



CITY OF MERCED

Meeting Agenda

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

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

Monday, May 7, 2018

6:00 PM

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

Closed Session at 5:00 PM/Regular Meeting at 6:00 PM

NOTICE TO PUBLIC

WELCOME TO THE MEETING OF THE MERCED CITY COUNCIL

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

PUBLIC COMMENT: OBTAIN SPEAKER CARD FROM THE CITY CLERK

Members of the audience who wish to address the City Council are requested to complete a speaker card available at the podium against the right-hand side of the Council 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.** [18-193](#) **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Unrepresented Management AUTHORITY: Government Code Section 54957.6
- B.2.** [18-194](#) **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Employee Organization: American Federation of State, County, and Municipal Employees (AFSCME) Council 57; Local 2703; International Association of Fire Fighters, Local 1479; Merced Association of City Employees

(MACE). AUTHORITY: Government Code Section 54957.6

- B.3.** [18-249](#) **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Employee Organizations: Merced Police Officers' Association (MPOA); Merced Association of Police Sergeants. AUTHORITY: Government Code Section 54957.6

C. CALL TO ORDER

C.1. Invocation - Mary Hofmann, Congregation of Etz Chaim

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 the 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 the Public Financing and Economic Development Authority receive no compensation.

E. REPORT OUT OF CLOSED SESSION

F. CEREMONIAL MATTERS

- F.1.** [18-222](#) **SUBJECT:** Proclamation - Municipal Clerks Week

REPORT IN BRIEF

Received by John Tresidder, Assistant City Clerk

- F.2.** [18-224](#) **SUBJECT:** Proclamation - Building Safety Month

REPORT IN BRIEF

Received by the Inspections Services Division Department.

- F.3.** [18-223](#) **SUBJECT:** Proclamation - Bike Month

REPORT IN BRIEF

Received by a BAC Commissioner

- F.4.** [18-247](#) **SUBJECT:** "2017 California Water Environment Association (CWEA)

Medium Collections System of the Year Award"

REPORT IN BRIEF

Presented by Ryan Selman from Carrollo Engineers to the City of Merced Public Works Department.

F.5. [18-248](#)

SUBJECT: Recognition of Outgoing Youth Council Member

REPORT IN BRIEF

Certificate of Recognition will be presented to Cynthia Ratzlaff for her time and service on the Merced Youth Council.

G. SPECIAL PRESENTATIONS

G.1. Report on Somoto Sister City Delegation

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. [18-180](#)

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. [18-235](#)

SUBJECT: Information-Only Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$30,000 and of Public Works contracts under \$67,779.

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 2017-2018 threshold of \$67,779.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2017-2018 threshold of \$30,000.00, the contracts listed on the attached table were entered into by the City.

J.3. [18-186](#)

SUBJECT: Information Only - Site Plan Review Committee Minutes of February 8, 2018

RECOMMENDATION

For information only.

J.4. [18-217](#)

SUBJECT: Information Only - Planning Commission Minutes of March 21, 2018

RECOMMENDATION

For information only.

J.5. [18-205](#)

SUBJECT: City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of April 2, 2018

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 April 2, 2018.

J.6. [18-211](#)

SUBJECT: Street Closure Request #18-09 - Street Closure Request for the Merced County Fair (35th District Agricultural Association/Merced County Fair)

REPORT IN BRIEF

Consider a request for use of City streets for the Merced County Fair (June 6-10, 2018).

RECOMMENDATION

City Council - Adopt a motion approving the street closure of G Street, between West Childs Avenue and West 11th Street, from 3:00 p.m. to 12:00 a.m. each day, from Wednesday, June 6, 2018, through Sunday, June 10, 2018, for the Merced County Fair, subject to the details and conditions outlined in the administrative staff report.

J.7. [18-213](#)

SUBJECT: Agreement for Municipal Advisory Services with Fieldman, Rolapp & Associates and Waive the Competitive Bidding Requirement

REPORT IN BRIEF

Considers awarding an agreement to Fieldman, Rolapp & Associates to provide municipal advisory services in connection with a General Obligation Bond ballot measure and subsequent bond financing and waive the competitive bidding requirement.

RECOMMENDATION

City Council - Adopt a motion approving the contract with Fieldman, Rolapp & Associates (FRA) for municipal advisory services, waiving the competitive bid, and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

J.8. [18-188](#)

SUBJECT: Distribution of Wahneta Hall Trust Funds

REPORT IN BRIEF

Consider approving the allocation of the 2018 Wahneta Hall Trust Funds.

RECOMMENDATION

City Council - Adopt a motion approving the recommendation by the Recreation and Parks Commission to allocate the 2018 Wahneta Hall Trust funds to the Kiwanis Club of Greater Merced; and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

J.9. [18-190](#)

SUBJECT: Award Bid to Taylor Backhoe Service for the Merced "N" Street Roadway Rehabilitation, Project No. 117041

REPORT IN BRIEF

Consider awarding a construction contract in the amount of \$1,007,139.55 for the Merced "N" Street Roadway Rehabilitation.

RECOMMENDATION

City Council - Adopt a motion awarding the Merced "N" Street Roadway Rehabilitation, Project No. 117041 to Taylor Backhoe Services, Inc., in the amount of \$1,007,139.55; and authorizing the City Manager, or Assistant City Manager, to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

J.10. [18-189](#)

SUBJECT: Lease Agreement Between the City of Merced and Greyhound Lines, Inc., Located at the Merced Transportation Building

REPORT IN BRIEF

Lease Agreement between the City of Merced and Greyhound Lines, Inc., located at the Merced Transportation Building.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement between the City of Merced and Greyhound Lines, Inc.; and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

J.11. [18-202](#)

SUBJECT: Consideration of an Amendment to Agreement with PM AM Alarm Management

REPORT IN BRIEF

Consider approving an amendment to the existing Professional Services Agreement with PM AM Alarm Management to gain access to our test server under city supervision to extract our historical data for alarm users.

RECOMMENDATION

City Council - Adopt a motion approving an amendment to an agreement for professional services with PM AM Alarm Management at zero cost; and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

K. PUBLIC HEARINGS

Members of the public who wish to speak on public hearings listed on the agenda will be heard when the Public Hearing is opened, except on Public Hearing items previously heard and closed to public comment. After the public has commented, the item is closed to further public comment and brought to the Council for discussion and action. Further comment will not be received unless requested by the Council.

K.1. [18-191](#)

SUBJECT: Continued Public Hearing - Repeal of Regional Transportation Impact Fee Ordinance

REPORT IN BRIEF

The City Council will consider the repeal of the Regional Transportation Impact Fee Ordinance (Merced Municipal Code Chapter 17.64).

RECOMMENDATION

City Council - Adopt a motion:

A. Introducing **Ordinance No. 2487**, an Ordinance of the City Council of the City of Merced, California, Repealing Chapter 17.64 of the Merced Municipal Code relating to the Regional Transportation Impact Fees; and,

B. Rescinding the Implementation Agreement Authorizing the Merced County Association of Governments to Manage and Administer the Regional Transportation Impact Fee Program, dated March 1, 2005.

L. REPORTS

L.1. [18-215](#)

SUBJECT: Professional Services Agreement with LSA Associates and Reimbursement Agreement with Merced Mall, LP, for Preparation of an Environmental Document for the Merced Mall Expansion and Redevelopment Project

REPORT IN BRIEF

The City Council will consider approving a Professional Services Agreement with LSA Associates along with a Reimbursement Agreement with Merced Mall, LP, for preparation of an environmental document for the Merced Mall Expansion and Redevelopment Project.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving the Professional Services Agreement with LSA Associates in the amount of \$76,745.00 for preparation of an environmental document for the Merced Mall Expansion/Redevelopment Project; and,

B. Approving the Reimbursement Agreement with Merced Mall, LP, in the amount of \$84,419.50 to cover the cost of the consultant contract and City staff management of the contract in the preparation of the environmental document; and,

C. Approving the appropriation of funds to Account 017-0804-512-17-00-Professional Services in the amount of \$76,745.00 for payment to LSA Associates for planning services; and,

D. Approving an increase in revenue in the amount of \$76,745.00 to Account 017-0804-360-01-02-Other Revenue Developers and \$7,674.50 to Account 017-0804-331-03-25-Environmental Impact Filing EIR for staff administration of the environmental process (approval is contingent upon execution of the agreements); and,

E. Authorizing the City Manager or Assistant City Manager to execute the documents.

L.2. [18-244](#)

SUBJECT: Results of the Property Owner Polling for Industrial Park Study Area #7 Completed by Quad Knopf, Inc.

REPORT IN BRIEF

Quad Knopf consultants interviewed property owners within Study Area #7 about transitioning their land into an Industrial Park, and prepared a report with the findings.

RECOMMENDATION

Provide an informational update to the City Council and receive direction on continuing with the Industrial Park Study Area #7 project.

M. BUSINESS

M.1. Request to Add Item to Future Agenda

M.2. City Council Comments

N. ADJOURNMENT



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.1.

Meeting Date: 5/7/2018

SUBJECT: CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative:
City Manager Steve Carrigan; Unrepresented Management AUTHORITY: Government Code Section
54957.6



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.2.

Meeting Date: 5/7/2018

SUBJECT: CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Employee Organization: American Federation of State, County, and Municipal Employees (AFSCME) Council 57; Local 2703; International Association of Fire Fighters, Local 1479; Merced Association of City Employees (MACE). AUTHORITY: Government Code Section 54957.6



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item B.3.

Meeting Date: 5/7/2018

SUBJECT: CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative:
City Manager Steve Carrigan; Employee Organizations: Merced Police Officers' Association
(MPOA); Merced Association of Police Sergeants. AUTHORITY: Government Code Section
54957.6



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item F.1.

Meeting Date: 5/7/2018

SUBJECT: Proclamation - Municipal Clerks Week

REPORT IN BRIEF

Received by John Tresidder, Assistant City Clerk

ATTACHMENTS

1. Municipal Clerks Week Proclamation



Proclamation

- WHEREAS, The Office of the Municipal Clerk, a time honored and vital part of local government exists throughout the world, and
- WHEREAS, The Office of the Municipal Clerk is the oldest among public servants, and
- WHEREAS, The Office of the Municipal Clerk provides the professional link between the citizens, the local governing bodies and agencies of government at other levels, and
- WHEREAS, Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all.
- WHEREAS, The Municipal Clerk serves as the information center on functions of local government and community.
- WHEREAS, Municipal Clerks continually strive to improve the administration of the affairs of the Office of the Municipal Clerk through participation in education programs, seminars, workshops and the annual meetings of their state, provincial, county and international professional organizations.

NOW, THEREFORE, I, MIKE MURPHY, MAYOR of the City of Merced, on behalf of the City Council, hereby proclaim the week of May 6 through May 12, 2018, as Municipal Clerks Week in the City of Merced and extend appreciation to our Assistant City Clerk, John Tresidder, our Deputy City Clerk, Jennifer Levesque, and our Records Clerk, Kirk Greene for the vital services they perform and to their dedication to the community they represent.

Signed this 7th day of May, 2018.

Mike Murphy, Mayor of Merced



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item F.2.

Meeting Date: 5/7/2018

SUBJECT: Proclamation - Building Safety Month

REPORT IN BRIEF

Received by the Inspections Services Division Department.

ATTACHMENTS

1. Proclamation



Proclamation

- WHEREAS, The City of Merced is committed to recognizing our growth and strength depends on the safety and economic value of the homes, buildings and infrastructure that serve our citizens, both in everyday life and in times of natural disaster, and;
- WHEREAS, our confidence in the structural integrity of these buildings that make up our community is achieved through the devotion of vigilant guardians—building safety and fire prevention officials, architects, engineers, builders, tradespeople, design professionals, laborers and others in the construction industry—who work year-round to ensure the safe construction of buildings, and;
- WHEREAS, these guardians are dedicated members of the International Code Council, a U.S. based organization, that brings together local, state and federal officials that are experts in the built environment to create and implement the highest-quality codes to protect us in the buildings where we live, learn, work, worship, play, and;
- WHEREAS, our nation benefits economically and technologically from using the International Codes® that are developed by a national, voluntary consensus codes and standards developing organization, our government is able to avoid the high cost and complexity of developing and maintaining these codes, which are the most widely adopted building safety and fire prevention codes in the nation; these modern building codes include safeguards to protect the public from natural disasters such as hurricanes, snowstorms, tornadoes, wildland fires, floods and earthquake; and;
- WHEREAS, Building Safety Month is sponsored by the International Code Council to remind the public about the critical role of our communities' largely unknown guardians of public safety—our local code officials—who assure us of safe, efficient and livable buildings that are essential to keep America great, and;
- WHEREAS, “Building Codes Save Lives” the theme for Building Safety Month 2018, encourages all Americans to raise awareness of the importance of building safe and resilient construction; fire prevention; disaster mitigation, and new technologies in the construction industry. Building Safety Month 2018 encourages appropriate steps everyone can take to ensure that the places where we live, learn, work, worship and play are safe, and recognizes that countless lives have been saved due to the implementation of safety codes by local and state agencies, and,
- WHEREAS, each year, in observance of Building Safety Month, Americans are asked to consider the commitment to improve building safety and economic investment at home and in the community, and to acknowledge the essential service provided to all of us by local and state building departments, fire prevention bureaus and federal agencies in protecting lives and property.

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, do hereby proclaim the month of May 2018 as Building Safety Month. Accordingly, I encourage our citizens to join with their communities in participation in Building Safety Month activities.

Signed this 7th day of May, 2018.

Mike Murphy, Mayor of Merced



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item F.3.

Meeting Date: 5/7/2018

SUBJECT: Proclamation - Bike Month

REPORT IN BRIEF

Received by a BAC Commissioner

ATTACHMENTS

1. Bike Month Proclamation



Proclamation

WHEREAS, for more than a century, the bicycle has been an important part of the lives of many Americans, and, today, millions of Americans engage in bicycling to commute to work or school; to achieve and maintain physical fitness; and to recreate with family and friends; and,

WHEREAS, the education of cyclists, pedestrians, and motorists as to the proper and safe interaction of traffic is important to ensure the safety and comfort of all roadway users; and,

WHEREAS, in 2009, the City established a *Bicycle Advisory Commission* to serve as an advisory body to improve conditions for bicyclists; to promote bicycling as a means of transportation; to improve safety conditions for bicyclists; and to help implement policy, programs, and bikeway infrastructure for all ages and users; and,

WHEREAS, the *Merced Bicycle Coalition* and independent cyclists throughout our City are promoting greater public awareness of bicycle operation and safety education in an effort to reduce accidents, injuries, and fatalities for all;

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, on behalf of the City Council, and the City of Merced Bicycle Advisory Commission, do hereby proclaim the month of May 2018 as BIKE MONTH throughout the City, and further proclaim Friday, May 18, 2018, as BIKE-TO-WORK DAY and BIKE-TO-SCHOOL DAY, and urge all Citizens of Merced to recognize the importance of bicycling for transportation and recreation, and urge everyone to be more aware of cyclists using our public streets.

Signed this 7th day of May, 2018.

Mike Murphy, Mayor of Merced



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item F.4.

Meeting Date: 5/7/2018

SUBJECT: "2017 California Water Environment Association (CWEA) Medium Collections System of the Year Award"

REPORT IN BRIEF

Presented by Ryan Selman from Carrollo Engineers to the City of Merced Public Works Department.



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item F.5.

Meeting Date: 5/7/2018

SUBJECT: Recognition of Outgoing Youth Council Member

REPORT IN BRIEF

Certificate of Recognition will be presented to Cynthia Ratzlaff for her time and service on the Merced Youth Council.



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item J.1.

Meeting Date: 5/7/2018

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

Agenda Item J.2.

Meeting Date: 5/7/2018

Report Prepared by: Kirkland Greene, Records Clerk II

SUBJECT: Information-Only Contracts

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$30,000 and of Public Works contracts under \$67,779.

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 2017-2018 threshold of \$67,779.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2017-2018 threshold of \$30,000.00, the contracts listed on the attached table were entered into by the City.

ATTACHMENTS

1. "Information-Only" Contracts Table for April 2018

Exhibit 1 – Table of Contracts

5/7/2018 City Council Meeting

Page 1 of 2

Department/Division	Vendor	Purpose/Location	Amount
1120 – Public Works - Parks	Technicon Engineering Services, Inc.	Agreement for Professional Services to Provide Geotechnical Investigation for a Project to Restore Laura's Fountain at Applegate Park. <i>(Donated work—\$3,845.00.)</i>	(No funds.)
0803 – Engineering	Sater Oil International (c/o Merced Sater, LLC)	Agreement Guaranteeing the Performance of Certain "Storm Drain Work" Associated With the Development of a Merced Retail Center (at Childs Ave. and Parsons Ave.).	(No funds.)
0803 – Engineering	Materials Testing Consultants, Inc.	Agreement for Professional Services to Provide Inspection Services for Installation of a Gazebo at McNamara Park.	\$ 1,500.00
0804 – Planning	Goodwin Consulting Group, Inc.	Sixth Amendment to Agreement for Professional Tax Consulting Services to Prepare an RMA for CFD Annexation No. 12.	\$ 3,000.00
1205 – Zoo	Jon Klingborg, DVM (DBA: Valley Animal Hospital)	First Amendment to Agreement for Veterinary Services at Applegate Zoo (July 1, 2017 through June 30, 2018).	\$ 3,500.00
1201 – Recreation and Parks	Best Electric	Troubleshoot and repair power to light poles at Hoover Middle School Ball Field No. 4 (800 East 26 th Street). Statement of Services (PO #130142).	\$ 3,893.00
1001 – Police	Progressive Solutions, Inc.	Fiscal Year 2018/2019 Software Maintenance Agreement for <i>PetTrack</i> Software (Dog Licensing) – Annual Renewal.	\$ 3,926.98
1102 – Public Works - Admin.	Biggs Cardosa Associates, Inc.	Agreement for Professional Services to Provide Structural Engineering Services in Connection With a Project to Construct a Downtown Monument Sign.	\$ 6,800.00
0803 – Engineering	Salem Engineering Group, Inc.	Agreement for Professional Services to Provide Construction Materials, Soils Testing, and Inspection Services (for a pathway at Hwy 59 BNSF RR crossing).	\$ 7,921.00
0803 – Engineering	Golden Valley Engineering & Surveying, Inc.	Provide surveying services for CDBG Project No. 118028 - John Muir sidewalks (topography and boundary survey). Statement of Services (PO #130206).	\$ 9,800.00
1114 – PW - Storm Drains	Mid Cal Pipeline & Utilities, Inc.	Remove and replace storm drain crossing from the NE to the NW corners of 22nd Street and "H" Street. Statement of Services (PO #130188).	\$12,000.00

²²
Copies of all of the contracts listed above are available in the City Clerk's Office.

Exhibit 1 – Table of Contracts (Continued)5/7/2018 City Council Meeting

Page 2 of 2

1114 – PW - Storm Drains	Mid Cal Pipeline & Utilities, Inc.	Remove and replace storm drain crossing from the NE to the NW corners of 22nd Street and MLK, Jr. Way. Statement of Services (PO #130187).	\$12,000.00
0301 – Attorney’s Office	Dalen Unruh (DBA: Unruh Bobcat Service)	Agreement for Professional Services to Demolish Substandard Housing, Located at 289 East Alexander Ave.	\$14,800.00
1119 – Public Works - Facilities	Tyco Fire and Security Management (DBA: Johnson Controls Fire Protection, LP)	Furnish all engineering, installation of all equipment, materials, programming and testing of fire alarm upgrade for the City of Merced Civic Center. Statement of Services (PO #130100).	\$17,871.45
0701 – Finance	Chad Wohlford (DBA: Wohlford Consulting)	Professional Services Agreement to Complete a Citywide Cost Allocation Plan for Fiscal Year 2017-2018.	\$20,950.00
0403 – Information Technology	Smarsh, Inc.	Service Agreement to Provide a Searchable Archiving Platform for Mobile Text Messages and Social Media Accounts for Records Compliance Purposes.	\$25,060.00
0301 – Attorney’s Office	AndersonPenna Partners, Inc.	Agreement for Professional Services to Establish Policies and Procedures for the Blighted Property Abatement Team.	\$29,500.00



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item J.3.

Meeting Date: 5/7/2018

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

SUBJECT: Information Only - Site Plan Review Committee Minutes of February 8, 2018

RECOMMENDATION

For information only.

ATTACHMENTS

1. SP Minutes of 02-08-2018

CITY OF MERCED
Site Plan Review Committee

MINUTES

Planning Conference Room
2nd Floor Civic Center
Thursday, February 8, 2018

Acting Chairperson ESPINOSA called the meeting to order at 1:36 p.m.

ROLL CALL

Committee Members Present: Planning Manager Espinosa (for Director of Development Services McBride), Acting City Engineer Son, and Acting Assistant Chief Building Official Frazier

Committee Members Absent: None

Staff Present: Planner/Recording Secretary Mendoza-Gonzalez

1. **MINUTES**

M/S FRAIZER - SON, and carried by unanimous voice vote, to approve the Minutes of January 18, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Site Plan Application #419, submitted by Golden Valley Health Centers, property owner, to construct a new 2-story medical office (approximately 27,000 s.f.) at 3940 Sandpiper Avenue, within an Office Commercial (C-O) Zone.

Planner MENDOZA-GONZALEZ reviewed the application for this item. For further information, refer to Draft Site Plan Review Committee Resolution #419. The applicant and his associates were in attendance to answer questions from the Committee.

Site Plan Review Committee Minutes

Page 2

February 8, 2018

Acting Chairperson ESPINOSA opened and closed the Public Hearing at 1:45 p.m., as there were no comments from the public.

M/S FRAZIER - SON, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #18-04, and approve Site Plan Application #419, subject to the Findings and twenty-four (24) conditions set forth in the Draft Resolution #419:

AYES: Committee Members Frazier, Son, and Acting Chairperson Espinosa

NOES: None

ABSENT: None

5. **INFORMATION ITEMS**

5.1 **Calendar of Meetings/Events**

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

6. **ADJOURNMENT**

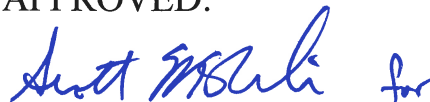
There being no further business, Acting Chairperson ESPINOSA adjourned the meeting at 1:53 p.m.

Respectfully submitted,



Francisco Mendoza-Gonzalez, Secretary
Merced City Site Plan Review Committee

APPROVED:



Kim Espinosa, Acting Chairperson/
Planning Manager
Merced City Site Plan Review Committee

CITY OF MERCED
 SITE PLAN REVIEW COMMITTEE
 RESOLUTION #419

<u>Golden Valley Health Centers</u>	<u>Construct a new 2-story medical office (approximately 27,000 s.f.) for Golden Valley Health Centers.</u>
APPLICANT	PROJECT
<u>7535 N. Palm Ave., Ste. 201</u>	<u>3940 Sandpiper Avenue</u>
ADDRESS	PROJECT SITE
<u>Fresno, CA 93711</u>	<u>231-200-004</u>
CITY/STATE/ZIP	APN
<u>(559) 437-0887</u>	<u>Office Commercial (C-0)</u>
PHONE	ZONING

In accordance with Chapter 20.68 of the Merced City Zoning Ordinance, the Site Plan Review Committee reviewed and administratively approved Site Plan Application #419 on February 8, 2018, submitted by Golden Valley Health Centers, property owner, to construct a new 2-story medical office (approximately 27,000 s.f.) at 3940 Sandpiper Avenue, within an Office Commercial (C-O) Zone. Said property being more particularly described as Parcel 4 as shown on the map entitled “Parcel Map for V&S Real Estate Investments, LLC,” recorded in Book 115 of Page 21 of Merced County Records; also known as Assessor’s Parcel Number (APN) 231-200-004.

WHEREAS, the proposal is exempt from the California Environmental Quality Act (CEQA) as a second tier environmental document, based upon the City’s determination that the proposed development remains consistent with the current General Plan and provisions of CEQA Guidelines, in accordance with Section 15162 (Exhibit H); and,

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

- A) The Project complies with the General Plan designation of Office Commercial (CO) and the Zoning designation of Office Commercial (C-O).
- B) The Project is consistent with General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan previously approved for this site (see Condition #3 and Exhibit E).
- C) General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan were approved for this site on May 6, 2013. As such, this Project is exempt from the Post Construction Standards for the City’s MS IV Permit.

- D) The Northview Office Center was recently split into multiple parcels through Resolution #942 regarding Lot Split #16-03 (Exhibit F). With that approval, the property owner was required to record a reciprocal easement for utility lines, access, parking, and lighting (as was required in the conditions of approval by Condition #21 from General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan).
- E) This proposal includes the construction of a 2-story medical office that is generally 30 feet tall with decorative architectural features reaching a height of 45 feet. The proposed site plan includes a 27,000-square-foot medical office, an outdoor plaza, bike racks, and bike lockers. The building exterior consists of cement plaster walls, plaster trim, metal siding, limestone porcelain veneer, and aluminum window shades. The building colors are neutral (beige/brown/blue) and consistent with the other office currently being constructed within the Northview Office Center.
- F) Merced Municipal Code Table 20.10-2 *Development Standards for Commercial Zones*, Note [3], states that the Site Plan Review Committee may establish the maximum height allowed for a commercial building adjacent to a residential zone. The Site Plan Review Committee has reviewed this Project and is of the opinion that the proposed 45-foot-tall building is appropriate for this site, given that the top of the second floor is generally 30 feet tall and the structures above that height are generally decorative architectural features.
- G) The parking requirement for a medical office building is one space for every 250 square feet of building area. The proposed 27,000-square-foot medical office building requires 108 parking spaces. The proposed parking lot includes 131 parking spaces, which exceeds the minimum parking requirements for this use. Parking lot trees at a ratio of one tree for every six parking spaces are also required (Condition #13).
- H) The Project site is subject to the North Merced Sign Ordinance. For properties within a Commercial Office (C-O) Zone, a building or office complex is permitted an identification sign of 4 square feet. However, with approval of an Administrative Conditional Use Permit, a building could be allowed ¼ square foot of signing for each lineal foot of building frontage up to a maximum of 25 square feet. The sign area could be increased to 37.5 square feet for the following qualifiers: 1) a building with two or more usable stories; 2) a single-story building with one hundred feet or more of frontage; or 3) an office complex. An office complex or tenant within an office building could also qualify for a monument sign. Based on Qualifier No. 1, this site may have up to 37.5 square feet of signage (Condition #9).
- I) A Public Hearing Notice was circulated in the newspaper and mailed to adjacent residential property owners at least 10 days before the public hearing, in accordance with MMC Section 20.68.050.E and MMC Chapter 20.70. Staff did

not receive any public comments for this project as of the time that this report was prepared (2/1/2018).

- J) If the amount of medical uses within the Northview Office Center exceeds 71,800 square feet, a new traffic study and parking analysis may be required, at the discretion of the Director of Development Services (per Condition #27 in the Conditions of Approval from General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan). This is the second medical building reviewed for this office center. The first medical building approved for the Northview Office Center is 35,000 square feet. Together, that medical building and this medical building total 62,000 square feet.
- K) The subject site has a concrete block wall along the southern property line, between the proposed office building and the subdivision to the south, as is required under the Conditions of Approval for General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan.
- L) The proposed Landscape Plan (Exhibit C) includes landscaping and fast growing trees along the southern property line as required under the Conditions of Approval from General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan.

NOW, THEREFORE, BE IT RESOLVED that the Merced City Site Plan Review Committee does approve Site Plan Application #419 subject to the following conditions:

- 1) The site shall be constructed as shown on Exhibit B (site plan), Exhibit C (landscape plan), and Exhibit D (elevations), except as modified by the conditions of approval within this resolution.
- 2) All conditions contained in Site Plan Review #79-1 – Amended (“Standard Conditions for Site Plan Review Application”) shall apply.
- 3) The Project shall comply with all relevant conditions of approval from General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan previously approved for the project site. The Project shall also comply with all terms and conditions of the Developer Agreement (Exhibit G) for the previously referenced projects dated May 6, 2013 and all mitigation measures outlined in Initial Study #12-35.
- 4) The Project shall comply with the conditions of approval from Resolution #941 for Lot Split #16-03.
- 5) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply, including, but not limited to, the California Building Code and Fire Codes.
- 6) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof,

and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

- 7) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- 8) All plans and supporting documents submitted for Building Permit review shall comply with the most recently adopted version of the California Building Code.
- 9) All signing shall comply with the North Merced Sign Ordinance. With approval of Site Plan #419, an increase in sign area for each tenant in compliance with Merced Municipal Code Section 17.36.660 is granted. Each tenant shall be eligible for up to ¼-square-foot of signing for each linear foot of building frontage up to a maximum of 25 square feet in compliance with MMC Section 17.36.660 (E) or up to a maximum of 37.5 square feet of signing if in compliance with MMC Section 17.36.660 (G).
- 10) Only non-illuminated signs shall be allowed on the southern elevation of the 2-story building, per Exhibit E previously approved for this site.
- 11) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access.
- 12) Parking lot and building lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements.
- 13) Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree

- list). Trees shall be installed at a ratio of at least one tree for each six parking spaces. In addition, street trees shall be planted as required by City Standards.
- 14) Irrigation for all on-site landscaping shall be provided by a drip system or micro-spray system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other State or City mandated water regulations.
 - 15) The on-site landscape design shall include the use of xeriscape landscaping and avoid the use of turf as much as possible.
 - 16) All mechanical equipment shall be screened from public view.
 - 17) Any retail uses allowed as an accessory use or otherwise, shall be limited in hours to be open no later than 10:00 p.m., per Condition #28 of Exhibit E.
 - 18) Based on the proposed use and size of the building, the applicant should provide short-term bicycle parking spaces equivalent to 8% of required parking spaces and long-term bicycle parking spaces equivalent to 8% of required parking spaces. In addition, the bicycle parking spaces should meet the City's design standards for bicycle racks, including racks with covered shelters. Based on the required 108 parking spaces, the applicant should provide 9 short-term and 9 long-term bicycle parking spaces. Details to be worked out with Planning staff at the building permit stage.
 - 19) The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
 - 20) The applicant shall comply with Merced County Health Department requirements and obtain all necessary permits.
 - 21) As required by Merced Municipal Code Section 17.04.050 and 17.04.060, full public improvements shall be installed/repared if the permit value of the project exceeds \$85,000.00. Public improvements may include, but not be limited to, repairing/replacing the sidewalk, curb, gutter, street corner ramp(s), and other relevant City of Merced/State/Federal standards and regulations.
 - 22) The premises shall remain clean and free of debris and graffiti at all times.
 - 23) All landscaping shall be kept healthy and maintained, and any damaged or missing landscaping shall be replaced immediately.
 - 24) The applicant shall work with the City's Refuse Department to determine the best location for the refuse enclosure and to determine if recycling containers would be required. A double trash enclosure may be required. All refuse containers shall be located within a refuse enclosure constructed per City Standards.

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

2-8-18
DATE



Francisco Mendoza-Gonzalez

Planner
TITLE

Exhibits

- A) Location Map
- B) Site Plan
- C) Landscape Plan
- D) Elevations
- E) Conditions of Approval from GPA #12-03, ZC #416, and Revision #5 to NE Yosemite Specific Plan and Mitigation Monitoring Program from Developer Agreement (Exhibit G)
- F) Lot Split Resolution #941
- G) Developer Agreement
- H) CEQA Section 15162 Finding



Mercy Medical Center

Cruickshank Middle School

MERCY

Office Under Construction

Subject Site
(Proposed Golden Valley Health Centers Medical Office)

COMMUNITY COLLEGE EAST

Merced College

SANDPIPER

BOBOLINK

Single-Family Homes

NIGHTINGALE

HUMMINGBIRD

REDWING

MANSIONETTE



VICINITY MAP

PROJECT INFORMATION

78,325 SQ. FT. (1.8 ACRES)
BUILDING SIZE
1ST FLOOR 14,800 SQ. FT.
2ND FLOOR 12,000 SQ. FT.
TOTAL 26,800 SQ. FT.

PARKING

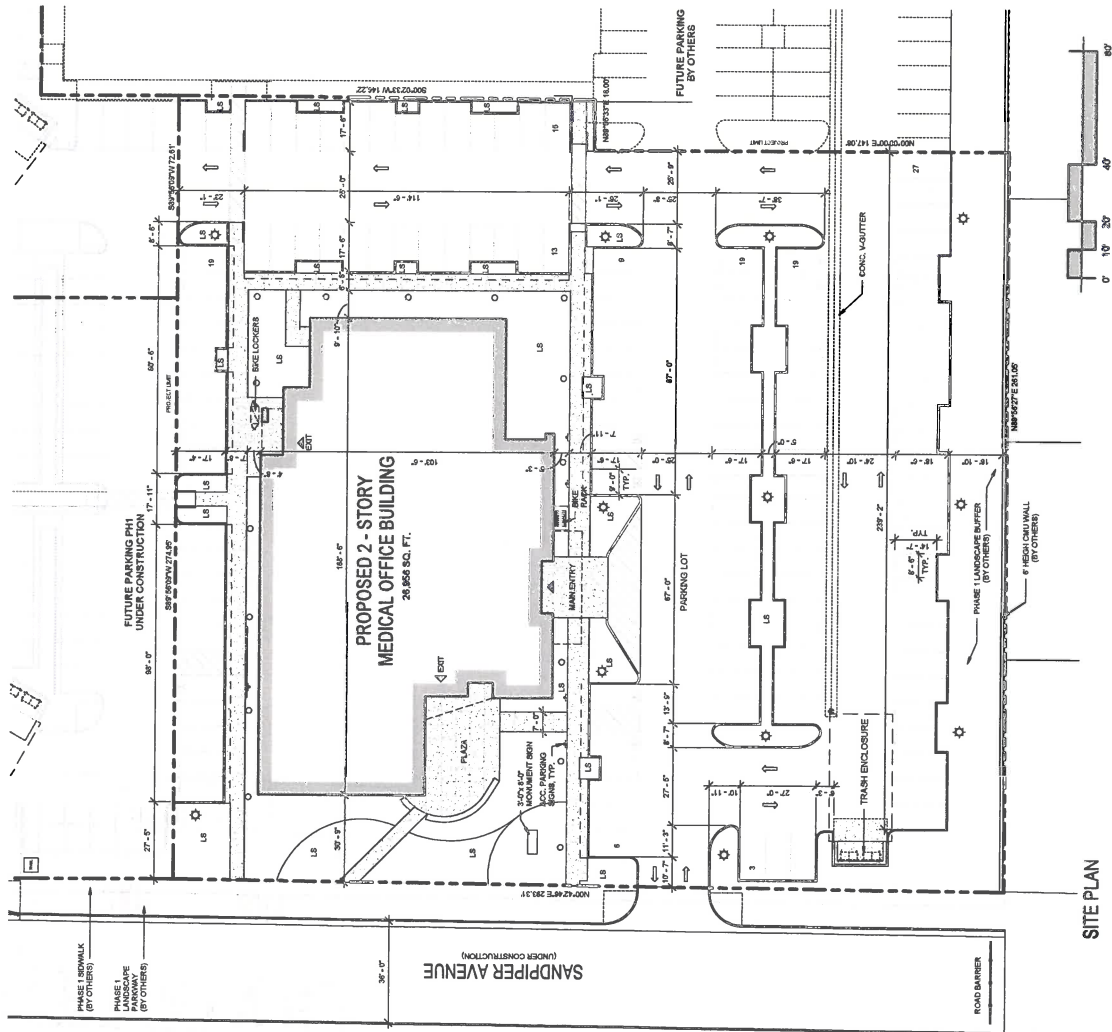
1,150 REQUIRED FOR "NON PUBLIC" AREAS @ 26,800 SQ. FT. @ 10% = 22,917 SQ. FT.	REQUIRED	PROVIDED
BLDG 22,917 SQ. FT. / 700 = 115 STALLS		

STANDARD PARKING STALLS	67	80
CLEARVIEW VEHICLE STALLS	11	11
INCLUDING FUTURE CHARGING STATIONS	34	34
COMPACT STALLS	5	5
ACCESSIBLE STALLS	5	5
PARKING TOTALS (412 STALLS)	115	130

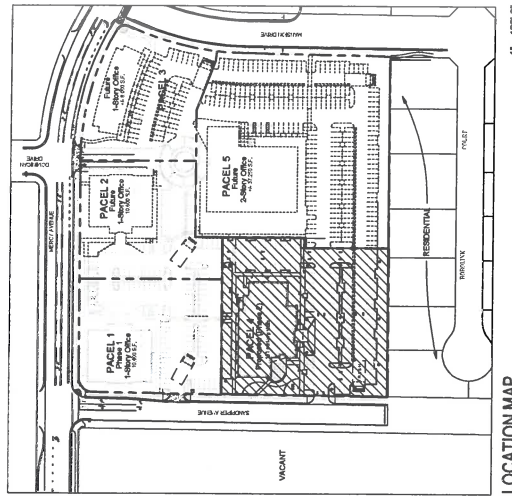
PROJECT SUMMARY

BIKE PARKING	
REQUIRED	PROVIDED
SHORT TERM BIKE (70 VISITORS @ 0.05%)	4
LONG TERM BIKE (40 STAFF @ 0.05%)	2
TOTALS	6

- LEGEND**
- 7" CONC. PAVING (4" NATIVE @ 80%)
 - NO. OF PARKING STALLS
 - LANDSCAPE AREA
 - LSH POLE
 - PATHWAY LIGHT ROLL-ON



SITE PLAN



LOCATION MAP

PROJECT NO.
16-10287
DRAWING DATE
1/22/17

1

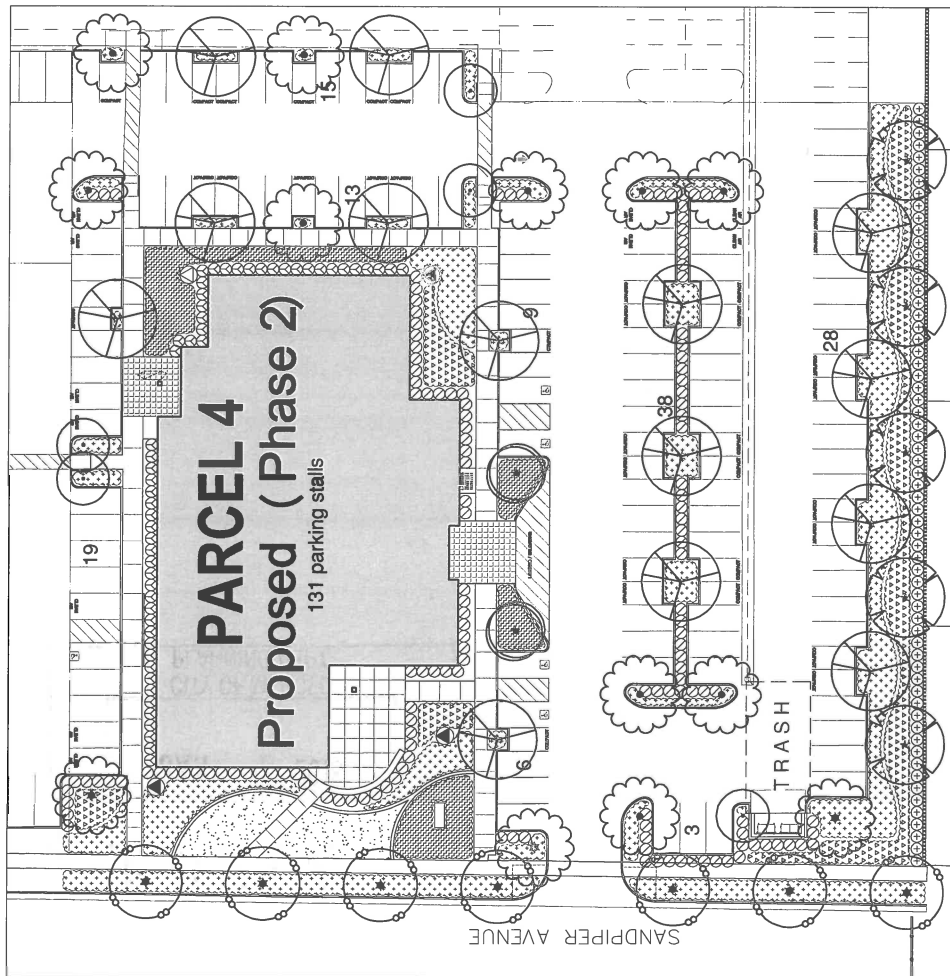


TETER
ARCHITECTS ENGINEERS CONNECTED

SITE PLAN

NEW MEDICAL OFFICE BUILDING AT
NORTHVIEW PROFESSIONAL CENTER
MERCED, CA





LANDSCAPE PLANTING LEGEND

SYMBOL **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

Moderate **WATER USE** **DESCRIPTION**

Low **WATER USE** **DESCRIPTION**

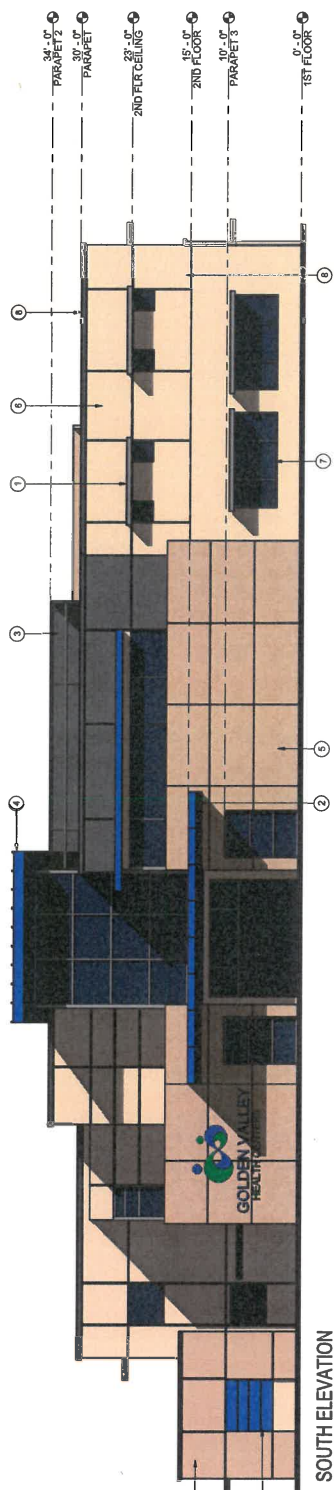
Moderate **WATER USE** **DESCRIPTION**

LANDSCAPE SHADING CALCULATIONS

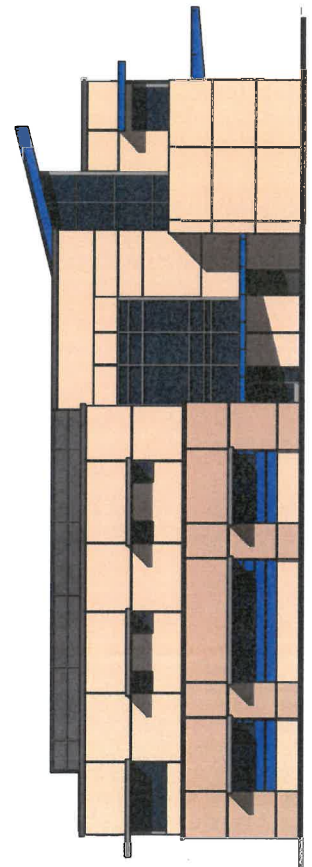
	100%	50%
LARGE TREE (30' - 35')	962 SF	481 SF
TOTAL SF FOR LARGE TREES	11	18
TOTAL SF FOR LARGE TREES	10,982 SF	7,896 SF
MEDIUM TREE (20' - 30')	707 SF	354 SF
TOTAL SF FOR MED. TREES	0	2
TOTAL SF FOR MED. TREES	0 SF	708 SF
SMALL TREE (15' - 20')	314 SF	157 SF
TOTAL SF FOR MED. TREES	0	4
TOTAL SF FOR MED. TREES	0 SF	628 SF
TOTAL SHADING PROVIDED		19,614 SF
TOTAL PARKING LOT AREA		39,174 SF
PARKING LOT SHADING PERCENTAGE		50%

Water Usage Chart - MAVA vs. ETWU
MAVA* (Eq. 10.22)(A)(0.45)
ETWU (Hydrozone #1 - Low - Bubbler)
ETWU (Hydrozone #2 - Moderate - Bubbler)
ETWU (Hydrozone #3 - High - Spray)
TOTAL ETWU (Sum of Hydrozones 1, 2 & 3 = 212,671 gallons per year)
MAVA > ETWU
280,045 gallons > 212,671 gallons ✓

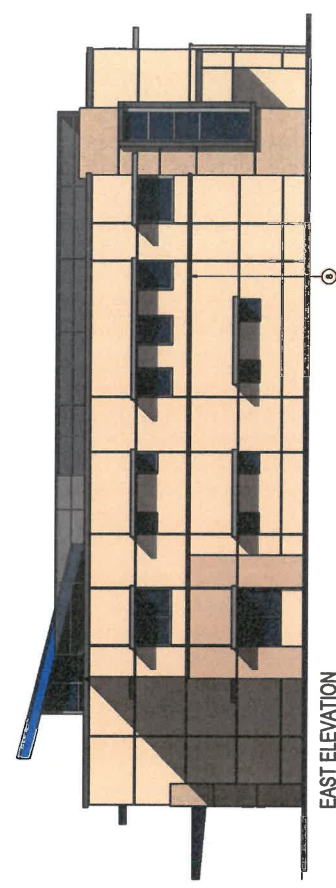
RECEIVED
1711 - 5018
MAY 10 2018
CIVIL ENGINEER



SOUTH ELEVATION



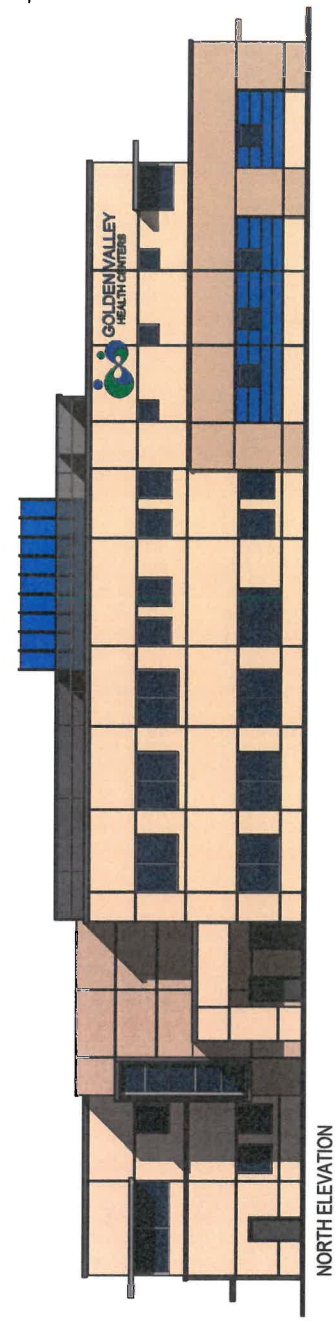
WEST ELEVATION



EAST ELEVATION

KEYNOTES

1. ALUMINUM WINDOW SHADE
2. A/C PANELING
3. PREFORMED METAL SIDING - ASP SPAN, SPAN LOK REGAL BLUE
4. STANDING SEAM METAL ROOF - ASP SPAN, SPAN LOK REGAL BLUE
5. LIMESTONE PORCELAIN VENEER
6. CEMENT PLASTER - EARLY PCC, MD
7. ALUMINUM STOREFRONT SYSTEM
8. PLASTERED TRIM
9. CEMENT PLASTER - BENJAMIN MOORE DORSET GOLD



NORTH ELEVATION

CONDITIONS OF APPROVAL
General Plan Amendment #12-03;
Zone Change #416; and,
Revision #5 to the NE Yosemite Specific Plan

- 1) The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and in compliance with the height specified in Exhibit 2 (elevations) -- Attachments B and C, except as modified by the conditions.
- 2) The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
- 3) All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
- 4) Approval of the General Plan Amendment and Zone Change is subject to the applicant's entering into a written (developer) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
- 5) The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any

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

- 6) The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
- 7) Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated before the first building permit is issued. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.
- 8) Due to the City's inter-face regulations (MMC Section 20.52), a conditional use permit shall be required prior to the construction of all buildings.
- 9) The project shall comply with all mitigation measures outlined in Initial Study #12-35 (Attachment R) and Exhibit B of the Planning Commission Resolution (Attachment S).
- 10) All signs shall comply with the North Merced Sign Ordinance and Section 20.20 (Commercial Office Zone) of the City's Zoning Ordinance.
- 11) The applicant shall construct all improvements per City Standards along the property frontage on both the east and west sides of Sandpiper Avenue. The east side of Sandpiper Avenue shall include sidewalk, curb and gutter, and a travel lane. The west side shall include curb and gutter and the travel lane only. The developer shall be eligible for reimbursement for the west half of the improvements per Merced Municipal Code Section 17.58.030 and

- 17.58.040. Sandpiper Avenue to be constructed along the full property frontage with the first phase of construction. (Mitigation Measure – Transportation/Traffic #1)
- 12) A right turn lane shall be provided at the intersection of Sandpiper Avenue and Mercy Avenue. Additional right-of-way dedication may be needed along Sandpiper Avenue to allow the construction of the turn lane. If the City Engineer determines additional right-of-way is needed, the developer shall provide the dedication prior to beginning construction on any building. (Mitigation Measure – Transportation/Traffic #5)
 - 13) Mercy Avenue shall be widened and re-stripped to provide a continuous Two-Way left Turn (TWLT) along the school frontage. This improvement shall be provided with the first phase of construction. (Mitigation Measure – Transportation/Traffic #4)
 - 14) The installation of the sidewalk, curb and gutter along the entire frontage of the property along Mansionette Drive shall be installed with the first phase of construction. (Mitigation Measure – Transportation/Traffic #1)
 - 15) Any missing or damaged improvements along the property frontage on Mercy Avenue shall be installed/repared with the first phase of construction. (Mitigation Measure – Transportation/Traffic #1)
 - 16) Install solar powered speed detection signs along Mansionette. A sign shall be posted for both northbound and southbound traffic. (Mitigation Measure – Transportation/Traffic #3)
 - 17) The approval of this General Plan Amendment, Zone Change, and Specific Plan Revision allows all principally permitted and accessory uses within a Commercial Office (C-O) zone (MMC 20.20). Accessory uses include incidental services, such as restaurants, pharmacies, and retail sales to serve occupants and patrons of the principally permitted uses, when conducted and entered from within the building group, provided there is no exterior display or advertising.
 - 18) Conditional uses listed in Merced Municipal Code Section 20.20.040 are allowed with the approval of a Conditional Use Permit with the exception of mortuaries, crematories, bail bonds businesses, and R-4 residential uses which are precluded by the Conditional Zoning as proposed and agreed to by the applicant and as spelled out in the Developer Agreement per Condition #4 .

- 19) Appropriate turning radii shall be provided within the parking areas to allow for Fire Department and refuse truck access. (Mitigation Measure – Public Services #1)
- 20) Parking lot trees shall be installed per the City’s Parking Lot Landscape Standards. Trees shall be a minimum of 15-gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City’s approved tree list). Trees shall be installed at a ratio of at least one tree for each six parking spaces.
- 21) If the property is split into multiple parcels, owners shall be required to record joint access and parking easements allowing free vehicular access and parking between parcels. Such easements shall be recorded as part of any parcel map or conditional use permit approval.
- 22) A minimum 6-foot high concrete block wall shall be installed along the southern property line between this parcel and the residences along the north side of Bobolink Court. The wall could be raised to 7-feet 4-inches if a majority of the residents agree to the increased height prior to construction.
- 23) Sufficient parking shall be provided with each phase to accommodate the uses within that phase per MMC 20.58. If all the uses within a phase are medical office uses, additional parking may be needed to accommodate those uses. It shall be the developer’s responsibility to install all required parking necessary for each use prior to occupancy of each building.
- 24) Pedestrian access between buildings and to the public sidewalk shall be provided. This may be done through the use of special paving or other markings to indicate the pedestrian path of travel and shall be provided with each phase of construction. Details shall be worked out at the Conditional Use Permit stage.
- 25) The landscaping, including all trees, along the southern property line shall be installed with the first phase of construction. The trees in this area shall be a minimum 24-inch box trees and shall consist of a fast-growing tree species that will substantially shield the view from the office buildings into the residential lots to the south. No certificates of occupancy shall be issued until this landscaping is installed. The installation of the landscaping includes the construction of the block wall required in Condition #22.
- 26) Only non-illuminated signs shall be allowed on the southern elevation of the two-story buildings (Phases B and C) to prevent any spill-over onto the adjacent residential lots.

- 27) If the amount of the medical uses exceeds 71,800 square feet as shown on Exhibit A (Attachment B of Staff Report #13-08), a new traffic study and parking analysis may be required at the discretion of the Development Services Director.
- 28) Any retail uses allowed as an accessory use or otherwise shall be limited in hours to be open no later than 10:00 p.m.
- 29) Bicycle racks shall be provided throughout the development. A minimum ratio equal to 5% of the vehicular parking spaces shall be provided with each phase.
- 30) The developer shall work with the City's Refuse Department to appropriately place all refuse containers. Approval of these locations shall be included at the Conditional Use Permit stage.
- 31) The building design shall be approved at the Conditional Use Permit stage. At that time, full elevations, materials, and details on any other design elements shall be provided.
- 32) All necessary parcel maps shall be approved prior to any building permits being issued.
- 33) Parking lot lighting shall be shielded or oriented in a way that does not allow "spill-over" onto adjacent lots in compliance with the California Energy Code requirements. Any lighting on the building shall be oriented to shine downward and not spill-over onto adjacent properties.
- 34) If the City Engineer determines additional right-of-way is needed on Mercy Avenue, the developer shall dedicate a maximum 10-foot wide strip of land along the entire property frontage on Mercy Avenue. If the City Engineer determines less than a 10-foot wide strip is needed, only the width required for public use shall be required for dedication. In return, the City shall work with the developer to insure the size of the buildings is not reduced.
- 35) A gate shall be installed at the Mercy Avenue driveway and shall automatically close during the hours traffic to Cruickshank Middle School is at its peak (i.e., during the hours students are being dropped off for school and picked up after school). When school is not in session (during the summer or during extended vacation periods), the gate may remain open during the peak hours. The gate shall be equipped with a knock box to allow fire department access when the gate is closed. The gate shall be setback from the street to allow for sufficient vehicle stacking. The location and design of the gate shall be approved at the Conditional Use Permit stage.

ENVIRONMENTAL REVIEW #12-35

Mitigation Monitoring Program

MITIGATION MONITORING CONTENTS

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

LEGAL BASIS AND PURPOSE OF THE MITIGATION MONITORING PROGRAM

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

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

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

- 1) The requirements of the adopted mitigation monitoring program for the General Plan Amendment #12-03/Zone Change #416/Specific Plan Revision #5 to the NE Yosemite Specific Plan shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

MITIGATION MONITORING PROCEDURES

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

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

GENERAL PLAN MITIGATION MEASURES

As a second tier environmental document, Initial Study #12-35 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

NONCOMPLIANCE COMPLAINTS

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

MONITORING MATRIX

The following pages provide a series of tables identifying the mitigation measures proposed specifically for General Plan Amendment #12-03, Zone Change #416, and Specific Plan Revision #5 to the NE Yosemite Specific Plan. The columns within the tables are defined as follows:

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

General Plan Amendment #12-03/Zone Change #416/Specific Plan Revision #5 to the NE Yosemite Specific Plan Mitigation Monitoring Checklist

Project Name: _____ File Number: _____
Approval Date: _____ Project Location: _____
Brief Project Description: _____

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

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
A-4 - Aesthetics	Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area.	MM - Aesthetics 1	The project as a whole and each individual building will be required to conform to the California Energy Code regarding lighting and to avoid "spillage" onto adjacent properties.	Significant	Less Than significant	The Inspection Services Department will monitor compliance during the plan review process for each building and the site.
C-2 - Air Quality	Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	MM - Air Quality 1	Prepare and implement a Dust control Plan to comply with SJVAPCD Regulation VIII Requirements to control construction emissions of PM ₁₀ .	Significant	Less than Significant	The Inspection Services Department will monitor compliance during the construction of the buildings.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
E-2 - Cultural Resources	Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5.	MM - Cultural Resources 1	If evidence of archaeological, cultural, or paleontological artifacts, or unique geological resources are discovered during construction, all operations within an area at and adjacent to the discovered site shall halt until a qualified archaeologist determines the extent of significance of the site.	Significant	Less than Significant	The Inspection Services Department and Planning Department will monitor compliance during the construction of the buildings.
E-3 Cultural Resources	Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature					

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
E-2 -- Cultural Resources	Cause a substantial adverse change in the significance of an archaeological resource pursuant to §15064.5.	MM -- Cultural Resources 2	On-site preservation of a resource is the preferred alternative. Preserving a cultural deposit maintains the artifacts in context and may prevent inadvertent discovery of, or damage to, human burials. Preservation may be accomplished through a number of means such as capping or covering the site with a layer of soil, fencing the site area, and/or incorporation of the resource in a park area.	Significant	Less than Significant	The Inspection and Planning Department will monitor compliance during the construction of the buildings.
E-3 Cultural Resources	Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature					

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
E-4 Cultural Resources	Disturb any human remains, including those interred outside of formal cemeteries	MM - Cultural Resources 3	<p>If human remains are discovered, no further disturbance shall occur until the County Coroner has made the necessary findings as to origin and disposition pursuant to Public Resources Code Section 5097.98. If the coroner determines that no investigation of the cause of death is required and if the remains are of Native America origin, the coroner will notify the Native American Heritage Commission, which in turn will inform a most likely descendant. The descendant will then recommend to the landowner appropriate disposition of the remains and any grave goods.</p>	Significant	Less than Significant	The Inspection Services Department and Planning Department will monitor compliance during the construction of the buildings.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
K-1 Noise	Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies	MM - Noise 1	Grading and construction activity shall be limited to daylight hours (between 7 a.m. and 7 p.m.) in areas where noise sensitive receptors are located.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction of the buildings.
		MM - Noise 2	No individual piece of equipment shall produce a noise level exceeding 83dBA at a distance of twenty-five feet from the source. If the device is housed within a structure on the property, the measurement shall be made outside the structure at a distance as close to twenty-five feet from the equipment as possible.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction of the buildings.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
K-1 Noise (continued)	See above.	MM -- Noise 3	In noise sensitive areas, construction equipment, compressors, and generators shall be fitted with heavy duty mufflers specifically designed to reduce noise impacts.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction of the buildings.
		MM -- Noise 4	The noise level at any point outside of the property plane of the project shall not exceed 86 dBA.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction of the buildings.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
M-1 Public Services	The project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the following public services					

Continued on next page.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
	Fire Protection	MM – Public Services 1	The site design shall meet all Fire Code and Merced City Fire Department standards for drive aisle widths and turning radii.	Significant	Less than Significant	The Inspection Services Department will monitor compliance during the plan review and construction phases of the buildings.
		MM – Public Services 2	All buildings over 5,000 square feet shall be provided with a fire sprinkler system and all necessary monitoring equipment.	Significant	Less than Significant	The Inspection Services Department will monitor compliance during the plan review of the buildings.
		MM – Public Services 3	If determined necessary by the City Fire Department, on-site fire hydrants shall be provided. Location of the hydrants shall be determined by the Fire Department.	Significant	Less than Significant	The Inspection Services Department will monitor compliance during the plan review of the buildings.
		MM – Public Services 4	The developer shall pay all required impact fees, including fees for the City's Public Facilities Financing Plan (PFFP) and the county-wide Regional Transportation Impact Fees (RTIF).	Significant	Less than Significant	The Planning Department will monitor compliance during the plan review of the buildings.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
	Fire Protection (continued)	MM – Public Services 5	The developer shall form a Community Facilities District (CFD) prior to construction of the project.	Significant	Less than Significant	The Planning Department will monitor compliance during the Plan Review stage.
M-1 Public Services	Police Protection	MM – Public Services 4	The developer shall pay all required impact fees, including fees for the City's Public Facilities Financing Plan (PFFP) and the county-wide Regional Transportation Impact Fees (RTIF).	Significant	Less than Significant	The Planning Department will monitor compliance during the plan review of the buildings.
		MM – Public Services 5	The developer shall form a Community Facilities District (CFD) prior to construction of the project.	Significant	Less than Significant	The Planning Department will monitor compliance during the Plan Review stage.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
M-1 Public Services	Schools	MM -- Public Services 6	The developer shall pay all school facilities fees as required by the Merced City School District and the Merced Union High School District prior to issuance of a building permit.	Significant	Less than Significant	The Inspection Services Department will monitor compliance prior to Building Permit issuance.
M-1 Public Services	Other Public Facilities	MM -- Public Services 4	The developer shall pay all required impact fees, including fees for the City's Public Facilities Financing Plan (PFFP) and the county-wide Regional Transportation Impact Fees (RTIF).	Significant	Less than Significant	The Planning Department will monitor compliance during the plan review of the buildings.
		MM -- Public Services 5	The developer shall form a Community Facilities District (CFD) prior to construction of the project.	Significant	Less than Significant	The Planning Department will monitor compliance during the Plan Review stage.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
N-1 Recreation	Increase the use of neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated	MM - Recreation 1	Prior to issuance of a building permit for this project, the developer shall pay all development fees including Public Facilities Impact Fees and for a Community Facilities District to support the ongoing maintenance of parks within the area.	Significant	Less than Significant	The Planning Department will monitor compliance during the Plan Review stage.
	Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	MM - Recreation 2	The project shall be responsible for constructing all required bicycle lanes along Mercy Avenue, Mansionette Drive, and Sandpiper Avenue. The construction of these lanes will further the City's goal to connect all paths and lanes throughout the City.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
O - 1 Transportation/ Traffic	Cause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system (i.e. result in a substantial increase in either vehicle trips, the volume to capacity ratio on roads, or congestion at intersections)	MM - Transportation/ Traffic 1	Provide all required public improvements, including but not limited to, sidewalk, curb, gutter, and bike lanes along all frontages of the project site (Mercy Avenue, Sandpiper Avenue, and Mansionette Drive).	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.
Continued on next page.						

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
O – 1 Transportation/ Traffic	See above.	MM – Transportation/ Traffic 2	Provide a crosswalk across Mercy Avenue between the project site and the medical center. Based on the projected traffic volumes, additional warning signs shall be installed with the crosswalk. Signage for the crosswalk shall include flashing LED pedestrian crossing signs. All signs shall be approved by the City of Merced and installed per City Standards.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.
		MM – Transportation/ Traffic 3	Install solar powered speed detection signs along Mansionette. A sign shall be posted for both northbound and southbound traffic.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.

Continued on next page.

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
O - 1 Transportation/ Traffic	See above.	MM - Transportation/ Traffic 4	Mercy Avenue should be widened and re-striped to provide a continuous Two-Way left Turn (TWLT) along the school frontage. This improvement would increase the capacity of the Mercy Avenue/Mansionette Drive intersection and reduce conflicts between the through and turning traffic at the school's driveways. While congestion would remain near the school, the duration of congestion and queuing could be shortened with this improvement.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.
Continued on next page.						

Impact No.	Impact	Mitigation No.	Mitigation Measures	Level of Significance		Monitoring Program
				Before Mitigation	After Mitigation	
O - 1 Transportation/ Traffic	See above.	MM - Transportation/ Traffic 5	The northbound Sandpiper Avenue approach could be re-configured to provide two lanes (i.e., a left + thru lane and a separate right turn lane). With this improvement, the approach would operate at LOS D.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.
O - 2 Transportation/ Traffic	Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roadways	MM - Transportation/ Traffic 1 - 5 above		Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.
P-7 Utilities and Service Systems	Comply with federal, state, and local statutes and regulations related to solid waste	MM - Utilities and Service Systems 1	The developer shall provide all necessary solid waste and recycling containers or facilities on-site as required by federal, state, and local regulations.	Significant	Less than Significant	The Inspection Services Department and Engineering Department will monitor compliance during the construction stage.

Certificate of Completion:

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

Environmental Coordinator

Date

CITY OF MERCED
Minor Subdivision Committee
Lot Split Application #16-03

RESOLUTION # 941

WHEREAS, the Merced City Minor Subdivision Committee met on October 12, 2016, to consider Lot Split Application #16-03, which would provide for the re-subdivision of an approximately 7.55-acre parcel into five separate commercial parcels ranging in size from 8,000 square feet to 37,250 square feet. This parcel is generally located at the on the southeast corner of Mercy Avenue and Mansionette Drive, Merced, California, APN 231-040-002; and,

WHEREAS, upon due public notice, a public hearing was conducted on above said date; and,

WHEREAS, said re-subdivision would create the five separate commercial parcels shown on Exhibit A.

WHEREAS, said Lot Split #16-03 has been reviewed by the Merced Minor Subdivision Committee and found to comply with the provisions of the Subdivision Ordinance and Lot Split Procedures, and finds the following:

1. The proposed minor subdivision complies with the currently adopted City of Merced General Plan designation of Commercial Office (CO) and the current Zoning designation of Commercial Office (C-O).
2. The City of Merced has conducted an environmental review of the proposed minor subdivision in accordance with the California Environmental Quality Act (CEQA) and has concluded this is a categorically exempt Class 15 project.

NOW, THEREFORE, BE IT RESOLVED that the Minor Subdivision Committee does approve Lot Split Application #16-03, submitted by Golden Valley Engineering on behalf of V & S Real Estate Investments, LLC, property owner, subject to the following conditions:

1. Survey monuments shall be set at all angle points and lot corners.
2. All construction and improvements, due as part of the building permit stage, shall be in accordance with zoning, building, and all other codes, ordinances, standards, and policies of the City of Merced.
3. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, street trees, street lights, parks and open space. CFD procedures shall be initiated prior to the recordation of any parcel map. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

4. Either prior to the sale of any parcel described herein, or within two years of the date of this resolution, whichever is sooner, an official parcel map shall be filed with the Merced County Recorder in accordance with Section 66410 et. seq. of the State of California Government Code (Subdivision Map Act). Any lawful extensions, if granted, would apply.
5. The Developer Agreement approved for General Plan Amendment #12-03 and Zone Change #413 shall be referenced on the Final Map as Document #2013-018023, recorded 5/16/2013.
6. Per Condition #11 of Exhibit C (Conditions of Approval) of the Developer Agreement, Sandpiper Avenue shall be constructed along the full property frontage with the first phase of construction.
7. Per Condition #13 of Exhibit C (Conditions of Approval) of the Developer Agreement, Mercy Avenue shall be widened and re-stripped to provide a continuous Two-Way Left Turn (TWLT) along the school frontage with the first phase of construction.
8. Per Condition #14 of Exhibit C (Conditions of Approval) of the Developer Agreement, sidewalk, curb and gutter along the entire frontage of the property along Mansionette Drive shall be installed with the first phase of construction.
9. The existing 38-foot temporary drainage easement recorded with the Final Map for Mansionette Estates Unit 2 in Volume 52, Pages 31,32, and 33 of Merced County Records shall be abandoned with the recordation of the Final Map for this Lot Split.
10. The new 20-foot drainage easement proposed shall be dedicated with the Final Map for this Lot Split as shown on Exhibit A.
11. Covenants, Conditions, and Restrictions (CC&R's) shall be recorded concurrently with the map and shall be cross-referenced on the map. CC&R's shall include all necessary easements related to joint access, parking, lighting, utilities, and maintenance. Access points and path of travel from City streets to each parcel shall be clearly defined in the CC&R's. Joint access and parking easements shall allow free vehicular access and parking between all parcels. CC&R's shall be modified as needed to reflect any changes to the site plan.
12. In lieu of the CC&R's required by Condition #11, a reciprocal easement for all utility lines, access, parking, and lighting shall be recorded by separate document concurrently with the final map.
13. Each parcel shall be allowed only one domestic water service. Each parcel shall be provided with a water connection for fire suppression as required by the California Fire Code and may be allowed an additional connection for landscape purposes. If more than one connection on an individual parcel is needed for fire suppression and/or landscape purposes, the additional connection shall be approved by the City Engineering and Public Works Departments and shall be installed per City Standards.

October 12, 2016

14. The Project shall comply with the conditions of approval for General Plan Amendment #12-03, Zone Change #416, and Revision #5 to the Northeast Yosemite Specific Plan previously approved for this project [Exhibit C of Developer Agreement (Exhibit B)]. The project shall also comply with all terms and conditions of the Developer Agreement (Exhibit B) for the previously referenced projects dated May 6, 2013 and all mitigation measures outlined in Initial Study #12-35.
15. All property taxes due for this property shall be paid and proof of payment provided to the City of Merced prior to recordation of the Parcel Map.
16. The owner shall provide the City of Merced a "Parcel Map Guarantee Report" from a Title Company at least two weeks prior to recording the Parcel Map.
17. The owner shall pay all recording fees with a separate check made payable to the "Merced County Recorder's Office."
18. The property owner shall enter into a "Subdivision Drainage Agreement" with the Merced Irrigation District Improvement District No 1 (MIDDID No. 1), if applicable, and pay all fees as required by MID.

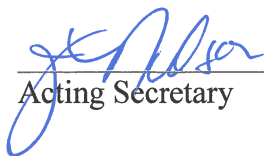
Upon motion by Acting Committee Member Nelson, seconded by Acting Committee Member Cardoso, and unanimously approved.

Adopted this 12th day of October, 2016.



Kim Espinosa for David Gonzalves,
Director of Development Services/Chairman,
Minor Subdivision Committee of the City of
Merced, California

ATTEST:



Acting Secretary

Exhibits

- A) Tentative Parcel Map
- B) Developer Agreement

RECORDING REQUESTED BY:

City of Merced, A California charter
municipal corporation

WHEN RECORDED MAIL TO:

City of Merced
City Clerk
678 West 18th Street
Merced, California 95340

2013-018023

5/16/2013



(Above for Recorder's Use Only)

DEVELOPER AGREEMENT

THIS AGREEMENT is made and entered into as of this 6 day of May 2013
by and between the City of Merced, a California Charter Law Municipal Corporation ("City")
and V & S Real Estate Investment, LLC, a California Limited Liability Company ("Owner").

WITNESSETH

WHEREAS, Owner has applied to the City for a General Plan amendment and zone
change for the property located generally on the south side of Mercy Avenue between the future
Sandpiper Avenue and Mansionette Drive, and as legally described on Exhibit "A," and shown
on the Map at Exhibit "B," attached hereto and incorporated herein by this reference; and,

WHEREAS, City is willing to consider Owner's request provided that certain conditions
are met.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and
representations contained herein, and for other good and valuable consideration, the receipt and
sufficiency of which is hereby acknowledged and agreed, the parties hereto agree as follows:

1. Owner, for himself and all successors thereto, agrees to pay all City and school
district fees, taxes, and/or assessments in effect on the date of subdivision and/or permit
approval, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or
assessments which are in effect at the time water/sewer connection and/or building or
encroachment permits are issued, which may include public facility impact fees, other impact
fees as applicable, and any Mello-Roos taxes—whether for infrastructure, services, or any other
activity or project authorized by the Mello-Roos law, etc., (and to comply with the additional
conditions set forth in Exhibit "C," and the Mitigation Measures set forth in Exhibit "D,"
attached hereto and incorporated herein by this reference). Payment shall be made at the time of
building permit issuance unless an Ordinance or other requirement of the City mandates or
permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

2. Owner desires to comply with the conditions of approval set forth on Exhibit "C," and Mitigation Measures set forth in Exhibit "D," and within this Agreement and acknowledges that the conditions are necessary to mitigate the environmental impact caused by Owner's development or are necessary to offset the costs to the City generated by Owner's development including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code.

3. Owner agrees to pay all sewer connection costs imposed by the City as delineated in Section 15.16.070 of the Merced Municipal Code and to pay all other costs required by Chapter 15.16 of the Merced Municipal Code.

4. The Owner shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, Owner shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Owner's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the Owner shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any agency or instrumentality thereof, or any of its officers, officials, employees, or agents.

5. City, on its part, agrees to rezone the subject property to Conditional Commercial Office (C-O) and change the General Plan (City approval) in accordance with Exhibit "B."

6. The Owner agrees that the following uses shall be prohibited in compliance with the Conditional Zoning approved for the site: mortuaries, crematories, bail bonds businesses, and R-4 residential uses.

7. No building permit or other permit shall be issued that is not in compliance with this Agreement.

8. It is expressly agreed that this Agreement is not intended to limit the power of the City to impose other requirements, limitations, or fees, etc., as a condition of development, and does not relieve the Owner from complying with all other requirements that may be imposed as a condition of development, whether now in existence or hereinafter imposed by the City whether by zone change, subdivision map approval, ordinance, resolution, use permit, or otherwise. The parties agree that this Paragraph does not apply to the approval of the final map and issuance of building permits for project(s) subject to this Agreement on the property described in Exhibit "A."

9. To the extent allowed by law, the conditions of this Agreement constitute covenants running with the land, and shall be enforceable by the City or by any present or future owner of any of the land described in Exhibit "A."

10. Owner agrees to comply with and abide by all conditions set forth by the City relating to the development of the property subject to this Agreement, including installation of all required public improvements.

11. In the event of default by Owner, and in addition to any other remedy available to the City, the City shall have the right to rezone the land back to its original designation and/or to de-annex the land as appropriate.

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

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

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

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

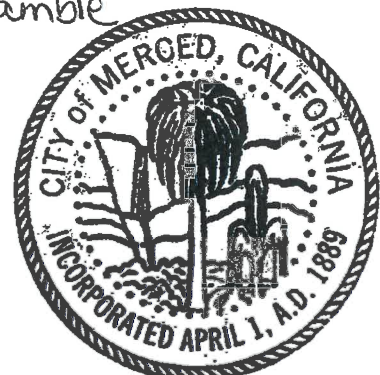
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Law Municipal Corporation

BY: John M. Bramble
City Manager
John M. Bramble

ATTEST:
JOHN M. BRAMBLE, CITY CLERK

BY: [Signature]
Assistant/Deputy City Clerk



APPROVED AS TO FORM:

BY: Ken Ryed 3/24/13
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

OWNER
V & S REAL ESTATE INVESTMENTS, LLC,
A California Limited Liability Company

BY: _____
Signature
Sidhardha Lakireddy
Print Name

Its: Managing Member

ADDRESS: 2040 Bancroft Way 301
Berkeley CA 94704

TELEPHONE: 510 900 5209

FAX: 510 550 2805

E-MAIL: sid@anchavalley.com

APPROVED AS TO FORM:

BY: Ker Ryzel 3/24/13
City Attorney Date

213485
ACCOUNT DATA:

BY: Russley R. Luf
Verified by Finance Officer

No funds to encumber. Wk 4/22/13
Wk 4/22/13

OWNER
V & S REAL ESTATE INVESTMENTS, LLC,
A California Limited Liability Company

BY: _____
Signature

Print Name

Its: Managing Member

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

ACKNOWLEDGMENT

State of California

County of Merced ~~ALAMEDA~~

On MAY 09, 2013, before me, Jeffrey C. Lee,
a Notary Public, Personally appeared SIDHARDHA LAKIRGOOY

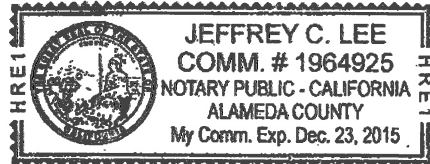

who proved to me on the basis of satisfactory evidence to be the person(s)
whose name(s) is/are subscribed to the within instrument and acknowledged
to me that he/she/they executed the same in his/her/their authorized
capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed
the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of
California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Notary Public



(seal)

ACKNOWLEDGMENT

State of California

County of Merced

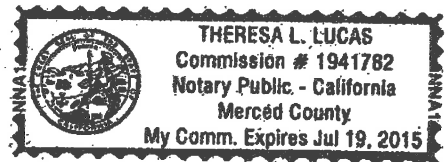
On May 14, 2013, before me, Theresa L. Lucas,
a Notary Public, Personally appeared John M. Bramble

who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Theresa L. Lucas
Notary Public



(seal)

Exhibit A
Legal Description .

Remainder F as shown on the map entitled "Mansionette Estates Unit 2" recorded in Volume 55, Page 13 of Merced County Records; also known as Assessor's Parcel Number (APN) 231-040-002.

**The California Environmental Quality Act
(CEQA) Section 15162 Findings:**

Application: Site Plan Review #419

Assessor Parcel Number or Location: Assessor's Parcel Number (APN): 231-200-004

Previous Initial Study/EIR Reference: This site was previously reviewed through Initial Study #12-35, resulting in a Mitigated Negative Declaration. The current proposal to construct an approximately 27,000-square-foot, two-story medical office building is consistent with the previous environmental review and the project remains in conformance with the City's *Merced Vision 2030 General Plan* as amended through General Plan Amendment #12-03, adopted by the City Council on May 6, 2013.

Original Project Date: Mitigated Negative Declaration #12-35 adopted by the Merced City Council on May 6, 2013.

Section A - Previous Studies

- | | | |
|--|--------------------------|-------------------------------------|
| | Yes | No |
| 1. Substantial changes are proposed in the project that will require major revisions of the previous project EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comment/Finding: The proposed building is consistent with the previous environmental review. No changes are proposed.

- | | | |
|--|--------------------------|-------------------------------------|
| | Yes | No |
| 2. Substantial changes have occurred with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comment/Finding: There have been no changes in the circumstances under which the project is undertaken that would require major revisions in the previous Mitigated Negative Declaration. There are no new significant environmental effects or substantial increases in the severity of previously identified environmental effects, and the area under consideration remains the same area previously evaluated.

- | | | |
|---|--------------------------|-------------------------------------|
| | Yes | No |
| 3. New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, has been revealed? (If "Yes" is checked, go to Section "B" below) | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

Comment/Finding: There is no new information of substantial importance that was not known and could not have been known with the reasonable diligence at the time the previous Mitigated Negative Declaration was adopted.

Section B - New Information

A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
---	---------------------------------	---

B) Significant effects previously examined will be substantially more severe than shown in the previous EIR.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
--	---------------------------------	---

C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
---	---------------------------------	---

D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
---	---------------------------------	---


Comment/Finding: All previously identified mitigation measures will be enforced with this project including payment of Public Facility Impact Fees. Therefore, the resulting impacts are no greater than those previously analyzed and the previously imposed mitigation measures remain sufficient to address all impacts from this project.

On the basis of this evaluation, in accordance with the requirements of Section 15162 of the CEQA Guidelines:

- | | |
|-------------------------------------|--|
| <input type="checkbox"/> | 1. It is found that subsequent negative declaration will need to be prepared. |
| <input type="checkbox"/> | 2. It is found that an addendum Negative Declaration will need to be prepared. |
| <input type="checkbox"/> | 3. That a subsequent EIR will need to be prepared. |
| <input checked="" type="checkbox"/> | 4. No further documentation is required. |

Date: January 29, 2018

Prepared By:



 Francisco Mendoza-Gonzalez,
 Planner



CITY OF MERCED

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

ADMINISTRATIVE REPORT

Agenda Item J.4.

Meeting Date: 5/7/2018

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

SUBJECT: Information Only - Planning Commission Minutes of March 21, 2018

RECOMMENDATION

For information only.

ATTACHMENTS

1. PC Minutes 03-21-2018

CITY OF MERCED
Planning Commission

MINUTES

Merced City Council Chambers
Wednesday, March 21, 2018

Chairperson Dylina called the meeting to order at 7:02 p.m., followed by a moment of silence and the Pledge of Allegiance.

ROLL CALL

Commissioners Present: Sonia Alshami, Mary Camper, Travis Colby, Robert Dylina, and Peter Padilla

Commissioners Absent: Jeremy Martinez (excused), (one vacancy)

Staff Present: Planning Manager Espinosa, Chief Deputy City Attorney Fincher, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S COLBY-ALSHAMI, and carried by unanimous voice vote (one absent, one vacancy), to approve the Minutes of March 7, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

4.1 **Information on Food Trucks.**

Planning Manager ESPINOSA reviewed excerpts from the City of Merced Zoning Ordinance regarding food trucks. For further information, refer to Staff Report #18-09.

There was no one present wishing to speak regarding this item; therefore, public testimony was opened and closed at 7:08 p.m.

Commissioner COLBY commented that streamlining the application process for food trucks would promote more local business for the City.

Planning Manager ESPINOSA clarified a few questions regarding terminology and logistics within the current application process for the Commission.

M/S COLBY-ALSHAMI, and carried by the following vote, to give direction to staff to prepare potential ordinance amendments and to schedule the item for a future Planning Commission meeting, to modify the requirements for mobile food vendors in the C-O, C-N, C-C, and B-P Zones to require Site Plan Review or Minor Use Permit rather than a Conditional Use Permit subject to Footnote #10 to Table 20.10-1, shown in Staff Report 18-09, regarding the City Center area:

AYES: Commissioners Alshami, Camper, Colby, and
Chairperson Dylina

NOES: Commissioner Padilla

ABSENT: Commissioner Martinez, (one vacancy)

ABSTAIN: None

5. **INFORMATION ITEMS**

5.1 **Calendar of Meetings/Events**

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

March 21, 2018

5.2 Miscellaneous

Commissioner PADILLA reiterated to the Commission that he will be absent for the Planning Commission meeting of April 4, 2018, due to a business conference.

6. ADJOURNMENT

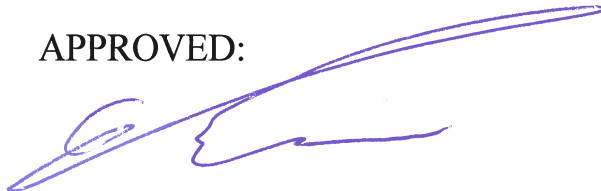
There being no further business, Chairperson DYLINEA adjourned the meeting at 7:19 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary
Merced City Planning Commission

APPROVED:



ROBERT DYLINEA, Chairperson
Merced City Planning Commission



ADMINISTRATIVE REPORT

Agenda Item J.5.

Meeting Date: 5/7/2018

SUBJECT: City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of April 2, 2018

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 April 2, 2018.

ALTERNATIVES

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

ATTACHMENTS

1. Minutes of April 2, 2018



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

Monday, April 2, 2018

6:00 PM

A. CLOSED SESSION ROLL CALL

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

Absent: 0

B. CLOSED SESSION

Mayor MURPHY called the Closed Session to order at 5:03 PM.

B.1. **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to Government Code section 54956.9(d)(2): (1) case

B.2. **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Employee Organization: American Federation of State, County, and Municipal Employees (AFSCME) Council 57; Local 2703; International Association of Fire Fighters, Local 1479; Merced Association of City Employees (MACE). AUTHORITY: Government Code Section 54957.6

B.3. **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Unrepresented Management AUTHORITY: Government Code Section 54957.6

Clerk's Note: Council adjourned from Closed Session at 5:42 PM.

C. CALL TO ORDER

Mayor MURPHY called the Regular Meeting to order at 6:01 PM.

C.1. Invocation - Abdur Raqeeb Wali, Ahmadiyya Muslim Community

The invocation was delivered by Abdur Raqeeb WALI from the Ahmadiyya Muslim Community.

C.2. Pledge of Allegiance to the Flag

Mayor MURPHY led the Pledge of Allegiance to the Flag.

D. ROLL CALL

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

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 the 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 the 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 - Adult Education Day

REPORT IN BRIEF

Received by Steve Hobbs Merced Adult School Principal.

Mayor MURPHY presented Steve HOBBS, Principal at Merced Adult School the proclamation for Adult Education Day.

F.2. **SUBJECT:** Proclamation - Sexual Assault Awareness Month

REPORT IN BRIEF

Received by Chee Yang, Valley Crisis Center

Mayor MURPHY presented Chee YANG from Valley Crisis Center, the proclamation for Sexual Assault Awareness Month.

G. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

H. ORAL COMMUNICATIONS

Shirley FARR, Merced - spoke on the Fahrens Park and dog park maintenance.

I. CONSENT CALENDAR

Items I.7. Professional Services Agreement between the City of Merced and Merced Main Street Association in the Amount of \$60,000 for Fiscal Year 2017-2018, I.11. Approval of an Update to the City's Investment Policy, I.12. Revenue Stabilization Fund Policy and Economic Development Opportunity Fund Policy, and I.14. Accept and Appropriate Donated Funds for Police K9 Unit; were pulled for separate consideration.

Approval of the Consent Agenda

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

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

No: 0

Absent: 0

I.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.

I.2. **SUBJECT: Information-Only Contracts**

REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$30,000 and of Public Works contracts under \$67,779.

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 2017-2018 threshold of

\$67,779.00, and Chapter 3.04.080 - 3.04.110 of the Merced Municipal Code to execute Non-Public Works contracts under the adjusted FY 2017-2018 threshold of \$30,000.00, the contracts listed on the attached table were entered into by the City.

This Consent Item was approved.

- I.3. **SUBJECT:** Information Only-Bicycle Advisory Commission Minutes of December 12, 2017

RECOMMENDATION

For information only.

This Consent Item was approved.

- I.4. **SUBJECT:** Information Only - Planning Commission Minutes of February 21, 2018

RECOMMENDATION

For information only.

This Consent Item was approved.

- I.5. **SUBJECT:** Traffic Committee Minutes of January 9, 2018

RECOMMENDATION

For information only.

This Consent Item was approved.

- I.6. **SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of March 5, 2018 and March 8, 2018

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 March 5, 2018 and March 8, 2018.

This Consent Item was approved.

- I.8. **SUBJECT:** Resolution Implementing Local Business Preference

Policy

REPORT IN BRIEF

Resolution implementing a policy that allows for a 5% local preference when purchasing goods and services from vendors.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2018-18**, a Resolution of the City Council of the City of Merced, California, adopting a Local Business Preference Policy.

This Consent Item was approved.

I.9.

SUBJECT: Approval of Two Agreements for Professional Services with Tait Environmental Services, Inc., for a Commodities Flow Study and a Community Risk Assessment Plan and Approval to Waive the Competitive Bidding Requirement Which May Be Waived For Professional Services

REPORT IN BRIEF

Considers approving two agreements for professional services with Tait Environmental Services, Inc., for a Commodities Flow Study and a Community Risk Assessment Plan. The work will be paid for by Cal OES Hazardous Materials Emergency Preparedness Program grant funds (\$55,000) that the City Council accepted on October 16, 2017. Also considers waiving the competitive bidding requirement as the work being performed is a professional service.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving a Professional Services Agreement for \$29,694 with Tait Environmental Services, Inc. for a Commodities Flow Study; and,
- B. Approving a Professional Services Agreement for \$14,951 with Tait Environmental Services, Inc. for a Community Risk Assessment Plan; and,
- C. Waiving the Competitive Bidding Requirement pursuant to Merced Municipal Code section 3.04.210; and,
- D. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.10.

SUBJECT: Request to Set a Public Hearing for the 2018 Housing and Urban Development (HUD) Annual Action Plan

REPORT IN BRIEF

Request to set a Public Hearing for Monday, April 16, 2018, to consider the 2018 Housing and Urban Development (HUD) Annual Action Plan.

RECOMMENDATION

City Council - Adopt a motion setting a Public Hearing for Monday, April 16, 2018, to consider the Housing and Urban Development Annual Action Plan.

This Consent Item was approved.

I.13.

SUBJECT: Acceptance of Grant Funding From the San Joaquin Valley Air Pollution Control District Incentive Program

REPORT IN BRIEF

Consider the acceptance of grant funding in the amount of \$86,749.65 from the San Joaquin Valley Air Pollution Control District (SJVAPCD) to reimburse the City for the purchase of electric vehicles.

RECOMMENDATION

City Council - Adopt a motion:

A. Accepting the grant award and increasing the revenue budget in account 001-1002-324.02-00 by \$86,749.65; and,

B. Appropriating the same to 001-1002-523.43-00; and,

C. Approving the use of pooled cash until reimbursement from the grant is received; and,

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

This Consent Item was approved.

I.15.

SUBJECT: Street Closure for Youth Sports Parade

REPORT IN BRIEF

Street closure request for the Youth Sports Parade on Saturday, April

14, 2018.

RECOMMENDATION

Council - Adopt a motion approving the street closures of W. Main Street, from "G" Street to "O" Street, including side streets, and "O" Street from W. Main Street to W. 21st Street, as requested by Merced Golden Lions for the Youth Sports Parade on Saturday, April 14, 2018. Street closures will be from 8:00 a.m. to 1:00 p.m., subject to the conditions outlined in the administrative report.

This Consent Item was approved.

I.16.

SUBJECT: Bellevue Ranch West, Village 12, Phase 1 - Final Map 5358

REPORT IN BRIEF

The City Council will consider approval of Final Map #5358, generally located at the southwest corner of M Street and Arrow Wood Drive (extended), and the Subdivision Agreement for Bellevue Ranch West, Village 12, Phase 1, along with a Deferred Improvement Agreement for a traffic signal and bike path.

RECOMMENDATION

City Council - Adopt a motion:

A. Approving **Resolution 2018-16**, a Resolution of the City Council of the City of Merced, California, approving the Final Subdivision Map for Bellevue Ranch West, Village 12, Phase 1 Subdivision (#5358); and,

B. Approving the Subdivision Agreement for Bellevue Ranch West, Village 12, Phase 1; and,

C. Approving the Deferred Improvement Agreement for the deferral of certain improvements related to Bellevue Ranch West, Village 12, Phase 1, between the City of Merced and Stonefield Home, Inc.; and,

D. Approving a Reimbursement Agreement between the City of Merced and Stonefield Home, Inc. for the installation of a traffic signal at Cardella Road and M Street as prescribed in Chapter 17.62 of the Merced Municipal Code and related Administrative Policy and Procedure A-32; and,

E. Authorizing the City Manager or the Assistant City Manager to execute the Subdivision Agreement, the Deferred Improvement

Agreement, and the Reimbursement Agreement.

This Consent Item was approved.

I.17.

SUBJECT: Bellevue Ranch West, Village 12, Phase 2 - Final Map 5359

REPORT IN BRIEF

The City Council will consider approval of Final Map #5359 for Bellevue Ranch West, Village 12, Phase 2, generally located at the southwest corner of M Street and Arrow Wood Drive (extended).

RECOMMENDATION

City Council - Adopt a motion:

A. Approving **Resolution 2018-17**, a Resolution of the City Council of the City of Merced, California, approving the Final Subdivision Map for the Bellevue Ranch West, Village 12, Phase 2 Subdivision (#5359); and,

B. Approving the Subdivision Agreement for "Bellevue Ranch West, Village 12, Phase 2," between the City of Merced and Stonefield Home, Inc., (property owner); and,

C. Authorizing the City Manager or the Assistant City Manager to execute the Subdivision Agreement.

This Consent Item was approved.

I.18.

SUBJECT: Street Closure Request #18-05 for the Merced County Hispanic Chamber of Commerce to Host the Second Annual Merced Cowboy/Vaquero 5-Kilometer and Kids' Half-Mile Runs

REPORT IN BRIEF

Consider a request for the use of City streets and Bob Hart Square on Saturday, May 19, 2018, for a 5K and Half-Mile runs.

RECOMMENDATION

City Council - Adopt a motion approving the street closures of W. Main Street (between H and Q Streets), Q Street (between W. Main and W. 19th Streets), W. 19th Street (between Q and O Streets) O Street (between W. 19th and W. 21st Streets), W. 21st Street (between O and Q Streets) Q Street (between W. 21st and W. 23rd Streets), W. 23rd Street (between Q and H Streets), H Street (between W. 23rd and

W. 21st Streets), W. 21st Street (between H and I Streets), I Street (between W. 21st and W. 19th Streets), W. 19th Street (between I and H Streets), H Street (between W. 19th and W. Main Streets), and the use of Bob Hart Square, as detailed in the staff report. The event will be held on Saturday, May 19, 2018, from 5:00 a.m. to 12:00 p.m. (event time from 7:30 a.m. to 12:00 p.m.), for the Merced Cowboy/Vaquero 5K and Kids' Half-Mile Runs, subject to the details and conditions outlined in the administrative staff report.

This Consent Item was approved.

I.19.

SUBJECT: Improvement Maintenance Agreement within State Highway Right of Way on Route 59 within the City of Merced for State Highway 59 Multi-Use Path Crossing Project 115047

REPORT IN BRIEF

Approves an agreement with the State of California, acting by and through the Department of Transportation, to establish terms and conditions for the City responsibility for the improvements placed within the State Highway right of way on State Route 59, constructed by the ATPL (045) State Highway 59 Multi-use Path Crossing Project 115047.

RECOMMENDATION

City Council - Adopt a motion approving the Improvement Maintenance Agreement, and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.20.

SUBJECT: Amendment Modification Summary (E-76) for Active Transportation Program (ATP) Cycle 1 Grant for the Construction Phase of the Highway 59 Multi-Use Pathway Crossing Project 115047

REPORT IN BRIEF

Consideration of acceptance and appropriation of \$834,000.00 in ATP Grant funding for the construction costs associated with the pedestrian crossing project on Highway 59 at the BNSF RR crossing.

RECOMMENDATION

City Council - Adopt a motion:

A. Accepting grant revenue from ATP (Caltrans) for construction cost

associated with the pedestrian crossing project on Highway 59 at the BNSF RR crossing; increasing revenue account 450-1104-321-17-00, Proj 115047 in the amount of \$834,000; and,

B. Appropriating the same to account 450-1104-637-65-00- Project 115047 Highway 59 Multi Use Pathway Crossing; and,

C. Approving the use of pooled cash until reimbursement from the grant is received; and,

D. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.21.

SUBJECT: Agreement for Use of Easement with Porges Properties 1, LLC, a California Limited Company for a Proposed Prime Shine Car Wash on 16th Street

REPORT IN BRIEF

Consider approving the Agreement for Use of Easement with the property owner to allow certain private improvements, as specified in the attached agreement, to be installed on the existing City easement for a future development project.

RECOMMENDATION

City Council - Adopt a motion approving the Agreement for Use of Easement with Porges Properties 1, LLC, a California Limited Company; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

This Consent Item was approved.

I.22.

SUBJECT: Award Bid to Rolfe Construction Company for the B Street Sewer Main Replacement Project 116013

REPORT IN BRIEF

Consider awarding a construction contract to Rolfe Construction in the amount of \$811,785.00 for the replacement of sewer main along B Street.

RECOMMENDATION

City Council - Adopt a motion:

A. Awarding the B Street Sewer Main Replacement Project 116013 to Rolfe Construction Company of Atwater, Ca, in the amount of \$811,785.00; and,

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

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

This Consent Item was approved.

I.7.

SUBJECT: Professional Services Agreement between the City of Merced and Merced Main Street Association in the Amount of \$60,000.00 for Fiscal Year 2017-2018

REPORT IN BRIEF

Agreement between the City of Merced and Merced Main Street Association to provide services to the Downtown Business Improvement Area during Fiscal Year 2017-2018.

RECOMMENDATION

City Council - Adopt a motion approving an agreement with the Merced Main Street Association for Downtown Services for 2017-2018 in the amount of \$60,000.00, and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

Council Member MARTINEZ pulled this item to request a staff report.

Economic Development Associate Karen BAKER and President of the Greater Merced Chamber of Commerce Manuel ALVARADO discussed the Professional Services Agreement between the City of Merced and Merced Main Street Association.

Council, Staff, and Mr. ALVARADO discussed the use of surplus funds, fundraising event funds, how funds are spent, the downtown double business tax, and cost of seasonal signage.

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

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

No: 0

Absent: 0

I.11.

SUBJECT: Approval of an Update to the City's Investment Policy

REPORT IN BRIEF

Considers approving an update to the City's Investment Policy.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2018-22**, a Resolution of the City Council of the City of Merced, California, adopting Investment Policy.

Council Member BELLUOMINI pulled this item to ask questions about the City's investment policies.

Council, Chandler Assets Portfolio Strategist Carlos OBLITES, and Staff discussed various investment percentages. They also discussed the reviewing and selling or retaining of securities, reviewing the investment portfolio, and notifying Council about any investment changes.

A motion to approve was made by Council Member PEDROZO that was seconded by Council Member BLAKE.

Council, Mr. OBLITES, and Staff continued their discussion on the City's Investment Policy.

Council Member BELLUOMINI requested to amend the motion to add in section 14 of the policy the following phrase: reporting major and critical incidence of non-compliance with this policy to the City Manager and the City Council.

Clerk's Note: Council Member PEDROZO declined to amend his motion.

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

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

No: 0

Absent: 0

I.12.

SUBJECT: Revenue Stabilization Fund Policy and Economic Development Opportunity Fund Policy

REPORT IN BRIEF

Consider adopting the Revenue Stabilization Fund Policy and Economic Development Opportunity Fund Policy.

RECOMMENDATION

City Council - Adopt a motion:

A. Adopting **Resolution 2018-19**, A Resolution of the City Council of the City of Merced, California, adopting Revenue Stabilization Fund Policy; and

B. Adopting **Resolution 2018-20**, A Resolution of the City Council of the city of Merced, California, adopting Economic Development Opportunity Fund Policy.

Mayor MURPHY pulled this item to request a report.

Finance Officer Venus RODRIGUEZ gave a slide show presentation on the Revenue Stabilization Fund Policy and Economic Development Opportunity Fund Policy.

Council and Staff discussed the Trust 115 fund, revenue stabilization fund goal, the economic development opportunity fund dollar amount, and one time cost allocations. They also discussed percentage allocation for the different funds, CalPers, and financial advantage of putting money in different funds.

Leslie CATJO, Merced - asked about the business incentive program.

Ms. RODRIGUEZ stated that the busniess incentive program would be incorporated in one of the mentioned funds.

Assistant City Manager Stephanie DIETZ asked if Council would consider taking action on the economic development opportunity fund policy and coming back at a later date to take action on the Trust 115 Fund and the revenue stabilization fund policy.

A motion was made by Council Member Pedrozo, seconded by Council Member Blake, approving Resolution 2018-20 and to bring back the Revenue Stabilization Fund Policy at a later date. The motion carried by the following vote:

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

No: 0

Absent: 0

I.14.

SUBJECT: Accept and Appropriate Donated Funds for Police K9 Unit

REPORT IN BRIEF

Accept private person donations from Mary Allison (\$100, unspecified), North Merced Rotary (\$1,000 for Safe Kids ID), John Bankson \$2,000 (for K9), and William/Jung Purcell (\$100, unspecified) and appropriate to specified accounts.

RECOMMENDATION

City Council - Adopt a motion:

A. Accepting donations totaling \$3,200 for the Police Department and Police K9 Unit; and,

B. Increasing Police Revenue Account #001-1001-360.02-01, "Contributions and Donations," in the amount of \$3,200 and appropriating to expense accounts: \$1,000 to 001-1037-522.29-00 (Public Relations), and \$2,200 to 001-1027-522.29-00 (K9).

Council Member SERRATTO pulled this item to thank the donors for their generosity.

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

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

No: 0

Absent: 0

J. PUBLIC HEARINGS

J.1.

SUBJECT: Public Hearing - Repeal of Regional Transportation Impact Fee Ordinance

REPORT IN BRIEF

The City Council will consider the repeal of the Regional Transportation Impact Fee Ordinance (Merced Municipal Code Chapter 17.64).

RECOMMENDATION

City Council - Adopt a motion introducing **Ordinance No. 2487**, an Ordinance of the City Council of the City of Merced, California, Repealing Chapter 17.64 of the Merced Municipal Code relating to the Regional Transportation Impact Fees.

Planning Manager Kim ESPINOSA gave a slide show presentation on the Repeal of Regional Transportation Impact Fee (RTIF) Ordinance.

Council discussed the RTIF funds, how the funds are spent, and what would replace the RTIF.

Mayor MURPHY opened the Public Hearing at 7:35 PM and continued the Public Hearing to the May 7th meeting, pending the outcome of the Merced County Association of Governments Board Meeting.

A motion was made by Council Member Pedrozo, seconded by Council Member Blake, to continue the Public Hearing to the May 7th meeting. The motion carried by the following vote:

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

No: 0

Absent: 0

K. REPORTS

K.1.

SUBJECT: Adoption of a Resolution for an Exemption to CalPERS 180-Day Wait Period to Hire a Temporary Dispatcher Pursuant to Government Code Sections 7522.56 and 21224

REPORT IN BRIEF

Adoption of a resolution approving the hiring of Lisa Linares as an extra-help retired annuitant to perform the duties of a Temporary Dispatcher under Government Code sections 7522.56 and 21224, effective April 5, 2018.

RECOMMENDATION

City Council - Adopt a motion adopting **Resolution 2018-21**, a Resolution of the City Council of the City of Merced, approving an

exception to the CALPERS 180-day wait period pursuant to Government Code sections 7522.56 and 21224.

Interim Police Chief Chris GOODWIN gave a brief report on hiring a temporary dispatcher.

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

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

No: 0

Absent: 0

K.2. SUBJECT: 2017 California Housing Legislative Update

REPORT IN BRIEF

Council Member Belluomini requested that staff provide the Council with a presentation on the 15 housing bills signed into law by Governor Brown in 2017. Staff has attached a detailed overview of the new housing legislation and will present a summary to the Council as requested.

Housing Supervisor Mark HAMILTON and Principal Planner Michael HREN gave a slide show presentation on the 2017 California Housing Legislative Update.

Council and Staff discussed the percentage of affordable housing, laws that allow the conversion of multi-family homes to duplexes, local accountability, and compliance.

K.3. SUBJECT: Acceptance of Ballot Proceeding Voting Results for the Northwood Village, East College Homes, Moss Landing, and Ridgeview Meadows Maintenance Districts; Approval of Annual Increase in Assessment Levy to the Moss Landing Maintenance District and Approval of No Increases to the Northwood Village, East College Homes and Ridgeview Meadows Maintenance Districts

REPORT IN BRIEF

Acceptance of ballot results on the proposed increase in annual assessment levy to property owners in the Northwood Village, East College Homes, Moss Landing, and Ridgeview Meadows Maintenance Districts. Approves an annual increase in assessment levy to the Moss Landing Maintenance District; subject to annual Consumer Price Index adjustments and approves no increase in annual assessment levies to Northwood

Village, East College Homes, and Ridgeview Meadows Maintenance Districts with the previous year's annual assessment remaining in effect.

RECOMMENDATION

City Council - Adopt a motion:

- A. Accepting assessment ballot proceeding results for the Northwood Village, East College Homes, Moss Landing, and Ridgeview Meadows Maintenance Districts; and,
- B. Approving annual increase in assessment levy to the Moss Landing Maintenance District; subject to annual Consumer Price Index adjustments; and,
- C. Approving no increase in annual assessment levies to Northwood Village, East College Homes, and Ridgeview Meadows Maintenance Districts with the previous year's annual assessment remaining in effect.

Director of Public Works Ken ELWIN gave a brief report on the ballot proceeding results.

Council and Staff discussed advancing the funds to begin work immediately, the ballot results, and providing more informative outreach to the public.

A motion was made by Council Member Blake, seconded by Council Member Pedrozo, to accept the assessment ballot proceeding results. The motion carried by the following vote:

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

No: 0

Absent: 0

K.4. SUBJECT: Sewer Master Plan Discussion

REPORT IN BRIEF

Seeks Council direction on finalizing the draft Sewer Master Plan.

RECOMMENDATION

Provide direction to staff on finalization of the draft Sewer Master Plan, provide approval to begin the CEQA environmental process, and direct staff to explore financing options to support the construction of the plan.

Assistant City Manager Stephanie DIETZ, Director of Public Works Ken

ELWIN, and Director of Community Development Scott MCBRIDE gave a slide show presentation on the Sewer Master Plan.

Council and Staff discussed financing options and phasing the Sewer Master Plan.

Richard HARRIMAN, Merced - spoke on the cost of phasing the Sewer Master Plan and requested a more detailed presentation.

Rick TELEGAN, Fresno - requested to have the presentation available online or emailed to him in advance. He also spoke on having an opportunity to review and discuss options for the Sewer Master Plan and suggested an ad hoc committee to discuss the Sewer Master Plan in more detail.

Council and Staff discussed assessment districts, phasing options and how it applies to the General Plan, annexation.

After the motion was made, Council and Staff continued their discussion on the environmental and construction impact in both phasing of the project and total project, and phasing options for the Sewer Master Plan, and policies.

A motion was made by Council Member Pedrozo, seconded by Mayor Pro Tempore McLeod, to have staff start the CEQA process and to start exploring finance options to support the plan. The motion carried by the following vote:

Aye: 5 - Mayor Pro Tempore McLeod, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

No: 2 - Council Member Belluomini, and Council Member Martinez

Absent: 0

Clerk's Note: Council recessed at 9:13 PM and returned at 9:26 PM.

L. BUSINESS

L.1.

SUBJECT: Request to Discontinue all Work on an Ordinance for Meeting Decorum and Conduct

REPORT IN BRIEF

This item is in response to Council's request to have staff discontinue all work in drafting an ordinance regarding decorum and conduct at Council Meetings.

RECOMMENDATION

City Council - Adopt a motion directing staff to discontinue all work related to a decorum and conduct ordinance for Council Meetings.

Mayor MURPHY and Interim City Attorney Jolie HOUSTON discussed discontinuing all work on an Ordinance for meeting decorum and conduct.

Speakers in favor of discontinuing the meeting decorum and conduct ordinance:

Claudia GONZALEZ, Winton
Marilyn MOCHEL, Merced
Victoria CASTILLO, Merced
Michael CLAIBORNE, Fresno
Sol RIVAS, Merced
Alejandro AVALOS, Merced
Reyna GABRIEL-PERALTA, Merced
Isai PALMA, Merced

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

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

No: 0

Absent: 0

L.2. SUBJECT: City Council Downtown Subcommittee

REPORT IN BRIEF

This item is in response to Mayor Pro-Tempore McLeod's request to discuss the formation of a Council subcommittee to meet with other local municipalities with successful downtown areas.

RECOMMENDATION

Select Council subcommittee and direct staff as needed.

Clerk's Note: This item was moved to the April 16th meeting.

L.3. Request to Add Item to Future Agenda

There were no items added.

L.4. City Council Comments

Council Member MARTINEZ reported on attending the Weaver Middle School Band Crab Feed fundraiser and the Merced Academy Soccer Tournament. He also spoke about a new Welcome to Merced sign located in his district.

Mayor Pro Tempore MCLEOD reported on attending the plant sale at Merced College.

Council Member BELLUOMINI wished everyone a Happy Easter and Passover Season.

Council Member PEDROZO reported on attending the California League of Cities dinner, the Merced County Association of Governments meeting, water review rate study, and thanked Staff for their work preparing for possible Bear Creek flooding.

Mayor MURPHY reported on attending the High Speed Rail meeting, the Junior Leadership Merced Class Day and graduation, the Merced County Association of Governments meeting, the Merced Integrated Regional Water Management Authority meeting, a housing issue panel, the Merced Soccer Academy Tournament, the plant sale at Merced College, and the Mega Region meeting at the University of Phoenix. He also spoke about the Rose Garden, thanked Staff for the work they did for the Bear Creek flooding, and for fixing potholes.

M. ADJOURNMENT

Clerk's Note: The Regular Meeting adjourned at 9:58 pm.

A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, the Regular Meeting was adjourned in memory of Maggie Randolph. The motion carried by the following vote:

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

No: 0

Absent: 0



ADMINISTRATIVE REPORT

Agenda Item J.6.

Meeting Date: 5/7/2018

Report Prepared by: Kimberly Nutt, Planning Technician II, Planning Department/Development Services

SUBJECT: Street Closure Request #18-09 - Street Closure Request for the Merced County Fair (35th District Agricultural Association/Merced County Fair)

REPORT IN BRIEF

Consider a request for use of City streets for the Merced County Fair (June 6-10, 2018).

RECOMMENDATION

City Council - Adopt a motion approving the street closure of G Street, between West Childs Avenue and West 11th Street, from 3:00 p.m. to 12:00 a.m. each day, from Wednesday, June 6, 2018, through Sunday, June 10, 2018, for the Merced County Fair, subject to the details and conditions outlined in the administrative staff report.

ALTERNATIVES

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

AUTHORITY

City of Merced Charter Section 200; California Vehicle Code (CVC) Section 21100(a), as follows:

"21100. Local authorities may adopt rules and regulations by ordinance or resolution regarding the following matters:

(a) Regulating or prohibiting processions or assemblages on the highways."

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The 35th District Agricultural Association, is requesting closure of City streets in conjunction with the Merced County Fair, to be held June 6, 2018, through June 10, 2018.

The Merced County Fairgrounds is bordered by Martin Luther King Jr. Way, West 11th Street, G

Street, and West Childs Avenue. Parking for the fair is available at several areas, with the largest and one of the most heavily-used lots being the unpaved gated area across G Street, east of the Fairgrounds (Attachment 1).

Street Closure Details

The only street involved in this request is G Street, from West/East Childs Avenue to West/East 11th Street. The street section will be used to route cars to specific fair parking areas, but will be closed to through traffic. Through access will be provided to emergency vehicles only.

The Merced County Sheriff's Department plans to set up coned-off "traffic lanes" to help guide vehicles wishing to park in the east parking lot. The general public will only be permitted access to the lot from the intersection of West/East 11th and G Streets, while only Fair-related traffic (i.e. livestock exhibitors, fair personnel, etc.) will be allowed access from Childs Avenue.

By restricting access to through traffic in this manner, the Sheriff's Department is able to establish a "safe zone" pedestrian crossing area from the parking lot to the Fairground's eastern entrance gate each day of the fair. Safety is especially important here, as the Kiddie Carnival area is located just inside the gates at this side of the Fairgrounds. In addition to providing families close parking to the Kiddie Carnival area, the eastern parking lot also serves as overflow parking for the northern parking lot on West 11th Street (Attachment 2).

The following are the planned times of the street closure, along with the official Fair hours:

- Street Closure hours: 5:00 p.m. to Midnight, each day of the Fair.
- Fair hours: Wednesday through Thursday, 5:00 p.m. through 11:00 p.m.; Friday, 5:00 p.m. through 12:00 a.m.; and Saturday and Sunday, 3:00 p.m. to 12:00 a.m.

Event Background

First held in 1891, the Merced County Fair has been a fixture on regional event calendars each year, drawing crowds of approximately 10,000 each day. In 2010, to accommodate the State Fair's new schedule, the Merced County Fair moved from each July to each June, allowing fairgoers to enjoy the slightly more temperate temperatures of late spring/early summer.

The Merced County Fair, with the help of the Merced County Sheriff's Department, first used this street closure format in 2009, and has used it each successive year since.

Conditions of Approval

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

1. By applying for the street closure request, the Permittee shall agree to indemnify, protect, defend (with counsel selected by the City), save, and hold the City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to person, or damage to property resulting from intentional or negligent acts, errors, or omissions of Event Sponsor

or Event Sponsor's officers, employees, agents, volunteers, and participants during performance of the Event, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Event Sponsor or its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. Acceptance by the City of insurance certificates and endorsements required for this Event does not relieve Event Sponsor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

2. Prior to closing any streets, Event sponsor shall complete and file with the City a special events, general liability, and automobile policy of at least \$500,000 combined limit for bodily injury and property damage which covers the entire event. Said policy shall stipulate that this insurance will operate as primary insurance and that no other insurance will be called on to cover a loss covered thereunder. Additional insured endorsements evidencing this special events, general liability and automobile coverage, naming the city and its officers, agents, and employees as additional insureds, must be submitted to the City prior to the event. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the City.
3. Event Sponsor shall contact all businesses and residences affected by the street closures, advising of the hours, conditions, and reason thereof within one half-mile of the closure area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City with signed confirmation that the proper notification was given (Attachment 3).
4. Event Sponsor shall be responsible for placing and removing all traffic barricades and posting of parking restrictions where the street will be closed. Specifically, where parking is currently permitted on the proposed closed section of G Street, the applicant shall post "No Parking" signs for the duration of the Fair on both the east and west sides to ensure the street is clear. Any parked vehicles remaining at the start of the Fair shall be towed away. "No Parking" signs shall be posted at least twenty-four (24) hours prior to the towing of vehicle(s) per California Vehicle Code Section 22651(m).
5. Event Sponsor shall maintain a minimum 22-foot-wide emergency vehicle travel lane through the interior of the closure area at all times. Fire hydrant access shall not be blocked at any time whatsoever.
6. Event Sponsor shall provide staffing at or near all barricades, so that personnel is on-hand and readily available to move barricades aside for emergency vehicles, Fair equipment, or other such authorized vehicles to pass through quickly and unobstructed, in the event this is necessary.
7. Event Sponsor shall provide additional sworn personnel and directional signage throughout and surrounding the closure area and all affected intersections to ensure the safe flow of traffic.
8. The Event Sponsor shall make a concerted effort to employ more parking lot attendants in all Fairgrounds parking lots, in order to effectively move vehicles through the lots and reduce traffic congestion.
9. The Event Sponsor shall maintain a dedicated "pedestrian zone" within the closed section of G

Street. All areas of the pedestrian zone shall be handicapped accessible, per ADA requirements.

10. To aid the traffic flow of fairgoers leaving the area, the Fair shall make available the use of the G Street parking lot's rear gate at the elbow intersection of East 9th and E Streets. The Event Sponsor shall ensure that the driveway is clear of obstructions for the safe passage of vehicles out of the parking lot. If the gate is used, additional sworn officer personnel shall be placed at both adjacent intersections at E Street/East 11th Street and D Street/East 9th Street to direct traffic onward. Actual use of this gate shall be at the discretion of the Fair/Sheriff's Department; however, it shall be readied and made available in the event it is needed to ease traffic congestion and/or public safety issues or concerns.

11. If needed, the Event Sponsor shall also make use of the G Street side gate at the northern paved West 11th Street parking lot for moving overflow parking to the eastern G Street parking lot.

12. Event Sponsor shall be responsible for removing all equipment and disposing of any trash and debris within and around the closure area that is generated from the Fair event prior to the expiration of the closure permit each day.

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

History and Past Actions

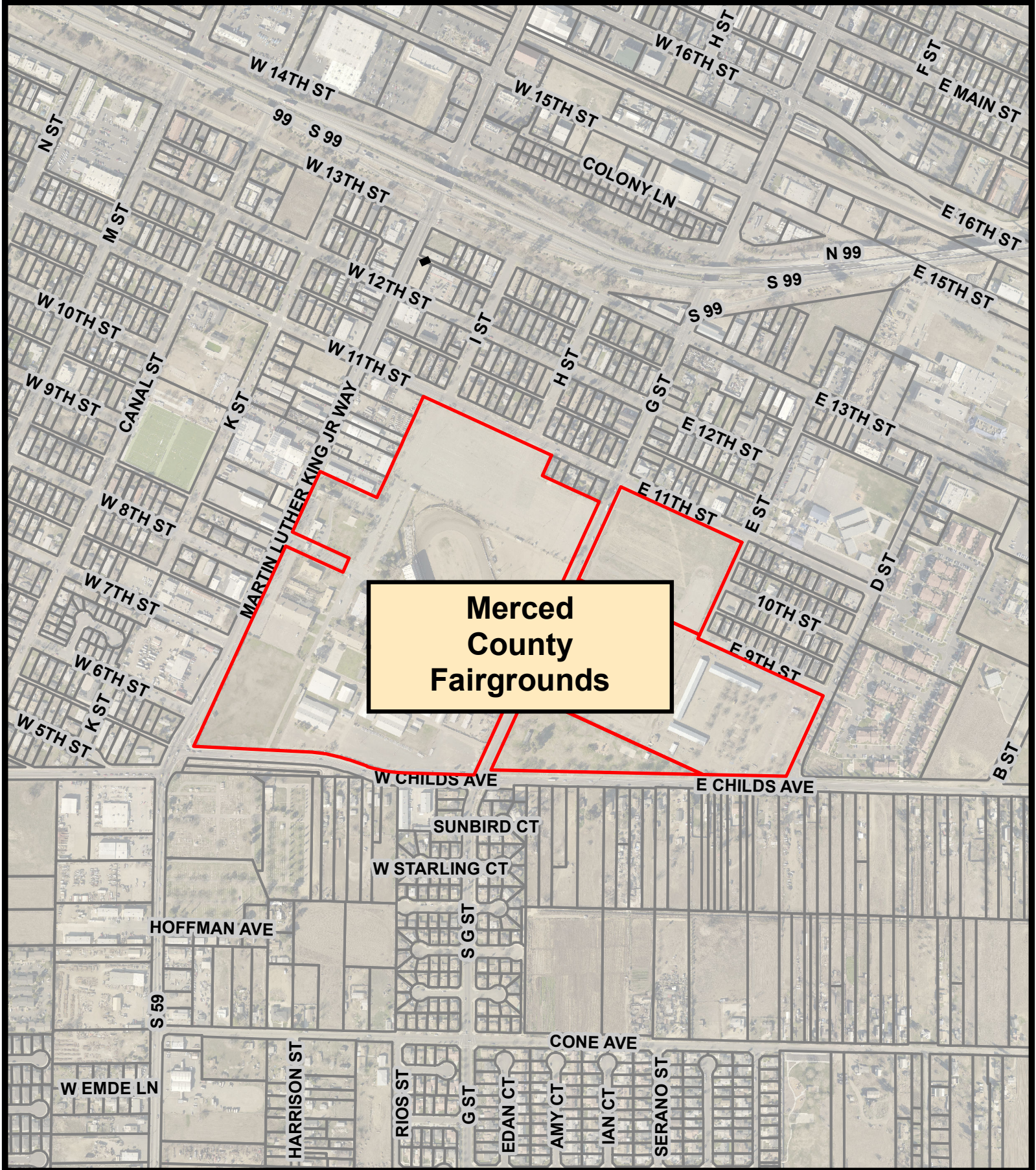
The Merced County Fair and Merced County Sheriff's Department first requested this street closure procedure in 2009. It has operated successfully and has subsequently been approved annually by the City Council.

IMPACT ON CITY RESOURCES

As all traffic control will be handled by the Sheriff's Department and volunteers, no impact to City resources is expected.

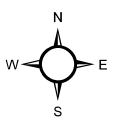
ATTACHMENTS

1. Location Map
2. Site Plan/Closure Map
3. Notification of Pending Street Closure



Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

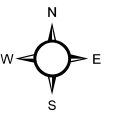
LOCATION MAP: Street Closure #18-09
Merced County Fair
Wednesday, June 6 - Sunday, June 10, 2018





Disclaimer: This document was prepared for general inquiries only. The City of Merced makes no warranty, representation, or guarantee regarding the accuracy of this map. The City of Merced is not responsible for errors or omissions that might occur. Official information regarding specific parcels should be obtained from official recorded or adopted City documents.

STREET CLOSURE DETAIL: Street Closure #18-09
Merced County Fair
Wednesday, June 6 - Sunday, June 10, 2018; 3:00 p.m. to Midnight Daily



NOTIFICATION OF PENDING STREET CLOSURE

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

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

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

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

Streets to be closed: _____

Other streets with restricted access: _____

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

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

NOTIFICATION OF PENDING STREET CLOSURE

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

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

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

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

Streets to be closed: _____

Other streets with restricted access: _____

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

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

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

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

Signed _____ Title: _____ Date: _____



ADMINISTRATIVE REPORT

Agenda Item J.7.

Meeting Date: 5/7/2018

Report Prepared by: Venus Rodriguez, Finance Officer

SUBJECT: Agreement for Municipal Advisory Services with Fieldman, Rolapp & Associates and Waive the Competitive Bidding Requirement

REPORT IN BRIEF

Considers awarding an agreement to Fieldman, Rolapp & Associates to provide municipal advisory services in connection with a General Obligation Bond ballot measure and subsequent bond financing and waive the competitive bidding requirement.

RECOMMENDATION

City Council - Adopt a motion approving the contract with Fieldman, Rolapp & Associates (FRA) for municipal advisory services, waiving the competitive bid, and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

ALTERNATIVES

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

AUTHORITY

Merced City Charter Section 200. Merced Municipal Code section 3.04.210 (exemption from competitive bidding).

CITY COUNCIL PRIORITIES

As provided for in the 2017-18 Adopted Budget.

DISCUSSION

In August 2017, the City Council approved the purchase of 3033 N. G Street (Merced Sun-Star facility) for a future police headquarters site. To keep the Police Headquarters project moving forward, staff indicated we would be bringing back to the City Council requests to hire consultants for the following tasks: poll the public regarding support for sales tax increase to fund the Police Headquarters and other city facilities, architect to perform a facility needs assessment, and financial advisor to evaluate alternative means of funding.

In October 2017, the City Council approved a professional service agreement to facilitate a public opinion survey. FM3 completed a telephone survey with likely November 2018 voters in the City of

Merced. Voters were asked their willingness to support a bond measure and/or a new sales tax to fund new City facilities and upgrades. More voters were in favor of the bond measure.

In order to begin evaluating a general obligation (GO) bond measure the first step is to hire a municipal advisor. There are two phases to the agreement with FRA, pre-election and post-election. The pre-election duties include; GO bond strategy, calculating tax rates and maximum authorization, GO bond survey support, recommending GO bond structure, preparing ballot language/statement, preparation of tax rate statement, and monitoring the election. The post-election duties include; set-up project management protocols, prepare and monitor schedule, review financing documents, structuring the bond issue, meeting with rating agencies, and coordinating with the underwriter for sale of the bonds.

Preparation by a municipal advisor for a GO bond measure begins well in advance of the election date. In order to meet the timeline for the November 2018 election, FRA working with City staff, will need to complete all of the pre-election duties and present options to the City Council by the second Council meeting in July to adopt a resolution of election. We will have less than three months if the agreement is approved by the City Council today.

Due to the rigid timeline staff is requesting City Council waive the competitive bidding requirement. The City of Merced has worked with FRA as a municipal advisor since 2002. FRA assisted in developing the cities Land Secured Financing Policy and the newly adopted Debt Policy. They also served as municipal advisors for the following bond issues:

CFD 2003-1 Bellevue Ranch East
CFD 2005-1 Bellevue Ranch West
CFD 2006-1 Moraga
CFD 2003-1 Bellevue Ranch East Refunding
CFD 2005-1 Bellevue Ranch West Refunding

FRA is very familiar with the City of Merced and we have established a great rapport. FRA has served the City of Merced well in the past and staff has no reservation that they will continue to do well for us in this endeavor.

FRA is a California corporation that has been a leader in independent financial advising services serving public agencies since 1966. They are based out of Irvine, California and are advisors to several cities, counties, special districts, school districts and non-profit agencies. They maintain one of the highest success rates for GO bond measures.

IMPACT ON CITY RESOURCES

If the ballot measure passes all fees for services will be paid from bond proceeds. If the ballot measure does not pass, the City of Merced will need to pay from the General Fund a not to exceed amount of \$7,500 for pre-election services provided by FRA.

ATTACHMENTS

1. Professional Service Agreement

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and Fieldman, Rolapp and Associates, Inc., a California Corporation, whose address of record is 19900 MacArthur Blvd., Suite 1100, Irvine, California 92612 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to prepare a General Obligation Bond ballot measure and issue bonds; and

WHEREAS, Consultant represents that it possesses the professional skills to provide financial advisory services in connection with said project.

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

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

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

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

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant for actual services rendered under this Agreement shall be made upon presentation of an

invoice detailing services performed under the Scope of Services, in accordance with the fee schedule set forth in Exhibit "A" attached hereto and incorporated herein by reference. The Consultant agrees to provide all services required under the Scope of Services in Exhibit "A" within the compensation amount set forth in Exhibit "A".

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

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

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

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

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City,

Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

a. Workers' Compensation Insurance. Full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

b. General Liability.

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

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.

- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

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

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

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

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

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

11. ASSIGNABILITY OF AGREEMENT. It is understood and agreed that this Agreement contemplates personal performance by the Consultant and is

based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Consultant under this Agreement will be permitted only with the express written consent of the City.

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

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

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

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

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

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

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

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

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

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

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

21. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY: K. Hoes 4.10.18
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
FIELDMAN, ROLAPP AND
ASSOCIATES, INC.,
A California Corporation

BY: Anna Sarabian
(Signature)

ANNA SARABIAN
(Typed Name)

Its: Principal
(Title)

BY: [Signature]
(Signature)

Thomas G. Schenck
(Typed Name)

Its: Senior Vice President
(Title)

Taxpayer I.D. No. 95-292-0834

ADDRESS: 19900 MacArthur Blvd.,
Suite 1100, Irvine 92612

TELEPHONE: 949-660-7300

FAX: 949-474-8773

E-MAIL: asarabian@feldman.com



SCOPE OF SERVICES

This Scope of Services (the “Scope”) and proposed Not-to-Exceed Amount is for the specific project: 2018 Ballot Measure and potential subsequent bond financing(s).

Our Scope of Services is comprised of two phases, pre-election and post-election. For a potential November 2018 bond election, preparation is required well in advance of the election date. As illustrated in the General Obligation Bond Election Flow Chart we present on the next page, there are a lot of steps that need to be followed and the timeframe is quite rigid. **The City needs an experienced team that can guide it through the process and ensure the success of the election.**

The pre-election phase involves a lot of team work and analyses to gauge voter sensitivity to various potential tax rate levels, especially in light of recent “anti-tax” moods and built-in opposition to ballot measures in general. In addition, already existing tax measures in your service area should also be taken into account when evaluating the voters’ willingness to support your measure.

Before the City submits any bond documents, FRA will assist in developing and analyzing a questionnaire with the election/polling consultant(s). After the initial polling, we will refine our tax analysis. We will also work with bond counsel to prepare future ballot language and will prepare tax rate/maximum bonding capacity analyses prior to City Council approval. Depending on the analyses we prepare, the total bond amount will carry much of the weight in the 75-word ballot statement.

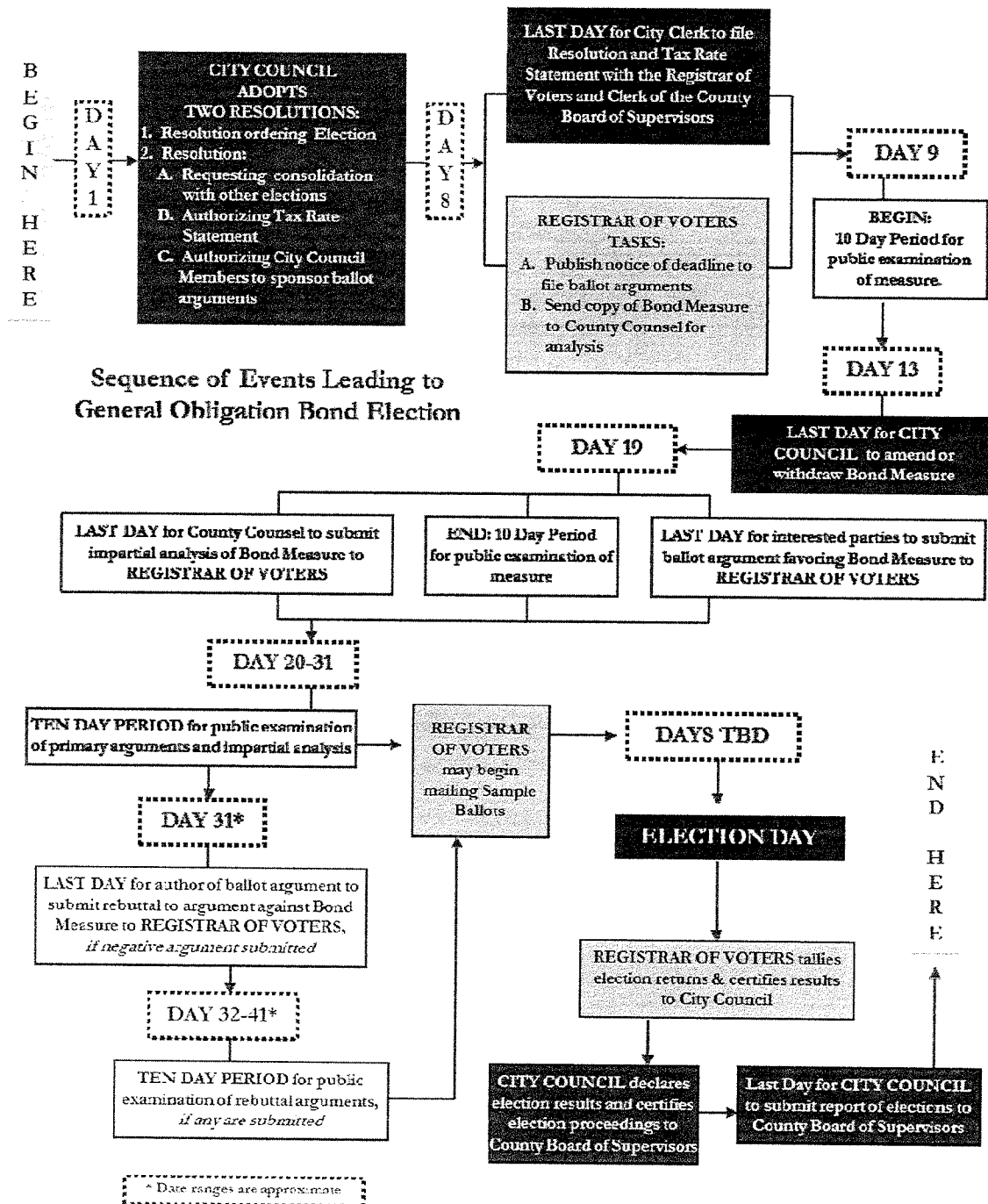
A major recent change in election ballot language is a result of Assembly Bill 195 (“AB 195”) which requires that the 75-word ballot statement include estimates of an average or range of proposed tax rates as well as the annual ad valorem tax that will be generated from the new bond. This change has two negative effects as it (i) creates voter confusion and suspicion on the actual cost of the proposed bond, and (ii) reduces the number of words that is typically used to talk about the facilities that will be financed with the bond. We will work with the City, Bond Counsel and the Election Consultant to craft AB 195-compliant ballot language

At least 88 days before an election, a stated project list must be presented and upon approval, the City Council must adopt a resolution of election. Lastly, a Tax Rate Statement will be prepared by FRA and the City and the bond authorization amount must be estimated. During this time, FRA will coordinate and organize all interested parties, generate preliminary bonding numbers, and present agenda items at all necessary City Council meetings for approval and further explanation. What this means is that all final documents (tax rate statement, ballot arguments, etc.) will need to be submitted by the second week in August, 2018, at the latest, which means mid to late July approval by the City (or during the first meeting in August of 2018, at the latest).

Upon a successful election, FRA would work immediately with the City to issue bonds under a new authorization. Pending a successful issuance, FRA will assist the City in

complying with post-election disclosure requirements such as annual audit reports. FRA's duties as an independent municipal advisor remain unchanged during the pre-election and post-election phases as we will continue to provide objective analysis in every stage of the financing process. The detailed scope of work and list of duties we will perform during the pre-election and the post-election phases can be found on the following pages.

GENERAL OBLIGATION BOND ELECTION FLOW CHART





Detailed Steps of Pre-Election Duties

Duties	Description
GO Bond Strategy	FRA shall review the City's overall financing needs and assist in the GO Bond Strategy and provide support to both the City and Election/Polling Consultant. FRA shall calculate the amount of debt that can be supported by the tax rates for the range of possible amount tested in the poll.
Calculate the Tax Rates and Maximum Authorization	FRA shall calculate the amount of debt that can be supported by the tax rates for the range of possible amount tested in the poll and any other tax rates the City would like to consider. FRA shall analyze the impact of alternative bond scenarios on tax rates in order to recommend a proposed bond amount and issuance schedule.
GO Bond Survey Support	FRA shall assist the City with development of the survey and analyze the survey results.
Recommend GO Bond Structure which includes analysis of Assessed Value	FRA shall recommend a GO Bond structure that is consistent with sound municipal finance practices. FRA shall review historical Assessed Value trends and make recommendations for conservative projections for future growth. A structure will be recommended based both on the City's need for funds and for achieving the lowest possible borrowing cost.
Prepare Ballot Language/Statement	FRA shall assist the City, Bond Counsel and Election Consultant in preparing the ballot language.
Preparation of Tax Rate Statement	FRA shall prepare the Tax Rate Statement and seek input from the City, Bond Counsel and Election Consultant.
Monitor the Election and Transaction Process	FRA shall have primary responsibility for the successful implementation of the financing strategy and timetable that is adopted for each debt issue. FRA shall coordinate (and assist, where appropriate) in the preparation of the legal and disclosure documents and shall monitor the progress of all activities leading to the sale of debt. FRA shall prepare the timetables and work schedules necessary to achieve this end in a timely, efficient and cost-effective manner and will coordinate and monitor the activities of all parties engaged in the financing transaction.



Detailed Steps of Post-Election Duties

1. INITIAL MEETING AND SET-UP OF PROJECT MANAGEMENT PROTOCOLS

Our aim in this stage of the work is to ensure that everyone has a clear understanding of the financing and policy goals of the City. Ensuring that everyone has a thorough grasp of the City's goals will empower the financing team to work smoothly and efficiently.

- a) The City, Financial Advisor and other Finance Team Members will confer in a "kick-off" meeting regarding the financing and agree on deadlines for deliverables and other matters necessary to ensure timely completion of the financing.
- b) The City and Financial Advisor shall establish a periodic report format to keep the City advised of developments in the financing.
- c) Bi-weekly or as needed conference calls will be established to check progress, discuss developments and review financial documents.

2. PREPARE AND MONITOR SCHEDULE

To ensure milestones are met in a timely manner and that the preparation for a bond measure or the issuance of bonds occurs according to schedule, our firm will work with the rest of the Finance Team to draft a schedule of responsibilities. Thereafter, we will coordinate the team to make certain that financing activities are occurring according to schedule.

- a) Financial Advisor will prepare a financing schedule to meet the City's goal of issuing bonds.
- b) Financial Advisor will monitor and ensure that all members of the Finance Team have completed their assigned tasks within the pre-established time frames.

3. REVIEW FINANCING DOCUMENTS

FRA will review documents and will review the highlights and notable points with City staff, saving time for the staff.

- a) Financial Advisor will work with the City and the finance team to ensure that the documents are accurate.
- b) Financial Advisor will work with the City and the finance team to ensure that all documents are delivered prior to the City Council agenda deadlines.

4. STRUCTURING OF THE BOND ISSUE

FRA will review the various financing structures and alternatives that are available to the City and will assist the City in choosing the one that provides the administrative and financial points that best fit with the City at the best price. As part of that analysis, FRA will assist the City with determining the optimal term of the financing and the number of series of bonds to be issued. In addition, FRA will evaluate the method of sale and provide a recommendation to the City on whether to sell the bonds competitively or on a negotiated basis.

The Financial Advisor will review current market conditions, City's financial data, County data, and the City's policies in order to make a recommendation as to the appropriate



structure for the transaction.

Financial Advisor will confer with the Rating Agencies and Bond Insurance Companies to determine additional finance structures that would best suit the City.

- a) Financial Advisor will prepare Bond sizing analysis and prepare sensitivity analysis to rising interest rates.

5. MEETINGS WITH RATING AGENCIES AND BOND INSURERS *(if applicable)*

FRA will take the lead with the City to procure debt at the best price by ensuring the market is aware of the City's strong rating.

- a) Financial Advisor will prepare presentations to Rating Agencies and Bond Insurance Companies.
- b) Financial Advisor will prepare presentations to the City Council and City Staff.
- c) Financial Advisor will coordinate meetings or conference calls with Rating Agencies and Bond Insurance Companies.
- d) Financial Advisor will attend City Council Meetings for Resolution of Issuance and, if needed, for a City Council Workshop.

6. SELLING THE BONDS

- a) Financial Advisor will coordinate marketing plan with underwriter.
- b) Financial Advisor will post Preliminary Official Statement and Official Statement to interested parties.
- c) Financial Advisor will facilitate calls before and at pricing of the bonds.
- d) Financial Advisor will review pricing and make recommendations to the City.

7. CLOSING ACTIVITIES

- a) Financial Advisor will prepare press-release.
- b) Financial Advisor will prepare closing memorandum with wire instructions and coordinate with the Trustee and Underwriter to ensure the smooth closing of the transaction.
- c) Financial Advisor will review all closing documents for accuracy and completeness.
- d) Financial Advisor will coordinate with the financing team on all closing activities.

FRA is excited by the opportunity to serve the City. Our scope of services extends far beyond that of a transactional Financial Advisor. This involves implementing an entire Plan of Finance for the City including i) Assessed Value Review, ii) Tax Rate Analysis and iii) Exploration of Future Needs. After we have explored all financing options and reviewed them, we then execute on our Plan of Finance.



PROPOSED FEE

We propose that no fees will be paid to FRA until a bond sale takes place: 100% of our fees will be paid from bond proceeds. We will keep track of our time for the services we provide during the pre-election stage and accrue the time at the hourly rates listed below on a fully contingent basis. Upon successful election, we would expect to be reimbursed for the pre-election services we have accrued (capped at a not-to-exceed amount of \$15,000) from the costs of issuance associated with the first general obligation bond financing in addition to the transaction fee associated with that bond issuance and related to the services we provide during the post-election phase.

SCHEDULE OF HOURLY RATES	
Executive Officer	\$335 Per Hour
Principal	\$305 Per Hour
Senior Vice President	\$290 Per Hour
Vice President	\$240 Per Hour
Assistant Vice President	\$205 Per Hour
Senior Associate	\$160 Per Hour
Associate	\$135 Per Hour
Analyst	\$90 Per Hour
Administrative Assistant	\$70 Per Hour
Clerical	\$40 Per Hour

We propose a transaction fee of \$45,000 which would apply to each general obligation bond transaction pursued by the City. This fee does not include expenses associated with the transaction. All services performed pursuant to debt issuance shall be fully contingent on, and payable at the closing of the debt issue(s) undertaken. If no bonds are issued, we would expect to be reimbursed for services provided through November 2018 per the hourly fee schedule provided above. Such services will be capped at a total not-to-exceed amount of \$7,500.

Expenses

All verifiable out of pocket expenses shall be billed at a not-to-exceed amount of \$2,700 per transaction. Reimbursable expenses include overnight mail, conference calls, copying and printing/postage.



ADMINISTRATIVE REPORT

Agenda Item J.8.

Meeting Date: 5/7/2018

Report Prepared by: Jennifer Meissonnier, Recreation Supervisor, Parks and Recreation

SUBJECT: Distribution of Wahneta Hall Trust Funds

REPORT IN BRIEF

Consider approving the allocation of the 2018 Wahneta Hall Trust Funds.

RECOMMENDATION

City Council - Adopt a motion approving the recommendation by the Recreation and Parks Commission to allocate the 2018 Wahneta Hall Trust funds to the Kiwanis Club of Greater Merced; and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

ALTERNATIVES

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

AUTHORITY

Charter of the City of Merced, Section 200.

CITY COUNCIL PRIORITIES

As provided for in the 2017-18 Adopted Budget.

DISCUSSION

The Wahneta Hall Trust fund was established in 1995. The trust provisions require that the City of Merced use a specific portion of the trust for an endowment fund with income being used to establish and maintain a mini-train system and/or band concert program in Applegate Park. This year there is \$1,782 available.

On February 20, 2018, the Parks and Recreation Department mailed letters of invitation to apply for the 2018 Wahneta Hall Trust funds to recipients from previous years, which included the Kiwanis Club of Greater Merced, the Merced Symphony Association, the Merced College Concert Band, Merced Marching 100 and Golden Valley High School Band. The department also sent a news release to the local media notifying the public of the pending trust distribution.

This year, the sole applicant that submitted a proposal was the Kiwanis Club of Greater Merced. The

Kiwanis Club of Greater Merced applied for the full \$1,782 to be used to operate and maintain the train at Kiddieland in Applegate Park.

At the March 26, 2018 Recreation and Parks Commission meeting the Commissioners reviewed and unanimously approved the application from the Kiwanis Club of Greater Merced for the Kiddieland train system program to assist with operational costs of the popular park attraction for the full \$1,782, because they met the provisions of the trust, and submitted a complete application.

IMPACT ON CITY RESOURCES

Funding is available within the Fiscal Year 2017-2018 budget out of Fund 795-Wahneta Hall Trust.

ATTACHMENTS

1. Wahneta Hall Trust Fund Press Release
2. Kiwanis Club Request

NEWS RELEASE

City of Merced
Parks and Community Services Department
632 W. 18th Street
Merced, CA 95340 (physical)

February 20, 2018

Contact person: Jennifer Meissonnier, 209-385-6854, meissonnierj@cityofmerced.org

WAHNETTA HALL TRUST FUND APPLICATIONS DUE

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

The Merced City Council annually disburses these funds to organizations that meet eligibility criteria and can perform the services as described in the Trust. This year there is \$2,105 available for distribution. Past recipients have included the Kiwanis Club of Greater Merced for the mini-train operation, as well as the Merced County Regional Arts Council, Merced Symphony Association, and Merced Community Band for band concerts at the Merced Open Air Theater in Applegate Park.

The application deadline for 2018 funding is Tuesday, March 20, 2018. Non-profit organizations interested in applying for funding should submit their letters of request to Jennifer Meissonnier, Recreation Supervisor, Office of Parks and Community Services, 678 W. 18th Street, Merced, CA 95340 (mailing). Please call 209-385-6854, or email meissonnierj@cityofmerced.org for additional information on eligibility criteria and application requirements.

* * * * *

GREATER MERCED



Officers:

Alicia De Los Santos - President
Stephanie Perez-Secretary
Janice Jimenez -Treasurer
David Kamins- Past President

March 14, 2018

City of Merced
Parks and Recreation Department
690 W. 16th Street
Merced, CA 95340

Subject: Wahneta Hall Trust Fund

To Whom it May Concern:

The Kiwanis Club of Greater Merced appreciates your invitation to submit the following request and information to the Wahneta Hall Trust Fund:

1. Amount Requested: \$2,105
2. Purpose of request: To operate and maintain the mini train at Kiddieland in Applegate Park during the 2018 season. Additional repairs and renovation are currently being completed this year and additional funding is needed.
3. Reason for Consideration: Operation of the mini train system in Applegate Park is a community service to the children's and parents of the City and County of Merced, as well as visitors to the community. Even with all-volunteer staffing by Kiwanis members, high school Key Club members, and Merced Police Explorers, the cost of operation exceeds the revenue. The mini train has been a popular feature of the park for over 50 years and has created many memorable experiences for thousands of children and their parents.

4. Qualifications for Consideration: Under the terms of the Wahneta Hall Trust, the income for the endowment fund is to be used to maintain the mini train and to off-set the costs recently incurred by the Club to repaint the train cars to make minor repairs to the caboose. The Kiwanis Club of Greater Merced greatly appreciates the special recognition of this important community asset by the founding benefactors of the fund.
5. Financial Statement for 2017: (Please see attached, Exhibit 1).
6. Current Season: The Kiwanis Club of Greater Merced plans to operate the 2018 season from the weekend of March 24th 2018 through the weekend of October 26, 2018.

Thank you for your time and consideration. If you have any questions, please feel free to contact me, at (209) 808-3269

Sincerely,

Alicia De Los Santos

President



ADMINISTRATIVE REPORT

Agenda Item J.9.

Meeting Date: 5/7/2018

Report Prepared by: Joel D Svendsen, PE, Associate Engineer, Engineering Dept.

SUBJECT: Award Bid to Taylor Backhoe Service for the Merced "N" Street Roadway Rehabilitation, Project No. 117041

REPORT IN BRIEF

Consider awarding a construction contract in the amount of \$1,007,139.55 for the Merced "N" Street Roadway Rehabilitation.

RECOMMENDATION

City Council - Adopt a motion awarding the Merced "N" Street Roadway Rehabilitation, Project No. 117041 to Taylor Backhoe Services, Inc., in the amount of \$1,007,139.55; and authorizing the City Manager, or Assistant City Manager, to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

ALTERNATIVES

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

AUTHORITY

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

CITY COUNCIL PRIORITIES

As provided for in the 2017-18 Adopted Budget.

DISCUSSION

The work to be done consists, in general of the reconstruction of "N" Street, from Childs Ave to 8th Street, including replacement of a 6" water main with an 8" water main, roadway pulverization, cement/lime treatment, asphalt concrete, curb and gutter, concrete handicap ramps, concrete sidewalk, driveway approaches, traffic loops, and modify pavement.

Staff prepared plans and specifications, and the project was advertised for bids. Bids were opened

on April 10, 2018, with the following results:

Contractor	Bid Schedule A Water Main Replacement	Bid Schedule B Roadway Rehabilitation	Total Bid Schedules A & B
Taylor Backhoe Services, Inc.	\$ 352,888.85	\$ 654,250.70	\$ 1,007,139.55
T&S West	\$ 447,700.00	\$ 786,676.45	\$ 1,234,376.45
Avison Construction	\$ 465,800.50	\$ 821,857.50	\$ 1,287,658.00

The following is the proposed budget for the project:

Construction	\$ 1,007,139.55
Contingency	\$ 100,713.92
Engineering, Testing & Inspection	\$ 100,000.00
Total:	\$ 1,207,853.47

This project will require partial lane closure of N Street between Childs Avenue and 8th Street. Staff will be coordinating with the school to ensure minimal impact to the school traffic. This includes waiting for the school to be in recess for the summer prior to beginning of construction. The contractor will be required to provide detour during the duration of the construction. Staff will provide the public with ample advance notification(s) and work with the contractor to maintain access to each property within the limit of the project.

IMPACT ON CITY RESOURCES

This project was established as a Capital Improvement Project and accounts 557-1106-637.65-00-117041 and 450-1104-637.65-00-117041 contain sufficient funding to complete the project.

ATTACHMENTS

1. Location Map
2. Bid Results
3. Construction Contract

LOCATION MAP



Bid Opening 4/10/18

BID SCHEDULE A - "N" STREET: WATER MAIN REPLACEMENT

CITY OF MERCED
PROJECT NO. 117041
MERCED "N" STREET ROADWAY REHABILITATION

NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	ENGINEERS ESTIMATE			TAYLOR BACKHOE SERVICE (Merced, CA)			T&S WEST (Linden, CA)			AVISON CONSTRUCTION (Madera, CA)		
				UNIT PRICE	ITEM TOTAL		UNIT PRICE	ITEM TOTAL		UNIT PRICE	ITEM TOTAL		UNIT PRICE	ITEM TOTAL	
1	Permit, Bonds, Licenses & Insurance	LS	1	\$ 5,000.00	\$ 5,000.00		\$ 5,800.00	\$ 5,800.00		\$ 25,000.00	\$ 25,000.00		\$ 20,000.00	\$ 20,000.00	
2	Public Convenience & Safety	LS	1	\$ 5,000.00	\$ 5,000.00		\$ 19,592.40	\$ 19,592.40		\$ 50,000.00	\$ 50,000.00		\$ 5,000.00	\$ 5,000.00	
3	Water Pollution Control	LS	1	\$ 2,000.00	\$ 2,000.00		\$ 4,149.32	\$ 4,149.32		\$ 5,200.00	\$ 5,200.00		\$ 1,500.00	\$ 1,500.00	
4	Street Sweeping	LS	1	\$ 1,000.00	\$ 1,000.00		\$ 1,740.00	\$ 1,740.00		\$ 5,000.00	\$ 5,000.00		\$ 2,500.00	\$ 2,500.00	
5	Surveying Services	LS	1	\$ 1,000.00	\$ 1,000.00		\$ 2,395.40	\$ 2,395.40		\$ 2,200.00	\$ 2,200.00		\$ 2,500.00	\$ 2,500.00	
6	Monumentation	LS	1	\$ 345.00	\$ 345.00		\$ 3,248.00	\$ 3,248.00		\$ 2,100.00	\$ 2,100.00		\$ 500.00	\$ 500.00	
7	Earthwork	LS	1	\$ 50,000.00	\$ 50,000.00		\$ 3,224.80	\$ 3,224.80		\$ 9,000.00	\$ 9,000.00		\$ 41,500.50	\$ 41,500.50	
8	Adjust Utility Boxes to Grade	EA	4	\$ 15,000.00	\$ 60,000.00		\$ 290.00	\$ 1,160.00		\$ 1,000.00	\$ 4,000.00		\$ 1,200.00	\$ 4,800.00	
9	8" DIP Water Main	LF	2,000	\$ 65.00	\$ 130,000.00		\$ 91.02	\$ 182,040.00		\$ 88.00	\$ 176,000.00		\$ 98.00	\$ 196,000.00	
10	8" Gate Valve	EA	11	\$ 1,400.00	\$ 15,400.00		\$ 1,952.03	\$ 21,472.33		\$ 3,000.00	\$ 33,000.00		\$ 2,500.00	\$ 27,500.00	
11	6" Gate Valve	EA	2	\$ 1,200.00	\$ 2,400.00		\$ 2,555.74	\$ 5,111.48		\$ 2,800.00	\$ 5,600.00		\$ 1,850.00	\$ 3,700.00	
12	Fire Hydrant Assembly w/walve	EA	4	\$ 7,300.00	\$ 29,200.00		\$ 7,259.23	\$ 29,036.92		\$ 7,500.00	\$ 30,000.00		\$ 7,800.00	\$ 31,200.00	
13	Rebate Water Service (1")	EA	4	\$ 2,500.00	\$ 10,000.00		\$ 1,580.45	\$ 6,321.80		\$ 3,000.00	\$ 12,000.00		\$ 1,150.00	\$ 4,600.00	
14	Water Service Connection (1")	EA	22	\$ 1,300.00	\$ 28,600.00		\$ 1,624.86	\$ 35,746.92		\$ 2,000.00	\$ 44,000.00		\$ 2,950.00	\$ 64,900.00	
15	Water Service Connection (6")	EA	2	\$ 2,500.00	\$ 5,000.00		\$ 4,352.50	\$ 8,705.00		\$ 4,800.00	\$ 9,600.00		\$ 3,200.00	\$ 6,400.00	
16	Pressure Testing & Disinfection	LS	1	\$ 10,000.00	\$ 10,000.00		\$ 7,354.40	\$ 7,354.40		\$ 15,000.00	\$ 15,000.00		\$ 20,000.00	\$ 20,000.00	
17	Connection to Existing Water System	EA	4	\$ 25,000.00	\$ 100,000.00		\$ 3,947.52	\$ 15,790.08		\$ 5,000.00	\$ 20,000.00		\$ 8,300.00	\$ 33,200.00	
TOTAL BID SCHEDULE A, ITEMS 1 THROUGH 16					\$ 405,445.00			\$ 352,888.85			\$ 447,700.00			\$ 465,800.50	

BID SCHEDULE B - "N" STREET: ROADWAY REHABILITATION

NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	ENGINEERS ESTIMATE			TAYLOR BACKHOE SERVICE (Merced, CA)			T&S WEST (Linden, CA)			AVISON CONSTRUCTION (Madera, CA)		
				UNIT PRICE	ITEM TOTAL		UNIT PRICE	ITEM TOTAL		UNIT PRICE	ITEM TOTAL		UNIT PRICE	ITEM TOTAL	
1	Permit, Bonds, Licenses & Insurance	LS	1	\$ 15,000.00	\$ 15,000.00		\$ 10,440.00	\$ 10,440.00		\$ 57,500.00	\$ 57,500.00		\$ 40,000.00	\$ 40,000.00	
2	Public Convenience & Safety	LS	1	\$ 20,000.00	\$ 20,000.00		\$ 2,900.00	\$ 2,900.00		\$ 115,000.00	\$ 115,000.00		\$ 6,000.00	\$ 6,000.00	
3	Surveying Services	LS	1	\$ 10,000.00	\$ 10,000.00		\$ 3,793.20	\$ 3,793.20		\$ 3,600.00	\$ 3,600.00		\$ 4,500.00	\$ 4,500.00	
4	Monumentation	LS	1	\$ 2,000.00	\$ 2,000.00		\$ 3,248.00	\$ 3,248.00		\$ 6,000.00	\$ 6,000.00		\$ 500.00	\$ 500.00	
5	Portable Changeable Message Sign	EA	5	\$ 2,500.00	\$ 12,500.00		\$ 1,392.00	\$ 6,960.00		\$ 5,000.00	\$ 25,000.00		\$ 5,000.00	\$ 25,000.00	
6	Clearing and Grubbing	LS	1	\$ 2,500.00	\$ 2,500.00		\$ 1,740.00	\$ 1,740.00		\$ 10,000.00	\$ 10,000.00		\$ 12,500.00	\$ 12,500.00	
7	Earthwork, Roadway Excavation	CY	3,860	\$ 30.00	\$ 115,800.00		\$ 15.78	\$ 60,910.80		\$ 1.00	\$ 3,860.00		\$ 12.00	\$ 46,320.00	
8	Water Pollution Control	LS	1	\$ 5,000.00	\$ 5,000.00		\$ 4,149.32	\$ 4,149.32		\$ 9,500.00	\$ 9,500.00		\$ 1,500.00	\$ 1,500.00	
9	Pulverize Existing Pavement	SF	78,978	\$ 0.75	\$ 59,233.50		\$ 0.61	\$ 48,176.58		\$ 0.35	\$ 27,642.30		\$ 0.50	\$ 39,489.00	
10	Cement/Lime Treatment	TN	290	\$ 30.00	\$ 8,700.00		\$ 278.86	\$ 80,869.40		\$ 425.00	\$ 123,250.00		\$ 500.00	\$ 145,000.00	
11	Asphalt Concrete	TN	1,881	\$ 8.00	\$ 15,048.00		\$ 111.06	\$ 208,903.86		\$ 80.00	\$ 150,480.00		\$ 97.00	\$ 182,457.00	
12	Remove Concrete ADA Ramps	SF	855	\$ 5.00	\$ 4,275.00		\$ 5.45	\$ 4,659.75		\$ 2.50	\$ 2,137.50		\$ 5.50	\$ 4,702.50	
13	Remove Concrete Sidewalk	SF	1,305	\$ 15.00	\$ 19,575.00		\$ 5.08	\$ 6,629.40		\$ 2.40	\$ 3,132.00		\$ 5.50	\$ 7,177.50	
14	Remove Concrete Curb and Gutter	LF	403	\$ 5.00	\$ 2,015.00		\$ 5.81	\$ 2,341.43		\$ 13.50	\$ 5,440.50		\$ 25.00	\$ 10,075.00	
15	Remove Cross Gutter	SF	755	\$ 5.00	\$ 3,775.00		\$ 5.52	\$ 4,167.60		\$ 1.75	\$ 1,321.25		\$ 10.00	\$ 7,550.00	
16	Remove AC Pavement	SF	6,623	\$ 4.00	\$ 26,492.00		\$ 2.42	\$ 16,027.66		\$ 3.30	\$ 21,855.90		\$ 3.50	\$ 23,180.50	
17	Remove Driveway Approaches	SF	2,500	\$ 5.00	\$ 12,500.00		\$ 4.73	\$ 11,825.00		\$ 3.90	\$ 9,750.00		\$ 7.00	\$ 17,500.00	
18	Aggregate Base	CY	123	\$ 80.00	\$ 9,840.00		\$ 84.41	\$ 10,382.43		\$ 140.00	\$ 17,220.00		\$ 130.00	\$ 15,990.00	
19	Curb and Gutter	LF	403	\$ 20.00	\$ 8,060.00		\$ 56.80	\$ 22,890.40		\$ 55.00	\$ 22,165.00		\$ 70.00	\$ 28,210.00	
20	ADA Access Ramp	SF	420	\$ 8.00	\$ 3,360.00		\$ 22.09	\$ 9,277.80		\$ 25.00	\$ 10,500.00		\$ 23.00	\$ 9,660.00	
21	Concrete Sidewalk	SF	737	\$ 45.00	\$ 33,165.00		\$ 12.34	\$ 9,094.58		\$ 16.00	\$ 11,792.00		\$ 18.00	\$ 13,266.00	
22	Driveway Approach	SF	2,300	\$ 35.00	\$ 81,500.00		\$ 13.63	\$ 34,075.00		\$ 14.50	\$ 36,250.00		\$ 19.50	\$ 48,750.00	
23	Cross Gutter	SF	755	\$ 12.00	\$ 9,060.00		\$ 14.43	\$ 10,894.65		\$ 16.00	\$ 12,080.00		\$ 26.00	\$ 19,630.00	
24	Adjust Utility Valve box to Grade	EA	18	\$ 800.00	\$ 14,400.00		\$ 290.00	\$ 5,220.00		\$ 1,000.00	\$ 18,000.00		\$ 1,650.00	\$ 29,700.00	
25	Traffic Signal Loops	EA	6	\$ 1,000.00	\$ 6,000.00		\$ 2,204.00	\$ 13,224.00		\$ 1,900.00	\$ 11,400.00		\$ 1,900.00	\$ 11,400.00	
26	Traffic Signal Conduits and Pull Boxes	EA	1	\$ 5,000.00	\$ 5,000.00		\$ 2,900.00	\$ 2,900.00		\$ 2,500.00	\$ 2,500.00		\$ 4,000.00	\$ 4,000.00	
27	Conduits and Wiring	LS	1	\$ 10,000.00	\$ 10,000.00		\$ 2,900.00	\$ 2,900.00		\$ 2,500.00	\$ 2,500.00		\$ 4,000.00	\$ 4,000.00	
28	Advance Flashing Beacons and Signs	EA	2	\$ 5,000.00	\$ 10,000.00		\$ 11,600.00	\$ 23,200.00		\$ 20,000.00	\$ 20,000.00		\$ 16,000.00	\$ 32,000.00	
29	Traffic Stripes and Pavement Markings	LS	1	\$ 10,000.00	\$ 10,000.00		\$ 25,172.00	\$ 25,172.00		\$ 21,700.00	\$ 21,700.00		\$ 14,000.00	\$ 14,000.00	
30	Remove and Replace Signs	EA	3	\$ 250.00	\$ 750.00		\$ 116.00	\$ 348.00		\$ 500.00	\$ 1,500.00		\$ 600.00	\$ 1,800.00	
31	Pavement Markers	LS	1	\$ 3,000.00	\$ 3,000.00		\$ 1,269.04	\$ 1,269.04		\$ 1,100.00	\$ 1,100.00		\$ 1,000.00	\$ 1,000.00	
32	Existing Highway Facilities	LS	1	\$ 10,000.00	\$ 10,000.00		\$ 5,660.80	\$ 5,660.80		\$ 20,000.00	\$ 20,000.00		\$ 15,000.00	\$ 15,000.00	
TOTAL BID SCHEDULE B, ITEMS 1 THROUGH 32					\$ 768,280.50			\$ 654,250.70			\$ 786,676.45			\$ 821,857.50	

TOTAL BID SCHEDULES A & B \$ 1,173,725.50

\$ 1,007,139.55

\$ 1,234,376.45

\$ 1,287,658.00

GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT made on _____, by and between the CITY OF MERCED, a municipal corporation of the State of California, hereinafter called the Owner, and TAYLOR BACKHOE SERVICES INC., hereinafter called the Contractor:

WITNESSETH:

That the parties hereto have mutually covenanted and agreed, and by these presents do covenant and agree with each other, as follows:

1. CONTRACT DOCUMENTS. The complete contract consists of the following documents, to wit:

- (1) This General Construction Contract;
- (2) Faithful Performance Bond;
- (3) Laborers and Materialmens Bond;
- (4) Guaranty;
- (5) Special Provisions for **PROJECT NUMBERS 117041**;
- (6) Amendments to the Standard Specifications;
- (7) Project Plans;
- (8) Standard Specifications;
- (9) City Standards;
- (10) Proposal;
- (11) Instructions to Bidders;
- (12) Notice Inviting Bids;
- (13) Bidder's Bond;
- (14) List of Subcontractors and Material Dealers; and
- (15) Safety Provisions.

Any and all obligations of the Owner and the Contractor are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other, or vice versa, is to be executed the same as if mentioned in all said documents. The documents comprising the complete contract are sometimes hereinafter referred to as the Contract Documents. In case of conflict between any of the documents, the order of documents first listed above shall be the order of precedence, with the first item listed having the highest precedence.

2. THE WORK. Said Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner all work of improvement in accordance with Contract Documents in the manner designated in, and in strict conformity with, the Plans and Specifications for **PROJECT NUMBERS 117041**, which said Plans and Specifications are entitled, "**MERCED "N" STREET ROADWAY REHABILITATION**," for construction in Merced County in Merced, and which were included in the award of bid made by the City Council of the City of Merced on _____, 2018.

It is understood and agreed that said tools, equipment, apparatus, facilities, labor, transportation and material, except materials to be supplied by the City as designated in the Contract Documents, shall be furnished and said work performed and completed as required in said Plans and Specifications under the sole direction and control of the Contractor, and subject to inspection and approval of the Owner or its

representative. The Owner hereby designates the City Engineer as its representative for the purpose of this Contract.

3. CONTRACT PRICE. The Owner agrees to pay, and the Contractor agrees to receive and accept the following prices as full compensation for furnishing all materials and doing all work contemplated and embraced in this agreement to wit:

BID SCHEDULE A "N" STREET: WATER MAIN REPLACEMENT PROJECT 117041

ITEM NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
1	Permits, Bonds, Licenses & Insurance	LS	1	\$ 5,800.00	\$5,800.00
2	Public Convenience & Safety	LS	1	\$19,592.40	\$19,592.40
3	Water Pollution Control	LS	1	\$4,149.32	\$4,149.32
4	Street Sweeping	LS	1	\$1,740.00	\$1,740.00
5	Surveying Services	LS	1	\$2,395.40	\$2,395.40
6	Monumentation	LS	1	\$3,248.00	\$3,248.00
7	Earthwork	LS	1	\$3,224.80	\$3,224.80
8	Adjust Utility Boxes to Grade	EA	4	\$290.00	\$1,160.00
9	8" DIP Water Main	LF	2,000	\$91.02	\$182,040.00
10	8" Gate Valve	EA	11	\$1,952.03	\$21,472.33
11	6" Gate Valve	EA	2	\$2,555.74	\$5,111.48
12	Fire Hydrant Assembly w/valve	EA	4	\$7,259.23	\$29,036.92
13	Relocate Water Service (1")	EA	4	\$1,580.45	\$6,321.80
14	Water Service Connection (1")	EA	22	\$1,624.86	\$35,746.92
15	Water Service Connection (6")	EA	2	\$4,352.50	\$8,705.00
16	Pressure Testing & Disinfection	LS	1	\$7,354.40	\$7,354.40
17	Connection to Existing Water System	EA	4	\$3,947.52	\$15,790.08

TOTAL BID SCHEDULE A ITEMS 1 THROUGH 17 \$ 352,888.85

BID SCHEDULE B "N" STREET: ROADWAY RECONSTRUCTION PROJECT 117041

ITEM NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
1	Permits, Bonds, Licenses & Insurance	LS	1	\$10,440.00	\$10,440.00
2	Public Convenience & Safety	LS	1	\$2,900.00	\$2,900.00
3	Surveying Services	LS	1	\$3,793.20	\$3,793.20
4	Monumentation	LS	1	\$3,248.00	\$3,248.00
5	Portable Changeable Message Sign	EA	5	\$1,392.00	\$6,960.00
6	Clearing and Grubbing	LS	1	\$1,740.00	\$1,740.00
7	Earthwork/Roadway Excavation	CY	3,860	\$15.78	\$60,910.80
8	Water Pollution Control	LS	1	\$4,149.32	\$4,149.32
9	Pulverize Existing Pavement Section	SF	78,978	\$0.61	\$48,176.58
10	Cement/Lime Treatment	TN	290	\$278.86	\$80,869.40
11	Asphalt Concrete	TN	1,881	\$111.06	\$208,903.86

12	Remove Concrete ADA Ramps	SF	855	\$5.45	\$4,659.75
13	Remove Concrete Sidewalk	SF	1,305	\$5.08	\$6,629.40
14	Remove Concrete Curb and Gutter	LF	403	\$5.81	\$2,341.43
15	Remove Cross Gutter	SF	755	\$5.52	\$4,167.60
16	Remove AC Pavement	SF	6,623	\$2.42	\$16,027.66
17	Remove Driveway Approaches	SF	2,500	\$4.73	\$11,825.00
18	Aggregate Base	TN	123	\$84.41	\$10,382.43
19	Curb and Gutter	LF	403	\$56.80	\$22,890.40
20	ADA Access Ramp	SF	420	\$22.09	\$9,277.80
21	Concrete Sidewalk	SF	737	\$12.34	\$9,094.58
22	Driveway Approach	SF	2,500	\$13.63	\$34,075.00
23	Cross Gutter	SF	755	\$14.43	\$10,894.65
24	Adjust Utility Valve Box to Grade	EA	18	\$290.00	\$5,220.00
25	Traffic Signal Loops	EA	6	\$2,204.00	\$13,224.00
26	Traffic Signal Conduits & Pull Boxes	LS	1	\$2,900.00	\$2,900.00
27	Conductors and Wiring	LS	1	\$2,900.00	\$2,900.00
28	Advance Flashing Beacons and Signs	EA	2	\$11,600.00	\$23,200.00
29	Traffic Stripes & Pavement Markings	LS	1	\$25,172.00	\$25,172.00
30	Remove and Replace Signs	EA	3	\$116.00	\$348.00
31	Pavement Markers	LS	1	\$1,269.04	\$1,269.04
32	Existing Highway Facilities	LS	1	\$5,660.80	\$5,660.80

TOTAL BID SCHEDULE B ITEMS 1 THROUGH 32 \$ 654,250.70

TOTAL BID SCHEDULE A, & B, \$1,007,139.55

4. **TERMINATION.** If the Contractor should be adjudged as bankrupt or if he should make a general assignment for the benefit of his creditors, or if a receiver should be appointed on account of his insolvency, or if he or any of his subcontractors should violate any of the provisions of the Contract Documents, the Owner may serve written notice upon him and his surety of its intention to terminate the Contract; such notice to contain the reasons for such intention to terminate the Contract, and, unless within ten (10) days after serving of such notice such violation shall cease and satisfactory arrangements for correction thereof be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate.

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that if the surety within fifteen (15) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not commence performance thereof within thirty (30) days from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

5. NOTICE AND SERVICE THEREOF. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice, or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, (a) if the notice is given to the Owner, per personal delivery thereof to the City Engineer of said Owner, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to the Owner, postage prepaid and registered; (b) if the notice is given to the Contractor, by personal delivery thereof to said Contractor or to his duly authorized representative at the site of the project, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to said Contractor at **1600 FALCON WAY, MERCED CA 95341**, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to such surety or person, as the case may be, at the address of such surety or person last communicated by him to the party giving the notice, postage prepaid and registered.

6. ASSIGNMENT OF CONTRACT. Neither the Contract nor any part thereof, nor moneys due, or to become due thereunder, may be assigned by the Contractor without the prior written approval of the Owner.

7. CONTRACT SECURITY. The Contractor shall furnish a surety bond in an amount at least equal to 100 percent of the contract price as security for the faithful performance of this Contract. The Contractor shall also furnish a separate surety bond in an amount at least equal to 100 percent of the contract price as security for the payment of all persons for furnishing materials, provisions, provender, or other supplies used in, upon, for, or about the performance of the work contracted to be done, or for performing any work or labor thereon of any kind, and for the payment of amounts due under the Unemployment Insurance Code with respect to such work or labor in connection with this Contract, and for the payment of a reasonable attorney's fee to be fixed by the court in case suit is brought upon the bond.

8. INSURANCE. The Contractor shall not commence work under this Contract until he has obtained all insurance required by Section 7-3 of the Standard Specifications for Public Works Construction (1997 Edition), as amended, and such insurance has been approved by the City Attorney of Owner, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. Contractor shall furnish the Owner with satisfactory proof of the carriage of insurance required, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Contract, and particularly paragraph 9 hereof. Said insurance obtained by the Contractor shall be primary and noncontributory as to any insurance maintained by owner. ***Endorsement for additional insured shall be submitted on Standard form CG 20101185. Endorsement forms CG 20101001 and CG 20371001, when used together, are acceptable in lieu of CG 20101185 for Public Works projects.*** Any policy of insurance required of the Contractor under this Contract shall also contain an endorsement providing that thirty (30) days' notice must be given in writing to the Owner of any pending change in the limits of liability or of any cancellation or modification of the policy.

The Contractor shall furnish the City a policy or certificate of liability insurance in which the City is the named insured or is named as an additional insured with the Contractor. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the City shall be the insured or named as an additional insured covering the work, whether liability is attributable to the Contractor or the City. The policy shall insure the City, its officers, employees and agents while acting within the scope of their duties on the work, against all claims arising out of or in connection with the work.

The Contractor may file insurance acceptable to the City covering more than one project. The coverage shall provide the following minimum limits:

Bodily Injury...	\$500,000.00	each person
	\$1,000,000.00	each occurrence
	\$1,000,000.00	aggregate products and completed operations
Property Damage...	\$250,000.00	each occurrence
	\$500,000.00	aggregate

A combined single limit policy with aggregate limits in the amount of \$1,250,000.00 will be considered equivalent to the required minimum limits.

The Contractor will require all subcontractors to take out and maintain bodily injury liability and property damage liability in the amounts stated above.

The Contractor and subcontractors shall save, keep and hold harmless the City, its officers and agents from all damages, costs or expenses in law or equity that may at any time arise or be set up because of damages to property, or of personal injury received by reason of or in the course of performing work, which may be caused by any willful or negligent act or omission by the Contractor, any of the Contractors employees, or any subcontractor. The City will not be liable for any accident, loss or damage to the work prior to its completion and acceptance.

All liability insurance policies shall bear an endorsement or shall have attached a rider whereby it is provide that, in the event of expiration or proposed cancellation of such policies for any reason whatsoever, the Agency shall be notified by registered mail, return receipt requested, giving sufficient time before the date thereof to comply with the applicable law or statute, but in no event less than thirty (30) days before expiration or cancellation is effective.

All insurance required by this section shall be from a California admitted insurance company.

The cost of this insurance shall be included in the Contractor's bid.

CANCELLATION CLAUSE

NOTE: The standard form used by insurance carriers will not be acceptable unless the word "endeavor" is crossed out where the paragraph states, "The issuing company will (endeavor to) mail . . ." A portion of the last paragraph should be crossed out, which states, "but failure to mail such notice shall impose no obligation or liability of any kind upon the company."

9. HOLD HARMLESS. The Contractor will indemnify, defend with counsel selected by the Owner, save, keep, and hold harmless, the Owner and all officers, employees, and agents thereof from all damages, costs, or expenses, in law or in equity, that may at any time arise or be set up because of personal injury or damage to property sustained by any person or persons by reason of, or in the course of the performance of said work, or by reason of any infringement or alleged infringement of the patent rights of any person or persons, firm or corporation, in consequence of the use in, on, or about said work, of any article or material supplied or installed under this Contract. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Notwithstanding the above, the Contractor shall, wherever it is necessary, keep and maintain at his sole cost and expense during the course of his operations under this Contract such warnings, signs, and barriers as may be required to protect the public. The provisions of the preceding sentence shall not impose any liability upon the Owner and are for the express benefit of the general public.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

It is expressly understood that Contractor is an independent contractor and that its employees shall not be employees of or have any contractual relationship with the City. Contractor shall be responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Should Contractor desire any insurance protection, the Contractor is to acquire such protection at its expense.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

10. ACCIDENT PREVENTION. Precaution shall be exercised at all times for protection of persons (including employees) and property. The safety provisions of applicable laws, building and construction codes shall be observed. Machinery, equipment, and other hazards shall be guarded or eliminated in accordance with the safety provisions of the Construction Safety Orders issued by the Industrial Accident Commission of the State of California.

11. PAYMENT. The Owner will make partial and final payment to the Contractor in accordance with Section 9-3.2 of the Standard Specifications, as amended, except that the Owner will retain the five percent (5%) of the final payment amount until the expiration of thirty-five (35) days from the date of recording by Owner of notice of acceptance of completion of all work covered by this Contract, if such notice be recorded within ten (10) days after the acceptance of completion of such Contract; or, if such notice be not so recorded within ten (10) days, until the expiration of ninety-five (95) days after the acceptance of completion of such work of improvement, at which time and not before, Owner shall pay to Contractor the whole of the remaining five percent (5%) of said contract price so held back as provided.

The payment of progress payments by the Owner shall not be construed as an absolute acceptance of the work done up to the time of such payments, but the entire work is to be subjected to the inspection and approval of the Owner and subject to whatever inspection and approval may be required by law.

12. CALIFORNIA LABOR CODE. The Contractor is aware of, and hereby agrees to comply with Section 1776 of the California Labor Code.

13. SUBSTITUTION OF SECURITIES FOR WITHHELD AMOUNTS. Pursuant to Section 22300 of the Public Contracts Code of the State of California, securities may be substituted for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a State or Federally-chartered bank as the escrow agent, who shall pay such moneys to the Contractor upon satisfactory completion of the Contract.

Securities eligible for substitution under this section shall include those listed in Section 16430 of the Government Code of the State of California, or bank or savings and loan certificate of deposit.

The Contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

Any escrow agreement entered into pursuant to this section shall contain, as a minimum, the following provisions:

- (a) The amount of securities to be deposited;
- (b) The terms and conditions of conversion to cash in case of the default of the Contractor; and
- (c) The termination of the escrow upon completion of the Contract.

14. TRENCHES AND EXCAVATIONS. Should the Contractor be required to dig trenches or other excavations that extend deeper than four (4) feet below the surface, then the following clauses shall apply:

- (a) The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:
 - (1) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law;
 - (2) Subsurface or latent physical conditions at the site differing from those indicated;
 - (3) Unknown physical conditions at the site of any unusual nature different materially from those ordinarily encountered, and generally recognized as inherent in work of the character provided for in the Contract.
- (b) The City shall promptly investigate the conditions, and if it finds that the conditions do materially so differ or do involve hazardous waste and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the work, shall issue a change order under the procedures described in this Contract.
- (c) In the event that a dispute arises between the City and the Contractor whether the conditions materially differ or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of or time required for performance of any part of the work, the Contractor shall not be excused from any scheduled completion date provided for by the contract, but shall proceed with all work to be performed under the contract. The Contractor shall retain any and all rights provided either by contract or by law, which pertain to the resolution of disputes and protests between the contracting parties.

15. CLAIMS. This clause applies to all Contractor claims of three hundred seventy-five thousand dollars (\$375,000), or less, which arise out of this Contract.

- (a) "Claim" means a separate demand by the Contractor for (1) a time extension, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract, and payment of which is not otherwise expressly provided for or the Contractor not otherwise entitled to, or (3) an amount the payment of which is disputed by the City.
- (b) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing herein shall extend the time limit or supersede notice requirements otherwise provided by Contract for the filing of claims.

- (c) For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within forty-five (45) days of receipt of the claim or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.
 - (1) If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the City and the Contractor.
 - (2) The City's written response to the claim as further documented shall be submitted to the Contractor within fifteen (15) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information, whichever is greater.
- (d) For claims of over fifty thousand dollars (\$50,000) and less than, or equal to, three hundred seventy-five thousand dollars (\$375,000), the City shall respond in writing to all written claims within sixty (60) days of receipt of the claim or may request, in writing within thirty (30) days of receipt of the claim, any additional documentation supporting the claim, or relating to defenses or claims the City may have against the Contractor.
 - (1) If additional information is thereafter required, it shall be requested and provided upon mutual agreement of the City and the Contractor.
 - (2) The City's written response to the claim as further documented shall be submitted to the Contractor within thirty (30) days after receipt of the further documentation, or within a period of time no greater than that taken by the Contractor in producing the additional information or requested documentation, whichever is greater
- (e) If the Contractor disputes the City's written response, or the City fails to respond within the time prescribed, the Contractor may so notify the City, in writing, either within fifteen (15) days of receipt of the City's response, or within fifteen (15) days of the City's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon a demand, the City shall schedule to meet and confer conference within thirty (30) days for settlement of the dispute.
- (f) If, following the meet and confer conference, the claim or any portion remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of Division 3.6 of Title I of the Government Code. For purposes of those provisions, the running of the period of time within which a claim must be filed shall be tolled from the time the Contractor submits its written claim pursuant to Subdivision (b) until the time the claim is denied, including any period of time utilized by the meet and confer conference.
- (g) The following procedures shall be followed for all civil actions filed to resolve claims subject to this clause:
 - (1) Within sixty (60) days, but no earlier than thirty (30) days following the filing or responsive pleadings, the court shall submit the matter to non-binding mediation unless waived by mutual stipulation of both parties. The mediation process shall provide for the selection within fifteen (15) days by both parties of a disinterested third person as mediator, shall be commenced within thirty (30) days of the submittal, and shall be concluded within fifteen (15) days from the

commencement of the mediation unless a time requirement is extended upon a good cause showing to the court.

(2) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.

(3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.

- (h) The City shall not fail to pay money as to any portion of a claim that is undisputed, except as otherwise provided in this contract.
- (i) In any suit filed under Section 20104.4, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

IN WITNESS WHEREOF, three (3) identical counterparts of this Contract, each of which shall for all purposes be deemed an original thereof, have been duly executed by the parties hereinabove named, on the day and year first herein written.

ATTEST:

CITY OF MERCED, a Municipal Corporation
(Herein called Owner)

By: _____
Deputy City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

TAYLOR BACKHOE SERVICES, INC.
(Contractor Name, Herein called Contractor)

By: _____
City Attorney

By: AJ _____
Contractor
Janet Taylor
President

ACCOUNT DATA:

TAXPAYER I.D. NO: 77-0573963

PROJECT NUMBERS 117041

VENDOR NUMBER: _____

Project Account Number:

ADDRESS: 1600 Falcon Way
Merced, CA 95341

450-1104-637.65-00-117041

PHONE 209-384-8429

Amount: **\$ 1,007,139.55**

FAX: 209-384-7629

By: _____
Finance Officer Verification

EMAIL: janet@taylorbackhoe.com
(SEAL)



ADMINISTRATIVE REPORT

Agenda Item J.10.

Meeting Date: 5/7/2018

Report Prepared by: Karen Baker, Development Associate, Merced Visitor Services

SUBJECT: Lease Agreement Between the City of Merced and Greyhound Lines, Inc., Located at the Merced Transportation Building

REPORT IN BRIEF

Lease Agreement between the City of Merced and Greyhound Lines, Inc., located at the Merced Transportation Building.

RECOMMENDATION

City Council - Adopt a motion approving the lease agreement between the City of Merced and Greyhound Lines, Inc.; and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

ALTERNATIVES

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

AUTHORITY

Section 200 of the City of Merced Charter.

CITY COUNCIL PRIORITIES

As provided for in the 2017-2018 Adopted Budget.

DISCUSSION

Background

Greyhound Lines, Inc. has been a tenant at the Merced Transportation Building since August of 2000, leasing both office space and bus parking space. The City and Greyhound enjoy a positive working relationship, and Greyhound desires to continue leasing space in the Transportation Center. Greyhound is a valued tenant and provides an important service to the community.

The Transpo Building serves as the central station for bus transportation in Merced, and therefore, an ideal location for Greyhound operations. In addition to Greyhound, several bus systems are currently

leasing space including Yosemite Area Regional Transportation System (YARTS), Merced County's "The Bus", Viajes California, and Storer Transportation.

Proposed Lease

The City of Merced and Greyhound Lines, Inc. negotiated a lease subject to the following key terms (Attachment 1):

Location: Merced Transportation Center, 710 W. 16th Street, Merced, CA

Leased Area: 440 square feet (open counter and storage space)

Term: 5 years and one (1) five (5) year option to extend

Common Area: Waiting area, restrooms, and entryways

Bus

Concourse Area: Exclusive use for three (3) boarding bays

Rent: Year 1-\$ 1304.00 per month
Year 2-\$ 1304.00 per month
Year 3-\$ 1326.00 per month
Year 4-\$ 1326.00 per month
Year 5-\$ 1348.00 per month

Greyhound will also pay its pro-rata share of utilities and janitorial expenses for use of common areas at the Transpo Building. They will pay eleven percent (11%) of the incurred costs for maintenance, repairs, janitorial services and supplies of the Building. Greyhound will also pay eight (8%) for refuse service, water, sewer, gas, electricity, alarm services, and other public utility services for the Transpo Building.

IMPACT ON CITY RESOURCES

No appropriation of funds is needed.

ATTACHMENTS

1. Proposed Greyhound Lines, Inc. Lease

LEASE AGREEMENT

THIS LEASE made this _____ day of _____, 2018, by and between the City of Merced, a municipal corporation ("Lessor"), and Greyhound Lines, Inc., a Delaware Corporation ("Lessee").

WHEREAS, the Lessor is the owner of the Merced Transportation Center building located on a tract of land in Merced, California, at 710 West 16th Street; and

WHEREAS, Lessee operates a transit system and desires to lease certain bus concourses at the Merced Transportation Center.

WHEREAS, the prior written Lease between Lessor and Lessee expired on or about August 6, 2010, and Lessee has occupied the premises as a month-to-month tenant since that time.

NOW, THEREFORE, in consideration of the terms and conditions set forth herein, the Lessor and Lessee do hereby agree as follows:

1. DEFINITIONS.

a. Building. "Building" is defined as that certain building known as the Merced Transportation Center buildings consisting of one story and a total of approximately 5,300 square feet of floor space, located at 710 West 16th Street, Merced, California, and labeled Transpo Center on Exhibit B.

b. Facility. "Facility" shall be defined as the area within the Building reserved for the exclusive use of Lessee, and labeled Facility on the attached Exhibit B.

c. Common Area. "Common Area" shall be defined as the waiting area, restroom facilities and entryways of the Building located inside the building and labeled Common Area on the attached Exhibit B.

d. Bus Concourse Area. "Bus Concourse Area" shall be defined as the bus driveways and bus boarding areas as outlined and labeled on the attached Exhibit A. Lessee shall have exclusive use of three (3) bus boarding bays as illustrated on Exhibit A.

2. FACILITY. The Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all the conditions set forth herein that certain part of the Building, labeled Facility in Exhibit B, which is attached hereto and made a part hereof, situated in the City of Merced, County of Merced, State of California, containing approximately 440 square feet of Building area, together with all improvements thereon and appurtenances thereto, excepting therefrom the land upon which the Building and Facility are located; and subject to the conditions set forth herein, the continuous and uninterrupted right of Lessee and its officers, employees, business invitees, customers and patrons, of access to and from Facility over and across any part of Lessor's adjacent property which is not part of the Facility, for any purpose contemplated herein, including the Common Area and Bus Concourse Area.

3. TERM. The term of this Lease shall be five (5) years beginning on May 1, 2018, and one (1) five (5) year option to extend.

4. RENT. Lessee shall pay to Lessor as rent for use of the Facility and appurtenant rights equal monthly installments as indicated below payable in advance on or before the first day of each calendar month of the term. Rent for any period less than one month shall be a pro rata portion of the monthly installment. Rent shall be payable to Lessor at the address stated herein or to such other person or at such other place as Lessor shall designate as provided herein.

Rent shall be payable as follows:

Year 1 – \$1,304.00 per month
Year 2 – \$1,304.00 per month
Year 3 – \$1,326.00 per month
Year 4 – \$1,326.00 per month
Year 5 – \$1,348.00 per month

5. USE. The Lessee shall have the right of reasonable access to the Common Area and Bus Concourse Area, during normal business hours, for the life of this Lease.

Lessee shall not commit or permit any act or acts in or on the Facility or use the Facility or suffer it to be used in any manner which will cause a cancellation of any fire, liability, or other insurance policy covering the Building or any part thereof.

6. LESSOR'S WARRANTY OF TITLE. Lessor represents and warrants that:

a. Lessor is the sole owner in fee simple of the Building and has full right and power to grant the estate demised and to execute and perform this Lease;

b. The Building is and will remain free and clear of all encumbrances that could adversely affect Lessee's leasehold estate;

c. The intended use of the Building for purposes stated herein is permitted by all applicable zoning laws and regulations; and

d. The Building does and will comply with all applicable ordinances, regulations, and zoning and other laws.

7. QUIET ENJOYMENT. Lessor covenants and agrees that so long as Lessee observes and performs all the agreements and covenants required of it hereunder, Lessee shall peaceably and quietly have, hold and enjoy the Facility for the Lease term without any encumbrance or hindrance by Lessor. If Lessee's use of the Facility is significantly limited, or denied, through rezoning, environmental impact edict, or other action of any public or quasi-public agency, this Lease, at the sole option of Lessee, shall terminate as of the effective date of such action and the rent applying to the unexpired portion of the Lease term will abate.

8. REPAIRS, MAINTENANCE AND UTILITIES.

a. Exterior of Building. Lessor shall provide and pay for day-to-day maintenance and repair of the exterior area of the Building, including but not limited to the exterior landscaping, bus concourse area, driveways, exterior roof, and exterior side walls.

The Lessor shall pay the total cost of the water and electricity services for the exterior area of the Building.

b. Facility. The Lessee shall provide, perform and pay for day-to-day maintenance, repair, and janitorial services for the Facility, as defined in Subsection 1.b. above. The Lessee shall pay the total cost of its telephone and communication services used at the Facility.

c. Interior of Building. Except as provided in Subsections a. and b. above, the Lessor shall provide, perform, and pay all costs for maintenance, repairs, janitorial services, garbage and rubbish services, water, gas, electricity, telephone services, maintenance and janitorial supplies, security costs, and all other public utility services for the Building during the term of this Lease, or any renewals thereof as provided herein; and, Lessee shall, upon receipt of a proper accounting from Lessor, reimburse Lessor for said costs, on a monthly basis, its pro rata share of said costs as determined by reference to subsection d. below.

d. Pro Rata Share Computation. Lessee shall pay a monthly pro-rata share of eleven percent (11%) of the incurred costs for maintenance, repairs, janitorial services and supplies of the Building.

Lessee shall pay a monthly pro-rata share of eight percent (8%) for garbage and rubbish services, water, sewer, gas, electricity, telephone services, security costs, and other public utility services for the Building, during the term of this Lease, or any renewals thereof as provided herein.

For the purposes of this Lease:

The "Interior Area" shall mean the total square footage of leasable floor space in the interior of the Building. Such square footage to be determined prior to occupancy and to be approved by both Lessee and Lessor.

The "Facility Area" shall mean the square footage of the Facility, equaling 440 square feet.

The "Pro Rata Share," hereby defined, shall be the ratio of the Facility Area to the Interior Area.

9. **ALTERATIONS AND IMPROVEMENTS.** Lessee shall have the right to make alterations and improvements to the Facility subject to the following terms and conditions:

a. No alterations or improvements made by Lessee shall in any way impair the structural stability of the Building or diminish the value of the property;

b. All alterations or improvements shall be first approved in writing by the Lessor, but said approval shall not be unreasonably withheld by Lessor;

c. Lessee shall keep the Facility and every part of the Building free and clear of any mechanics' liens or materialmen's liens arising out of the construction of any such alterations or improvements.

d. All alterations and improvements made to the Facility shall become the property of the Lessor and shall remain on and be surrendered with the Facility at the expiration or sooner termination of this Lease or any renewal of this Lease.

e. Lessee's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, or equipment not removed by Lessee within thirty (30) days after the termination of this Lease or any extension thereof, shall automatically become the property of the Lessor. Lessee shall repair any damage to the Facility or Building caused by Lessee's removal of its personal property, trade fixtures, or equipment, but Lessee shall have no obligation to remove such items from the Facility or Building at any time.

10. **MECHANICS LIENS.** The Lessor and Lessee agree to keep the Building free from any and all claims of persons or firms or corporations who, at the request of Lessor or Lessee or their employees or contractor, furnish labor or materials to or for the benefit of the Building and Lessor and Lessee further agree to hold each other harmless from any and all claims.

11. **DAMAGE/DESTRUCTION.** If the Facility or Building is damaged or destroyed in whole or in part by fire or other casualty, Lessor shall repair and restore the Facility or Building to a good tenantable condition. All rent shall wholly abate in case the entire Facility or Building is untenable, or shall abate pro rata for the portion rendered untenable, or shall abate pro rata for the portion rendered untenable in case a part only is untenable, until the Facility and Building is restored to a tenantable condition. Lessor shall commence and complete all work required to be done under this paragraph with reasonable promptness and diligence, but Lessor shall not be in default in any required performance if delay in performance results from fire, flood, storm, labor disputes, shortage of materials or transportation facilities, governmental regulations, war, act of God or other causes beyond Lessor's reasonable control. If Lessor shall not commence such repair or restoration within thirty (30) days after such damage or destruction shall occur or if repair or restoration will require more than one hundred twenty (120) days to complete, Lessee may thereafter, at its option, terminate this Lease by giving the Lessor written notice of its election to do so at

any time prior to the commencement of such repair or restoration. In that event, this Lease shall terminate as of the date such notice is received by Lessor.

Notwithstanding any other provisions of this section, Lessee shall be responsible for repair and restoration of Lessee's trade fixtures and personal property located in or on the Building or Facility in the event of damage or destruction of said property.

12. FIRE INSURANCE. Lessor shall maintain during the period of construction of the Building and Facility, during the term of this Lease and any renewal hereof, coverage against loss or damage to the Building (excluding personal property or trade fixtures of Lessee) in the amount of not less than 90 percent of its full insurable value, against perils included within the classifications of fire, extended coverage, vandalism, malicious mischief and special extended perils; and, Lessee shall reimburse Lessor its pro rata share, as defined in Section 8.d. above, of the costs thereof, upon receipt of a proper accounting.

13. INSURANCE.

a. Lessee at its sole cost shall maintain public liability and property damage insurance during the entire term of this Lease, which shall include coverage of contractual liability as respects this Lease, in amounts not less than:

- (1) \$1 million for injury to or death, including accidental death, of one or more persons as a result of any one accident or incident; and
- (2) \$500,000.00 for damage to or destruction of any property of others

b. The insurance shall:

- (1) Insure against all liability of Lessee and its authorized representative arising out of or in connection with Lessee's use or occupancy of the Building or Facility, including the Common Area and Bus Concourse Area.
- (2) Insure performance by Lessee of the indemnity provisions of Section 29.

- (3) Provide that Lessor be named as an additional insured and contain cross liability endorsements.
- (4) Be considered by the parties hereto as primary insurance.
- (5) Contain an endorsement requiring thirty (30) days written notice from the insurance company to Lessor before cancellation or change in the coverage, scope, or amount of any policy.

c. Lessee represents to Lessor and Lessor acknowledges that Lessee self-insures in the ordinary course of its business. Notwithstanding any other provision contained herein to the contrary, the insurance obligations of Lessee set forth in this Paragraph may be satisfied by endorsements to existing excess/umbrella blanket policies written by companies of recognized standing showing a self-insurance retention of not more than \$1.5 million per occurrence for automobile liability and general liability insurance coverage; workers' compensation insurance coverage is subject to a \$1.0 million deductible per occurrence with a deductible of \$100,000 per occurrence for property damage insurance coverage, to the extent required under this Lease.

d. The Lessee shall furnish a certificate of insurance evidencing the aforesaid coverage.

Notwithstanding the above, it is further agreed to between the parties hereto that the limits of insurance coverage specified above are the minimum amounts required and shall be subject to revision by the Lessor from time to time if a need is indicated. The Lessor hereby agrees to act reasonably at all times with respect to the provisions of this paragraph.

14. **WAIVER OF SUBROGATION.** Lessor and Lessee and all parties claiming under or through them hereby mutually release and discharge each other, any other tenants or occupants of the Building in which the Facility is located, and the officers, employees, agents, representatives, customers and business visitors of Lessor or Lessee or such other tenants or occupants, from all claims, losses and liabilities arising from or caused by any hazard covered by insurance on or in connection with the Facility or said Building, even if caused by the fault or negligence of a released party. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

15. SIGNS. Any and all signs or advertisements of any nature extending into, on, or located over the Building, Facility, or Bus Concourse Area, shall conform to all City of Merced, California, zoning and building codes, shall be consistent with already existing signage at the Facility and shall be approved by Lessor in writing prior to construction, use, or erection thereof. Approval by Lessor shall not be unreasonably withheld, as to location, graphics type, content, dimensions, architectural or engineering standards.

16. TAXES. The terms of this Lease may result in the creation of a possessory interest. If such a possessory interest is vested in a private party to this Lease, the private party may be subjected to payment of personal property taxes levied on such interest. Lessee shall be responsible for the payment of, and shall pay before they become delinquent, all taxes, assessments and fees assessed or levied upon Lessee or the Facility, or any interest therein, including, but not limited to, buildings, structures, fixtures, equipment or other property installed, or constructed thereon. Lessee further agrees not to allow such taxes, assessments or fees to become delinquent and as such to become a lien against the Building or Facility or any improvement thereto. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax, assessment or fee in the manner authorized by law.

The obligation to make any payments pursuant to this Section shall survive the expiration of the term of this Lease, provided Lessee's obligation arose out of or is equitably allocable to the period covered by this Lease.

Unless otherwise provided by this Section, the Lessee shall pay the Lessor its pro rata share, as defined in Section 8.d. above, of any other taxes, assessments, or fees, which the Lessor may become obligated to pay in connection with the ownership or maintenance of the Building.

17. ASSIGNMENT AND SUBLETTING. Lessee shall not encumber, assign, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Facility, without the prior written consent of Lessor. Neither shall Lessee sublet the Facility or any part thereof, or allow any persons, other than Lessee's customary commissioned sales contractor, agents or servants, to occupy or use the Facility or any part thereof without the prior written consent of Lessor. A consent of Lessor to one assignment, subletting, or occupation and use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation and use by another person. Any encumbrance, assignment, transfer, or subletting without the prior written consent of Lessor,

whether it be voluntary or involuntary, by operation of law, or otherwise, is void and shall, at the option of Lessor, terminate this Lease.

The consent of Lessor to any assignment of Lessee's interest in this Lease or the subletting by Lessee of the Facility, shall not be unreasonably withheld or delayed.

Notwithstanding anything to the contrary as set forth above, Lessee may, without Lessor's consent, assign or sublease all or a portion of the Facility to a subsidiary, affiliate or parent company of Lessee or any subsequent purchaser of Lessee. Any permitted assignment or sublease shall not relieve the Lessee from any obligations set forth herein.

18. PUBLIC ACCESS. The public shall have access at all times to the Facility by way of the Common Area identified on Exhibit B.

19. TERMINATION OF LEASE.

a. In the event the Lessee determines in good faith that it no longer practicably, economically, or operationally can do business from the Facility, upon making a reasonable showing of same to Lessor, Lessee shall have the right to terminate this Lease on ninety (90) days' prior written notice.

b. It is understood and agreed by the parties hereto that Lessor and its successors in interest shall and hereby do reserve the right to cancel or terminate this Lease prior to expiration of the term or renewed or extended term hereof as follows:

- (1) If the Lessee is in default or breach of this Lease, as specified in Section 21 of this Lease or as otherwise provided by law; or
- (2) If the Lessee assigns or sublets the Facility without the prior written consent of Lessor, as specified in Section 17 of this Lease.

20. COMPLIANCE WITH LAWS. During the term of this Lease and any renewals hereof, Lessee shall promptly execute and comply with all federal, State, County, and City statutes, ordinances, regulations, laws, or other requirements applicable to the occupancy of the Facility, and the operation of the Building as a Multipurpose Transportation Facility.

21. DEFAULT/REMEDIES.

Lessee:

The occurrence of any one or more of the following events constitutes a material default and breach of this Lease by Lessee:

- a. The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where the failure continues for a period of twenty (20) days after written notice thereof from Lessor to Lessee.
- b. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, other than those described in Subsection a. above, where the failure continues for a period of thirty (30) days after notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.
- c. The making by Lessee of any general assignment, or general arrangement for the benefit of creditors.
- d. The filing by Lessee of a petition to have Lessee adjudged a bankrupt.
- e. The judicial declaration of Lessee as bankrupt.
- f. The appointment of a trustee or receiver to take possession of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if possession is not restored within thirty (30) days.
- g. The attachment, execution or other judicial seizure of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if the seizure is not discharged within thirty (30) days.

In the event of any such default or breach with the exception of bankruptcy or receivership, by Lessee, Lessor may, after giving written notice as provided above, pursue those remedies available to Lessor under the law or judicial decisions of the State of California. In the event of bankruptcy or receivership, this Lease shall immediately terminate.

If Lessee breaches this Lease or is in default, as provided above, the Lessor may terminate this Lease upon written notice as provided herein. On such termination, the Lessor may recover from Lessee:

- (i) The worth at the time of award of the unpaid rent which has been earned at the time of termination;
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proves could have been unreasonably avoided;
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under this Lease, or which in the ordinary course of things would likely result therefrom.

The "worth at the time of award" of the amounts referred to in Subsections (i) and (ii) hereinabove is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to in paragraph (iii) of this subsection is computed by discounting such amount at the legal rate of interest.

Even though Lessee breaches this Lease or is in default, as provided above, this Lease continues in effect for so long as the Lessor does not terminate Lessee's right of possession; and the Lessor may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease, unless the breach by Lessee constitutes a breach and abandonment of the Lease, in which case the Lessor may enforce all its rights and remedies except its right to recover rent as it becomes due.

For the purposes of this Lease, acts of maintenance or preservation or efforts to relet the Facility do not constitute a termination of Lessee's right to possession.

The rights of the Lessor under this Lease shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law. Nothing in this Lease affects the right of the Lessor to equitable relief where such relief is appropriate.

Nothing in this Lease affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer. If Lessor brings an action in unlawful detainer, and possession of the property is no longer an issue because possession of the property is delivered to Lessor before trial or, if there is no trial, before judgment is entered, unless Lessor amends the complaint to state a claim for damages not recoverable in the unlawful detainer proceeding, the bringing of an unlawful detainer, forcible entry, or forcible detainer action as described hereinabove does not affect Lessor's right to bring a separate action for relief on termination, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which claim for damages was made and determined on the merits in the previous action.

Efforts by the Lessor to mitigate the damages caused by Lessee's breach of this Lease do not waive the Lessor's right to recover damages under this section.

Nothing in this section affects the right of the Lessor to indemnification for liability arising prior to the termination of this Lease for personal injuries or property damage as provided in Section 28 of this Lease.

22. DEFAULT/REMEDIES.

Lessor:

Lessor shall not be in default unless Lessor fails to perform obligations required of it within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default if Lessor commences performance within the thirty (30) day period and thereafter diligently completes performance.

If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Lease, Lessee may, after giving

notice as provided above, either cure the default and deduct the cost thereof from rent subsequently becoming due hereunder, or elect to terminate this Lease upon giving thirty (30) days' written notice to Lessor of its intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Lessor has meanwhile cured the default. Lessee may also pursue those remedies available to it under the law or judicial decisions of the State of California.

23. CONDEMNATION. If all of the Building or a substantial portion thereof is taken under the power of eminent domain, sold under the threat of the exercise of said power, or disposed of to satisfy federal requirements (all of which are herein called "condemnation"), this Lease shall automatically terminate as of the date the condemning authority takes title or possession, whichever occurs first.

If any other taking adversely substantially affects Lessee's use of the Facility, then Lessee may elect to terminate this Lease as of the date the condemning authority takes possession. Lessee's election to terminate shall be made in writing thirty (30) days after Lessor has given Lessee written notice of the taking (or in the absence of such notice, within thirty (30) days after the condemning authority has taken possession). If Lessee does not terminate this Lease in accordance with this paragraph, this Lease shall remain in full force and effect as to the portion of the Facility remaining, except that rent shall be reduced in the proportion that the area taken diminishes the value and use of the Facility to Lessee. In addition, Lessor, at its expense, shall promptly repair any damage to the Facility caused by condemnation and restore the remainder of the Facility to the reasonable satisfaction of Lessee.

Any award or payment made upon condemnation of all or any part of the Facility shall be the property of Lessor, whether such award or payment is made as compensation for the taking of the fee or as severance damages; provided Lessee shall be entitled to the portion of any such award or payment for loss of or damage to Lessee's trade fixtures, removable personal property, and additions, alterations and improvements made to the Facility by Lessee, or for its loss of the leasehold interest herein created.

Lessor shall give notice to Lessee within five (5) days after receipt of notification from any condemning authority of its intention to take all or a portion of the Facility.

Notwithstanding anything, expressed or implied, to the contrary contained in this Lease, Lessee at its own expense, may in good faith contest any such award for

loss of or damage to Lessee's trade fixtures, removable personal property, and additions, alterations and improvements made to the Facility by Lessee, and for its loss of the leasehold interest herein created.

24. SEVERABILITY; CHOICE OF LAW. No waiver of any breach of any covenant, condition or stipulation hereunder shall be taken to be a waiver of any succeeding breach of the same covenant, condition or stipulation. In the event of default, either party may also pursue those remedies available to it under the laws or judicial decisions of the State of California.

25. BINDING EFFECT. This Lease shall be binding upon the parties hereto, their heirs, personal representatives, administrators, successor and assigns.

26. ASSUMPTION BY NEW OWNER. If the City of Merced transfers any interest in the Facility to any other party or entity, this Lease shall remain in full force and effect, with the new owner assuming the role of Lessor with all the rights and duties specified in this Lease.

27. SURRENDER. Lessee agrees to take good care of the Facility and to commit no waste, and suffer no injury to be done to the same, and to return the possession of the same to Lessor at the expiration of the term, in as good condition as at the commencement of this Lease, normal wear and tear, unavoidable accidents and damage by casualty excepted.

If Lessee fails to surrender the Facility upon the expiration or termination of this Lease, Lessee shall indemnify and hold the Lessor harmless from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

28. INDEMNITY. Lessee shall indemnify, defend and hold harmless Lessor and its officers, employees and agents from any and all claims or demands, actions, damages, costs and expenses for injuries to persons or property arising out of the negligence or improper acts or omissions of Lessee, its agents, officers or employees which are connected with or incident to Lessee's operations, use or occupancy at or of the Merced Transportation Facility.

Lessor shall indemnify, defend and hold harmless, Lessee and its officers, employees and agents from any and all claims or demands, actions, damages, costs and expenses for injuries to persons or property arising out of the sole negligence of Lessor, its officers, employees or agents; provided, however, that the foregoing

hold harmless provision of Lessor shall have no force or effect on actions or claims which are the result of Lessor's non-negligent fulfilling of its obligations under this agreement or which are the result of Lessor being named in a lawsuit, action or claim merely by virtue of the business relationship which exists between the parties hereto.

29. COVENANTS AGAINST DISCRIMINATION. The Lessee agrees for itself, its heirs, executors, administrators and assigns, and all persons claiming under or through them, that any deed or deeds shall contain the following covenants:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, national origin, religion, sex, marital status, physical disability or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Facility herein leased, on or shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, occupancy of tenants, lessees, sublessees, subtenants or vendees in the Facility herein leased."

30. NOTICES. All notices and other communications contemplated shall be in writing and shall be deemed given when personally delivered or received by mail, and shall be personally delivered or mailed by certified mail, return receipt requested, with postage and fees paid, as follows:

LESSOR: City of Merced
c/o City Manager
678 West 18th Street
Merced, CA 95340

LESSEE: Greyhound Lines, Inc.
Real Estate Department
P.O. Box 660362
Dallas, TX 75266-0362

COPY TO: Greyhound Lines, Inc.
Legal Department
P.O. Box 660362
Dallas, TX 75266-0362

31. RENEWAL OPTIONS. Lessee shall have the option to extend the term of this Lease for one (1) additional period of five (5) years on the same terms and conditions as contained herein. Lessee may exercise said renewal options by notifying Lessor in writing of its election on or before one hundred twenty (120) days prior to the expiration of the term. Rent for the renewal term shall be \$1,414.00 per month unless a lesser amount is agreed upon within ninety (90) days prior to the expiration of the term.

32. ENTIRE AGREEMENT. All preliminary and contemporaneous agreements and understandings are merged and incorporated into this Lease which contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

33. TAXES, UTILITIES AND MECHANICS' LIENS. Notwithstanding anything expressed or implied to the contrary contained in this Lease, Lessee, at its own expense, may in good faith contest charges for taxes or utilities or mechanics' lien claims and, in the event of such contest, may permit the items contested to remain unpaid during the period of the contest any appeal therefrom; provided that such nonpayment shall not be permitted to cause a loss or forfeiture of any part of the Building. Lessor shall render to Lessee all assistance reasonably possible in contesting such charges including joining in and signing any protest or pleadings which Lessee deems advisable to file. Should any refund be made of any charges paid by Lessee, the amount of such refund shall belong to and be paid to Lessee.

34. MISCELLANEOUS.

34.1 Attachments, Headings, Terms. All attachments referred to herein are hereby incorporated by reference into this Lease. The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. The word or words enclosed in quotation marks shall be construed as defined terms for purposes of this Agreement. The terms "Lessor" and "Lessee" shall be construed to mean, when required by the context, the directors, officers, employees, invitees, contractors, materialmen, servants and agents of Lessor and Lessee.

34.2 Attorney's Fees. If either party named herein brings an action to enforce the terms of this Lease or to declare rights hereunder, the prevailing party

in any such action, on trial or appeal, shall be entitled to its reasonable attorney's fees to be paid by losing party as fixed by the court.

34.3 Execution and Delivery. This Lease shall not be binding nor confer any rights upon either party unless and until executed and mutually delivered by and between both parties.

34.4 Relationship of Parties. This Lease does not create the relationship of principal and agent or a partnership or joint venture, or of any association other than that of Lessor and Lessee.

34.5 Time of the Essence. Time and specific performance are each of the essence of this Lease.

34.6 Books and Records. Lessee shall have the right at all reasonable times to review the Lessor's books, accounting, and other records with respect to the operation, maintenance, repair, and utility costs, to determine and verify such costs and Lessee's pro rata share thereof, including insurance and taxes set forth in Sections 12 and 15 herein. Lessor must maintain said books and records for a period of at least two (2) years following the calendar month in which said costs were incurred.

35. **SUBORDINATION.** Lessor shall have the right, at any time or times during the term of this Lease, to mortgage Lessor's interest in the Facility for any purposes, and Lessee will, if requested by the lender, subordinate its interest in the Facility to the lien of lender's mortgage or trust deed, provided the lender agrees in writing, in recordable form, not to disturb Lessee's possession of the Facility under this Lease, so long as Lessee is not in default of any of the terms, conditions, and covenants of this Lease, and to accept the performance by Lessee of its covenants and obligations hereunder if such mortgage shall be foreclosed (hereinafter referred to as "non-disturbance agreement").

Any mortgage or lien created against the Facility or any portion thereof shall contain, and the mortgagee or lienholders shall execute, a nondisturbance agreement in favor of Lessee and its successor and assigns.

36. **CONTINGENCY.** This lease is subject to approval by Caltrans, State of California. If this contingency is not satisfied, neither the Lessor or Lessee shall have any claim against the other and both parties shall be relieved of all obligations of this Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date and year first above written.


CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  3-21-2008
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

GREYHOUND LINES, INC.
A Delaware Corporation

BY: _____

Title: _____

Taxpayer I.D. No. _____

Address: P.O. Box 660362
Dallas, TX 75266-0362

Telephone: (214) 849-83899

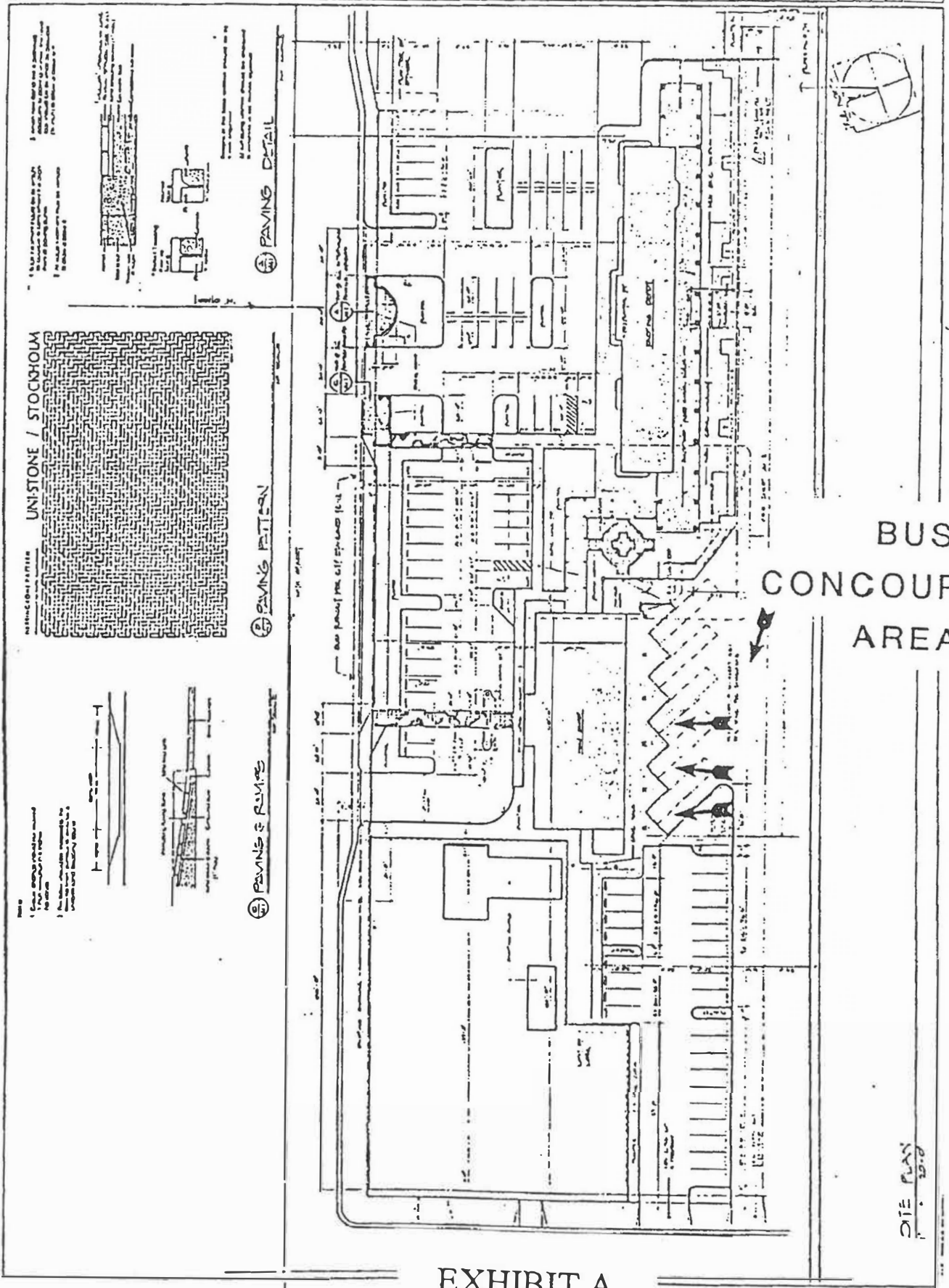


EXHIBIT A

Transpo Center

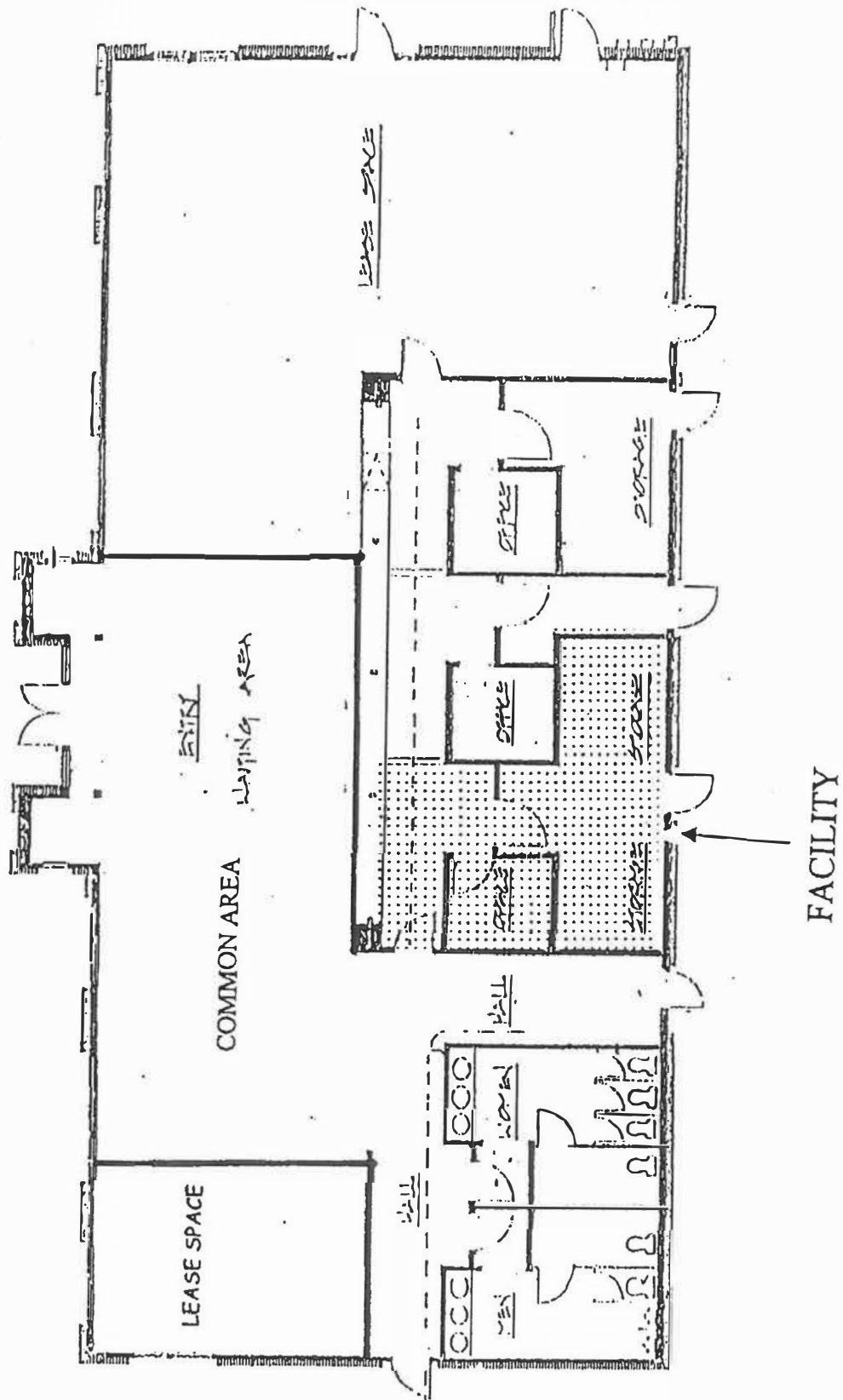


EXHIBIT B



ADMINISTRATIVE REPORT

Agenda Item J.11.

Meeting Date: 5/7/2018

Report Prepared by: Marvin Dillsaver, Police Communications Supervisor

SUBJECT: Consideration of an Amendment to Agreement with PM AM Alarm Management

REPORT IN BRIEF

Consider approving an amendment to the existing Professional Services Agreement with PM AM Alarm Management to gain access to our test server under city supervision to extract our historical data for alarm users.

RECOMMENDATION

City Council - Adopt a motion approving an amendment to an agreement for professional services with PM AM Alarm Management at zero cost; and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

ALTERNATIVES

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

AUTHORITY

Article III of Title 3, Chapter 3.04, of the Merced Municipal Code.

CITY COUNCIL PRIORITIES

This action supports the City Council's priorities of increasing organization efficiency and effectiveness as well as enhancing public safety.

DISCUSSION

On December 18, 2017, City Council approved an agreement with PM AM Corporation for the management and administration of the City's burglar alarm systems and false alarm ordinance.

PM AM Corporation has requested an amendment to the original contract for false alarm services to include the additional services of accessing the City's computer system to extract and collect historical data pertaining to the City's false alarm program. A backup copy of all data from our production servers will be placed on our test servers to allow the vendor to extract the historical alarm data from an area with the least amount of intrusion to the system. This work will be done in conjunction and supervised by the City's IT department. PM AM has agreed to collect the historical

alarm data for use within the new alarm management software without a fee to the city.

IMPACT ON CITY RESOURCES

No appropriation of funds is necessary. There is no fee for the extraction of historical data

ATTACHMENTS

1. Original Agreement
2. Amendment to Agreement

CONTRACT FOR FALSE ALARM BILLING AND TRACKING SERVICES

THIS CONTRACT FOR FALSE ALARM TRACKING AND BILLING SERVICES ("Contract") made and entered into this 18TH day of DEC., 2017, by and between the **City of Merced**, a municipal corporation of the State of California, 678 West 18th Street, Merced, California, 95340, ("Merced" or "CITY") and **PM AM Corporation**, ("CONTRACTOR"), a corporation of the State of Texas with its principal administrative offices located at 5430 LBJ Freeway, Suite 370, Dallas, Texas 75240.

WITNESSETH:

Whereas, the Merced City Council enacted ordinances related to alarm systems and false alarms titled Chapter 8.28 Burglar Alarm Systems and False Alarms as of this date ("Alarm Ordinance"), as amended; and

Whereas, the goal of Merced is to encourage more responsible use of alarm systems and to reduce the number of false alarms to which public safety officers must respond by accurately tracking false alarm instances and assessing fees and penalties as required by the Alarm Ordinance; and

Whereas, in its implementation of the Alarm Ordinance, Merced is authorized to engage a third-party CONTRACTOR to assist the CITY in the enforcement of the Alarm Ordinance so that persons and organizations that use alarm systems can be held accountable for false alarms through a system of fees and penalties; and

Whereas, the CONTRACTOR created and markets the proprietary software system ("Software"), an integrated suite of software applications operating in a web-based environment, designed to assist false alarm reduction managers and planners in government agencies and industry in accessing information relevant to false alarms, and which has been developed at CONTRACTOR's private expense for the commercial marketplace and is not in the public domain; and

Whereas, Merced desires to engage the CONTRACTOR to provide the full service false alarm solution ("Services") described in Attachment A; and

Whereas, the CONTRACTOR desires to accept such engagement.

Now, Therefore, the parties agree as follows:

1. Term.

The term of this Contract shall commence upon the date it is signed by both parties (the "Effective Date") and shall continue for a period of five (5) years with the option to extend for two (2) 1-year terms following the date the CONTRACTOR begins tracking and billing for false alarms ("Contract Implementation Date"). This Contract shall automatically renew for additional one-year periods unless either Merced notifies the CONTRACTOR or the CONTRACTOR notifies Merced in writing no later than ninety (90) days prior to the expiration of the initial or any annual renewal term that the CITY or CONTRACTOR wishes to terminate this Agreement as of the expiration of such initial or renewal term.

2. Contract Documents and Order of Precedence.

The contract documents consist of the following Attachments which are incorporated into the Contract by this reference:

A. **Attachment A**, describes the Scope of Services to be provided by the CONTRACTOR and the CITY's operational responsibilities, and Attachment B, Payment Terms.

B. The Order of Precedence shall be as follows: (1) this Contract; (2) Attachment A; and (3) Attachment B.

C. At any time during the term of this Contract the CITY may request that CONTRACTOR perform Special Services for additional compensation to be agreed upon by the CITY and CONTRACTOR prior to the performance of any Special Services by CONTRACTOR. As used herein, Special Services means any work which is determined by the CITY to be necessary for this Contract, but which the parties did not reasonably anticipate would be necessary at the execution of this Contract and which CONTRACTOR agrees to perform. If the CITY and CONTRACTOR reach an agreement on the performance of Special Services, CONTRACTOR shall undertake such Special Services after receiving the authorization from the CITY.

3. Alarm Management Scope of Services.

A. The CONTRACTOR shall provide the Alarm Management Services described in **Attachment A - Alarm Management Services**.

B. The Alarm Management Services shall assist Merced in enforcing its Alarm Ordinance to include tracking of responsible persons (including individuals, businesses who use alarm systems, registering of alarm systems, billing and notification of permit and false alarm fees in accordance with the Alarm Ordinance and at the direction and under the supervision of Merced's Alarm Administrator, maintenance of a database of persons who use alarm systems, tracking of false alarm occurrences, collection of fees, the collection and enforcement of penalties for violations, generating performance and outcome reports and assuring the availability to Merced of timely false alarm information, all as more specifically described in **Attachment A - Alarm Management Services**.

4. Software license.

Merced shall be licensed and authorized to use the Software and any additional specific customization and development provided as part of the Alarm Management Services described in **Attachment A**. The license shall cover all Software, including, without limitation, software interfaces and software modifications. The scope of the license is revocable, non-transferable and non-exclusive and is authorized by CONTRACTOR for use by Merced to access its false alarm information. Notwithstanding the preceding, CONTRACTOR retains all right and title to the Application software, including but not limited to, all publication rights, all development rights, all reproductions rights, and all rights that may follow from the commercial development of the software. Merced does not acquire any ownership rights to the Application software. The Software is protected in favor of PMAM, as well as any future registered trademarks, are trademarks of PMAM.

5. Duration of the Software License.

Merced shall have the right to use the Software in accordance with **Attachment A** for so long as the CONTRACTOR provides Alarm Management Services to Merced and/or licenses the Software in accordance with the Termination provisions in this Contract. This license shall apply for the duration of the Contract and any extensions provided for herein or agreed to in writing by the parties. In the event the business relationship with CONTRACTOR is terminated or ended for any reason, Merced's license rights to use the Software shall likewise terminate except as provided for in this Contract, including **Attachment B**.

6. Modification of the Software.

A. Modifications or adaptations of the Software shall be limited to creating or providing interfaces between the Software and Merced's computer systems required to import or export data in order to implement the Software or for such other purposes that CONTRACTOR deems appropriate.

B. Merced shall retain a nonexclusive License to use the modified and/or "customized" interfaces with the Software during the term of this Contract, provided, however, the use of the original Software with such adaptations in any projects other than the management of the Alarm Ordinance shall be subject to additional compensation to CONTRACTOR in an amount and subject to terms to be determined by the parties in writing prior to any such additional use.

7. Protecting Confidential and Proprietary Information.

The proprietary information of both parties, CONTRACTOR and Merced is and shall remain the valuable intellectual property of each respective party. Except as required by law, neither party shall disclose any such information to any third party for any reason without the express written consent of the other party and shall only use proprietary information for internal purposes to facilitate and assist CONTRACTOR and CITY staff in the administration of the Alarm Ordinance. In addition, the parties shall provide reasonable safeguards to protect their respective software, hardware systems and data from unauthorized intrusion by third parties. Notwithstanding, the parties recognize that the CITY is a government body subject to compliance with California Public Records laws.

Names, addresses, type of alarm, identification information of any alarm monitoring company, or identification information of any person cited under the Alarm Ordinance shall not be released, exhibited or sold to any third party by CONTRACTOR, except as required by law.

All data received hereunder shall be made a part of Merced's permanent records and files and preserved therein for a period in accordance with the requirements of California law. Merced will inform CONTRACTOR of the required retention time in writing at the beginning of the Contract term and, in the event these requirements change, as soon as those changes are approved by the appropriate California State or CITY agency.

Each party further agrees that in the event that any documents containing confidential information of the other party should be improperly used or removed in any way from the possession or control of the other party by a party, the breaching party shall immediately notify the other party orally and in writing, and shall join with the other party at their request in taking such reasonable steps as the owner of the confidential information may deem advisable to enjoin the misuse and regain possession of such confidential information, or steps otherwise necessary for the protection of the owner's rights and the confidentiality of the information.

All alarm related data maintained by the CONTRACTOR shall remain the property of the CITY. If the Contract is terminated for any reason, the CONTRACTOR shall provide such data to Merced on a timely basis in a mutually acceptable, electronic file format. Notwithstanding any other provision in this Contract, all obligations relating to disclosure of Proprietary Information remain subject to the Freedom of Information Act or California Public Records Act, Cal. Gov't Code §§ 6250 et seq. (collectively, the "PRA"). The Parties intend that if CITY is served with a request for disclosure under the PRA, or any similar statute, the CITY in good faith will make the determination as to whether the material is discloseable or exempt under the statute, and shall resist the disclosure of Proprietary Information which is exempt from disclosure to the extent allowable under the law. CITY shall advise CONTRACTOR in writing at least ten (10) days prior to the intended disclosure of any decision to disclose Proprietary Information, and the reasons therefore, and if CONTRACTOR then timely advises CITY in writing that it objects to the disclosure, CITY shall not disclose the information. In such case, CONTRACTOR shall then be solely liable for defending the non-disclosure and shall indemnify and hold CITY harmless for such nondisclosure.

8. Reproduction and Copyright.

A. The Software is protected under the Copyright and Patent laws of the United States, and as extended by treaty, with Canada. Merced may not copy, or allow anyone else to copy or otherwise reproduce, any part of the Software without the prior written consent of CONTRACTOR, except to store and/or install a copy of the Software on a storage device, such as a network server, used only to run the Software on other computers over an internal network and for back-up or archive purposes.

B. During the term of this Contract, Merced may copy any CONTRACTOR provided Software as necessary to its hard disks or other such storage medium to efficiently operate the Software on Merced single-user system, multiple-user system, or network. The Software shall be copied as a whole, and the use of the copies shall be governed by this Contract. All other copying is prohibited.

C. Upon termination of this Contract, Merced shall immediately deinstall or otherwise permanently remove CONTRACTOR'S proprietary Software from Merced's system or network and provide a written affidavit to CONTRACTOR signed by an authorized official of CITY that it has done so.

9. Limitations on the Use of the Software.

Merced may not reverse engineer, decompile, or disassemble the Software. The Software is licensed as a single product. Its component parts may not be separated.

10. Notices of Intellectual Property Rights.

Merced shall assure that CONTRACTOR's notices of intellectual property (e.g., patent, trademark, and copyright notices) provided by CONTRACTOR, if any, shall remain visible on the Software when displayed electronically, or when output created by it is printed for distribution to persons or organizations outside the normal scope of the Alarm Ordinance.

11. Payment.

Merced shall pay the CONTRACTOR for the Services described, in accordance with **Attachment B** ("Payment Terms").

12. Collection of Fines.

The CITY shall support the collection of false alarm fees, fines and penalties in accordance with the Alarm Ordinances and at the direction of the Alarm Administrator. If the CITY directs CONTRACTOR to engage a third-party collection organization for delinquent amounts, the CITY shall cause the necessary legislative and administrative procedures to be enacted and/or adopted in order to delegate to the CONTRACTOR the authority to collect the delinquent fees on behalf of the CITY.

13. Confidentiality of Merced False Alarm Data.

Any false alarm collection data provided to the CONTRACTOR during the performance of the Alarm Management Services shall be used only in a manner consistent with this Contract, and no false alarm collection data shall be disclosed without the prior written consent of Merced. If such disclosure is compelled or required in any judicial or administrative proceeding, the CONTRACTOR shall, before disclosing such information, first notify Merced and give Merced an opportunity to object to the disclosure.

In the event Merced objects to such disclosure, it shall notify the CONTRACTOR that it will indemnify it, to the extent provided by law, for any costs and expense incurred, including, without limitation, the cost of attorney fees expended in the defense of any action or proceeding, or relating to the refusal to disclose such information.

14. Merced Responsibilities.

A. Merced shall cooperate with and assist the CONTRACTOR by providing management decisions affecting startup or provision of the Alarm Management Services within ten business days of receipt of CONTRACTOR's request for a decision, as well as providing personnel, information, approvals, and acceptances in accordance with a mutually-agreed Implementation Plan to be developed by CONTRACTOR and Merced at the start of the Services. This Implementation Plan will define the detailed tasks and schedule necessary to achieve the following program target milestones:

- 1) Commence Services implementation activities on the Effective Date;
- 2) Begin collecting and processing alarm location information within sixty (60) days of the Effective Date; and
- 3) Begin processing false alarm activations within ninety (90) days of the Effective Date.

B. Merced shall provide the CONTRACTOR with CAD alarm incident Records, appeal records, and necessary historical, non-financial alarm registration and alarm incident information in accordance with the terms of a mutually-agreed implementation plan and in a mutually-agreed electronic format, as necessary and proper, to allow the CONTRACTOR to effectively provide the Services and enforce the Alarm Ordinance.

15. Merced Alarm Administrator.

To facilitate effective communication between Merced and the CONTRACTOR, and in accordance with the Alarm Ordinance, Merced shall designate an Alarm Administrator for the false alarm program and a Financial Administrator for fiduciary responsibilities. The Alarm Administrators shall have the power and authority to make decisions relating to the Services. A secondary Alarm Administrator will also be designated to act on behalf of the Alarm Administrators when the primary Alarm Administrators are unavailable. The primary and secondary Alarm Administrators shall be designated by Merced. The Alarm Administrator has the authority to waive, void, or modify violation notices and the resulting fine amounts. Any such waiver, modification, or voiding will be communicated to the CONTRACTOR in a written format. The Financial Administrator shall have the power and authority to make decisions relating to financial transactions for the administration of the program. The Financial Administrator will be designated by the CITY.

16. Resolution of Disputes.

A. *Mediation.* In the event of a dispute between the parties concerning any matter arising under this Contract, the parties shall proceed to good-faith mediation of the dispute. The mediation venue shall be Merced, California. The cost of mediation shall be shared equally.

17. Termination.

A. *For Convenience.* Either party may terminate this Contract for any reason and at any time by giving at least ninety (90) days written notice to the other party of such termination and specifying the effective date thereof. If the Contract is terminated by the CITY, the CONTRACTOR shall be paid for any services already performed by sharing in the collections of all amounts billed by the CONTRACTOR through the date of termination. If the Contract is terminated by the CONTRACTOR, the CONTRACTOR shall provide .

B. *For Cause.* Either party may terminate this Contract for cause if the other party does not perform its duties or exercise its responsibilities in accordance with this Contract including the maintenance of the system of fees and fines in effect at the beginning of the Contract period. Upon an event of cause by either party (Non-performing party), the other (Claimant) party shall provide thirty (30) days prior written notice to the non-performing party that the Contract terms have not been carried out in accordance with this Contract. If the event of cause is not corrected by the Non-performing party to the reasonable satisfaction of the Claimant, the Claimant may terminate this Contract after a thirty (30) day written cure notice to the Non-performing party.

C. *Termination Within Initial five (5) year period.* If this Contract is terminated by the CITY or its implementation is terminated or postponed by the CITY during the initial five (5) year period, for any reason other than breach by the CONTRACTOR, the CONTRACTOR shall be entitled to receive a prorated share of its initial startup costs as specified in **Attachment B**, in addition to any Service fees owed the CONTRACTOR as described in Paragraph 18 – Rights upon Termination.

D. *Termination Upon Change in Alarm Ordinance.* CONTRACTOR'S Fee Schedule and pricing for any and all Services to be provided by CONTRACTOR to the CITY under this Contract have been set, established and agreed to be based upon the current provisions of applicable CITY ordinances relating to alarms. Should said ordinances change at any time during the term of this Contract to reduce the applicable fee, fines and charges, then the CONTRACTOR reserves the express right to enter into good faith negotiations with the CITY to modify the Fee

Schedule and pricing accordingly. If, within thirty (30) days of notice from CONTRACTOR to the CITY of its desire to so renegotiate, the parties are unable to reach an agreement mutually acceptable to both parties, then CONTRACTOR reserves the right to terminate this Contract upon written notice to CITY. Said termination shall not be deemed to be a default by CONTRACTOR under this Contract, CONTRACTOR shall be paid all fees and costs due and owing CONTRACTOR as of the date of said termination.

E. *Termination Upon Misuse of Proprietary Software.* CONTRACTOR may terminate this Contract upon 15 days prior written notice to CITY if CITY misuses or attempts to appropriate the proprietary software of CONTRACTOR, unless CITY cures such breach within 15 days of receipt of such notice.

18. Rights upon Termination.

A. If the CONTRACTOR is entitled to terminate this Contract or the CITY chooses not to continue the Contract for its convenience, the CONTRACTOR shall provide CITY with a Closeout and Termination Plan and Services in accordance with the provisions of Paragraph 18A hereof.

B. If Merced terminates this Contract or if the CONTRACTOR terminates for cause, Merced, in addition to payment of false alarm collections owed to the CONTRACTOR based on the CONTRACTOR's billings through the date of termination, shall undertake good faith efforts to collect any Alarm Management Services fees and civil penalties for Ordinance violations billed, but not yet collected, as of the date of termination, in order to pay the CONTRACTOR, all amounts due the CONTRACTOR as a result of efforts engaged in by the CONTRACTOR on Merced's behalf.

C. In the event that either party terminates this agreement, the CONTRACTOR agrees that all data collected under this agreement is part of Merced's permanent record and that all data, including historical records under the required retention time will be provided to Merced in MS-SQL format within 30 days of the termination date.

18A Closeout and Termination Plan.

A. In the event either Party terminates this Contract or if the Contract is allowed to expire, CONTRACTOR and the CITY agree to the following:

1. CONTRACTOR shall diligently support the CITY and the incoming contractor to ensure a smooth transition for the Contract close-out/transition, at no additional cost to the CITY. At a minimum, CONTRACTOR shall:

(a) Develop a Closeout Plan and submit it to Merced Alarm administrators within fifteen (15) Business Days of receiving the CITY'S request to initiate the transition plan or notice that this Contract will be terminated. At a minimum, the Closeout Plan must include proposals related to the following:

(i) A transition plan;

(ii) A cut-over date, on which, the new contractor is responsible for all claims from the cut-over date forward and CONTRACTOR is responsible for all claims prior to the cut-over date;

- (iii) A description of the tasks, timelines, milestones, and deliverables for transferring CONTRACTOR'S duties under the Agreement to a new vendor; and
 - (iv) Transition procedures for the duties of data collection and transmission, reporting, invoicing, payment receipts, and deposits.
- (b) Attend meetings with the CITY and the incoming contractor, upon the Merced Alarm Administrator's request, to facilitate the transition, which meetings may occur telephonically or in person as the situation or the Merced Alarm Administrator requires;
 - (c) Coordinate with the CITY and the incoming contractor to facilitate the transition and establish a timeline for the transition;
 - (d) Coordinate CONTRACTOR'S resources to match the timeline and Closeout Plan approved by the Merced Alarm Administrator;
 - (e) Support all reasonable requests for information, coordination, and the provision of items and services to facilitate the transition plan.

B. After the expiration or termination of this Contract, CONTRACTOR shall be responsible for continuing to process collections that occurred prior to the termination or expiration date of this Contract for a period of up to ninety (90) days after the date of expiration or termination ("Closeout Period") of the Contract. The City shall compensate Contractor pursuant to the terms and conditions of this Contract, except that CONTRACTOR shall be entitled to receive payment for Net Cash Collections received by CONTRACTOR during the Closeout Period and which are posted to the CITY'S designated bank account within thirty (30) Business Days after the Closeout Period ends.

C. Within thirty (30) Business Days of the termination or expiration of this Contract and prior to the CITY'S payment to CONTRACTOR of any outstanding invoices or amounts to which CONTRACTOR is entitled, CONTRACTOR shall, at no charge, return all CITY documents; provided, however, CONTRACTOR may retain that which is necessary to perform the appropriate services and claims subject to the Closeout Period.

19. Indemnification.

A. Subject to the limitations hereinafter set forth in Paragraph 21 hereof, the CONTRACTOR shall indemnify, hold harmless, and defend Merced, its elected and appointed officials, and any employee or agent CITY is required to indemnify relating to the actions or inactions of CONTRACTOR hereunder, and successors in interest from all claims, damages, losses and expenses including attorney's fees, arising out of or resulting, directly or indirectly, from the CONTRACTOR's (or CONTRACTOR's subcontractors, if any) performance or breach of the Contract provided that such claim, damage, loss, or expense is not caused by the negligent act or omission or willful misconduct of Merced or its elected and appointed officials and employees acting within the scope of their employment. Except as otherwise set forth in Paragraph 21 hereof, this Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

B. In the event that a claim is made against the CONTRACTOR, which arises out of the negligence or willful misconduct of Merced or any of Merced's employees, Merced shall indemnify the CONTRACTOR to the extent Merced is liable and authorized to do so under the law.

C. Any party seeking indemnification shall promptly notify the other party of its discovery of any matter-giving rise to a claim of indemnity. For each individual claim, the indemnifying party shall have no obligation to the other or to any third party with respect to any expenses incurred by or on behalf of the other or its assumption of control of the defense of the claim, or with respect to any compromise or settlement made, without the prior written consent of both parties.

D. If CONTRACTOR is required to indemnify CITY hereunder, CONTRACTOR may assume the defense of CITY with counsel reasonably acceptable to CITY at the expense of CONTRACTOR. In addition, CITY may engage its own counsel to participate in any defense in any such proceeding at the CITY'S expense.

20. Patent infringement.

The CONTRACTOR shall indemnify Merced, its elected and appointed officials, officers, employees, agents, and successors in interest from and against all damages and expenses resulting from any infringement action brought against the CONTRACTOR, or against Merced to the extent that any such action is predicated on the use of CONTRACTOR's software, during the term of this Contract. This Hold Harmless and Indemnification provision shall in no way be limited by any financial responsibility or insurance and shall survive termination of this contract

21. Limitation of Liability.

A. In no event shall either Party be liable to the other for consequential, special, incidental or punitive damages arising out of or relating to performance and nonperformance. This limitation shall apply regardless of the form of action, whether in contract or in tort, including negligence or misrepresentation, including loss of fees, profits or income, arising directly or indirectly out of the provision or non-provision of Services or Additional Services hereunder, whether or not such party had any knowledge that such damages might be incurred.

B. Notwithstanding any other provision of this Agreement to the contrary, except Paragraph 20 hereof, in no event whatsoever shall CONTRACTOR be liable for damages attributable to its actions or inactions, or its subcontractor's actions or inactions, with respect to the Services or Additional Services provided hereunder, whether for indemnification or otherwise, in excess of the sum of: (i) any insurance proceeds actually received by CONTRACTOR, or paid by CONTRACTOR's insurance carrier to the CITY, with respect to the claim for indemnification by the CITY hereunder, and (ii) the amount of fees actually retained by CONTRACTOR under this Agreement as its fee during the six (6) months immediately preceding the act or omission that generated CONTRACTOR's indemnification obligation hereunder; provided, however, the limitations on the indemnification obligations of CONTRACTOR set forth in this Section shall not apply to the obligation of CONTRACTOR to pay the CITY its share of the collected revenues as set forth in this Agreement.

22. Insurance.

The CONTRACTOR shall provide and maintain in full force and effect at no additional cost to Merced for the duration of the Contract commercial general liability insurance or comprehensive general liability insurance with a minimum limit of \$1,000,000 per occurrence for bodily injury and damage to property including contractual liability, premises/operations, products/completed operations, independent CONTRACTORS, broad form property damage, and personal injury coverage and a minimum aggregate amount of \$1,000,000 or commercial/comprehensive general liability insurance plus additional excess umbrella liability insurance to meet these limits.

The CONTRACTOR agrees that it shall add Merced, its elected and appointed officials, officers, and successors in interest to the CONTRACTOR's liability insurance policies as additional insureds. The CONTRACTOR shall require its insurance carrier or agent to certify that this requirement has been satisfied on all Insurance Certificates issued under this Contract.

Before any work is initiated and before any invoices are paid for work performed under this Contract, the CONTRACTOR shall provide written proof of compliance with the above insurance requirements by delivering to:

City of Merced
Attn: City Clerk's Office
678 W 18th Street
Merced, California 95340

a copy of a certificate or certificates of insurance completed by its insurance carrier or agent certifying that minimum insurance coverages as required above are in effect and that the coverage will not be canceled or changed until thirty (30) days after written notice is given to the CITY. The CONTRACTOR shall maintain, update, and renew the Certificate(s) for the term of this Contract.

23. Assignment.

This Contract shall not be assigned to any third party without prior written consent, which may be withheld in the sole and absolute discretion of either party. A change in ownership of the CONTRACTOR or a purchase of the majority of assets or stock of the CONTRACTOR by another company shall not be considered an assignment of this Contract.

24. Attorney's Fees.

Should the parties or either of them employ an attorney to enforce by litigation in a court of competent jurisdiction, any of the contract provisions because of a disputed matter arising under this Contract, to assert damages for the breach of the Contract, or in order to obtain injunctive relief, then the prevailing party shall be entitled to recover reasonable attorney's fees, costs, charges, and any expenses expended or incurred.

25. Notices.

Wherever under this Contract one party is required or permitted to give notice to the other, such notice shall be deemed given when delivered in hand or when mailed, by United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

In the case of the CONTRACTOR:

PM AM Corporation
5430 LBJ Freeway, Suite 370
Dallas, TX 75240
Attention: Mr. Pankaj Kumar, CEO

In the case of Merced:

City of Merced
678 West 18th Street
Merced, California 95340
Attention: City Clerk's Office

26. Governing Law.

The substantive laws of the State of California shall govern this Contract without regard to the law of conflicts. Venue shall be in the appropriate court of Merced, California. Such actions shall neither be commenced in nor removed to federal court.

27. Severability.

If any provision of this Contract is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired.

28. No Waiver.

The failure by any party to exercise any right stated in this Contract shall not be deemed a waiver of the right.

29. Complete Agreement.

This Contract when signed by both parties sets forth the entire understanding of the parties as to its subject matter, conditions and obligations and may not be modified except by further written agreement.

30. Independent Contractors.

In performing the work under this Contract, the CONTRACTOR acts as an independent CONTRACTOR and is solely responsible for necessary and adequate worker's compensation insurance, personal injury and property damage insurance, as well as errors and omissions insurance. The CONTRACTOR, as an independent CONTRACTOR, is obligated to pay federal and state income tax on moneys earned. The personnel employed by the CONTRACTOR are not and shall not become employees, agents or servants of Merced because of the performance of any work by or under the performance of this Contract.

31. Cooperative Purchases.

This Contract may be used by other government agencies. The CONTRACTOR has agreed to offer similar services to other agencies under the same terms and conditions as stated herein except that the revenue share percentage (Compensation) may be negotiated between

the CONTRACTOR and other agencies based on the specific revenue expectations, agency reimbursed costs, and other agency requirements. The CITY will in no way whatsoever incur any liability in relation to specifications, delivery, payment, or any other aspect of purchases by such agencies.

WHEREAS, the individuals representing the parties are both authorized and have executed this Contract effective as of on the date first written above.

City of Merced, California

By: _____

12/28/17
City Manager

Contractor:

PM AM CORPORATION

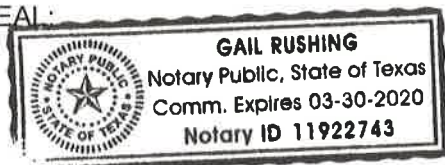
By: _____

PANKAJ KUMAR,
Chief Executive Officer

STATE OF TEXAS
COUNTY OF DALLAS

Sworn and subscribed before me this 11th day of January 2018 ~~December, 2017~~ by PANKAJ KUMAR as the Chief Executive Officer of Contractor and who is personally known to me.

NOTARY SEAL:



Gail Rushing
Notary Public, State of Texas

ATTEST:
CITY CLERK

BY: _____

Assistant/Deputy City Clerk



APPROVED AS TO FORM:

Kelly C. Fincher
KELLY C. FINCHER

Chief Deputy City Attorney

300519 Po #: 129106
FUNDS/ACCOUNTS VERIFIED

Finance Office V-17915 **DATE**

178 Funds Available. due 12/19/17
001-1030-522-17-00 \$10,000.00

ATTACHMENT A

Scope of Services

Purpose

The purpose of this Scope of Services is to describe the duties and responsibilities of Contractor (), and the Merced, California ("Merced " or "CITY") required for a comprehensive alarm management strategy that includes the coordination of permit registration, generation and collection of alarm fees, issuance of fines, false alarm education, on-line services, and coordination with alarm companies.

CONTRACTOR Responsibilities

CONTRACTOR Responsibilities

Project Manager will deliver a series of documents to the City Project Manager, which may include one or more of the following: Implementation Task Checklist, Issue Tracking Tools, Project Status Tracking spreadsheets, and Implementation Plan and Timeline. Prior to starting the project, CONTRACTOR and City will agree on the final project kick off agenda, that will be used to formalize points of contact, establish project expectations, review deliverable due dates, review previous lessons learned, and establish upcoming tasks.

1. At the beginning of the project, electronic conversion/import to CONTRACTOR computer server(s) of any CITY alarm program records required to support the proposed CONTRACTOR services. These records may contain historical CITY alarm business, alarm system location, responsible party and other alarm data previously developed by or for Merced. CONTRACTOR shall obtain this data directly from Merced and relies on the CITY for the accuracy and completeness of any such historical data;
 - A. Assist the City in the roll-out of the updated City Ordinance and false alarm requirements through educational efforts and community outreach.
 - B. Publish notification of the updated City Ordinance and alarm permit requirements for all residential and business addresses, and for alarm service providers.
2. Update alarm business, alarm system location and responsible party information and renew permits and alarm registrations in accordance with the CITY Alarm Ordinance ("Ordinance"). Updated information may be processed by mail, electronically and / or online;
 - A. Register, renew and bill the registration of alarm systems in accordance with the Ordinance. Registrations and renewals may be processed by mail, telephone, electronically and / or online. Notices related to registration may be sent by email or mail based on the alarm user contact information maintained;
 - B. Provide exceptional customer service to community members and businesses. PMAM CSR's will be available from 6:30 am to 5 pm PST for the city's citizens. While ultimately there may be a disagreement over responsibility for a false alarm, communications with community members and businesses should be prompt,

responsive, and courteous and provide a clear explanation of the situation and routes of appeal.

- C. Follow up quickly and effectively with delinquent alarm users that have not paid their fees or penalties by the due date in a friendly, professional, and customer service-oriented manner. Inform delinquent alarm users of the credit impact if fines are not paid including reporting of their delinquency to credit bureau reporting agencies.
- D. PMAM will also accept permit applications over the phone.

4. Import daily or as soon as CITY data is available into the CONTRACTOR's alarm billing system, alarm incident data (in formats prescribed by CONTRACTOR) extracted by the CITY from the CITY's New World CAD/911 System;

5. Create and host a dedicated, secure (SSL encrypted) Merced Alarm Program website for CITY citizens and businesses to obtain false alarm reduction educational information, review alarm ordinance and appeal requirements, access and update alarm account information, and pay alarm fees online if preferred. This website may be linked by the CITY to the CITY website if desired. Ensure the Service Provider processing, storing and transmitting cardholder data for online payments made to the City is Payment Card Industry (PCI) compliant as detailed in Appendix D of this Agreement. ;

6. Initialize, maintain, secure and back-up Program databases including alarm business, alarm system location and incident data; alarm-related financial transactions and accounts receivable information. CONTRACTOR will comply with the provisions of the Alarm Ordinance, and update Program business rules to comply with Alarm Ordinance changes as supported by the CONTRACTOR software;

7. Process false alarm incident data, including the matching of false alarm incidents with the alarm system location database maintained by CONTRACTOR;

8. Bill and correspond with alarm businesses and alarm users in accordance with the Alarm Ordinance provisions. This will include but may not be limited to invoices and delinquent payment notices. A warning notice will be sent to each alarm user on the occasion of the alarm user's first false alarm immediately preceding the first chargeable alarm incident. Warning notices may be sent by mail, email or other electronic method based on the alarm user's accepted contact method(s). Allow City to create and modify letter template and language. Changes to templates shall be permitted with the understanding that each template should be changed no more than once a year after implementation is complete. Emergency changes due to errors or changes in ordinance provisions shall be permitted at any time.;

9. Provide CITY alarm users access to online information on false alarm reduction and Ordinance requirements to include an Online Alarm School or mail-in false alarm prevention training program.

10. Answer telephone inquiries from CITY alarm users that are placed to a false alarm program toll-free customer service number established for the CITY;

11. Process fee / penalty payments mailed to and deposited in a nearby CITY-approved bank lockbox and account, and received from other payment channels, e.g. online, as agreed on by CONTRACTOR and the CITY, and apply these payments to alarm accounts;

12. Support alarm hearings and appeals by notifying the CITY of any such appeals, providing a CITY Alarm Program representative with documentation supporting noticing / billing decisions; and updating the system with the disposition of any hearing results;

13. Provide and maintain computer equipment, software, mailing equipment and furniture at CONTRACTOR's Program processing facilities;

14. Provide the CITY secure (SSL encrypted), online, on-demand access to alarm management information and reports including, but not limited to, alarm account transaction history, alarm system information, and financial transactions/balances with format and content specified by the Alarm Management System and the designated Bank, and agreed on between the CITY and CONTRACTOR; and,

15. Perform special collection functions as directed and authorized by the CITY such as retaining a third party collection agency or providing delinquent account information to other CITY agencies. To the extent permitted by local law, third-party collection fees will be added to the delinquent amounts.

CONTRACTOR will use commercially reasonable efforts to make the online false alarm management system available with an uptime percentage of at least 95%. CONTRACTOR will notify the City's designated Systems Administrators and designated backups of any system outage, and take steps to remedy any issues to make the system accessible as quickly as possible. In the event of a scheduled outage, the CONTRACTOR will notify the City's designated Systems Administrators and backups at a reasonable period prior to the outage. Notices will be sent via e-mail.

City and CONTRACTOR agree that because the sole means of City and CONTRACTOR compensation under the Contract is revenue sharing it is in the mutual best interest of both parties to minimize system downtime. Multiple failures to meet the 95% will allow the City to terminate the contract for cause under section 17b.

Regular hours of service (Pacific time) 630 to 1700 hours, Monday – Friday excluding holidays observed by the U.S. Federal Government.

CONTRACTOR agrees to preserve the confidentiality and integrity of City of Merced data with administrative, technical and physical measures that conform to generally recognized industry standards and best practices that CONTRACTOR then applies to its own processing environment. Maintenance of a secure processing environment includes but is not limited to the timely application of patches, fixes and updates to operating systems, network equipment and applications, as provided by vendor.

CONTRACTOR shall provide up to three (3) hour web-based "train-the-trainer" training covering all necessary topics based on user roles of end-user, systems administrator, alarm administrator, and any other roles necessary for the successful operation of the system.

CONTRACTOR is responsible for all costs of carrying out these responsibilities including, but not limited to, the cost of staff, facilities, equipment, consumable supplies, bank account, lockbox, credit card fees, and first-class postage. Only third-party collection costs (if any), e.g.

collection agency fee, and citizen overpayments, if any, will be shared by the parties through payment from gross collections before revenue sharing.

Assist the City's representative or Alarm Administrator by scheduling appeal hearings and providing notification of appeal decisions for any false alarm hearings.

Vendor agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of (PII) Personally Identifiable Information or other event requiring notification. In the event of a breach of any of CONTRACTOR's security obligations, or other event requiring notification under applicable law, CONTRACTOR agrees to:

- a. Notify City of Merced by telephone and e-mail of such an event within 24 hours of discovery, and
- b. Assume responsibility for informing all such individuals in accordance with applicable law, and
- c. Indemnify, hold harmless and defend City of Merced from and against any claims, damages, or other harm related to such Notification Event.

CONTRACTOR is responsible for all costs of carrying out these responsibilities including, but not limited to, the costs of staff, facilities, equipment, consumable supplies. Only third-party bank and credit card fees, mailing supply costs (paper and envelopes), first class postage, third party collection costs (if any), e.g. collection agency fee, and citizen overpayments, if any, will be shared by the parties through payment from gross collections before revenue sharing.

Merced Responsibilities

1. Appointing a CITY Alarm Administrator ("Administrator") and backup administrator who will be the primary points of contact between CONTRACTOR and the CITY. The Administrator(s) is responsible for overseeing CONTRACTOR's operation of the False Alarm Management Services Program ("Program") and accessing Program information, as needed, via CONTRACTOR provided online access;
2. Requesting or supporting CONTRACTOR's requests of Alarm Companies, as needed, to provide alarm system information;
3. Making any and all decisions about alarm call response, determining whether calls are false alarms, providing any on-scene communication of alarm related information to alarm users, and for entering any alarm related information within the CITY New World CAD/911 system;
4. Extracting false alarm call incident data from the New World CAD/911 System and transferring this data electronically to CONTRACTOR (via CONTRACTOR's FTP site over a VPN tunnel). The data extraction format will be provided by CONTRACTOR and CONTRACTOR will provide the CITY additional software for automating the daily transfer of alarm incident files to CONTRACTOR. CONTRACTOR will assist the City of Merced in identifying the database tables required in the CAD system for the false alarm call incident data. ;
6. Assist with conducting any general public education programs on false alarms; and,

7. Transferring any and all financial information from the Program generated alarm reports to other Merced financial systems, as needed.

The CITY is responsible for all costs of carrying out the CITY's responsibilities, including, but not limited to the costs of staff, facilities, computer equipment and consumable supplies.

[Remainder of Page Intentionally Left Blank]

ATTACHMENT B PAYMENT TERMS

1. Revenue Sharing Percentage

The revenue-sharing approach requires no out-of-pocket or startup expenditures by the City. All proposed CONTRACTOR service fees will be based on a percentage of alarm program fees and fines collected. CONTRACTOR's alarm program collections will cover all software development, licensing, website hosting, historical data conversion, equipment, postage, supplies, credit card and bank fees, lockbox and other costs incurred by the CONTRACTOR to provide the False Alarm Billing and Tracking Services described herein.

The CONTRACTOR's Revenue Share is 20%.

CONTRACTOR agrees to pay all bank lockbox and credit card fees and all correspondence mailing costs (at first class postal rates) from CONTRACTOR's share after revenue sharing calculations.

Any certified mail requirements will be billed separately on a monthly basis and is not subject to the revenue share division.

The revenue share percentages are based on several assumptions over which the CONTRACTOR has little or no control:

- The Ordinance fee and fine schedules remain at levels equal to or greater than at the Contract effective date;
- The CITY adopts a fair, but firm approach to granting appeals. Appeals and CITY waived charges are expected to reduce collections by no more than 5% annually; and
- The CITY actively supports enforcement of the Alarm Ordinance, including support of reasonable measures to collect all amounts due for violations of the Alarm Ordinance.

Revenue Share Payment Process

CITY and CONTRACTOR agree as follows:

1. All false alarm related fee collections from any payment method, including but not limited to bank lockbox and online credit card, shall be deposited, as soon as practical, in a False Alarm Bank Account ("False Alarm Account") to be established at a mutually agreeable Commercial Bank;
2. CITY and CONTRACTOR agree to maintain a positive balance of available funds ("Minimum Balance") at all times in the False Alarm Account;
3. At the beginning of each month, CONTRACTOR will reconcile the alarm related deposits for the most recent completed month and report the same to CITY. Upon CITY's approval, CITY and CONTRACTOR shall authorize and cause the issuance of electronic (ACH) transfers to CITY and to CONTRACTOR as follows:
 - a. With regard to the transfer to CONTRACTOR, the amount will be calculated for

CONTRACTOR based on the Revenue Share described above. That amount, not to exceed 20 % of the revenue collected during the preceding month, shall be transferred to a bank and account authorized by CONTRACTOR; and,

- b. The remaining balance of the revenue collected during the preceding month of no less than 80% (less any pre-determined fees; i.e. postage), shall be transferred to a bank and CITY account specified by CITY .
4. At the termination of this Contract, any remaining balance shall be transferred to CONTRACTOR and to CITY on the same prorata basis, e.g. 20% and 80% respectively.
5. CITY is a California public entity and all financial obligations extending beyond the current fiscal year are subject to funds being budgeted and appropriated therefore.

Delinquent Account Terms

The parties shall define a mutually agreeable process and methods for collecting amounts due from delinquent accounts. If organizations other than the CITY and CONTRACTOR are retained to collect overdue amounts, the parties agree that the collection costs shall to the extent permitted by State of California law be added to the delinquent amounts owed by alarm system users or be borne by the parties on a pro-rata basis by deducting the third party collection fees from the gross third party collections before the revenue shares are calculated.

The CITY Payment Upon Early Termination (Per Paragraph 17C)

If, within the initial five (5) years of the effective date, this Contract is terminated by the CITY for convenience under 17A, or is terminated by CONTRACTOR for cause as defined in Paragraph 17B, CONTRACTOR shall be due a one-time Program Termination fee, not to exceed \$24,000.00, to reimburse CONTRACTOR for startup costs. This fee shall be in addition to any other amounts due CONTRACTOR under the Contract. The \$24,000.00 shall be amortized (reduced) on a straight-line basis (\$1,000 per month) over the first two (2) years.

ATTACHMENT C SYSTEM FUNCTIONAL OVERVIEW

- The **FAMS™** system is a comprehensive alarm management solution that includes the coordination of permit registration, generation and collection of alarm fees, issuance of fines; false alarm education, online services, and coordination with alarm companies
- The solution shall include technology to automatically, and at a frequency as determined by the City, export and process alarm incident data from the City's NewWorld Systems records management system and import it into the CONTRACTOR'S FAMS™ alarm billing system.
- System shall provide fully automated RECORDS incident data export and file transfer to CONTRACTORS system without the need for manual intervention. If there becomes an error in the automated process both parties will work together to correct the problem as quickly as possible.
- The system shall process false alarm incident data, including the matching of false alarm incidents with the alarm system location database maintained by the CONTRACTOR.
- CONTRACTOR shall bill and correspond with alarm businesses and alarm users, both permitted and non-permitted in accordance with the City Ordinance provisions. This will include; but may not be limited to; invoices and delinquent payment notices.
- System shall send a warning notice to each alarm user on the occasion of the alarm user's first false alarm. Warning notices may be sent by mail; e-mail or other electronic method; based on the alarm user's accepted contact method(s).
- Systems shall provide a hosted dedicated, secure (SSL encrypted) City Alarm Program website for community members and businesses to obtain false alarm reduction educational information, review alarm ordinance and appeal requirements, access and update alarm account information, register and renew their accounts and pay alarm fees online if preferred.
- System shall allow City to securely search the alarm database online and to access alarm account history and alarm ordinance enforcement actions.
- System shall provide multiple search criteria such as name, address, and phone number, including partial and wildcard searches. Also provide the ability to search alarm database by alarm CONTRACTOR name.
- System shall provide alarm permit applications for renewal and allow interactive, online application and application by mail using a local mailing address.
- System and CONTRACTOR shall register, renew and bill the registration of alarm systems in accordance with the City Ordinance. Registrations and renewals may be

processed by mail, electronically and /or online. Notices related to registration may be sent by e-mail or mail based on the alarm user contact information maintained. Mail submission shall be to a local mailing address.

- System shall track new permits and allow City-defined permit statuses, e.g. active, expired, and suspended or other statuses as defined in the alarm Ordinance.
- System shall provide detailed invoices with the history of all false alarm dates and locations.
- System shall provide the City the ability to view payments online.
- System shall maintain secure back-up program databases including alarm business, alarm system location and incident data; alarm-related financial transactions and accounts receivable information.

ATTACHMENT D
PCI COMPLIANCE FOR THIRD-PARTY SERVICE CONTRACTOR (TPSP) ADDENDUM

CONTRACTOR acknowledges it does not process, store, or transmit the City's customer cardholder data for online payments. Online payers are redirected from CONTRACTOR's website to a web portal of a "Service Provider" engaged by CONTRACTOR. This Service Provider processes, stores, and transmits cardholder data for online payments made to the City, CONTRACTOR only receives payment authorizations. **Contractor is responsible for ensuring Service Provider is PCI compliant in accordance with and consistent with guidelines established in the "Third-Party Security Assurance" issued by the PCI Security Standard Council currently available at:**

[https://www.pcisecuritystandards.org/documents/ PCI_DSS_V3.2_Third_Party_Security_Assurance.pdf](https://www.pcisecuritystandards.org/documents/PCI_DSS_V3.2_Third_Party_Security_Assurance.pdf)

On an on-going basis, Contractor is responsible for implementing new or updated guidelines related to third party security assurance issued by the PCI Security Standard Council .

Within 30 days of execution of this addendum, Contractor shall provide an Attestation of Compliance (AOC) of the Service Provider with scope verification that matches the type of service provided for online payments or other PCI compliance document as acceptable to the City. During the contract term, Contractor shall annually provide the AOC or other PCI compliance document related

to the Service Provider acceptable to the City on the anniversary date of this addendum or the AOC renewal date whichever occurs earlier. .

**FIRST AMENDMENT TO
CONTRACT FOR FALSE ALARM BILLING AND TRACKING SERVICES**

THIS FIRST AMENDMENT TO CONTRACT FOR FALSE ALARM TRACKING AND BILLING SERVICES (“Amendment”) is made and entered into this ____ day of March, 2018, by and between the **City of Merced**, a municipal corporation of the State of California, 678 West 18th Street, Merced, California, 95340, (“Merced” or “CITY”) and **PM AM Corporation**, (“**CONTRACTOR**”), a corporation of the State of Texas with its principal administrative offices located at 5430 LBJ Freeway, Suite 370, Dallas, Texas 75240.

WITNESSETH:

WHEREAS, the parties hereto previously entered into that certain Contract for False Alarm Billing and Tracking Services, dated on or about November 8, 2017 (“**Contract**”) pursuant to which the City engaged Contractor to provide certain false alarm solution services described in the Contract;

WHEREAS, the City has requested Contractor to provide certain additional services not encompassed by the Contract, namely, to access the City’s computer system to extract and collect historical data pertaining to the City’s false alarm program for the period January 1, 2015 to February 28, 2018 (“**Historical Period**”) and submit a report to the City setting forth such historical data (“the “**Historical False Alarm Data**”);

WHEREAS, as a material inducement to Contractor to perform such additional services, the City has agreed to release Contractor from any liability relating to Contractor’s actions or inactions pertaining to its access to the City’s computer system and the extraction of the Historical False Alarm Data;

WHEREAS, Contractor has agreed to collect such Historical False Alarm Data and provide such information to the City as an accommodation to the City without a fee for performing such services; provided that City release Contractor from any liability arising from Contractor’s services with respect to the Historical False Alarm Data; and

WHEREAS, the parties desire to reduce their agreement as to the performance of services by Contractor with respect to the Historical False Alarm Data to a written agreement;

NOW, THEREFORE, for an in consideration of the foregoing recitals, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and confessed, the parties hereby agree as follows.

1. **Incorporation of Recitals.** The foregoing Recitals are incorporated herein by this reference thereto.

2. **Grant of Access License.** The City hereby grants Contractor a non-exclusive license and right to access its computer systems, under city supervision, for the period expiring upon the earlier of (i) May 30, 2018, or (ii) the date Contractor delivers the Historical False Alarm Data to the City (the “**Computer Access Period**”) for the sole purpose of accessing, collecting and extracting the Historical False Alarm Data from the City’s computer system. The City shall facilitate access to the computer systems within 7-business day after the execution of this Amendment. Once the CONTRACTOR has successfully extracted and provided the Historical False Alarm Data in an approved mutually agreed format the contractor shall no longer access the city computer systems using the terms and conditions of this amendment.

3. **Services of Contractor.** Contractor shall use its best efforts to access and extract the Historical False Alarm Data and deliver a copy thereof (the “**Historical False Alarm Data Report**”) to the City within the Computer Access Period. Contractor shall only access the City’s computer system for the purpose of collecting and extracting the Historical False Alarm Data and shall conduct such access in a reasonable manner during normal business hours of the City. Contractor shall have the right to retain a copy of the Historical False Alarm Data Report for the purpose of assisting Contractor in determining and negotiating a reasonable fee for its services in the event the Contract is renewed or otherwise extended.

4. **Fee for Services.** Contractor is performing the services, in connection with the extraction, collection and delivery of the Historical False Alarm Data pursuant to this Amendment, as an accommodation to the City. Contractor acknowledges and agrees that it shall not receive any fee or other compensation or reimbursement of any expenses in connection with the performance of its services to the City pursuant to this Amendment.

5. **Release of Liability.** As a material inducement to Contractor to enter into this Amendment and in consideration of Contractor agreeing to perform its obligations hereunder without compensation, City hereby irrevocably and unconditionally releases, acquits and forever discharges Contractor and its officers, directors, shareholders and employees (collectively, the “**Contractor Released Parties**”) from any and all claims, liabilities, demands and causes of action, known or unknown, that the City may have or claim against any of the Contractor Released Parties arising out of or resulting from, or connected in any way to the services, actions or inactions of Contractor in connection with the access to the City’s computer system, the extraction and collection of the Historical False Alarm Data and the delivery thereof to the City, including any claims that in performing such services Contractor has introduced any of the following into the computer system of the City: spyware, adware, ransom-ware, rootkit, key-logger, virus, trojan, worm or other code or mechanism designed to provide unauthorized access to, or control over, the City computer system by any unauthorized party or which may restrict the access of the City or its employees or other authorized users to the City computer system.

6. **Ratification of Contract.** Except as modified by this Amendment, the City and Contractor hereby confirm and ratify the terms of the Contract.

WHEREAS, the individuals representing the parties are both authorized and have executed this Amendment effective as of the date first written above.

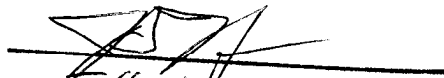
CITY:

CITY OF MERCED, CALIFORNIA

By: _____

STEVE CARRIGAN,
City Manager

APPROVED AS TO FORM:


Jeffrey S. Kaufman
Interim City Attorney

CONTRACTOR:

PM AM CORPORATION

By: _____

DAVE MOSS,
Vice President



ADMINISTRATIVE REPORT

Agenda Item K.1.

Meeting Date: 5/7/2018

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

SUBJECT: Continued Public Hearing - Repeal of Regional Transportation Impact Fee Ordinance

REPORT IN BRIEF

The City Council will consider the repeal of the Regional Transportation Impact Fee Ordinance (Merced Municipal Code Chapter 17.64).

RECOMMENDATION

City Council - Adopt a motion:

A. Introducing **Ordinance No. 2487**, an Ordinance of the City Council of the City of Merced, California, Repealing Chapter 17.64 of the Merced Municipal Code relating to the Regional Transportation Impact Fees; and,

B. Rescinding the Implementation Agreement Authorizing the Merced County Association of Governments to Manage and Administer the Regional Transportation Impact Fee Program, dated March 1, 2005.

ALTERNATIVES

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

AUTHORITY

Chapter 17.64 of the Merced Municipal Code authorizes the City's collection of the Regional Transportation Impact Fees.

CITY COUNCIL PRIORITIES

Not applicable.

DISCUSSION

The City of Merced adopted the Regional Transportation Impact Fee (RTIF) in May 2005, per Ordinance #2194, and amended the RTIF in June 2008, per Ordinance #2310. From August 2005 until August 2016, the City collected the fee on all new development projects (residential,

commercial, and industrial) in the City in order to raise additional revenues to pay for regional transportation improvements.

Starting in January 2012, other jurisdictions in Merced County began suspending collection of the RTIF on some or all new developments. Other cities, although still collecting the RTIF on selected projects, exempted major commercial projects from paying the fee based on a variety of stated reasons.

From 2005 to 2016, the City of Merced collected over \$5.1 million in RTIF fees. That represented 41 percent of the \$12.2 million total collected over all jurisdictions. Just for comparison purposes, the City of Merced's population represented only 31 percent of the County's population in 2016.

Given the inconsistent application of the fees to development projects throughout the County, the City of Merced had been at a competitive disadvantage to competing jurisdictions within the County based on the City continuing to charge the RTIF, despite having lowered the City's Public Facilities Impact Fees by over 55 percent in 2012. Therefore, on July 5, 2016, the City Council adopted Ordinance No. 2461 suspending the collection of the RTIF for 2 years, starting on August 17, 2016, through July 6, 2018.

On January 18, 2018, the MCAG Board of Directors reviewed a number of options regarding the future of RTIF and how funds should be allocated if the program was dissolved (Attachment 1). The Board ultimately elected to suspend RTIF indefinitely.

On February 5, 2018, the City Council reviewed options from MCAG on how to proceed with the RTIF program. The City Council voted 7-0 to approve the 2016 RTIF Study Project list, contingent on the money being allocated based on contribution. The City Council also voted 7-0 to approve Option 3C, allocating the remaining funds to all jurisdictions based on the contributions those jurisdictions made.

The City of Merced will begin a 5-year update of the City's Public Facilities Impact Fee program in 2018. This process will include an analysis of the City's development impact fees for transportation, traffic signals, police, fire, and parks and bikeways, including regional transportation projects within the City's Sphere of Influence. As part of that study, the City can consider adding any projects that were on the RTIF list of projects into the City's fee program.

Given the MCAG Board's decision to suspend the RTIF indefinitely and the City's previous suspension of collecting the RTIF ending in July 2018, City staff is recommending that the City Council adopt an ordinance repealing Chapter 17.64 (Regional Transportation Impact Fee) in its entirety. See Attachment 3 for the proposed Ordinance, which will end the City's collection of the RTIF fees on a permanent basis. The Implementation Agreement (Attachment 2) also needs to be rescinded.

This item was continued from the April 2, 2018, Council meeting because of further actions anticipated by other jurisdictions on the RTIF. MCAG indicated that as of April 4, 2018, Merced County, Los Banos, Dos Palos, Livingston, and Gustine had all taken action to rescind the Implementation Agreement and adopt the 2016 Project list.

IMPACT ON CITY RESOURCES

The Regional Transportation Impact Fees that were collected by the City were forwarded to the Merced County Association of Governments (MCAG), so there will be no impacts on City resources by repealing those fees. If the RTIF program is abolished by MCAG, the City of Merced should expect to receive an unknown amount of RTIF funds back, based on our previous contributions, to put into local transportation projects.

ATTACHMENTS

1. "RTIF Alternatives for Consideration by the MCAG Governing Board" (January 2018)
2. RTIF Implementation Agreement
3. Draft City Council Ordinance repealing the RTIF

Regional Transportation Impact Fee (RTIF) Alternatives for Consideration by the Merced County Association of Governments Governing Board January 2018

This document contains a list of options for how to proceed regarding the RTIF. The MCAG Governing Board has considerable discretion regarding the RTIF, however, several options require action by individual jurisdictions for implementation.

Option 1: Status quo

The Board could act at any time to allocate existing funds to eligible projects. As the 2016 study was not fully implemented, projects would need to be selected from the approved 2008 list. If projects from the 2016 study were desired, each of the seven jurisdictions would need to adopt the 2016 study. The continued collection of RTIF by selected jurisdictions is up to the jurisdictions.

Option 2: Re-commitment to RTIF and adopt the 2016 study

All jurisdictions approve the 2016 study and those jurisdictions which have suspended collections resume doing so. Current and future funds would be available throughout the county for projects on the 2016 list at the discretion of the Board. A new study could be conducted in the future as an update to the 2016 study as needed.

Option 3: Termination of the RTIF and distribution of available funds by the Board

Without all jurisdictions participating, all jurisdictions cease collecting RTIF. While the RTIF implementation could terminate with withdrawal of jurisdictions, that would render any jurisdiction which withdrew ineligible for funding. Rescission of the 2005 implementation agreement by all jurisdictions would terminate the RTIF and leave all jurisdictions eligible to receive some of the remaining available RTIF funds. Under this option there are many possibilities for the distribution and use of funds.

- **Option 3A: Allocation of funds to eligible projects**

Like Option 1, the Board could act to allocate existing funds to eligible projects. As the 2016 study was not fully implemented, projects would need to be selected from the approved 2008 list. If projects from the 2016 study were desired, each of the seven jurisdictions would need to adopt the 2016 study.

- **Option 3B: Allocation of funds to east and west regions**

While final authority remains with the Board, the Board could elect to allocate the remaining funds to the east and west sides of the county as geographically defined in the Measure V Transportation Expenditure Plan. The available funding could then be

considered by the Measure V Eastside and Westside Regional Projects Committees for recommendations to be made to the full board. Projects would need to be selected from the 2008 list unless all jurisdictions adopt the 2016 study.

- **Option 3B-1: Allocate funds by Measure V formula**
Divide the funds between the east and west based only on the Measure V method (50% by percentage of population and 50% by percentage of road mileage)
- **Option 3B-2: Allocate funds by contribution of jurisdiction**
Divide the funds between the east and west based on the contributions by individual jurisdictions. Amount of contributions by each city could be used to determine city-related contributions for each side of the county. The County's portion of contribution would still need to be split between the east and west regions. The allocation of the County's portion could be done by the Measure V formula or another method.
- **Option 3B-3: Allocate funds by other considerations**
Funds could be allocated using other considerations including continued collection of funds, previous use of funds, or any other applicable considerations.
- **Option 3C: Allocate remaining funds to all jurisdictions based on contributions**
Under this option, the funds would be allocated to all seven jurisdictions based on the amount of funds each contributed to the RTIF over the entire length of the program. This would account for jurisdictions which did and did not continue to collect RTIF funds. As a majority of all funds collected have already been expended, each jurisdiction would receive a pro-rated amount of the remaining funds. An estimated \$4.9 million is available of the total net revenue of \$14.2 million from the life of the program. That means that each jurisdiction would receive about 34.5 percent of the funds which were contributed. The Board has the ability to allocate funds to eligible projects, which is currently the 2008 list. The 2016 study would need to be adopted by all jurisdictions to make the 2016 projects available.

While the Board could allocate funds to each jurisdiction in this manner, the funds could only be used for eligible projects. This could result in some jurisdictions receiving amounts of funds that would not be meaningful compared to the costs of eligible projects. Options would need to be pursued by jurisdictions and the Board to ensure that final allocations would be made to jurisdictions in amounts that could be utilized effectively.

Quarterly Reporting

Date Updated: 10/23/2017

TABLE 1

REGIONAL TRANSPORTATION IMPACT FEES (RTIF) COLLECTED BY JURISDICTION FOR FY 2017-2018					
JURISDICTION	1 ST QTR	2 ND QTR	3 RD QTR	4 TH QTR	TOTAL
Alwater	41,912.26	0.00	0.00	0.00	41,912.26
Dos Palos					0.00
Gustine					0.00
Livingston					0.00
Los Banos Note 1					0.00
Merced City				0.00	0.00
Merced County	87,439.30				0.00
Interest Earnings	12,125.94		0.00	0.00	87,439.30
Total	141,477.50	0.00	0.00	0.00	12,125.94
					141,477.50

TABLE 2

REGIONAL TRANSPORTATION IMPACT FEES (RTIF) COLLECTED BY JURISDICTION TO-DATE SEPTEMBER 2017*										
JURISDICTION	TOTAL	FY 2017-18	FY 2016-17	FY 2015-16	FY 2014-15	FY 2013-14	FY 2012-13	FY 2011-12	FY 2010-11	
Alwater	1,210,950.17	41,912.26	241,544.08	348,808.13	237,695.01	88,365.04	33,663.76	72,258.88	58,832.41	
Dos Palos	109,527.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Total Cash Balance in Fund @ 9/30/2017	4,711,441.15	0.00	0.00	0.00	0.00	0.00	18,641.70	0.00	0.00	
Livingston	117,251.00	0.00	0.00	117,251.00	0.00	0.00	0.00	0.00	0.00	
Los Banos	1,776,781.73	0.00	1,375.00	5,289.84	0.00	28,189.99	3,115.00	41,203.34	58,308.90	
Merced City	5,181,108.72	0.00	0.00	314,543.48	385,162.34	161,796.29	233,879.12	316,747.97	100,137.23	
Merced County	5,143,446.13	87,439.30	460,714.86	440,973.64	303,784.59	499,886.80	484,556.55	304,487.63	282,524.22	
Total Jurisdictions	18,253,515.90	129,351.56	703,634.05	1,224,674.09	936,641.84	779,250.12	773,856.13	734,397.80	480,602.78	
Interest Earnings	718,826.37	12,125.94	40,729.42	20,304.37	14,102.92	11,481.71	22,364.35	35,024.26	57,147.27	
Total Collections	18,973,341.27	141,477.50	744,363.47	1,244,978.46	950,744.86	780,731.83	796,220.48	769,722.06	537,750.03	
Refunds	-200,895.08	0.00	-16,120.10	-1,375.00	0.00	0.00	-42,436.94	-20,388.17	0.00	
Total Net	18,772,346.19	141,477.50	728,243.37	1,243,603.46	950,744.86	780,731.83	753,783.54	749,333.89	537,750.03	

REGIONAL TRANSPORTATION IMPACT FEE PROJECT LISTS

2008 RTIF Study Project List (Adopted)

Project Location	Project Description	Cost
Bellevue Road	connection to 99 - from new interchange to Atwater	\$5,000,000
Mission Avenue Improvements	from 59 to 99 (not adding lanes)	\$8,400,000
Hwy 59 north realignment	"Merced-Atwater Highway" - re-align from 99 to Bellevue with new 99 Interchange	\$214,000,000
Hwy 59 Mission to Childs	widen to 4 lanes from Mission Ave. to Childs Ave.	\$5,000,000
Hwy 59 - 152 to Mission	widen to 4 lanes from SR 152 to Mission Ave.	\$50,000,000
Hwy 140 Brady Overhead	widen to 4/5 lanes - from Parsons to Santa Fe Ave.	\$48,000,000
Hwy 140 to Campus Parkway	widen to 4/5 lanes - from Santa Fe Ave. to Campus Parkway	\$13,500,000
Hwy 140/33 Gustine Truck Route	Bypass	\$5,000,000
Hwy 152 Los Banos Bypass		\$497,000,000
Hwy 165 North of Hilmar	widen to 4/5 lanes - from Hilmar to Stanislaus County or alternate project to reduce traffic on SR 165 through Hilmar	\$43,000,000
Dos Palos Road Improvements		\$5,000,000
Winton Parkway	Interchange improvements and widening (Livingston)	\$15,000,000
Campus Parkway	From SR 99 to Yosemite Ave.	\$63,000,000
TOTAL		\$971,900,000

2016 RTIF Study Project List (Not Adopted as of Dec 2017)

Project	Project Description	Cost
Atwater-Merced Expressway - Phase 1b	Construct two-lane extension from Green Sands to Santa Fe	\$62,200,000
Campus Parkway from Childs Avenue to north of SR 140	Construct Phase 2 of four-lane divided expressway	\$30,524,000
Campus Parkway from north of SR 140 to Yosemite Avenue	Construct Phase 3 of four-lane divided expressway	\$55,000,000
E. Mission Avenue from SR 59 to west of Henry Street in south Merced	Construct two-lane roadway	\$4,911,600
Bellevue Road from Vine Avenue to Orchard Park near Dole plant.	Construct two-lane roadway	\$2,206,240
Hammatt Avenue at SR 99 in Livingston	Construct traffic signals & roadway improvements at interchange	\$1,674,400
Lander Avenue (SR 165) from American Avenue to August Avenue	Construct center two way left turn lane for 0.4 miles	\$785,900
SR 33 at SR 140 in Gustine	Construct a roundabout	\$2,300,000
SR 59 from Merced to SR 152	Construct two sets of passing lanes	\$2,158,000
SR 33 (Elgin Avenue) from Valeria Street to Christian Street in Dos Palos	Construct four-lane roadway	\$5,000,000
Los Banos improvement project	Construct RTIF project, to replace Los Banos Bypass	\$50,000,000
TOTAL		\$216,760,140

12/21/18

277

**IMPLEMENTATION AGREEMENT
AUTHORIZING THE MERCED COUNTY ASSOCIATION OF GOVERNMENTS
TO MANAGE AND ADMINISTER THE REGIONAL TRANSPORTATION
IMPACT FEE PROGRAM**

This Agreement ["Agreement"] is made this day of 3/1/2005, pursuant to Government Code section 6500, et seq., and the Merced County Association of Governments Joint Powers Agreement ["Joint Powers Agreement"] dated November 28, 1967, as amended, by and between Merced County Association of Governments, a California Joint Powers Authority ["MCAG"], and the following seven public entities, all of which are members of MCAG [referred to herein individually as "Party" or collectively as the "Parties"]:

County of Merced
City of Atwater
City of Dos Palos
City of Gustine
City of Livingston
City of Los Banos
City of Merced

RECITALS

A. Each of the Parties to this Agreement is a governmental entity. The purpose of this Agreement is to authorize MCAG, pursuant to the Joint Powers Agreement, to manage and administer the Regional Transportation Impact Fee ["RTIF"] Program.

B. The Parties find that future development within the County of Merced to the year 2030 will result in traffic volumes in excess of capacity on a regional system of streets, arterials and highways.

C. The Parties find that failure to expand the capacity of the existing circulation system will cause unacceptable levels of congestion on the streets, arterials and highways of the regional system.

D. The Parties find that existing and future sources of revenue are inadequate to fund substantial portions of the regional transportation system improvements needed to avoid unacceptable levels of congestion and related adverse impacts.

E. The Parties find and declare that the MCAG RTIF Study, as amended (May 2005), has determined the extent to which new development of land will generate traffic volumes impacting the roadway system to the year 2030 and have determined that the RTIF Ordinance (Exhibit A) establishes a fair and equitable method to fund costs of transportation improvements necessary to accommodate the traffic volumes generated by future development of land within each city and Merced County.

F. The Parties find and determine that current impact fees from new development will construct only a portion of local and regional facilities and that adoption of the RTIF

Ordinance is necessary to secure additional revenues needed to construct improvements and accommodate traffic generated by land development.

G. The Parties have determined that it is in their best interest to join together to administer the funds provided by the RTIF and to authorize the MCAG to manage and administer the RTIF funds and improvements along with any other funds that are made available for regional streets and highways in Merced County.

H. The Parties find that in order to serve the purposes described herein, additional funding, other than that received from the above described fee, must be obtained. Each Party has agreed to cooperate in obtaining additional financing.

I. The Parties anticipate that MCAG shall administer the funds and the program generated for regional streets and highways in Merced County by exercising the powers granted herein for the life of this Agreement twenty-five (25) years, through 2030.

ARTICLE 1 PURPOSE AND POWERS

1.1 Purpose of the Agreement.

Each Party to this Agreement has the common power to plan for, acquire, construct, maintain, repair, manage, operate, impose fees for and incur indebtedness for and control over facilities for the purpose of planning and constructing transportation facilities.

The purpose of this Agreement is to jointly exercise the foregoing common powers to oversee and implement the RTIF, manage the funds generated from such fees and any other funds designated for planning, funding, designing and, constructing regional streets and highways in Merced County in accordance with the laws of the State of California.

1.2 Powers.

MCAG, through its Governing Board; is hereby authorized to perform all necessary functions to fulfill the purposes of this Agreement. MCAG shall have the power in its own name to do any of the following:

- A. Exercise jointly the common powers of its members in studying and planning ways and means to provide for planning, designing, financing and constructing transportation facilities throughout Merced County;
- B. Make and enter into contracts;
- C. Contract for the services of engineers, attorneys, planners, financial consultants and such other persons as it deems necessary;
- D. Incur debts, obligations, issue bonds, and invest and reinvest, or sell or exchange securities;

- E. Adopt rules, regulations, policies, bylaws and procedures governing the operation of MCAG in accordance with the enumerated purposes contained herein;
- F. Apply for appropriate grants under any federal, state, or local programs for assistance in developing the transportation program;
- G. Receive gifts, contributions and donations of property, funds, services and other forms of financial assistance from persons, firms, corporations and governmental entities;
- H. Acquire, hold, and dispose of property by lease, lease purchase or sale;
- I. Acquire property by eminent domain subject to conditions as set forth in Section 1.3 of this Agreement;
- J. Lease, acquire, construct, manage, maintain, and operate any buildings, works, of improvements;
- K. Sue and be sued in its own name;
- L. Determine project priorities, set design standards for projects, and coordinate with the Parties to oversee construction of improvements;
- M. Annually update the 5-year Capital Improvement Plan and set or adjust the appropriate standards for determining the amount of the RTIF; and
- N. To the extent not herein specifically provided for, to exercise any powers in furtherance of the purpose of this Agreement in the manner of and according to the methods provided under applicable law.

1.3 Power of Eminent Domain.

For the purpose of exercising eminent domain, to acquire property in furtherance of the purposes of this Agreement, the "legislative body" of MCAG shall be the Governing Board of MCAG ["Governing Board"]. Resolutions of Necessity may be adopted by a two-thirds (2/3) vote of the Governing Board with each member agency having one (1) vote. The power of eminent domain as authorized herein is subject to veto by the jurisdiction within whose boundaries eminent domain is being exercised. A jurisdiction must exercise its veto by resolution, within sixty (60) days from the date of receipt of notification of the intent to exercise eminent domain within its boundaries.

ARTICLE 2
ADMINISTRATION OF REGIONAL TRANSPORTATION IMPACT FEE FUND

2.1 Imposition of Regional Transportation Impact Fee.

On or before the effective date of this Agreement (or in the case of a new party, on or before that party becomes signatory to this Agreement), it is anticipated that each Party will adopt a RTIF in an amount equal to or more than the fee as recommended pursuant to the MCAG RTIF study, as amended, requiring the payment of a mitigation fee as a condition of discretionary project approval, or other permit process, for the purposes of defraying a portion of the actual or estimated cost of constructing regional transportation improvements. Adoption of a RTIF is not required in order to be a Party to this Agreement.

2.2 Annual Review of Fees.

The Governing Board of MCAG shall annually review and, if necessary, recommend amending the amount of the mitigation fee to insure that it is a fair and equitable method of distributing the costs of the improvements necessary to accommodate traffic volumes generated by future growth.

The legislative body of each Party shall annually undertake review of the mitigation fee and shall, if necessary, modify the fee to be imposed to insure that it is a fair and equitable method of distributing the costs of the improvements necessary to accommodate traffic volumes generated by future growth. The revised fee shall be imposed within one hundred and twenty (120) days.

2.3 Collection of Fees.

Each party to this Agreement agrees to collect the fee pursuant to its RTIF Ordinance or Resolution and quarterly remit the collected fees and any interest thereon to MCAG to be placed in the MCAG Transportation Mitigation Trust Fund ("Trust Fund").

2.4 Holding of Fees.

The Governing Board shall deposit, invest, account for and expend the fees in accordance with Government Code section 66006.

The Governing Board shall make annual findings for any funds remaining in the account longer than five years: and refund any uncommitted funds plus interest pursuant to Government Code section 66001.

2.5 Annual Budget.

The Governing Board shall adopt an annual budget for the fiscal year.

2.6 Disbursements.

The MCAG Executive Director shall request warrants from the Merced County Treasurer in accordance with budgets approved by the Governing Board. The Treasurer shall pay such claims or disbursements and such requisition for payment in accordance with rules, regulations, policies, procedures and bylaws adopted by the Governing Board.

2.7 Accounts.

All funds of the Trust Fund shall be placed in a separate account or accounts. The receipt, transfer, or disbursement of such funds, during the term of this Agreement, shall be accounted for in accordance with generally accepted accounting principles applicable to governmental entities and pursuant to Government Code section 6505, et seq., and any other applicable laws of the State of California. All revenues and expenditures shall be reported monthly to the Governing Board.

2.8 Expenditures Within Approved Annual Budget.

All expenditures shall be made within the approved annual budget. No expenditures in excess of those budgeted shall be made without the approval of the Governing Board.

2.9 Audit of Trust Fund.

The records and accounts of the Trust Fund shall be audited annually by an independent certified public accountant and copies of such audit report shall be filed with the Merced County Auditor, State Controller and each Party to MCAG no later than fifteen (15) days after receipt of said audit by the Governing Board.

2.10 Audit of Imposition and Collection of Fees.

The records and accounts, with respect to fee imposition and collection, of any Party who imposes a mitigation fee shall be audited once within any six (6) month period at the request of the Governing Board of MCAG or a majority of Parties to this implementation agreement. Said audit shall be conducted by an independent certified public accountant and copies of such audit report shall be filed with each party to MCAG no later than fifteen (15) days after receipt of said audit by the Governing Board.

ARTICLE 3

ADMISSION AND WITHDRAWAL OF PARTIES

3.1 Admission of New Parties.

Public entities, other than the original Parties, may wish to participate in this Agreement. Additional Merced County public entities may become parties to this Implementation Agreement upon such terms and conditions as provided by the Governing Board and with the consent of two-thirds (2/3) of the existing Parties to this Implementation Agreement, evidenced by the execution of a written addendum to this Agreement, and signed by all of the Parties including the additional party.

3.2 Withdrawal.

The Parties anticipate that they will participate in this Agreement until its purposes are accomplished. The withdrawal of any Party, unless otherwise provided by the Governing Board, shall be conditioned as follows:

(a) Following a properly noticed public hearing, written notice of withdrawal shall be given to MCAG, within 1 year and 90 days prior to the effective date of withdrawal;

(b) Withdrawal shall not relieve the Party of its proportionate share of any debts or other liabilities incurred by the Mitigation Trust Fund prior to the date of the party's notice of withdrawal;

(c) Withdrawal shall result in the forfeiture of that Party's rights and claims relating to distribution of property and funds upon termination of this Agreement, as set forth in Section 4 below;

(d) Withdrawal from this Agreement shall not be deemed withdrawal from membership in MCAG.

3.3 Re-admission of Party.

Public entities that withdraw from this Agreement may be re-admitted upon such terms and conditions as provided by the Governing Board.

ARTICLE 4 TERMINATION AND DISPOSITION OF ASSETS

4.1 Termination.

MCAG shall continue to exercise the joint powers herein until the termination of this Agreement, pursuant to its terms, any extension thereof, or until the Parties shall have mutually rescinded this Agreement; provided, however, that this Agreement shall continue to exist for the purposes of disposing of all claims, distribution of assets, and all other functions necessary to conclude the affairs of the RTIF.

Termination shall be accomplished by written consent of all of the Parties, or shall occur upon the withdrawal from the Agreement of a sufficient number of the agencies enumerated herein so as to leave less than five of the enumerated Parties as remaining Parties to this Agreement.

4.2 Distribution of Property and Funds.

Upon termination, any property interest remaining in the Trust Fund following the discharge of all obligations shall be disposed of as the Governing Board shall determine. The Governing Board shall consider, to the extent legally possible, the objective of returning to each Party a proportionate return on the contributions made to such properties by such Parties, less previous returns, if any, and provided that said property interests shall be utilized to construct major arterial transportation facilities which accomplish the purposes of this Agreement.

ARTICLE 5
MISCELLANEOUS

5.1 Effective Date.

This Agreement shall be effective and MCAG shall be authorized to proceed under this Agreement when this Agreement has been executed by the Merced County Board of Supervisors and each of the six member City Councils, but not sooner than April 1, 2005.

5.2 Partial Invalidity.

If any one or more of the terms or provisions of this Agreement shall be adjudged invalid, unenforceable, void or voidable by a court of competent jurisdiction, each and all of the remaining terms and provisions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

5.3 Amendments.

The Parties to this Agreement may amend it by two-thirds (2/3) vote, except any amendment with respect to the veto power over eminent domain (Section 1.3) must be unanimous.

5.4 Execution.

The Board of Supervisors of the County of Merced and the City Councils of the cities enumerated herein have each authorized execution of this Agreement as evidence by the authorized signatures below.

5.5 Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.

PARTY

BOARD OF SUPERVISORS,
COUNTY OF MERCED

By:

[Signature]
Chair

Attest:

[Signature]
Clerk of the Board

CITY COUNCIL, CITY OF ATWATER

By:

[Signature]
Mayor

Attest:

[Signature]
City Clerk

CITY COUNCIL, CITY OF DOS PALOS

By:

[Signature]
Mayor

Attest:

[Signature]
City Clerk

DATE OF APPROVAL

8/10/05
Date

**APPROVED AS TO LEGAL FORM
RUBEN B. CASTILLO
MERCED COUNTY COUNSEL**

[Signature]
BY: _____

8/1/05
Date

8/3/05
Date

CITY COUNCIL, CITY OF GUSTINE

By:

James J. Bonta
Mayor

Attest:

Quell Hill
City Clerk

8/16/05
Date

CITY COUNCIL, CITY OF LIVINGSTON

By:

[Signature]
Mayor

Attest:

Martha Waters
City Clerk

8/5/05
Date

CITY COUNCIL, CITY OF LOS BANOS

By:

[Signature]
Mayor

Attest:

Lucia L. Mauer
City Clerk

8/14/05
Date

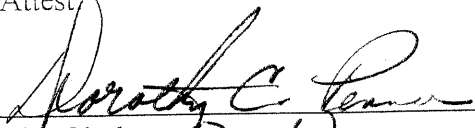
CITY COUNCIL, CITY OF MERCED

By:

[Signature]
Mayor

8/4/05
Date

Attest:


City Clerk (Deputy)

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
REPEALING CHAPTER 17.64 OF THE MERCED
MUNICIPAL CODE RELATING TO THE
REGIONAL TRANSPORTATION IMPACT FEES**

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

WHEREAS, the City of Merced adopted the Regional Transportation Impact Fee ("RTIF") on May 2, 2005 pursuant to Ordinance No. 2194 and amended the RTIF pursuant to Ordinance No. 2310 adopted on July 7, 2008. Since August 2005, the City of Merced has collected RTIF on all new development projects (residential and commercial) in the City in order to raise additional revenues to pay for regional transportation improvements; and

WHEREAS, in August 2005, the County of Merced and Cities of Atwater, Dos Palos, Gustine, Los Banos and Merced began collecting the RTIF. In November 2014, the City of Livingston began collecting the RTIF; and

WHEREAS, in January 2012, the City of Dos Palos suspended collecting the RTIF. In January 2012, the City of Los Banos suspended the collection of the RTIF for non-residential projects and in August 2014, suspended the collection of the RTIF for all projects. Other cities, although still collecting the RTIF on selected projects, have exempted major commercial projects from paying the fee based upon a variety of stated reasons; and

WHEREAS, given the inconsistent application of the RTIF to development projects throughout the County, the City of Merced has been at a competitive disadvantage with other jurisdictions within the County; and

WHEREAS, the City of Merced adopted Ordinance No. 2461 suspending the collection of RTIF for all new development until July 5, 2018.

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

SECTION 1. AMENDMENT TO CODE. Chapter 17.64, “Regional Transportation Impact Fee,” of the Merced Municipal Code is hereby repealed in its entirety.

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 _____, 2018, and was passed and adopted at a regular meeting of said City Council held on the ____ day of _____, 2018 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:

Kylores *3.6.18*
City Attorney **Date**



ADMINISTRATIVE REPORT

Agenda Item L.1.

Meeting Date: 5/7/2018

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

SUBJECT: Professional Services Agreement with LSA Associates and Reimbursement Agreement with Merced Mall, LP, for Preparation of an Environmental Document for the Merced Mall Expansion and Redevelopment Project

REPORT IN BRIEF

The City Council will consider approving a Professional Services Agreement with LSA Associates along with a Reimbursement Agreement with Merced Mall, LP, for preparation of an environmental document for the Merced Mall Expansion and Redevelopment Project.

RECOMMENDATION

City Council - Adopt a motion:

- A. Approving the Professional Services Agreement with LSA Associates in the amount of \$76,745.00 for preparation of an environmental document for the Merced Mall Expansion/Redevelopment Project; and,
- B. Approving the Reimbursement Agreement with Merced Mall, LP, in the amount of \$84,419.50 to cover the cost of the consultant contract and City staff management of the contract in the preparation of the environmental document; and,
- C. Approving the appropriation of funds to Account 017-0804-512-17-00-Professional Services in the amount of \$76,745.00 for payment to LSA Associates for planning services; and,
- D. Approving an increase in revenue in the amount of \$76,745.00 to Account 017-0804-360-01-02-Other Revenue Developers and \$7,674.50 to Account 017-0804-331-03-25-Environmental Impact Filing EIR for staff administration of the environmental process (approval is contingent upon execution of the agreements); and,
- E. Authorizing the City Manager or Assistant City Manager to execute the documents.

ALTERNATIVES

- 1. Approve the agreements, as recommended by staff; or,
- 2. Approve the agreements, subject to modifications by City Council (identify specific items to be amended in the motion); or,
- 3. Deny; or,
- 4. Refer to staff for reconsideration of specific items (to be addressed in the motion); or,

5. Continue to a future City Council meeting (date and time to be specified in the motion).

AUTHORITY

Charter of the City of Merced, Section 200

CITY COUNCIL PRIORITIES

This item is aligned with the City Council's priority for economic development.

DISCUSSION

Proposed Project

The developers, Merced Mall, LP, recently submitted an application to the City for the expansion and redevelopment of the Merced Mall in two phases. Phase I will involve the expansion of Buildings B and D by a total of 50,000 square feet along with significant façade improvements. There are two options under consideration for Phase II, which involve the expansion of the theatre. Alternative I would involve expanding Building C between JC Penney and Kohl's to 72,000 square feet for an expanded theatre, while Alternative II would involve the expansion of the theatre to 72,000 square feet at its existing location that would also require demolition of two existing buildings. Attachment 1 depicts the Phase I improvements and the two Phase II Alternatives. The Merced Mall sits on 52 acres, generally bound by West Olive Avenue to the south, R Street to the west, Loughborough Drive to the north, and M Street to the east.

Requested entitlements include a Site Utilization Plan Revision to Planned Development No. 1 to approve the changes to the Site Plan, and a Sign Ordinance Amendment to allow a new Shopping Center sign (details of which are still pending). In order for the Planning Commission and City Council to consider the project, an environmental analysis will need to be prepared under the provisions of the California Environmental Quality Act (CEQA).

Selection of the Environmental Consultant

City staff and the project applicants are recommending that LSA Associates be selected as the environmental consultant due to their experience with similar projects and their understanding and level of analysis of the project issues in the subject area. LSA Associates and its staff members who will work on the project have the required experience and qualifications to complete the proposed environmental work.

Terms of the Agreements

Attachment 2 contains the recommended agreement for professional services which includes a scope of services, budget and the anticipated schedule. The scope of work will include the preparation of an initial study in anticipation of the preparation of a Mitigated Negative Declaration (if it is determined that an Environmental Impact Report is required, the scope will need to be amended), and technical studies that include cultural resources and traffic. All the work will be performed by LSA Associates with no sub-consultants proposed.

As indicated in the reimbursement agreement (Attachment 3), the applicant will pay for the entire consultant cost (\$76,745) in three equal payments of \$20,000 each plus one final payment of \$16,745, with the first payment due upon execution of the contract and the other payments due at intervals of 30, 60, and 120 days from the execution of the agreement. The applicants will also reimburse the City for staff time spent on administering the environmental process based on actual cost of time, services and materials. An additional deposit of \$7,674.50 (ten percent of the cost of the environmental review) is required upon execution of the agreement. In fact, the applicants have already provided the City with both payments due upon execution.

The applicants also acknowledge in Section 2 of the reimbursement agreement (Attachment 3) that "the contract with the Consultant is being entered into by the City as an accommodation to the Developer to facilitate the evaluation of the project and does not guarantee any particular result of outcome. Developer further acknowledges and agrees that it shall have no control over the work product of the Consultant, and that its payment of the costs is not dependent thereon."

IMPACT ON CITY RESOURCES

The entire cost for preparing the environmental document (\$76,745) will be reimbursed to the City by the developers as well as the costs (\$7,674.50) to cover City staff management of the consultant contract and environmental process. Actions to appropriate the revenue to the corresponding Accounts in the Development Services Department budget are included in the recommendation.

ATTACHMENTS

1. Proposed Site Plan Options for Merced Mall Expansion/Redevelopment
2. Professional Services Agreement with LSA Associates
3. Reimbursement Agreement with Merced Mall, LLC

PHASE I EXPANSION SITE PLAN

215

[illegible]

PHASE II ALTERNATE II EXPANSION SITE PLAN

The site plan illustrates the proposed expansion of the Kohl's Department Store. The new building, shaded in gray, is situated between existing buildings A, B, C, and D. The plan includes detailed parking layouts with existing spaces marked with diagonal lines and proposed spaces marked with horizontal lines. Key features include a 'PROPOSED NEW PARKING TRUCKER' area, a 'PROPOSED NEW BUILDING 8,400 SQ. FT. (EXISTING BUILDING 8,400 SQ. FT.)', and a 'PROPOSED NEW BUILDING 8,400 SQ. FT. (EXISTING BUILDING 8,400 SQ. FT.)'. The plan also shows existing buildings such as Target, J.C. Penney, Sears, and various parking lots. The site is bounded by Loughborough Drive to the north, West Olive Avenue to the east, and R Street to the south. A north arrow is located in the bottom right corner.

217

217

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made and entered into this ____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation, whose address of record is 678 West 18th Street, Merced, California 95340, (hereinafter referred to as "City") and LSA Associates, Inc., a California corporation, whose address of record is 20 Executive Park, Suite 200, Irvine, California 92614 (hereinafter referred to as "Consultant").

WHEREAS, City is undertaking a project to evaluate the environmental impacts of a proposed expansion and redevelopment of the Merced Mall on 52 acres generally bound by M Street to the east, West Olive Avenue to the south, R Street to the west, and Loughborough Drive to the north (the "Project"); and

WHEREAS, Consultant represents that it possesses the labor and professional skills and expertise to provide environmental services in connection with said Project.

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

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

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

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

3. **RESERVED.**

4. **COMPENSATION.** Payment by the City to the Consultant shall be made monthly in proportion to the services based on time and materials specified in the fixed fee, for work satisfactorily performed within each phase. For Consultant's services rendered under this Agreement, City shall pay Consultant the not to exceed sum of Seventy-Six Thousand Seven Hundred Forty-Five Dollars (\$76,745.00).

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

6. **RECORDS.** It is understood and agreed that all plans, studies, specifications, data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Consultant relating to the matters covered by this Agreement shall be the property of the City, and Consultant hereby agrees to deliver the same to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use.

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

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

In the event Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System

(PERS) to be eligible for enrollment in PERS as an employee of the City, Consultant shall indemnify, protect, defend, and hold harmless the City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

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

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

- a. Workers' Compensation Insurance. Reserved.
- b. General Liability.
 - (i) Consultant shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.

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

c. Automobile Insurance.

- (i) Consultant shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.
- (ii) The City, its officers, employees, volunteers and agents are to be named as additional insureds under the policy, as respects automobiles owned, leased, hired or borrowed by the Consultant.
- (iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Consultant and its sub-contractors, and that any other insurance or self insurance maintained by City or other named insureds shall be excess and non-contributory.

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

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

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

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

g. Notwithstanding any language in this Agreement to the contrary, Consultant shall be entitled to be paid pursuant to the terms of this Agreement until Consultant has obtained the insurance required by this Section 10 and provided documentation of said insurance to the City. In addition to any other remedies City may have, City reserves the right to withhold payment if Consultant's insurance policies are not current.

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

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

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

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

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

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

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

in writing, and initialed by the authorized City representative, as to each additional contractual term or condition.

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

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

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

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

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

21. COUNTERPARTS. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

///

///

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  4-4-2018
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

CONSULTANT
LSA ASSOCIATES, Inc.,
A California Corporation

BY: 
~~Rob McCann~~ Mike Trotta
~~Chief Executive Officer~~ President

Taxpayer I.D. No. 94-2341614

ADDRESS: 20 Executive Park, Ste 200
Irvine, CA 92614

TELEPHONE: 949-553-0666

FAX: _____

E-MAIL: Rob.McCann@lsa.net Mike.Trotta@lsa.net
Contracts@lsa.net

EXHIBIT A

1. SCOPE OF WORK

The scope of work for CEQA compliance and preparation of an Initial Study is discussed below and is summarized in Table 1.

TASK A: PROJECT INITIATION

The project initiation task will provide an opportunity for the LSA team to meet with City staff and, if appropriate, the applicant team to collaborate, strategize and discuss the LSA recommended approach to environmental review and the associated work program. Other key project initiation tasks will involve conducting a site visit, gathering information, and preparing the project description.

1. Start-Up and Site Visit

LSA will meet with City staff, and the applicant team if desired, to discuss expectations regarding the tasks to be undertaken as part of the environmental documentation effort for the proposed project. As a part of this meeting, LSA will:

- Discuss the City's expectations and desired approach to environmental documentation for the project;
- Discuss the role of each team member and establish how information will flow within the team;
- Identify any concerns and issues of those in attendance;
- Review information needs and gather any additional relevant information and data; and

Table 1: Scope of Work Summary

TASK A: PROJECT INITIATION

1. Start-Up and Site Visit
2. Data Gathering and Evaluation
3. Project Description

TASK B: PREPARE TECHNICAL STUDIES

1. Cultural Resources Memorandum
2. Traffic Impact Analysis

TASK C: EVALUATION OF ENVIRONMENTAL EFFECTS

1. Aesthetics
2. Agriculture and Forestry Resources
3. Air Quality
4. Biological Resources
5. Cultural Resources
6. Geology/Soils
7. Greenhouse Gas Emissions
8. Hazards/Hazardous Materials
9. Hydrology/Water Quality
10. Land Use/Planning
11. Mineral Resources
12. Noise
13. Population/Housing
14. Public Services
15. Recreation
16. Transportation/Traffic
17. Tribal Cultural Resources
18. Utilities/Service Systems
19. Mandatory Findings of Significance

TASK D: INITIAL STUDY

1. Administrative Draft
2. Screencheck Draft
3. Public Review Draft IS/MND
4. Response to Comments
5. Mitigation Monitoring and Reporting Program

TASK E: MEETINGS

TASK F: PROJECT MANAGEMENT

- Finalize the schedule for the review process.

In conjunction with the start-up meeting, LSA staff will visit the project site and photograph the surroundings, document existing conditions and site features, and confirm information provided by the City and the project applicant.

2. Data Gathering and Evaluation

Existing data and analyses applicable to the project site and vicinity will be collected, evaluated, and reviewed by the project team. It is assumed that, at a minimum, the applicant will provide the following project-related materials:

- Written description of the project, including phases and alternatives;
- Description of construction activities including duration, equipment, and excavation and grading;
- Site plan which includes the following: building footprint; setbacks; vehicle circulation; and landscaping;
- Conceptual elevations showing height and building appearance;
- Description of pervious/impervious surfaces, both pre- and post-construction; and
- Energy, water conservation, and other green building materials incorporated into the project.

LSA will review the above materials provided by the applicant, as well as any other additional background reports during the project initiation phase. LSA will also review the City's General Plan and Municipal Code, as well as any other pertinent background documents.

3. Project Description

Based on the applicant's site plan and elevations and conversations with City staff and the project team, LSA will draft a project description that includes all elements necessary to comply with CEQA, including, but not limited to, the purpose, physical elements and phasing and alternatives of the proposed project. The project description will include a map showing the location and boundaries of the project site. The project description will also describe the overall approval process for the project and identify all discretionary and anticipated subsequent approvals. All relevant agencies and reviewing bodies will also be identified.

Crafting an appropriately detailed and illustrated project description is often the single most time-consuming (as well as important) element of a CEQA review document. LSA will work closely with the City to ensure that the project description provides a level of detail appropriate for CEQA analysis. A draft project description with graphics will be submitted to the City and applicant for review and comment before the LSA team begins conducting any impact analyses.

TASK B: TECHNICAL STUDIES

Based on our initial review of the project, a Cultural Resources Memorandum and a Traffic Impact Analysis will be needed to adequately address these disciplines under CEQA.

1. Cultural Resources Memorandum

LSA will conduct cultural resource studies that are needed to address requirements of CEQA. LSA reviewed the project area and did not identify any built environment cultural resources within or adjacent to the project area that are over 50 years old and have the potential to be significantly affected by the proposed project. It is currently unknown whether or not archaeological resources are present within the subsurface area of direct impact within the project area. LSA will conduct the following tasks to identify resources within the project area:

Task 1.1: Research and Field Investigation

- A records search will be conducted at the Central California Information Center. The records search will identify previously recorded or otherwise known cultural resources and previous cultural resource studies within or adjacent to the project area.
- LSA will review cultural resource inventories to identify cultural resources that may be listed within or adjacent to the project area. Relevant listings are the California Inventory of Historic Resources, Five Views: An Ethnic Sites Survey for California, California Historical Landmarks, California Points of Historical Interest, National Historic Landmarks, and the Directory of Properties in the Historic Property Data File which contains the listings of the National Register of Historic Places and the California Register of Historical Resources. If available, appropriate City and County listings will be reviewed.
- LSA will conduct background research and a literature review, consisting of a review of archaeological, ethnographic, historical, and environmental publications and maps at historical archives and at LSA. The background research will identify previously recorded or otherwise known cultural resources in or adjacent to the project area, and will provide data to interpret the subsurface archaeological sensitivity of the project area.
- LSA will contact the Native American Heritage Commission in Sacramento for a review of the Sacred Lands File to determine if the project area contains any listed sites.
- LSA will contact the Merced County Historical Society for any information or concerns they may have about cultural resources that may be impacted by the project.

Task 1.2: Documentation

LSA will prepare a memorandum to summarize the methods and results of the study, and recommendations for mitigation or further study should it be necessary.

Task 1.3: Response to Comments

LSA has budgeted 4 hours for responding to comments generated during review of the Cultural Resources memorandum.

2. Traffic Impact Analysis

LSA will prepare a traffic impact analysis (TIA) for the proposed project. LSA has identified the following three tasks to prepare the TIA.

Task 2.1: Coordination

LSA will coordinate with the City to confirm the proposed project (including land use types and quantities, as well as phasing and timing of implementation). LSA will request a detailed site plan depicting the new retail and movie theater locations, internal circulation, parking supply/layout, and access point(s). For purposes of this proposal, it is assumed that LSA will evaluate both Phase II project alternatives.

LSA will also confirm the TIA scope of work with the City Planning and/or the Public Works Departments. This will include confirmation of the specific analysis methodologies and assumptions, project trip generation and distribution, identification of an appropriate ambient growth percentage and cumulative background traffic conditions (i.e., approved/pending projects list), and discussion of specific concerns regarding the project and/or study area. LSA will also coordinate with the City and/or the Merced County Association of Governments (MCAG) to verify the assumptions/sources to be used in preparation of the vehicle miles traveled (VMT) assessment.

Task 2.2: Data Collection

The TIA will examine the following seven development scenarios:

1. Existing
2. Existing Plus Project Phase I
3. Existing Plus Project Phase I and Phase II Alternative 1
4. Existing Plus Project Phase I and Phase II Alternative 2
5. Cumulative (future short-term year, corresponding to project opening)
6. Cumulative Plus Project Phase I and Phase II Alternative 1
7. Cumulative Plus Project Phase I and Phase II Alternative 2

The following information will be collected prior to preparation of the TIA.

Existing Traffic Counts. LSA anticipates that the study area will be comprised of the nine intersections and four roadway segments listed below.

Intersections:

1. R Street/Loughborough Drive
2. R Street/Right-In, Right-out, Left-In (RIROLI) Mall Driveway
3. R Street/Olive Avenue
4. Pepperwood Lane–Mall Driveway/Olive Avenue
5. Mall Driveway/Loughborough Drive
6. Applewood Lane–RIROLI Mall Driveway/Olive Avenue
7. M Street/Loughborough Drive–Collins Drive
8. M Street/Fairfield Drive
9. M Street/Olive Avenue

Roadway Segments:

1. R Street between Loughborough Drive and Olive Avenue
2. Loughborough Drive between R Street and M Street
3. Olive Avenue between R Street and M Street
4. M Street between Loughborough Drive and Olive Avenue

LSA will obtain traffic counts from an independent car count company. Intersection turn-movement counts will be conducted for up to nine locations in the AM peak hour (7:00 a.m. to 9:00 a.m.) and PM peak hour (4:00 p.m. to 6:00 p.m.). In addition, 24-hour average daily traffic (ADT) counts will be conducted for up to four roadway segments. LSA will also collect geometric and traffic control data at the study area intersections and roadways. The cost to conduct the intersection and roadway segment counts is approximately \$3,000.

The count locations will be confirmed by City staff prior to this data collection effort. If the City requires additional study area locations, the count budget may need to be revised.

Ambient Growth and Cumulative Traffic Conditions. A future, short-term scenario corresponding to the proposed project opening year will be analyzed. LSA will confirm with the City the applicable ambient growth rate for purposes of this analysis. To determine cumulative traffic conditions, LSA will request from the City Planning Department a current list of approved and/or pending (committed) projects up to the project opening year. LSA will also request the TIAs and/or environmental documents for these projects to develop cumulative baseline traffic volumes. If these documents are not available, LSA staff will assign approved/pending project trips to the study area intersections

utilizing the “manual method” of trip assignment. LSA anticipates utilizing the manual method for up to five projects.

Circulation Improvements. LSA will research information on planned, programmed, and/or funded circulation improvements in the vicinity of the project site. This information will be obtained from the Public Works Department (i.e., Capital Improvement Projects [CIP]), the California Department of Transportation (Caltrans), and/or other jurisdictions in the area. LSA will identify the timing and implementation of any planned/funded improvements at the study area locations. This information will establish the circulation network assumptions and help determine appropriate project mitigation (if necessary) during each analysis condition.

Task 2.3: Baseline Conditions

Existing Conditions. Existing AM and PM peak-hour traffic conditions and levels of service (LOS) will be assessed for the study area intersections using the Highway Capacity Manual (HCM) 2010 methodology and the Synchro (Version 10) software. The LOS for the roadway segments will be determined using the roadway classifications and capacity thresholds defined in the City’s General Plan.

Existing transit, bicycle, and pedestrian infrastructure and service will also be described and included in the existing setting analysis.

Cumulative Conditions. Future traffic volumes corresponding to the project buildout year will be developed based on existing counts, an ambient growth rate, and cumulative project traffic. Cumulative a.m. and p.m. peak-hour traffic conditions and LOS will be assessed for the study area intersections. The LOS will also be determined for the study area roadway segments.

Task 2.4: Project Trip Generation, Distribution, and Assignment

Daily AM peak-hour and PM peak-hour trips will be generated for the proposed project using trip generation rates from the Institute of Transportation Engineers (ITE) Trip Generation Manual, 10th Edition (2017). Any trip reductions will be done in coordination with City staff. Project-related trips will be distributed through the study area intersections and roadways based on expected travel patterns between the project site and local and regional destinations. Project volumes will be assigned to the arterial street system based on the trip distribution identified above. The resulting project trip assignment will be overlaid onto the existing and cumulative traffic volumes to determine the “plus project” volumes.

Task 2.5: Project Impact Assessment

Existing Plus Project Conditions. LSA will analyze the existing plus project (Phase I, Phase I and Phase II Alternative 1, and Phase I and Phase II Alternative 2) traffic conditions at the study area intersections and roadway segments to determine the ability of the circulation system to provide acceptable LOS when the project is added to existing conditions. The resulting existing plus project traffic volumes will be examined to determine peak-hour intersection and daily roadway segment LOS. Project impacts will be identified assuming existing roadway and intersection geometrics.

Cumulative Plus Project Conditions. LSA will analyze the cumulative plus project (Phase I and Phase II Alternative 1, as well as Phase I and Phase II Alternative 2) traffic conditions at the study area intersections and roadway segments to determine the ability of the circulation system to provide acceptable LOS when the project is added to short-term cumulative conditions. The resulting forecast traffic volumes will be examined to determine peak-hour intersection and daily roadway segment LOS.

Task 2.6: Recommended Improvements

Based on the results of Task 2.5, mitigation measures will be identified to address impacts created by the project (if any) for each of the analysis conditions. Mitigation measures could include intersection and roadway widening, traffic signal installation and modification, local street striping and channelization improvements, and signage, etc.

Specific timing and implementation of mitigation measures will take into account the City's goals for public infrastructure, the City's CIP (and whether phased/partial or full build out of an improvement would provide necessary project mitigation), and forecasted traffic demand. Alternative mitigation measures and strategies will be explored and considered for impacted study area locations.

Task 2.7: Site Plan Analysis

A review and analysis of on-site circulation and site access will be performed based on the project site plan. LSA will review project volumes, turn movements, traffic controls, and LOS at the project driveways to determine the adequacy of the interface with the arterial street system. If necessary, LSA will provide recommendations for the site, including additional/modified access points to the site.

Task 2.8: Parking Assessment

A review of the existing and proposed parking supply will be compared with the City Municipal Code parking requirements for the existing and proposed land uses of the project. Because of the reduction of existing on-site parking spaces for Phase I and Phase II Alternative 2 of the project, LSA will coordinate with City Planning and/or Public Works staff to provide a qualitative assessment of the total parking spaces provided on site. If necessary, LSA will provide recommendations for the site, including additional parking spaces (on- or off-site) and/or a reduction in project intensity.

It should be noted that malls throughout the State and the Country, including the Merced Mall, may be experiencing a decline in customers for various reasons, including online shopping. As a result, the mall could also be experiencing a decrease in total parking demand, freeing up parking spaces and accommodating the redevelopment and expansion of the mall. Therefore, it is anticipated that a qualitative analysis as proposed would be adequate to assess parking constraints and parking surveys of the existing mall are not included as part of this scope of work. However, as an optional task (described below), the City may request or require that formal parking surveys of the mall be conducted to identify the current peak parking demand and availability of parking spaces on site.

Optional Task – Parking Surveys. LSA would utilize an outside traffic data collection firm to conduct one day of hourly parking surveys during typical mall hours of operation between 10:00

a.m. and 9:00 p.m. The cost associated with this effort would be approximately \$4,000. If parking surveys or additional services are required by the City, a subsequent and detailed proposal will be prepared by LSA and submitted for the City's consideration.

Task 2.9: VMT Assessment

Senate Bill (SB) 743 (Steinberg 2013) was approved by Governor Brown on September 27, 2013. As a part of the legislation to approve the Sacramento King's Arena, SB 743 created a path to revise the definition of transportation impacts according to CEQA. As the guidelines are proposed today, CEQA transportation impacts are determined using "levels of service" (LOS) of roadways and intersections, which is a measure of congestion. The three objectives of SB 743 related to development are to diversify land uses, encourage infill development, and focus on creating a multimodal environment.

As a result of SB 743, the OPR released discussion drafts and technical guidelines in August 2014,^[1] July 2015,^[2] and January 2016^[3] that suggested VMT as the new metric for transportation impacts. Instead of congestion, this metric aims to reduce greenhouse gases by limiting the amount of miles people travel in a vehicle.

On November 27, 2017, the OPR released the proposed updates to the CEQA Guidelines and the *Technical Advisory on Evaluating Transportation Impacts in CEQA* (Technical Advisory) that has been transmitted to the California Natural Resources Agency for review and to undergo the formal rulemaking process. On January 26, 2018, the Natural Resources Agency distributed proposed updates to the CEQA Guidelines. The public comment period will end on March 15, 2018.

Although State Law and CEQA will eventually utilize VMT as the metric for transportation impacts, VMT thresholds and analysis requirements have not yet been formally adopted. Therefore, LSA will prepare a VMT assessment to disclose the existing VMT within the geographical area, as well as the potential VMT generated by the project for informational purposes. The VMT assessment will not provide an impact analysis or prescribe mitigation.

LSA will work with the City and/or MCAG to identify the source (MCAG traffic model) for obtaining existing VMT and average trip length data for the City. Total VMT and average VMT per person will be requested for both local (project-specific traffic analysis zone [TAZ]) and regional areas.

^[1] Governor's Office of Planning and Research. 2014. *Preliminary Discussion Draft of Updates to the CEQA Guidelines Implementing Senate Bill 743*. August.

^[2] Governor's Office of Planning and Research. 2015. *Technical Advisory on Evaluating Vehicle Miles Traveled in CEQA*. July.

^[3] Governor's Office of Planning and Research. 2016. *Revised Proposal on Updates to the CEQA Guidelines Evaluating Transportation Impacts in CEQA*. January.

LSA will calculate total VMT and average VMT per person for the project using the average trip lengths identified by and approved for the City. If necessary, LSA will develop average trip lengths based on origins/destinations and routes to/from the project site.

LSA will prepare a summary of the existing VMT in the local/regional vicinity of the project obtained from the City and/or MCAG, as well as the VMT projections for the project, in the TIA.

Task 2.10: Report Preparation

A TIA will be prepared discussing the existing and cumulative traffic conditions, with and without the proposed project alternatives. Intersection, roadway, and on-site improvements required to accommodate the project will be identified. The TIA will also include a discussion of project VMT. One revision to the TIA based on City comments is included in this proposal.

It is not expected that LSA traffic staff will be required to attend any meetings in Merced, as LSA will be able to participate on conference calls to address any comments on the TIA. If necessary, LSA will attend any meetings and/or public hearings on a time-and-materials basis.

TASK C: EVALUATION OF ENVIRONMENTAL EFFECTS

An Initial Study will be prepared in accordance with CEQA and the CEQA Guidelines and will utilize the Environmental Checklist Form (Appendix G of the CEQA Guidelines). LSA will respond to the checklist questions for the various impact topics and add concise explanatory comments related to each topic. The City's standard conditions of approval and existing regulations will be applied wherever possible. This scope of work assumes that upon completion of the Initial Study, a recommendation will be made that a Mitigated Negative Declaration will satisfy CEQA documentation requirements. Preparation of an Environmental Impact Report is not included in this scope of work.

The following environmental topics will be evaluated in the Initial Study, consistent with the requirements of CEQA. Each issue topic is shown in alphabetical order, as it appears in the CEQA checklist.

1. Aesthetics

The proposed project, which would include the expansion and redevelopment of an existing shopping center, is unlikely to adversely change the visual character of the area to a significant degree. LSA believes that no visual simulations of the project would need to be created, but they can be provided as an optional task. LSA will describe the existing visual character of the site and vicinity and identify potential changes to the visual setting in the project area, including installation of the proposed reader board sign on West Olive Avenue. Impacts of the proposed project on scenic vistas, scenic resources, and the visual character of the site and vicinity will be analyzed in this section. LSA will also summarize policies and regulations regarding visual resources. Potential impacts on visual resources will be evaluated including new sources of light and glare.

2. Agriculture and Forestry Resources

The project site is developed, is located in an urban area in the City of Merced, and is not used for agricultural or timber production. LSA will provide brief responses to the checklist questions for this topic.

3. Air Quality

LSA will prepare an air quality analysis for the proposed project in response to the Initial Study Checklist questions. The air quality analysis will include the following components: 1) assessment of baseline air quality in the area based on data from the San Joaquin Valley Air Pollution Control District (SJVAPCD) and California Air Resources Board (ARB); 2) quantitative assessment of project construction and operational impacts for Phase I, Phase II Alternative 1, and Phase II Alternative 2 using the California Emissions Estimator Model version 2016.3.2 (CalEEMod); and 3) recommendation of mitigation measures consistent with the SJVAPCD guidelines. LSA will also prepare the required assessment to address SJVAPCD's Rule 9510 (Indirect Source Review). Model output will be attached as a technical appendix.

4. Biological Resources

LSA will evaluate the biological resources present in the project area and determine project effects to those resources. A key objective of the evaluation will be to identify any special-status plant or wildlife species, or sensitive habitats that may be affected by the project. Based on a preliminary review of aerial photographs, the project area appears to be completely developed and does not support natural communities; therefore, it provides little to no habitat for special status plants or wildlife. Sensitive biological resources potentially occurring in the project area are likely limited to nesting birds.

- **Research/Coordination.** LSA will request a list of special-status species from the U.S. Fish and Wildlife Service (USFWS) and will query the California Natural Diversity Data Base (CNDDB) and California Native Plant Society (CNPS) Online Database.
- **General Field Survey.** LSA will conduct a pedestrian survey of the project to assess the potential for trees located on the project site to provide suitable nesting habitat.
- **Documentation.** The results of the field survey will be documented in the biology section of the IS/MND. The section will include a discussion of plant communities present on the site, as well as a discussion of common plant and animal species occurring (or expected to occur) on the site based on the communities present. Any sensitive biological resources identified will be mapped on an aerial photo exhibit. The section will document biological resources in the project area and evaluate potential project effects to biological resources, if any.

5. Cultural Resources

LSA will provide responses to the cultural and paleontological resources questions within the Initial Study Checklist using the findings identified in the Cultural Resources Memorandum prepared under Task B.

6. Geology/Soils

This section will summarize the site's potential for geologic impacts using the information available in the City's General Plan. This section of the Initial Study will include a discussion of potential seismic impacts including fault rupture, seismic shaking, ground failure, and landslides; the maximum expected earthquake on nearby active faults that would likely cause very strong seismic groundshaking at the project site; potential geotechnical impacts including unstable soils; and any potential impacts associated with slope instability. Mitigation for potential seismic and soils impacts could include compliance with the recommendations of the City's General Plan Policies, as applicable.

7. Greenhouse Gas Emissions

In response to the Initial Study checklist questions, LSA will evaluate the project's impacts on global climate change and greenhouse gas emissions. LSA will provide a quantitative assessment of greenhouse gas emissions Phase I, Phase II Alternative 1, and Phase II Alternative 2 associated with all relevant sources related to the project for which project data are available, including construction activities, vehicle emissions, energy consumption, and water usage using CalEEMod. In accordance with SJVAPCD guidance, LSA will prepare one operational CalEEMod run for the year 2005 to establish the business as usual operational emissions and another CalEEMod run for the year 2020 for each phase and alternative to determine if the project would meet the required 29 percent reduction in operational greenhouse gas emissions. LSA will also provide a qualitative assessment of the project's consistency with relevant plans and regulations, including the City's Climate Action Plan (October 2012). In addition, LSA will identify, where necessary, practical mitigation measures to reduce the project's short-term construction and long-term greenhouse gas impacts to the extent feasible.

8. Hazards/Hazardous Materials

Demolition of the existing structures and associated pavements, and excavation and grading of site soils could result in the release of hazardous materials at the site. Potential threats from hazardous materials and other hazards that could result from construction and operation of the proposed project will be evaluated. LSA will describe known and potentially hazardous materials issues in the project area and immediate vicinity based on information available in the City's General Plan. Review of information available on the State Water Resources Control Board's GeoTracker database indicates that, although there are no active hazardous materials cleanup sites located on the project site or in the project vicinity, on-site soil was contaminated and subsequently remediated resulting in a closed case. Other tasks will include a description of any potential project-related interference with emergency response or emergency evacuation plans and a description of local fire hazards.

9. Hydrology/Water Quality

LSA will describe potential impacts related to water quality, public water supplies, groundwater resources, groundwater recharge, flooding and erosion. LSA will reference any stormwater management plans (or similar plan) in response to the hydrology and water quality Initial Study Checklist questions. The current hydrologic setting for the project site will be further described, including the existing flooding and stormwater requirements and regulations. LSA will identify best management practices that would need to be implemented during construction and operation of the project to minimize potential erosion impacts. LSA will evaluate the efficiency of stormwater controls and best management practices for proposed as part of the project. Mitigation measures will be prepared, as needed, to reduce any impacts to less-than-significant levels, if feasible.

10. Land Use/Planning

The proposed project would include the expansion and redevelopment of an existing shopping center and would not change the existing use of the site. This section will evaluate the project's compatibility with surrounding land uses and discuss the project's consistency with applicable land use policies and regulations included in the City's General Plan and Zoning Ordinance that could lead to significant physical impacts. Applicable discretionary permits will also be identified in this section.

11. Mineral Resources

The City of Merced's General Plan states that the City does not contain any mineral resources that require managed production. LSA will provide brief responses to the checklist questions for this topic.

12. Noise

LSA will prepare a noise analysis for the proposed project, in response to the Initial Study Checklist questions. The noise analysis will include the following components: 1) a description of existing noise conditions in and around the project site; 2) quantitative assessment of noise impacts on sensitive receptors related to project construction and operation associated with Phase I, Phase II Alternative 1, and Phase II Alternative 2; and if required, 3) preparation of mitigation measures consistent with best practices.

13. Population/Housing

It is not expected that the proposed project would have any effect on population or housing. LSA will provide brief responses to the checklist questions for this topic.

14. Public Services

Operation of the proposed project would not likely result in a substantial increase in the demand for public services. LSA will work with City staff and fire and police service providers to determine if the proposed project would result in potential impacts to these services. No impacts to school services would result with development of the proposed project; this topic will be briefly discussed.

15. Recreation

The proposed project would not introduce new residential population to the area, and a substantial increase in the demand for park and recreational services is not anticipated with development of the proposed project. LSA will provide brief responses to the checklist questions for this issue topic.

16. Transportation/Traffic

In response to the Initial Study Checklist questions, LSA will summarize the findings of the TIA prepared under Task B.

17. Tribal Cultural Resources

As noted above under the Cultural Resources topic, LSA will consult the Sacred Lands File of the Native American Heritage Commission to determine if any known sacred or tribal cultural resources are located within the vicinity of the project site. Working with tribal data provided to LSA by the City, LSA will provide brief responses to the Tribal Cultural Resources Initial Study section checklist questions, assuming no tribal cultural resources are identified on the project site or within the immediate vicinity.

18. Utilities/Service Systems

Expansion and redevelopment of the project site is not likely to result in a substantial increase in the demand for utility services. LSA will describe the existing utility systems serving the project area and work with City staff to determine if the proposed project would require an expansion of existing infrastructure or facilities. This analysis will include relevant information from the City's General Plan and City staff. The Initial Study will recommend mitigation measures, if necessary.

19. Mandatory Findings of Significance

The Initial Study's environmental checklist will conclude by responding to this series of questions as set forth in Appendix G of the CEQA Guidelines. In regards to the potential for cumulative impacts, LSA will coordinate with City staff in regards to identifying other past, current and probable future projects that could, in connection with the project, create cumulatively considerable impacts, and will also rely on information from the traffic analysis regarding cumulative conditions.

TASK D: INITIAL STUDY

LSA will prepare three drafts of the Initial Study: an Administrative Draft, a Screencheck Draft, and a Public Review Draft. The Final Initial Study/Mitigated Negative Declaration (IS/MND) will include responses to comments, as necessary, and a Mitigation Monitoring and Reporting Program (MMRP), as described below.

1. Administrative Draft

Using the setting and analysis prepared under Task C above, LSA will prepare an Administrative Draft Initial Study with the following components. Figures and tables will be provided as appropriate to illustrate the project site, the proposed project and the study's findings.

- Project Description
- CEQA Environmental Checklist Form
- Mandatory Findings of Significance
- Contacts and Bibliography
- Mitigated Negative Declaration
- Draft Traffic Impact Analysis
- Draft Cultural Resources Study

The Administrative Draft Initial Study will be provided to the City for review and comment. It is assumed that the City will review and consolidate all internal comments before they are submitted to LSA. LSA will provide up to five (5) paper copies and one electronic version in MS Word and PDF formats for review by City staff.

2. Screencheck Draft

Based on a single set of consolidated and non-contradictory comments from City staff, LSA will amend the Administrative Draft IS/MND and will prepare a Screencheck Draft IS/MND for review. We have allotted time for responding to changes; however, if this task exceeds the cost allotted in the budget due to changes in project description or requests for additional analysis that are not necessary to prepare a legally-adequate document, a budget adjustment may be required.

LSA will provide up to five (5) paper copies and one electronic version in MS Word and PDF formats for review by City staff to verify that all requested changes have been made and all appendix materials, references, and final graphics are acceptable. LSA will also provide the City with an electronic compare version of the Screencheck Draft. This version will show text changes made to the Administrative Draft IS/MND in underline and strikeout for the City to more easily confirm that all comments and edits are fully incorporated into the Screencheck Draft.

3. Public Review Draft IS/MND

LSA will make any minor necessary revisions to the Screencheck Draft and prepare the public review IS/MND. Up to 30 hard copies, up to 75 CD copies in PDF format, and one copy of the document in MS Word format will be prepared. LSA will also prepare a Notice of Completion, in accordance with the CEQA Guidelines, and coordinate with the City to distribute the Draft IS/MND pursuant to CEQA and City review procedures.

4. Response to Comments Document

LSA will review public and agency comments received on the IS/MND during the 30-day public review period, and will prepare responses to CEQA comments in a memorandum format, as necessary. This scope and budget assume up to approximately 12 hours to prepare responses to

comments. Should an unexpectedly large volume of comments be submitted, LSA will request an adjustment in the budget to cover work beyond the assumed level.

5. Final IS/MND

Following completion of the Response to Comments Document, LSA will prepare a Final IS/MND that will incorporate all changes made to the Public Review Draft IS/MND. LSA will provide up to 30 hard copies, up to 50 CD copies in PDF format, and one copy of the document in MS Word format.

6. Mitigation Monitoring and Reporting Program

LSA will prepare a Mitigation Monitoring and Reporting Program (MMRP) for all mitigation measures identified in the IS/MND. The MMRP will list mitigation measures that are recommended in the IS/MND and provide standards and timelines for monitoring these measures. Electronic copies of the final MMRP will be submitted to the City with the Response to Comments memorandum.

TASK E: MEETINGS

Amy Fischer and Kyle Simpson will be available throughout the environmental review period to meet with the City to gather information, review progress, review preliminary findings, discuss staff comments, offer input into discussions on project modifications, and consult on CEQA procedural matters. The cost estimate includes attendance by Amy and/or Kyle at the following meetings: project start-up meeting under Task A, one additional in-person meeting with City staff and the project team, and attendance at up to two public hearings under this task. This scope also assumes up to three teleconferences of approximately one hour.

Attendance at any additional team meetings or public hearings is not included in this scope of work or in the cost estimate shown in Table 3. Attendance at any additional meetings can be billed on a time and materials basis.

TASK F: PROJECT MANAGEMENT

Amy and Kyle will undertake a variety of general project management tasks throughout the Initial Study preparation period. Amy will provide input on the scope, budget, contract negotiations and management, and scheduling of the project, and will be responsible for the overall quality of all work undertaken. She will also be available for consultation on CEQA procedural matters as well as application of the CEQA Guidelines to this project.

Kyle will coordinate the day-to-day activities associated with the project. This will include regular client contact, oversight of team members, schedule coordination, and development of products. He will also provide direction to all team members that will ensure an internally-consistent, coherent document. Amy and Kyle will review all in-house prepared text, tables, and graphics before these materials are presented to the City as administrative review documents.

2. SCHEDULE

The preliminary work schedule for preparation and completion of the environmental review process is shown in Table 2. LSA will finalize the schedule, including deliverable dates with the City once we are authorized to proceed and once preliminary development plans and all requested background materials listed in this scope of work are provided by the applicant team. Please note that this preliminary timeline is aggressive, yet flexible, and we are happy to work with the City to adapt the schedule to fit ongoing priorities and scheduling.

Table 2: Preliminary Schedule

Milestone	Responsible Party	Duration a	Cumulative Week
Notice to Proceed	City	–	–
Project Start-Up Meeting	City/LSA	1 week	1
Draft Project Description ^b	LSA	2 weeks	3
City Review of Draft Project Description	City	2 weeks	5
Prepare Technical Studies	LSA	3 weeks	8
Review Technical Studies	City	2 weeks	10
Prepare Administrative Draft IS/MND	LSA	6 weeks	16
Review Administrative Draft IS/MND	City	4 weeks	20
Prepare Screencheck Draft IS/MND	LSA	2 weeks	22
Review Screencheck Draft IS/MND	City	2 weeks	24
Prepare and Publish Public Review Draft IS/MND	LSA	1 week	25
<i>30-Day Comment Period</i>	–	30 days	29
Prepare Admin. Draft Response to Comments Memo and MMRP	LSA	1 week	30
Review Admin. Draft Response to Comments Memo and MMRP	City	1 week	31
Prepare and Distribute Final Response to Comments and MMRP	LSA	1 week	32
Final MND Adoption	City	>10 days	34

^a Number of days refers to business days excluding weekends and holidays

^b Assumes that all requested project information and materials received within 1 day of start-up meeting

3. COST ESTIMATE

For completion of the proposed scope of services within the schedule set forth in this proposal, the LSA team has provided a preliminary cost estimate in the form of a spreadsheet that details tasks by assigned personnel (see Table 3).

The estimated cost of the LSA team's labor and direct expenses is \$73,045. We have also identified a contingency amount of 5 percent of the total budget (\$3,700). The amount would not be used without written authorization from the City. With the contingency amount the total contract would be \$76,745. As you review the proposal and compare the work scope with the line item budget, if you find that there are ways of economizing or believe that expansions are needed, we would be glad to discuss suggestions for modifying both scope and budget.

Table 3: Cost Estimate for the Merced Mall Expansion and Redevelopment Project

LABOR COSTS												
	Principal (Fischer)	Project Manager (Simpson)	Planner (Carlucci)	Principal, Biological Resources (Bray)	Wildlife Biologist (Williams)	Senior Cultural Resources Manager (Vallaire)	Cultural Resources Analyst (Falke)	Principal, Transportation (Wilhelm)	Associate/Transportation (Arizabal)	Assistant Planner, Transportation (Yahata)	Document Management, Graphics and Production (Staff)	Team Total
Hourly Rate:	\$190	\$160	\$95	\$195	\$110	\$130	\$90	\$220	\$150	\$90	\$115	
Task A. Project Initiation												
(1) Start-Up Meetings/Site Visit	4	4										\$1,400
(2) Data Gathering and Evaluation	1											\$190
(3) Project Description	2	8	8								5	\$2,995
Subtotal for Task A	7	12	8	0	0	0	0	0	0	0	5	\$4,585
Task B. Technical Studies												
(1) Cultural Resources Memorandum	1					16	40				3	\$6,215
(2) Traffic Impact Analysis	2							14	26	132	16	\$21,080
Subtotal for Task B	3	0	0	0	0	16	40	14	26	132	19	\$27,295
Task C. Conduct Environmental Analysis												
(1) Aesthetics		1	2									\$350
(2) Agriculture and Forestry Resources		1	1									\$255
(3) Air Quality	6		24									\$3,420
(4) Biological Resources		1		6	24						7	\$4,775
(5) Cultural Resources	2	1					5					\$990
(6) Geology and Soils		2	4									\$700
(7) Greenhouse Gas Emissions	2		16									\$1,900
(8) Hazards and Hazardous Materials		6	4									\$1,340
(9) Hydrology and Water Quality		4	2									\$830
(10) Land Use and Planning		2	4									\$700
(11) Mineral Resources		1	2									\$350
(12) Noise	2		8									\$1,140
(13) Population and Housing		1	2									\$350
(14) Public Services		2	4									\$700
(15) Recreation			1									\$95
(16) Transportation/Traffic		2	5									\$795
(17) Tribal Cultural Resources		1	4									\$540
(18) Utilities and Service Systems		2	4									\$700
(19) Mandatory Findings of Significance		2	1									\$415
Subtotal for Task C	12	29	88	6	24	0	5	0	0	0	7	\$20,345
Task D. Prepare Initial Study/Mitigated Negative Declaration												
(1) Administrative Draft IS/MND	4	8	2								6	\$2,920
(2) Screencheck IS/MND	2	4	6								3	\$1,935
(3) Public Review Draft IS/MND	2	2	1								6	\$1,485
(4) Response to Comments Document	2	8	2								2	\$2,080
(5) Final IS/MND	2	4	4								6	\$2,090
(6) Mitigation Monitoring and Reporting Program	1	1	2								1	\$655
Subtotal for Task D	13	27	17	0	0	0	0	0	0	0	24	\$11,165
Task E. Meetings												
Subtotal for Task E	4	12	0	0	0	0	0	0	0	0	0	\$2,680
Task F. Project Management												
Subtotal for Task F	4	12	0	0	0	0	0	0	0	0	0	\$2,680
TOTAL LABOR	43	92	113	6	24	16	45	14	26	132	55	\$68,750
DIRECT COSTS												
(1) Travel, Deliveries, Communication												\$145
(2) Maps; Plans; Reports; Database Searches												\$550
(3) Traffic Counts												\$3,100
(4) Printing and Graphic Reproduction												\$500
TOTAL DIRECT COSTS												\$4,295
TOTAL LSA TEAM BUDGET												
TOTAL LSA TEAM BUDGET (WITHOUT CONTINGENCY)	\$73,045											
CONTINGENCY FUNDS												
CONTINGENCY AT 5 PERCENT	\$3,700											
TOTAL LSA TEAM BUDGET WITH CONTINGENCY												
TOTAL LSA TEAM BUDGET (WITH CONTINGENCY)	\$76,745											

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT is made and entered into this _____ day of _____, 2018, by and between the City of Merced, a California Charter Municipal Corporation (“City”) and Merced Mall, LP, a California Limited Partnership, whose address of record is 3510 Unocal Place, Suite 300, Santa Rosa, California 95403 (“Developer”).

WHEREAS, Developer desires to expand and redevelop the Merced Mall on approximately 52 acres, generally bound by M Street on the east, West Olive Avenue on the south, R Street on the west, and Loughborough Drive on the north (hereinafter referred to as the “Project”); and

WHEREAS, Developer desires to reimburse City for all of the costs and expenses associated with assessing the environmental impacts of said Project.

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

1. REIMBURSEMENT. Without regard to the outcome or adequacy thereof, and without offset for any reason, Developer agrees to reimburse City for all of the fees, costs, and expenses of a certain contract entered into or to be entered into between City and LSA Associates, Inc. (the “Consultant”) relating to the environmental review of the proposed Project. It is understood that City would not have engaged Consultant had Developer not made an express promise and guarantee to pay the fees, costs, and expenses related thereto.

A. With regard to the aforementioned contract with Consultant, Developer shall reimburse the City the sum of Seventy-Six Thousand Seven Hundred Forty-Five Dollars (\$76,745.00) as follows: (a) the sum of Twenty Thousand Dollars (\$20,000.00) upon execution of this Agreement; (b) the sum of Twenty Thousand Dollars (\$20,000.00) within thirty (30) days of execution of this Agreement; (c) the sum of Twenty Thousand Dollars (\$20,000.00) within sixty (60) days of execution of this Agreement; and (d) the sum of Sixteen Thousand Seven Hundred Forty-Five Dollars (\$16,745.00) within one hundred twenty (120) days of execution of this Agreement. In the event the foregoing amount (\$76,745.00) is amended or otherwise adjusted in the contract with the Consultant, Developer agrees to similarly amend its reimbursement obligation hereunder with the intent that the City will at all times be reimbursed for all the fees, costs, and

expenses under said contract with the Consultant. In the event the contract with the Consultant terminates, the Developer will only be responsible for its pro-rata share of the Consultant's cost to the date of the termination.

B. In addition to the Consultant time spent on preparing the environmental document, City staff will spend considerable time administering the Consultant contract. Under City Council Resolution #98-31, also known as the "Planning and Development Fee Schedule," the management fee for environmental review reports is ten percent (10%) of the cost. Pursuant to said Schedule, the Development hereby agrees to deposit upon the mutual execution of this Agreement, the additional sum of Seven Thousand Six Hundred Seventy-Four Dollars and Fifty Cents (\$7,674.50) to be applied toward the cost of City staff time administering the preparation of an environmental document by the Consultant. The Developer may request periodic statements from the City's Finance Department itemizing costs applicable toward the deposit. All costs over and above the initial deposit are due and payable prior to the final Planning Commission/City Council action on the Project.

2. The Developer acknowledges that the above-referenced contract with Consultant is being entered into by City as an accommodation to the Developer to facilitate evaluation of the Developer's Project and does not guarantee any particular result or outcome. The Developer further acknowledges and agrees that it shall have no control over the work product of Consultant, and that its payment of the above sums is not dependent thereon. The Developer also acknowledges and agrees that failure of the Developer to make payments when due shall be grounds for City to suspend work and/or cancel said contract.

3. The Developer reserves the right to provide a performance bond on behalf of Consultant, subject to Consultant's consent, and at the Developer's sole expense.

4. The Developer shall have the right to utilize the reports and work product of Consultant in connection with the proposed Project.

5. No application for any project from the Developer shall be considered for approval until the above-referenced contract with Consultant is completed. Nothing herein is intended to suggest any result upon the hearing of any such application thereon. The City retains its authority to grant, deny, or condition any and all projects and applications.

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

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

8. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns.

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

10. If any portion of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

11. This Agreement constitutes the complete, entire, exclusive, and final agreement and understanding between the parties as to the subject matter herein, superseding all negotiations, prior discussions, and preliminary agreements or contemporaneous understandings, written or oral.

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

13. This Agreement may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

///

///

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.


CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____
City Manager

ATTEST:
STEVE CARRIGAN, CITY CLERK

BY: _____
Deputy City Clerk

APPROVED AS TO FORM:

BY:  4-4-2018
City Attorney Date

ACCOUNT DATA:

BY: _____
Verified by Finance Officer

{Signatures continued on next page.}

DEVELOPER
MERCED MALL, LP,
A California Limited Partnership
By: MERCED MALL, LLC,
A California Limited Liability Company
Its: General Partner
By: CODDING ENTERPRISES, LP,
A California Limited Partnership
Its: Sole Member
By: CODDING INVESTMENTS, INC.,
A California Corporation
Its: General Partner

BY: 
Leory Knibb

ITS: Vice President

Taxpayer I.D. No. 94-2379331

ADDRESS: 3510 Unocal Place, Ste. 300
Santa Rosa, CA 9540

TELEPHONE: 707-978-5800

FAX: 707-623-9469

EMAIL: leroyk@coddington.com



ADMINISTRATIVE REPORT

Agenda Item L.2.

Meeting Date: 5/7/2018

Report Prepared by: Frank Quintero, Director of Economic Development

SUBJECT: Results of the Property Owner Polling for Industrial Park Study Area #7 Completed by Quad Knopf, Inc.

REPORT IN BRIEF

Quad Knopf consultants interviewed property owners within Study Area #7 about transitioning their land into an Industrial Park, and prepared a report with the findings.

RECOMMENDATION

Provide an informational update to the City Council and receive direction on continuing with the Industrial Park Study Area #7 project.

AUTHORITY

City of Merced, Municipal Code, Section 200.

CITY COUNCIL PRIORITIES

Merced Budget Fiscal Year 2017-2018, Economic Development, Section 7, Objective #2, "Proceed with the necessary steps towards development of a new local and/or regional industrial park."

DISCUSSION

The City of Merced contracted with Quad Knopf Inc. to poll the property owners in Industrial Park Study Area #7 about transitioning their property into a future industrial park. The consultants reached out to the property owners via mail and telephone from mid-February 2018, and continued into early April 2018. A neighborhood meeting was held on March 15, 2018.

The subject area consists of ±1,267 acres with parcel sizes ranging from one-acre to more than 165-acres. There are 26 property owners within the study area, and 23 responded to the poll (88.5%). The 23 owners collectively own 1,173 acres of Study Area #7 (92.6%). The results of the public outreach to the owners are contained in the attached report.

Unless directed otherwise by the City Council, staff will continue to seek funding from sources such as the Economic Development Administration to proceed with the LAFco recommended General Plan Amendment/Specific Plan and environmental review for a Sphere of Influence (SOI) amendment.

ATTACHMENTS

1. Public Outreach - Area 7 Industrial Park Report

PUBLIC OUTREACH

**CITY OF MERCED
AREA 7 INDUSTRIAL PARK**

Prepared for:

City of Merced
Economic Development Department
678 W. 18th Street
Merced, CA 95340
Contact: Frank Quintero, Director

Consultant:



2816 Park Avenue
Merced, CA 95348
Contact: Desmond Johnston, AICP, Project Manager
Phone: (209) 723-2066

April 27, 2018

Table of Contents

<i>SECTION 1 - INTRODUCTION.....</i>	<i>2</i>
1.1 - Purpose of the Study.....	2
1.2 - Location of Plan Area.....	2
1.3 - LAFCo Input.....	3
<i>SECTION 2 - Stakeholder Outreach.....</i>	<i>4</i>
2.1 - Outreach Approach	4
2.2 - Phone Interviews and Mailer Responses.....	4
<i>SECTION 3 - Neighborhood Outreach</i>	<i>7</i>
3.1 - Advertising the Meeting	7
3.2 - Outreach Meeting Summary	7
<i>SECTION 4 - Conclusion.....</i>	<i>8</i>

Appendices

- A. Project Schedule**
- B. Letter to Property Owners**
- C. Narrative Summary of Interview Responses**
- D. List of Interview Questions**
- E. Neighborhood Outreach Meeting PowerPoint**
- F. Neighborhood Outreach Meeting Notes**
- G. Neighborhood Outreach Meeting Comment Cards**

SECTION 1 - INTRODUCTION

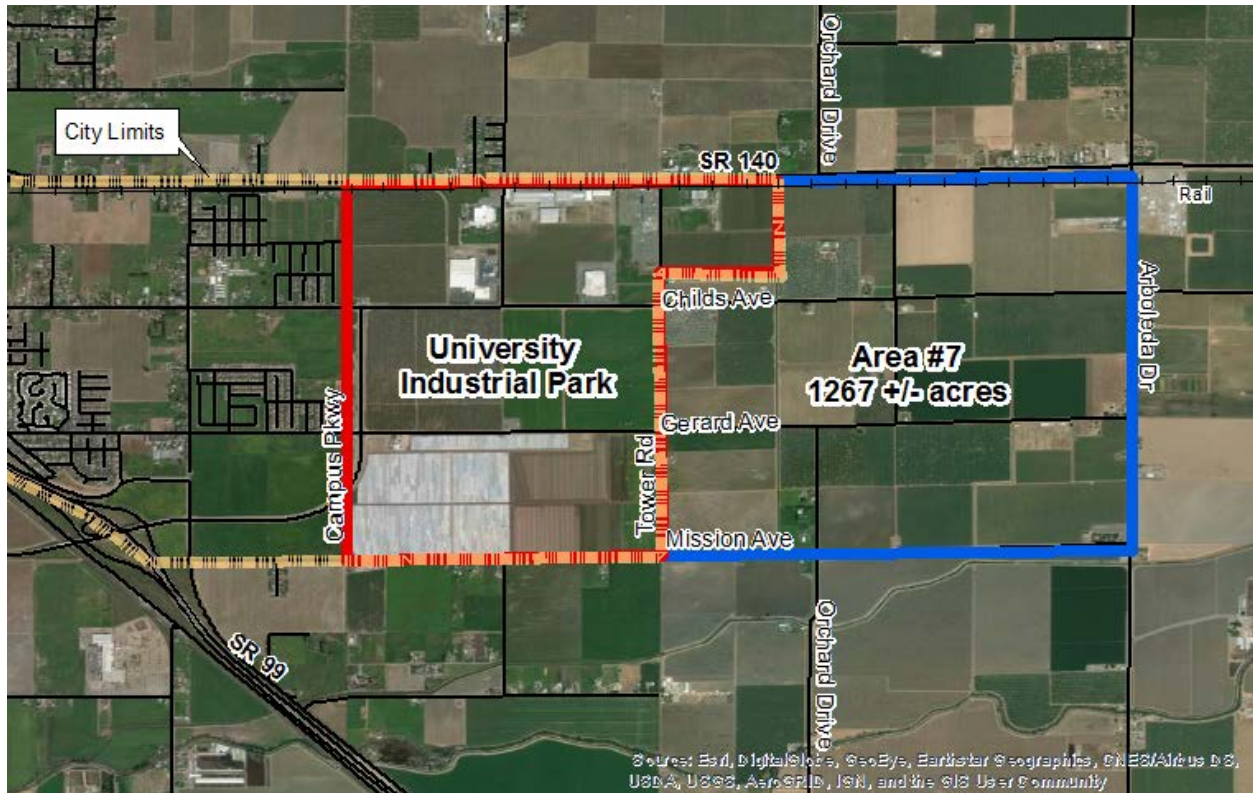
1.1 - Purpose of the Study

The City of Merced selected QK to provide professional planning services to conduct community outreach to the property owners and other interested stakeholders for the purpose of potentially annexing land for a future industrial park on the City's south side next to University Industrial Park and acceptance of a preferred site by the community. A report had been prepared by Chabin Concepts in May of 2017 to identify an area of the City that would be deemed most appropriate for needed industrial land; and, as a result of that study, the City Council selected the 1,267-acre Area 7 as the most suitable contiguous set of parcels for industrial development. QK was hired to move forward with the next step in the process – Community Outreach – by conducting interviews with stakeholders and presenting the background, benefits, and vision of the preferred site to the community. Planning services began on January 24, 2018 and ended with this summary report. Interviews were conducted primarily in mid-February and continued into April in order to reach as many property owners as possible, since some owners were away or live out-of-state. A neighborhood meeting was held on March 15. A timeline of planning activities is located in Appendix A of this document.

The City currently lacks a strong industrial base and the employment opportunities that it brings. The unemployment rate of Merced (9.2%) is much higher than the State's average of 4.2%. The median household income is 29% lower than the State's average. The City is anxious to find a site for industrial development since other industrial parks, Western and Airport Industrial Parks, are over 75% developed, and University Industrial Park has impediments to development. With an appropriate site, the City wants to attract a variety of industries including research and technology, warehousing and distribution, biotechnology, renewable energy, telecommunications, incubator businesses, ag-related industries, and more.

1.2 - Location of Plan Area

The parcels are in an area outside the city limits, but adjacent to the existing University Industrial Park located south of SR 140, west of Arboleda Drive, north of Mission Avenue, and east of Tower Road. The site has access to State Route 99, located 1.6-miles to the west, and is less than five miles to downtown Merced. In addition, the preferred site has access to rail.



Area 7 Location Map.

1.3 - LAFCo Input

In conjunction with any public outreach to the community, the City wanted to weigh the potential for annexation of the preferred parcels into the City with LAFCo. Scott McBride, City of Merced Community Development Director, met with LAFCo Executive Director, Bill Nicholson, on March 6, 2018 to explain City's objective, why Area 7 was chosen, and that this was a preliminary inquiry as to how the City should proceed. After discussion about the requirements of LAFCo, Mr. Nicholson focused on the process that he recommended.

1. The City should propose a General Plan/Specific Plan with text and plan amendments to more firmly define the purpose, infrastructure, buildout, etc, of the proposed site.
2. Include an environmental review for a Sphere of Influence (SOI) amendment. It would likely include agricultural land mitigation also based on recent actions and policies with Merced LAFCo.

In the end, Mr. Nicholson seemed receptive to the project as long as it followed all appropriate processes including necessary planning exercises that would be undertaken by the City.

SECTION 2 - STAKEHOLDER OUTREACH

2.1 - Outreach Approach

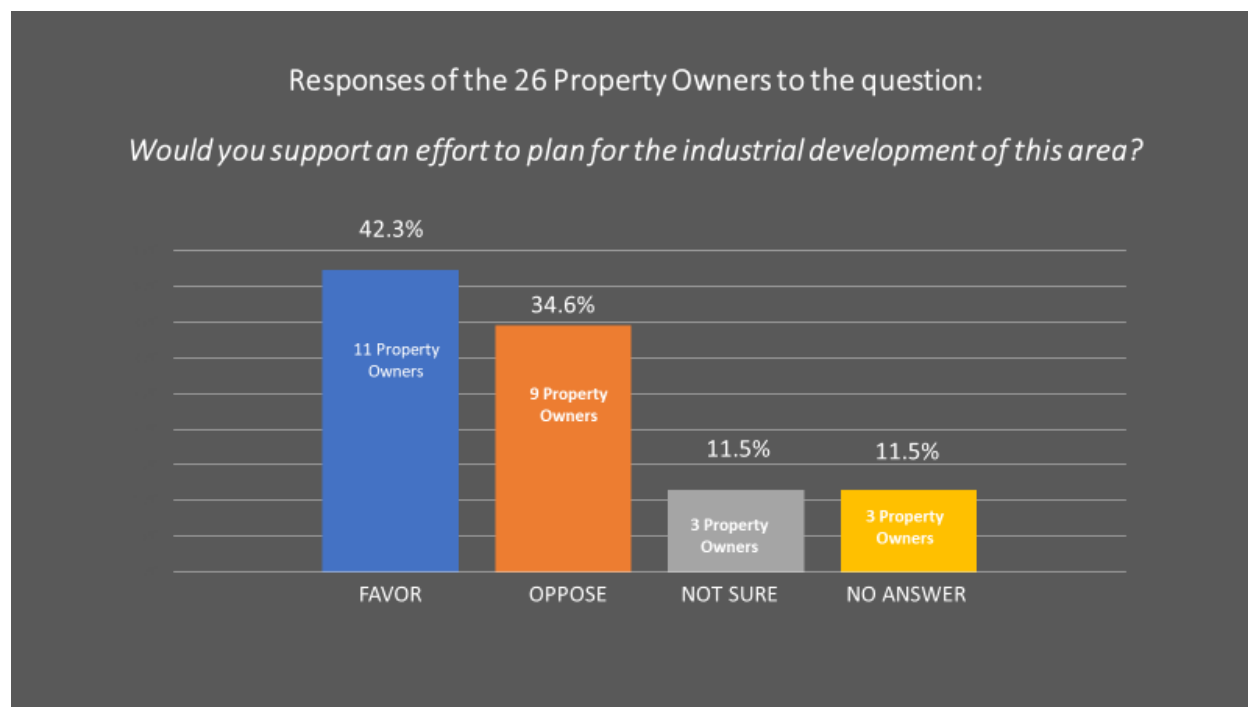
The first step in the outreach process was to identify the list of property owners within Area 7 and their contact information. This list was compiled from County of Merced property tax records and reflected the ownership at the last property tax roll compilation done by the County of Merced. Common ownership among some of the parcels was identified and a new listing was run. QK initiated research through various databases and community to identify telephone numbers for property owners, as telephone numbers are not part of the property tax database. Telephone outreach to all the owners was initiated and included at least 3 attempts to reach them. Messages were left with several call-back options available. In addition, the City mailed letters to property owners notifying them of the City's potential interest in Area 7 for an industrial park. A copy of the letter is located in Appendix B of this document.

2.2 - Phone Interviews and Mailer Responses

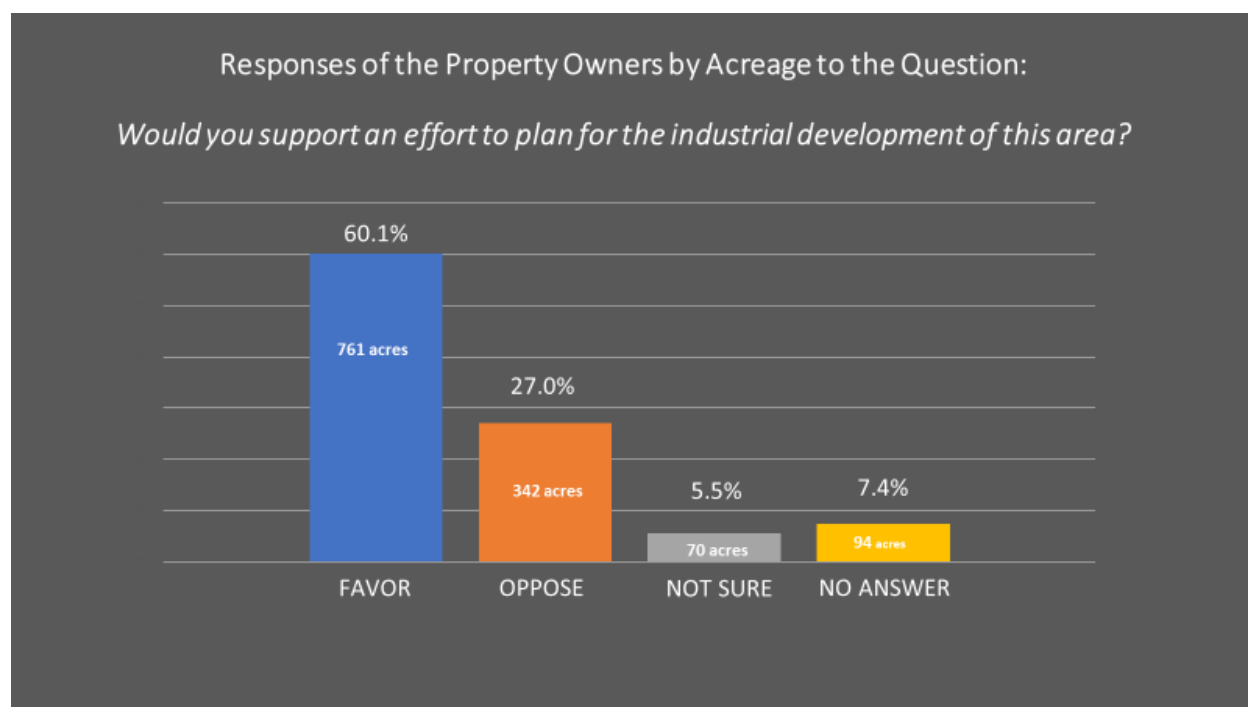
QK prepared a list of six core survey questions that were reviewed and approved by the City. The stakeholder interviews were conducted initially from February 13 to 15 but continued through March and into April with several attempts, until 23 of the 26 property owners were reached by phone or in writing. The questions sought their thoughts for a vision for their property and the city; personal goals; concerns and issues; and, other ideas they might have.

The list of interview questions is in the Appendix C of this summary report. A final summation opportunity was provided to property owners that invited any additional thoughts or comments. Notes of these discussions are provided in Appendix D of this report.

The following graph depicts a visual summary of the opinions offered by the twenty-six property owners to the question, *"Would you support an effort to plan for industrial development of this area?"*



When viewed from the standpoint of representative acreage owned, the following graph depicts a summary of the same question, “*Would you support an effort to plan for the industrial development of this area?*”



Several caveats must be stated about the input collection process. While every attempt was made to cover all the items in the questionnaire with each property owner, interviews often didn’t proceed in a clearly ordered or planned fashion. Many property owners had questions that needed

to be addressed before they would express opinions, and others offered immediate and or extensive comments that addressed later questions on the survey. Still others offered some immediate responses; but, did not offer a specific response to other questions. Many desired to attend the public meeting to ask questions and respond in person.

The information from the interviews is presented in narrative fashion in the Appendix D of this document. It is not a verbatim transcription, but a summary that attempts to accurately capture the intent of each respondent. In a few instances respondents requested confidentiality be maintained by not including specific information provide that might identify them to readers of the report.

Many of the property owners had owned their land for more than a decade (10 to 35 years) and wanted to remain as farmers. They viewed farmland in this area as an asset. Some moved to this area to enjoy living in a rural setting. Others wanted to see economic growth, more jobs created, and stated that long-term change was inevitable, especially when considering a twenty- to thirty-year growth plan. They also felt that new development needed to be well-planned. Some viewed their property as a long-term investment and would be willing to accept a higher value for their farm land than current and future agricultural use would bring.

Profile of Survey Property Owner Roll – Industrial Area #7

- The area contains 47 separate parcels of property.
- The total acreage of the area is 1,267 acres.
- The parcels range in size from less than an acre to more than 165 acres.
- Uses are predominantly ag related, personal residences and some businesses.
- There are 26 owners of property within the area.
- Ten of the owners owned more than one parcel.
- Of the 26 owners in the area, 23 responded to the phone or written questions (88.5%)
- These 23 owners collectively own 1,173 acres of Area #7 (92.6%)

SECTION 3 - NEIGHBORHOOD OUTREACH

3.1 - Advertising the Meeting

The City placed advertisements in two local newspapers, the Merced Sun-Star and the Merced County Times, notifying the public of a public meeting on Area 7 facilitated by QK, to present the need for a new industrial park, the preferred location, background history of the community, and to gather their input, ideas, and concerns for a future industrial park in their neighborhood.

3.2 - Outreach Meeting Summary

The meeting was held at the Pioneer Elementary School on a weekday evening for maximum participation by local residents. Pioneer is located 1.5 miles from Area 7. Facilitated by QK, other co-facilitators were the City Economic Director and the Community Development Director. Nearly two dozen local residents and stakeholders participated in the public meeting, including the Weaver School District superintendent and several board members. QK prepared a PowerPoint presentation (Appendix E) and sought questions and input from the community. Presenters emphasized that this would be a long-term effort of five to 20 years to become ready for industrial development, and that anyone who wishes to farm can continue farming. Following is a condensed summary of the comments received at the Neighborhood Outreach Meeting. A complete set of notes can be found in Appendix F.

- Residents expressed concern for the truck traffic that would result from the proposed development. The increased amount of traffic on both Childs Avenue and Campus Parkway were identified. There was concern for the safety of school children when truck traffic is added the roadways.
- Some wanted to see improvement to Childs Avenue as part of an overall plan.
- A site closer to the SR 99 was suggested. Others suggested that the City consider a site or sites west of SR 99.
- Concern for converting prime farmland to industrial use was expressed.
- The Weaver Union School District wanted to be included in any progress moving forward on the Area 7 industrial park.



The advertisement that appeared in the local newspapers.

- Some suggested that the City consider the site owned by Wal-Mart for an industrial park.
- Some suggested that the local dairies be converted to industrial use before prime farmland.
- Some are in favor of “new development in the area”.

Comment Cards

Neighborhood Outreach meeting attendees were invited to offer comments and questions at the meeting, and to fill out comment cards and insert them in a drop box additionally or if preferred. Four comment cards were completed, and the comments have been transcribed and attached to this report as Appendix G. Three of the comments expressed displeasure with the concept of industrial uses being established in the area, and one of the comments is supportive.

SECTION 4 - CONCLUSION

As shown in the graphs on Page 4 of this report, a majority of property owners indicate a favorable response to the Area 7 expansion of the University Industrial Park – 42.3% in favor versus 34.6% opposed. Further, in terms of land area owned, owners representing 60.1% of Area 7 favor a transition to industrial land use. Those in support of the industrial park did so for several reasons. While many enjoy farming as an interim use, their long-term goals were to find the highest economic use and value for their property knowing the industrial park is a long-term project. Others were in support of Merced’s need for additional employment and a strong industrial base.

Other attendees at the neighborhood outreach meeting, however, expressed varying levels of apprehension relating primarily to the loss of prime farmland, truck traffic, increased traffic overall, and a diminished pastoral setting.

APPENDICES

APPENDIX A
PROJECT SCHEDULE

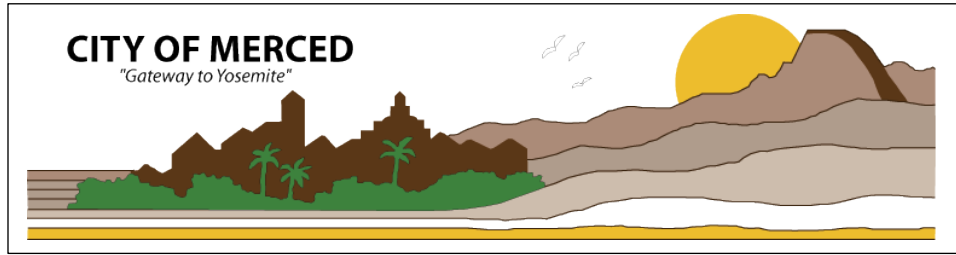
Merced “Area 7” Industrial Park Outreach Schedule

Task	Scope of Work Task	Date
1	Kick Off Meeting	Jan 24
2	Conduct Interviews	
	2a - City to provide QK with updated list of property owners	Jan 31
	2b - City staff to return draft List of Interview Questions w/comments to QK	Feb 7
	2c – QK and City to research to each gather phone #s for the list, and trade	Feb 7
	2d – City will mail out letter to property owners	Feb 8
	2e – QK makes interview calls to property owners	Feb 13-15
3	Neighborhood Meeting	
	3a – QK will prepare a flyer for newspaper and direct mailing	Feb 15
	3b – City will place newspaper ad twice (15 and 5 days in advance of Meeting)	Feb 27 & March 9
	3c – City will mail flyer to property owners and stakeholders	March 5
	3d – QK will provide draft PowerPt to staff for review	March 7
	3e – Presentation by QK to Neighborhood and stakeholders (Pioneer or Weaver school)	March 15
4	LAFCo Staff interview – City staff and QK will meet w/LAFCo director and summarize discussion	March 6
5	Report Completion – QK will provide outreach summary to City staff	April 30
	City staff to take Report to CC as information item	May 7

Updated 4/26/2018

APPENDIX B

LETTER TO PROPERTY OWNERS



Office of Economic Development (800) 723-4788 (209) 385-6827 Office (209) 723-1780 Fax

February 9, 2018

Re: Interview Regarding Industrial Park Study Area #7

Dear Property Owner:

The Merced City Council evaluated areas surrounding the City for future long-term growth of the community's industrial property base. Of the five areas recently studied, the City Council decided on an eastward expansion of University Industrial Park for further outreach and review as Merced's next long-term industrial growth region. The Industrial Park Study Area is bordered by Highway 140 to the north, Tower Road to the west, Arboleta Drive to the east, and Mission Avenue to the south.

As a property owner in this area, the City of Merced desires to collect input from you about these conceptual plans.

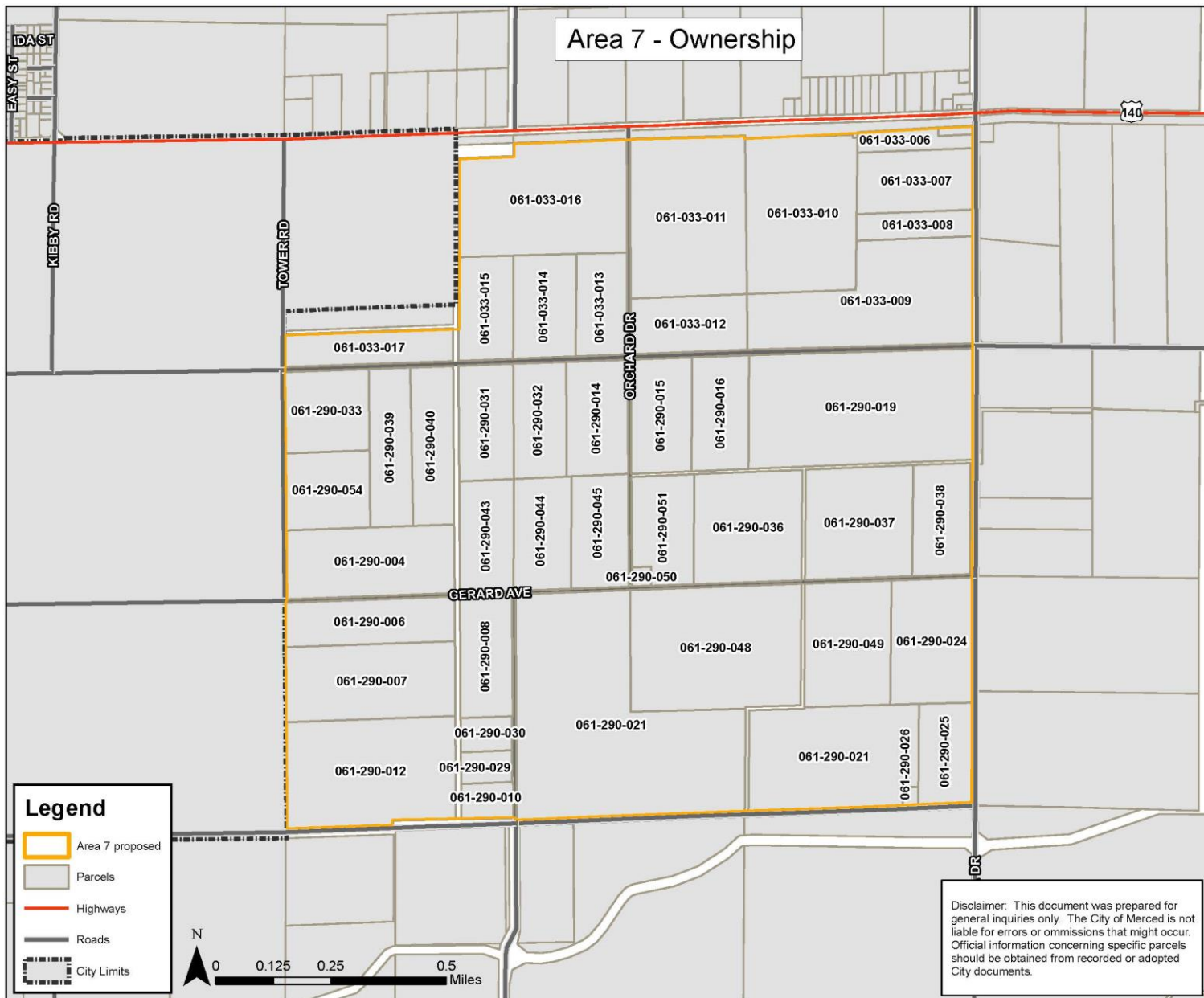
The long-term growth plans would direct future business growth towards the area identified on the attached map. The change in the area would be gradual (over many years), and requires extensive planning and public improvements before any changes could happen in the area. This long term planning effort would not require any changes to your individual property's current use.

The City of Merced contracted with QK, Inc., a professional planning and engineering firm with offices in Merced, to secure input from you about the future planning for your area. QK staff will be calling you in the near future, and would like speak with you for about 10 minutes about these ideas. Should you prefer to contact QK directly, please call John Quiring (209/723-2066) with your thoughts or questions. The City will also host an open house at a later date where you will have the opportunity to meet personally and discuss these plans.

Thank you for your assistance, and cooperation in advance.

Sincerely,

Frank Quintero, Director of Economic Development
City of Merced, (209) 385-6826



PARCEL	OWNER	ACRES
061-290-010	HAFLICH SHERYL I & ROBERT W	5.66
061-290-029	ENGLERT JOHN H & EDNA L TRUSTEES	4.92
061-290-030	CARTER GREG A & GLORIA A	5.29
061-290-012	MACHADO JOSEPH A & LAURA C TRUSTEE	54.20
061-290-025	SLATER NANCY PELLISSIER	16.47
061-290-007	CAMPOS FRANCES N TRUSTEE	38.50
061-290-006	MONTGOMERY LANG H	22.86
061-290-008	SLATER NANCY PELLISSIER TRUSTEE	19.21
061-290-048	SLATER NANCY PELLISSIER TRUSTEE	62.91
061-290-049	MONTGOMERY FARMS LP	32.36
061-290-024	SANCHEZ MANUEL V & MARY L	30.87
061-290-050	ALLEN PEGGY G & BRYAN A	1.11
061-290-004	CARDWELL RANCHES LP	35.00
061-290-043	VANWYHE JD & KATHY TRUSTEE	18.30
061-290-044	VANWYHE JD & KATHY TRUSTEE	19.55
061-290-051	ALLEN GEORGE T SR & LINDA M TRUSTEES	19.61
061-290-045	VANWYHE JD & KATHY TRUSTEE	19.42
061-290-036	ALLEN GEORGE T SR & LINDA M TRUSTEES	35.89
061-290-037	LEE DANIEL & LINDA Y	35.87
061-290-054	SANCHEZ YLDEFONSO V & MARY C TRUSTEES	19.75
061-290-033	HANSEN RONALD W & KATHRYN E TRUSTEES	20.82
061-290-039	HANSEN RONALD W & KATHRYN E TRUSTEES	20.16
061-290-040	HANSEN RONALD W & KATHRYN E TRUSTEES	20.12
061-290-031	FARNSWORTH JOHN T TRUSTEE	19.09
061-290-032	FARNSWORTH JOHN T TRUSTEE	18.34
061-290-014	EARLEY DONNA J TRUSTEE	21.23
061-290-015	MARTINELLI LEONARD & LINDA M TRUSTEES	20.92
061-290-016	VIANI LARRY J	19.57
061-290-019	VIANI LARRY J	76.46
061-033-017	PORTER NEIL W TRUSTEE	16.74
061-033-012	BARNELL THOMAS R & SARAH A TRUSTEES	19.65
061-033-015	KANG JAGTAR & KANG PREETPAL S	17.14
061-033-014	KANG JAGTAR & KANG PREETPAL S	19.58
061-033-013	MCCABE HEBERT LESLIE JR & ELIZABETH D TRUSTEES	15.74
061-033-009	ROCHA JOHN C & ANGELINA D TRUSTEES	56.44
061-033-008	CROP PRODUCTION SERVICES INC	9.42
061-033-007	VOJE INC	21.58
061-033-016	PEGUERO ALFRED & CLIPPER DEBORAH TRUSTEE	55.19
061-033-011	KLEIBER MICHAEL C & MOLLY DIANNA	55.62
061-033-010	ROCHA JOHN C & ANGELINA D TRUSTEES	51.90
061-033-006	VOJE INC	6.70
061-033-005	VOJE INC	0.92
061-290-021	SLATER NANCY PELLISSIER TRUSTEE	165.35
061-290-026	VILLANUEVA FERNANDO & VEGA-PERAL MARTHA ALICIA	0.86
061-290-038	No Data	19.32

City of Merced Industrial Park Study Area #7

APPENDIX C

NARRATIVE SUMMARY OF INTERVIEW RESPONSES

Merced Industrial Project – Property Owners Response Summaries

Owners Interview Collection Process Description:

A list of all property owners was identified within the 1267-acre area described as Industrial Park Study Area #7. This list was compiled from County of Merced property tax records and reflected the ownership at the last property tax roll compilation done by the County. Common ownership among some of the parcels was identified and a new listing was run. QK initiated research through various databases and community to identify telephone numbers for property owners, as telephone numbers are not part of the property tax database. Potential telephone numbers were identified for ___ out of ___ owners. Telephone outreach to all the owners was initiated and at least 3 attempts to reach them and leave messages was attempted with several call back options provided to the owner. In addition, ___ mailings were sent to each property owner of record.

A list of six core questions was developed with two additional questions for property owners who invited additional discussion. A final summation opportunity was included that invited any additional thoughts or comments.

Several caveats must be stated about the input collection process. While every attempt was made to cover all the items in the questionnaire with each property owner, interviews often don't proceed in a clearly ordered or planned fashion. Many property owners had questions that needed to be addressed before they would express opinions and others offered immediate and or extensive comments that immediately addressed later questions. Still others offered some immediate response but did not offer a specific response to one or more questions, as they desired to attend the public meeting to ask questions in person. All these responses are equally valid and useful to the goal which is to initiate and collect input from our targeted property owners.

The information from the interviews is presented in narrative fashion. It is not a verbatim transcription, but a summary that attempts to accurately capture the intent of each respondent. In a few instances respondent requested confidentiality be maintained by not including specific information provide that might identify them to readers of the report.

Profile of Survey Property Owner Roll – Industrial Area #7

- The area contains 47 separate parcels of property.
- The total acreage of the area is 1267 acres.
- The parcels range in size from less than an acre to more than 165 acres.
- Uses are predominantly ag related, personal residences and some businesses.
- There are 26 owners of property within the area.
- Ten of the owners owned more than one parcel.
- Of the 26 owners in the area, 23 responded to the phone or written questions (88.5%)
- These 23 owners collectively own 1173 acres of Area #7 (92.6%)

	YES	NO	AMBIVALENT or UNSURE	No Answer
Responses of 26 Property Owners - #	11	9	3	3
Responses of 26 Property Owners - %	42.3%	34.6%	11.5%	11.5%
Responses of Property Owners by Acreage - #	761	342	70	94
Responses of Property Owners by Acreage - %	60.1%	27.0%	5.5%	7.4%

Telephone Interview Responses

Response #1

PO had owned the property for more than 40 years and currently farmed various tree crops. He described himself as “older” who intended for the property to benefit his children.

PO described his goals as a businessman who valued his property as very good land but was open to changing it’s use to a higher value if it would benefit his family and be good for the community. PO expressed support for plans for potential change as long as it was well planned and the best place for future growth. PO felt that 20 years from now the community needed more job areas.

PO did not have any concerns at this time about special needs of the area or future changes. He added that his children and grandchildren needed more opportunities in the future and he would send a family member to the meeting.

Response #2

PO has owned the property for a few years, lives on-site and operates a small farm operation. PO described a very contentious experience in another community with a State agency which involved an eminent domain action. PO and I had an extensive discussion that addressed this concern.

PO stated that their goal for the property was to leave it as ag-based use and envisioned no change. They planned to operate their small farming operation indefinitely. PO stated they would not support any change to more urbanized use of any form. PO’s long-term concern for the area was encroaching urbanization and asked that their comments clearly underscored their desire to see the area remain rural in nature.

Response #3

PO and family has owned property within and around the area since the late 1960’s. PO stated that their goals were to continue to farm the property unless other opportunities presented through growth of the Merced area. In the meantime, they would continue with current use.

PO stated that they were very supportive of any plans to expand availability of sites for appropriate light industrial and business growth. He stated that he had no specific concerns but just wanted it planned well through responsible experts in planning for job center growth. PO had no further views on the area but asked to continue to be kept abreast of interest or plans for the area.

Response #4

PO stated that they have owned property in the area for several years and were committed to long-term farming. Their long-term goals were to continue farming and considered this an excellent area in which to pursue ag-related activity.

PO expressed that his only concern for the area involved encroachment of more urbanized uses into this area. He stated that he would not sell or develop his property for any other use. PO felt that ag use was the best opportunity for the area.

Response #5

PO stated that he has farmed and owns land both within the identified area as well as in areas outside of Area #7. He and his family have been in the area for over 35 years. He stated he also has other business interests unrelated to agriculture. His long-term goals are to manage his property for their best economic use.

PO stated that he would support any good plan for light industrial growth in the area and considers it a critical need for Merced's future. He stated that he believes there are many opportunities that have missed Merced as the community was unprepared and the City needed to invest in infrastructure to better plan for its' future. PO also stated that better coordination with the County needed to occur to prevent spotty commercial and industrial growth. PO stated that the proposed concept of a new job center was consistent with his vision for the area.

Response #6

PO stated that they had lived in the area for about 30 years and has a small ag use on their property also. Their long-term goals were to stay on the property in the current use. They also stated that they were uncertain of their thoughts on any proposed changes as they had not fully discussed the prospect of change in their area.

PO also stated that they felt change would inevitably happen in Merced as the City grew but they were not yet prepared to speak specifically to it as it relates to this area. They did believe that any future growth needs to be very well planned and have the support of the community. They did not have any further concerns but planned to attend any community meetings.

Response #7

PO stated that their enterprise had been in the area for over 35 years and its' current use was ag related. They had no long-term goals beyond the continued operation of their operation at this site. The PO stated that he didn't have a strong opinion either way about the development of the area. If their site ended up with a higher economic value than their current operation they would probably move to another nearby location.

PO indicated they perceived that long-term change in the area was inevitable. If the community envisioned a better or different direction they would accept that vision. Their only long-term concern would be to ensure that road infrastructure was well planned to support and accommodate planned development.

Response #8

PO stated that they had owned their property in the area between 15-20 years and currently had an ag use. They further stated that although they support ag, their long-term goal for the property was to get the highest use as an investment and hoped for some type of enhanced development for the area.

PO stated that they supported further consideration of the proposed industrial development concept for the area. They stated that they wanted it well planned, and supportive of the type of jobs that would be good for the Merced area. Their primary concern was the development of the correct infrastructure to support the long-term development and that this plan was consistent with their vision for the area.

Response #9

PO stated that their family had farmed in the area for three generations and continued to farm tree crops. The PO spoke highly of the property they farmed for its ag operations and quality of the soil. PO goals for their property would be to continue to farm in the long term as they were currently doing.

PO stated that their vision for the area was for it to continue as ag related. They stated they did not support development of the area outside of the City limits and that enough development of industrial and commercial uses had already occurred.

Response #10

PO stated that their family has farmed the area for about 30 years with tree crops. They also stated that their probable goals were to continue to farm but were not completely closed to considering other uses. They were not sure if they would support changes to the area but would need to discuss further among their family and partners before expressing a strong opinion about possible change.

The PO stated that while they are basically farmers, they support good growth for the City and realize the UC will add to some of the good growth for the area. They expressed some concerns about preserving property rights for owners as an important part of any future plans for the areas and making sure current property owners were not threatened with eminent domain issues like the HSR problems.

Response #11

PO stated that he had owned the property for about 10 years and farmed it currently in tree crops. He further stated that his long-term goal was to get the best investment return on the property as either ag or other use. PO further stated that he supports well planned growth and that if it led to better and more jobs he supported transitioning to other uses of the land he owned.

Response #12

PO stated that they had been farming between 15-20 years at this property with tree crops and the property had a small number of owners in its history. The PO stated their present use was planned to be continued and their goal was to do so into the long-term.

The PO owner stated they probably would not support long-term development plans for the area as they were concerned it would eventually impact their use of their own property. They valued the quality of the farmland and believe it to be an asset to the area. The PO thought the UC was a good enhancement to Merced and would cause some growth but hoped it would be in a different area. They did believe the labor pool needed more training for the good of the area.

Response #13

PO stated that they currently farmed the property and had for over 20 years. They stated that their long-term goal was to farm unless they could get better economic value for their property. They stated that they supported the expansion of the growth to this area as long as it was well planned and took advantage of the benefits of the UC.

The PO wanted to see the Campus parkway extended faster and to develop the infrastructure to support jobs in the area. He stated that Merced has all the advantages for positive growth of the economy and the City and County needed to build on that. He stated he believed this plan was consistent with his vision for the area.

Response #14

PO has owned the property for more than 10 years and the property is zoned for ag without any crops currently. PO plans to put crop in as an interim use but long-term goals are to find it's highest economic use in the next 10-20 years. PO stated he supported new plan for the area as long as it was well planned and supported good job growth. PO stated that the planning process should be very transparent to all the property owners if anything was pursued further for this Area #7. PO stated he would be interested in further information and hoped to attend the meeting.

Response #15

PO stated that they have resided at their site for more than 30 years and had no long-term plans to change. PO stated that the reason they moved to this area was for the rural nature of the area and did not support any further urbanization. PO wanted the land to remain agricultural and believed that further industrial development would generally be a negative factor in their quality of life. The PO expressed some concerns with flooding but did not provide any further specifics. They stated this plan was not consistent with their vision for the future of the area.

The PO contacted the consultant after the public meeting and asked for this specific statement to be made part of their response, and also submitted similar written responses to the questionnaire: *"We were at the meeting at Pioneer Elementary School Thursday, March 15. We would like to have our farm land preserved for agriculture and not industrial purposes. We would prefer to see any growth done on the West side Hwy. 99. More and more of Merced County's prime Ag land is being destroyed."*

Response #16

PO stated that they or their family had owned or farmed their property for many decades. They stated that while they loved farming, they supported change for the area and did not have a long-term goal to continue farming their property. Their vision for the area was to see it transition into an area that would support job creation in the community.

They further stated they wanted the City to be more aggressive, to not chase of business opportunities, to make sure non-contributors to economic growth were not attracted to the area and to help create better jobs.

Response #17

PO stated that they had been farming tree crops for a number of decades both inside the Area #7 and outside of the area. PO stated that their short-medium term goals are to continue farming and long term would be driven by economic conditions and opportunities. PO stated he was not against future growth of high quality economic development but needed to be well planned and support Merced's needs for employment. Also tied to the UC. He had no other specific concerns. PO stated that if area transitioned to business/industrial, the City would need to have strong standards for aesthetics and infrastructure and enforce them. PO could not attend public meeting but wanted to be actively involved if possible.

Response #18

PO stated that they had been farming for many years but declined to specify how long. They stated that they enjoyed farming and would continue to do so as long as it was practical. They preferred ag use for the area but would support industrial or commercial use for the area if they obtained better value for their property. They strongly stated that they hoped and would only support quality planning and hoped the UC would be a big part of the area's future. The PO did not have any specific ideas for what could be done for the area but just wanted good growth for Merced.

Response #19

PO stated that they owned the land for investment for a number of years and ag use was best use at this point. They stated they did not have a strong feeling about the eventual use of the property but would support more urban development as long as it was well done. They stated they wanted whatever development occurred to support the property values in the area and make sure it was done well. The PO declined to discuss their property or views any further.

Written Questionnaire Responses:

Four property owners were not reached by telephone but submitted written responses to the interview questions following their attendance at the public meeting.

Response #1

PO purchased several pieces of land to farm that they have owned since 1992. Both have pistachios orchards. PO stated their goal is to farm for the next 30 years. The believe this is farm land that should be left as it is and that there is a lot of un-developed industrial land already in this area. PO did not want someone building something next door that is industrial that prevents them from farming – spraying, harvesting, etc.

Response #2

PO stated they have lived and farmed over 50 years and their long-term goals are to have the property stay in family and farm. They do not support further development in this area and would prefer the property stay as it is as farmland. PO stated they do not believe the conditions will change enough to

support industrial development and it will only attract less desirable development. They would like the City to stop further consideration and focus only on other City issues such as crime, homelessness, fixing existing infrastructure and better retail and entertainment development. The PO cited Turlock as an example for further development.

Response #3

PO stated they have lived and farmed for 15 years, primarily almonds, Because of the location and its prime farm ground. Their long-term goal is to continue living here and growing almonds for profit and did not support a change in the area. They stated they would support it staying very similar to the way it looks now, but with the pot holes fixed. They felt this was a high value agricultural area that needs to be protected. They encouraged the City to find another area that isn't a high value farm land area and to clean up and reuse other areas first.

Response #4

The PO stated their family originally purchased in 1950's and has been passed down in the family and have farmed a pistachio orchard. Long-term they plan for retirement on the site and do not support expansion beyond Tower road. They stated this area looks good now and as existing agriculture they believe it needs to stay that way. They mentioned the soil is very good. They stated they do not support change in the area and Merced needs more improvement elsewhere.

APPENDIX D

LIST OF INTERVIEW QUESTIONS

Merced “Area 7” Property Owner Interview Questions

1. Do you live in and/or farm the parcel? Why did you acquire this land, how long have you owned it, and what is its present use?
2. What are your goals for this property? Are they short- to mid-term (5-10 years) or long term (10 – 20 years)?
3. Would you support an effort to plan for the industrial development of this area?
4. If you looked 20 years into the future, what would you like this area east of Merced to look like?
5. Is there one concern or issue that needs special attention?
6. What would you change, enhance, or add to this area if it is zoned industrial? What results would you hope to see from that change?

APPENDIX E

NEIGHBORHOOD OUTREACH MEETING POWERPOINT

City of Merced

Industrial Park Study Area 7

Neighborhood Outreach Meeting



Thursday, March 15, 2018

6:00-7:00pm

Pioneer Elementary School



Introductions

Frank Quintero: City of Merced

John Quiring: QK Public Outreach

Desmond Johnston, AICP: QK Project Manager



Background

Unemployment Rates*:

City of Merced: 9.2%

State of California: 4.2%



* As of December 2017; US Labor Department,
Bureau of Labor Statistics.



Background

Median Household Income*:

City of Merced: \$41,312**

State of California: \$67,739

**Note: 29% lower than State average.



* City-data.com.



Background

The City lacks a strong industrial base and the employment opportunities it brings.



Background

- City commissioned a study by DSG Advisors*/Chabin Concepts, Inc. in 2017.
- Looked at Merced “as seen over nearly 30 years viewed from the perspective of different industries, technologies, and Merced’s unique development forces.”
- The group looked at five sites in Merced County and narrowed the selection to two, and recommended Site #7.
- Today, we seek public input on preferred Site #7.



* An international corporate site selection firm.

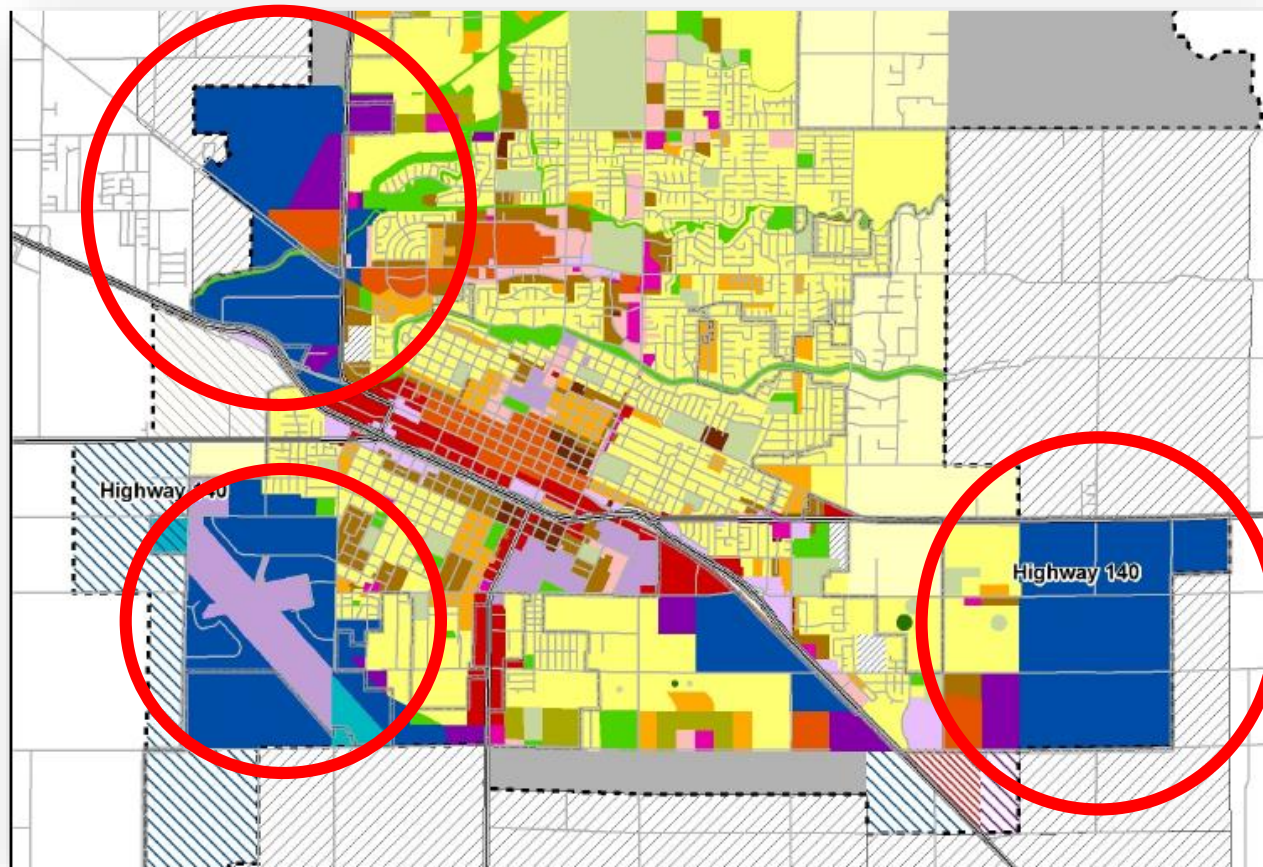


The City wants to attract:

- Ag-related Industries.
- Research and Technology.
- Warehousing and Distribution.
 - Biotechnology.
 - Telecommunications.
 - Renewable Energy.
- Start Up and Incubator Businesses.
 - More

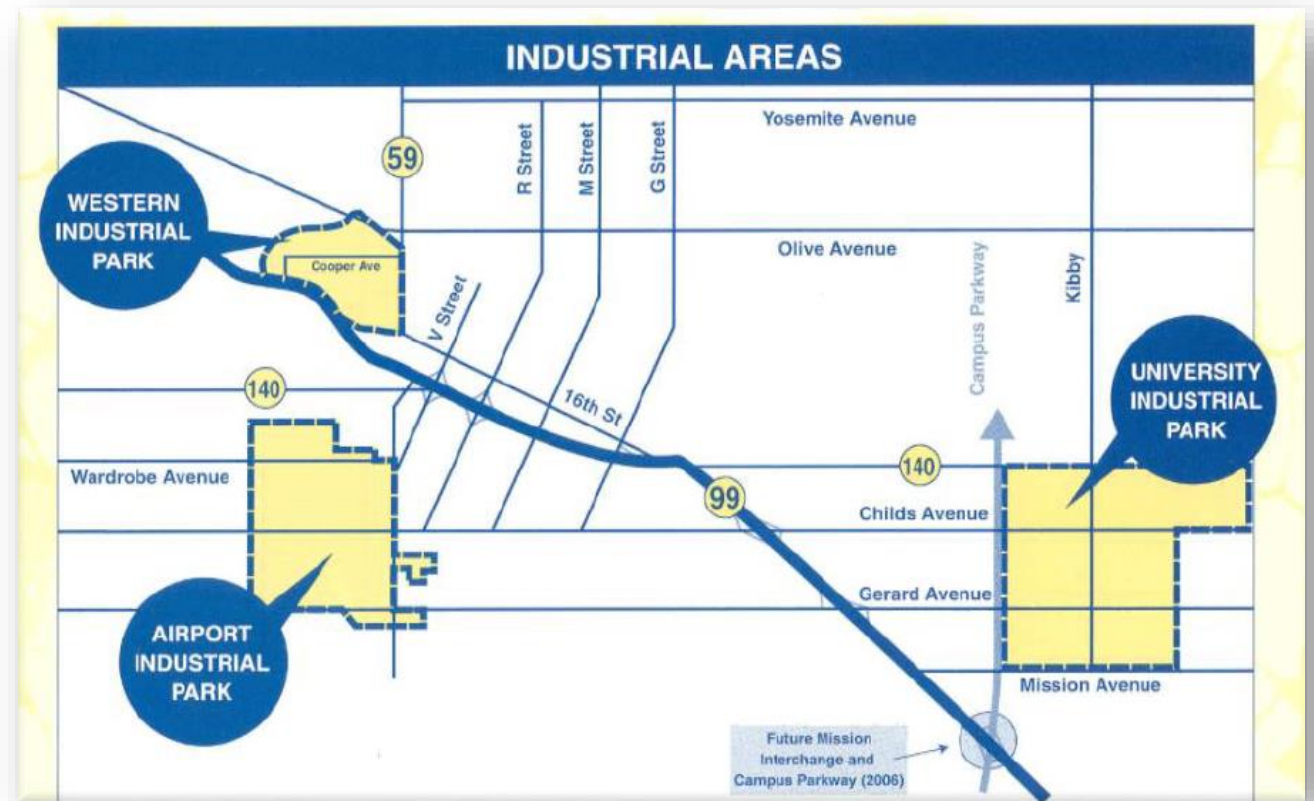


General Plan Map

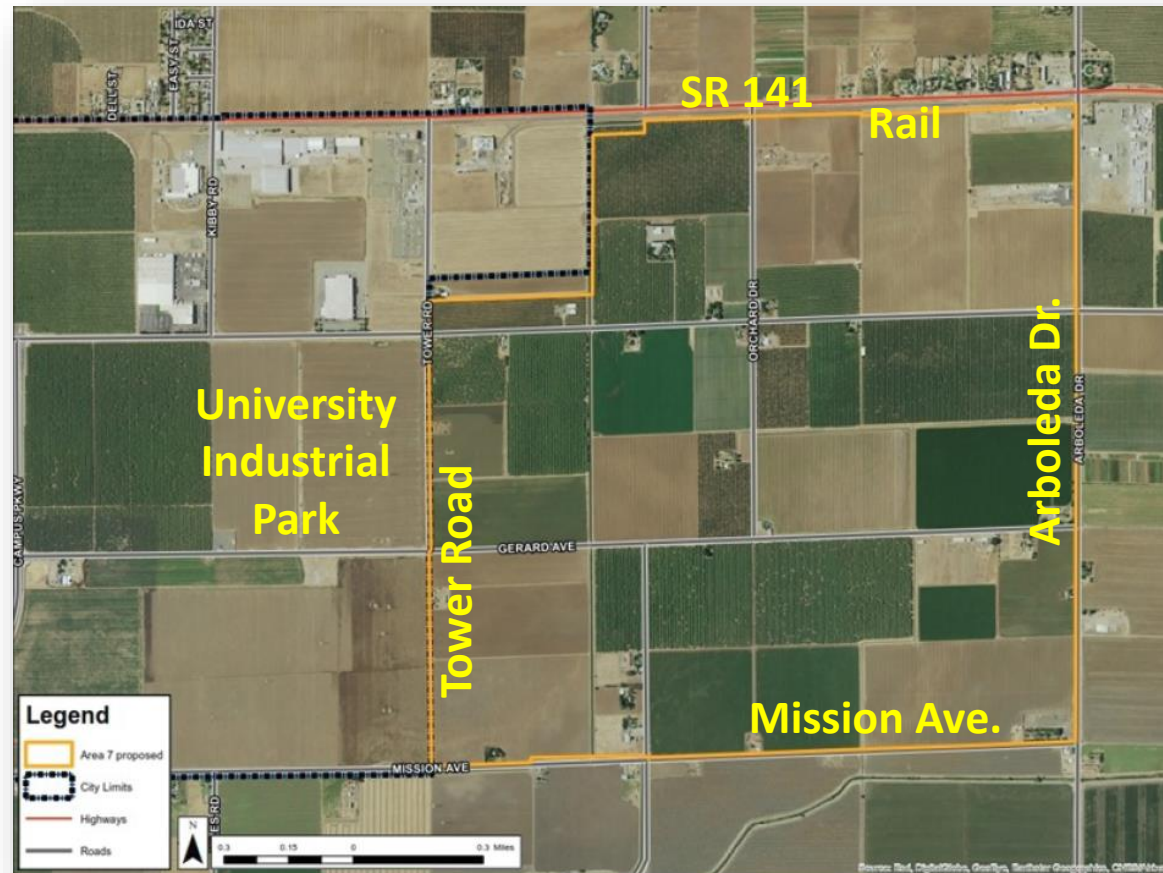


Existing Industrial Parks

- Western and Airport Industrial Parks are over 75% developed.
- The University Industrial Park has impediments to development, i.e., power lines, existing ownership.



Aerial of Site #7



Why Site #7?

- 1,267-acres
- Next to University Industrial Park (expansion potential).
- City's Sphere of Influence (SOI) and General Plan consistency.
- Highway access and access to future Merced Loop.
- Rail service including double-tracking.



Why Site #7?

- Available utility infrastructure.
- Police and Fire availability.
- Absence of existing land uses now and in the future.
- Curb appeal of large and multi-national corporations.
- No dairies.



Public Outreach

1. Interviews with property owners.
2. Today's Neighborhood Meeting
3. Report findings of interviews and outreach meeting to City, and City will decide on next steps.



Sample Interview Questions

- Do you live in and/or farm the parcel? Why did you acquire this land, how long have you owned it, and what is its present use?
- What are your goals for this property? Are they short- to mid-term (5-10 years) or long term (10 – 20 years)?
- Would you support an effort to plan for the industrial development of this area?
- If you looked 20 years into the future, what would you like this area east of Merced to look like?
- Is there one concern or issue that needs special attention?



Comments or Questions?



Thank You...

for attending the
Neighborhood Outreach Meeting



APPENDIX F

NEIGHBORHOOD OUTREACH MEETING NOTES

AREA 7 NEIGHBORHOOD MEETING NOTES

3/15/2018 6PM

- Are we still looking at the other site?
- Could this be developed before the site that Walmart didn't use?
Frank Q response—S. Perry Road in Patterson- took 30 years.
- What route will those trucks take exactly?
The Klein family has worked to see a mall out here
All these trucks will interfere with the school
- The city said there were several dairies on the other side, but there was only one
- Would rather we clean up some problem land – where dairies were – before using up/cover up good farmland
- Is this powerpoint available?
- What is the timeline going forward?
- About 20 years ago, when they did the Pluim Plan, the city council said that Industrial should not come past Tower Road, to preserve the prime ag land.
- The trucks- I live about 2 blocks away- now the retail thing popped us. We have a lot of traffic. Would like to know what the Pluims think about the trucks going through their retail project.
- Would improvements to Childs Avenue be part of the plan?
Frank Q response —during the study, we would identify the kind of road it will be.
- If all of those trucks are going to the freeway, why don't you put this by the freeway?
- Why do you want our land, prime land, when you can do this elsewhere?
- Why can't Merced..... but they're eating prime ag land
- This was all protected ag land when we bought here
- Wasn't the Walmart site on the University Industrial Park?
- The city usually already knows what it wants.
- Superintendent Curry—we have a strong interest, 2,800 students, 1,200 families—we really want to be part of the progress

AREA 7 NEIGHBORHOOD MEETING NOTES

3/15/2018 6PM

- That new store going across the street from the high school---do we have a voice when these things happened? I didn't hear about it.
- The Walmart site--- Frank Q response - Walmart still owns it.
- Parking by McLane trucks is insane, city should build them a parking lot.
- Whether this takes 5 or 25 years—it's either good or bad now and then.
- This is the best Ag land
- What would it take to remove this "Area" from the study and look at the other areas?
- If we're a property owner, will we be notified of any community meeting on this?
- We have a nice home on 20 acres.

APPENDIX G

NEIGHBORHOOD OUTREACH MEETING COMMENT CARDS

AREA 7 NEIGHBORHOOD MEETING COMMENT CARDS

3/15/2018 6PM

No Name	There are too many issues with this town that needs to be addressed than this mess. Pioneer School no parking this is prime farm land. This should always stay that way.
Renee Nelson Trustee member Weaver Union School 50 Luke Ct Merced	I am very concerned as a homeowner that you would choose prime agricultural land for a project like this. I am personally against this. I believe you should pick areas much close to the freeway for traffic. As a board member I am concerned about traffic in our area especially on Campus Parkway and Childs Ave. We are trying to attract people to our city and new UC and an Industrial Park is not the best invitation at the Campus Parkway area. I do believe the city needs new jobs but we need to look in other areas that might be better suited and not use prime land. We also need to keep our students safe with less truck traffic.
Jenae Day jday@weaverusd.org mrsday@jdaze.com	I am a teacher at Pioneer. I own 4.9 acres on the east part of Vassar east of Highway 99, so I don't believe my property is affected but I'm close to the development area. My husband and I are actually excited about finally seeing some development in Merced, but we also feel for property owners that are affected. From what I listened to at this meeting, property owners were told that imminent domain is not a factor, so owners would have a choice (which is different then what my husband and I went through with the high speed rail at that time) We are very excited about the project and hope that it can gain more support as the time goes. I would like to know about meetings to come.**send notices to contact info**
Karen Wallace Weaver School District Trustee	I am not in favor and recommend and urge looking at other sites. A couple of compelling reasons: 1. This is PRIME FARMLAND!! 2. Additional truck traffic on Childs Ave/Campus Parkway. Additional traffic will be arriving with the new retail center. We DO NOT need additional trucks and/or industrial park traffic.