection with this Agreement, regardless of the form, may be brought by Customer more than one (1) year after Customer becomes aware of or should reasonably have become aware of the occurrence of events giving rise to the Claim.

(28) FORCE MAJEURE. Neither party shall be liable to the other or any third party by reason of any failure or delay of its obligations under this Agreement where the delay or failure results from any cause beyond its reasonable control, including, but not limited to, acts of God, fires, storms, floods or other acts of nature, explosions, systemic electrical telecommunications or other utility failures, earthquakes, hurricanes, tornados, natural disasters, strikes, shortage of materials, work stoppage or other labor dispute, embargoes, riots, insurrections, acts of war or terrorism, or any action or restraint by court order or public or governmental authority ("**Force Majeure Event**"). The party subject to the Force Majeure Event agrees to use commercially reasonable efforts to minimize the impact of the Force Majeure Event on the other party.

(29) AMENDMENT. This Agreement may only be amended by a written document signed by both parties. Badger Meter will not be bound by and specifically objects to any term, condition or other provision which is different from or in addition to the provisions of this Agreement (whether or not it would materially alter this Agreement) and which is submitted by Customer in any receipt, acceptance, confirmation, agreement, purchase order, correspondence or other documentation. If the terms of this Agreement are not consistent with the terms contained in any policy, the terms contained in this Agreement will control, except that the Service Terms will control over this Agreement.

(30) POLICIES. Badger Meter reserves the right to modify the policies at any time by posting a revised version on the Portal or otherwise providing notice to Customer. The modified terms will become effective upon posting or notice. By continuing to use the Service after the effective date of the modification to a policy, Customer agrees to be bound by the modified policies. It is Customer's responsibility to check the Badger Meter site regularly for modifications to the policies.

(31) ENTIRE AGREEMENT. This Agreement, including all applicable Exhibits and policies, constitutes the entire agreement between the parties with regard to its subject matter. This



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Agreement supersedes all prior or contemporaneous agreements, discussions, negotiations, undertakings, communications, representations or proposals, whether written or oral.

(32) ORIGINALS, COUNTERPARTS. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which together will be deemed to constitute one and the same document. This Agreement may be executed and delivered by facsimile signature or portable document format (.pdf) by electronic mail.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties to this BEACON AMA Managed Solution Master Agreement by signing below:

BADGER METER, INC

THE CITY OF MERCED, CA

Signature

Signature

Kimberly K. Stoll

Printed Name

Printed Name

VP - Sales and Marketing

Title

Title

Date

Date

APPROVED AS TO FORM:

KENNETH ROZELL

Senior Deputy City Attorney



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EXHIBIT 1

FEES

1. **Service Fees.** Customer agrees to pay the following Service Fees, as consideration for the right to access and use the Portal, Service and Documentation during the Term, as well as applicable Taxes.
2. **Invoicing.** Badger Meter shall issue invoices to Customer for Service and Support Fees on a monthly basis. Payment is due within forty-five (45) days of the date of the invoice.
3. **Interest and Costs.** Customer agrees that it will be responsible to pay Badger Meter for any collection expenses incurred by Badger Meter, including interest at the highest interest rate permitted by law, and reasonable attorneys' fees and court costs incurred by Badger Meter in enforcing its rights under this Agreement.

BEACON Monthly Endpoint Subscription Fee

Hourly Data, Once Daily Call-in: \$0.82 per meter per month

Invoicing for monthly endpoint subscription fee starts at time of endpoint activation or 6 months from date of shipment, whichever comes first.



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EXHIBIT 2

SERVICE LEVEL AGREEMENT

This Service Level Agreement ("SLA") will go into effect upon completion of Endpoint Provisioning, which is the point during meter installation when the endpoint is installed and verified to provide data to the BEACON AMA Managed Solution.

1. CUSTOMER SUPPORT.

Service Levels. Within one (1) hour after a request for Customer Support Services from Customer, Badger Meter will respond to such request in accordance with the procedures set forth below. Customer may report the problem by phone, email or website provided by Badger Meter to Customer. Badger Meter will use commercially reasonable efforts to meet the response and resolution times set forth below:

Severity Level	Response Time	Resolution Time
Level 1 – Service is unavailable	one (1) hour	six (6) hours
Level 2 – certain interruptions but service is still available	twenty-four (24) hours	twenty-four (24) hours
Level 3 – minor intermittent malfunction	twenty-four (24) hours	three (3) days
Level 4 – suggestions for new features or enhancements to BEACON Portal and Service	twenty-four (24) hours	Evaluated, scheduled and prioritized for potential inclusion in upcoming releases.



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2. BEACON PORTAL AND SERVICE AVAILABILITY PROMISE.

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- BEACON Portal and Service Availability of 99% within each calendar month, excluding any Emergency Downtime, Scheduled Downtime, any unavailability of the Portal and Service due to any Force Majeure Event and any unavailability of the Portal and Service less than fifteen (15) minutes in duration following written notice thereof.

Definitions

"Availability" is the monthly uptime percentage with normal functionality of the Portal and the Service, calculated as described below.

"Emergency Downtime" means any unavailability of the Portal or Service due to a temporary suspension by Badger Meter to perform maintenance to address any, urgent and unexpected issue with the Portal or Service.

"Scheduled Downtime" means any unavailability of the Portal or Service due to scheduled maintenance. Scheduled maintenance may occur between 10:00 p.m. on Saturday to 4:00 a.m. on Sunday (Pacific Time) every week. Badger Meter shall have the right to change the scheduled maintenance times upon notice to Customer posted on the BEACON Portal.

CALCULATION of BEACON Portal and Service Availability:

Availability is measured by Badger Meter through standard monitoring software that tests the application availability at least every five (5) minutes and logs unavailability incidents (date and UTC time) for each monitored component.

Availability is calculated as the percentage of uptime in the applicable calendar month, excluding scheduled downtime:

$$\left(1 - \frac{\text{TotalUnavailabiltyMinutes}}{\text{TotalMinutesofServiceMonth} - \text{TotalMinutesofApprovedDowntime}} \right)$$

Where:

"Total Unavailability Minutes" is the cumulative unavailability time in minutes in the applicable month where the Portal and Service are not available due to unplanned outages or from systematic errors on the part of Badger Meter,

"Total Minutes of Service Month" is the cumulative time in minutes in the month in question, calculated by taking the number of days in month x 24 hours/day x 60 minutes/hour, and



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“Total Minutes of Approved Downtime” is the cumulative time in minutes in the applicable month where the Supplier applications are not available due to scheduled downtime ; other planned scheduled outages, or approved exclusion conditions as defined in this Agreement.

In order to be included within the Total Unavailability Minutes: (a) Customer shall notify Badger Meter, in writing, via email(techsupport@badgermeter.com) of the unavailability of the Portal or the Service; (b) such unavailability shall be greater than fifteen (15) minutes in duration following Badger Meter’s receipt of such notice; and (c) Customer shall notify Badger Meter, in writing, via email within twenty-four (24) hours of such unavailability that it should be included within the Total Unavailability Minutes unless such unavailability is due to any Emergency Downtime, Scheduled Downtime, or any unavailability of the Services due to any Force Majeure Event.

Service Credits

If Badger Meter fails to meet the BEACON Portal and Service Availability Promise, the following Service Credits apply:

% of Availability in the Month	Service Credit(% of monthly recurring fees)
≥99%	0%
≥98% and <99%	5%
≥96.5% and <98%	10%
≥95.0% and <96.5%	15%
<95.0%	25%



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3. **MONTHLY BILLING DATA SERVICE PROMISE.**

Badger Meter will use commercially reasonable efforts to fulfill the following Service Promise:

- The BEACON AMA Managed Solution will successfully provide Monthly Billing Data for at least 97.0% of provisioned accounts at the time of billing request to the BEACON AMA Managed Solution.

Definitions

“Managed Solution” is a system that consists of a network deployment using fixed network and/or cellular endpoints, where Badger Meter maintains the responsibility for managing the reading hardware and software for system operation over the Term of the Agreement.

“Provisioned Accounts” are accounts with cellular or fixed network endpoints that are discovered by the network, fully able to communicate with the network, and completely entered correctly in the BEACON AMA Managed Solution.

“Monthly Billing Data” is a valid meter reading obtained within three (3) days of the billing as performed through the BEACON AMA Managed Solution to provisioned accounts.

CALCULATION of Monthly Billing Data Service Promise for Provisioned Accounts:

Monthly Billing Data success rate is calculated by the count of accounts in the billing cycle with meter read data within three (3) days (**“Count of Billing Reads”**) divided by the number of active and Provisioned Accounts in the billing cycle (**“Count of Total Billing Cycle”**).

$$\frac{\text{Count of Billing Reads}}{\text{Count of Total Billing Cycle}}$$

Where:

“Count of Billing Reads” is the total number of accounts in the billing file with valid data that a billing quality reading is supplied for managed solution endpoints.

“Count of Total Billing Cycle” is the total number of accounts with valid data in the billing file being processed for managed solution endpoints.



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If Customer suspects that the Monthly Billing Data Service Promise has not been met for a particular Billing Cycle, (a) Customer shall notify Badger Meter, in writing, within twenty-four (24) hours of the occurrence, via email (techsupport@badgermeter.com) of the Count of Billing Reads and Count of Total Billing Cycle of managed solution endpoints; (b) the specific time and date when the billing read file was generated.

Service Credits

If Badger Meter fails to meet the Monthly Billing Data Service Promise, the following Service Credits apply:

% of Successful Billing Reads in the Applicable Billing Cycle	Service Credit (% of monthly recurring fees)
≥97.0%	0%
≥95.0% and <97.0%	5%
≥90.0% and <95.0%	10%
≤90.0%	25%



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4. MISCELLANEOUS.

Exclusions

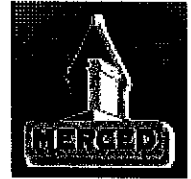
The BEACON Portal and Service Availability Promise and Monthly Billing Data Service Promise do not apply to any of the following performance issues:

- (i) Resulting from any actions or inactions of Customer, its Authorized Users or Authorized Consumers;
- (ii) Resulting from Customer or its suppliers equipment, software, or other technology and/or Customer's third party equipment, software, or other technology outside of Badger Meter's control;
- (iii) Caused by failures, including, but not limited to, internet connectivity, port availability, firewall configuration, or cellular networks at Customer's location;
- (iv) Resulting from Customer's breach of any term or condition under the Agreement;
- (v) Caused by unexpected or unintentional RF interference or signal obstruction caused by sources not present or not in use during endpoint installation;
- (vi) Caused by intentional RF interference or signal obstruction not present during endpoint installation, caused by third parties;
- (vii) Caused by Customer, an Authorized User's or an Authorized Consumer's misuse or abuse of the Portal or Service;
- (viii) During an event triggering a disaster recovery and for a twenty-four (24) hour period after the resumption of the Service following such an event to allow for the system to return to normal operating ranges;
- (ix) Arising from Badger Meter's suspension or termination of Customer's right to use the BEACON Managed Solution in accordance with the Agreement;
- (x) Arising from failure of Customer to follow Badger Meter's published installation, operation and maintenance instructions and Clarifications from Badger Meter's Preliminary Network Design;
- (xi) When outdoor temperatures either exceed or are below the endpoint operating temperature range as described in the applicable product data sheet.
- (xii) Accounts read using manual, touch read, handheld and mobile technology are not included as part of the Monthly Billing Data Service Promise, as these reading technologies are outside of Badger Meter's control.

In the event Badger Meter does not meet a Service Promise hereunder, Badger Meter will conduct a commercially reasonable root cause analysis of the Service promise failure. If Badger Meter's analysis is inconclusive, or if Badger Meter concludes that circumstances outside of Badger Meter's control caused the Service promise failure, or if Badger Meter concludes that a failure falls under any other exclusions described hereunder, Customer will not be entitled to a Service Credit. If Badger Meter's analysis is conclusive and that circumstances within Badger Meter's control caused the Service failure, Customer will be eligible to receive a Service Credit as described above.



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EXCEPT AS EXPRESSLY PROVIDED IN THIS SLA, THE SERVICE CREDITS SPECIFIED IN THIS SLA WILL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BADGER METER'S FAILURE TO MEET THE SERVICE PROMISE SPECIFIED IN THIS SLA.

Badger Meter will report Service Promises and applicable Service Credits upon request and upon a commercially reasonable frequency. Following each report, upon Customer request, the parties will discuss such performance and the extent to which any Service Credits either are appropriate or should be modified due to circumstances not captured by the reporting methodology.

Upon agreement concerning the Service Credits due, such Service Credits will be applied against Badger Meter's charges in the months following the month in which the credits were incurred.



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EXHIBIT 3

BEACON AMA MANAGED SOLUTION SECURITY POLICY

- 1. BEACON AMA Portal and Service Information Security Program.** Badger Meter maintains an information security program (including the adoption and enforcement of internal policies and procedures) designed to (a) support the BEACON AMA Managed Solution, (b) identify reasonably foreseeable and internal risks to the BEACON Portal and Service security and unauthorized access to the Badger Meter Network, and (c) minimize security risks. The BEACON Portal and Service information security program includes the following measures:
 - 1.1 Network Security.** The Badger Meter Network is electronically accessible to employees, and contractors necessary to provide the Portal and Service. Badger Meter maintains access controls and policies to manage what access is allowed to the Badger Meter Network from each network connection and user, including the use of firewalls or functionally equivalent technology and authentication controls. Badger Meter maintains corrective action and incident response plans to respond to potential security threats.
 - 1.2 Physical Security.**
 - 1.2.1 Physical Access Controls.** Physical components of the Badger Meter Network are housed in nondescript facilities (the “Facilities”). Physical barrier controls are used to prevent unauthorized entrance to the Facilities both at the perimeter and at building access points. Passage through the physical barriers at the Facilities requires either electronic access control validation (e.g., card access systems, etc.) or validation by human security personnel (e.g., contract or in-house security guard service, receptionist, etc.). Employees and contractors are assigned photo-ID badges that must be worn while the employees and contractors are at any of the Facilities. Visitors are required to sign in with designated personnel, must show appropriate identification, and are assigned a visitor ID badge that must be worn while the visitor is at any of the Facilities, and are continually escorted by authorized employees or contractors while visiting the Facilities.
 - 1.2.2 Limited Employee and Contractor Access.** Badger Meter provides access to the Facilities to those employees and contractors who have a legitimate business need for such access privileges. When an employee or contractor no longer has a business need for access privileges, the access privileges are promptly revoked, even if the employee or contractor continues to be an employee of Badger Meter or its affiliates.
 - 1.2.3 Physical Security Protections.** All major access points (other than main entry doors) are maintained in a secured (locked) state. Access points to the Facilities are monitored by video surveillance cameras designed to record all individuals accessing the Facilities. All physical access to the Facilities by employees and contractors is logged and routinely audited.



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- 1.2.4 Pre-Employment Screening.** Badger Meter conducts criminal background checks, as permitted by applicable law, as part of pre-employment screening practices for employees commensurate with the employee's position and level of access to the Facilities. Badger Meter will not permit an employee to have access to the non-public Customer Content or perform material aspects of the Service if such employee has failed to pass such background check.
- 2. Continued Evaluation.** Badger Meter will conduct periodic reviews of the security of its Badger Meter Network and adequacy of its information security program as measured against industry security standards and its policies and procedures. Badger Meter will continually evaluate the security of its Badger Meter Network and associated Service to determine whether additional or different security measures are required to respond to new security risks or findings generated by the periodic reviews.
- 3. Customer Responsibilities.** System security is a shared responsibility between Badger Meter and Customer. Customer shall assign a systems service administrator to be responsible for establishing access and usage policies. Customer shall develop commercially reasonable policies and procedures to insure physical security, establishing account access approvals and procedures, conduct regular reviews of access rights, and provide security awareness training for staff using the Service. The administrator shall also be responsible for policies and procedures related to Authorized Consumers access to their individual data resident on the Network.

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ADMINISTRATIVE REPORT

File #: 16-004

Meeting Date: 5/2/2016

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 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 as 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-XX** 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 2016-15
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

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Exhibit C
Voting Matrix

	Action	Voting Requirement
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 Byrd 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:

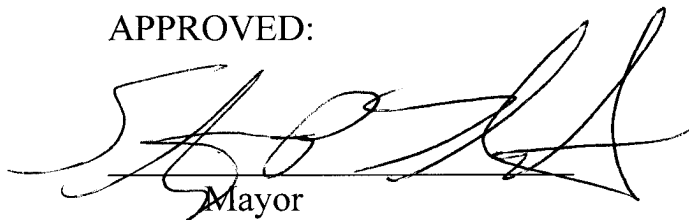
AYES: Council Members: BLAKE, MURPHY, RAWLING, LOR, PEDROZO, THURSTON

NOES: Council Members: NONE

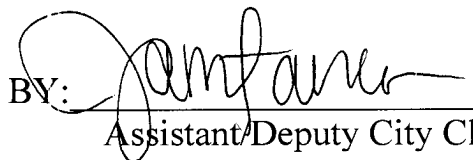
ABSENT: Council Members: DOSSETTI

ABSTAIN: Council Members: NONE

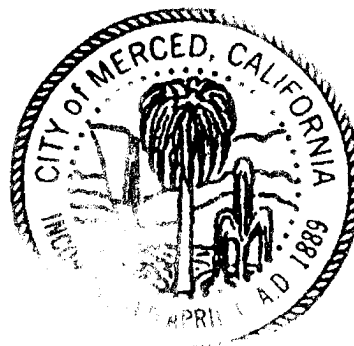
APPROVED:


Mayor


ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: 
Assistant/Deputy City Clerk

(SEAL)



APPROVED AS TO FORM:

 10/30/13
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

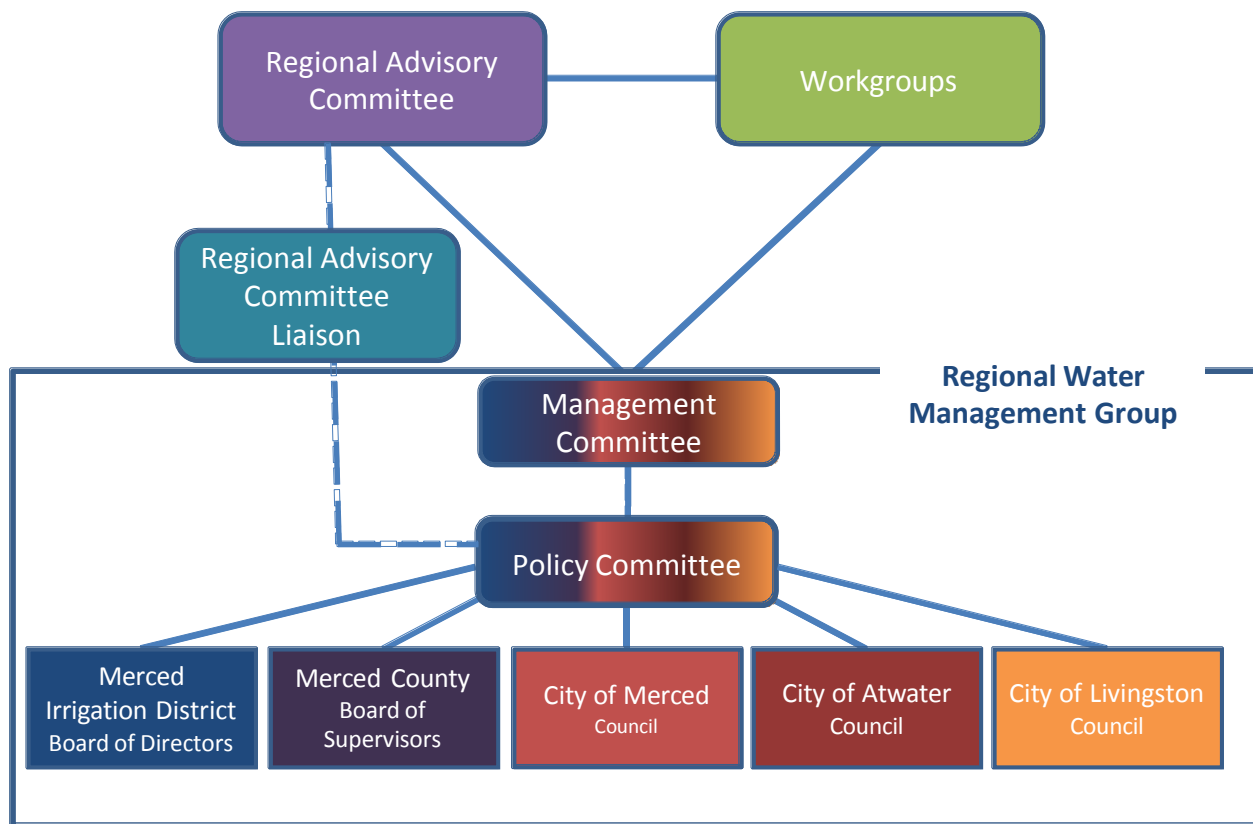
The interim RAC identified a preferred long-term governance structure for the Merced IRWM planning process, to be implemented following adoption of the MIRWMP. This recommended long-term governance structure, illustrated in Figure 3-1, consists of the following entities.



- 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.



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.



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.



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.



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) 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.



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), 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



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.

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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).

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.

<u>Membership Categories (Caucuses)</u>	<u>Maximum Number of Representatives</u>
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 1st through 31st.
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 1st.

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.

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) 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 ElTal (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) 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:

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.

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.

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.

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, (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: 4/15/16

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"> • Draft Plan Inventory TM • Draft Land Use Planning TM
July 2012	<ul style="list-style-type: none"> • Draft Goals and Objectives TM • Resource Management Strategies TM
Aug 2012	<ul style="list-style-type: none"> • Draft Project Solicitation and Review Process
Sep 2012	<ul style="list-style-type: none"> • Draft Planning Process Governance TM • Call for projects
Oct 2012	<ul style="list-style-type: none"> • List of prioritized projects
Dec 2012	<ul style="list-style-type: none"> • Draft CEQA/NEPA TM • Draft Tech Analysis section
Jan 2013	<ul style="list-style-type: none"> • Draft Plan Performance and Monitoring section • Draft Data Management section
Feb 2013	<ul style="list-style-type: none"> • Draft Finance section • Draft Implementation Governance Section
Mar 2013	<ul style="list-style-type: none"> • Draft IRWM Plan
Apr 2013	<ul style="list-style-type: none"> • Draft Highlights Document
May 2013	<ul style="list-style-type: none"> • Final IRWM Plan

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 IRWM 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). 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

File #: 16-170

Meeting Date: 5/2/2016

Report Prepared by: Kim Espinosa, Planning Manager, Development Services Department

SUBJECT: Street Closure Request #16-07 for N Street During Construction of the UC Merced Downtown Center for Turner Construction on Behalf of UC Merced

REPORT IN BRIEF

Turner Construction, on behalf of UC Merced, is requesting the closure of N Street and adjacent sidewalks during the construction of the UC Merced Downtown Center from June 1, 2016, through November 30, 2017.

RECOMMENDATION

City Council - Adopt a motion approving the street and sidewalk closures as requested below by Turner Construction on behalf of UC Merced, from June 1, 2016, through November 30, 2017, subject to the conditions listed in the body of this report.

Requested street and sidewalk closures: Northbound lane (east side) of N Street between West 18th Street and West 19th Street; Sidewalk on north side of West 18th Street between N Street and Alley access into Merced Center Arcade; and Sidewalk on east side of N Street between West 18th Street and West 19th Street.

ALTERNATIVES

1. Approve, as recommended by the Traffic Committee and staff; or,
2. Approve, subject to modifications as conditions by Council; or,
3. Deny the request completely; or,
4. Refer back to staff for reconsideration of specific items as requested by Council; or,
5. Continue the item to a future Council meeting (date and time to be specified in City Council motion).

AUTHORITY

City of Merced Charter Section 200; California Vehicle Code (CVC) Sections 21100(a) and 21101€, the latter as follows:

“21101. Local authorities, for those highways under their jurisdiction, may adopt rules and regulations by ordinance or resolution on the following matters:

- (e) Temporarily closing of a portion of any street for celebrations, parades, local special events, and other purposes when, in the opinion of local authorities having

jurisdiction or a public officer or employee that the local authority designates by resolution, the closing is necessary for the safety and protection of persons who are to use that portion of street during the temporary closing.”

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

Applicant's Request

Turner Construction, on behalf of the University of California, Merced, is requesting the closure of the northbound lane of N Street between West 18th Street and West 19th Street and adjacent sidewalks along West 18th Street and N Street for the construction of the new UC Merced Downtown Center at the northeast corner of N Street and West 18th Street (Attachment 1). The closure would be from June 1, 2016, through November 30, 2017, and would accommodate the construction activities and ensure the safety of pedestrians around the construction site. A groundbreaking event is also expected to be held in the closure area and on the project site on June 8, 2016. The requested closure is less than 400 feet, which can normally be authorized by City staff. However, because of the length of time for the closure, City Council action is requested.

At least seventy-two hours (three days) prior to the street closures, the event organizers are required to notify nearby businesses and residences within one half-mile of the affected streets (Condition #5). To ensure this is done, event organizers are required to provide staff with confirmation that this notification was given, and staff has prepared a standard form that the event sponsor shall complete, photocopy, and distribute to businesses and residences within the stated area (Attachment 4). A signed copy of this form shall also be given to Planning Department staff as soon as those businesses and residences are notified for confirmation.

Traffic Committee Action

On March 8, 2016, the request was considered by the Traffic Committee. See Attachments 2 and 3 for the street closure request and associated construction logistics maps. The Traffic Committee unanimously voted 5-0 to recommend the request be approved, contingent on City Council approval.

Conditions of Approval

The street closure will be subject to the following conditions, if approved:

1. By applying for the street closure request, the Permittee shall agree to indemnify, protect, defend (with counsel selected by the City), save, and hold the City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Event Sponsor or Event Sponsor's officers, employees, agents, volunteers, and participants during performance of the Event, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful

misconduct, negligent acts, or omissions of Event Sponsor or its officers, employees, agents, volunteers, or participants, or resulting from the negligence of the City, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. Acceptance by the City of insurance certificates and endorsements required for this Event does not relieve Event Sponsor 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.

2. Prior to engaging in the event, Event Sponsor shall provide the City with a Certificate of Liability Insurance evidencing coverage in an amount of no less than \$500,000 for property damage and \$500,000 for personal injury or a minimum combined single limit coverage of \$500,000. Said policy shall stipulate that this insurance will operate as primary insurance and that no other insurance will be called on to cover a loss covered thereunder. Additional insured endorsements evidencing this coverage, naming the City of Merced, its Officers, Employees, and Agents as additional insureds, must be submitted to the City prior to the event. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the City. Certificates of Insurance shall also be provided for Automobile insurances of all automobiles used for the event. If the Event Sponsor has any employee(s), full workers' compensation insurance shall be provided with a limit of at least \$100,000 for any one person as required by law.
3. Failure to comply with any law, rule, or regulation applicable to the use of said streets shall be grounds to revoke any such permit and, in such circumstances, the Chief of Police shall immediately revoke said permit. The Event Sponsor or permit holder, in such case, shall have the right to appeal said revocation to the City Council.
4. Event sponsor shall be responsible for placing and removing all traffic barricades and posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651 (m).
5. Event sponsor shall contact all businesses and residences affected by the street closures, advising them of the hours, conditions, and reason thereof within one half-mile of the closure area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City with confirmation that the proper notification was given (Attachment 4).
6. The Applicant shall be responsible for removing all equipment and disposing of any trash and debris within and around the closure area that is generated from the construction prior to the expiration of the closure permit.
7. The Applicant shall coordinate with Public Works staff at (209) 385-6800 if City Refuse service is needed during the construction.
8. Event sponsor shall provide emergency vehicle access into and through N Street at all times via moveable or drive-over barricades at the intersections of West 18th and 19th Streets. Fire

hydrant access shall not be blocked at any time whatsoever.

9. Event sponsor shall provide adequate supervision throughout the closure area and surrounding intersections to ensure the safety of the participants and the public gathered during the groundbreaking ceremony, as required by the Police Department.
10. During the groundbreaking ceremony on June 8, 2016, the Permittee shall be responsible for ensuring any and all food booth and other vendors shall obtain business licenses with the City of Merced (if not currently licensed) and/or Merced County Department of Health permits (for food service) prior to the groundbreaking event. Addition of these activities shall require Special Events Insurance be obtained (see City of Merced Insurance Department).
11. No alcoholic beverages may be served or sold at the groundbreaking event.
12. 18th Street, the southbound lanes of N Street, the alley adjacent to the Merced Center Arcade, and all other adjacent City rights-of-way to the construction site and closure area shall be maintained free of all construction debris at all times. If construction debris does drift into these areas, it shall be cleaned and removed immediately.

All other provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures) shall apply.

IMPACT ON CITY RESOURCES

No City resources will be necessary during construction. However, during the groundbreaking event on June 8, 2016, there may be some limited use of City resources to make sure street and sidewalk closures are in place, refuse containers are available, the Civic Center is ready to welcome guests and serve as a cooling center, traffic is appropriately directed, mobile food truck locations, and other typical event related functions. The UC is anticipating 500 to 1,000 in attendance.

ATTACHMENTS

- 1) Location Map
- 2) Construction Logistics Maps
- 3) Traffic Committee Request
- 4) "Notification of Pending Street Closure" form



- General Notes:**
1. All Lanes open on W 18th Street
 2. Side walk on W 19th Street to remain open
 3. Side walk on W 18th Street closed (City ROW)
 4. North bound N Street closed (City ROW)

Overall Site View

General Notes

- 8' Fabric wrap fencing around project site
- North bound N street closed to public
- All closures for safety buffer zones and sidewalk will be from June 1-2016 thru October 30-2017
- Employee parking only at top deck of parking garage on East side of project
- Work hours from 6:30am – 5:00pm
- Re-stripe as necessary
- Sidewalk at South side of project closed to public (City ROW)
- Container 10 each will be 8' wide, 8' tall, 20' deep (City ROW)
- Trailers each of the 4 are 10' wide, 10' tall, and 40' long (City ROW)
- Restrict alley between project and parking structure to one way traffic and have 15' wide fire lane
- East bound lanes to remain unaffected

Logistics Items

1. Construction Trailers (x4)
2. Conex Box (x10)
3. Buffer Zones (approx. 20ft)
4. Downtown Center Construction Worker Parking (50-65 stalls)
5. Laydown Area
6. Existing Parking Garage
7. Construction Entrance
8. Construction Exit
9. Construction Fencing



South Elevation View

General Notes

- 8' Fabric wrap fencing around project site
- North bound N street closed to public
- All closures for safety buffer zones and sidewalk will be from June 1-2016 thru October 30-2017
- Employee parking only at top deck of parking garage on East side of project
- Work hours from 6:30am – 5:00pm
- Re-stripe as necessary
- Sidewalk at South side of project closed to public (City ROW)
- Container 10 each will be 8' wide, 8' tall, 20' deep (City ROW)
- Trailers each of the 4 are 10' wide, 10' tall, and 40' long (City ROW)
- Restrict alley between project and parking structure to one way traffic and have 15' wide fire lane
- East bound lanes to remain unaffected

Logistics Items

1. Construction Trailers (x4)
2. Conex Box (x10)
3. Buffer Zones (approx. 20ft)
4. Downtown Center Construction Worker Parking (50-65 stalls)
5. Laydown Area
6. Existing Parking Garage
7. Construction Entrance
8. Construction Exit
9. Construction Fencing



West Elevation View

General Notes

- 8' Fabric wrap fencing around project site
- North bound N street closed to public
- All closures for safety buffer zones and sidewalk will be from June 1-2016 thru October 30-2017
- Employee parking only at top deck of parking garage on East side of project
- Work hours from 6:30am – 5:00pm
- Re-stripe as necessary
- Sidewalk at South side of project closed to public (City ROW)
- Container 10 each will be 8' wide, 8' tall, 20' deep (City ROW)
- Trailers each of the 4 are 10' wide, 10' tall, and 40' long (City ROW)
- Restrict alley between project and parking structure to one way traffic and have 15' wide fire lane
- East bound lanes to remain unaffected

Logistics Items

1. Construction Trailers (x4)
2. Conex Box (x10)
3. Buffer Zones (approx. 20ft)
4. Downtown Center Construction Worker Parking (50-65 stalls)
5. Laydown Area
6. Existing Parking Garage
7. Construction Entrance
8. Construction Exit
9. Construction Fencing



North Elevation View

General Notes

- 8' Fabric wrap fencing around project site
- North bound N street closed to public
- All closures for safety buffer zones and sidewalk will be from June 1-2016 thru October 30-2017
- Employee parking only at top deck of parking garage on East side of project
- Work hours from 6:30am – 5:00pm
- Re-stripe as necessary
- Sidewalk at South side of project closed to public (City ROW)
- Container 10 each will be 8' wide, 8' tall, 20' deep (City ROW)
- Trailers each of the 4 are 10' wide, 10' tall, and 40' long (City ROW)
- Restrict alley between project and parking structure to one way traffic and have 15' wide fire lane
- East bound lanes to remain unaffected

Logistics Items

1. Construction Trailers (x4)
2. Conex Box (x10)
3. Buffer Zones (approx. 20ft)
4. Downtown Center Construction Worker Parking (50-65 stalls)
5. Laydown Area
6. Existing Parking Garage
7. Construction Entrance
8. Construction Exit
9. Construction Fencing



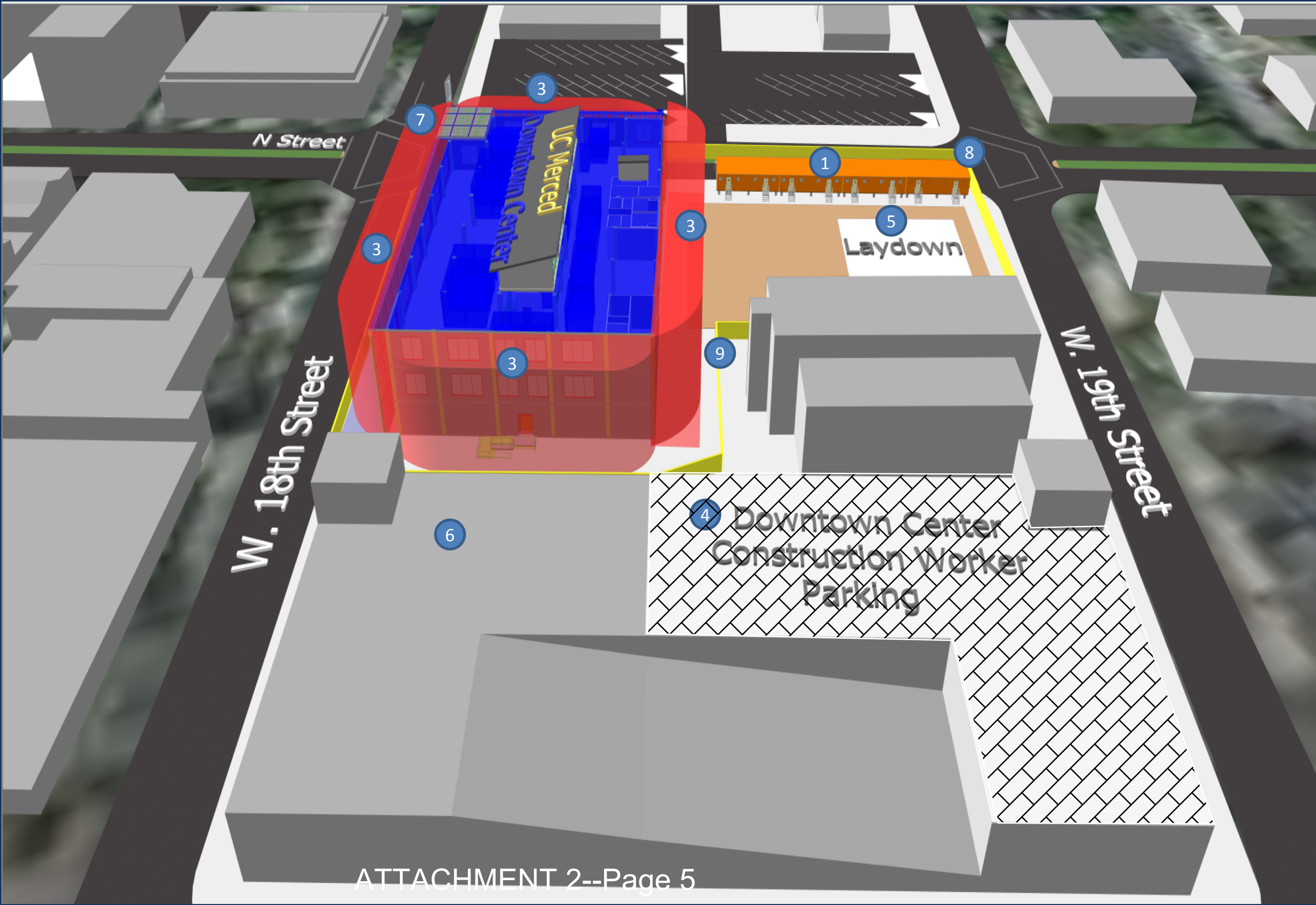
East Elevation View

General Notes

- 8' Fabric wrap fencing around project site
- North bound N street closed to public
- All closures for safety buffer zones and sidewalk will be from June 1-2016 thru October 30-2017
- Employee parking only at top deck of parking garage on East side of project
- Work hours from 6:30am – 5:00pm
- Re-stripe as necessary
- Sidewalk at South side of project closed to public (City ROW)
- Container 10 each will be 8' wide, 8' tall, 20' deep (City ROW)
- Trailers each of the 4 are 10' wide, 10' tall, and 40' long (City ROW)
- Restrict alley between project and parking structure to one way traffic and have 15' wide fire lane
- East bound lanes to remain unaffected

Logistics Items

1. Construction Trailers (x4)
2. Conex Box (x10)
3. Buffer Zones (approx. 20ft)
4. Downtown Center Construction Worker Parking (50-65 stalls)
5. Laydown Area
6. Existing Parking Garage
7. Construction Entrance
8. Construction Exit
9. Construction Fencing



City of Merced

RQ#: 16-009

Citizen Action Request Form: Traffic Committee

Contact Person: Leon Waller Day Phone: _____

Email Address: _____
UC Merced Design + Construction

Address: 5200 North Lake Road, Merced, CA 95343 Today's Date: February 24, 2016

Location of Concern (map attachments and photographs are encouraged):
655 West 18th Street, Merced, CA 95340

Northeast corner of 18th and N Streets

Describe Concerns At This Location: _____

1. Closure of the east lane of N Street boulevard during the Downtown Campus Center construction estimated from
June 2016 through November 2017 as shown in the attached contractor's construction site logistics plan.
2. Closure of 18th and N Street sidewalks bordering the Downtown Campus Center construction site from June 2016
through November 2017 to create a safety zone along the construction project boundaries as shown in the attached
contractor's construction site logistics plan.

For Official Use Only:

Project #: _____ Date Received: _____ Date Field Inspected: _____

Field Inspection Results: _____

Date Response To Contact Person: _____

Resolution of Concern: _____

Date Completed: _____

Traffic Engineer's Signature or Designee

Date

NOTIFICATION OF PENDING STREET CLOSURE

This is to notify you of an event that will require the closure of street(s) in your area. Please note the details below, including the date and time of the closure(s), and plan to park your vehicle(s) off the affected street(s) on the day of the event. Your cooperation is greatly appreciated. If you have any concerns, please notify the contact person listed.

Name of Event: _____ **Type of event (parade, etc.):** _____

Contact Person: _____ **Phone Number:** _____

Date(s) of closure: _____ **Time:** between _____ am/pm and _____ am/pm

Streets to be closed: _____

Other streets with restricted access: _____

Please Note: Event Sponsor is responsible for posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to any necessary towing of vehicle(s), per California Vehicle Code Section 22651(m).

To avoid having your vehicle towed, please keep this notice as a reminder and comply with the posted parking restrictions. If you are a business with employees, please notify your employees as soon as possible and post this notice in a conspicuous location. Thank you.

NOTIFICATION OF PENDING STREET CLOSURE

This is to notify you of an event that will require the closure of street(s) in your area. Please note the details below, including the date and time of the closure(s), and plan to park your vehicle(s) off the affected street(s) on the day of the event. Your cooperation is greatly appreciated. If you have any concerns, please notify the contact person listed.

Name of Event: _____ **Type of event (parade, etc.):** _____

Contact Person: _____ **Phone Number:** _____

Date(s) of closure: _____ **Time:** between _____ am/pm and _____ am/pm

Streets to be closed: _____

Other streets with restricted access: _____

Please Note: Event Sponsor is responsible for posting of parking restrictions where street is closed. "No Parking" signs shall be posted at least twenty-four (24) hours prior to any necessary towing of vehicle(s), per California Vehicle Code Section 22651(m).

To avoid having your vehicle towed, please keep this notice as a reminder and comply with the posted parking restrictions. If you are a business with employees, please notify your employees as soon as possible and post this notice in a conspicuous location. Thank you.

To be signed by Event Sponsor Representative after completion of required 72-hour notification and submitted to the City of Merced Planning Dept, City Hall (2nd Floor), 678 W. 18th Street, Merced.

I have notified the required parties of the dates, times, and affected streets, as required.

Signed _____ Title: _____ Date: _____



ADMINISTRATIVE REPORT

File #: 16-171

Meeting Date: 5/2/2016

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Second Reading of Ordinance Dealing with Angle Parking, No Parking Zones, Freight and Passenger Loading Zones, and Accessible Passenger Loading Zone on N Street between W. 18th and W. 19th Streets

REPORT IN BRIEF

Second reading of previously introduced Ordinance.

RECOMMENDATION

City Council - Adopt **Ordinance 2458**, an Ordinance of the City Council of the City of Merced, California, amending Merced Municipal Code Sections 10.28.090, "Angle Parking Permitted Where," 10.28.230, "No Parking Zone," and 10.32.050, "Freight and Passenger Loading Zones - Locations," and adding Section 10.28.059, "Accessible Passenger Loading Zones," to the Merced Municipal Code.

ALTERNATIVES

1. Approve, as recommended by the Traffic Committee; or,
2. Continue to a future meeting; or,
3. Deny

AUTHORITY

The Merced Municipal Code (MMC):

Section 10.28.070 - Angle parking-Markings.

Whenever any provision of this code or other ordinance of this city designates and describes any street or portion thereof upon which angle parking shall be permitted, the city engineer shall mark or sign such street indicating the angle at which vehicles shall be parked.

Section 10.28.080 - Angle parking-Method.

When signs or markings are in place indicating angle parking as provided by Section 10.28.070, no person shall park or stand a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings.

Section 10.28.180 - Curb markings-Generally.

The city engineer is authorized, subject to the provisions and limitations of this chapter to place, and when required shall place, the following curb markings to indicate parking or standing regulations.

Such curb markings have the following meanings:

- A. Red means no stopping, standing, or parking at any time except as permitted by the state Vehicle Code; provided, that a bus may stop in a red zone marked or signed as a bus zone;
- B. Yellow means no stopping, standing, or parking at any time between six a.m. and six p.m. of any day except Sundays and holidays for any purpose other than the loading or unloading of passengers or materials;
- C. White means no stopping, standing, or parking for any purpose other than loading or unloading of passengers which shall not exceed three minutes and such restrictions shall apply between six a.m. and six p.m. of any day except Sundays and holidays and except as follows:
 - 1. When such zone is in front of a hotel or church the restrictions shall apply at all times.
 - 2. When such zone is in front of a theatre the restrictions shall apply at all times except when such theatre is closed;
- D. Green means no standing or parking for longer than the period indicated by signs properly posted on any day except Sundays and holidays;
- E. Blue means no standing or parking except for vehicles bearing a special license plate or special placard issued for disabled persons pursuant to Section 9105 or Section 22511.5 of the California Vehicle Code; provided, that there shall also be posted a sign as provided in Chapter 10.36. Blue curb parking spaces shall be operative twenty-four (24) hours a day, Sundays and holidays included.

Section 10.28.190 - Curb markings-Violation.

No person shall stop, stand or park a vehicle adjacent to any such legible curb marking or sign in violation of any of the provisions of Section 10.28.180.

Section 10.28.210 - Zones determined by city council.

The city council shall, by ordinance or resolution, determine those streets, parts of streets, alleys or other locations, upon which parking shall be limited to stated periods of time, or to certain vehicles or shall be prohibited, and the city engineer shall designate such streets or parts of streets, alleys or other locations by appropriate signs, parking space markings or curb markings.

This request add the subject street section to those in this particular MMC Section:

Section 10.28.230 - No parking zones.

When authorized signs are in place giving notice thereof, no person shall stop, stand, or park any vehicle at any time on any day along the following portions of the following streets: (See table in MMC 10.28.230)

ATTACHMENTS

1. Ordinance 2458

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING MERCED MUNICIPAL CODE
SECTIONS 10.28.090, "ANGLE PARKING –
PERMITTED WHERE," 10.28.230, "NO PARKING
ZONES," AND 10.32.050, "FREIGHT AND
PASSENGER LOADING ZONES – LOCATIONS,"
AND ADDING SECTION 10.28.059, "ACCESSIBLE
PASSENGER LOADING ZONES," TO THE
MERCED MUNICIPAL CODE**

**THE CITY COUNCIL OF THE CITY OF MERCED DOES ORDAIN
AS FOLLOWS:**

SECTION 1. AMENDMENT TO CODE. Section 10.28.090, "Angle
Parking – Permitted Where," of the Merced Municipal Code is hereby amended by
deleting the following portion of the following street:

"Street:	Portion:
East side of N Street	From the north line of West 18th Street to the south line of West 19th Street."

SECTION 2. AMENDMENT TO CODE. Section 10.28.090, "Angle
Parking – Permitted Where," of the Merced Municipal Code is hereby amended by
adding the following portions of the following street:

"Street:	Portion:
East side of N Street	From the southwest property line of APN 031- 054-024 to the south line of West 19th Street."
West side of N Street	From the north line of West 18th Street to the south line of West 19th Street."

SECTION 3. AMENDMENT TO CODE. Section 10.28.230, “No Parking Zones,” of the Merced Municipal Code is hereby amended by adding the following portion of the following street:

“Street:
East side of N Street

Portion:
Beginning at the point that is 84 feet north of the eastern curb return of West 18th Street, then northerly to the northwest property line of APN 031-054-022.”

SECTION 4. AMENDMENT TO CODE. Section 10.32.050, “Freight And Passenger Loading Zones – Location,” of the Merced Municipal Code is hereby amended by adding the following portion of the following street:

“Street:
East side of N Street

Portion:
Beginning at the point that is 44 feet north of the eastern curb return of West 18th Street, then northerly 40 feet.”

SECTION 5. ADDITION TO CODE. Section 10.32.059, “Accessible Passenger Loading Zones,” is hereby added to the Merced Municipal Code to read as follows:

“10.32.059 Accessible passenger loading zones.

When authorized signs or curb markings are in place giving notice thereof, the locations described in the following paragraphs are designated as accessible passenger loading zones at all times, including Saturdays, Sundays, and holidays.

“Street:
East side of N Street

Portion:
Beginning at the point that is 24 feet north of the eastern curb return of West 18th Street, then northerly 20 feet.”

SECTION 6. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 7. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 8. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2016, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2016, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Ken Ryce 4/8/14
City Attorney **Date**



CITY OF MERCED

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

ADMINISTRATIVE REPORT

File #: 16-172

Meeting Date: 5/2/2016

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Second Reading of Ordinance Dealing with Cardrooms

REPORT IN BRIEF

Second reading of previously introduced Ordinance.

RECOMMENDATION

City Council - Adopt **Ordinance 2457**, an Ordinance of the City Council of the City of Merced, California, Amending Section 9.08.020, "Cards," of the Merced Municipal Code Relating to Cardrooms.

ALTERNATIVES

1. Adopt as written; or,
2. Continue to a future meeting; or,
3. Deny.

AUTHORITY

City of Merced Charter, Section 200.

ATTACHMENTS

1. Ordinance 2457

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
AMENDING SECTION 9.08.020, "CARDS," OF
THE MERCED MUNICIPAL CODE RELATING
TO CARDROOMS**

WHEREAS, two cardrooms are authorized to operate within the City; and

WHEREAS, under existing City regulations, no cardroom may operate with more than four card tables and no more than eight card tables may be located within the City; and

WHEREAS, under specific provisions of the Business and Professions Code, the City Council may authorize an increase in the number of card tables without a vote of the voters of the City of Merced; and

WHEREAS, Business and Professions Code Section 19961, subd. (a)(2) allows an increase of one additional card table; and

WHEREAS, Business and Professions Code Section 19961.06, subd. (a) allows an increase of two additional card tables; and

WHEREAS, Business and Professions Code 19961.06, subd. (b) allows an increase of two additional card tables; and

WHEREAS, Business and Professions Code Section 19965 allows an increase of three additional tables; and

WHEREAS, pursuant to the authority of these code sections, the City Council wishes to increase the number of allowed card tables within the City of Merced from eight card tables to 16 card tables; and

WHEREAS, on or after the effective date of this Ordinance, the City Council wishes for a cardroom operator to be able to apply for up to eight additional card tables, provided, however, that under no circumstances shall the total number of authorized card tables within the City exceed 16 card tables; and,

WHEREAS, the City Council wishes to remove existing limits and bets and wagers at cardrooms within the City.

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

SECTION 1. AMENDMENT TO CODE. Section 9.08.020, "Cards," of the Merced Municipal Code relating to cardrooms is hereby amended to read as follows:

"9.08.020 - Cardrooms.

A. Cardrooms in the City of Merced may only be located in areas zoned as follows:

1. Central Commercial (C-C);
2. Commercial Thoroughfare (C-T);
3. General Commercial (C-G).

B. It is unlawful and a misdemeanor, subject to punishment in accordance with Chapter 1.12 of this code, for any person, either as principal, agent, employee, or otherwise, to play, conduct, or deal any game of cards in any cardroom, or in any other public place or place resorted to generally by the public, between the hours of two a.m. and six a.m. of any day, with the exception of a duly licensed cardroom operating in a Commercial Thoroughfare (C-T) zone or Central Commercial (C-C) zone pursuant to a conditional use permit which regulates the hours of operation.

C. Any person operating a cardroom shall be responsible and liable for patron security and safety in and around the gaming establishment. Security guards shall be provided in such number and at such times as directed by the Chief of Police, or as may otherwise be required by conditional use permit.

D. As of April 18, 2016, there are two cardrooms authorized to operate within the City of Merced, each of which had four (4) card tables. There shall be no

increase in the existing number of cardrooms without the approval of a majority of the voters of the City.

E. The City hereby increases the number of authorized card tables within the City from eight (8) card tables to sixteen (16) card tables. There shall be no increase in the number of card tables beyond sixteen (16) card tables without the approval of a majority of the voters of the City.

E. In order for a cardroom to increase the number of card tables from the four (4) card tables that existed as of April 18, 2016, the operator must first obtain a conditional use permit to add additional card tables. A cardroom operator may apply for up to eight (8) additional card tables subject to the overall limit of sixteen (16) card tables within the City; provided, however, that under no circumstances shall a cardroom have more than twelve (12) card tables.

F. If a cardroom operator obtains a conditional use permit to add additional card tables, the new card tables must be added within one (1) year from the date of approval of the conditional use permit. Otherwise, the right to add the additional card tables shall automatically expire and the number of card tables allowed in that cardroom shall revert back to the number of card tables that existed prior to the approval of the conditional use permit.

G. There shall be no City-imposed limits on bets and wagers in a cardroom located within the City. Individual cardroom operators may set their own limits on bets and wagers. The rules of each game and wagering limits shall be clearly posted at the gaming tables where the games are offered to provide the patrons adequate notice of such rules and limits.”

SECTION 2. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 3. SEVERABILITY. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance, and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 4. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the ____ day of _____, 2016, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2016, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

Mayor

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant City Clerk

(SEAL)

APPROVED AS TO FORM:

Ken Ryzed 4/18/16
City Attorney Date



ADMINISTRATIVE REPORT

File #: 16-181

Meeting Date: 5/2/2016

SUBJECT: Transportation Expenditure Plan Report - Presentation by Marjie Kirn, Executive Director, Merced County Association of Governments

REPORT IN BRIEF

Considers approval of the Transportation Expenditure Plan for Merced County.

RECOMMENDATION

City Council - Adopt **Resolution 2016-15**, A Resolution of the City Council of the City of Merced, California, approving the Transportation Expenditure Plan for Merced County and endorsing its approval as a ballot measure in November 2016.

ALTERNATIVES

1. Approve as recommended by staff; or,
2. Continue to a future meeting; or,
3. Deny.

AUTHORITY

City of Merced Charter, Section 200.

ATTACHMENTS

1. Transportation Expenditure Plan (revised)
2. Measure Fact Sheet
3. Resolution 2016-15

REVISED

**2016 ½ CENT TRANSPORTATION
SALES TAX MEASURE
EXPENDITURE PLAN**

Prepared by:



369 W. 18th Street
Merced, CA 95340

MARCH 2016

Introduction

A Merced County ½ Cent Transportation Sales Tax Expenditure Plan was prepared to:

Guide more than \$450 million in transportation fund expenditures generated through the approval of a Merced County half-cent transportation sales tax over the next 30 years if approved by the voters in the November 2016 election.

The Expenditure Plan was developed by a 24-member Transportation Expenditure Plan (TEP) Committee created and appointed by the Merced County Association of Governments (MCAG) Governing Board. The committee was comprised of representatives from each of the seven member agencies (Atwater, Dos Palos, Gustine, Livingston, Los Banos, Merced and the County of Merced), as well as, a wide variety of community stakeholders representing diverse interests from across the county (Appendix C).

The Expenditure Plan will address major regional transportation needs in Merced County through the Year 2047 with the initiation of a ½ cent sales tax.

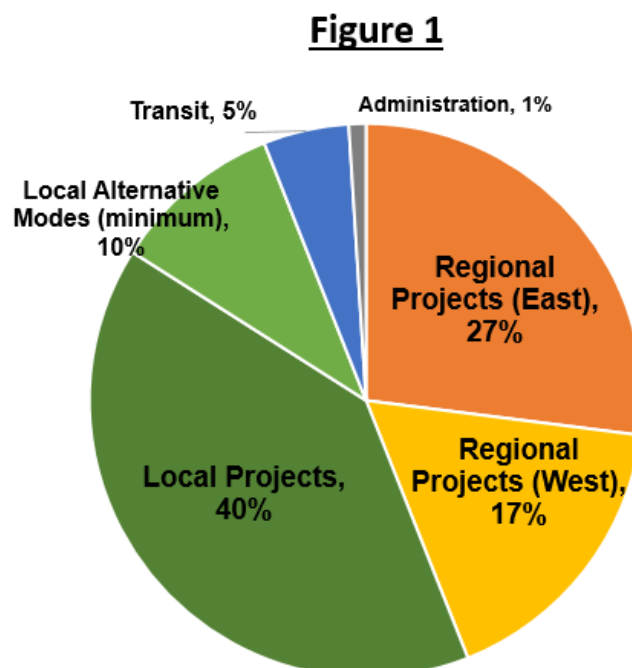
Where will the money go?

Figure 1 provides an overview of the proposed Expenditure Plan that outlines where the funds will be spent and what categories of projects will be funded.

The funding categories include:

1. Regional Projects
2. Local Projects
- 2A. Alternative Modes Projects
3. Transit, and
4. Administration.

The proposed 30-year Transportation Measure is expected to generate a total of \$450 million.



1. REGIONAL PROJECTS

44% of the Transportation Measure funds are allocated to Regional Projects which are established in the adopted Regional Transportation Plan (RTP) approved by the MCAG Governing Board. 27% must be spent on projects east of the San Joaquin River, and 17% must be spent on projects west of the San Joaquin River. The projects within the RTP were selected through a process that evaluated safety, performance measures and cost effectiveness. The RTP is updated every four years with 25 years of transportation projects. Regional Projects provide for the movement of goods, services, and people throughout Merced County and benefit multiple jurisdictions.

2. LOCAL PROJECTS

50% of the Transportation Measure funds are allocated to Local Projects to address the diverse needs of the cities and the County. The Local Projects funding category provides each of the member agencies with the flexibility to develop a priority list of local projects. This category will allow funding for projects ranging from pot-hole repair and road rehabilitation to sidewalks and safe routes to schools to freeway interchange improvements.

2.A. ALTERNATIVE MODES PROJECTS

At least 20 percent (20%) of the Local Projects funds each jurisdiction receives must be used for Alternative Modes projects. This sub-category is intended to fund projects that provide transportation alternatives including bicycle, pedestrian, passenger rail, or other modes of transportation that reduce single-occupant vehicle use.

3. TRANSIT

5% of the Transportation Measure funds are directed to support increased transit service.

4. ADMINISTRATION

The remaining 1% of the total Transportation Measure funding is directed to program implementation activities. Details regarding the administration of the funds are provided in Appendix A.

Responding to Public Needs

Two-thirds (66.7%) voter approval is necessary to pass the Transportation Measure in November 2016. In order to ensure that Merced County Association of Governments is on target with this Expenditure Plan, voters and community residents were initially surveyed to determine support for a new Transportation Measure.

The voters of Merced County responded with strong support to impose a sales tax which would lead to transportation improvements in Merced County. Meeting the needs of Merced County residents requires leveraging state and federal expenditures with local resources. Even with the passage of the Transportation Measure there will not be enough funding available to address the more than \$1 billion in transportation needs. The Transportation Measure will generate \$450 million over the next 30 years to address a portion of this need. Therefore, leveraging additional federal and state dollars, beyond what the region expects, is critical.

Most state and federal grants require a match. Counties that pass transportation sales tax measures are referred to as “Self-Help” counties and can generate the revenues to be used as matching dollars. Similar measures throughout the San Joaquin Valley and California have been very successful in this regard. Such measures have been viewed as the most important transportation programs ever approved by voters in those counties. According to the Regional Transportation Plan, Merced County needs to become a Self-Help county to achieve its goals and address its transportation needs.

The TEP Committee, which included representatives from each of the cities, the County of Merced, MCAG and a number of community stakeholders, worked together to develop the Expenditure Plan funding categories and other key components.

Annual Audit of Transportation Measure

The Transportation Measure expenditures and accounts of the local agencies and MCAG will be audited on an annual basis by an independent audit firm retained by Merced County Association of Governments. Appendix A provides additional detail regarding the Transportation Measure audit process.

Citizen Oversight

To inform the public and to ensure that the Transportation Measure revenues and expenditures are spent as promised to the public, a Citizens’ Oversight Committee would be formed by MCAG as part of the new Transportation Measure. Details regarding the committee are provided in Appendix B.

Anticipated Measure Revenues

If voters approve the Transportation Measure on November 8, 2016, they will allow MCAG to impose a ½ cent retail transaction and use tax for 30 years (between April 1, 2017 and March 31, 2047). The Transportation Measure Sales Tax will:

Provide \$450 million in new revenues for transportation improvements according to financial projections through the year 2047.

This estimate considers current sales tax receipts (with no growth rate in sales tax proceeds) through March 2047. Since the project funding is shown in current dollars, the projected revenues are shown in current dollars. Actual revenues will depend on actual sales tax proceeds. The allocation of projected revenues to specific transportation funding categories is described in the following sections of this Expenditure Plan. A Transportation Measure Implementation Plan detailing current transportation projects will be updated every two (2) years to adjust the projection of sales tax receipts, ensuring that the projections are consistent with future expenditures and promises made in this initial Expenditure Plan. MCAG will have the option of issuing bonds to deliver Transportation Measure projects to reduce project costs by delivering them earlier.

Funding Categories

Through many weeks of intense discussion and hard work, the following Transportation Measure funding categories and commitments were developed by the TEP Committee. MCAG realized that providing funds for all modes of transportation would meet the quality of life intent of the new Transportation Measure. This would in turn enable agencies within Merced County to address the needs of residents, businesses, and major industries over the 30-year life of the Transportation Measure.

The Expenditure Plan will:

Provide funds for regional road improvements, public transit, rehabilitate existing roads and other transportation programs that improve mobility and air quality within the County and each of the cities.

1. Regional Projects – 44% of total

If \$450 million is collected over 30 years, then \$198 million will be available for Regional Projects - \$121.5 million on the Eastside and \$76.5 million on the Westside.

Forty-four percent (44%) of the funds will be allocated to this category.

- 27% of the total is for an Eastside share, to be spent on projects east of the San Joaquin River.
- 17% of the total is for a Westside share, to be spent on projects west of the San Joaquin River.

The dividing line between Eastside and Westside shares is the San Joaquin River. Two committees will be created to recommend projects:

- The Eastside Regional Projects Committee will consist of one council person from each City that includes area east of the San Joaquin River and each County Supervisor whose district includes area east of the River.
- The Westside Regional Projects Committee will consist of one council person from each City that includes area west of the San Joaquin River and each County Supervisor whose district includes area west of the River.

As the Local Transportation Authority overseeing the funds, the Governing Board of Merced County Association of Governments has the authority to approve recommendations made by the Regional Projects Committees. Notwithstanding the foregoing, the MCAG Governing Board shall not approve a project that has not been recommended by a Regional Projects Committee.

Regional Projects must be listed in the applicable Regional Transportation Plan, which is updated every four years and can be amended as needed. These projects provide for the movement of goods, services, and people throughout Merced County. Projects on the State Highway system or the Regional Road System or the Regional Transportation System defined by MCAG are Regional Projects. Projects located in or directly benefitting more than one jurisdiction are Regional Projects.

Examples of Regional Projects include but are not limited to:

- Improving highway and freeways
- Adding lanes to projects on the Regional Road System
- Improvements on the Regional Transportation System
- Passenger Rail
- Bus Rapid Transit
- Regional bikeways and trails
- Improvements to Regional Airports
- Transportation Demand Management benefitting more than one jurisdiction, such as vanpools and ridesharing.

Funds can be used for all phases of project development and implementation. In some cases, other sources of funding will also be used for these projects, for example State Transportation Improvement Program (STIP) funds.

2. Local Projects – 50% of total

If \$450 million is collected over 30 years, then \$225 million will be available for Local Projects.

Fifty percent (50%) of the funds will be allocated to this program. The local elected city councils and the Board of Supervisors will be the decision-making bodies for the use of these funds within their respective jurisdictions. Every year each City and the County will receive funding based on a formula using a base amount, population, and road miles. The goal is to improve the local transportation systems within each individual city and the County overall.

Local agencies in Merced County know what their needs are and how best to address them. The funding will help cities and the County to meet maintenance needs and to rehabilitate their aging transportation systems. Funds can be used for all phases of project development and implementation. Funds can be used for new projects or programs, for safety improvements, or for maintenance or operation of existing projects or programs

Potential uses include but are not limited to:

- Pothole repair
- Repaving streets
- Bridge repair or replacement
- Traffic signals
- Add additional lanes to existing streets and roads
- Improve sidewalks
- Bicycle or pedestrian facilities
- Separate street traffic from rail traffic

The funds for the Local Projects program will be allocated annually to local jurisdictions (the Cities and the County) using a formula as follows:

1. A base amount of \$150,000 will be allocated to each jurisdiction;
2. The remaining funds will be allocated based on the average of the jurisdiction's share of the total countywide population and their share of the total countywide public maintained road miles. For example, if a jurisdiction has 35% of the population and 75% of the road miles they will be allocated 55% of the funds remaining after the base amounts are allocated.

2.A Alternative Modes Projects – at least 20% of Local Projects (10% of total)

If \$450 million is collected over 30 years, then \$45 million will be available for Alternative Modes Projects.

At least twenty percent (20%) of the “Local Projects” funds each jurisdiction receives must be used for Alternative Modes projects. Each jurisdiction may use more than this minimum but not less. The goal of this sub-category of projects is to provide safe alternatives to automobile travel, increase use of alternative modes, and improve air quality and the environment. This sub-category may be used for projects and programs that provide alternatives to single-occupant vehicle use, including but not limited to:

- Sidewalks, crosswalks, safe routes to schools, ADA curb ramps, and other pedestrian projects
- Bicycle projects
- Passenger Rail
- Railroad crossing safety improvements
- Vanpools, carpools or other ridesharing programs or incentives
- Roundabouts or other air quality improvements
- or other alternative modes

This sub-category may be used for new projects or programs, for safety improvements, or for maintenance or operation of existing projects or programs. Funds can be used for all phases of project development and implementation.

This sub-category may also be used as an incentive or as matching funds for transportation-related components of sustainable communities and developments that help increase alternatives to automobiles.

Below is an example of what the annual allocation to each local jurisdiction could look like in any given year, assuming \$15,000,000 in revenue.

Jurisdiction	Example Annual Amount	20% for local alternative modes projects	80% for other local transportation needs
City of Atwater	\$615,763	\$123,152	\$492,610
City of Dos Palos	\$244,816	\$48,963	\$195,853
City of Gustine	\$246,594	\$49,319	\$197,276
City of Livingston	\$368,040	\$73,608	\$294,432
City of Los Banos	\$767,143	\$153,429	\$613,714
City of Merced	\$1,554,461	\$310,892	\$1,243,569
Merced County	\$3,703,183	\$740,637	\$2,962,546
Total	\$7,500,000	\$1,500,000	\$6,000,000

3. Transit – 5% of total

If \$450 million is collected over 30 years, then \$22.5 million will be available for Transit Projects

Five percent (5%) of the funds will be allocated to this program. The Governing Board of the Merced County Association of Governments is the decision-maker for allocating these funds. The goal of this funding category is to expand or enhance public transit services and programs.

To accomplish this important goal, funding is provided to the transit agency within the County to expand transit services. Potential uses include but are not limited to:

- New routes to enhance existing transit service
- Low emission buses
- Night and weekend service
- Bus shelters and other capital improvements
- Safer access to public transit services
- Fare reduction or subsidies

4. Administration – 1% of total

If \$450 million is collected over 30 years, then \$4.5 million will be available for Administration.

One percent (1%) of the funds will be allocated to MCAG to:

- Prepare Implementation Plan updates
- Develop funding allocation requirements
- Administer and conduct specified activities identified in the categories described above
- Prepare Annual Transportation Measure Report
- Contract for annual independent audits
- Staff the regional committees and provide technical assistance.

For more information

Merced County Association of Governments
369 W. 18th Street
Merced, CA 95340
P: (209) 723-63153

F: (209) 723-0322
www.mcagov.org

Appendices

Appendix A – Expenditure Plan Administration

Governing Board and Organizational Structure

A description of the Merced County Association of Governments and its organizational structure related to the sales tax follows. The structure is consistent with the enabling legislation.

Merced County Transportation Authority Structure under the Transportation Measure

The Merced County Association of Governments (MCAG) is the Merced County Local Transportation Authority and will administer the Transportation Measure in compliance with Public Utilities Code PUC 180000 et seq. If the Transportation Measure is approved by Merced County voters in November 2016, the Authority will be responsible for administering the Transportation Measure in accordance with plans and programs outlined in this and subsequent updates of this Expenditure Plan. In addition, this Expenditure Plan includes provision for a Citizens' Oversight Committee. Details regarding the Committee are contained in Appendix B. The TEP Implementation Plan will continue to be prepared by MCAG and approved by its Policy Board and by the Authority.

PUC 180000 includes provisions regarding the number of members on the Authority Board. Specifically, the Authority will be represented by eleven (11) members including:

- Five (5) members of the Board of Supervisors
- One (1) member representing each of the six cities in Merced County: Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced consisting of members of the city council appointed by the city council

Alternates to the regular members of the authority may participate in accordance with the MCAG By-Laws.

Plan Update, Approval Process, and Expenditure Plan Amendments

Plan Review and approval process

There are three primary reports/plans that are referenced as follows:

1. The Expenditure Plan – The Expenditure Plan is approved by the voters and may be amended once a year as outlined below.
2. The Annual Report – The Annual report is prepared each year by the Citizen's Oversight Committee to provide review how sales tax receipts are being spent and publicize the results
3. Biennial Implementation Plan – Prepared every two years to outline project expenditures. The Implementation Plan will be timed to coincide with the development of the Bi-annual State Transportation Improvement Program development.

In compliance with schedules mandated in federal and state law, MCAG regularly prepares a new long-range transportation plan (RTP) that updates and renews a list of candidate projects for all transportation modes (streets, highways, public transportation, bikeways, aviation, etc.). If funds are available for any projects beyond those now listed in this Expenditure Plan, they will be drawn from that list. MCAG will have the option of issuing bonds to deliver Measure projects and programs contained in this Expenditure Plan to reduce project costs by delivering them earlier.

All updates of the Expenditure Plan will be subject to public review and public hearings. While these candidate projects may change and priorities for funding may occur, there are more than enough project

needs within the County to be addressed using all types of funding, including Transportation Measure funds. It will be vital during development of each Expenditure Plan Update to consider financing all transportation modes in order to insure a balanced and efficient transportation system. All of the projects and programs included in this Expenditure Plan are considered essential to meet the transportation needs of Merced County.

The Funding Categories and overall Funding Allocations formulas described in this Expenditure Plan may not be amended without approval of the voters.

Amendments to the Expenditure Plan

As specified in Public Utilities Code Section 180207:

- (a) The authority may annually review and propose amendments to the county transportation expenditure plan adopted pursuant to Section 180206 to provide for the use of additional federal, state, and local funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances.
- (b) The authority shall notify the board of supervisors and the city council of each city in the county and provide them with a copy of the proposed amendments.
- (c) The proposed amendments shall become effective 45 days after notice is given.

The Funding Categories and overall Funding Allocations formulas described in this Expenditure Plan may not be amended without approval of the voters.

Bi-Annual Implementation Plan

At a minimum of once every two years, MCAG will prepare and adopt a Transportation Measure Implementation Plan. This will include a financial plan consistent with the Regional Transportation Improvement Program (RTIP) and the State Transportation Improvement Program (STIP).

- MCAG staff working with member agencies and affected stakeholders will develop the Draft Implementation Plan, and will update it every two years.
- The MCAG Governing Board receives the Draft Implementation Plan and its updates and schedules public hearings to review the Plan
- The MCAG Governing Board adopts the Implementation Plan

Independent Financial Audits

If the Transportation Measure is approved by the voters, MCAG would conduct independent financial audits consistent with PUC 180000 et seq.

Implementation Guidelines

Administration Program: - 1% of the Measure

There are a number of processes that MCAG must also perform to support the Transportation Measure including maintenance of the Expenditure Plan and development of requirements associated with:

- Each of the proposed allocation programs
- The identification and prioritization of projects

It is recommended that MCAG be allocated 1% of sales tax revenue to address important activities.

Activities of MCAG are described below:

- Prepare Annual Work Program and Budget
- Develop the allocation program requirements including focused studies needed to implement the Transportation Measure
- Prepare the Implementation Plan every two years
- Develop the priority list of regional capacity increasing and rehabilitation projects
- Conduct an independent audit of Transportation Measure funds on an annual basis
- Conduct on on-going public outreach program

- Issue bonds to deliver Transportation Measure projects contained in Implementation Plan to save project costs by delivering them earlier
- Allocate Transportation Measure proceeds to the local jurisdictions consistent with the Expenditure Plan requirements
- **Staff the regional committees and provide technical assistance.**

Bonding and Financing

MCAG will have the authority to bond and use other financing mechanisms, including, when more advantageous economically, loans from banks and other financial lending institutions, for the purposes of expediting the delivery of transportation projects and programs and to provide economies of scale. Bonds or loans, if issued, will be paid with the proceeds of the transportation sales tax. The costs and risks associated with the bonding and loans will be presented in the Implementation Plan, and will be subject to public comment before any bond sale or loan application is approved.

MCAG will also be able to use other means to accelerate the delivery of Regional Projects including partnering with other COGS, the State of California, the federal government, and other government agencies, federal authorization funds, federal earmarks, partnering with private entities, seeking outside grants and matching or leveraging tax receipts to the maximum extent possible.

Local agencies may choose to advance funds for a project, either a project specified in the plan, or a project for which they plan to use their local agency Local Project funds, and to receive reimbursement for that advancement in accordance with the plan. The fund advancement and reimbursement projections must be approved by MCAG in accordance with the voting requirements, prior to proceeding with the project. Local agencies may also accumulate funds from their Local Projects allocations over several years to fund larger or higher cost projects.

Regional Projects Contingency Fund

MCAG will also have the ability to set aside a contingency fund for Regional Projects shares of up to 5% of the annual receipts from the tax. Revenues to fund the contingency may be accumulated if revenues exceed projections.

In the event that actual revenues in any given year are less than the budgeted revenues, the MCAG Board may use the contingency fund to make up the difference between the budgeted revenues and the actual revenues. The contingency fund may also be used to fund projects where the actual cost exceeds projections.

Accountability

All business of MCAG will be conducted in an open and public meeting process in accordance with the California Brown Act. MCAG will approve all spending plans described in this document and will ensure that adequate public involvement has been included in the preparation of all spending plans. MCAG will be required to hire an independent auditor who will annually audit all sales tax expenditures, ensuring that expenditures are made in accordance with the plan, and with prudent, established accounting regulations and practices.

Maintenance of effort

The enabling legislation in Public Utilities Code PUC 180001(e) states:

It is the intent of the Legislature that funds generated pursuant to this division be used to supplement and not replace existing local revenues used for transportation purposes.

Each Agency receiving revenues for “Local Projects” shall annually maintain, as a minimum, the same level of local fully discretionary general fund revenues that were expended on average for fiscal years 2013/14, 2014/15 and 2015/16, for transportation purposes. Dedicated funds for transportation such as gas tax revenues are not counted as general fund revenues. Transfers in to the general fund will not be counted as general fund revenues. Grant awards and general fund revenues used as matching funds for

grant awards will not be counted as general fund revenues.

Other Guidelines

This plan is guided by principles that ensure that the revenue generated by the transportation sales tax is spent in the most efficient and effective manner possible, consistent with the desires of the voters of Merced County. The principles outlined in this section provide flexibility needed to address issues that may arise during the life of the plan.

1. MCAG will fund both regional and local projects, and will also provide funds to local agencies to address special and localized needs.
2. MCAG is charged with a fiduciary duty in administering the transportation sales tax proceeds in accordance with the applicable laws and this Expenditure Plan. Receipt of these tax proceeds may be subject to appropriate terms and conditions as determined by MCAG in its reasonable discretion, including, but not limited to, the right to require recipients to execute funding agreements and the right to audit recipients' use of the tax proceeds.
3. The monies collected through MCAG shall be accounted for and invested separately, unless and until the funds are turned over to a local agency in accordance with the plan. At such time, the local agency shall keep a separate accounting of the monies and any and all expenditures to ensure that the monies are spent in accordance with the approved expenditure plan.
4. All meetings of MCAG will be conducted in public accordance to state law, through publicly noticed meetings. The annual budget of MCAG, annual work plan, biennial Implementation Plan, and annual report will all be prepared for public scrutiny. The interests of the public will further be protected by the Citizens' Oversight Committee described in this Plan.
5. Under no circumstances may the proceeds of this transportation sales tax be applied to any purpose other than for transportation improvements benefiting Merced County and its member agencies.
6. Actual revenues may be higher or lower than expected in this Plan, due to changes in receipts and/or matching or leveraging capability. Estimates of actual revenue will be programmed annually by the MCAG during its annual budget process.
7. All projects funded with these transportation sales tax funds will be required to complete appropriate California Environmental Quality Act (CEQA) and other environmental review as required.
8. Funds may be accumulated by MCAG or by recipient agencies over a period of time to pay for larger and long-term projects. If accumulated for a general purpose, the proceeds will be used for the transportation purposes described in the Expenditure Plan.
9. MCAG will have the ~~capability of loaning authority to loan~~ transportation sales tax receipts ~~allocated to Regional Projects~~ at prevailing interest rates to ~~other~~ member agencies for the implementation of needed transportation projects, provided that a guaranteed revenue stream is devoted to repay such a loan over a maximum amount of time, and provided that the loan will not interfere with the implementation of programs or projects defined in the Expenditure Plan. Loaning of funds ~~allocated to Regional Projects~~ requires ~~2/3rds~~ MCAG Board approval ~~and approval by the affected Regional Committee.~~
10. Each Local jurisdiction shall have the authority to loan transportation sales tax receipts allocated to them for Local Projects to member agencies for the implementation of needed transportation projects.
11. New incorporated cities or new transit agencies or services that come into existence in Merced County during the life of the Expenditure Plan could be considered as eligible recipients of funds through a Plan Amendment, and an additional position created on the governing board.

Appendix B – Citizens Oversight Committee

Committee Purpose

- To provide input on implementation of the Plan, and to advise the MCAG Board if and when the Plan needs to be augmented and to ensure that the funds are being spent in accordance with the Plan.
- To inform the public and to ensure that the Transportation Measure (Measure) funding program revenues and expenditures are spent as promised to the public.

Administrative Issues

Committee Formation

- The Committee will be formed within six (6) months upon approval of the Transportation Measure by the voters of Merced County in November 2016.
- The Committee shall not be amended out of the Expenditure Plan.
- Meetings will commence when Transportation Measure revenues are recommended for expenditure; including Implementation Plan updates.

Selection and Duties of Committee Chair and Vice Chair

- The Committee shall select a Chair and Vice Chair from the members, each of whom shall serve a one (1) year term.
- The duties of the Chair will be to call meetings, set agendas, and preside over meetings.
- The duties of the Vice Chair will be to perform the same duties described above in the absence of the Chair.

Committee Meetings

- The Committee will hold one formal meeting annually, with additional meetings scheduled as needed by the Committee.
- All Committee meetings must be held in compliance with the Brown Act.
- All meetings will be conducted per “Robert’s Rules of Order”.

Subcommittee Requirements

- The Committee may elect to form subcommittees to perform specific parts of its purpose.
- All subcommittees shall have an odd number of members.

Committee Membership, Selection, and Quorum

Membership & Selection

The Committee will be designed to reflect the diversity of the County. The Committee will consist of 14 members. Each organization represented on the Citizens’ Oversight Committee will nominate its representative; with final appointments approved by the governing board of MCAG. The membership shall be as follows:

- One member will be appointed by each City and the County (Total of 7)
- One representative from the building industry
- One representative from the agriculture industry
- One representative from an ethnic community group
- One representative from a major private sector Merced County employer
- One representative from an advocacy group representing bicyclists and pedestrians, and/or transit
- One member who is a professional in the field of audit, finance and/or budgeting with a minimum of five years in a relevant and senior decision-making position in the public or private sector
- One representative from an environmental advocacy group

In the case of the final four representatives, applications from residents within Merced County who are over the age of 18 will be solicited and accepted. The representatives will be selected by the MCAG Governing Board.

Quorum

- A quorum will be no less than eight (8) members of the Committee
- An action item of the Committee may be approved by a simple majority of those present, as long as the quorum requirement is met.

Term of Membership

- Terms of membership will be for two (2) years. No member may serve more than 8 years.
- Members may be reimbursed for authorized expenses, but not be compensated for their service on the Committee.
- In an effort to maintain Committee member consistency, during the first two (2) years of the Committee, terms will be staggered with 7 of the members to serve a one-year term, 7 of the members to serve a two-year term. The length of the first terms will be determined via random selection.
- Proxy voting will not be permitted.

Eligibility

- U.S. citizen 18 years of age or older who resides in Merced County
- Not an elected official at any level of government
- Not a public employee at any State, County or local city agencies
- Must submit an annual statement of financial disclosure consistent with Fair Political Practices Commission (FPPC) rules and regulations and filed with the Authority

Staffing

- MCAG will staff the Committee and provide technical and administrative assistance to support and publicize the Committee's activities.
- MCAG services and any necessary outside services will be paid using the MCAG's Transportation Measure Administration revenues.
- Expert staff will be requested to provide information and make presentations to the Committee, as needed.

Responsibilities

The Committee may receive, review and recommend any action or revision to plans, programs, audits or projects that is within the scope of its purpose stated above. Specific responsibilities include:

- Receive, review, inspect, and recommend action on independent financial and performance audits related to the Transportation Measure
- Receive, review, and recommend action on other periodic reports, studies and plans from responsible agencies. Such reports, studies and plans must be directly related to Transportation Measure revenues or expenditures
- Review and comment upon Measure expenditures to ensure that they are consistent with the Expenditure Plan
- Annually review how sales tax receipts are being spent and publicize the results
- Present Committee recommendations, findings, and requests to the public and MCAG in a formal annual report to inform Merced County residents how funds are being spent.
- The Committee will have full access to the MCAG independent auditor and will have the authority to request and review specific information, with the understanding that the Committee will rely upon data, processes and studies available from MCAG, and other relevant data generated by reputable sources. It is understood; that MCAG will be continuously striving to improve the reliability of data and to update analytical and modeling
- processes and that the Committee will be kept abreast of any such efforts, and is invited to participate in development of such updates in a review capacity.

The Committee will assist MCAG in taking advantage of changing situations with technical and transportation developments in the future. Therefore, the provisions regarding the Committee make up, processes and protocols are viewed through 2047 based upon a 2016 perspective, and are not meant to be unduly restrictive on the MCAG and the Committee's roles and responsibilities.

Appendix C – TEP Steering Committee Roster

MCAG/Merced County	Deidre Kelsey Hub Walsh
Leadership Council for Justice and Accountability	Kaylon Hammond
Hilmar	Mike Seward
Assembly Member Adam Gray	Ryan Heller
Caltrans	Tom Dumas
Transit	Rich Green
Merced Boosters	Michael Carpenter Vinton Thengvall
Greater Merced Chamber of Commerce	Adam Cox
Golden Valley Health Centers	Mary-Michal Rawling
UC Merced	Phillip Woods
Merced College	Paul Baxter
City of Gustine	Ellen Hasness Pat Nagy
City of Dos Palos	Jerry Antonetti Michael McGlynn
City of Los Banos	Mike Villalta Steve Carrigan/Gary Brizzee
City of Atwater	Jim Price Scott McBride
City of Merced	Josh Pedrozo Tony Dossetti - Alternate
City of Livingston	Alex McCabe
Agriculture	Diana Westmoreland Pedrozo

MERCED COUNTY

½ Cent Sales Tax Transportation Expenditure Plan

The Problem

Our region is facing a serious funding shortfall. We are unable to maintain our streets, roads, bridges, sidewalks and other critical components of our region's transportation infrastructure. As state and federal funding continue to decline and our local and regional transportation systems continue to deteriorate, additional revenue is needed to not only maintain the current system but also expand to meet the needs of our growing population.

\$380 million

amount needed to **maintain** our local streets and roads through 2040

\$1.1 billion

amount needed to **expand** our regional roads and highways through 2040

\$450 million

amount of **new revenue** the proposed sales tax is projected to generate over 30 years

The Solution

If approved by voters in November 2016, a half-cent sales tax could generate more than \$450 million in new revenue to address our transportation needs over the next three decades. The proposed Transportation Expenditure Plan outlines a flexible approach to spending these funds, providing transportation funding directly to our local governments and setting aside funding for projects of regional benefit along our highways and regionally significant corridors.

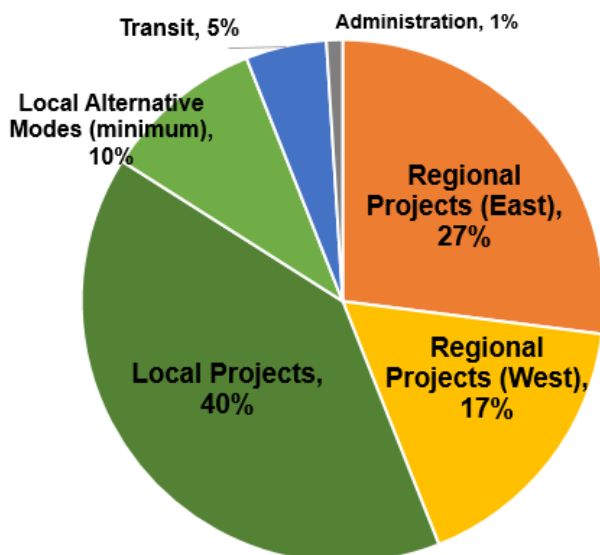
Who developed the Transportation Expenditure Plan?

The Plan is the product of a collaborative process involving a broad range of engaged stakeholders from throughout the county. The 24-member committee was comprised of representatives from the Cities of Atwater, Dos Palos, Gustine, Livingston, Los Banos, and Merced, the County of Merced, and a wide variety of community stakeholders representing diverse interests from across the county.

Where will the money go?

The proposed transportation sales tax is estimated to generate \$15 million annually, to be allocated to the following categories:

- **Regional Projects**
- **Local Projects and Alternative Modes**
- **Transit**
- **Administration**



Local Shares	Annual Amount	30 Year Total
Atwater	\$615,763	\$18 million
Dos Palos	\$244,816	\$7 million
Gustine	\$246,594	\$7 million
Livingston	\$368,040	\$11 million
Los Banos	\$767,143	\$23 million
Merced	\$1,554,461	\$47 million
County	\$3,703,183	\$111 million
Regional Shares	Annual Amount	30 Year Total
Regional Projects – Eastside	\$4,050,000	\$122 million
Regional Projects – Westside	\$2,550,000	\$77 million
Transit	\$750,000	\$23 million

Regional Projects: **44%** of the total annual revenue will be dedicated to regional projects located in or directly benefiting more than one jurisdiction in Merced County. With the San Joaquin River serving as the geographic boundary, 27% of these funds will be dedicated to projects on the eastside of the county, while 17% will fund projects on the westside. Examples of regional projects include but are not limited to: **improving highways and freeways, investing in passenger rail and supporting vanpools and other ridesharing programs.**

Local Projects & Alternative Modes: **50%** of the total annual revenue will be allocated directly to local jurisdictions based on their share of the County's population and maintained road miles. This funding will give local jurisdictions the flexibility to address local transportation needs including but not limited to: **repairing potholes and bridges, repaving streets, replacing traffic signals and improving sidewalks and bicycle facilities.**

As local jurisdictions invest these funds into their communities, at least 20% of the local funds received must be used for Alternative Modes projects. The goal of this requirement is to provide safe alternatives to automobile travel such as biking, walking and passenger rail. Examples of such projects include but are not limited to: **sidewalks, crosswalks, safe routes to schools, curb ramps, bicycle projects, railroad crossing safety improvements, ridesharing programs, and other air quality improvement projects.**

Transit: **5%** of the annual revenue will be dedicated to improving The Bus – our region's county-wide public transit system. These funds may be used to enhance and expand transit services and programs including bus shelters, fare reductions, and improved services for seniors, the disabled and veterans.

Administration: **1%** of the annual revenue will be allocated to Merced County Association of Governments for administrative responsibilities including administering a citizens' oversight committee, preparing annual reports and contracting for annual independent audits.



For more information:

Stacie Dabbs, Public Information Officer

(209)723-3153 or stacie.dabbs@mcagov.org

<http://www.mcagov.org/240/Transportation-Expenditure-Plan>

RESOLUTION NO. 2016-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
APPROVING THE TRANSPORTATION
EXPENDITURE PLAN FOR MERCED COUNTY
AND ENDORSING ITS APPROVAL AS A BALLOT
MEASURE IN NOVEMBER 2016**

WHEREAS, the City of Merced recognizes the dire condition the City's and the region's streets, roads, and highway system; and

WHEREAS, the Merced County Association of Governments has prepared a Transportation Expenditure Plan that proposes transportation programs and projects that will increase safety, alleviate congestion, and improve street and road pavement conditions; and

WHEREAS, the City of Merced finds that the Transportation Expenditure Plan will benefit its citizens, businesses, and agricultural industry.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

SECTION 1. The City Council of the City of Merced approves the Transportation Expenditure Plan for Merced County and endorses its approval by the citizens of the City of Merced and Merced County as a ballot measure in November 2016.

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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 Ryall 3/17/16
City Attorney Date



ADMINISTRATIVE REPORT

File #: 16-180

Meeting Date: 5/2/2016

Report Prepared by: Brad Grant - Finance Officer

SUBJECT: Revenue Sharing

REPORT IN BRIEF

The report describes the history of Revenue Sharing and latest proposals between the City and County.

RECOMMENDATION

City Council - Provide direction to City Manager on next steps to be taken.

ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by City Council; or,
3. Refer to staff for reconsideration of specific items; or,
4. Deny.

AUTHORITY

Charter of the City of Merced, Section 200. State of California Revenue and Taxation Code.

CITY COUNCIL PRIORITIES

Economic Development.

DISCUSSION

History of Revenue Sharing

The State of California Revenue and Taxation Code requires an agreement for the sharing of property taxes between cities and counties prior to the Local Agency Formation Commission (LAFCO) reviewing an application for annexation.

Prior to the passage of Proposition 13 such an agreement was not required because city tax rates were added to the existing county tax rate as part of an approved annexation.

Prior to Proposition 13, the property tax rate throughout California averaged less than 3% of market value. Additionally, there were no limits on increases for the tax rate or on assessed value changes. Some properties were reassessed 50% to 100% in just one year and their owners' property tax bills increased accordingly.

On June 6, 1978, nearly two-thirds of California's voters passed Proposition 13, reducing property tax rates on homes, businesses and farms by about 57%.

Under Proposition 13 property tax values were rolled back and frozen at the 1976 assessed value level. Increases on assessed values on any given property were limited to no more than 2% per year, as long as the property was not sold and the tax was limited to 1% of assessed value. Once sold, the property was taxed at 1% of the sale price, and the 2% yearly cap became applicable to future years. This allowed property owners to finally be able to estimate the amount of future property taxes and determine the maximum amount taxes could increase.

Subsequent to the passage of Proposition 13 and upon annexation of properties into cities, the reduced tax rate of 1% had to be shared. This sharing requirement produced the need for an agreement between cities and counties.

History of Revenue Sharing Between the City and County

In 1980 the City of Merced and County of Merced adopted tax sharing agreements detailing the split of the 1% of property taxes. The 1980 agreements were in place until the County withdrew them by letter, dated May 11, 1995. At that time the City was in the process of submitting an application for the proposed Bellevue Ranch.

In 1997 the City of Merced and County of Merced entered into a new tax sharing agreement which expired December 31, 2014.

Negotiations

Because of the housing explosion in the early 2000's and prior to the expiration of the agreement the City worked with the County to come up with a more equitable revenue sharing arrangement. As part of this process the City engaged the services of an outside consultant to prepare a fiscal analysis that could be used to support a fair and equitable revenue split. This analysis was presented to the County but was not acceptable to them, so no new agreement was reached.

Because no annexation can be completed until a revenue sharing agreement is in place, the City Council has made this a priority and negotiations have continued with the County since the agreement ended.

Current City and County Proposals

City Proposal	County Proposal
Ag Mitigation	Ag Mitigation
Upon annexation City would receive all taxes from base (1) and increment (2) values that would have gone to the County Fire Fund.	Upon annexation City would receive all taxes from base and increment values that would have gone to the County Fire Fund.
Upon annexation County and City split all taxes from base and increment that would have gone to the County General Fund, 60% to County and 40% to City. After deducting ERAF (3), County and City sharing is about 50% / 50%.	Upon annexation County would retain all taxes from base that would have gone to the County General Fund. Upon annexation County would receive 80% of the taxes and the City 20% of the taxes from increment that would have gone to the County General Fund. After deducting ERAF, County and City sharing is about 73% / 27%.

- (1) Base: Value at time of annexation upon which the "base" tax amount is determined.
- (2) Increment: Increase in value (development) after annexation upon which the "increment" tax amount is determined.
- (3) ERAF: Education Revenue Augmentation Fund - State takeaway for schools.

Since 2006 the County of Merced has insisted Agricultural Mitigation be part of the Revenue Sharing negotiations between the County and cities. Recent meetings and discussions by the County have now brought up the topic of the Local Agency Formation Commission (LAFCO) being considered as a means of discussion for agricultural mitigation. Further review by the City's legal department is needed on this topic.

The City receiving all of the County Fire Fund base and increment taxes is appropriate, because upon annexation the City would be responsible for providing fire services to the area.

The City receiving no County General Fund base property taxes and only receiving taxes from County General Fund increment is not appropriate because upon annexation the City would need to provide other services, in addition to fire. An area fully developed that is annexed would result in the County receiving all base property taxes and the City never receiving much from increment because there would be no opportunity for more development.

The net split of increment of about 73% to the County and 27% to the City is not equitable. The County feels it is fair, because when they combine the Fire and General Fund base and increment amounts, the split between County and City is about 50% / 50%.

The County General Fund and the County Fire Fund amounts should not be combined for share calculation purposes. Upon annexation there are two different revenue streams, one to provide fire

services and one for all other municipal services.

Options

Discuss options and provide direction to City Manager on next steps.

IMPACT ON CITY RESOURCES

Without a revenue sharing agreement in place no annexations can occur.

ATTACHMENTS

1. May 11, 1995 Cancellation Letter
2. 1997 Revenue Sharing Agreement / Resolution 1997-8

MERCED COUNTY

ADMINISTRATIVE DEPARTMENT

2222 "M" STREET • MERCED, CALIFORNIA 95340 • TELEPHONE (209)385-7637 • FAX (209) 385-7375



CLARK G. CHANNING
County Administrator

May 11, 1995

Jim Marshall, City Manager
City of Merced
P.O. Box 2068
Merced, CA 95344

Dear Mr. Marshall:

Merced County has received the Notice of Public Hearing for the proposed Bellevue Ranch project. It is our understanding that this project involves an amendment to the City General Plan, rezoning, and annexation of the subject lands to the City for the purpose of accomodating urban development. The County Planning Director has informed me that the City Planning Commission is recommending to the City Council that the entire territory be annexed by the City even though the project will not be built out for many years.

As you know, the City and County must achieve an agreement for the sharing of tax revenues before an annexation can be approved by the Local Agency Formation Commission. Given the size of the Bellevue Ranch project, the current fiscal condition of the County, and recent State actions affecting County revenues, the historical revenue sharing agreement applied to City annexations may no longer be appropriate.

Therefore, by this letter, the County is notifying the City of Merced that the County intends to initiate negotiations for a new revenue sharing agreement with the City concerning this project following City Council action initiating annexation proceedings. The purpose of these negotiations is not to inhibit or constrain the growth of the City, but to ensure that the revenues realized from development are equitably shared in light of the current levels of service provided by both the City and County to the inhabitants of the annexation area.

Jim Marshall, City Manager
May 11, 1995
Page 2

I look forward to further discussions with you and your staff on this matter.

Sincerely,


Clark Channing
County Administrator

CC/RES/ah

cc: Board of Supervisors
County Counsel
County Auditor

**PROPERTY TAX SHARING AGREEMENT
BETWEEN THE CITY OF MERCED AND COUNTY OF MERCED**

THIS AGREEMENT, is made and entered into this 4th day of February, 1997, by and between the County of Merced, a political subdivision of the State of California, (hereinafter referred to as "County"), and the City of Merced, a Municipal Corporation incorporated under the laws of the State of California, (hereinafter referred to as "City"), and pursuant to Revenue and Taxation Code of the State of California.

In consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

I. PROPERTY TAX SHARING:

County and City agree to adopt property tax sharing resolutions pertaining to areas annexed to the City in accordance with California Revenue and Taxation Code Section 96.1 (hereinafter all references are to the Revenue and Taxation Code unless otherwise stated) which document agreement for the County to retain the base property tax for the County General Fund and County Fire Fund. Pursuant to Section 96.5, the County General Fund will retain its incremental tax rate while the County Fire Fund rate will transfer its entire incremental tax rate to the City of Merced.

II. CRIMINAL JUSTICE STUDY

County and City staff will explore, in a collaborative manner, the feasibility of a criminal justice study, the process of funding a study, and the implementation of any recommendations from the study.

III. REDEVELOPMENT AGENCIES

City will cause the City Redevelopment Agency to pass through funds to the County from City Redevelopment Project Area #2 (hereinafter RDA #2) beginning in fiscal year 1996-1997. County agrees to use said funds for library services. Payment of fifty percent (50%) of the annual amount shall be due each January 15, forty percent (40%) shall be due each May 15, and ten percent (10%) shall be due each September 30.

The initial pass through amount for fiscal year 1996-97 will be \$100,000, the equivalent of a per capita rate of \$125.00 times the population growth of 800 people. Said sum will be adjusted for each subsequent fiscal year based on increased assessed value in RDA #2. Population growth will be calculated at a fixed rate on one and one-half percent annually, and applied to a 1996 base year population of 61,712, as established by the California Department of Finance. When the amount generated by sixty-two dollars and fifty cents (\$62.50) times the cumulative population growth surpasses the initial RDA pass through adjusted for growth in assessed value, City agrees that the RDA will increase the pass through amount equal the capitated rate. Exhibit 1 is intended to illustrate these provisions, based on an assumed seven percent (7%) annual increase in assessed value in RDA #2. The exhibit is included for demonstration only. Actual growth in assessed value will be used to implement this provision.

In order to accomplish the foregoing, County shall obtain approval from all taxing entities.

IV. ERAF—COUNTY BENEFIT FUND

For every new city RDA project area established on or after the effective date of this Agreement, the City RDA will establish a separate fund and deposit annually an amount equal to County's annual Educational Revenue Augmentation Fund (ERAF) increment defined as the net of the annual RDA project area tax increment pass through County property tax share less County's annual ERAF contributions based on the RDA project area tax increment. Said amount shall be established annually by County Auditor, and reported to the RDA by the first of June of each fiscal year. Interest on these funds shall accrue to the RDA.

Said funds will be utilized for the construction and augmentation of beneficial public projects within City's Sphere of Influence, as amended from time to time. Said projects will be defined by County's Board of Supervisors, as permitted by Redevelopment Law.

In the event any legislative change, property tax rulings or regulations reduce or eliminate the ERAF contribution in the RDA, County will receive its share of the RDA pass through as defined by state law.

V. CAPITAL FACILITY IMPACT FEES RELATED TO GROWTH

A. Both County and City have determined that there is a direct nexus and reasonable relationship between growth within the City and its impact on County public facilities, including, but not limited to, criminal justice jails, county-wide sheriff facilities, health and social service facilities, public works, libraries, hospital, public parks, and recreation, environmental resources and air quality within the entire county, and that there is a direct nexus and reasonable relationship between growth in the unincorporated area of the County that lies within City's sphere of influence and its impact on City's public facilities, including, but not limited to, traffic and circulation.

B. City agrees to adopt any County public facility fee (except for fire services) as requested by County and to collect said fee prior to the issuance of any City building permit and to forward the fee proceeds to County on a fiscal year quarterly basis. The County agrees to be responsible for expending and accounting for the fees pursuant to the requirements of California Government Code Section 66000 et seq. However, the City shall not be obligated to collect such fees with regard to applications for building permits received prior to the date of this agreement, or with regard to projects involving vesting maps, which maps had vested prior to the date of this agreement. The City and its officials, officers, agents, and employees shall be protected by County and shall incur no liability in acting or proceeding in good faith upon the passage of any such fee and the collection thereof.

C. County agrees to indemnify and hold harmless City and its officers, agents, and employees from any and all liabilities, claims, demands, actions, losses, damages or costs, including attorney's fees, caused by or arising out of, or in any way connected directly or indirectly, to any public facility fee applicable to County adopted or imposed by City at County's request. In the event any person, corporation, or entity disputes or refuses to pay the public facilities fees, County shall be solely responsible for compliance with the protest provisions, as set forth in Section 66000 et seq. of the Government Code as the same now exists or hereafter may be amended.

D. County agrees to adopt and collect on behalf of the City any public facility fee requested by City and to collect said fee prior to the issuance of any County building permit and to forward the fee proceeds to City on a fiscal year quarterly basis. The City agrees to be responsible for expending and accounting for the fees pursuant to the requirements of California Government Code Section 66000 et seq. However, the County shall not be obligated to collect such fees with regard to applications for building permits received prior to the date of this agreement or outside the City's

sphere of influence, or with regard to projects involving vesting maps, which maps had vested prior to the date of this agreement. The County and its officials, officers, agents, and employees shall be protected by City and shall incur no liability in acting or proceeding in good faith upon the passage of any such fee and the collection thereof.

E. City agrees to indemnify and hold harmless County and its officers, agents, and employees from any and all liabilities, claims, demands, actions, losses, damages or costs, including attorney's fees, caused by or arising out of, or in any way connected directly or indirectly, to any public facility fee adopted or imposed by County on behalf of City. In the event any person, corporation, or entity disputes or refuses to pay the public facilities fees, City shall be solely responsible for compliance with the protest provisions, as set forth in Section 66000 et seq. of the Government Code as the same now exists or hereafter may be amended.

F. It is agreed between the parties hereto that each collecting body will receive six percent (6%) of the public facility fee revenues collected as reimbursement for administrative costs of collection.

VI. COUNTY GENERAL PLAN POLICIES TO ACCOMMODATE CITY GROWTH

The County agrees to amend its General Plan and administer zoning and subdivision regulations to accommodate the growth of the City as outlined in the City's General Plan as follows:

A. Within the City's proposed Specific Urban Development Plan Area (SUDP) (SUDP, as illustrated in figure 2.4 of the City's 2015 Draft General Plan), the County agrees not to change the land use designation of territory from a rural classification (i.e., agriculture) to an urban designation (i.e., residential, commercial, or industrial). The County will maintain existing agricultural zoning within this non-urban designation. All discretionary approvals under the agricultural zone would be subject to a mutual determination that they would not conflict with the adopted City's General Plan. Any discretionary approval by the County within those areas currently zoned for urban development within this boundary would be subject to adopted City development standards including, but not limited to, curbs, gutters, sidewalks, street widths, and water and sewer services. During the review of discretionary projects within urban zoned areas, the County will provide an opportunity for the City to discuss the merits of annexation to the City with the affected property owner or representative.

B. Within those areas currently designated as Rural Residential Centers in the County General Plan, discretionary projects would be limited to residential development of one unit per acre or less. The County will not expand existing Rural Residential Centers into the City's proposed Sphere of Influence outside of the University Community SUDP.

C. Within the area designated in the County General Plan as the University Community SUDP (within the proposed City's Sphere of Influence), the County agrees to implement development consistent with the cooperative planning process described in the County's General Plan (attached). The County agrees to refer all discretionary projects to the City for comment to avoid conflicts with the City General Plan.

D. Within those areas outside the City's Proposed 2015 SUDP, outside established Rural Residential Centers, and outside the University Community SUDP but within the proposed City Sphere of Influence (as illustrated in Figure 2.4 of the City's 2015 Draft General Plan), both the County and City agree that they will not approve any changes in land use designation from a non-urban to an urban designation without the prior agreement of the other party.

VII. APPLICABLE LAW AND INTERPRETATION

A. Both parties agree that this Agreement and all documents issued or executed pursuant hereto and the rights and obligations of the parties thereunder and hereunder is subject to and governed by the laws of the State of California in all respects as to the interpretation, construction, operation, effect, and performance.

B. The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent breach. The making or the acceptance of a payment by either party with knowledge of the existence of a breach shall not operate or be construed to operate as a waiver of any subsequent breach.

C. In the event this Agreement is terminated for any reason, nothing in this Agreement or by the execution thereof shall be construed as a waiver of City's right to assert as a defense or affirmative allegation that the County lacks the authority to levy, impose or collect public facilities fees within the boundaries of an incorporated City without the consent of said City.

D. No remedy conferred herein upon or reserved to the parties hereto is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any failure to comply with any term or condition of this Agreement shall impair any such right or power or shall be construed to be a waiver thereto but any such right and power may be exercised from time to time and as often as may be deemed expedient.

E. The provisions of this Agreement shall constitute the entire agreement between the parties and may be modified only by written agreement duly executed by the parties hereto.

F. City and County further covenant to cooperate with one another in all respects necessary to insure the successful consummation of the actions contemplated by this Agreement, and each will take all actions within its authority to insure cooperation of its officials, officers, agents, and employees.

G. In the event County's or City's public facility fee(s) or their general plans or any elements thereof are, in whole or in part, determined to be invalid by any court, governmental agency, public board or body, County and City acknowledge and agree that any such invalidity shall have no force or effect upon any of the remaining terms or conditions of this Agreement.

H. Implementation of this Agreement shall commence upon the date of approval of this Agreement and shall continue until the end of 2014, provided that either party may terminate this Agreement at any time so long as six (6) months prior written notice before the end of any fiscal year (June 30) is given to the other party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first written above.

COUNTY OF MERCED

By [Signature]
Title CHAIRMAN

Date FEB 10 1997

CITY OF MERCED

By [Signature]
Title MAYOR

Date Feb. 10, 1997

APPROVED AS TO LEGALITY AND FORM:

CITY OF MERCED

By [Signature]
City Attorney

Date 2-19-97

COUNTY OF MERCED

By [Signature]
County Counsel

Date 2-4-97

970845 PO# 33425
FUNDS/ACCOUNTS VERIFIED
[Signature]
FINANCE OFFICE DATE
\$100,000.00
843-2001-572.17-00
funds available 2/18/97 paid

**EXHIBIT "1" TO PROPERTY TAX SHARING
AGREEMENT WITH THE CITY OF MERCED**

Fiscal Year	Population	1.50% Cumulative Population Growth	Growth At \$62.50 Per Capita Less Initial \$100,000	\$100,000 Initial Amount With 7% Annual Growth *	Higher of Growth In Per Capita Or Assessed Value
1997	61,712		0	100,000	100,000
1998	62,638	926	(42,125)	107,000	107,000
1999	63,577	1,865	16,563	- 114,490	114,490
2000	64,531	2,819	76,188	122,504	122,504
2001	65,499	3,787	136,688	131,080	136,688
2002	66,481	4,769	198,063	140,255	198,063
2003	67,479	5,767	260,438	150,073	260,438
2004	68,491	6,779	323,688	160,578	323,688
2005	69,518	7,806	387,875	171,819	387,875
2006	70,561	8,849	453,063	183,846	453,063
2007	71,619	9,907	519,188	196,715	519,188
2008	72,694	10,982	586,375	210,485	586,375
2009	73,784	12,072	654,500	225,219	654,500
2010	74,891	13,179	723,688	240,985	723,688
2011	76,014	14,302	793,875	257,853	793,875
2012	77,154	15,442	865,125	275,903	865,125
2013	78,312	16,600	937,500	295,216	937,500
2014	79,486	17,774	1,010,875	315,882	1,010,875
			7,901,563	3,399,903	8,294,935

* Assumptions regarding assessed value growth rate are for purposes of illustration only.

ATTACHMENT NO. 1
PLANNING COMMISSION STAFF REPORT
SEPTEMBER 11, 1996
GENERAL PLAN TEXT AMENDMENT NO. 95001

DELETE EXISTING SECTION B.5.b. OF THE GENERAL PLAN LAND USE CHAPTER

(Existing Section 5.b. will be deleted as shown and following portions under Section B.5 will be reformatted to their previous condition as contained in the Land Use Chapter prior to December 1991)

b. ~~The Proposed University of California Campus~~

~~The Merced County Board of Education, Trustee for the Virginia Smith Estate, has offered 2,000 acres to the University of California for the development of the tenth University of California Campus. The general location of this proposed site is shown on Map 1.~~

~~In order to properly plan for this potential campus and to ensure the development of compatible land uses in the vicinity, a UC Campus Study area is identified on the Land Use Policy Diagram. This study area is delineated to encompass the entire Virginia Smith Estate property and other properties in the vicinity. If this site continues to be considered for the UC Campus, the County will initiate a general plan amendment for this study area which will designate the overall categories and intensity of land use, identify necessary public facilities and basic infrastructure necessary to serve and compliment the University. It is anticipated that a program EIR will provide the environmental documentation for this process. If this site is chosen for the UC Campus, the County will initiate a specific planning process for all or a portion of the study area which follows the procedures and policies outlined in Goal 1 of this Land Use Chapter. It is intended that this specific plan will comply with the provisions of sections 65450 et. seq. of the Government Code. Subsequent environmental documentation will be necessary for the County to remove or change these general plan designations. Throughout this general and specific planning process, the boundaries of the study area may change, however, the general location will remain the same.~~

(Text under Section 5.c. will be moved to end of Section 5.a., and following section will be re-lettered 5.b., through 5.g.).

NEW SECTION B.6. OF THE LAND USE CHAPTER

6. Individual SUDP Policy Discussion

This section of the Land Use Chapter presents a description and discussion of individual SUDPs which have been established to satisfy regionally significant land use goals of the County. While these SUDPs generally enjoy the same entitlement level and policy direction as other SUDPs presented in Section B.2., they are unique as to existing or future land use characteristics and involve major institutional facilities such as a university or regional airport. These SUDPs require additional General Plan policy direction to ensure the implementation of these areas successfully satisfies County and region-wide goals.

a. University Community SUDP

The Regents of the University of California have selected a site near Lake Yosemite for the development of the tenth campus of the UC system. This site is located approximately two and one half miles northeast of the Lake, on property currently controlled by the Virginia Smith Trust through the Merced County Board of Education. The University has been offered 2,000 acres for a core campus and campus-related development (see Figure I-2). This site was selected following a six year search and evaluation process which began with over eighty sites located throughout the

Central Valley region of California. The final three sites were evaluated through a program environmental impact report prepared for and certified by the Regents. As of mid-1996, no firm development schedule for the tenth campus has been set by the University.

During the site selection process undertaken by the University of California, the Board of Supervisors expressed strong support for the siting of the tenth campus near Lake Yosemite. In 1990, the Board of Supervisors adopted a guidance package which expressed the County's commitment to a cooperative planning process with the University involving the City of Merced, landowners, and the County. The goal of this process is to insure that land uses developed in the vicinity of the campus are complementary to and not in conflict with the mission of the University.

Following adoption of the UC Guidance Package, the Board of Supervisors established a UC Campus Study Area Boundary in the General Plan recognizing the importance of coordinating the review of development projects and land use studies in the vicinity of the UC site then under consideration (see the Land Use Policy Diagram).

Adjacent to the Virginia Smith Trust property, is property controlled by the Cyril Smith Trust. This Trust is administered by Wells Fargo Bank. Representatives of the Cyril Smith Trust have also stated to the Regents their commitment to participate in a cooperative land use planning process.

The lands north and east of the Lake Yosemite Regional Park were historically designated "Foothill Pasture" which were not considered for urban land use designation or zoning. However, given the decision of the Regents and prior commitments made by the Board of Supervisors, the territory within the Cyril and Virginia Smith Trusts will be considered for future urban land uses. This area is designated the University Community SUDP on the Land Use Policy Diagram, recognizing the need for specific urban land use planning and designations in the future.

Recognizing the pressure of speculative development and zoning resulting from the Regents decision, urban land use designations within the University Community SUDP should be adopted following a comprehensive cooperative joint planning process involving the University, the City of Merced, landowners and effected urban service providers. Urban land use designations proposed independent of a coordinated planning process should be discouraged and may only be considered when determined not to conflict with the development of the University campus. Similarly, lands around the University Community SUDP should remain designated for rural land uses for the foreseeable future. The UC Campus Study Area will serve as a boundary for review of discretionary projects for compatibility or possible conflict with the future planning and development of the SUDP area.

The prospective transportation corridors serving the University Community SUDP have been identified as Bellevue Road to the southwest and La Paloma Road to the northwest. The specific prospective corridor linking the site to State Route 99 to the south has not been identified. However, alternatives that should be considered are Lake Road, Kibby Road (extended) and Arboleda Road (extended) which are shown on the Countywide Circulation Diagram presented in the Circulation Chapter (II) of this General Plan. Future capacities of all transportation corridors which will potentially serve the University should be protected.

6. 7. Land Use Policy Diagram

(Text in this Section will remain unchanged).

NEW GOAL AND POLICY LANGUAGE IN SECTION "C"

NEW GOAL 11:

Accommodate the tenth University of California Campus and orderly development of adjacent land uses through a comprehensive planning process.

Objective 11.A.:

Land use designations supporting the University are identified for the Campus site and adjacent lands in a coordinated and organized manner involving land owners, the City of Merced, University of California, and the Merced Irrigation District.

Policies:

1. The boundaries of the Virginia Smith Trust and Cyril Smith Trust properties shall be identified as "University Community SUDP". Lands within this boundary shall be designated "University Community Urban Reserve" until designated for specific urban uses.
2. The "UC Campus Study Area" boundary on the Land Use Policy Diagram is designated to serve as a broader area of analysis and evaluation during the interim University Community planning process.

Implementation:

The County will prepare a specific plan or area plan for the University Community SUDP which will provide land use and development policies for the area and contain specific land use and zoning designations. A planning team will be formed for this effort involving representatives from Merced County, the University of California, City of Merced, landowners and Merced Irrigation District.

Objective 11.B.:

Speculative development projects, re-zonings and General Plan Amendments determined to be detrimental to a coordinated development process for the University Community are discouraged.

Policies:

3. Zoning within the University Community SUDP shall remain agricultural until planned for urban use through adoption of a General Plan Amendment.
4. General Plan Amendments, re-zonings and development projects within the UC Campus Study Area and along possible access routes, shall be denied if determined to be detrimental to the coordinated orderly development of the University Community SUDP.

Implementation:

Within the UC Campus Study Area boundary which includes the University Community SUDP, the Planning Director shall review all applications for discretionary approvals. If the Planning Director determines that approval of the application could adversely affect the coordinated planning process

of the University Community SUDP, the Planning Director shall refer the application to the Planning Commission. If the Commission concurs that the proposal could adversely affect a coordinated planning effort, it shall recommend to the Board of Supervisors that the application be denied or referred to staff with direction to either not process the application, or to work with the applicant to attempt to modify the application to address specific issues.

Objective 11.C.:

Access routes serving the University and adjacent land uses are appropriately classified to ensure adequate capacity.

Policies:

5. Identification of all major access routes serving the University Community SUDP shall be included in all SUDP planning efforts, and appropriate amendments to the Circulation Chapter will classify these routes according to their proper function.
6. Development projects along possible access routes shall be located and designated in a manner which preserves the future capacity and aesthetics of the route to adequately serve the University Community SUDP.

Implementation:

All applications for discretionary and non-discretionary projects located along possible access routes to the University Community SUDP will be reviewed for proposed building setbacks from existing and possible future rights-of-way. Consideration will be given to regional transportation planning efforts through MCAG, City of Merced Circulation Element amendments and other studies conducted by public agencies. Where a conflict is identified, all buildings should be set back further from the right of way, or application processing should be suspended until completion of the University Community transportation studies.

AMENDMENTS TO EXISTING GENERAL PLAN POLICY (GOAL 1 UNDER SECTION "C")
(New text is underlined. All other text under Goal 1 will remain unchanged).

Objective 1.B.:

New full service SUDPs are created which provide an alternative to urban development on productive agricultural lands or to accommodate regionally significant institutional and publicly sponsored land uses.

Policies:

3. New SUDPs shall only be established through adoption of a Community Specific Plan for the territory involved except where the County initiates an SUDP for regionally significant land uses which satisfy specific goals of this Land Use Chapter.
4. Consider establishment of a new SUDP only where the location and size of the community promotes agricultural land conservation, urban service efficiencies and is determined to be compatible with existing urban areas.

General Plan Text Amendment Application No. 95001

Page 5

5. The establishment of a new SUDP must provide positive overall economic benefits to the County and include consideration of providing both employment and housing opportunities - including affordable housing for existing County residents.

RESOLUTION NO. 97- 8

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED
APPROVING PROPERTY TAX SHARING AGREEMENT

WHEREAS, Section 99 of the Revenue and Taxation Code added by AB8 (Chapter 232) enacted in 1979 provides that in the case of a jurisdictional change (annexation) the governmental bodies of all agencies whose service responsibilities are altered by the change shall determine the amount of property tax revenues to be exchanged between them; and

WHEREAS, representatives of the County of Merced and City of Merced have met and discussed the change of property tax; and

WHEREAS, annexation causes certain revenues to automatically shift from the County to the City, such as sales tax, motor vehicle in-lieu tax, trailer coach in-lieu tax, transient occupancy tax, real property transfer tax, vehicle code fines, gasoline tax, and other fees and licenses; and

WHEREAS, it is the desire of the County and City to establish a uniform method of exchanging property taxes that will apply to all annexations to the City of Merced commencing the effective date of this agreement, and continuing until changed by a new agreement, or until the County or City terminates the agreement in accordance with its terms;

NOW, THEREFORE, the City Council of the City of Merced resolves as follows:

SECTION 1. The City Council hereby approves the agreement attached hereto as Exhibit A.

SECTION 2. This resolution shall take effect upon execution of the agreement by the City and the County.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 2¹⁰ day of February, 1997, by the following called vote:

AYES: Council Members: SULLIVAN, WALSH, KNUDSEN, AMEY, MOORE, BERNASCONI

NOES: Council Members: NONE

ABSTAIN: Council Members: NONE

ABSENT: Council Members: THURSTON

ATTEST:

JAMES G. MARSHALL, CITY CLERK

BY: Carol Bregman
Deputy City Clerk

APPROVED:

Richard Bernasconi
Mayor

(SEAL)

taxshare.res





ADMINISTRATIVE REPORT

File #: 16-183

Meeting Date: 5/2/2016

Report Prepared by: John Tresidder, Assistant City Clerk, City Clerk's Office

SUBJECT: Citizens' Oversight Committee - Measure C Appointment

REPORT IN BRIEF

Accept recommendation to fill Citizens' Oversight Committee - Measure "C" vacancy.

RECOMMENDATION

City Council - Adopt a motion accepting recommendation from the Citizens' Oversight - Measure "C" Committee and re-appointing one individual to the Southern District to serve as a member of the Committee.

ALTERNATIVES

1. Approve, as recommended by Citizens' Oversight Committee; or,
2. Approve, subject to other than recommended by Citizens' Oversight Committee; or,
3. Deny; or,
4. Direct the Clerk's Office to continue recruitment for the vacancies.

AUTHORITY

Charter of the City of Merced, Section 3.38.050.

DISCUSSION

The purpose of the Citizens' Oversight - Measure "C" Committee is to review projected revenues created by the voter approved Measure "C", a one-half cent Sales Tax. The Committee recommends proposed expenditures to City Council. The Committee consists of three voting members from each of the three existing Policing Districts of the City, for a total of nine voting members, who serve four-year terms of office. There are also ex-officio members representing the various recognized municipal employee bargaining units. Meetings are held on the second Tuesday two months after the end of each quarter at 6:00 p.m. As outlined in Section 3.38.050 of the Charter, any vacancy for a voting member on the Citizens' Oversight Committee shall be filled by having the Citizens' Oversight Committee make nominations to the City Council for consideration as a whole.

The term of Isabel Sanchez expired on January 1st of 2016. At the last Measure C meeting, the Committee expressed its desire for her to consider another term. Ms. Sanchez stated she would like to serve a second term on the Committee and completed a new application for re-appointment. No other applications have been received for the Southern District seat.

Attached is the application of Isabel Sanchez and a copy of the current roster.

ATTACHMENTS

1. Application of Isabel Sanchez
2. Current Roster

City of Merced - Boards & Commissions

Profile

Isabel Sánchez
First Name Middle Initial Last Name

Retired bi-lingual aide
Employer Job Title

Email Address

Alternate Phone

77 yrs.
Number of Years Living in Merced:

Merced
City Suite or Apt State Postal Code CA. 95341

Highest Level of Education Completed: *

- ☐ Less than High School
☒ High School Graduate
☒ Some College, No Degree
☐ Associate's Degree
☐ Bachelor's Degree
☐ Master's Degree
☐ Professional Degree
☐ Doctoral Degree

Are you currently serving on a Board or Commission?
If so, please list:

Which Boards would you like to apply for? Measure C Committee Member.

Communication

The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?

☐ Yes ☒ No

By phone or mail.

If you selected no, please identify how you would like to be contacted:

Interests & Experiences

Tell us about yourself, and why you are applying for this particular Board or Commission:

I am a native of Merced for 77 years and retired from Merced City School District for 23 years as a bi-lingual aide. I have a family of eight grown up children. Belong to the Altar Society at Sacred Heart Church. I belong to a group called Neighbors United For A Better South Merced. I'm attending now the Police Academy for eleven weeks. I'm replying to continue to serve our community to the best of my capability in representing our community as a Measure C Committee Member.

What is your understanding of the roles and responsibilities of this Board or Commission?

My understanding and responsibilities roles of Measure C Committee Member is to review projected revenues created by the voters approved Measure C a one-half cent Sales Tax for general purposes.

Do you have experience or special knowledge pertaining to the areas of interest?

Yes, I belonged to a group in the pass in working on how to work together in getting what we needed badly. We worked with Cal-tran in installing the signal lights and the much needed pedestrian cross walk on Martin Luther King Way and Childs Ave.

Any other comments you would like to add that may assist the City Council in their decision?

It doesn't matter how old or young you are. When you get involve with the community and get to meet other people you can learn a lot of knowledge from them and find avenues to succeed in helping the community. Now that my family is grown up and doing for themselves, I have the time to commit to my community and get involve.

Upload a Resume

Requirements

AB 1234 Ethics Training

☒ I Agree *

Attendance Policy

☒ I Agree *

Statement of Economic Interests - FPPC Form 700

☒ I Agree *

Oath of Office

☒ I Agree *

Public Scrutiny

☒ I Agree *

How did you hear about this vacancy? *

☐ Newspaper

As a Measure C Committee Member my term was up and I agree to reapply.

☐ City Website

☐ A Friend

☒ Other

At a Measure C committee meeting which I service, I would like to continue as a member.

If you selected other, please indicate how you learned about the vacancy:

Demographics

Mexican American

Ethnicity

Female

Gender

09-27-38

Date of Birth

Submission

Isabel Sanchez

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.



City of Merced, CA

CITIZENS OVERSIGHT COMMITTEE - MEASURE C

BOARD ROSTER



DANIEL KAZAKOS

1 Term Apr 06, 2015 - Jan 01, 2019

Office Southern District
Position Member
Appointed by City Council



JEROME RASBERRY

1 Term Apr 21, 2014 - Jan 01, 2018

Office Southern District
Position Chair
Appointed by City Council



CHARLES REYBURN

1 Term Sep 02, 2014 - Jan 01, 2018

Office Central District
Position Member
Appointed by City Council



ISABEL SANCHEZ

1 Term Apr 02, 2012 - Jan 01, 2016

Office Southern District
Position Member
Appointed by City Council



FRANCISCO VARELA

1 Term Sep 02, 2014 - Jan 01, 2018

Office Central District
Position Member
Appointed by City Council



JACQUELINE WALTHER-PARNELL

1 Term Apr 21, 2014 - Jan 01, 2018

Office Northern District
Position Vice-Chair
Appointed by City Council



RICHARD H. WENDLING

1 Term Apr 18, 2016 - Jul 01, 2018

Office Northern District
Position Member
Appointed by City Council



VACANCY



VACANCY



ADMINISTRATIVE REPORT

File #: 16-182

Meeting Date: 5/2/2016

SUBJECT: Council Policy C-6

REPORT IN BRIEF

Council Policy C-6 is in response to City Council direction to staff to provide a yearly reviews of Charter Officers.

RECOMMENDATION

City Council - adopt a motion adding Council Policy C-6 to the City Council Administrative Policies and Procedures.

ALTERNATIVES

1. Approve Council Policy C-6 as written; or,
2. Approve Council Policy C-6 with amendments (specified in motion); or,
3. Continue to a future meeting; or,
4. Deny.

AUTHORITY

City of Merced Charter, Section 200.

DISCUSSION

At the City Council Meeting of March 7, 2016, Council discussed the different review processes for the different Charter Officers. Staff was directed to create a Council Policy regarding annual reviews of the Charter Officers. Attached is the policy for Council discussion and approval.

IMPACT ON CITY RESOURCES

N/A

ATTACHMENTS

1. Council Policy C-6

ADMINISTRATIVE POLICIES AND PROCEDURES

SUBJECT: PERFORMANCE EVALUATION OF CITY MANAGER, CITY ATTORNEY
AND FINANCE DIRECTOR

EFFECTIVE: May 3, 2016

PURPOSE:

To establish a protocol for the City Council's evaluation of the City's three Charter Officers: the City Manager, City Attorney and Finance Officer ("Charter Officers").

POLICY:

To provide the highest levels of service to the citizens of Merced, it is the policy of the City Council to ensure that the City's Charter Officers be given annual performance evaluations to receive feedback on their performance, and to have objectives set for the upcoming year.

APPLICABILITY:

This Policy is applicable to the City's Charter Officers, including those serving in the role of an Acting or Interim Charter Officer.

PROCEDURES:

1. City Manager and City Attorney

Beginning one year after the City Manager and City Attorney's respective dates of hire, and thereafter on an annual basis, the City Council will meet with each individually in closed session to conduct a formal performance evaluation. The City Manager and City Attorney will coordinate and ensure the timely placement of their performance evaluations on the City Council's closed session agenda. It is the desire of the City Council that a constructive evaluation of these employees occur at a City Council meeting when the entire City Council is present to afford each Councilmember the opportunity to participate in the evaluations. However, the performance evaluations should not be unduly delayed due to an extended absence of one or more Councilmembers.

The performance evaluation criteria shall be in a format and manner chosen in the discretion of the City Council. The performance criteria shall include the Council's stated standards and expectations which are formulated by a consensus of the Council. The City Council may provide the City Manager and City Attorney with written feedback or a summary of their performance reviews to ensure that he or she is aware of his or her job performance, strengths and weaknesses and any issues that are in need of improvement. The City Council may also provide guidance on future efforts.

2. Finance Officer

Beginning one year after the Finance Director's date of hire, and thereafter on an annual basis at a time approximate to the employee's anniversary date (in that position), the Finance Officer will have a formal performance review. Pursuant to the City Charter, the City's Finance Officer is hired, and may be removed by a majority vote of the City Council, yet he or she works at the direction of the City Manager. It is the stated policy of the City Council that the task of conducting the Finance Officer's annual performance evaluation be delegated to the City Manager. Thereafter, before becoming final, City Council reserves the right to discuss and provide input on the Finance Officer's performance evaluation in closed session, at a City Council meeting when the entire City Council is present to afford each Councilmember the opportunity to provide input. An extended absence of one or more Councilmembers should not unduly delay the finalization of the performance review. The City Manager shall coordinate the timely placement of the performance review on the City Council's closed session agenda.

The performance evaluation criteria shall be in a format and manner acceptable to the City Council, and shall include stated standards and expectations. The City Manager and City Council may provide the Finance Officer with written feedback or a summary of his or her performance review to ensure that he or she is aware of his or her job performance, strengths and weaknesses and any issues that are in need of improvement. Guidance on future efforts may also be provided.

3. Right to Review

Nothing in this policy shall prevent the City Council (or the City Manager in relation to the Finance Officer) from scheduling an informal or formal

performance review of a Charter Officer at any time during the year, in accordance with the City Charter, Personnel Rules and Regulations and/or any applicable employment agreements.

APPROVED:

Steve Carrigan
City Manager