



# 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, March 6, 2017

7:00 PM

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

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

#### NOTICE TO PUBLIC

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

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

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

Members of the audience who wish to address the City Council are requested to complete a speaker card available at the podium against the right-hand side of the Council Chamber. 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 Chamber.

#### A. CLOSED SESSION ROLL CALL

#### B. CLOSED SESSION

##### B.1. [17-108](#)

**SUBJECT:** CONFERENCE WITH REAL PROPERTY NEGOTIATORS  
- Property: 3033 G Street, Merced, CA APN 007-350-009 and City of  
Merced Property 301 E Yosemite Ave, Merced, CA APN  
231-040-021; Agency Negotiator: Frank Quintero, Director, Economic  
Development; Negotiating Parties: Kevin Crawford representing  
McClatchey Newspapers Inc. and City of Merced and; Under  
Negotiation: Price and Terms of Payment.

##### B.2. [17-109](#)

**SUBJECT:** CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED

LITIGATION: Significant Exposure to Litigation Pursuant to  
Paragraph (2) of Subdivision (d) of Section 54956.9: 1 Case

B.3. [17-061](#)

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

**C. CALL TO ORDER**

C.1. Invocation - Monika Grasley, Lifeline Community Development Corporation

C.2. Pledge of Allegiance to the Flag

**D. ROLL CALL**

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

**E. REPORT OUT OF CLOSED SESSION**

**F. SPECIAL PRESENTATIONS**

F.1. Update on Water Meters

**G. CEREMONIAL MATTERS**

G.1. [17-095](#)

SUBJECT: Proclamation - Multiple Sclerosis Awareness Week

**REPORT IN BRIEF**

Received by Yvette R. Brisco, 2017 Walk MS Ambassador.

G.2. [17-111](#)

SUBJECT: Proclamation in Honor of Bishop Dwight Amey

**REPORT IN BRIEF**

Received by Bishop Dwight Amey's Family.

**H. WRITTEN PETITIONS AND COMMUNICATIONS**

**I. ORAL COMMUNICATIONS**

Members of the public who wish to speak on any matter not listed on the agenda may speak during this portion of the meeting and will be allotted 5 minutes. The Mayor may, at his discretion, reduce the time to 3 minutes if there are more than 3 speakers, in order to accommodate as many speakers as possible. State law prohibits the City Council from acting at this meeting on any matter raised during the public comment period. Members of the public who wish to speak on a matter that is listed on the agenda will be called upon to speak during discussion of that item.

## J. CONSENT CALENDAR

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

**J.1.**     [17-091](#)                    **SUBJECT:** Reading by Title of All Ordinances and Resolutions

**REPORT IN BRIEF**

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

**RECOMMENDATION**

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

**J.2.**     [17-098](#)                    **SUBJECT:** Information-Only Contracts

**REPORT IN BRIEF**

Notification of awarded Non-Public Works contracts under \$29,000 and of Public Works contracts under \$65,204.

**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 FY 2016-2017 threshold of \$65,204.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2016-2017 threshold of \$29,000.00, the contracts listed on the attached table were entered into by the City.

**J.3.**     [17-110](#)                    **SUBJECT:** Information Only- Recreation and Parks Commission Minutes from January 23, 2017

**REPORT IN BRIEF**

For information only

**J.4. [17-106](#)**

**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of February 6, 2017 and February 8, 2017.

**REPORT IN BRIEF**

Official adoption of previously held meeting minutes.

**RECOMMENDATION**

**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of February 6, 2017 and February 8, 2017.

**J.5. [17-083](#)**

**SUBJECT:** Acceptance of Fiscal Year 2016 State Homeland Security Grant Program (SHSGP) Funds for the Purchase of Confined Space Rescue Equipment

**REPORT IN BRIEF**

Consider accepting additional Fiscal Year 2016 SHSGP funds for the purchase of Confined Space Rescue Equipment, and appropriate supplemental funds to complete the purchase.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving **Resolution 2017-11**, a Resolution of the City Council of the City of Merced, California, authorizing the City Manager or Assistant City Manager to Execute the California Governor's Office of Emergency Services Fiscal Year 2016 Grant Assurances Agreement; and,

B. Accepting Fiscal Year 2016 SHSGP grant funds in the amount of \$6,540.00 as revenue in the Intergovernmental - State Government Grants - Other State Grants account 001-0901-324.02-00; and,

C. Appropriating \$6,540.00 to the Machinery/Equipment account 001-0901-522.26-00 to purchase Confined Space Rescue equipment; and,

D. Authorizing the use of pooled cash to cover the appropriation until grant funds are reimbursed.

**J.6. [17-094](#)**

**SUBJECT:** Consideration of Ordinance Amending Chapter 01.08 of the Merced Municipal Code Regarding Custody and Use of the City's Seal

**REPORT IN BRIEF**

Consider adoption of City Ordinance that confirms that the City Clerk is the Custodian of the City Seal and prohibits the use by any person of the seal of the City of Merced, or any imitations or derivations thereof.

**RECOMMENDATION**

**City Council** - Adopt a motion introducing **Ordinance 2473**, an Ordinance of the City Council of the City of Merced, California, Amending Chapter 1.08, "City Seal," of the Merced Municipal Code Regarding the Use of the City Seal.

J.7. [17-107](#)

**SUBJECT:** Support Transportation Funding Legislation

**REPORT IN BRIEF**

Seeking Council support of transportation funding legislation that is in the State Assembly and Senate.

**RECOMMENDATION**

**City Council**- Adopt a motion supporting new Transportation Funding legislation in the state and directing staff to produce letters of support and other materials to reflect the City's position.

J.8. [17-084](#)

**SUBJECT:** Consider Increasing the Construction Contingency Percentage for the Waste Water Treatment Plant Headworks Corrosion Control Project 116018

**REPORT IN BRIEF**

Authorizes approval to increase the construction contingency from 10% to 15% of the original construction contract award amount, for a total of up to \$13,557.85 of additional work.

**RECOMMENDATION**

**City Council** - Adopt a motion increasing the contingency up to 15% for the Waste Water Treatment Plant (WWTP) Headworks Corrosion Control Project 116018; and, authorizing the City Manager or Assistant City Manager to sign the necessary documents.

J.9. [17-076](#)

**SUBJECT:** Second Reading - Ordinance No. 2469 "Regulated Communications in City Procurement Process" Adding Chapter 3.06 to the Merced Municipal Code

**REPORT IN BRIEF**

Second reading of previously introduced Ordinance.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2469**, an Ordinance of the City Council for the City of Merced, California adding Chapter 3.06, regulated communications in City procurement process to the Merced Municipal Code.

**K. BUSINESS**

K.1. [17-097](#)      **SUBJECT:** Selection of Date for Planning Commission Interviews

**REPORT IN BRIEF**

Available dates for a Special Meeting to conduct Planning Commission interviews are March 13, 14, 15, 16, 23, 28, 29, and 30.

**RECOMMENDATION**

**City Council** - Adopt a motion selecting a date for holding Planning Commission Interviews and confirming a 6 PM start time.

K.2. Request to Add Item to Future Agenda

K.3. City Council Comments

**L. ADJOURNMENT**



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.1.**

Meeting Date: 3/6/2017

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**SUBJECT:** CONFERENCE WITH REAL PROPERTY NEGOTIATORS - Property: 3033 G Street, Merced, CA APN 007-350-009 and City of Merced Property 301 E Yosemite Ave, Merced, CA APN 231-040-021; Agency Negotiator: Frank Quintero, Director, Economic Development; Negotiating Parties: Kevin Crawford representing McClatchey Newspapers Inc. and City of Merced and; Under Negotiation: Price and Terms of Payment.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.2.**

Meeting Date: 3/6/2017

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**SUBJECT:** CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of Section 54956.9: 1 Case





# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.3.**

Meeting Date: 3/6/2017

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



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item G.1.**

Meeting Date: 3/6/2017

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**SUBJECT:** Proclamation - Multiple Sclerosis Awareness Week

### REPORT IN BRIEF

Received by Yvette R. Brisco, 2017 Walk MS Ambassador.

### ATTACHMENTS

1. Multiple Sclerosis Awareness Week Proclamation



# Proclamation

WHEREAS, Multiple Sclerosis (MS) is an unpredictable, often disabling disease of the central nervous system that disrupts the flow of information between an individual's body and brain; and

WHEREAS, MS affects an estimated 2.5 million worldwide, 400,000 in the United States and over 40,000 in California; and

WHEREAS, often first diagnosed in individuals aged 20-50, MS is the most common neurological disease leading to disability in young adults; and

WHEREAS, the National Multiple Sclerosis Society addresses the challenges of each person affected by MS by funding cutting-edge research, driving change through advocacy, facilitating education, and providing programs and services designed to help people with MS and their families move forward with their lives; and

WHEREAS, discovering the cause, finding a cure, and preventing future generations from being diagnosed with MS is an important task that all Americans, Californians, and Mercedians should support; and

WHEREAS, the City of Merced, State of California recognizes the importance of finding the cause and cure of MS, a chronic and often devastating disease, and expresses its appreciation and admiration for the dedication that the National Multiple Sclerosis Society – Central Valley has shown toward a future free of MS;

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, do hereby proclaim March 5-11, 2017, as Multiple Sclerosis Awareness Week, and urge all citizens of Merced to take cognizance of this event and participate fittingly in its observance.

Signed this 6<sup>th</sup> day of March 2017.

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*Mike Murphy, Mayor of Merced*



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item G.2.**

Meeting Date: 3/6/2017

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**SUBJECT:** Proclamation in Honor of Bishop Dwight Amey

### REPORT IN BRIEF

Received by Bishop Dwight Amey's Family.

### ATTACHMENTS

1. Proclamation



# *Proclamation*

WHEREAS, Dwight Amey, a City Council Member, Civil Rights Leader, Pastor and mentor did share his gifts and talents with the Merced community; and

WHEREAS, Dwight Amey was born July 7, 1945 in Madera, California, served in the United States Army from 1968 to 1972, married Gwendolyn Wright on December 4, 1965; and

WHEREAS, Dwight Amey did Pastor New Faith Tabernacle from 1975 - 2017, where he poured into the lives of parishioners for over 40 years; and

WHEREAS, Among Mr. Amey's accomplishments were his strides in promoting equality, justice and unity, such as encouraging the renaming of J Street to Martin Luther King Jr. Way and helping to create the annual Martin Luther King Jr. March to honor the great civil rights pioneer; serving on the Merced City Council; instructing and mentoring young men through the Merced County Office of Education; and

WHEREAS, Dwight Amey was a member of a number of city commissions, nonprofit organizations, including Lions and Kiwanis Clubs, Merced Arts Council, Merced City Planning and Recreation Commissions and Citizens Advisory Committee, past President of NAACP and Friends of Merced Parks and Community Services, Chairman of the MLK Celebration Committee; and

WHEREAS, The City of Merced did honor him by naming a park at Blix Avenue and Albert Drive the Dwight Amey Neighborhood Park.

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, do hereby recognize DWIGHT AMEY for his civil rights leadership, his service in the United States Army and his investments in the community that have educated and improved the quality of life of the citizens of Merced.

Signed this 6<sup>th</sup> day of March 2017.

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*Mike Murphy, Mayor of Merced*



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item J.1.**

Meeting Date: 3/6/2017

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**SUBJECT:** Reading by Title of All Ordinances and Resolutions

### REPORT IN BRIEF

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

### RECOMMENDATION

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



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item J.2.**

Meeting Date: 3/6/2017

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

**SUBJECT:** Information-Only Contracts

### REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$29,000 and of Public Works contracts under \$65,204.

### 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 FY 2016-2017 threshold of \$65,204.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2016-2017 threshold of \$29,000.00, the contracts listed on the attached table were entered into by the City.

### ATTACHMENTS

1. "Information-Only" Contracts Table for February 2017

### **Exhibit 1 – Table of Contracts**

3/6/2017 City Council Meeting

<b>Department/Division</b>	<b>Vendor</b>	<b>Purpose/Location</b>	<b>Amount</b>
0403 – Information Technology	Alcatel-Lucent USA, Inc.	Collaboration Agreement governing the City of Merced's membership and participation in the ng Connect Program and the ng Connect Focus Service (free service).	(No funds.)
0803 – Engineering	Taylor Backhoe Service, Inc.	Potholing services in support of Well No. 21 (Project No. 113026).	\$ 2,974.80
0803 – Engineering	Taylor Backhoe Service, Inc.	Potholing to locate utility line in the roadway and dirt areas of "B" Street, Cone Avenue, and Gerard Avenue (for an estimated nine potholes; Project No. 116013).	\$ 4,762.20
1108 – Wastewater Treatment Facility (WWTF)	R. B. Beatty Painting	Repainting inside of hypochlorite and ferric chloride building, glycerin pump room, and containment areas.	\$19,900.00

*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

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**Agenda Item J.3.**

Meeting Date: 3/6/2017

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**SUBJECT:** Information Only- Recreation and Parks Commission Minutes from January 23, 2017

### REPORT IN BRIEF

For information only

### ATTACHMENTS

1. Recreation & Parks Commission minutes from January 23, 2017

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

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

**MONDAY  
JANUARY 23, 2017**

**A.     CALL TO ORDER**

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

**B.     PLEDGE OF ALLEGIANCE**

**C.     ROLL CALL**

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

*M/S/C- Jenkins/Chavez motioned to excuse Commissioner Nelson*

**D.     CEREMONIAL MATTERS**

**E.     ORAL COMMUNICATIONS**

**F.     CONSENT ITEMS**

**1. MINUTES OF NOVEMBER 28, 2017**

*M/S/C- Chavez/Jenkins motioned to approve and file the minutes.*

**G.     BUSINESS**

**1. VOLUNTEER RECOGNITION (COMMISSIONERS)**

*M/S/C- Jenkins/Washington motioned to approve recognizing volunteers 3 times per year (March, November & July) at Commission meetings and contacting the media so they can come to meeting to take pictures for paper.*

**2. BUDGET SUBCOMMITTEE (COMMISSIONERS)**

*M/S/C- Washington/Jenkins motioned to move the park sign project forward and designate Commissioner Chavez as the spokesperson.*

### **3. RECREATION PROGRAMMING**

**(COMMISSIONERS)**

*No action taken*

## **H. REPORTS**

***M/S/C- Washington/Chavez motioned to move item H-1 before item F***

### **1. PARK SIGN UPDATE**

**(CHAVEZ)**

*M/S/C-Washington/Jenkins motioned to move park sign project forward*

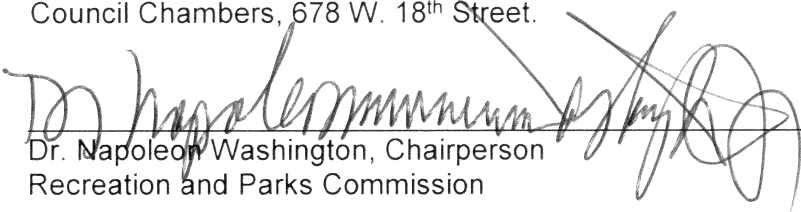
### **2. STAFF REPORTS**

**(CONWAY, CHAVEZ, JOHNSON)**

*No action required-information only*

## **I. ADJOURNMENT**

The Recreation and Parks Commission meeting was adjourned at 6:13 p.m. and will meet again on Monday, March 27, 2017 for their regularly scheduled meeting in the Council Chambers, 678 W. 18<sup>th</sup> Street.

  
Dr. Napoleon Washington, Chairperson  
Recreation and Parks Commission



## ADMINISTRATIVE REPORT

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**Agenda Item J.4.**

Meeting Date: 3/6/2017

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**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of February 6, 2017 and February 8, 2017.

### REPORT IN BRIEF

Official adoption of previously held meeting minutes.

### RECOMMENDATION

**City Council/Public Financing and Economic Development/Parking Authority** - Adopt a motion approving the meeting minutes of February 6, 2017 and February 8, 2017.

### ALTERNATIVES

1. Approve as recommended; or,
2. Approve, subject to amendments.

### ATTACHMENTS

1. Minutes of February 6, 2017
2. Minutes of February 8, 2017



# CITY OF MERCED

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

## Minutes

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

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Monday, February 6, 2017

7:00 PM

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#### A. CLOSED SESSION ROLL CALL

**Clerk's Note:** Council Member MCLEOD arrived at 5:57 PM.

**Present:** 7 - Mayor Mike Murphy, Mayor Pro Tempore Kevin Blake, Council Member Joshua Pedrozo, Council Member Michael Belluomini, Council Member Anthony Martinez, Council Member Jill McLeod, and Council Member Matthew Serratto

**Absent:** 0

#### B. CLOSED SESSION

Mayor MURPHY called the Closed Session to Order at 5:46 PM.

**B.1.** **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL-ANTICIPATED LITIGATION: Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of Section 54956.9: 1 Case

**B.2.** **SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: City Manager; Authority: Government Code Section 54957

**B.3.** **SUBJECT:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION - Title: Finance Officer; Authority: Government Code Section 54957

**Clerk's Note:** Council adjourned from Closed Session at 6:59 PM.

#### C. CALL TO ORDER

Mayor MURPHY called the Regular Meeting to order at 7:02 PM.

C.1. Invocation - Lamar Henderson, Human Services Agency (All Dad's Matter)

The invocation was delivered by Lamar HENDERSON from the Human Services Agency (All Dad's Matter).

C.2. Pledge of Allegiance to the Flag

#### D. ROLL CALL

**Present:** 7 - Mayor Mike Murphy, Mayor Pro Tempore Kevin Blake, Council Member Joshua Pedrozo, Council Member Michael Belluomini, Council Member Anthony Martinez, Council Member Jill McLeod, and Council Member Matthew Serratto

**Absent:** 0

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

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

There was no report.

## **F. CEREMONIAL MATTERS**

**F.1.** **SUBJECT: Proclamation - Teen Dating Violence Awareness and Prevention Month**

### **REPORT IN BRIEF**

Received by Director Chee Yang and Volunteer Coordinator Sophie Kanabay of the Valley Crisis Center.

Council Member SERRATTO presented the Teen Dating Violence Awareness and Prevention Month Proclamation to Director Chee YANG and Volunteer Coordinator Sophie KANABAY of the Valley Crisis Center.

## **G. SPECIAL PRESENTATIONS**

**G.1.** Update on False Alarm Ordinance - Marvin Dillsaver

Marvin DILLSAVER gave an update on the False Alarm Ordinance.

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

The Clerk's Office did not receive any written petitions and communications.

## **I. ORAL COMMUNICATIONS**

Ron COOK, Merced Garden Club, Merced - spoke about the rose garden at Applegate Park.

Reverend RAMSEY, Atwater - spoke on the Valentine's Day Dance event.

## **J. CONSENT CALENDAR**

Items J.6. Community Facilities District (CFD) Annual Reports, J.8. Supplemental Budget Appropriation - Northwood Village Maintenance District, J.9. Award Bid to Viking Construction Company, Inc., for the M and G Street Bridges at Bear Creek Project 108026, J.12. Vacation #16-01 - Setting a Public Hearing for February 21, 2017, to Vacate a 2.18-Acre Storm Drain Basin and a 0.95-Acre Storm Drain Easement, J.13. Amendment to Professional Services Agreements with Interwest Consulting Group, CSG Consultants Inc., and 4-LEaf Inc. for Building Services, J.15. Support Assembly Bill No. 1 and Senate Bill No. 2, and J.17. Second Reading - Ordinance No. 2469 "Regulated Communications in City Procurement Process" Adding Chapter 3.06 to the Merced Municipal Code were pulled for further consideration.

### Approval of the Consent Agenda

**A motion was made by Council Member Pedrozo, seconded by Mayor Pro Tempore Blake, to approve the Consent Agenda. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0

**J.1.**

**SUBJECT:** Reading by Title of All Ordinances and Resolutions

#### REPORT IN BRIEF

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

#### RECOMMENDATION

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

**This Consent Item was approved.**

**J.2.**

**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of December 19, 2016 and January 3, 2017.

#### REPORT IN BRIEF

Official adoption of previously held meeting minutes.

**RECOMMENDATION**

**City Council/Public Financing and Economic**

**Development/Parking Authority** - Adopt a motion approving the meeting minutes of December 19, 2016 and January 3, 2017.

This Consent Item was approved.

**J.3.**

**SUBJECT:** Information-Only Contracts

**REPORT IN BRIEF**

Notification of awarded Non-Public Works contracts under \$29,000 and of Public Works contracts under \$65,204.

**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 FY 2016-2017 threshold of \$65,204.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2016-2017 threshold of \$29,000.00, the contracts listed on the attached table were entered into by the City.

This Consent Item was approved.

**J.4.**

**SUBJECT:** Information Only - Recreation and Parks Commission Minutes from November 28, 2016

**REPORT IN BRIEF**

For Information Only

This Consent Item was approved.

**J.5.**

**SUBJECT:** Information Only - Planning Commission meeting Minutes of November 9, 2016

**RECOMMENDATION**

For information only.

This Consent Item was approved.

**J.7.**

**SUBJECT:** Joint Funding Agreement with Merced Irrigation District for Local Share for Additional Work on Groundwater-Surface Water Interaction Model for the Merced Groundwater Basin



**REPORT IN BRIEF**

Consideration of an agreement with Merced Irrigation District (MID) for an amendment to the contract for the Merced Water Resources Model in the amount of \$173,773.50; a jointly funded agreement with Merced Irrigation District, which will be partially reimbursed from cost shares of other groundwater users collaborating on the future Groundwater Sustainable Plan.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the expenditure of \$173,773.50 for the Merced Water Resources Model, authorizing the City Manager to execute the necessary documents, and the Finance Officer to make the necessary budget adjustments.

**This Consent Item was approved.**

**J.10.**

**SUBJECT:** Professional Services Agreement with Quincy Engineering, Inc., for Engineering Construction Services for the M and G Street Bridges at Bear Creek Project 108026

**REPORT IN BRIEF**

Consider approving an agreement in the amount of \$180,887.06 for specialized bridge engineering construction services for the M and G Street Bridges over Bear Creek Project.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the Professional Services Agreement with Quincy Engineering, Inc., in the amount of \$180,887.06; and, authorizing the City Manager to execute the necessary documents.

**This Consent Item was approved.**

**J.11.**

**SUBJECT:** Administering Agency Program Supplement and Amendment Modification Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant for Sidewalk Infill on Oleander Avenue, CML-5085(043), Project 114050

**REPORT IN BRIEF**

Consider a resolution approving a California Department of Transportation Program Supplement for the use of \$53,853 in CMAQ Grant funding for construction costs associated with sidewalk infill on Oleander Avenue, bounded by Alexander Avenue and Olive Avenue.

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**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2017-06**, a Resolution of the City Council of the City of Merced, California, Approving Federal-Aid Projects Program Supplement Agreement No. 024-N1; and
- B. Accepting and appropriating \$53,853 in grant funds from CMAQ for construction costs associated with sidewalk infill on Oleander Avenue; and,
- C. Transferring matching funds of \$6,977 from Street and Signal CIP Fund 450-1104-637.65-00-Projects to be Determined to 450-1104-637.65-00-114050; and,
- D. Approving the use of pooled cash until reimbursement is received from the grant; and,
- E. Authorizing the City Manager or his designee to execute the necessary documents.

**This Consent Item was approved.**

**J.14.**

**SUBJECT:** Reimbursement Agreement with California High Speed Rail Authority for Technical Review

**REPORT IN BRIEF**

Proposed Reimbursement Agreement with the California High Speed Rail Authority to reimburse the City for staff costs associated with reviewing plans necessary to construct the Merced segment and Downtown Station. Amount of the Agreement shall not exceed \$55,000.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2017-09**, a Resolution of the City Council of the City of Merced, California, approving a reimbursement agreement with the California High Speed Rail Authority for reimbursement of costs related to the review of technical studies, legal documents, and design plans for the high speed rail project; and,
- B. Authorizing the City of Merced to enter into a Reimbursement Agreement with the California High Speed Rail Authority for Technical

Review not to exceed \$55,000; and,

C. Authorizing the City Manager to execute the necessary documents;  
and,

D. Authorizing the Finance Officer to make the necessary budget  
adjustments.

**This Consent Item was approved.**

**J.16.**

**SUBJECT:** Second Reading - Ordinance No. 2472 Dealing with  
Limited Time Parking Lots, On-Street Disabled Persons Parking, No  
Parking Zones, and Four-Way Stop Intersections

**REPORT IN BRIEF**

Second reading of previously introduced Ordinance.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2472**, an Ordinance of the City Council of the City of Merced, California, Amending Sections 10.28.215 "Limited Time Parking Lots-Two Hours", 10.28.230 "No Parking Zones", 10.28.275 "Disabled Persons-On-Street Parking", 10.28.380 "Stop Intersections Designated" of the Merced Municipal Code.

**This Consent Item was approved.**

**J.6.**

**SUBJECT:** Community Facilities District (CFD) Annual Reports

**REPORT IN BRIEF**

Specific sections of the California Government Code require annual reporting for special tax measures and local bond measures. Each year, City staff prepares the Community Facilities District Annual Reports, which summarizes the financial activity of the CFD and certifies that use of funds is consistent with the purpose of the CFD. These reports are required to be filed with the Agency's governing board annually.

**RECOMMENDATION**

**City Council** - Adopt a motion accepting and filing the reports with the City Clerk.

Council Member BELLUOMINI pulled this item to ask for clarification on the surplus funds and the ability to spend them within the CFD.

Director Brad GRANT explained that if the money was above and beyond the reserve fund, the money could be spent within the district.

**A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0

**J.8.**

**SUBJECT:** Supplemental Budget Appropriation - Northwood Village Maintenance District

**REPORT IN BRIEF**

Consider authorizing a supplemental budget appropriation to cover installation of landscape irrigation system and the re-seeding of the associated park strip lawn.

**RECOMMENDATION**

**City Council** - Adopt a motion approving a supplemental budget appropriation from the unappropriated reserves of the Northwood Village Maintenance District, in the amount of \$2,000, to cover installation of landscape irrigation system and the re-seeding of park strip lawn.

Council Member SERRATTO pulled this item to ask if there are any plans for drought-friendly alternatives.

Director of Public Works Ken ELWIN stated that the City's long term goal is to look into more drought tolerant landscaping.

**A motion was made by Council Member Serratto, seconded by Council Member Belluomini, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0

**J.9.**

**SUBJECT:** Award Bid to Viking Construction Company, Inc., for the M and G Street Bridges at Bear Creek Project 108026

**REPORT IN BRIEF**

Consider awarding a construction contract in the amount of \$2,716,573.00 for the repair of the M and G Street bridges over Bear Creek.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Awarding the bid for the M and G Street Bridges at Bear Creek Project 108026, to Viking Construction Company, Inc., in the amount of \$2,716,573.00; and,

B. Authorizing the City Manager to execute the necessary documents and to approve change orders not to exceed 15% of the total contract.

Mayor MURPHY pulled this item to discuss authorizing change orders exceeding 10 percent.

Interim City Engineer Theron ROSCHEN explained the issues that arise when having to do a change order on a project and the time constraints that follow when having to bring the change order to the Council for approval.

Council Member MARTINEZ asked what was the likelihood of exceeding the 10 percent of the total contract.

Mr. ROSCHEN explained that it would be difficult to tell because of the uniqueness of the project. He also offered to communicate information about the development of the project.

Council Member SERRATTO asked about safeguards protecting taxpayers money.

Mr. ROSCHEN discussed hiring an engineering inspection firm and the staff's job to ensure the project being performed is reasonable.

Mayor Pro Tempore BLAKE stated his support for the 15 percent in change orders.

Council Member PEDROZO stated his support for the 15 percent in change orders.

Mayor MURPHY offered a compromise to have a discussion before the change order reaches 10 percent of the original contract.

Interim City Attorney Jolie HOUSTON stated that the Council can first vote on awarding the contract to Viking Construction, then vote on the percentage limit of change orders.

A motion was made by Mayor Murphy, seconded by Council Member Pedrozo, to award the bid to Viking Construction Company. The motion carried by the following vote:

Aye: 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Belluomini, Council Member Martinez, Council Member McLeod, Council Member Pedrozo, Council Member Serratto

No: 0

Absent: 0

A motion was made by Mayor MURPHY to cap the change orders at 10 percent, but failed due to lack of a second.

Council Member SERRATTO stated his support for the 15 percent in change orders.

**A motion was made by Council Member Pedrozo, seconded by Mayor Pro Tempore Blake, to approve staff's recommendation of change orders not exceeding 15 percent. The motion carried by the following vote:**

**Aye:** 6 - Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 1 - Mayor Murphy

**Absent:** 0

**J.12.**

**SUBJECT:** Vacation #16-01 - Setting a Public Hearing for February 21, 2017, to Vacate a 2.18-Acre Storm Drain Basin and a 0.95-Acre Storm Drain Easement

**REPORT IN BRIEF**

Sets a public hearing for February 21, 2017, to vacate a 2.18-acre storm drain basin and a 0.95-acre storm drain easement, generally located east of G Street and approximately 390 feet north of Yosemite Avenue.

**RECOMMENDATION**

**City Council - Adopt a motion adopting Resolution 2017-05 a**

Resolution of the City Council of the City of Merced, California, declaring its intention to vacate a 2.18-acre storm drain basin and a 0.95-acre storm drain easement generally located east of G Street and approximately 390 feet north of Yosemite Avenue (Vacation #16-01) setting time and place for public hearing.

Council Member BELLUOMINI pulled this item to ask about landscaping the drainage basin in the Mansionette Maintenance District.

Associate Planner Julie NELSON stated that there will be landscaping installed around the basin, but will be deferred until the development at Yosemite and G occurs.

Director of Public Works Ken ELWIN explained that the landscaping can not be installed until there is more development in the area.

**A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0

**J.13.**

**SUBJECT:** Amendments to Professional Services Agreements with Interwest Consulting Group, CSG Consultants Inc., and 4-Leaf Inc. for Building Services

#### **REPORT IN BRIEF**

The City Council will consider approving amendments to Professional Services Agreements with three consultants for planning and building services.

#### **RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the 2nd Amendment to the Agreement for Professional Services with Interwest Consulting Group, Inc., to provide as needed building services in an amount not to exceed an additional \$80,000; and,

B. Approving the 1st Amendment to the Agreement for Professional Services with CSG Consultants, Inc., to provide as needed building

services in the amount not to exceed an additional \$25,000; and,

C. Approving the 1st Amendment to the Agreement for Professional Services with 4-Leaf, Inc., to provide as needed building services in the amount not to exceed an additional \$5,000; and,

D. Authorizing the Finance Officer to make the necessary budget adjustments; and,

E. Authorizing the City Manager to execute the above agreements.

Council Member BELLUOMINI pulled this item to ask about hiring permanent employees to increase capacity in the Inspection Services Division vs. contract employees.

City Manager Steve CARRIGAN stated that if the number of building permits continue to rise, then a full-time employment opportunity will be presented to the Council.

**Clerk's Note:** Council Member PEDROZO was not at the dais at the time of the vote.

**A motion was made by Council Member Belluomini, seconded by Mayor Pro Tempore Blake, that this agenda item be approved. The motion carried by the following vote:**

**Aye:** 6 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 1 - Council Member Pedrozo

**J.15.**

**SUBJECT:** Support Assembly Bill No. 1 and Senate Bill No. 1

**REPORT IN BRIEF**

Seeking Council support of AB 1 (Frazier) and SB 1 (Beall) that would provide a new transportation funding plan for the state.

**RECOMMENDATION**

**City Council-** Adopt a motion supporting AB 1 and SB 1 and directing staff to produce letters of support and other materials to reflect the City's position.

**Clerk's Note:** This item was pulled to be moved to a future agenda.

**J.17.**

**SUBJECT:** Second Reading - Ordinance No. 2469 "Regulated



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Communications in City Procurement Process” Adding Chapter  
3.06 to the Merced Municipal Code

**REPORT IN BRIEF**

Second reading of previously introduced Ordinance.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2469**, an Ordinance of the City Council for the City of Merced, California adding Chapter 3.06, regulated communications in City procurement process to the Merced Municipal Code.

Council Member SERRATTO pulled this item to ask for input from people and to move this item to a later Council meeting.

Greg HOSTETLER, Merced - spoke against the proposed Ordinance.

Doug FLUETSCH, Merced - spoke against the proposed Ordinance.

Robert DYLINE, Merced - spoke against the proposed Ordinance.

Stan THURSTON, Merced - spoke in favor of the proposed Ordinance.

Council Member MARTINEZ asked whether Council doing their own research proposals would be undercutting City Staff.

Mayor MURPHY explained that the research the Council would do is to form an opinion and also discussed the safeguards that are in place.

Council Member PEDROZO stated his opposition for the proposed Ordinance.

Council Members and Interim City Attorney discussed clarifying the limitations with the communication between Council Members and proposers, agents acting on behalf of the proposer, and citizens.

City Manager Steve CARRIGAN discussed the Ordinance and stated that only two cities in California have adopted this Ordinance.

Council Members further discussed the communication section of the proposed Ordinance.

**A motion was made by Council Member Belluomini, seconded by Council Member Serratto, that this agenda item be continued to the March 6th meeting. The motion carried by the following vote:**

**Aye:** 4 - Mayor Pro Tempore Blake, Council Member Belluomini, Council Member McLeod, and Council Member Serratto

**No:** 3 - Mayor Murphy, Council Member Pedrozo, and Council Member Martinez

**Absent:** 0

**Clerk's Note:** Council took a break at 8:52 PM and returned to the Regular Meeting at 9:04 PM.

## K. PUBLIC HEARINGS

**K.1.** **SUBJECT:** Public Hearing Assessment Ballot Proceeding - Oakmont #3, Campus North, and Mansionette Maintenance Districts

### REPORT IN BRIEF

Consider conducting a public hearing to hear public testimony regarding proposed assessment increases, and continue hearing to allow staff sufficient time to tally the ballots, and report the results at the February 21, 2017 Council meeting.

### RECOMMENDATION

**City Council** - Adopt a motion:

A. Conducting a Public Hearing for the Oakmont #3, Campus North, and Mansionette Maintenance Districts to allow for public testimony on proposed assessment increases; and,

B. Continuing Public Hearing until Tuesday, February 21, 2017, to allow staff sufficient time to tally the ballots and report the results at the February 21, 2017, City Council Meeting.

Director of Public Works Ken ELWIN gave a presentation on the assessment ballot proceeding.

Interim City Attorney Jolie HOUSTON explained that the public can submit their ballots until the close of the Public Hearing tonight, the Assessment District Public Hearing will be closed and then the matter continued to the February 21st meeting.

Council Member PEDROZO asked about the prevailing wage issue.

Ms. HOUSTON confirmed that the maintenance district would be subjected

to prevailing wage.

Mayor Pro Tempore BLAKE discussed a fairness issue pertaining to the Mansionette District.

Mayor MURPHY opened the Public Hearing at 9:31 PM.

Larry SMITH, Merced - asked questions in regards to the Mansionette District.

Richard EASON, Merced - spoke against the proposed fee increase for the Campus North Maintenance District.

Mayor MURPHY closed the Public Hearing at 9:44 PM.

Council Member BELLUOMINI discussed looking at this process as a learning experience.

**A motion was made by Council Member Pedrozo, seconded by Mayor Pro Tempore Blake, that this matter be continued to the February 21, 2017 meeting. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0

## L. REPORTS

### L.1.

**SUBJECT:** Locating Merced's Next Industrial Park

#### REPORT IN BRIEF

At the January 3, 2017 Council meeting, Staff was directed to bring back a report on Industrial Land Use.

#### RECOMMENDATION

For Information Only.

Director of Economic Development Frank QUINTERO gave a presentation on industrial park.

President and CEO of Chabin Concepts, Audrey TAYLOR gave a slide show presentation on Future Regional Industrial Park Development.

Council Member MARTINEZ asked about the strengths and weakness in Sectors 6 and 7 described in the presentation.

Ms. TAYLOR explained the 13 factors they used to compare the two sectors.

Council Member BELLUOMINI asked what advantage was to be gained by partnering with the County. He also asked about the water weakness in Sector 6 and City boundary constraints on future annexation.

Mr. QUINTERO explained the advantages of partnering with the County is in the planning stages and speeds up the annexation portion of the project as well as leverages funding for the project.

Ms. TAYLOR explained the weakness in Sector 6 for water service. She also explained the potential to extend Sector 7, while Sector 6 is a pocket of the land that can't be expanded.

Council Member BELLUOMINI asked about freeway access on Sectors 6 and 7.

Ms. TAYLOR explained that both Sector 6 and 7 have freeway access.

Council Member MARTINEZ discussed the residents position on where the industrial park should go.

John ANDREWS, Merced - spoke on the Merced Interchange as the location of the potential industrial park.

Ronda BOHNER, Merced - spoke on Sector 6 as the location of the potential industrial park.

Larry SMITH, Merced - spoke on the Mission Interchange and Highway 99 as the location of the potential industrial park.

Pamela ANDREWS, Merced - spoke on Sector 6 as the location of the potential industrial park.

## M. BUSINESS

### M.1.

**SUBJECT:** Council Member Belluomini's Request to Discuss City Entry Signs

### REPORT IN BRIEF

This item is in response to Council Member Belluomini's request to discuss entry signs into the City.

**RECOMMENDATION**

It is requested Council give staff direction on this item.

Council Member BELLUOMINI gave a presentation on City entry signs. He suggested general locations and sizes for the signs.

Council Member PEDROZO suggested a discussion with Council before reaching out to the public.

Council Member MARTINEZ stated his support for the entry signs without the service clubs' logos on the sign.

Mayor Pro Tempore BLAKE stated his support for the entry signs and suggested a possible arch sign on 16th Street similar to Modesto's Downtown sign.

Larry SMITH, Merced - spoke on having signs with service clubs' logos as well as a Welcome to Merced arch.

Rich MILLER, Merced - spoke on having a more subtle way to display the service clubs and suggested that the sign should say something compelling of this town.

Mayor MURPHY stated his support for the entry signs.

Council Member SERRATTO stated his support for the entry signs but also his concern for cost and priorities. He also suggested a possible mural for Highway 99.

**A motion was made by Mayor Murphy, seconded by Council Member Belluomini, to form an Ad-Hoc Committee to include Council Members Belluomini, Blake, and Martinez. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0

M.2. Request to Add Item to Future Agenda

Council Member MARTINEZ requested to add an item to discuss awarding scholarships to Merced High School Districts Seniors for the March 6th

meeting.

Council Member BELLUOMINI requested to add an item to discuss the creation of railroad quiet zones for the March 20th meeting.

Council Member PEDROZO requested an update on the water meters for the February 21st meeting.

Council Member SERRATTO requested to add an item to discuss infill incentive zones.

Mayor MURPHY discussed a priority meeting for the items that are being added.

### M.3. City Council Comments

Council Member BELLUOMINI stated he received a letter from John RUSSELCURRY regarding access to the arcade at the Multicultural Arts building.

Council Member PEDROZO reported on attending the Joe Herb Park cleanup with the Youth Council. He also discussed the rail crossing closures and congratulated Merced High School's Academic Decathlon Team for winning the competition for the 9th year in a row.

Council Member MARTINEZ congratulated the City Staff, the Mayor, and everyone involved in the State of the City Address. He reported on attending the Youth Council park cleanup and he also discussed the Wizard of Oz play performed by the Weaver School District.

Council Member MCLEOD stated she received numerous positive remarks from young people about the State of the City Address and mentioned the dates for the Youth Council park cleanup.

Mayor Pro Tempore BLAKE discussed the upcoming Town Hall meeting.

Council Member SERRATTO congratulated everyone involved in the State of the City Address, reported on attending the Youth Council park cleanup, and the Merced Walks cleanup.

Mayor MURPHY reported on attending the ribbon cutting for Pizza Factory and Bobcat Diner, the Martin Luther King Jr. Parade, NAACP dinner, touring the 20/20 project at UC Merced, and the US Conference of Mayors in Washington DC. He thanked everyone involved with the State of the City Address.

City Manager Steve CARRIGAN announced the Homeless Summit on February 17th.

## **N. ADJOURNMENT**

**Clerk's Note:** The Regular Meeting adjourned at 11:07 PM.

**A motion was made by Mayor Pro Tempore Blake, seconded by Council Member Pedrozo, that the Regular Meeting be adjourned in honor of Retired Officer Ray Sterling. The motion carried by the following vote:**

**Aye:** 7 - Mayor Murphy, Mayor Pro Tempore Blake, Council Member Pedrozo, Council Member Belluomini, Council Member Martinez, Council Member McLeod, and Council Member Serratto

**No:** 0

**Absent:** 0



# CITY OF MERCED

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

## Minutes

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

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Wednesday, February 8, 2017

6:00 PM

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#### A. CALL TO ORDER

Mayor MURPHY called the Town Hall Meeting to order at 6:04 PM.

**Clerk's Note:** The Town Hall Meeting was held at Rivera Middle School, 945 Buena Vista Drive, Merced, CA 95348.

A.1. Pledge of Allegiance to the Flag

#### B. ROLL CALL

**Clerk's Note:** Council Member MCLEOD arrived to the Town Hall Meeting at 7:11 PM.

**Present:** 7 - Mayor Mike Murphy, Mayor Pro Tempore Kevin Blake, Council Member Joshua Pedrozo, Council Member Michael Belluomini, Council Member Anthony Martinez, Council Member Jill McLeod, and Council Member Matthew Serratto

**Absent:** 0

#### C. OPENING COMMENTS

C.1. Stephanie Dietz - Assistant City Manager

Assistant City Manager Stephanie DIETZ thanked the Citizens for coming.

C.2. Mike Murphy - Mayor

Mayor MURPHY discussed the opportunity for the public to speak more during the Town Hall Meetings and had the Council Members introduce themselves.

#### D. PUBLIC COMMENT

Janis PHENIS, Merced - spoke on increasing traffic officers, more activities for students, and more higher-level jobs. She also commended City Staff, stating they are responsive and respectful.

Mayor MURPHY discussed the traffic committee and spoke on the need for



more police.

Levonne PHILLIPS, Merced - spoke on the speeding traffic in her neighborhood, blighted houses, garbage trucks leaving garbage cans in the middle of the street, the homeless rummaging through their trash cans, and the City maintaining trees.

Council Member BELLUOMINI agreed that speeding is becoming more of an issue in the Northwood Neighborhood, after the speed bumps were added in the Rambler Neighborhood.

Assistant City Manager Stephanie DIETZ explained the pilot program to focus on the blighted houses that are the worst offenders.

Director of Public Works Ken ELWIN discussed the small crew that maintain the trees and parks.

Mayor MURPHY discussed the Merced Connect App that is available to citizens to report issues in the City.

Margaret SALAS, Merced - spoke on the traffic by Rivera Middle School and the need for a traffic officer to control the school traffic.

Victoria CASTILLO, Merced - spoke against the VIPER Program, the need for more youth opportunities, and building trust between the community and the Police Department.

Mayor MURPHY and Police Chief Norman ANDRADE explained the VIPER Program.

Ruby RAY, Merced - stated her displeasure with Yard Masters.

Mr. ELWIN discussed relying on citizens to contact Public Works if they see something not being done by Yard Masters.

Leanne ROSMOND, Merced - spoke on the lack of fun activities sponsored by the City, the trash in the City, people not picking up after their pets, the garbage not being separated when being picked up, and noisy trains driving through the City at three in the morning.

Council Member SERRATTO discussed different volunteer activities and social events in the City.

Mayor MURPHY spoke on the mountain bike park that will be installed at

Fahrens Park.

Recreation and Parks Supervisor Lindsey JOHNSON discussed the volunteer website the City has for citizens to sign up.

Monika GRASLEY, Life Line, Merced - spoke on the Life Line Program and the work they do.

Chanel WEAVER, Merced - spoke on youth opportunities, making information for events and activities more attainable to the public, and more cohesiveness with community groups.

Jeremy MARTINEZ, United Way, Merced - spoke on a website to look for events and volunteering opportunities. He asked about the Martin Luther King area plan.

Ron COOK, Merced - spoke on the Rose Garden.

Ms. DIETZ asked to schedule a meeting with Mr. COOK and Mr. ELWIN to address the Rose Garden issues.

Chi MOORE, Merced - spoke on safety in the City and pet owners not picking up after their animals.

Shirley FARR, Merced - spoke on the Fahrens Park neighborhood sign that is falling down and replacing the playground equipment at Fahrens Park. She also asked for a variety of activities for the youth.

Gloria SANDOVAL, Merced - asked for an update on the water meters. She also spoke about her concerns in regards to flooding, bees in Applegate Park, and the Homeless Memorial.

Mayor MURPHY discussed eliminating veterans homelessness as well as homelessness overall.

Gary CANDAL, Merced - spoke on trash being dumped in Black Rascal Creek, Yard Masters not trimming trees and picking up trash, garbage not being picked up separately, traffic at Rivera Middle School, and the main office at Rivera overwatering their lawn and flooding the streets.

Robert TORRES, Merced - spoke on the Eucalyptus trees on M Street, suggested cutouts for buses to stop at when picking up passengers, and the need for bus stop shelters. He also spoke on Measure V and wanting that money to go to first responders.

Council Members thanked the public for coming to the Town Hall Meeting and offered to speak to anyone after the meeting.

#### **E. ADJOURNMENT**

**Clerk's Note:** The Town Hall Meeting was adjourned at 8:01 PM.



## ADMINISTRATIVE REPORT

Agenda Item J.5.

Meeting Date: 3/6/2017

**Report Prepared by:** Billy Alcorn, Deputy Chief, Merced Fire Department

**SUBJECT:** Acceptance of Fiscal Year 2016 State Homeland Security Grant Program (SHSGP) Funds for the Purchase of Confined Space Rescue Equipment

### REPORT IN BRIEF

Consider accepting additional Fiscal Year 2016 SHSGP funds for the purchase of Confined Space Rescue Equipment, and appropriate supplemental funds to complete the purchase.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving **Resolution 2017-11**, a Resolution of the City Council of the City of Merced, California, authorizing the City Manager or Assistant City Manager to Execute the California Governor's Office of Emergency Services Fiscal Year 2016 Grant Assurances Agreement; and,
- B. Accepting Fiscal Year 2016 SHSGP grant funds in the amount of \$6,540.00 as revenue in the Intergovernmental - State Government Grants - Other State Grants account 001-0901-324.02-00; and,
- C. Appropriating \$6,540.00 to the Machinery/Equipment account 001-0901-522.26-00 to purchase Confined Space Rescue equipment; and,
- D. Authorizing the use of pooled cash to cover the appropriation until grant funds are reimbursed.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to other than recommended by staff; or,
3. Deny; or
4. Refer to staff for reconsideration of specific items; or,
5. Continue to a future meeting.

### AUTHORITY

Charter of the City of Merced, Section 200

### CITY COUNCIL PRIORITIES

Public safety, as provided for in the Fiscal Year 16/17 Adopted Budget.

**DISCUSSION**

The Merced County Office of Emergency Services (OES) has awarded the City of Merced \$6,540.00 from the Fiscal Year 2016 State Homeland Security Grant Program (SHSGP) for the purchase of Confined Space Rescue and Technical Rescue equipment. The purchase of this equipment will improve the response capabilities for the City of Merced Fire Department and increase firefighter safety when operating during these types of emergencies. The items being purchased include: a pass alarm alert system, an AC non-contact voltage detector, a multi-beam headlamps, a personal radio frequency identification monitors, rescue carabineers, and an equipment storage bag.

The Merced Fire Department has specialized rescue teams consisting of confined space rescue, trench rescue, high/low angle rope rescue, and water rescue. Each member of the Merced Fire Department has been trained to the state certified Rescue Systems I level.

The State of California Emergency Management Agency requires adoption of a resolution by the City Council of the City of Merced, California, authorizing execution of the FY 2016 Grant Assurances Agreement to establish concurrence on the requirements of this grant.

**IMPACT ON CITY RESOURCES**

There is no cost to the City, as grant funds fully cover this purchase and no match is required. However, pooled cash will be utilized to cover the appropriation until grant funds are reimbursed.

**ATTACHMENTS**

1. Resolution 2017-11
2. FY 2016 SHSGP Grant Assurances

**RESOLUTION NO. 2017-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AUTHORIZING THE CITY MANAGER OR  
ASSISTANT CITY MANAGER TO EXECUTE  
THE CALIFORNIA GOVERNOR'S OFFICE  
OF EMERGENCY SERVICES FY2016 GRANT  
ASSURANCES AGREEMENT**

WHEREAS, the City of Merced Fire Department has been awarded \$6,540 of the FY2016 State Homeland Security Grant Program funds sub-granted through the California Governor's Office of Emergency Services Agency (Cal OES); and

WHEREAS, the Cal OES requires adoption of a resolution authorizing execution of the FY2016 Grant Assurances Agreement to establish concurrence on the requirements of the grant.

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 hereby authorizes the City Manager to execute the Cal OES FY2016 Grant Assurances Agreement, which is required to establish concurrence on the requirements of the grant.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_\_ day of \_\_\_\_\_ 2017 by the following called 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:

Kelly C. Fincher 2/28/17  
City Attorney Date



## **Standard Assurances For All Cal OES Federal Grant Programs**

**As the duly authorized representative of the Applicant, I hereby certify** that the Applicant has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management and completion of the project described in this application, within prescribed timelines.

**I further acknowledge that the Applicant is responsible for reviewing and adhering to all requirements within the:**

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) California Supplement to the NOFO; and
- (d) Federal and State Grant Program Guidelines.

### **Federal Regulations**

Government cost principles, uniform administrative requirements and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (CFR) and updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

**Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. The Applicant hereby agrees to comply with the following:**

### **1. Proof of Authority**

The Applicant will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that the Applicant and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required.
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of the Applicant and the city council, governing board, or authorized body.
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body.
- (d) The official executing this agreement is, in fact, authorized to do so.



This Proof of Authority must be maintained on file and readily available upon request.

**2. Period of Performance**

The Applicant will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

**3. Lobbying and Political Activities**

As required by Section 1352, Title 31 of the U.S. Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, the Applicant certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

The Applicant will also comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and §§ 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, the Applicant agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

**4. Debarment and Suspension**

As required by Executive Orders 12549 and 12689, and 2 CFR § 200.212 and codified in 2 CFR Part 180, Debarment and Suspension, the Applicant will provide protection against waste, fraud,

and abuse by debarring or suspending those persons deemed irresponsible in their dealings with the federal government. The Applicant certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where the Applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

#### **5. Non-Discrimination and Equal Employment Opportunity**

The Applicant will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs; (42 U.S.C. §§ 12101-12213.)
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing;

- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
- (i) Executive Order 11375, which bans discrimination on the basis of on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- (k) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (l) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (n), the Applicant will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

## **6. Drug-Free Workplace**

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), the Applicant certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

## **7. Environmental Standards**

The Applicant will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000-21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000-15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;

- (e) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190); Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (f) Executive Order 11514 which sets forth national environmental standards.
- (g) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order EO 11990 which requires preservation of wetlands;
- (h) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (i) The Endangered Species Act of 1973, (P.L. 93-205);
- (j) Wild and Scenic Rivers Act of 1968 (16 U.S.C. § 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

The Applicant shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

## **8. Audits**

For subrecipients expending \$750,000 or more in federal grant funds annually, the Applicant will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

## **9. Access to Records**

In accordance with 2 CFR § 200.336, the Applicant will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. The Applicant will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

## **10. Conflict of Interest**

The Applicant will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

## **11. Financial Management**

### **False Claims for Payment**

The Applicant will comply with 31 U.S.C § 3729 which sets forth that no subgrantee, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

## **12. Reporting - Accountability**

The Applicant agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

## **13. Whistleblower Protections**

The Applicant also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

## **14. Human Trafficking**

The Applicant will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

## **15. Labor Standards**

The Applicant will comply with the following federal labor standards:

- (a) Comply with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts.
- (b) Comply with the Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

## **16. Worker's Compensation**

The Applicant must comply with provisions which require every employer to be insured to protect workers who may be injured on the job before commencing performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

## **17. Property-Related**

If applicable to the type of project funded by this federal award, the Applicant will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchase.

- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.).
- (d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

#### **18. Certifications Applicable Only to Federally-Funded Construction Projects**

For all construction projects, the Applicant will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications.
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

#### **19. Use of Cellular Device While Driving is Prohibited**

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

#### **20. Freedom of Information Act**

The Applicant acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Rights Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

## **EMERGENCY MANAGEMENT PERFORMANCE GRANT PROGRAM - PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS**

### **21. Reporting Accusations and Findings of Discrimination**

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS financial assistance office and the DHS Office of Civil Rights and Civil Liberties (CRCL) by e-mail at [crcl@hq.dhs.gov](mailto:crcl@hq.dhs.gov) or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.

In the event any court or administrative agency makes a finding of discrimination against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS financial assistance office and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

### **21. Acknowledgment of Federal Funding from DHS and Use of DHS Seal, Logo, and Flags**

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

All recipients must obtain permission from their financial assistance office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

### **22. Activities Conducted Abroad**

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

### **23. Best Practices for Collection and Use of Personally Identifiable Information (PII)**

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Award recipients may also find as a useful resource the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template respectively.

**24. Copyright**

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under federal financial assistance awards.

**25. Energy Policy and Conservation Act**

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

**26. Federal Debt Status**

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

**27. Fly America Act of 1974**

All Applicants must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

**28. Hotel and Motel Fire Safety Act of 1990**

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

**29. Non-supplanting Requirement**

All Applicants who receive awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

**30. Patents and Intellectual Property Rights**

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

**31. SAFECOM**

All Applicants who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency



Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

### **32. Terrorist Financing**

All Applicants must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the Order and laws.

### **33. Reporting of Matters Related to Recipient Integrity and Performance**

If the total value of the Applicant's currently active grants, cooperative agreements, and procurement contracts from all federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of this federal award, the Applicant must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the terms and conditions of your award.

### **34. USA Patriot Act of 2001**

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

### **IMPORTANT**

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. The Applicant recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on the Applicant, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by the Applicant and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers, including contracts under grants and cooperative agreements and subcontracts. All recipients are bound the Department of Homeland Security Standard Terms and Conditions 2016, Version 6.0, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/sites/default/files/publications/Fiscal%20Year%202016%20DHS%20General%20Terms%20and%20Conditions.pdf>

The undersigned represents that he/she is authorized by the above named Applicant to enter into this agreement for and on behalf of the said Applicant.


Subrecipient: \_\_\_\_\_

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

  
**KELLY C. FINCHER**  
**Chief Deputy City Attorney**



## ADMINISTRATIVE REPORT

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**Agenda Item J.6.**

Meeting Date: 3/6/2017

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**Report Prepared by:** Jolie Houston, Interim City Attorney

**SUBJECT:** Consideration of Ordinance Amending Chapter 01.08 of the Merced Municipal Code Regarding Custody and Use of the City's Seal

### REPORT IN BRIEF

Consider adoption of City Ordinance that confirms that the City Clerk is the Custodian of the City Seal and prohibits the use by any person of the seal of the City of Merced, or any imitations or derivations thereof.

### RECOMMENDATION

**City Council** - Adopt a motion introducing **Ordinance 2473**, an Ordinance of the City Council of the City of Merced, California, Amending Chapter 1.08, "City Seal," of the Merced Municipal Code Regarding the Use of the City Seal.

### ALTERNATIVES

1. Approve, as recommended by Staff; or,
2. Modify ordinance for introduction; or,
3. Deny.

### AUTHORITY

City of Merced, Charter, Section 200

### CITY COUNCIL PRIORITIES

Not applicable.

### DISCUSSION

It has recently come to the attention of staff that parties unaffiliated with the City may be using the City seal, or variations thereof, for purposes other than official city business. The unauthorized use of the seal is likely to mislead residents into believing that these unaffiliated parties are associated with the City. This is particularly concerning if the seal is used to mislead residents into believing the entity is associated with the city for the purpose of soliciting payments or personal information from residents, or to influence the outcome of elections.

To address this concern, the City Attorney's Office has drafted Ordinance 2473, which adds Section 1.08.020 to the Municipal Code to confirm that the City Clerk is the custodian of the city seal. This Ordinance also adds Section 1.08.030 to the municipal code, which prohibits any person or group

from making or using the City seal, or variations thereof, for any purpose other than the official business of the City. Section 1.08.030 would also prohibit any person from placing the seal or its variations on printed or electronic material for the purpose of confusing the public, or to persuade individuals to vote in favor of any ballot measure or candidate for public office.

**IMPACT ON CITY RESOURCES**

None.

**ATTACHMENTS**

1. Proposed Ordinance
2. Redlined Ordinance

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING CHAPTER 1.08, "CITY SEAL," OF  
THE MERCED MUNICIPAL CODE REGARDING  
THE USE OF THE CITY SEAL**

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

**SECTION 1. AMENDMENT TO CODE.** Chapter 1.08, "City Seal,"  
of the Merced Municipal Code is hereby amended to read as follows:

**"CHAPTER 1.08  
CITY SEAL**

**Section:**

- 1.08.010 City Seal.**
- 1.08.020 Custodian.**
- 1.08.030 Use of City Seal.**
- 1.08.040 Penalty.**

**1.08.010 City Seal.**

The common seal of the City is hereby adopted  
and described as follows:

A palm tree, a fountain, and a waterfall, so  
arranged that the palm tree shall occupy the central  
space of the seal, the fountain on the right, and the  
waterfall on the left of the palm tree, surrounding  
which, in the margin of the seal shall appear the  
words, 'City of Merced, California, Incorporated  
April 1, A. D. 1889.'

**1.08.020 Custodian.**

As provided for in Section 602(D) of the Charter,  
the City Clerk shall be the custodian of the City  
Seal.

### **1.08.030 Use of City Seal.**

A. It shall be unlawful for any person or group to make or use the seal of the City of Merced, or any derivation, rendering, version, expression, logo, stamp or reproduction thereof, for any purpose other than for the official business of the City of Merced, its City Council, officers or departments, except upon approval of the City Council by resolution.

B. No person or group shall place any imitation of the City Seal, nor any derivation, rendering, version, expression, logo, stamp or reproduction thereof, on any written, printed or electronic material that is designed, intended or likely to confuse, deceive or mislead the public or cause the reader of such material to believe it to be an official city publication.

C. It shall be unlawful for any person or group to place the City Seal, or any derivation, rendering, version, expression, logo, stamp or reproduction thereof, on any written, printed or electronic material in favor of or against any ballot measure, or in favor of or against any candidate for public office.

### **1.08.040 Penalty.**

A violation of this Chapter is a misdemeanor, punishable in accordance with Chapter 1.12 of this Code. At the discretion of the City, this Chapter may also be enforced by use of civil or administrative remedies.”

**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 \_\_\_\_\_, 2017, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2017, by the following called vote:

**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

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**Mayor**

**ATTEST:**  
**STEVE CARRIGAN, CITY CLERK**

**BY:** \_\_\_\_\_  
**Assistant/Deputy City Clerk**

**(SEAL)**

**APPROVED AS TO FORM:**

Kelly C. Fincher      2/28/17  
**City Attorney**                      **Date**



**ORDINANCE NO. \_\_\_\_\_**

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**Section:**

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- 1.08.030 Use of City Seal.**
- 1.08.040 Penalty.**

**1.08.010 City Seal.**

The common seal of the City is hereby adopted and described as follows:

A palm tree, a fountain, and a waterfall, so arranged that the palm tree shall occupy the central space of the seal, the fountain on the right, and the waterfall on the left of the palm tree, surrounding which, in the margin of the seal shall appear the words, 'City of Merced, California, Incorporated April 1, A. D. 1889.'

**1.08.020 Custodian.**

As provided for in Section 602(D) of the Charter, the City Clerk shall be the custodian of the City Seal.

### **1.08.030 Use of City Seal.**

A. It shall be unlawful for any person or group to make or use the seal of the City of Merced, or any derivation, rendering, version, expression, logo, stamp or reproduction thereof, for any purpose other than for the official business of the City of Merced, its City Council, officers or departments, except upon approval of the City Council by resolution.

B. No person or group shall place any imitation of the City Seal, nor any derivation, rendering, version, expression, logo, stamp or reproduction thereof, on any written, printed or electronic material that is designed, intended or likely to confuse, deceive or mislead the public or cause the reader of such material to believe it to be an official city publication.

C. It shall be unlawful for any person or group to place the City Seal, or any derivation, rendering, version, expression, logo, stamp or reproduction thereof, on any written, printed or electronic material in favor of or against any ballot measure, or in favor of or against any candidate for public office.

### **1.08.040 Penalty.**

A violation of this Chapter is a misdemeanor, punishable in accordance with Chapter 1.12 of this Code. At the discretion of the City, this Chapter may also be enforced by use of civil or administrative remedies.”

**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 \_\_\_\_\_, 2017, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2017, by the following called vote:

**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

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**Mayor**

**ATTEST:**  
**STEVE CARRIGAN, CITY CLERK**

**BY:** \_\_\_\_\_  
**Assistant/Deputy City Clerk**

**(SEAL)**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**City Attorney                      Date**



## ADMINISTRATIVE REPORT

**Agenda Item J.7.**

Meeting Date: 3/6/2017

**Report Prepared by:** *Mike Conway, Assistant to the City Manager*

**SUBJECT:** Support Transportation Funding Legislation

### REPORT IN BRIEF

Seeking Council support of transportation funding legislation that is in the State Assembly and Senate.

### RECOMMENDATION

**City Council-** Adopt a motion supporting new Transportation Funding legislation in the state and directing staff to produce letters of support and other materials to reflect the City's position.

### 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

As provided for in the 2016-17 Adopted Budget

### DISCUSSION

There are huge transportation needs in the state, but not the dollars to pay for them. Fuel efficiency continues to increase, but the gas tax hasn't been increased since 1994. Electric vehicles don't contribute to the gas tax funds, but do contribute to wearing down the roadways. The average driver pays \$762 a year in maintenance due to the poor condition of our roads.

The recent series of storms have just highlighted the need to repair and rebuild the state's aging road system. Highway 50 is reduced to 1 lane in each direction because the road was washed out and Highway 1 is closed near Big Sur because an aging bridge has to be rebuilt.

In Merced, there are more than 479 miles of roads, most of them in need of some kind of repair. In

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addition, there are 15 bridges in the City, some dating back to the Roosevelt-era WPA. It's a short drive to find a road that is in need of repair or rebuilding.

There is a need to change the way transportation is funded in the state. Discussions with Assemblyman Adam Gray and State Senator Anthony Cannella indicate we can expect major bills to be moving through the Legislature this year. We are asking the City Council to give staff authority to respond quickly when asked for letters of support for transportation bills that will benefit the City of Merced and its residents.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds are needed.



## ADMINISTRATIVE REPORT

**Agenda Item J.8.**

Meeting Date: 3/6/2017

**Report Prepared by:** Joel D. Svendsen., PE - Associate Engineer

**SUBJECT:** Consider Increasing the Construction Contingency Percentage for the Waste Water Treatment Plant Headworks Corrosion Control Project 116018

### REPORT IN BRIEF

Authorizes approval to increase the construction contingency from 10% to 15% of the original construction contract award amount, for a total of up to \$13,557.85 of additional work.

### RECOMMENDATION

**City Council** - Adopt a motion increasing the contingency up to 15% for the Waste Water Treatment Plant (WWTP) Headworks Corrosion Control Project 116018; and, authorizing the City Manager or Assistant City Manager to sign the necessary documents.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to conditions other than recommended by staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items (specific items to be addressed in the motion); or,
5. Continue to a future meeting (date and time to be specified in the motion).

### AUTHORITY

Charter of the City of Merced, Article XI, Section 1109 - Contracts on Public Works, and Merced Municipal Code Chapter 3.04, Article IV - Public Works Contracts.

### CITY COUNCIL PRIORITIES

As provided for in the Fiscal Year 2016-17 Adopted Budget.

### DISCUSSION

The construction work consists, in general, of the installation of an odor control system, including concrete pad, structural supports for ductwork, all the required electrical work, including the connection of all drains and water supply lines. All work is being performed at the Merced Waste Water Treatment Plant within the City of Merced.

On June 20, 2016, the City Council awarded the project to the lowest bidder, Richard Townsend Construction, in the amount of \$90,385.65. At that time, the following Construction Budget was

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approved:

Construction	\$ 90,385.65
Contingency (10%)	\$ 9,038.50
Construction Engineering, Testing, Inspection	\$ 36,598.25
Equipment	\$ 144,569.60
Total	\$ 280,592.00

At the June 20, 2016, meeting, Council authorized the City Manager to approve change orders for up to 10% of the total contract.

Construction began in November 2016. A number of unexpected conditions have been encountered during construction. This report is intended to alert the City Council in advance that there may be necessary work beyond the 10% allotted contingency. Approval of this proposed increase in the contingency amount will allow the construction to proceed uninterrupted.

A change order in the amount of \$8,502.22 has already been generated which brings the contingency to 9% with 60% of the work completed. This change order included the extension of bid quantities for an increased concrete slab area with the associated aggregate base. The extension of the concrete slab was required to provide more room for the equipment and enhance the City's long-term operations and maintenance. In addition, there exists the potential for additional contract change orders. For example, there may be additional work for conduit fittings that do not match with the existing electrical layout.

Staff is requesting that the City Council approve the contingency increase up to 15%, which equates to \$13,557.85, so that the construction can be allowed to continue without delay. The revised proposed budget would be as follows:

Construction	\$ 90,385.65
Contingency (15%)	\$ 13,557.85
Construction Engineering, Testing, Inspection	\$ 32,078.90
Equipment	\$ 144,569.60
Total	\$ 280,592.00

## IMPACT ON CITY RESOURCES

This project was established as a Capital Improvement Project and the account 553-1108-637.65-00-116018 contains sufficient funding to complete the project.





# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item J.9.**

Meeting Date: 3/6/2017

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**SUBJECT:** Second Reading - Ordinance No. 2469 "Regulated Communications in City Procurement Process" Adding Chapter 3.06 to the Merced Municipal Code

### REPORT IN BRIEF

Second reading of previously introduced Ordinance.

### RECOMMENDATION

**City Council** - Adopt a motion adopting **Ordinance 2469**, an Ordinance of the City Council for the City of Merced, California adding Chapter 3.06, regulated communications in City procurement process to the Merced Municipal Code.

### ALTERNATIVES

1. Approve as discussed at the November 7, 2016 City Council Meeting; or,
2. Refer back to staff for reconsideration or redrafting of certain specified items (specific items to be addressed by the City Council in the motion); or,
3. Deny the request; or,
4. Continue to a future City Council meeting (date and time to be specified in the motion).

### AUTHORITY

City of Merced, Charter, Section 200.

### ATTACHMENTS

1. Ordinance No. 2469

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA, ADDING  
CHAPTER 3.06, "REGULATED  
COMMUNICATIONS IN CITY PROCUREMENT  
PROCESS," TO THE MERCED MUNICIPAL  
CODE**

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

**SECTION 1. ADDITION TO CODE.** Chapter 3.06, "Regulated Communications in City Procurement Process," is hereby added to the Merced Municipal Code to read as follows:

**"CHAPTER 3.06**

**REGULATED COMMUNICATIONS IN CITY  
PROCUREMENT PROCESS**

**Section:**

- |                 |   |
|-----------------|---|
| <b>3.06.010</b> | <b>Short Title.</b>   |
| <b>3.06.020</b> | <b>Declaration of Legislative Intent.</b>   |
| <b>3.06.030</b> | <b>Definitions.</b>   |
| <b>3.06.040</b> | <b>Applicability.</b>   |
| <b>3.06.050</b> | <b>Regulation of Communications During<br/>Competitive Procurement; Notice of<br/>Regulated Communication Rule.</b> |
| <b>3.06.060</b> | <b>Disclosure of Regulated Communications.</b>  |
| <b>3.06.070</b> | <b>Sanctions.</b>   |
| <b>3.06.080</b> | <b>Evaluation of Disclosed Communications;<br/>Criteria for Imposition of Sanctions.</b>                            |
| <b>3.06.090</b> | <b>Appeals.</b>   |
| <b>3.06.010</b> | <b>Short Title.</b>   |

This Chapter shall be known as the Regulated Communications in City Procurement Process Ordinance.

### **3.06.020 Declaration of Legislative Intent.**

In enacting this Chapter, the City Council hereby declares and finds as follows:

- A. All communications by and between Proposers, the Mayor and Councilmembers in competitive procurement should be open and public.
- B. All elected officials should be provided the same information for decision-making involved in competitive procurement.
- C. The provisions of this Chapter are necessary and appropriate in order to instill greater public confidence in the integrity of the City's procurement processes by eliminating the appearance of impropriety and special consideration.
- D. The provisions of this Chapter will lessen the chance of miscommunication or misunderstanding during competitive procurement.
- E. The provisions of this Chapter will foster a greater sense of equity and fair play in competitive procurement.
- F. The provisions of this Chapter ensure that the Mayor and all Councilmembers are afforded equal access to information during the procurement process.
- G. The provisions of this Chapter are intended to provide Councilmembers and the Mayor more useful information with which to render a fair and just decision.
- H. This Chapter furthers the Charter purpose of having professional staff research, evaluate, and make recommendations concerning the award of public contracts.

I. Nothing in this Chapter is intended to chill First Amendment Free Speech rights, such as the public's right to petition government, or the elected official's right of Free Debate.

J. This Chapter provides Proposers with defined channels to communicate information to Councilmembers and the Mayor, consistent with the overall purposes of this Chapter.

K. The award of a contract and the acts leading up to it are legislative in nature.

L. In enacting this Chapter, it is not the intent of the City Council to change the legislative nature of its procurement process.

M. This Chapter relates to an internal procedure dealing with the subject of competitive procurement. Nothing in this Chapter shall confer upon, or create rights in, any person that the person would not have absent this Chapter.

### **3.06.030 Definitions.**

The following definitions shall apply for purposes of this Chapter:

A. 'Communication' means communication in any form, directly or indirectly, by or between a Proposer, on the one hand, and Councilmember or the Mayor, on the other hand, during the pendency of a competitive procurement regardless of whether or not the Proposer at the time of the communication had yet to put forward, present, or sponsor a request, proposal, bid, or quote for consideration of a contract, if the Proposer eventually does so.

B. 'Competitive procurement' shall mean and include the processes for request for expression of interest,

request for proposals, and request for qualifications, as defined in this Chapter.

C. 'Continue' shall mean to persist in, remain in, carry on, recommence or resume a communication.

D. 'Disclosure' shall mean the writing, or oral statement entered in City Council proceedings, containing the information required by Section 3.06.060 of this Chapter necessary to disclose a regulated communication.

E. 'Elected official' shall mean the Mayor or any Councilmember of the City of Merced.

F. 'Initiate' shall mean to cause a communication to begin; to send, transmit, or convey information.

G. 'Initiation of competitive procurement' shall mean the issuance, publication or announcement by the City of Request for Expression of Interest, Request for Proposals or Request for Qualifications. The competitive procurement remains pending until it is completed upon any of the following: the award of a contract; the issuance of official City notice of cancellation of the process; or a determination by the Council not to award a contract, provided the determination is final and the City Council does not direct the re-initiation of the competitive procurement at the time it determines not to make an award.

H. 'Proposer' shall mean a person, other than a City division or department, who puts forward, presents, or sponsors an expression of interest, statement of qualification, request, proposal, or quote for consideration of a contract. For purposes of this Chapter, a Proposer is also any agent or representative, or officer of a Proposer, and any person holding an ownership, beneficial, equitable or security interest in a Proposer. However, a commercial lending institution is not a

proposer if it merely holds a security interest as a result of a loan or loans which are made in the lender's regular course of business on terms available to members of the public without regard to official status.

I. 'Record' shall mean the oral and written information conveyed to the Mayor and City Council through writings and statements made available to the public in connection with a competitive procurement, and upon which the City Council could rely in considering whether to award a contract. 'Record' shall include oral communication during a regular or special meeting of the City Council.

J. 'Regulated communication' shall mean any communication prohibited under Section 3.06.050 of this Chapter.

K. 'Request for Expression of Interest' (RFEI) means a solicitation to prospective proposers on a procurement opportunity. An RFEI may be issued in advance of an RFP to assist in the development of a more definitive set of terms and conditions, scope of work or service and the selection of qualified proposers. An RFEI does not contain all of the information a prospective proposer needs to provide a full bid or proposal response, and should not be construed as an RFP or notice inviting bids. The RFEI enables potential proposers to determine whether they have a serious interest in preparing a proposal or bid in response. The RFEI may be used simultaneously with a RFQ when the proposed procurement is well defined and the City has clear expectations for the procurement.

L. 'Request for Proposal' (RFP) shall mean an invitation for providers of services or work to solicit the right to supply services or work to the City, when any award is to be made to a Proposer providing the best value in meeting the interest of the City and the objectives of the project, based on criteria, such as

benefit to the City, qualifications, experience, and demonstrated ability, subject to the City's right to reject any and all proposals.

M. 'Request for Qualification' (RFQ) shall mean a City request for the submission of a statement of qualifications from interested potential Proposers as a pre-requisite to a bid or proposal for the right to supply materials, supplies, equipment, services or work.

O. 'Subject Proposer,' as used in this Chapter, shall mean the Proposer who is the subject of a disclosure and consideration of potential sanctions.

P. 'Writing' shall mean a writing as defined in California Evidence Code Section 250.

#### **3.06.040 Applicability.**

This Chapter applies to competitive procurement which may result in the award of a contract by the City Council, including RFPs, RFEIs, and RFQs. It applies whether the procurement process is classified as legislative or otherwise. The requirements of this Chapter apply upon the initiation of competitive procurement until the procurement process is completed, and is not dependent on whether or not a contract is awarded. Any communication (even if unintended or inadvertent) covered by this Chapter must be disclosed, as provided by this Chapter or any other applicable local, state, or federal law or regulation.

#### **3.06.050 Regulation of Communications During Competitive Procurement; Notice of Regulated Communication Rule.**

A. No Proposer shall initiate, engage in, or continue any communication to or with any elected official, and no elected official shall initiate, engage in, or continue any communication to or with any Proposer, concerning

or touching upon any matter which is the subject of a competitive procurement within the scope of this Chapter except as permitted in subsection B of this Section.

B. Only communications meeting the following requirements are allowed under this Chapter. A communication that is:

1. Made on the record in a regular or special meeting of the City Council; or
2. Between or among elected officials outside of a regular or special City Council meeting, provided that none of the communicants is an agent or representative of a Proposer, or acting in concert with or at the behest of a Proposer, and provided further the communication is not prohibited under the Ralph M. Brown Act (California Government Code §§ 54950, *et seq.*); or
3. Part of the record presented to the City Council as a result of being communicated to City staff involved in, and in the ordinary course of, the competitive procurement; or
4. An identical writing that is delivered simultaneously and by identical means to all elected officials, the City's Purchasing Supervisor, and the City Manager, at their respective official City offices. Except to the City's Purchasing Supervisor, hand deliveries must be made by someone other than a Proposer.
5. The regulated communication rule established by this Section and a reference to this Chapter shall be set forth in each RFEI, RFP and RFQ, or in the respective specifications or other documents referred to therein.



### **3.06.060 Disclosure of Regulated Communications.**

- A. Any elected official and any Proposer who has initiated, engaged in, continued in, or received any regulated communication shall disclose that regulated communication, as provided in this Section.
- B. A regulated communication should be disclosed at the earliest feasible time, but in any event, it shall be disclosed no later than 24 hours or the next business day following such communication.
- C. Disclosures shall be in writing unless the regulated communication occurs on the date the City Council is to consider award of the contract, in which case it may be orally disclosed on the record during the City Council proceedings concerning the subject procurement. Written disclosures shall be directed to the City's Purchasing Supervisor, and a copy filed with the City Clerk.
- D. The disclosure shall contain all the information necessary to fully and fairly convey the substance of the communication. At minimum, disclosures shall include the following information:
1. Identity of the person making the disclosure.
  2. Date, time and place of the regulated communication.
  3. Identity of each person who initiated, engaged in, continued, or received the regulated communication.
  4. Copies of all written regulated communications.
  5. Summary of all oral regulated communications.

6. Identity of all persons present during the regulated communication.

7. Identification of the subject competitive procurement and subject Proposer.

E. The City Clerk shall promptly distribute to all Councilmembers and the Mayor every disclosure filed pursuant to this Section. The City Attorney and City Manager shall also receive a copy of the disclosure.

F. The City's Purchasing Supervisor shall record the disclosure in the record of the competitive procurement.

### **3.06.070 Sanctions.**

A. In accordance with the applicable procedures for the respective competitive procurement as referenced or set forth in the specifications of the respective RFEI, RFP or RFQ, a Proposer violating this Chapter may be sanctioned as follows:

1. Disqualification from the competitive procurement; and/or
2. A finding of non-responsibility under the procurement; and/or
3. Setting aside by City Council of any award of contract prior to its execution by both parties.

B. These sanctions may be imposed in addition to any other remedies provided by any other law or regulation.

### **3.06.080 Evaluation of Disclosed Communications; Criteria for Imposition of Sanctions.**

A. The City's Critical Risk Management Team (CRMT), or similar City standing committee shall ensure

that the information which is the subject of a disclosure is reviewed, evaluated, and processed in accordance with applicable laws and regulations, this Chapter, and the specifications, criteria and requirements of the applicable competitive procurement.

B. The CRMT shall evaluate the disclosure, summarize the results of the evaluation of the disclosure, and make a recommendation on whether or not to impose sanctions concerning the regulated communication.

C. Before sanctions may be imposed, it shall first be established that the subject Proposer did initiate, engage in or continue a regulated communication, and, if so, whether any of the following extenuating circumstances exist:

1. The regulated communication was inadvertent and did not affect the integrity or outcome of the procurement process.

2. The regulated communication was initiated by the Mayor or a Councilmember, the subject Proposer advised the Mayor or Councilmember of the regulated communication rule, and the subject Proposer did not continue or engage in the regulated communication.

3. The regulated communication was made under bona fide mistake of fact or law, other than a mistake or ignorance of the provisions of this Chapter, and the regulated communication was not material to the procurement. A regulated communication may be deemed material if it relates to any provision of a RFEI, RFP, RFQ, or specifications or other documents referenced therein, including documents responsible to a RFEI, RFP or RFQ, unless the regulated communication is so obviously insignificant and unimportant that it could be objectively found that

no reasonable person would have been influenced by it, or attached any importance to it.

D. In the absence of extenuating circumstances, the subject Proposer may be sanctioned under this Chapter if doing so is deemed consistent with the objectives of this Chapter and in the best interest of the City.

E. The subject Proposer may appeal the determination of the CRMT that forms the basis of the recommendation for imposition of a sanction in accordance with the appeal procedures specifically applicable to the subject RFEI, RFP, or RFQ.

F. If a disclosure is made subsequent to the posting of the City Council agenda which includes notice of the consideration of the subject contract, the City Council shall refer the matter back to the CRMT for their evaluation, report and recommendations, in accordance with the provisions this section.

**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 \_\_\_\_\_, 2017, 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:**

Kelly Fincher      11/10/16  
**City Attorney**                      **Date**



**ADMINISTRATIVE REPORT**

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**Agenda Item K.1.**

Meeting Date: 3/6/2017

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**SUBJECT:** Selection of Date for Planning Commission Interviews

**REPORT IN BRIEF**

Available dates for a Special Meeting to conduct Planning Commission interviews are March 13, 14, 15, 16, 23, 28, 29, and 30.

**RECOMMENDATION**

**City Council** - Adopt a motion selecting a date for holding Planning Commission Interviews and confirming a 6 PM start time.

**ALTERNATIVES**

1. Select one of the dates as listed; or,
2. Provide alternate dates; or,
3. Continue to future meeting.