



# **CITY OF MERCED**

## **Amended**

### **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, July 2, 2018

6:00 PM

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

**Closed Session at 5:30 PM/Regular Meeting at 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](http://www.cityofmerced.org) or at the City Clerk's Office, 678 W. 18th Street, Merced, CA 95340. All public records relating to an open session item that are distributed to a majority of the Council will be available for public inspection at the City Clerk's Office during regular business hours.

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

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

#### **INDIVIDUALS WITH DISABILITIES**

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

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

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

- B.1.** [18-334](#) **SUBJECT: PUBLIC EMPLOYMENT - Title: City Attorney/Interim City Attorney; Authority: Government Code Section 54957**

#### **C. CALL TO ORDER**

C.1. Invocation - Pastor Greg Boyd, Calvary Chapel of Merced

C.2. Pledge of Allegiance to the Flag

## D. ROLL CALL

## E. REPORT OUT OF CLOSED SESSION

## F. CEREMONIAL MATTERS

- F.1. [18-338](#)      **SUBJECT:** Proclamation - Parks and Recreation Month

### REPORT IN BRIEF

Presented to a representative from the Recreation and Parks Department.

- F.2. [18-342](#)      **SUBJECT:** Certificate of Recognition for Lorena Ewing

### REPORT IN BRIEF

Mayor Murphy will present a certificate of recognition to interpreter Lorena Ewing for assisting the Council to be inclusive of Spanish speaking residents.

## G. WRITTEN PETITIONS AND COMMUNICATIONS

## H. 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.

## I. 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.

- I.1. [18-184](#)      **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.

I.2. [18-339](#)

**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.

I.3. [18-314](#)

**SUBJECT:** Information Only - Planning Commission Meeting Minutes of May 23, 2018

**RECOMMENDATION**

For information only.

I.4. [18-328](#)

**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of June 4, 2018 and June 12, 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 June 4, 2018 and June 12, 2018.

I.5. [18-221](#)

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

**REPORT IN BRIEF**

Authorizing a Professional Services Agreement with THOR, Inc. for \$176,000 for AS/400 programming services to support SunGard

application suite.

**RECOMMENDATION**

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

I.6. [18-326](#)

**SUBJECT:** Amendment to Agreement with Van Dermynen Maddox Corporation for Complaint Investigation Legal Services

**REPORT IN BRIEF**

Considers Amending an Agreement with Van Dermynen Maddux Corporation to the not to exceed amount of \$70,000.

**RECOMMENDATION**

**City Council** - Adopt a motion approving an amendment to the agreement with the Van Dermynen Maddux Law Corporation for Complaint Investigation Legal Services not to exceed the amount of \$70,000, and authorize the City Manager or Assistant City Manager to execute the necessary documents.

I.7. [18-341](#)

**SUBJECT:** Agreement with Berliner Cohen, LLP. for Interim City Attorney Legal Services

**REPORT IN BRIEF**

Considers Approving an Agreement with Berliner Cohen, LLP for continued Interim City Attorney Legal Services

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the Agreement for Interim City Attorney Legal Services with Berliner Cohen, LLP, and;

B. Authorizing the City Manager or Assistant City Manager to execute the Second Amendment to the Agreement for Interim Legal Services with Berliner Cohen, LLP, and;

C. Approving a Supplemental Appropriation in the amount of \$57,000 from the General Fund to account 001-0301-512.17-00 City Attorney Professional Services.

I.8. [18-310](#)

**SUBJECT:** Certification of June 5, 2018 Special Municipal Election



Returns

**REPORT IN BRIEF**

Certifies the June 5, 2018 election returns for City Measure Y.

**RECOMMENDATION**

**City Council** - Adopt **Resolution 2018-52**, a Resolution of the City Council of the City of Merced, California, reciting the fact of the Special Municipal Election held on June 5, 2018, declaring the result, and declaring such other matters as provided by law for Measure Y (Commercial Cannabis Business Tax).

**I.9.**     [18-291](#)

**SUBJECT:** Approval of Resolutions to Call for a General Municipal Election on November 6, 2018 to be Consolidated with the Gubernatorial General Election

**REPORT IN BRIEF**

Consideration of Resolutions calling a November 6, 2018 General Municipal Election for the Mayor and three members of the City Council by district and requesting the County Board of Supervisors consolidate the City's election with the Gubernatorial General Election being held on the same date.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Adopting **Resolution 2018-39**, a Resolution of the City Council of the City of Merced, California, calling a General Municipal Election for the election of the Mayor and three members of the City Council at the General Municipal Election to be held on November 6, 2018; and,

B. Adopting **Resolution 2018-40**, a Resolution of the City Council of the City of Merced, California, requesting that the Board of Supervisors of the County of Merced, California provide for the consolidation of a General Municipal Election with the Gubernatorial General Election to be held on November 6, 2018, direct the filing of a Notice of Election with the Registrar of Voters, submit an Incumbent List and Terms of Office, provide that candidate's statements are to be paid by candidate, and determine that a coin toss is the tie-breaking method; and,

C. Directing the City Manager/City Clerk and the City Attorney's Office to execute documents appropriate to carry out the tasks necessary for the General Municipal Election and to take actions related thereto.

I.10. This item has been moved to a future agenda.

I.11. 18-331      **SUBJECT:** Compensation Plan for Management Employees

**REPORT IN BRIEF**

Considers approving Compensation Plan for Management Employees.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving **Resolution 2018-50**, a Resolution of the City Council of the City of Merced, California, adopting a compensation plan for the executive management, middle management, supervisory management, and confidential management employees; and,

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

I.12. 18-295      **SUBJECT:** Agreement for Labor Relations Consulting, Labor Contract Negotiations and Employee Related Legal Services with Law Firm Liebert Cassidy Whitmore

**REPORT IN BRIEF**

Considers approving an agreement for labor relations consulting, labor contract negotiations and employee related legal services with the law firm Liebert Cassidy Whitmore in the amount not to exceed \$100,000.

**RECOMMENDATION**

**City Council** - Adopt a motion approving an agreement for professional services with Liebert Cassidy Whitmore for labor relations consulting, labor contract negotiations, and employee related matters in an amount not to exceed \$100,000 and authorizing the City Manager or Assistant City Manager to execute the necessary documents.

I.13. 18-252      **SUBJECT:** Two Amendments to Agreements for Professional Services with Provost and Pritchard Engineering Group, Incorporated, Project No. 119049

**REPORT IN BRIEF**

Considers authorizing two separate agreements for environmental remediation services for a combined total of \$288,500.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving the Second Amendment to Agreement for Professional Services (cleanup contract) with Provost and Pritchard Engineering Group, Incorporated, in the amount of \$230,000 for groundwater cleanup; and,
- B. Approving the Second Amendment to Agreement for Professional Services (reporting contract) with Provost and Pritchard Engineering Group, Incorporated, in the amount of \$58,500 for report drafting; and,
- C. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

**I.14.**    [18-297](#)

**SUBJECT:** Administering Agency State Program Supplement No. 030-F and Agreement Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant for the Motel Drive Sidewalks

**REPORT IN BRIEF**

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$53,983 in CMAQ Grant funding for Preliminary Engineering for the Motel Drive Sidewalk from Merced Avenue to Carol Avenue.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-49**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. 030-F; and,
- B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321.32-00 by \$53,983 and appropriating the same to account 450-1104-637.65-00 (Project No. 119043) for preliminary engineering costs associated with design of sidewalk on Motel Drive; and,
- C. Approving the use of pooled cash until reimbursement is received from the grant; and,
- D. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

I.15. [18-298](#)

**SUBJECT:** Administering Agency State Program Supplement No. 029-F and Agreement Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant CML-5085(048) for the John Muir School Sidewalks

**REPORT IN BRIEF**

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$67,906 in CMAQ Grant funding for Preliminary Engineering for the sidewalks near John Muir School.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-48**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. 029-F; and,
- B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321-32-00 by \$67,906 and appropriating the same to account 450-1104-637-65 (Project No. 119042) for preliminary engineering costs associated with design of sidewalk near John Muir School; and,
- C. Approving the use of pooled cash until reimbursement is received from the grant; and,
- D. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

I.16. [18-300](#)

**SUBJECT:** Administering Agency - State Master Agreement for Federal-Aid Projects - Program Master Agreement No. 10-5085F15

**REPORT IN BRIEF**

Considers approving the Administering Agency - State Master Agreement for Federal-Aid

**RECOMMENDATION**

**City Council** - Adopt a motion approving **Resolution 2018-51**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Master Agreement No.10-5085F15.

I.17. [18-299](#)

**SUBJECT:** Approval of Agreement with PredPol, Inc., for Predictive

Policing Software Subscription

**REPORT IN BRIEF**

Considers approving an agreement with Predpol, Inc. to provide predictive policing software that will assign probabilities and locations of future crimes.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the contract with Predpol, Inc., and; authorizing the City Manager or Assistant City Manager to execute the necessary documents.

**I.18.**    [18-318](#)

**SUBJECT:** Fiscal Year 2017 State Homeland Security Grant Program (SHSGP)

**REPORT IN BRIEF**

Considers accepting Fiscal Year (FY) 2017 State Homeland Security Grant Program (SHSGP) funds to purchase Bomb Unit (EOD) equipment for the Merced Police Department Bomb Team

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Accepting FY 2017 SHSGP grant funds in the amount of \$3,000.00 as revenue in account 001-1002-324-02-00; and,

B. Appropriating \$3,000.00 to Machinery/Equipment expense account 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 or Assistant City Manager to execute the necessary documents.

**I.19.**    [18-319](#)

**SUBJECT:** Acceptance of Fiscal Year 2017 State Homeland Security Grant Program Funds to Purchase Additional License Plate Reader Equipment; Waiver of the Competitive Bidding Requirement

**REPORT IN BRIEF**

Considers accepting Fiscal Year (FY) 2017 State Homeland Security Grant Program (SHSGP) funds in the amount of \$48,000 to purchase

additional automated license plate reader cameras with a request to waive the competitive bidding process.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Accepting FY 2017 SHSGP grant funds and increasing revenue budget in the amount of \$48,000; in account 001-1002-324-02-00 and,

B. Appropriating \$48,000.00 to Machinery/Equipment expense account 001-1002-523-43-00; and,

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

D. Waiving the competitive bidding requirements, as stated in Section 3.04.210 of the Merced Municipal Code, and authorizing the City to Sole Source purchase the requested license plate reader equipment and its installation through Lehr Auto for an amount not to exceed \$55,505.19; and,

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

**I.20.**    [18-323](#)

**SUBJECT:** Purchase and Installation of New Motorola Radio Base Stations and Voting Receivers for the Police Department and Waiving the Competitive Bidding Requirement

**REPORT IN BRIEF**

Considers authorizing the purchase (including installation costs) of new Motorola radio base stations and voting receivers for the Police Department using revenue currently available and waives the competitive bidding requirement for the purchase.

**RECOMMENDATION**

**City Council** - Adopt a motion waiving the competitive bidding requirements, as stated in Section 3.04.210 of the Merced Municipal Code, and authorizing the City to purchase the requested radio equipment through J's Communications, Inc. for equipment and installation costs not to exceed \$90,206.

**J. 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.

- J.1. [18-309](#)      **SUBJECT:** Ordinance Establishing an Arts and Culture Advisory Commission for the City of Merced

**REPORT IN BRIEF**

Asking the City Council to establish a Public Arts and Culture Advisory Commission in the City of Merced.

**RECOMMENDATION**

**City Council** - Adopt a motion introducing **Ordinance 2489**, an Ordinance of the City Council of the City of Merced, California, adding Chapter, 2.54 "Arts and Culture Advisory Commission," to the Merced Municipal Code.

**K. REPORTS**

- K.1. [18-327](#)      **SUBJECT:** Update on Commercial Cannabis Business Permits

**REPORT IN BRIEF**

City Staff will update the City Council on the status of the Commercial Cannabis Business Permit applications.

**RECOMMENDATION**

For information only.

- K.2. [18-337](#)      **SUBJECT:** Update on Public Facilities Bond Measure Survey Results

**REPORT IN BRIEF**

City Staff will provide an update to the City Council on the results of a recent survey conducted to test the viability of a Public Facilities Bond Measure on the November 2018 ballot.

**RECOMMENDATION**

Provide staff direction on next steps for pursuing Public Facilities financing options.

**L. BUSINESS**

- L.1. [18-330](#) **SUBJECT:** Boards and Commissions Reappointments - Recreation and Parks Commission (2)

**REPORT IN BRIEF**

Consider reappointing currently seated individuals to an additional term.

**RECOMMENDATION**

**City Council** - Adopt a motion reappointing qualified individuals who are eligible for, and interested in, an additional term on the Recreation and Parks Commission.

- L.2. [18-335](#) **SUBJECT:** City Council/Merced City School District Joint Meeting Request

**REPORT IN BRIEF**

The Merced City School District Board of Education has invited the City Council to hold a joint meeting to discuss items of mutual interest.

**RECOMMENDATION**

Provide staff direction on holding a joint meeting and possible dates and times that would work best for the Council.

L.3. Request to Add Item to Future Agenda

L.4. City Council Comments

**M. ADJOURNMENT**





# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.1.**

Meeting Date: 7/2/2018

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**SUBJECT:** PUBLIC EMPLOYMENT - Title: City Attorney/Interim City Attorney; Authority: Government Code Section 54957



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item F.1.**

Meeting Date: 7/2/2018

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**SUBJECT:** Proclamation - Parks and Recreation Month

### REPORT IN BRIEF

Presented to a representative from the Recreation and Parks Department.

### ATTACHMENTS

1. Proclamation



# Proclamation

- WHEREAS, parks and recreation programs are an integral part of communities throughout this country, including the City of Merced; and
- WHEREAS, our parks and recreation are vitally important to establishing and maintaining the quality of life in our communities, ensuring the health of all citizens, and contributing to the economic and environmental well-being of a community and region; and
- WHEREAS, parks and recreation programs build healthy, active communities that aid in the prevention of chronic disease, provide therapeutic recreation services for those who are mentally or physically disabled, and also improve the mental and emotional health of all citizens; and
- WHEREAS, parks and recreation areas are fundamental to the environmental well-being of our community; and
- WHEREAS, our parks and natural recreation areas ensure the ecological beauty of our community and provide a place for children and adults to connect with nature and recreate outdoors; and
- WHEREAS, the residents of the City of Merced including children, youth, families, adults, seniors, businesses, community organizations, and visitors benefit from the wide range of parks, trails, open space, sports fields, tennis courts, facilities and programs provided by the Parks and Recreation Department, including Movies in the Park, our splash parks, our expanded aquatics program, our renovated McNamara and Stephen Leonard Parks; and
- WHEREAS, the U.S. House of Representatives has designated July as Parks and Recreation Month; and

NOW, THEREFORE, I, MIKE MURPHY, Mayor of the City of Merced, on behalf of the City Council, do hereby proclaim July 2018 as Parks and Recreation Month in the City of Merced and in doing so, urge all its citizens to use and enjoy its parks, trails, open space, facilities, and recreation opportunities.

Signed this 2<sup>nd</sup> day of July, 2018.

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*Mike Murphy, Mayor of Merced*



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item F.2.**

Meeting Date: 7/2/2018

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**SUBJECT:** Certificate of Recognition for Lorena Ewing

### REPORT IN BRIEF

Mayor Murphy will present a certificate of recognition to interpreter Lorena Ewing for assisting the Council to be inclusive of Spanish speaking residents.



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.1.**

Meeting Date: 7/2/2018

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

### REPORT IN BRIEF

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

### RECOMMENDATION

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



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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Agenda Item I.2.

Meeting Date: 7/2/2018

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

**SUBJECT:** Information-Only Contracts

### REPORT IN BRIEF

Notification of awarded Non-Public Works contracts under \$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 June 2018

## **Exhibit 1 – Table of Contracts**

7/2/2018 City Council Meeting

<b>Department/Division</b>	<b>Vendor</b>	<b>Purpose/Location</b>	<b>Amount</b>
1201 – Recreation and Parks	Maria Ochoa	Leisure Class Agreement for Independent Contractor Services to Conduct Folklórico Dance Classes, from July 1, 2018 through June 30, 2019.	\$ 1,000.00
1201 – Recreation and Parks	Scott Lemberger	Leisure Class Agreement for Independent Contractor Services to Conduct Uechi-Ryu Karate Classes, from July 1, 2018 through June 30, 2019.	\$ 1,300.00
1108 – WWTP	Professional Home Painting	Labor, materials, and equipment necessary to repaint one interior pump station at the Wastewater Treatment Plant. (Statement of Services, PO #130663.)	\$ 1,900.00
0803 – Engineering	Technicon Engineering Services, Inc.	Agreement for Professional Services to Provide Material Testing and Inspection for Installation of a Gazebo at McNamara Park (Project No. 117005).	\$ 1,974.00
0301 – City Attorney	Mark E. Mandell (DBA: Mandell Municipal Counseling)	Agreement for Professional Services for Consulting Related to the Cannabis Tax and Cannabis Tax Ordinance.	\$ 2,322.00
0701 – Finance	Fieldman, Rolapp and Associates, Inc.	Agreement for Professional Services to Provide Consulting Assistance Related to Updating the Land Secured Financing Administrative Policy.	\$ 3,500.00
1201 – Recreation and Parks	Daniel (“Danny”) DuPont (DBA: DuPont Volleyball Academy)	Independent Contractor Services Agreement (Leisure Class) to Conduct a Youth Volleyball Camp in the Summer of 2018.	\$ 4,200.00
0803 – Engineering	Golden Valley Engineering and Surveying	Provide surveying services along “G” Street, from Childs Avenue to 13 <sup>th</sup> Street (Project No. 117039). (Statement of Services, PO #131007.)	\$ 7,520.00
2006 – Welcome Center	Gil Gomez-Sereno (DBA: Gil’s Lawn Service)	Agreement for Professional Services for Grounds and Facility Maintenance at the Bell Station (located at 415 West 18th Street) for Fiscal Year 2018-2019.	\$13,800.00
0403 – Information Technology	Merced County Office of Education	Public Access Cable Services Agreement to Designate the MCOE as an Independent, Non-Profit Access Mgt. Entity.	\$17,500.00
1108 – WWTP	RB Beatty Painting	Prepare and paint steel/metal frame in Secondary Clarifier #3 at the Wastewater Treatment Plant. (Statement of Services, PO #130692.)	\$19,700.00

**Exhibit 1 – Table of Contracts (Continued)**7/2/2018 City Council Meeting

1109 – Water Quality Control	Stantec Consulting Services, Inc.	Agreement for Professional Services to Provide a Report of Waste Discharge for NPDES Permit Renewal Application for the Wastewater Treatment Facility (WWTF).	\$19,976.00
0201 – City Manager	Merced Lao Family Community, Inc.	Agreement for Professional Services - Hmong Language Translation and Hmong Community Outreach Consultant Services for Fiscal Year 2018-2019.	\$22,416.00
0803 – Engineering	Technicon Engineering Services, Inc.	Regional Surface Transportation Program (RSTP) Project No. 117041 for resurfacing of "N" Street from 8th St. to Childs Ave. (Statement of Services, PO #130682.)	\$23,300.00
0803 – Engineering	Thomas Carpenter (DBA: Dragon Demolition)	Labor and materials to demolish and remove all structures, debris, etc. (Grogan Avenue at the old County dog pound), Project No 118042. (Statement of Services, PO #130596.)	\$27,870.00
1301 – Housing	RSG, Inc.	Agreement for Professional Services to Provide Assistance With Housing Successor Agency (HSA) Properties in Expending Affordable Housing Monies.	\$29,000.00
0803 – Engineering	ANV Contractors, Inc.	Labor and materials to demolish existing pad, construct new pad, and install a City-provided gazebo in McNamara Park. (Statement of Services, PO #130892.)	\$29,500.00





# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.3.**

Meeting Date: 7/2/2018

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

**SUBJECT:** Information Only - Planning Commission Meeting Minutes of May 23, 2018

### RECOMMENDATION

For information only.

### ATTACHMENTS

1. PC Minutes 05-23-2018

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

**MINUTES**

Merced City Council Chambers  
Wednesday, May 23, 2018

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

**ROLL CALL**

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

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

Staff Present: Director of Development Services McBride, Planning Manager Espinosa, Planner Mendoza-Gonzalez, Chief Deputy City Attorney Fincher, and Recording Secretary Davis

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S ALSHAMI-CAMPER, and carried by unanimous voice vote (one absent, one vacancy), to approve the Minutes of May 9, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 Conditional Use Permit (CUP) #1225, initiated by Juan Mondragon, on behalf of William Lee Liu and Tai Ho Liu, Trustees, property owner. This application involves a request to allow the sale of beer and wine for on-site consumption within a restaurant (Carnitas Michoacan) located at 1540 Yosemite Parkway. The subject site is generally located at the southeast corner at Yosemite Parkway and Shirley Street, within a Neighborhood Commercial (C-N) Zone.

Commissioner PADILLA recused himself from the hearing due to a professional conflict associated with the applicant.

Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #18-12.

Public testimony was opened at 7:11 p.m.

Speaker from the Audience in Favor:

JUAN MONDRAGON, Applicant, Merced

There were no speakers from the audience in opposition to the project.

Public testimony was completed at 7:13 p.m.

Commissioner ALSHAMI expressed concern with the project site being close to a State highway and the vicinity in which the site was to surrounding liquor stores.

M/S COLBY-CAMPER, to adopt a Categorical Exemption regarding Environmental Review #18-46, and approve Conditional Use Permit #1225, subject to the Findings and thirteen (13) Conditions set forth in Staff Report #18-12 (RESOLUTION #3094):

AYES: Commissioners Camper, Colby, and Chairperson Dylina

NOES: Commissioner Alshami

ABSENT: Commissioner Martinez, (one vacancy)

ABSTAIN: Commissioner Padilla

The motion failed due to the lack of a majority vote.

SECRETARY'S NOTE: Due to the fact that the motion for approval failed to receive four affirmative votes, the item was deemed denied.

Commissioner PADILLA returned to the dais.

#### 4.2 Fiscal Year 2018-2019 Capital Improvement Program (CIP)

Planning Manager ESPINOSA discussed the function of the Planning Commission in review of the CIP. For further information, refer to Staff Report #18-11.

M/S COLBY-ALSHAMI, and carried by the following vote, to find that the Fiscal Year 2018-2019 Capital Improvement Program is consistent with the General Plan:

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

NOES: None

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.

May 23, 2018

6. **ADJOURNMENT**

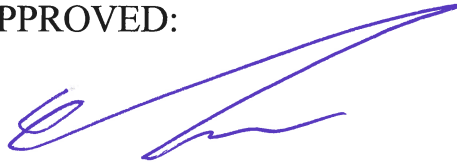
There being no further business, Chairperson DYLINEA adjourned the meeting at 7:22 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



ROBERT DYLINEA, Chairperson  
Merced City Planning Commission



## ADMINISTRATIVE REPORT

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**Agenda Item I.4.**

Meeting Date: 7/2/2018

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**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of June 4, 2018 and June 12, 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 June 4, 2018 and June 12, 2018.

### ALTERNATIVES

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

### ATTACHMENTS

1. Minutes of June 4, 2018
2. Minutes of June 12, 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

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Monday, June 4, 2018

6:00 PM

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#### A. CLOSED SESSION ROLL CALL

**Present:** 6 - Council Member Michael Belluomini, Council Member Anthony Martinez, Mayor Pro Tempore Jill McLeod, Council Member Joshua Pedrozo, Council Member Matthew Serratto, and Mayor Mike Murphy

**Absent:** 1 - Council Member Kevin Blake

#### B. CLOSED SESSION

Mayor MURPHY called the Closed Session to order at 5:04 PM.

**B.1.** **SUBJECT:** CONFERENCE WITH LABOR NEGOTIATORS -- Agency Designated Representative: City Manager Steve Carrigan; Unrepresented Management AUTHORITY: Government Code Section 54957.6

**B.2.** **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

**B.3.** **SUBJECT:** CONFERENCE WITH REAL PROPERTY NEGOTIATORS - Property: 1137 B Street, Merced, CA, APN: 035-010-071; Agency Negotiator: Stephanie Dietz, Assistant City Manager; Negotiating Parties: City of Merced and County of Merced; Under Negotiation: Price and Terms of Payment.

**B.4.** **SUBJECT:** PUBLIC EMPLOYMENT - Title: City Attorney; Authority: Government Code Section 54957

**Clerk's Note:** Council adjourned from Closed Session at 5:52 PM.

#### C. CALL TO ORDER

Mayor MURPHY called the Regular Meeting to order at 6:02 PM.

C.1. Invocation - Joel Dorman, First Baptist Church

The invocation was delivered by Joel DORMAN from First Baptist Church.

C.2. Pledge of Allegiance to the Flag

City Manager Steve CARRIGAN led the Pledge of Allegiance to the Flag.

**D. ROLL CALL**

**Present:** 6 - Council Member Michael Belluomini, Council Member Anthony Martinez, Mayor Pro Tempore Jill McLeod, Council Member Joshua Pedrozo, Council Member Matthew Serratto, and Mayor Mike Murphy

**Absent:** 1 - Council Member Kevin Blake

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. WRITTEN PETITIONS AND COMMUNICATIONS**

There were none.

**G. ORAL COMMUNICATIONS**

Mayya TOKMAN, Merced - spoke on establishing a permanent Children's Museum in Merced.

Sidra GOLDMAN-MELLOR, Merced - spoke on establishing a permanent Children's Museum in Merced.

**H. CONSENT CALENDAR**

Items H.5.City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of May 7, 2018 and May 14, 2018, H.7. Approve Amendment to Professional Services Agreement to Perform Tracking Survey Related to the Proposed Public Facilities General Obligation Bond and Approve Related Budget Transfer, H.9. Fiscal Year 2018-19 Annual Special Tax Rates for Community Facilities District (CFD) No. 2003-2 (Services), H.11. Loan Agreements for Gateway



Terrace II Apartments, and H.12. Consider Approving a Lease Agreement with the County of Merced for Property Located at the Corner of Childs Avenue and B Street; were pulled for separate consideration.

## Approval of the Consent Agenda

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

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

**No:** 0

**Absent:** 1 - Council Member Blake

### H.1.

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

#### REPORT IN BRIEF

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

#### RECOMMENDATION

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

**This Consent Item was approved.**

### H.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.**

H.3.                    **SUBJECT:** Information Only-Planning Commission Minutes of April 18, 2018

**RECOMMENDATION**

For information only.

**This Consent Item was approved.**

H.4.                    **SUBJECT:** Information Only - Site Plan Review Committee Minutes of April 5, 2018

**RECOMMENDATION**

For information only.

**This Consent Item was approved.**

H.6.                    **SUBJECT:** Sale of Surplus Orion SE 2 Endpoints to City of Lathrop

**REPORT IN BRIEF**

Approves the sale of surplus Orion SE 2 Endpoints to the City of Lathrop

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving **Resolution 2018-37**, a Resolution of the City Council of the City of Merced deeming certain equipment of the City to be “surplus” property and authorizing its sale to the City of Lathrop; and

B. Approving the surplus equipment purchase agreement with City of Lathrop to sell the one thousand four hundred and forty (1440) surplus Orion® SE 2 Endpoints; and

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

**This Consent Item was approved.**

H.8.                    **SUBJECT:** Professional Services Agreement with R3 Consulting Group, Inc., for Solid Waste Collection and Related Services Rate Study

**REPORT IN BRIEF**

Considers approving an agreement with R3 Consulting Group, Inc., to conduct a Solid Waste Collection and Related Services Rate Study.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving a professional services agreement with R3 Consulting Group, Inc., in the amount of \$64,860, to prepare a comprehensive solid waste collection and related services rate study; and,

B. Authorizing the City Manager or Assistant City Manager to sign the necessary documents.

**This Consent Item was approved.**

**H.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, June 18, 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, June 18, 2018, to consider the Housing and Urban Development Annual Action Plan.

**This Consent Item was approved.**

**H.13.**

**SUBJECT:** Contract Amendment with ABS Direct, Inc.

**REPORT IN BRIEF**

Consider a one-year extension with ABS Direct, Inc. for printing and mailing services.

**RECOMMENDATION**

**City Council** - Adopt a motion approving a one year extension to the contract with ABS Direct, Inc. and authorizing the City Manager or Assistant City Manager to execute all necessary documents.

**This Consent Item was approved.**

H.14.

**SUBJECT:** Agreement for Bond and Disclosure Counsel Services with Norton Rose Fulbright US, LLP and Waive the Competitive Bidding Requirement

**REPORT IN BRIEF**

Considers awarding an agreement to Norton Rose Fulbright US, LLP to provide bond and disclosure counsel 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:

A. Approving the contract with Norton Rose Fulbright (NRF) for bond and disclosure counsel services, waiving the competitive bid, and authorizing the City Manager or Assistant City Manager to execute the necessary documents and allow for minor modification to legal provisions as needed, and;

B. Approving transfers from Public Facilities Financing Fees-Police in the amount of \$5,000 from Fund 047, and \$5,000 from Fund 057 to Fund 449 Public Safety CIP, and appropriating the same amount to Project #116040 New Police Headquarters.

**This Consent Item was approved.**

H.5.

**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of May 7, 2018 and May 14, 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 May 7, 2018 and May 1, 2018.

Council Member BELLUOMINI pulled this item to briefly discuss an item in the minutes.

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

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

**No:** 0

**Absent:** 1 - Council Member Blake

**H.7.**

**SUBJECT:** Approve Amendment to Professional Services Agreement to Perform Tracking Survey Related to the Proposed Public Facilities General Obligation Bond and Approve Related Budget Transfer

**REPORT IN BRIEF**

Consider approving an amendment to the professional service agreement to the opinion research services contract to perform a second tracking survey related to the proposed Public Facilities General Obligation Bond Measure ballot language and approving the necessary budget transfers from the Public Facilities Financing Fees - Police of \$29,250.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving an amendment to the service agreement to the opinion research services contract to perform a second tracking survey for the proposed Public Facilities General Obligation Bond measure; and,

B. Approving a supplemental appropriation from the unreserved fund balances in the amounts of \$14,625 from fund 047 and \$14,625 from fund 057 and transfer to Fund 449 Public Safety CIP, and appropriating the same amount to Project #116040 New Police Headquarters; and,

C. Authorizing the Finance Officer to make the necessary budget adjustments and authorizing the City Manager or Assistant City Manager to sign the necessary documents.

Council Member BELLUOMINI pulled this item to ask about the public information outreach education effort.

Council Member BELLUOMINI and Assistant City Manager Stephanie DIETZ discussed the community outreach and mailers to educate the public.

**A motion was made by Council Member Pedrozo, seconded by Council**

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**Member Serratto, that this agenda item be approved. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Council Member Blake

**H.9.**

**SUBJECT:** Fiscal Year 2018-19 Annual Special Tax Rates for Community Facilities District (CFD) No. 2003-2 (Services)

**REPORT IN BRIEF**

Consider setting the Annual Special Tax Rates for Fiscal Year 2018-19 for Community Facilities District (CFD) No. 2003-2 (Services) for the City of Merced.

**RECOMMENDATION**

**City Council** - Adopt a motion approving **Resolution 2018-38**, a Resolution of the City Council of the City of Merced, Acting as the Legislative Body of the Community Facilities District No. 2003-2 (Services) of the City of Merced, Authorizing the Establishment of an Annual Special Tax Rates for Said District for Fiscal Year 2018-19.

Council Member BELLUOMINI pulled this item to ask about the large fund balance.

Council and Director of Public Works Ken ELWIN discussed the fund balance amount versus the annual expenditures.

**A motion was made by Council Member Belluomini, seconded by Council Member Serratto, approving this item and receiving further information on the fund balance amounts. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Council Member Blake

**H.11.**

**SUBJECT:** Loan Agreements for Gateway Terrace II Apartments Housing Project

**REPORT IN BRIEF**

Authorizes the City to enter into various loans, subordinations, notes,

and deeds of trust necessary to complete the financing of the Gateway Terrace II Housing Project.

#### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-34**, a Resolution of the City Council of the City of Merced, California, approving a HOME investment partnerships loan to Merced Gateway Investors II, LP, in the principal amount of \$500,000, approving and authorizing the execution of a loan agreement, regulatory agreement, subordination agreement, and related loan documents, and authorizing certain other actions in connection therewith; and,
- B. Approving the HOME regulatory agreement; and,
- C. Approving the HOME notice of affordability; and,
- D. Approving the HOME deed restriction covenants and loan agreement; and,
- E. Approving the HOME agreement containing covenants affecting real property; and,
- F. Approving the HOME note; and,
- G. Approving the HOME deed of trust and security agreement; and,
- H. Adopting **Resolution 2018-35**, a Resolution of the City Council of the City of Merced, California, approving a Community Housing Development Organization HOME investment partnerships loan to Merced Gateway Investors II, LP, in the principal amount of \$514,410, approving and authorizing the execution of a loan agreement, regulatory agreement, subordination agreement, and related loan documents, and authorizing certain other actions in connection therewith; and,
- I. Approving the CHDO-HOME note; and,
- J. Approving the CHDO-HOME deed of trust and security agreement; and,
- K. Approving the CHDO-HOME deed restriction covenants and loan agreement; and

L. Approving the CHDO-HOME notice of affordability restrictions; and,

M. Approving the CHDO-HOME regulatory agreement; and,

N. Approving the CHDO-HOME agreement containing covenants affecting real property; and,

O. Adopting **Resolution 2018-36**, a Resolution of the City Council of the City of Merced, California, approving a Community Development Block Grant (CDBG) loan to Merced Gateway Investors II, LP, in the principal amount of \$370,590, approving and authorizing the execution of a loan agreement, regulatory agreement, subordination agreement, and related loan documents, and authorizing certain other actions in connection therewith; and,

P. Approving the CDBG agreement containing covenants affecting real property; and,

Q. Approving the CDBG note; and,

R. Approving the CDBG deed of trust and security agreement; and,

S. Approving the CDBG deed restrictions covenants and loan agreements; and,

T. Approving the CDBG notice of affordability; and,

U. Adopting **Resolution 2018-33**, a Resolution of the City Council of the City of Merced, California, approving the parking agreement with Merced Gateway Investors II regarding use of K Street between 12th Street and 13th Street; and,

V. Approving the parking agreement; and,

W. Approving modifications to aforementioned documents as required by the City Attorney's Office to correspond to the City loan commitment agreement with Merced Gateway Investors II, LP and pertinent state and federal grant agreements and guidelines; and,

X. Authorizing the City Manager or Assistant City Manager to execute, and if necessary, make minor modifications to the agreements and Resolutions as described above as attached to this report and all associated documents.



Council Member BELLUOMINI pulled this item to ask about the reduction of the required parking spaces.

Council Member BELLUOMINI and staff discussed the process and reasons for reducing the number of parking spaces.

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

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

**No:** 0

**Absent:** 1 - Council Member Blake

**H.12.**

**SUBJECT:** Consider Approving a Lease Agreement with the County of Merced for Property Located at the Corner of Childs Avenue and B Street

**REPORT IN BRIEF**

Consider approving a lease agreement with the County of Merced to facilitate the entitlement process associated with the development of affordable and permanent-supportive multi-family housing at the corner of Childs Avenue and B Street.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the lease agreement between the County of Merced and City of Merced; and,

B. Authorizing the City Manager or Assistant City Manager to execute and, if necessary make minor modifications to the lease agreement described above and as attached to this report and all associated documents.

Council Member BELLUOMINI pulled this item to highlight the importance of the project.

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

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

No: 0

Absent: 1 - Council Member Blake

## I. PUBLIC HEARINGS

I.1. **SUBJECT:** Public Hearing - Zone Change #425 to Amend the Zoning for 3345 and 3351 East Gerard Avenue from Agricultural to Business Park

### REPORT IN BRIEF

The City Council will consider a request to change the zoning designation from Agricultural (A-1-20) to Business Park (B-P) for two parcels totaling approximately 71.135 acres located at approximately 3345 and 3351 Gerard Avenue.

### RECOMMENDATION

**City Council** - Adopt a motion:

A. Approving a determination that Environmental Review #18-11 is a second tier environmental document, consistent with the current general plan and provisions of CEQA Guidelines, Section 15162; and,

B. Introducing **Ordinance 2488**, an Ordinance of the City Council of the City of Merced, California, amending the official zoning map by rezoning two parcels totaling approximately 71.135 acres located approximately 1,300 feet east of Coffee Drive along the north and south sides of Campus Parkway to approximately 264 feet west of the intersection of Gerard Avenue and Campus Parkway, between Gerard Avenue and Mission Drive from Agricultural (A-1-20) to Business Park (B-P); and,

C. Authorizing the City Manager or Assistant City Manager to execute the legislative action agreement.

Principal Planner Michael HREN gave a slide show presentation on the Zone Change #425 to Amend the Zoning for 3345 and 3351 East Gerard Avenue from Agriculture to Business Park.

Mayor MURPHY opened and subsequently closed the Public Hearing at 6:40 PM due to lack of public comment.

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

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

**No:** 0

**Absent:** 1 - Council Member Blake

**I.2.                    SUBJECT: Public Hearing for Fiscal Year 2018-19 Proposed Budget**

**REPORT IN BRIEF**

Public Hearing to afford the interested public an opportunity to provide input on the content of the 2018-19 City Council, Public Financing and Economic Development Authority, and Parking Authority Proposed Budget

**RECOMMENDATION**

**City Council/Public Financing and Economic Development**

**Authority/Parking Authority** - It is recommended that the City Council/Authorities conduct the Public Hearing and provide direction to the City Manager on the content of the Fiscal Year 2018-19 Budget; and adopt a motion continuing the Public Hearing to the June 18, 2018 Council Meeting.

City Manager Steve CARRIGAN gave a brief summary of the proposed budget.

Finance Officer Venus RODRIGUEZ gave a slide show presentation on the Fiscal Year 2018/2019 Proposed Budget.

Council and staff discussed the two Public Safety Staffing options that were presented and clarified the dollar amounts that would be shifted.

Ms. RODRIGUEZ continued the slide show presentation.

Council and staff discussed a Trust 115 to help with future CalPers costs.

Mayor MURPHY opened the Public Hearing at 6:53PM.

William AVERY, Merced Police Officers Association - asked about the Public Safety Staffing options.

Mayor MURPHY closed the Public Hearing at 6:56 PM.

Council BELLUOMINI, Council Member SERRATTO, Council Member MARTINEZ, and Council Member PEDROZO stated their support for option one for the Public Safety Staffing.

Council and staff discussed a full-time Recreation and Parks secretary position, zoo and park rental upgrades, and the process of budget requests from Boards and Commissions. Council and staff discussed below the line requests, possible Measure Y Funds, and requests from non-profit organizations.

**Clerk's Note:** Council directed staff to proceed with option one of the public safety staffing options with option two expenses to cover the funding, one time cost for zoo safety issues, cost estimates for park shelters, and removing the Trust 115 from the budget.

Council and staff discussed the Applegate Park playground equipment, the Park Reserve Fund, and the Parsons Avenue Project.

**A motion was made by Council Member Pedrozo, seconded by Council Member Martinez, to continue this item to the June 18th City Council Meeting. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Council Member Blake

## J. REPORTS

### J.1.

**SUBJECT:** Maintenance Districts' Engineer's Report and Budgets for Fiscal Year 2018/2019 - Public Meeting

#### REPORT IN BRIEF

Consider public input on the various Maintenance Districts' budgets during the public meeting, without taking action on the determination of assessment levy until the close of the public hearing scheduled for Monday, June 18, 2018.

#### RECOMMENDATION

**City Council** - Adopt a motion seeking public input on the Fiscal Year 2018/2019 Maintenance Districts' budgets, without taking action until the public hearing is closed on June 18, 2018.

Director of Public Works Ken ELWIN gave a brief summary of the Maintenance Districts' Engineer's Report and Budgets for Fiscal Year 2018/2019.

**Clerk's Note:** No action required for this item.

**J.2.** **SUBJECT: Report on Fourth of July Enforcement Strategies and Public Outreach Campaign by the City's Illegal Fireworks Task Force Committee; Approval of Banners on Light Poles on Main Street**

**REPORT IN BRIEF**

Provides an update to the City Council on the City's efforts to combat illegal fireworks within the City limits and the public outreach efforts being made to deter people from using, selling and possessing illegal fireworks and approves the placement of banners on light poles on Main Street.

**RECOMMENDATION**

**City Council** - Adopt a motion receiving the informational report on the City's efforts to combat illegal fireworks and approving the request to place banners on light poles downtown from June 5, 2018 to July 6, 2018.

City Manager Steve CARRIGAN, Fire Chief Michael WILKINSON, Interim Police Chief Christopher GOODWIN, and Director of Information Technology Jeff BENNYHOFF gave a slide show presentation on the Fourth of July Enforcement Strategies and Public Outreach Campaign by the City's Illegal Fireworks Task Force Committee.

Council and staff discussed fines, fireworks stands hours of operation, enforcement of illegal fireworks, and a local fireworks show.

Rick SANDFORD, Merced - spoke on public safety concerns regarding illegal fireworks.

Fernando ECHEVARIA, Merced - spoke on illegal fireworks.

**A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, to approve banners on light poles on Main Street and to bring this item back to a future agenda for an update. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Council Member Blake

**K. BUSINESS**

**K.1.** **SUBJECT: Selection of Date and Format for Planning Commission Interviews**

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**REPORT IN BRIEF**

Available dates for a Special Meeting to conduct Planning Commission interviews are June 11,12,13,27, and 28.

**RECOMMENDATION**

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

Assistant City Clerk John TRESIDDER gave a brief summary of this item.

Council decided to hold the Planning Commission interviews on Tuesday June 12th at 6:00 PM.

Council Member MARTINEZ requested a map of where the current Planning Commissioners reside.

**K.2. Request to Add Item to Future Agenda**

There were no items added to a future agenda.

**K.3. City Council Comments**

Council Member MARTINEZ reported on attending a Crop Mobster event and the Weaver Middle School 8th grade graduation.

Council Member SERRATTO reported on attending the Youth Council Park Cleanup, riding the YARTS Bus to Yosemite, and joining the Continuum of Care.

Mayor Pro Tempore MCLEOD reported on volunteering for the elections.

Council Member BELLUOMINI reported on attending the Board of Realtors meeting, the Merced Rotary Club meeting, the Merced Boosters Club meeting, and the Merced Breakfast Lions Club meeting.

Council Member PEDROZO reported on attending the Youth Council Park Cleanup and the boosters event. He also spoke on the PG&E work on Yosemite Avenue and G Street.

Mayor MURPHY reported on attending the Merced College graduation as the commencement speaker, a ribbon cutting for Strong Tower Fitness, and a Housing Workshop. He also spoke on the Tioga Hotel renovations.

**L. ADJOURNMENT**

**Clerk's Note:** The Regular Meeting adjourned at 8:50 PM.

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**A motion was made by Council Member Belluomini, seconded by Council Member Martinez, to adjourn the Regular Meeting. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Council Member Blake



# CITY OF MERCED

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

## Minutes

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

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Tuesday, June 12, 2018

6:00 PM

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#### A. CALL TO ORDER

Mayor Pro Tempore MCLEOD called the Special Meeting to order at 6:05 PM.

##### A.1. Pledge of Allegiance to the Flag

Council Member BLAKE led the Pledge of Allegiance to the Flag.

#### B. ROLL CALL

**Present:** 6 - Council Member Michael Belluomini, Council Member Anthony Martinez, Mayor Pro Tempore Jill McLeod, Council Member Joshua Pedrozo, Council Member Matthew Serratto, and Council Member Kevin Blake

**Absent:** 1 - Mayor Mike Murphy

#### C. BUSINESS

##### C.1. Interviews of Planning Commission Applicants

Planning Commission applicants answered a series of interview questions relating to Planning Commission roles and duties posed by City Manager Steve CARRIGAN, with follow-up questions by Council Member BELLUOMINI and Council Member SERRATTO.

Planning Commission applicants in attendance:

Scott DREXEL, Rick MCMILLION, and Janice SCHMIDT

##### C.2.

**SUBJECT:** Appointments (2) - Planning Commission

#### REPORT IN BRIEF

Consider accepting nominations and appointing two applicants to the Planning Commission.

#### RECOMMENDATION

**City Council** - Adopt a motion accepting nominations and appointing two



individuals to the Planning Commission with one term ending date of July 1, 2022 and one term ending date of July 1, 2021.

**A motion was made by Council Member Blake, seconded by Council Member Pedrozo, to appoint Scott Drexel to the Planning Commission. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Mayor Murphy

Council Members discussed accepting more applications to possibly fill the remaining vacancy.

**A motion was made by Council Member Belluomini, seconded by Council Member Pedrozo, to accept more applications and schedule another Planning Commission interview to fill the remaining vacancy. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Mayor Murphy

## D. ADJOURNMENT

**Clerk's Note:** The Special Meeting adjourned at 7:14 PM.

**A motion was made by Council Member Pedrozo, seconded by Council Member Blake, to adjourn the Special Meeting. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 1 - Mayor Murphy



## ADMINISTRATIVE REPORT

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### Agenda Item I.5.

Meeting Date: 7/2/2018

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*Report Prepared by: Jeff Bennyhoff, Director of Information Technology*

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

### REPORT IN BRIEF

Authorizing a Professional Services Agreement with THOR, Inc. for \$176,000 for AS/400 programming services to support SunGard application suite.

### RECOMMENDATION

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

### ALTERNATIVES

1. Approve as recommended by Staff; or
2. Deny; or,
3. Refer to Staff for further evaluation.

### AUTHORITY

Charter of the City of Merced, Section 200.

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget.

### DISCUSSION

The Information Technology Department had two staff members retire several years ago. These two employees supported the City's SunGard software suite. This software suite runs on technology created in the late 1960s, called RPG, which requires a very unique skillset. Currently the department has no one with these skills in-house. All recruitment efforts have failed to find an applicant with these unique skills. As the professional community of people that support this type of older technology is currently experiencing mass gentrification, it will become increasingly important to move off our aging SunGard systems.

The SunGard software suite runs many of the City's critical business operations, including payroll, utility billing, GMBA, business licenses, building permits, and more, for the past 29 years. The retired staff members modified the existing programs provided by SunGard to fit the needs of the departments over that period of time.

On February 20<sup>th</sup>, 2018 Council approved a contract with NexLevel for a Needs Assessment, and Procurement services for a replacement to the SunGard System. Support for SunGard AS/400 system will need to continue until we have fully transitioned all departments off the SunGard AS/400 system. This support will decrease in future years as we continue to replace the SunGard modules and move them to new systems.

Currently the City uses the Thor Group to support these custom modifications to the SunGard software suite. The Thor Group is a professional staffing agency, which specializes, in this type of older technology. We utilize a Thor employee that was formerly a programmer for SunGard through the 1990's. This contract will allow the City to continue to utilize this person on a time-and-material basis of \$109/hour to support our modified SunGard software suite. We have used this contractor for two years to support our SunGard systems and has proven to be very professional, courteous, and responsive to our business needs.

Professional services from this fiscal year budget will be used to fund this contract.

### **IMPACT ON CITY RESOURCES**

Funding is available in the following fund: 672-0404-512-1700; \$176,000.

### **ATTACHMENTS**

1. Thor Client Services Master Agreement



CLIENT SERVICES MASTER AGREEMENT

(Time and Materials)

Client # 437414  
Client Purchase Order#:  
Master Agreement #:  
Date: 4/6/2018

TGI: THOR, INC.  
318 Avenue I., Suite 167  
Redondo Beach, CA 90277  
Tel: (310) 727-1777  
Fax: (310) 727-1770  
E-Mail: davidr@thorgroup.com

Client: City of Merced  
Address: 678 W. 18<sup>th</sup> St  
Merced, CA 95340

The Client has requested that Thor, Inc. (TGI), utilizing TGI's Consultants, fulfill various consultant requirements on an on going basis. With each new consultant requested from client, a client services agreement attachment referencing this Master Agreement number and/or purchase order number is to be done. Each client services agreement attachment provides:

- a. contractor's name
- b. scope of work
- c. under the direction of name
- d. start date
- e. approximate length of assignment
- f. Standard Service Bill Rate
- g. Overtime Service Bill Rate
- h. Double-time Service Bill Rate
- i. Travel expense:
- j. Special Instructions:

TGI may change the Scope of Work upon mutual written agreement with Client of such changes.

Standard Terms and Conditions

1. Client Fees and Conditions:

- a) Fee: In consideration for the services provided by TGI to Client under this Agreement, Client hereby agrees to pay to TGI the fee, on a time and materials basis, at the rate of per hour upon submission of a TGI Consultant Verification Record signed by Client, plus any expenses which have been pre-approved by both TGI and Client.
- b) Consultant Verification Record: Each week Consultant will submit to Client a four-part Consultant Verification Record with the hours Consultant worked in that particular week. For each week TGI's Consultant works, a separate Consultant Verification Record should be used. The week ending date is always Saturday. Client shall verify the hours worked, sign the Consultant Verification Record, and retain the client copy for Client's records. Client's signature on the Consultant Verification Record legally binds Client to pay TGI for those hours. If there are any changes or corrections marked on the face of the Consultant Verification Record, Client must initial them to indicate Client's approval.
- c) Fees: The services of TGI's Consultant will be paid in accordance with each individual Consultant Agreement. The services are billed on a weekly basis for actual hours. Client agrees to pay all TGI net upon receipt of invoice. In the event that payment is extended past forty-five (45) days, Client will be subject to, and agrees to pay, a 1.0% per month late payment charge on the unpaid balance. The Consultant Verification Record signed by Client will detail and act as satisfaction of all work performed.
- d) Cancellation: If Client cancels Consultant's services on the day of engagement prior to Consultant beginning such services, then Client shall pay a four (4) hour minimum charge.
- e) Performance Satisfaction: If client is not satisfied with TGI's performance of the services under this Agreement, then Client must notify TGI in writing, within fourteen (14) days after the completion of the services, specifying in detail the reasons for the dissatisfaction.

2. Consultant's Work Parameters: Client may set the working hours of TGI's Consultant depending upon Client's requirements. An acceptable schedule and work place must be agreed upon between TGI and Client prior to the Consultant starting work. Consultants

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Date:

THOR's Initials: OAL  
Date: 4/6/2018

must be flexible in their work schedule to meet the Client's/Government's training requirement/schedule. It is Client's responsibility to make any computer system usage time or Client's personnel available to meet the demands of the Scope of Work.

3. Confidentiality:

- a) TGI shall keep confidential and not disclose any of Client's confidential or proprietary information. TGI agrees to take the same reasonable steps to safeguard Client's confidential information as TGI uses to safeguard its own confidential or proprietary information. The confidentiality obligations in this Agreement shall not apply to: (1) any information which is, or becomes, available in the public domain through no wrongful act of TGI or its representatives; (2) any information lawfully in the possession of TGI or its representatives prior to their receipt of such information from Client; (3) any information independently developed by TGI or its representatives; (4) any information received by TGI or its representatives from a third party lawfully in possession of such information and having the right to disclose such information; and (5) any information required to be disclosed by law or court order.
- b) TGI shall, at no time, have the right to use the trademarks, trade names or service marks of Client, whether existing pursuant to common law or state or federal statutes, without the prior written approval of an executive officer of Client.
- c) TGI's Consultant shall not discuss their rate of pay with any member of Client's staff.
- d) Client agrees not to discuss TGI's fees or any of the incurred costs charged to TGI by the Consultant with anyone other than a TGI Manager.
- e) TGI's Consultants are instructed to abide by the licensing agreements that accompany Client's software.

4. Ownership and Intellectual Property Rights: All work produced pursuant to this Agreement shall be the property of Client, and all intellectual property rights, including but not limited to copyrights, patents and trade secrets, arising from any existing Client-owned or newly created work developed by TGI's Consultants while performing work for Client under this Agreement shall remain Client's property. However, Client is responsible for taking all steps necessary to protect said intellectual property rights including but not limited to affixing appropriate copyright notices, registering copyrights, and applying for patents.

5. Liability: The parties hereto hereby agree that (a) TGI is only providing individual Consultants to Client under the terms of this Agreement, (b) TGI is not warranting or guaranteeing the work performance or work product of such Consultants, (c) Client is solely responsible for defining the Scope of Work, overseeing the work performed by such Consultants, and utilizing and implementing the work produced by such Consultants, (d) TGI has no liability for such Consultants' work product or for such Consultants' errors or omissions present in such work product, (e) TGI shall not be liable for any direct, indirect, incidental, special, punitive, exemplary, or consequential damages (including any loss of profits or loss of business), whether in an action or claim arising in contract, tort or otherwise, resulting from or related to this Agreement or any work performed by Consultant or any work product of Consultant, (f) any claim by Client for damages against TGI must be brought against TGI within six (6) months after the expiration or termination of this Agreement, (g) TGI's maximum liability under this Agreement shall be limited to the aggregate sum accumulated separately by each contractor paid by Client to TGI under this Agreement, specifically applicable to the individual consultant in question, (h) except for the express warranties in this Agreement, TGI DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES IN CONNECTION WITH THIS AGREEMENT, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, and (i) TGI has no responsibility or liability for any computer software developed, written, amended or revised by Consultant, including but not limited to whether or not such computer software performs in accordance with Client's specifications or performs without interruption or error. TGI assumes no liability for consequential, direct or indirect damages resulting from work performed by a TGI Consultant.

6. Performance: TGI and its staff shall use their best efforts to complete the Scope of Work as specified to TGI by Client. In the event that the Client perceives a lack of performance of the Consultant, Client has the right to terminate this Agreement upon written notice to TGI, or to have TGI replace said Consultant, as soon as possible, with another consultant of "like" capabilities.

7. Hiring of Consultant:

- a) During the period from the date of this Agreement to the later of one (1) year after the completion of the tasks in the Scope of Work or two (2) years after the date of this Agreement, Client hereby agrees not to solicit or accept for employment (other than through TGI) the TGI Consultant on a permanent, temporary, or contract basis. This applies to any position within Client or its affiliates.
- b) Should Client breach Section 7(a), since it would be difficult to determine the amount of damage, Client hereby agrees to pay TGI, as liquidated damages, the greater of an amount equal to 20% of the dollars being earned by Consultant services on a contract basis or 20% of Consultant's first year's full-time permanent employee or consulting compensation if Consultant is hired.
- c) Any referrals of additional employment on a permanent, temporary, or contract basis, whether with Client or any other entity, which is made known, directly or indirectly, to TGI's Consultant are deemed referrals to TGI. Therefore, TGI will be entitled to compensation based upon an amount equal to 20% of the first year's compensation of the Consultant hired through such a referral. If the entity to whom that person is referred has not compensated TGI, Client shall be obligated for such charges. This applies for any position in Client's company, division of Client's company or to another company for a period of one (1) year after the completion of tasks in the Scope of Work or two (2) years after the date of this Agreement, whichever is the later.

8. No Assurance: Client acknowledges that it understands that TGI's ability to provide the services hereunder with regard to the Scope of Work is dependent upon many factors outside the control of TGI.

9. Miscellaneous:

- a) Entire Agreement: This Agreement constitutes the entire agreement among the parties hereto with regard to the subject matter hereof, and supersedes any and all other agreements, oral or written, among the parties hereto with regard to the subject matter hereof.
- b) Amendments: Except as otherwise provided in this Agreement, this Agreement shall not be modified or amended except by an instrument in writing executed by each of the parties hereto.

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Date:

THOR's Initials: *OAL*  
Date: 4/6/2018



c) Successors; Assignment: This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective successors, transferees and assignees. Neither this Agreement nor any interest herein may be transferred, directly or indirectly, or assigned by Client, in whole or in part, without the prior written consent of TGI. Any such transfer or assignment by Client without such TGI prior written consent shall be null and void.

d) Waiver: Any waiver of a provision of this Agreement must be in writing signed by the party waiving its rights and shall apply only in the specific instance and for the specific purpose given. The giving of a waiver in one instance or for one purpose shall not create any implied obligation to give a waiver in another instance or for another purpose.

e) Headings: The headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect any provision of this Agreement.

f) Severability; Enforceability: If any term or provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such term or provision shall not be affected thereby.

g) Applicable Law: This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California (other than principles of conflict of laws). No provision of this Agreement shall be construed against any party by reason of that party having drafted the same.

h) Attorney's Fees: In the event of any dispute among the parties hereto relating to the subject matter of this Agreement, the out-of-pocket costs and reasonable attorney's fees of the prevailing party shall be paid by the other party in addition to any other relief.

i) Arbitration: Any equitable relief sought by either party hereto (including injunctive relief) for breach of this Agreement by the other party hereto may be sought by judicial action in a court of competent jurisdiction. Except as set forth in the preceding sentence, any dispute, controversy or claim arising out of or relating to this Agreement shall be settled by binding arbitration held in Merced, CA before one (1) arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association then existing, and judgment on the arbitration may be entered in any court having jurisdiction over the subject matter of the controversy. The arbitrator shall not have the power to amend or modify this Agreement. If Client has any dispute, claim, or controversy relating to this Agreement, then Client must notify TGI in writing of such dispute, claim, or controversy within fourteen (14) days after the completion of the Scope of Work or the termination of this Agreement (whichever is earlier), and any such dispute, claim or controversy which is not so presented is barred and waived.

j) Not an Agent: The parties hereto understand and agree that this Agreement does not make either party hereto an agent or legal representative of the other party hereto for any purpose whatsoever. Consultant does not have, by this Agreement or otherwise, any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of TGI or Client or to bind TGI or Client in any manner whatsoever. Both parties expressly acknowledge that Consultant is retained by TGI and not by Client, and that the parties hereto are not partners or joint ventures.

k) Notices: All notices and other communications required under this Agreement shall be in writing and shall be sufficient in all respects if personally delivered or sent by registered or certified mail, postage prepaid, or by telecopy (with confirmed receipt), and addressed to the parties at the addresses first listed above. Any notice shall be deemed to have been delivered on the earlier of actual receipt or seventy-two (72) hours after the date it was mailed in the manner described above. Any party may change its address by a notice given to the other party in the manner set forth above.

l) Expenses: Each party hereto will bear its own expenses incurred in connection with entering into this Agreement, unless otherwise agreed to.

m) When requested by the Government, Consultants must show proof of a physical exam, Immunization Record or TITER lab results. Cost incurred for these requirements is the responsibility of TGI.

Date: April 6, 2018

THOR, INC.  
California Corporation  
TGI

By:   
(Signature)

Omar A. Lupercio  
(Printed Name)

Thor Contract Administrator  
(Title)

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

Client: City of Merced

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

APPROVED AS TO FORM:



THOR's Initials: OAL  
Date: 4/6/2018

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Date:



Client #: 437414  
Client Purchase Order #:  
Master Agreement #  
Job Order # 31515  
Date: April 4, 2018

## Client Services Agreement Consultant Attachment

Reference Master Agreement between THOR, INC. and Client  
For Each Consultant

TGI: THOR, INC.  
318 Avenue I, Suite 167  
Redondo Beach, CA 90277  
Tel: (310) 727-1777  
Fax: (310) 727-1770  
E-mail: [davidr@thorgroup.com](mailto:davidr@thorgroup.com)

Client: City of Merced  
678 W 18<sup>th</sup> St  
Merced, CA 95340

- a. Contractors Name: Ms. Elizabeth Berg
- b. Scope of Work: Assistance with Sungard Naviline System
- c. Under the Direction of: Mr. Jeff Bennyhoff, Director of IT
- d. Approximate Start Date: 7-1-18
- e. Approximate Length of Assignment: 1 year
- f. Standard Service Bill Rate: \$109/hour
- g. Overtime Service Bill Rate: \$109/hour
- h. Double-time Service Bill Rate: \$109/hour
- i. Travel Expense: Client agrees to pay airfare, hotel, rental car and per diem when consultant is required to be onsite.
- j. Special Instructions: Upon execution of this THOR Client Services Master Agreement and Client Services Agreement Consultant Attachment, Thor suggests the execution of Task Vetting and Support Guidelines with City of Merced as well as cover how City of Merced will use the Consultant Verification Record management tool. The twelve (12) month total billing from July 1, 2018 to June 30, 2019 for this assignment is not to exceed \$176,000 without prior approval from both THOR and Client.

### Signatures:

Authorized Client Representative

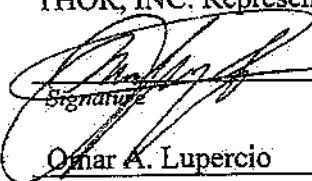
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Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

THOR, INC. Representative

  
Signature

Omar A. Lupercio

\_\_\_\_\_  
Name

Thor Contract Administrator

\_\_\_\_\_  
Title

April 4, 2018

\_\_\_\_\_  
Date



## ADMINISTRATIVE REPORT

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**Agenda Item I.6.**

Meeting Date: 7/2/2018

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*Report Prepared by: Kelly C. Fincher, Chief Deputy City Attorney*

**SUBJECT:** Amendment to Agreement with Van Dermeyden Maddox Corporation for Complaint Investigation Legal Services

### REPORT IN BRIEF

Considers Amending an Agreement with Van Dermeyden Maddux Corporation to the not to exceed amount of \$70,000.

### RECOMMENDATION

**City Council** - Adopt a motion approving an amendment to the agreement with the Van Dermeyden Maddux Law Corporation for Complaint Investigation Legal Services not to exceed the amount of \$70,000, and authorize 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 the City Council; or,
3. Refer to staff for reconsideration of specific items; or,
4. Continue to a future meeting; or,
5. Disapprove.

### AUTHORITY

City of Merced Charter section 200.  
Merced Municipal Code section 3.04

### CITY COUNCIL PRIORITIES

Not Applicable.

### DISCUSSION

In April 2017, the City entered into an Agreement with Van Dermeyden Maddox Law Corporation for confidential complaint investigation services. The original contract amount was \$29,000. During the course of the investigation facts arose which warranted an expansion of the scope and length of the investigation. The investigation has now concluded, however the services of the investigator continue to be needed for an upcoming City personnel board hearing, and any post- hearing processes.

### IMPACT ON CITY RESOURCES



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Sufficient funding is available in the FY 2018/19 adopted Budget. No additional budget appropriation is needed.



## ADMINISTRATIVE REPORT

Agenda Item I.7.

Meeting Date: 7/2/2018

*Report Prepared by: Kelly C. Fincher, Chief Deputy City Attorney*

**SUBJECT:** Agreement with Berliner Cohen, LLP. for Interim City Attorney Legal Services

### REPORT IN BRIEF

Considers Approving an Agreement with Berliner Cohen, LLP for continued Interim City Attorney Legal Services

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving the Agreement for Interim City Attorney Legal Services with Berliner Cohen, LLP, and;
- B. Authorizing the City Manager or Assistant City Manager to execute the Second Amendment to the Agreement for Interim Legal Services with Berliner Cohen, LLP, and;
- C. Approving a Supplemental Appropriation in the amount of \$57,000 from the General Fund to account 001-0301-512.17-00 City Attorney Professional Services.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Provide direction on specific revisions to the Agreement; or,
3. Request additional information; or,
4. Continue the matter to a certain date; or,
5. Decline to take action.

### AUTHORITY

Charter of the City of Merced, Sections 200 and 603

### CITY COUNCIL PRIORITIES

N/A

### DISCUSSION

On August 15, 2016, the City Council approved an Agreement with the law firm, Berliner Cohen, LLP (hereafter Berliner Cohen) to provide Interim City Attorney and other legal services for the City. Under the terms of that Agreement, Berliner Cohen Partner Jolie Houston was appointed Interim City Attorney and two Berliner Cohen attorneys, Jeff Kaufman and Kim Flores were retained to provide

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100 hours of interim City Attorney legal services.

Ms. Houston has been serving as the City's Interim City Attorney continuously following her appointment in August 2016. Since that time, the City Council has approved two amendments to the original agreement. In February 2017, the City Council approved a First Amendment to the Agreement which extended the term Agreement through January 31, 2018, and increased the hours worked from 100 to up to 120 hours per month. On January 16, 2018, the Agreement was extended to continue Berliner Cohen's services through June 30, 2018.

The original Agreement with Berliner Cohen has now expired, however, it is anticipated that the City Council may desire to continue to contract with the firm for interim legal services. Accordingly, a new Agreement for Legal Services with Berliner Cohen has been drafted for the City Council's consideration. Approval of this Agreement will allow the following: (1) the continued appointment of Jolie Houston as Interim City Attorney; (2) the staffing of the City Attorney's Office with Mr. Kaufman and Ms. Flores from Berliner Cohen's Merced office two days a week for eight hours a day (approximately 16 hours a week); and, (3) the performance of legal services as assigned for up to 120 hours a month. The cost of the Agreement will not exceed \$36,000 per month, most of which will be paid for from the City Attorney's Office budget through salary savings due to the vacant City Attorney and Senior Deputy City Attorney positions. Any hours worked over the 120-hour monthly limit will only be paid if Berliner Cohen obtains advanced authorization from the City to exceed the 120-hour monthly limit. As written, the instant Agreement will continue until terminated at any time by either party without cause upon 30 days' written notice.

Staff recommends that the Agreement with Berliner Cohen be approved to allow for the continuity of service to the City through June 30, 2018. Staff is seeking authority for a supplemental appropriation to support the anticipated cost of the full term of the agreement. Should the City Council appoint a full-time City Attorney prior to the end of the agreement, the supplemental appropriation will not be needed.

### **IMPACT ON CITY RESOURCES**

The agreement will not exceed \$432,000 for the entire fiscal year, \$375,000 will be paid from salary savings of the City Attorney and Senior Deputy City Attorney and a Supplemental Appropriation of \$57,000 will be required from the General Fund.

### **ATTACHMENTS**

1. Agreement for Interim City Attorney Services

## AGREEMENT FOR INTERIM LEGAL SERVICES

This Agreement for Interim Legal services ("Agreement") is made and entered into this \_\_\_\_ day of July 2018, by and between City of Merced, a California Charter Municipal Corporation (hereinafter referred to as the "City"), and Berliner Cohen, LLP, Attorneys, a partnership ("BC").

### WITNESSES

WHEREAS, it is the desire of the parties hereto to enter into this Agreement and establish the terms and conditions for rendition of interim legal services to the City and the compensation therefor.

NOW, THEREFORE, IT IS MUTUALLY AGREED as follows:

#### 1.0 Appointment of Interim City Attorney.

Since August 15, 2016, the City has retained BC to perform the professional services and appointed Jolie Houston, a Partner in BC, as Interim City Attorney to serve at the pleasure of the City Council.

#### 2.0 Attorney's Services and Scope of Work.

Commencing July 2, 2018, BC shall continue to be responsible for providing the services set forth in this Agreement as Exhibit "A" ("Basic Services"). BC shall expend its best efforts to carry out the professional services described herein, and faithfully represent the interests of the City during the term of this Agreement.

#### 3.0 Compensation.

Berliner Cohen proposes a flat hourly rate for up to 120 hours per month for the Basic Services. The hourly billing rate for partners and of counsel will be \$300 per hour and \$240 per hour for all other associates. If the Basic Services are expected to exceed the 120 hours in any given month, the Interim City Attorney and/or Chief Deputy City Attorney will consult with the City Manager, or his designee, to review the hours to determine if the additional work is authorized.

The 120 hours per month will include City Hall office hours at 2 days a week for 8 hours (includes court appearances on behalf of the City) not to exceed 80 hours per month. Only City business will be conducted during office hours.

As Interim City Attorney, Jolie Houston will work closely with the City Attorney's Office and the City Manager to manage the City's total legal costs to City approved budgets, including fees and costs paid to BC.

Reimbursable Expenses. Litigation costs and expenses for statutory fees, witness fees, reporters' per diem and stenographic transcriptions, photocopying, jury fees, electronic research, travel, and the expenses of serving process shall be advanced by BC and reimbursed by the City. Expert consultants and witnesses may be retained by BC on terms

acceptable to City, approved in advance by email or letter by the City representative, in which case City shall reimburse BC or pay such consultants or experts directly.

#### 4.0 Litigation and Special BC Projects.

In addition to the basic services, BC shall provide litigation and special project services at the request of the City. Litigation includes court and administrative proceedings of every type or nature, and litigation services includes client conferences, file and report reviews, interviews, legal research, site visits and discussions with witnesses and experts prior to formal proceedings. BC shall provide to the City Manager and City Council periodic reports of the status of all litigation assigned to it.

Special projects may include complex transactions and agreements, real estate matters, strategic advice, human resources or employment matters, assistance in negotiations and any other matter requested by the City.

Upon receipt of a request, BC shall provide a proposed engagement letter describing the scope of the engagement and estimated cost. If the request involves services that are outside the expertise of BC or that it cannot undertake because of conflicts or any other reason, BC shall recommend that the counsel be engaged to provide the services and, when permitted by applicable Rules of Professional Conduct, suggest specific firms or attorneys for consideration by the City. In cases of unusual significance or complexity, BC may recommend that the City retain other counsel in addition to, or in lieu of BC. In all cases, retention of counsel for litigation or special projects shall be at the discretion of the City; however, it is the expectation of the parties that BC will be engaged when it has the requisite experience, expertise and resources to perform the work.

#### 4.1 Litigation by City.

All litigation in which the City is plaintiff shall be initiated only at the direction of the City.

#### 4.2 Defense of Litigation.

Unless otherwise determined by the City, BC shall defend all actions and other proceedings brought against the City, its elected officials, appointed offices and agents ("City parties").

#### 4.3 Compensation for Litigation and Special Projects.

Advance approval by the City Council is required for special projects and litigation as defined in sections 4.1 and 4.2. In any event, except when precluded by a conflict of interest, BC shall provide representation until such time as the City has engaged BC or other counsel as directed by the City Manager and as necessary to maintain the status quo or prevent the entry of a default.

#### 4.4 Billings.

The charges for litigation, special project services and basic services are to be billed and paid monthly. With its statement, BC shall provide an accounting of the number of hours billed

for legal services. The billings will be reviewed by the City Manager, or his designee, and if in order, in his/her opinion, approved for payment. Any questions about billings that cannot be mutually resolved between the City Manager and Interim City Attorney may be referred to the City Council for resolution.

#### 5.0 Duties of Interim City Attorney.

Interim City Attorney shall provide representation and advice to City as provided in this Agreement, either personally or by assigning and supervising other BC attorneys or by overseeing the performance and work of other attorneys who are engaged by the City (unless otherwise directed by the City Council). Interim City Attorney shall review charges for services rendered by other attorneys to ensure that they are consistent with this Agreement and/or the terms of the specific engagement and otherwise reasonable. Interim City Attorney shall monitor the work of other attorneys to ensure that it is done efficiently and competently and, when appropriate in her judgment, shall adjust charges for work by BC attorneys that does not meet these standards. As used in this paragraph, "other attorneys" shall include BC attorneys and, unless otherwise directed by the Board, other firms and attorneys who are retained by the City as provided herein.

Interim City Attorney shall attend City Council meetings (2 per month) unless prevented by illness or vacation or excused by the Mayor or City Manager, in which case a BC Attorney shall attend unless excused by the Mayor or City Manager.

The BC Attorneys (a) shall assist the Interim City Attorney as she directs, and (b) shall perform the duties of the Interim City Attorney whenever she is unavailable due to illness, vacation or other reason approved by the Interim City Attorney.

#### 6.0 Priorities.

If there are more requests for service than can be accomplished in the time allowed, Interim City Attorney or BC may request the City Manager to establish priorities. Otherwise, Interim City Attorney shall respond in a reasonable time to all requests.

#### 7.0 Termination.

This Agreement shall continue until terminated. BC understands that this is an interim position; therefore, this Agreement may be terminated by the City, without cause, upon 30 days' written notice. This Agreement may be terminated by BC, without cause, upon 30 days' written notice to the City. The City shall be required to pay only for services rendered and charges incurred before the effective date of termination and shall not be responsible for services rendered or charges incurred thereafter.

#### 8.0 No Assignment.

This Agreement is entered into by the City and BC and the rights and obligations may not be assigned or delegated by BC to any other attorney without the express written consent of the City Council. This Agreement is not assignable.

9.0 Insurance.

BC shall, at its own expense, procure and maintain policies of insurance of the types and in the amounts set forth below, for the duration of this Agreement, including any extensions thereto. The policies shall state that they afford primary coverage. Failure to maintain required insurance at all times shall constitute a default and material breach of this Agreement. In such event, BC shall immediately notify the City and cease all performance under this Agreement until further directed by the City.

General Liability insurance shall be maintained with minimum limits of \$1,000,000 combined single limits written on an Insurance Services Office (ISO) Comprehensive General Liability "occurrence" form or its equivalent for coverage on an occurrence basis. Premises/Operations and Personal Injury coverage shall be included.

Professional errors and omissions liability insurance shall be maintained with minimum limits of \$1,000,000. If a claims-made policy is purchased, a "tail" of at least three years shall be purchased if non-renewed within three years of completion of performance of this Agreement. Applicable aggregates must be identified and claims history provided to determine amounts remaining under the aggregate.

The City Manager may modify or waive any of the specific requirements for the above insurance, except for the policy limits. Any such waiver may include substitute requirements and shall be confirmed by letter.

BC shall comply with the applicable portions of the California Labor Code concerning workers' compensation for injuries on the job.

10.0 Opinions.

All written opinions requested by the City Council and prepared by Interim City Attorney or BC shall be provided to the City Manager and all City Council members.

11.0 Review.

The City Council may meet with Interim City Attorney and review her performance. At this time, the parties may agree to changes or amendments hereto, including, but not limited to, changes in compensation provisions, which changes or amendments shall be evidenced by written amendment hereto.

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12.0 Delegation.

The City Council may delegate any of its duties, obligations, discretion or authority under this Agreement to its City Manager.

WITNESSETH:

**BERLINER COHEN, LLP, ATTORNEYS**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Jolie Houston, Partner

**CITY OF MERCED**

a California Charter Municipal Corporation of the  
State of California

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Steve Carrigan  
City Manager

Approved as to form:

Dated: 6/27/18 \_\_\_\_\_

By: Kelly Fincher \_\_\_\_\_  
Kelly Fincher  
Chief Deputy City Attorney



## **EXHIBIT A**

### **BASIC SERVICES**

Basic services to be provided by the Interim City Attorney shall include representation of and advice to the Council, committees and commissions and all City officials in legal matters of municipal government. This includes:

- a) Attendance at all City Council meetings (two per month), unless excused by Mayor or Council (attendance at special meetings or study sessions only upon request by City Manager or Mayor);
- b) City Hall office hours two days a week for eight hours (includes court appearances on behalf of the City) not to exceed 80 hours per month. Office hours may include projects assigned by the City Attorney's Office staff on an as-needed basis.
- c) Consultation with City Manager, City Staff, or authorized representatives to provide legal advice on City legal matters, including the Brown Act, Public Records Act and FPPC.
- d) Assistance with the preparation/review of all proposed ordinances, resolutions, contracts, proposed City policies and activities, and other documents pertaining to City business;
- e) Assistance with City code enforcement including filing complaints or administrative proceedings for litigation;
- f) Assistance with City personnel issues (excluding collective bargaining) requiring legal attention;
- g) Keeping the Council and City Manager informed of the status of litigation involving City. Interim City Attorney shall also advise the City Council and City Manager of significant developments in litigation involving City as the occur;
- h) Providing written legal opinions when requested by any four Council members;
- i) Assisting City Council, City Manager and appropriate staff in continuing to identify feasible options toward implementing and achieving the goals, policies and objectives of the City Council;



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item I.8.**

Meeting Date: 7/2/2018

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

**SUBJECT:** Certification of June 5, 2018 Special Municipal Election Returns

### REPORT IN BRIEF

Certifies the June 5, 2018 election returns for City Measure Y.

### RECOMMENDATION

**City Council** - Adopt **Resolution 2018-52**, a Resolution of the City Council of the City of Merced, California, reciting the fact of the Special Municipal Election held on June 5, 2018, declaring the result, and declaring such other matters as provided by law for Measure Y (Commercial Cannabis Business Tax).

### AUTHORITY

California Elections Code Sections 10262 through 10264 and the Merced City Charter Section 1003-Procedure for Holding Elections.

### DISCUSSION

The California Elections Code requires that the City Council receive and act upon the returns or results of each municipal election. The City Council placed the City sponsored Measure Y on the ballot.

The Merced County Registrar of Voters Barbara J. Levey, recently certified the election returns for all votes cast in the June 5th, 2018 election within Merced County. It is now appropriate for the City Council to take action to finalize these returns for City purposes. This action is required under the California Elections Code.

The attached resolution provides a breakdown of all votes cast for Measure Y.

### ATTACHMENTS

1. Resolution

**RESOLUTION NO. 2018-\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF MERCED, CALIFORNIA,  
RECITING THE FACT OF THE SPECIAL  
MUNICIPAL ELECTION HELD ON JUNE 5,  
2018, DECLARING THE RESULT, AND  
DECLARING SUCH OTHER MATTERS AS  
PROVIDED BY LAW FOR MEASURE Y  
(COMMERCIAL CANNABIS BUSINESS  
TAX)**

WHEREAS, a Special Municipal Election was held and conducted in the City of Merced, California, on Tuesday, June 5, 2018 as required by law; and

WHEREAS, notice of the election was given in the time, form and manner as provided by law; that voting precincts were properly established; that election officers were appointed and that in all respects the election was held and conducted and the votes were cast, received and canvassed and the returns made and declared in the time, form and manner as required by the provisions of the Elections Code of the State of California for the holding of elections in general law cities and consistent with Section 1003 of the Charter; and

WHEREAS, Pursuant to Resolution No. 2018-11 adopted on February 20, 2018, the County Election Department canvassed the returns of the election and has certified the results to this City Council, the results are received, attached and made a part hereof as “Exhibit A.”

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

SECTION 1. That the measure (Measure Y) voted upon at the election is as follows:

“MERCED COMMERCIAL CANNABIS BUSINESS TAX. Generating approximately \$1,000,000 annually locally to fund Merced Police, Fire, Parks, Recreation services such as 911 emergency response; neighborhood-based policing; fire/gang prevention services; skilled

police officers and firefighters; and safe clean parks;  
shall the City of Merced adopt an ordinance authorizing  
an annual commercial cannabis business tax of up to \$25  
per square foot of cultivation space, or 10% of gross  
receipts until ended by voters, with independent citizens  
oversight?"

SECTION 2. That the whole number of ballots cast in each precinct and the number of votes case in the City for and against the measure are as listed in Exhibit "A" attached.

SECTION 3. The City Council does declare and determine that:

As a result of the election, a two-thirds (2/3) majority of the voters voting on Measure Y did vote in favor of it, and that Measure Y was carried, and Title 3 of the Merced Municipal Code is amended by adding Chapter 3.2, "Commercial Cannabis Business Tax."

SECTION 4. The City Clerk shall enter on the records of the City Council of the City, a statement of the result of the election showing:

- A. The whole number of the ballots cast in the City;
- B. The measure voted upon;
- C. The number of votes given at each precinct for and against Measure Y;  
and,
- D. The total number of votes given for and against Measure Y.

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

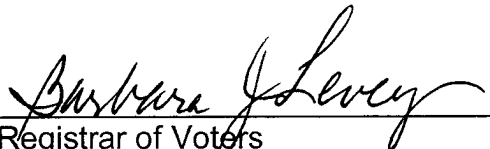
\_\_\_\_\_  
City Attorney      6-15-2018  
Date

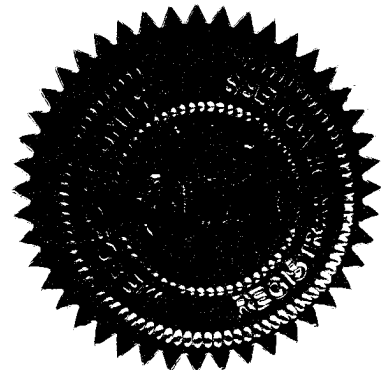
**CERTIFICATION OF  
COUNTY CLERK/REGISTRAR OF VOTERS  
OF THE RESULTS OF THE CANVASS  
OF THE JUNE 5, 2018,  
STATEWIDE DIRECT PRIMARY ELECTION**

STATE OF CALIFORNIA }  
COUNTY OF MERCED } ss.

I, **Barbara J. Levey**, County Clerk/Registrar of Voters of said county, do hereby certify that, in pursuance to the provisions of Elections Code Section 15300, et seq., I did canvass the results of the votes cast in the **Statewide Direct Primary Election** held in said County on **June 5, 2018**, for measures and contests that were submitted to the vote of the voters, and that the Statement of Votes Cast, to which this certificate is attached, is full, true and correct.

I hereby set my hand and official seal this 25<sup>th</sup> day of June 2018 at the **County of Merced**.

  
\_\_\_\_\_  
Registrar of Voters  
County of Merced  
State of California



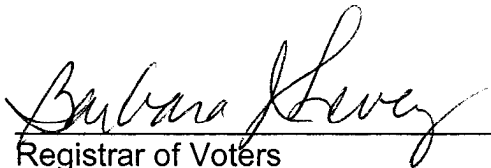
## HELP AMERICA VOTE ACT OF 2002 CERTIFICATION OF ELECTIONS OFFICIAL

STATE OF CALIFORNIA }  
COUNTY OF MERCED } ss.

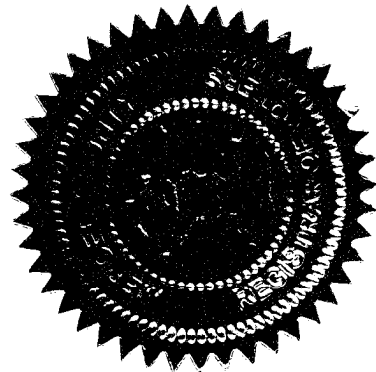
Pursuant to the statewide voter registration list requirements set forth in the Help America Vote Act of 2002 (HAVA) (pub. L. No. 107-252 (2002) 116 Stat. 1666, 42 U.S.C. §15483),

I, **Barbara J. Levey**, Registrar of Voters for the **County of Merced**, State of California, hereby certify that I complied with all provisions of Chapter 2 of Division 7 of Title 2 of the California Code of Regulations for the Federal election held on the **5th day of June 5, 2018** in the **County of Merced**, State of California, and all elections consolidated therewith.

I hereby set my hand and official seal this 25<sup>th</sup> day of June 2018 at the **County of Merced**.



\_\_\_\_\_  
Registrar of Voters  
County of Merced  
State of California



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71 PRECINCTS	R	V	T	MEASURE Y - CITY OF MERCED - 2/3 VOTE REQUIRED			
	E	O	P				
	G		R				
	I	B	N				
	S	A	O				
	T	L	U				
	E	L	T				
	R	O	A	Y		O	U
	E	T	G	e	N	V	N
	D	S	E	s	o	R	O
						E	D
						T	T
						E	E
						S	R
							S
COUNTY TOTAL	30542	10181	33.33	7371	2146	0	683
VOTING PRECINCTS	30542	10181	33.33	7371	2146	0	683
CONGRESSIONAL 16	30542	10181	33.33	7371	2146	0	683
STATE SENATE 12	30542	10181	33.33	7371	2146	0	683
STATE ASSEMBLY 21	30542	10181	33.33	7371	2146	0	683
BD OF EQUALIZATION 1	30542	10181	33.33	7371	2146	0	683
SUPERVISORIAL 1	5895	1451	24.61	1018	340	0	95
SUPERVISORIAL 2	20947	7672	36.63	5588	1587	0	511
SUPERVISORIAL 3	3697	1058	28.62	765	219	0	77
SUPERVISORIAL 4	3	0		0	0	0	0
SUPERVISORIAL TOTAL	30542	10181	33.33	7371	2146	0	683
CITY OF MERCED	30542	10181	33.33	7371	2146	0	683
CITY TOTAL	30542	10181	33.33	7371	2146	0	683



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				MEASURE Y - CITY OF MERCED - 2/3 VOTE REQUIRED					
				R V	T P				
				E O	U E				
				G T	R R				
				I E	B C	N C			
				S R	A A	O E			
				T S	L S	U N	O V	U V	
				E	L T	T T	V O	N O	
				R	O	A	E T	D T	
				E	T	G	R E	E E	
				D	S	E	s	o	S
71 PRECINCTS									
0006	01006	MERCED #1	1020	280	27.45	196	58	0	25
0007	01007	MERCED #2	611	153	25.04	120	27	0	4
0008	01008	MERCED #15	806	185	22.95	129	45	0	11
0009	01009	MERCED #16	431	104	24.13	71	33	0	4
0010	01010	MERCED #38	841	190	22.59	117	53	0	21
0011	01011	MERCED #39	444	62	13.96	47	13	0	2
0012	01012	MERCED #54	389	87	22.37	57	24	0	6
0013	01013	MERCED #73	420	100	23.81	63	28	0	9
0014	01014	MERCED #74	255	80	31.37	66	14	0	0
0022	02022	MERCED #3	305	121	39.67	88	23	0	9
0023	02023	MERCED #4	470	228	48.51	170	44	0	15
0024	02024	MERCED #5	381	95	24.93	76	16	0	3
0025	02025	MERCED #6	1037	389	37.51	281	93	0	15
0026	02026	MERCED #7	463	195	42.12	149	38	0	10
0027	02027	MERCED #8	763	342	44.82	243	72	0	26
0028	02028	MERCED #9	329	128	38.91	91	29	0	8
0029	02029	MERCED #10	680	200	29.41	145	42	0	13
0030	02030	MERCED #11	848	310	36.56	231	56	0	23
0031	02031	MERCED #12	674	273	40.50	182	67	0	24
0032	02032	MERCED #13	716	253	35.34	186	45	0	23
0033	02033	MERCED #14	483	170	35.20	106	56	0	9
0034	02034	MERCED #17	796	173	21.73	117	45	0	11
0035	02035	MERCED #18	308	94	30.52	68	22	0	4
0036	02036	MERCED #19	621	264	42.51	194	50	0	20
0037	02037	MERCED #20	742	333	44.88	229	81	0	26
0038	02038	MERCED #21	272	121	44.49	91	26	0	4
0039	02039	MERCED #22	504	203	40.28	147	45	0	11
0040	02040	MERCED #23	396	180	45.45	132	38	0	10
0041	02041	MERCED #26	898	348	38.75	262	60	0	28
0042	02042	MERCED #27	818	351	42.91	260	66	0	25
0043	02043	MERCED #28	833	353	42.38	241	85	0	25
0044	02044	MERCED #29	325	69	21.23	40	22	0	7
0045	02045	MERCED #30	836	217	25.96	153	55	0	13
0046	02046	MERCED #32	402	175	43.53	134	32	0	9
0047	02047	MERCED #33	1177	327	27.78	249	51	0	27
0048	02048	MERCED #35	517	271	52.42	207	54	0	10
0049	02049	MERCED #40	826	70	8.47	54	13	0	3
0050	02050	MERCED #46	277	114	41.16	79	23	0	13
0051	02051	MERCED #65	640	301	47.03	239	45	0	17
0052	02052	MERCED #67	613	253	41.27	187	46	0	22
0053	02053	MERCED #80	264	105	39.77	82	16	0	7
0054	02054	MERCED #81	354	201	56.78	155	30	0	16
0077	03077	MERCED #24	1202	292	24.29	204	74	0	15
0078	03078	MERCED #25	1089	424	38.93	319	77	0	28
0079	03079	MERCED #31	806	237	29.40	165	45	0	28
0080	03080	MERCED #36	600	105	17.50	77	23	0	6
0157	91157	MERCED #37	74	32	43.24	28	2	0	3
0158	91158	MERCED #41	0	0		0	0	0	0
0159	91159	MERCED #42	1	1	100.00	1	0	0	0
0160	91160	MERCED #45	209	70	33.49	52	12	0	5

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			R V E O G T I E S R T S E R E D	B C A A L S L T O T S	T P U E R R N C O E U N T T A G E	MEASURE Y - CITY OF MERCED - 2/3 VOTE REQUIRED			
						Y e s	N o	O V V O E T R E S	U V N O D T E E R S
71 PRECINCTS									
0161	91161	MERCED #51	96	31	32.29	19	8	0	4
0162	91162	MERCED #53	1	0		0	0	0	0
0163	91163	MERCED #55	79	29	36.71	19	8	0	0
0164	91164	MERCED #75	5	0		2	0	0	0
0165	91165	MERCED #78	154	32	20.78	21	10	0	1
0166	91166	MERCED #79	59	15	25.42	10	5	0	0
0179	92179	MERCED #44	135	45	33.33	33	7	0	5
0180	92180	MERCED #47	0	0		0	0	0	0
0181	92181	MERCED #48	1	0		0	0	0	0
0182	92182	MERCED #50	48	19	39.58	14	4	0	1
0183	92183	MERCED #52	137	32	23.36	19	9	0	4
0184	92184	MERCED #57	43	7	16.28	5	2	0	0
0185	92185	MERCED #58	9	1	11.11	1	0	0	0
0186	92186	MERCED #61	112	24	21.43	21	4	0	0
0187	92187	MERCED #62	179	60	33.52	33	24	0	3
0188	92188	MERCED #63	204	70	34.31	55	10	0	5
0189	92189	MERCED #64	192	84	43.75	59	23	0	2
0190	92190	MERCED #66	196	61	31.12	46	12	0	3
0191	92191	MERCED #71	104	39	37.50	32	5	0	2
0192	92192	MERCED #72	19	3	15.79	2	1	0	0
0235	94235	MERCED #34	3	0		0	0	0	0
GRAND TOTALS			30542	10181	33.33	7371	2146	0	683



## ADMINISTRATIVE REPORT

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### Agenda Item I.9.

Meeting Date: 7/2/2018

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

**SUBJECT:** Approval of Resolutions to Call for a General Municipal Election on November 6, 2018 to be Consolidated with the Gubernatorial General Election

### REPORT IN BRIEF

Consideration of Resolutions calling a November 6, 2018 General Municipal Election for the Mayor and three members of the City Council by district and requesting the County Board of Supervisors consolidate the City's election with the Gubernatorial General Election being held on the same date.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-39**, a Resolution of the City Council of the City of Merced, California, calling a General Municipal Election for the election of the Mayor and three members of the City Council at the General Municipal Election to be held on November 6, 2018; and,
- B. Adopting **Resolution 2018-40**, a Resolution of the City Council of the City of Merced, California, requesting that the Board of Supervisors of the County of Merced, California provide for the consolidation of a General Municipal Election with the Gubernatorial General Election to be held on November 6, 2018, direct the filing of a Notice of Election with the Registrar of Voters, submit an Incumbent List and Terms of Office, provide that candidate's statements are to be paid by candidate, and determine that a coin toss is the tie-breaking method; and,
- C. Directing the City Manager/City Clerk and the City Attorney's Office to execute documents appropriate to carry out the tasks necessary for the General Municipal Election and to take actions related thereto.

### ALTERNATIVES

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

## **AUTHORITY**

Charter of the City of Merced, Sections 400 and 1000;  
California Elections Code Section 10403.

## **CITY COUNCIL PRIORITIES**

As provided for in the 2018-19 Proposed Budget.

## **DISCUSSION**

In the 2014 election, the voters elected to change the City's at-large election to a district-based election. The City Council appointed a seven-member Independent Districting Advisory Committee to engage the public and create a district-based map with three districts north of the Santa Fe Railroad line and three districts south of the line. At their meeting of October 5, 2015, City Council adopted a final map and selected districts one, three, and five for election at the November 8, 2016 election.

At the November 6, 2018 election, three Council Members will be elected to four-year terms (one each in districts two, four, and six) and a Mayor will be elected at large to a two-year term of office.

The City has consistently recognized a cost savings in previous years by consolidating the General Municipal Election with the Consolidated Elections conducted by the Merced County Elections Office. The County has trained staff and volunteers, in addition to the necessary equipment, software, and locations to conduct elections efficiently and economically. Therefore, staff recommends that the City Council call for the General Municipal Election on November 6, 2018 and consolidate the General Municipal Election with the Gubernatorial General Election on November 6, 2018.

As in the previous years, candidates are to pay all costs for their Candidate Statements, and in the event of a tie vote after all votes have been counted, the tie will be resolved by a coin toss.

## **IMPACT ON CITY RESOURCES**

It is estimated that the November 6, 2018 General Municipal Election will cost approximately \$75,000. Funds have been included in the Fiscal Year 2018-2019 budget to cover this expense.

## **ATTACHMENTS**

1. Resolution 2018-39
2. Resolution 2018-40

**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
CALLING A GENERAL MUNICIPAL ELECTION  
FOR THE ELECTION OF THE MAYOR AND  
THREE MEMBERS OF THE CITY COUNCIL AT  
THE GENERAL MUNICIPAL ELECTION TO BE  
HELD ON NOVEMBER 6, 2018**

WHEREAS, Section 1000 of the City Charter provides for general municipal elections for the election of officers, and for such other purposes as the City Council may prescribe, in the City in November of even numbered years and to the maximum extent possible consolidated with other elections held in the State and in the County of Merced.

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

SECTION 1. Pursuant to Section 1000 of the City Charter, a general municipal election shall be, and is hereby ordered to be, held in and for the City of Merced on Tuesday, November 6, 2018, for the object and purpose of electing three City Council Members, one seat each in Districts 2, 4 and 6 for four-year terms, and a Mayor for a two-year term.

SECTION 2. The general municipal election hereby called for November 6, 2018 shall be and is hereby ordered consolidated with the Gubernatorial General Election to be held within the City on said date, and within the territory affected by the consolidation, all as required by and pursuant to law; and the election precincts, polling places, and officers of election within the City of Merced for said municipal election hereby called shall be the same as those selected and designated by the Board of Supervisors of the County of Merced for said consolidated election and set forth in the notice of election officers and polling places for said consolidated election published or to be published by the County Clerk of said County, as required by law, to which notice reference is hereby specifically made for a designation of the precincts, polling places, and election officers of the municipal election hereby called. The Board of Supervisors of said County is authorized to canvass, or cause to be canvassed, the returns of said general municipal election with respect to the

votes cast in the City of Merced and to certify the results to this City Council.

SECTION 3. Said general municipal election hereby called shall be held and conducted, and the votes thereat received and canvassed, and the return thereof made, and the result thereof ascertained and determined in accordance with the general election laws of the State of California, except as herein provided or as otherwise provided for in the City Charter.

SECTION 4. All persons qualified to vote at municipal elections in the City of Merced shall be qualified to vote at said general municipal election.

SECTION 5. The polls for the election shall be open at seven o'clock a.m. of the day of the election and shall remain open continuously from that time until eight o'clock p.m. of the same day when the polls shall be closed, and the election officers shall thereupon proceed to canvass the ballots cast thereat.

SECTION 6. In all particulars not recited in this Resolution, the election shall be held and conducted as provided by law for holding regularly scheduled General Elections.

SECTION 7. The City Clerk is authorized, instructed, and directed to procure and furnish any and all official ballots, notices, printed matter, and all supplies, equipment, and paraphernalia that may be necessary in order to properly and lawfully conduct the election.

SECTION 8. Notice of the time and place of holding the election is given and the City Clerk is authorized, instructed, and directed to give further or additional notice of the election, in time, form, and manner as required by law.

SECTION 9. At the next regular meeting of this City Council occurring after the returns of said general municipal election have been canvassed by the Board of Supervisors of the County of Merced, and the certification of the results thereof to this City Council, or at a special meeting called thereafter for such purpose, this City Council shall cause to be spread upon its minutes a statement of the results of said general municipal election as ascertained by said canvass.

SECTION 10. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting 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

\_\_\_\_\_  
City Attorney      6-20-2018  
Date

**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, REQUESTING THAT THE BOARD OF SUPERVISORS OF THE COUNTY OF MERCED, CALIFORNIA PROVIDE FOR THE CONSOLIDATION OF A GENERAL MUNICIPAL ELECTION WITH THE GUBERNATORIAL GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, DIRECT THE FILING OF A NOTICE OF ELECTION WITH THE REGISTRAR OF VOTERS, SUBMIT AN INCUMBENT LIST AND TERMS OF OFFICE, PROVIDE THAT CANDIDATE'S STATEMENTS ARE TO BE PAID BY THE CANDIDATE, AND DETERMINE THAT A COIN TOSS IS THE TIE-BREAKING METHOD**

WHEREAS, the City Council of the City of Merced has called a general municipal election to be held in the City of Merced on Tuesday, November 6, 2018, at which election will be submitted to the qualified electors of the City of Merced the election of three City Council Members, one seat each in Districts 2, 4 and 6 for four-year terms, and a Mayor for a two-year term; and

WHEREAS, a Gubernatorial General Election will be held on Tuesday, November 6, 2018, and it is the desire of this City Council that said general municipal election be consolidated with said Gubernatorial General Election; and

WHEREAS, a Candidate's Statement is to be paid by the Candidate; and

WHEREAS, a pre-determined tie-breaking method should be designated to prevent any possible dispute as to the final outcome of the election.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. The Board of Supervisors of the County of Merced is hereby requested to order the consolidation of said general municipal



election with the Gubernatorial General Election to be held on Tuesday, November 6, 2018, insofar as the City of Merced is concerned, and to further provide that within the territory affected by said Order of Consolidation, to wit: The City of Merced, the election precincts, polling places, and voting booths shall in every case be the same and there shall be one set of election officers in each of said precincts and to further provide that said measures hereinabove set forth shall be set forth in the ballots to be used at said election insofar as the same is held within the City of Merced.

SECTION 2. The Board of Supervisors of Merced County is hereby further authorized to direct the Registrar of Voters to canvass, or to cause to be canvassed, as provided by law, the returns of said general municipal election with respect to the votes cast in the City of Merced on such candidates running for the Office of Mayor and Offices of Member of City Council from Districts 2, 4 and 6, and to certify such canvass of votes cast to the Mayor and Members of the City Council for Districts 2, 4 and 6.

SECTION 3. The City Clerk of the City of Merced ("City Clerk") shall submit a list of incumbents and terms of offices to the Registrar of the County of Merced.

SECTION 4. The Candidate is required to pay for their Candidate's Statement.

SECTION 5. The City Council hereby determines that a coin toss shall be the tie-breaking method for this election.

SECTION 6. The City Clerk is hereby authorized and directed to certify to the due adoption of this Resolution and to transmit a copy thereof so certified to the Merced County Board of Supervisors and to file a copy hereof so certified with the Registrar of the County of Merced.

SECTION 7. The City Clerk shall certify to the passage and adoption of this Resolution and enter it into the book of original Resolutions and take other appropriate actions necessary to ensure the placement of said general municipal election before the voters of the City of Merced at said regularly scheduled Gubernatorial General Election.

SECTION 8. The City Clerk is hereby authorized and directed to reimburse the County of Merced in full for the services performed for

Gubernatorial General Election upon receipt of an invoice from the Registrar of Voters—Elections Office.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting 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

\_\_\_\_\_  
City Attorney      6-20-2018  
Date



## ADMINISTRATIVE REPORT

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**Agenda Item I.11.**

Meeting Date: 7/2/2018

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*Report Prepared by: Steven S. Carrigan, City Manager*

**SUBJECT:** Compensation Plan for Management Employees

### REPORT IN BRIEF

Considers approving Compensation Plan for Management Employees.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving **Resolution 2018-50**, a Resolution of the City Council of the City of Merced, California, adopting a compensation plan for the executive management, middle management, supervisory management, and confidential management employees; and,
- B. Authorizing the City Manager or Assistant City Manager to execute the necessary documents.

### ALTERNATIVES

- 1. Approve, as recommended by staff; or,
- 2. Deny; or
- 3. Refer back to staff with instructions.

### AUTHORITY

Resolution No. 80-106 - Resolution of the City Council of the City of Merced establishing an Employer-Employee Organizations Relations Policy.

Meyers Milias Brown Act

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget

### DISCUSSION

The Compensation Plan for Management Employees has been updated at the direction of the City Council and provides base wage increases and other benefits in accordance with the anticipated revenue forecast along with updating language to align with new state and federal laws. The City Manager recommends adoption of the Resolution approving the Memorandum of Understanding.

A summary of the items agreed upon in this Memorandum of Understanding are as follows:

- Term: Two years - the term of the agreement shall be effective January 1, 2018 and shall remain in effect through December 31, 2019.
- Wages: Base wage increases will be effective the first pay period of the fiscal year as follows: year one (2018) 2.50% and year two (2019) 2.50%.
- Management Categories: Additional management categories have been created to allow for the implementation of the Classification Study, non-exempt confidential, exempt confidential, non-exempt supervisory and exempt supervisory. Positions have been re-classified in accordance with the FLSA audit.
- Non-Exempt Overtime: For purposes of computing overtime hours worked and hours worked and time during which an employee is excused from work because of vacation, holiday, sick or authorized compensatory time off (CTO) shall be considered as time worked by employee.
- Stand by Pay: Exempt Supervisory and Middle Management have been included in the Stand by Pay.
- Vacation: Additional hours of vacation will be granted to employees completing 15 years of service.
- Vacation Payout: Allow employees the option to annually cash out a maximum of 20 accrued vacation hours.
- Administrative Pay Changes: Exempt Supervisory will receive a total of 40 hours, Middle Management will receive a total of 60 hours. Administrative pay cash out will be capped at 40 hours.
- Uniform Allowance: Increase of Fire Uniform Allowance to \$1,050 annually.

## **IMPACT ON CITY RESOURCES**

The total impact of the Compensation Plan on General Fund and other operating funds is approximately \$108,532. Funding has been included in the City Manager's Recommended FY 2018/19 budget. No additional budget appropriation is necessary.

## **ATTACHMENTS**

1. Resolution 2018-50
2. Compensation Plan for Management Employees

**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
ADOPTING A COMPENSATION PLAN FOR THE  
EXECUTIVE MANAGEMENT, MIDDLE  
MANAGEMENT, SUPERVISORY  
MANAGEMENT, AND CONFIDENTIAL  
MANAGEMENT EMPLOYEES**

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

**SECTION 1.** That certain document entitled “Compensation Plan for Management Employees,” effective January 1, 2018, a copy of which is attached hereto and marked Appendix “A,” is hereby approved and shall be effective from January 1, 2018 through December 31, 2019.

**SECTION 2.** All other resolutions or parts thereof inconsistent with Section 1 hereof are superseded, except to the extent the same are incorporated into an existing employment agreement whose term has not expired.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVEN S. CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Vellay J. J. J. J. J. 6/12/18  
City Attorney Date

**CITY OF MERCED**  
**COMPENSATION PLAN**  
**FOR**  
**MANAGEMENT EMPLOYEES**

\*\*\*\*\*

**JANUARY 1, 2018**  
**Through**  
**DECEMBER 31, 2019**

## **ARTICLE I**

### **GENERAL**

**SECTION 1.01. PURPOSE OF PLAN.** The management compensation plan is established to:

1. Compensate management personnel on the basis of merit and skill by a combination of fixed steps and variable amounts.
2. Encourage creative and decisive performance.
3. Recognize and distinguish management personnel differently from members of employee organizations.
4. Promote efficiency and economy.
5. Improve the City's ability to attract and retain outstanding management personnel.

**SECTION 1.02. SCOPE.** The management compensation plan covers positions in the classified and unclassified service in the job classes as set forth in Exhibit A, incorporated in and made a part of this document.

## **ARTICLE II**

### **MANAGEMENT EMPLOYEES**

**SECTION 2.01. GENERAL.**

1. The provisions of this Article applies to employees in the confidential, supervisory, middle and executive categories of the City's management team, hereinafter referred to as management employees.
2. The management compensation plan consists of a salary plan and certain benefits specific to the six different groups of management employees.
3. The City Council has adopted a management salary plan that consists of a salary range of five specific steps.
4. The City Manager is authorized to recommend changes for all classes in the compensation plan from time to time.
5. Salary adjustments for management employees are based on merit and fitness, and emphasize performance demands.



6. For purposes of this compensation plan, non-exempt employees pursuant to the Fair Labor Standards Act are in the non-exempt confidential and non-exempt supervisory categories. Exempt employees pursuant to the Fair Labor Standards Act are in the exempt confidential, exempt supervisory, middle management, and executive management categories.

## **SECTION 2.02. SPECIFIC COMPENSATION.**

1. The City Manager, as Chief Executive Officer, administers the management compensation plan.
2. Department Heads are responsible for recommending to the City Manager meritorious performance adjustments, and exceptional contribution adjustments for management employees within their respective departments.
3. The City Manager is authorized to review compensation and to approve or order increases or decreases thereto for management positions except the City Manager, the Finance Officer, and the City Attorney. The City Manager may not approve or order any salary decrease below Step One or approve or order any salary increase above the maximum established by the salary range.
4. The City Council, by resolution, shall establish the salary plan for all management employees.

## **ARTICLE III HOURS AND WORKING CONDITIONS**

### **SECTION 3.01. WORKDAY, WORKWEEK, WORK PERIOD NON-EXEMPT EMPLOYEES (CONFIDENTIAL AND SUPERVISORY MANAGEMENT CLASSIFICATIONS). EFFECTIVE OCTOBER 8, 2018 (PP22) SECTION 3.01 SHALL APPLY TO NON-EXEMPT CONFIDENTIAL AND NON-EXEMPT SUPERVISORY, UNLESS OTHERWISE STATED.**

- A. For non-exempt employees, the normal workday shall be eight (8) hours; the normal workweek shall be forty (40) hours; the normal work period shall be eighty (80) hours during each fourteen (14)-calendar days unless an employee has requested and received written permission from their department head and the City Manager authorizing an alternate work schedule. Approval shall be on a case by case basis.

Notwithstanding the above, non-exempt Fire Department personnel shall be assigned to either a 40-hour workweek or a 56-hour workweek. The following

special provisions shall apply to such personnel when assigned to a 56-hour workweek.

1. Work Shift – The normal work shift shall consist of 24 consecutive hours. The normal work shift shall begin at 8:00 am, except that:
    - a. Certain divisions, with approval of the department head and authorization of the City Manager, may operate at other times when needed to serve the public or to continue the efficient operations of City service.
    - b. Employees for whom necessity requires a different schedule than presented above shall work according to the schedule prepared by the Department Head and approved by the City Manager and posted on the department bulletin board.
  2. Workweek – The normal workweek shall average approximately 56 hours for non-exempt shift employees.
  3. Work Period – The basic work period shall be established to comply with the Fair Labor Standards Act, with the work period identified as twenty-four (24) calendar days under the 207(k) exemption.
- B. LONGER/SHORTER HOURS. These provisions do not restrict the extension of a regular workday or workweek when such is necessary to carry on the business of the City, nor shall they be deemed to bar the City from establishing a workday of less than eight (8) hours, or a workweek of less than forty (40) hours, or a work period of less than eighty (80) hours for all or any non-exempt employees.
- C. WORKWEEK SCHEDULE. Non-exempt Employees shall work a basic workweek according to the schedule prepared by the Department Head.
- D. REST PERIODS. All non-exempt employees shall be granted a rest period limited to fifteen (15) minutes during each four (4) hours of regular work. Rest periods shall not be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period. The department may make reasonable rules concerning rest period scheduling. No wage deduction shall be made and no time off shall be charged against employees taking authorized rest periods. Rest periods shall be considered hours worked and employees may be required to perform duties, if necessary. Rest periods not taken shall be waived and employees shall not accrue any rights or overtime for rest periods not taken.

- E. MEAL PERIODS. All non-exempt employees normally shall be allowed a meal period of not less than thirty (30) minutes nor more than one (1) hour which shall be scheduled generally in the middle of the work shift. The department may make reasonable rules concerning meal period scheduling. Employees are not authorized to work through a meal period to make up for previous absences, to accrue overtime, to gain entitlement to an earlier quitting time, or for any other reason, unless the employees' assigned or mandated duties require otherwise.
- F. WORK SCHEDULE CHANGES. Within the basic categories of workday, workweek, work period, rest period and meal period, the department head, with the approval of the City Manager, shall have the discretion to modify work schedules to meet the needs of the City. When changes in schedules are anticipated, or immediately necessitated by emergency conditions, the department head shall give employees as much advance notice as is reasonably possible. For purposes of this plan, emergency conditions are conditions involving real or potential loss of service or property or personal danger as determined by the management of the City.
- G. OVERTIME – DEFINITION. Overtime is defined, paid, and calculated pursuant to the Fair Labor Standards Act (FLSA) as actual hours worked beyond the established forty (40) hours in a seven (7) day workweek. For non-exempt employees assigned to a 56-hour work week, overtime is defined, paid and calculated pursuant to the Fair Labor Standards Act (FLSA) under the 207(K) exemption designated work period, as actual hours worked in excess of the established number of hours in a work period.
- H. OVERTIME COMPUTED. Effective June 18, 2018, Pay Period 18, for purposes of computing the number of hours worked, pursuant to the FLSA, actual hours worked and time excused from work because of a holiday, vacation, sick leave and authorized compensatory time off (CTO) shall be considered as time worked by the employee.
- I. OVERTIME – BASE RATE OF PAY. Except as otherwise provided in this plan, compensation for assigned and authorized overtime work in excess of forty (40) hours in a workweek for non-exempt employees shall be at a rate equivalent to one and one-half times the base rate of pay.
- J. CALL-BACK – DEFINITION. Call-back work is defined as work required of a non-exempt employee when such employee is not on his/her regular shift during the period that begins one (1) hour after the employee has left work and ends one (1) hour before the employee is scheduled to begin the next regular shift.

- K. **CALL-BACK PAY.** Employees called back to work by the department head or his/her representative during this period shall be paid in accordance with Section 3.01 H. Fire Battalion Chiefs hired for Emergency Recall (call-back) overtime shall be paid at time and one-half. These hours may be used to offset any overtime required under the FLSA.
- L. **STANDBY OR ON-CALL.** Except as otherwise provided in this document, non-exempt employees and effective October 8, 2018 (PP22) , exempt confidential, exempt supervisory, and middle management employees assigned by the department head or his/her representative to standby or be on-call outside the regular duty schedule shall receive a standby or on-call allowance as follows:
1. Employees assigned to standby or on-call on weekdays (i.e., a 16-consecutive hour period commencing with the end of the regularly-scheduled work shift) shall receive a standby allowance of two (2) hours' pay at the employee's regular straight time base rate of pay for each weekday night of standby or on-call required.
  2. Employees assigned to standby or on-call on regularly scheduled days off (i.e., a 24-consecutive hour period commencing at 8:00 a.m.) shall receive a standby or on-call allowance of three (3) hours pay at the employee's regular straight time base rate of pay for each of said days of standby or on call required.
  3. Employees assigned to standby or on-call on holidays shall receive a standby allowance of four (4) hours pay at the employee's regular straight time base rate of pay for each day of eligible holiday required on standby or on-call.
- M. **COMPENSATORY TIME OFF (CTO).** Non-exempt employees who work over forty (40) hours in a seven (7) day workweek may be given compensatory time off (CTO) in lieu of cash payment for overtime at the discretion of the department head. The time at which compensatory time off (CTO) may be taken will be determined by the department head based on the needs of the City service but after considering the preferences of the employee.
- N. **CTO RATE.** When CTO is authorized in lieu of cash payment for overtime, it shall be allowed and taken at the same base rate of pay that overtime is computed in accordance with the overtime sections of this plan.

- O. CTO – MAXIMUM ACCRUAL. The maximum accrual of CTO hours is eighty (80) hours. Above the maximum accrual, all overtime worked shall be paid at the rate of time and one-half of the base rate of pay. The City shall be in compliance with the Fair Labor Standards Act.
- P. CTO – PAYMENT. Prior to resignation, termination, retirement, status change, or promotion, into an exempt classification, a non-exempt employee shall be permitted to utilize accumulated CTO, or shall be paid the cash equivalent of the accumulated CTO, prior to the effective date of the resignation, termination, retirement, or promotion into an exempt classification. Non-exempt employees may, once per quarter, elect to cash out up to forty (40) hours of CTO. Payment shall be made by separate check/direct deposit.
- Q. GENERAL AUTHORIZATION. The amount of overtime work, call-back work, standby, or on-call, and the method of reimbursement for such work, such as cash, time off, or a combination thereof, shall be determined through general policy of the City Manager except as specifically abridged in this plan. No non-exempt employee shall perform overtime work, call-back work, standby or on-call unless such work is authorized and directed by the department head or his/her representative, and no employee shall be paid for such overtime, call-back, standby, or on-call unless the same shall be approved by the department head on the payroll sheet submitted at the end of the pay period in which the work was performed.

**SECTION 3.02. WORKDAY, WORKWEEK, WORK PERIOD EXEMPT EMPLOYEES (MIDDLE, AND EXECUTIVE MANAGEMENT CLASSIFICATIONS AND EFFECTIVE OCTOBER 8, 2018 (PP22) EXEMPT CONFIDENTIAL AND EXEMPT SUPERVISORY CLASSIFICATIONS).**

Management employees who are classified as exempt employees under the Fair Labor Standards Act (FLSA) are expected to work the hours necessary to accomplish the job requirements, including working alternate shifts, irregular hours, attending evening meetings, and travel to attend classes, meetings, and/or seminars as required. Exempt employees are generally expected to be available during regular hours of the normal workdays, except as required to meet other job requirements.

- A. ADMINISTRATIVE LEAVE DAYS – Exempt employees are eligible for administrative leave days. In addition to any and all leave, time off, vacation, or other authorized absence from the job, exempt employees shall earn the following number of administrative leave days, based on an eight (8) hour day, each calendar year.
  - 1. Exempt Confidential and Exempt Supervisory – All confidential and supervisory exempt employees shall earn forty (40) hours of administrative leave each calendar year. Administrative leave shall be

pro-rated effective October 8, 2018 to the end of the 2018 calendar year.

2. Middle Management – Employees in the positions of Police Captain, Police Lieutenant and Fire Deputy Chief shall earn sixty four (64) hours of administrative leave each calendar year.

All other unrepresented middle management employees shall earn sixty (60) hours of administrative leave each calendar year. The additional twenty (20) hours will be pro-rated effective October 8, 2018 to the end of the 2018 calendar year.

When a middle management employee is assigned to a 56-hour workweek the calculation for administrative leave days equals 89.6 hours of administrative leave per calendar year.

3. Executive Management – All executive management employees shall earn eighty (80) hours of administrative leave each calendar year.

The administrative leave days for all new hire exempt employees shall be prorated based on their hire date during the initial calendar year of their employment.

Upon promotion of an employee from one management category to another, the employee will receive a prorated amount of administrative leave of their new category, added to their remaining balance of administrative leave, not to exceed the annual accrual amount of their promotional category.

The administrative leave days for all exempt employees shall be taken as time off and shall be used during the calendar year earned or by January 31 of the succeeding year. No more than a maximum of 40 hours of administrative leave is eligible to be cashed out no earlier than the first pay period in December but before January 31 of the succeeding year. Any such administrative leave not taken or cashed out by January 31 shall be forfeited and not reimbursed to the employee.

When an exempt employee separates from City service through resignation, termination, or retirement, said employee shall be entitled to receive full-allowed annual accrual or remaining balance of annual paid administrative leave. At no time will the employee have to reimburse the City for administrative leave.

For the City Manager, Finance Officer and the City Attorney, administrative leave shall be as set forth above unless their respective employment agreement provides otherwise.

**SECTION 3.03. HOLIDAYS.** Holidays shall be paid in increments of 8 hours, unless designated otherwise. The following holidays are recognized as City holidays for pay purposes:

New Year's Day	The 1 <sup>st</sup> day of January
Martin Luther King Jr. Day	The 3 <sup>rd</sup> Monday of January
President's Day	The 3 <sup>rd</sup> Monday of February
Memorial Day	The last Monday in May
Independence Day	The 4 <sup>th</sup> day of July
Labor Day	The first Monday in September
Veterans Day	The 11 <sup>th</sup> day of November
Thanksgiving Day	The 4 <sup>th</sup> Thursday in November
Day After Thanksgiving	The day after the 4 <sup>th</sup> Thursday in November
Christmas Day	The 25 <sup>th</sup> day of December

Either Christmas Eve or New Year's Eve: As long as the department is adequately staffed as determined by the department head.

If staffing and scheduling makes it such that employees can get neither day off, an alternate day can be selected with approval of the department head if request is made prior to December 1st. Payment authorized for working only when deemed to be an emergency.

One Floating Holiday: To be taken when requested by the Employee and with the approval of the department head. Available to be taken up to December 31 of each calendar year. Floating Holiday will be paid at time of separation if not previously taken for that calendar year. Management employees hired after the second Monday in October would not be eligible for Floating Holiday in that calendar year.

When any day recognized as a holiday by the City falls on a Sunday, the following Monday shall be considered the holiday. When any day recognized as a holiday by the City falls on a Saturday, the preceding Friday shall be considered the holiday.

**SECTION 3.04. MODIFICATION OF HOLIDAY SCHEDULE.** It is understood that employees do not report to work on recognized City holidays unless otherwise directed by the Department Head. Subject to regulation and control of the City Manager, the Department Head may require any management employee to work on any or all of said holidays.

**SECTION 3.05. HOLIDAY PAY – DAY WORKED NON-EXEMPT**

**EMPLOYEES.** Non-exempt employees eligible for holiday benefits who are required to work on a day designated as a holiday herein shall be paid at the base rate of pay for each hour worked during the first eight (8) hours of work on such holiday and, in addition, shall receive pay equal to and in lieu of time off at the straight time base rate of pay for said holiday. The compensation provided for in this subsection shall be inclusive of any overtime compensation or other benefits to which such employees may be entitled under the provisions of any ordinance or resolution of the City or other applicable law, and not in addition thereto.

**SECTION 3.06. HOLIDAY PAY – DAY OFF NON-EXEMPT EMPLOYEES.**

When a day designated as a holiday falls on a normally assigned day off of a non-exempt employee who is eligible for holiday benefits, said employee shall receive additional pay equal to and in lieu of time off at the base rate of pay for said holiday.

**SECTION 3.07. HOLIDAY PAY – LEAVE OF ABSENCE.** A management employee shall not receive holiday pay if he/she is on an approved leave of absence.

**SECTION 3.08. HOLIDAY PAY – FIRE DEPUTY CHIEF POSITION AND FIRE BATTALION CHIEF POSITION.**

- A.** Every duty day is a workday. Employees shall work their regularly assigned schedule regardless of holidays, unless directed otherwise by the management of the City.
- B.** Employees working a 56-hour workweek shall receive compensation for twelve (12) hours of holiday pay at the straight time base rate of pay for each day designated as a holiday in Section 3.03 during the pay period that said holiday occurs.

**SECTION 3.09. MUTUAL AID INCIDENTS**

Exempt employees assigned to respond to a State or Federal mutual aid incident shall receive pass through compensation at their straight time base rate of pay for all hours assigned to the qualifying incident outside of their normal working hours provided that the inducement meets the following criteria:

- 1) Within the scope of the California Mutual Aid Plan;
- 2) A reimbursable incident which creates “pass through” funds; and
- 3) Outside the jurisdiction of the City of Merced

Payment for hours worked during reimbursable mutual aid incidents that are reimbursable shall be paid when City is reimbursed.



Fire Battalion Chiefs, Police Lieutenants and Police Captains deployed on mutual aid reimbursable incidents shall be paid at time and one-half of the employee's base rate of pay for all hours worked outside of the employees regularly scheduled shift. Fire Battalion Chiefs who backfill for those who are deployed on mutual aid reimbursable incidents, whether voluntarily hired or mandatorily hired, shall be paid at time and one-half of the employee's base rate of pay for all hours worked outside of the employees regularly scheduled shift. These hours may be used to offset any overtime required under the FLSA.

## **ARTICLE IV**

### **WAGES**

**SECTION 4.01. WAGES.** The wages shown on Exhibit A attached hereto are hereby incorporated in and made a part of this plan.

#### **SECTION 4.02. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM.**

##### **A. Miscellaneous**

For Miscellaneous Management Employees the City shall maintain the 2.5% at age 55 California Public Employees' Retirement Program (CalPERS). The City shall implement a two-tiered retirement system for all Miscellaneous Management Employees, and all new employees hired on or after December 10, 2012 will be covered by the 2% at age 60 benefit formula, if they are eligible for reciprocity as defined by CalPERS. "New Members", as defined by CalPERS, shall be covered by the 2% at age 62 benefit formula.

Participation in the PERS Retirement Program requires both an employer and an employee contribution. Employees shall pay the entire employee contribution required by CalPERS.

##### **B. Public Safety – Fire**

For Public Safety Fire Management Employees the retirement plan shall be the California Public Employees' Retirement System (CalPERS) 3% at age 50 Plan. The City has implemented a two-tiered retirement system for Public Safety Fire Employees. All Public Safety Fire Management Employees hired on or after the implementation date of October 7, 2011 shall be covered in the 3% at age 55 benefit formula, if they are eligible for reciprocity as defined by CalPERS. "New Members", as defined by CalPERS, shall be covered by the 2.7% at age 57 benefit formula.

Participation in the PERS Retirement Program requires both an employer and an employee contribution. Public Safety Fire Management employees shall be required to pay the entire employee contribution required by CalPERS.

Optional Death Benefits referred to in the below Government Code Sections agreed upon in the Fire Memorandum of Understanding shall be applicable to Fire Public Safety Management. All associated costs shall be paid by employees:

Government Code 21574 – 1959 Survivor Fourth Level Optional Benefit  
Government Code 21548 – Option 2 Death Settlement

### **C. Public Safety – Police**

For Public Safety Police Management Employees the retirement plan shall be the California Public Employees' Retirement System (CalPERS) 3% at age 50 Plan. The City shall implement a two-tiered retirement system for Public Safety Police Management Employees and all new members hired on or after December 10, 2012 shall be covered in the 3% at age 55 benefit formula, if they are eligible for reciprocity as defined by CalPERS. "New Members", as defined by CalPERS, shall be covered by the 2.7% at age 57 benefit formula.

Participation in the PERS Retirement Program requires both an employer and an employee contribution. Public Safety Police Management employees shall be required to pay the entire employee contribution required by CalPERS.

Employee contributions shall be considered pre-tax contributions.

**SECTION 4.03. DEFERRED COMPENSATION.** The City shall make available a Deferred Compensation Plan for those management employees who wish to participate in said plan. No City contribution is authorized.

**SECTION 4.04. BILINGUAL PAY.** In accordance with administrative policies and procedures, management employees required to speak or write in Spanish, or other eligible languages in addition to English, and including sign language, as part of the regular duties of his/her position shall be compensated at the following bi-weekly rates in addition to the employee's base rate of pay:

Verbal Skills Only	\$23.08
Written Skills Only	\$34.62
Verbal and Written Skills	\$46.15

Qualified employees will only receive one bilingual premium and may not compound premium payments, even if they are multilingual or provide bilingual and sign language services. The City Manager shall designate which languages shall be eligible for bilingual pay based on community needs and will determine the number of employees who will be eligible for bilingual assignments.

**SECTION 4.05. VEHICLE ALLOWANCE.** Executive Management employees who regularly use their personal vehicles for City business shall be eligible to receive a monthly vehicle allowance in lieu of using a City-provided vehicle. The amount of the monthly allowance is based upon the expected average miles

driven per month and adjusted annually by the same percentage that the Internal Revenue Service adjusts their mileage allowance used in calculating deductions for the business use of a vehicle. As a condition of receiving a vehicle allowance, Exempt Management employees must verify possession of a valid California Driver's license; verify that the vehicle is being maintained properly on a regular basis; and that coverage is in force for no less than \$100,000 per occurrence/\$300,000 per accident/\$50,000 property damage; and that coverage is being provided by a carrier "admitted in California with an AM Best rating of no less than A:VII."

Management employees who are provided personal use of a City vehicle are expected to keep accurate records to substantiate both the business and personal miles driven in employer-provided vehicles. The personal use of an employer-provided vehicle is taxable to the employee. "Personal Use" includes commuting. Clearly marked police and fire vehicles are exempted from both the record keeping and taxation requirements.

For the City Manager, the City Attorney and the Finance Officer, the vehicle allowance shall be as set forth above, unless their respective employment agreement provides otherwise.

## **ARTICLE V**

### **VACATION AND SICK LEAVE**

**SECTION 5.01. CONTINUOUS SERVICE.** For the purpose of this article, continuous service means service without any authorized break or interruption during the period for which the employee has been employed by the City. A break or interruption in continuous service shall be construed as a deliberate severance of employment initiated by either the City or the employee for periods of more than fifteen (15) calendar days.

**SECTION 5.02. VACATION ACCRUAL.** All eligible employees earn vacation benefits in accordance with their length of continuous service as follows:

**A. VACATION ACCRUAL CONFIDENTIAL, SUPERVISORY AND MIDDLE MANAGEMENT EMPLOYEES.**

During the first five (5) years of continuous service, full-time employees earn vacation benefits at the rate of 3.696 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 192.00 hours.

After completion of five (5) years of continuous service, full-time employees earn vacation benefits at the rate of 4.616 hours each biweekly pay period of continuous service. Employees who earn

vacation at this rate may accumulate vacation to a maximum of 240.00 hours.

After completion of nine (9) years of continuous service, full-time employees earn vacation benefits at the rate of 6.160 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 320.00 hours.

Effective June 18, 2018, after the completion of fifteen (15) years of continuous service, full-time employees earn vacation benefits at the rate of 6.928 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 360.00 hours.

After completion of twenty (20) years of continuous service, full-time employees earn vacation benefits at the rate of 7.696 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 400.00 hours.

After completion of twenty-five (25) years of continuous service, full-time employees earn vacation benefits at the rate of 9.232 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 480.00 hours.

**B. VACATION ACCRUAL EMPLOYEES ASSIGNED TO A 56 HOUR WORK WEEK.**

Employees assigned to a 56-hour workweek and who have less than five (5) years of continuous service earn vacation benefits at the rate of 4.312 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 224 hours.

After the completion of five (5) years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 6.462 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 336 hours.

After the completion of ten (10) years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 8.624 hours each biweekly pay period of continuous

service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 448 hours.

Effective June 18, 2018, After the completion of fifteen (15) years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 9.699 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 504 hours

After the completion of twenty (20) years of continuous service, employees assigned to a 56-hour workweek earn vacation benefits at the rate of 10.774 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 560 hours.

After the completion of twenty-five (25) years of continuous service employees assigned to a 56-hour workweek earn vacation benefits at the rate of 12.925 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 672 hours.

#### C. VACATION ACCRUAL EXECUTIVE MANAGEMENT EMPLOYEES.

During the first three (3) years of continuous service, full-time employees earn vacation benefits at the rate of 3.696 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 192.00 hours.

After completion of three (3) years of continuous service, full-time employees earn vacation benefits at the rate of 4.616 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 240.00 hours.

After completion of seven (7) years of continuous service, full-time employees earn vacation benefits at the rate of 6.160 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 320.00 hours.

After completion of twenty (20) years of continuous service, full-time employees earn vacation benefits at the rate of 7.696 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 400.00 hours.

Effective June 18, 2018, After the completion of fifteen (15) years of continuous service, full-time employees earn vacation benefits at the rate of 6.928 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 360.00 hours.

After completion of twenty-five (25) years of continuous service, full-time employees earn vacation benefits at the rate of 9.232 hours each biweekly pay period of continuous service. Employees who earn vacation at this rate may accumulate vacation to a maximum of 480.00 hours.

The City Manager and the City Attorney shall be entitled to the same cash out of vacation set forth below or as otherwise agreed to in their respective employment agreement.

**SECTION 5.03. VACATION USE.** Vacation used by an non-exempt employee shall be charged against the vacation accrued on an hour-for-hour basis, except as otherwise provided by FLSA.

**SECTION 5.04. MAXIMUM VACATION ACCRUAL.** When the maximum number of vacation hours is accumulated by an employee, vacation hours cease to accrue to that employee.

**SECTION 5.05. Vacation Cash Out.** All eligible employees will have the option to cash out up to a maximum of twenty (20) hours of accrued vacation time. Employees who elect to cash out vacation shall have a minimum balance of 100 accrued vacation hours prior to the cash out pay period and shall have completed their initial probationary period with the City of Merced. Vacation payment will take place once per year in the first pay period in December.

**SECTION 5.06. PAYMENT OF ACCRUED VACATION UPON SEPARATION.** Employees who leave City employment shall be compensated for vacation accrued but not taken up to the date of separation.

**SECTION 5.07. SICK LEAVE ACCRUAL.** All eligible employees earn sick leave benefits in accordance with their length of continuous service as follows:

- A. Full-time regular employees earn sick leave benefits from the first date of employment at the rate of 3.696 hours each biweekly pay period of continuous service. Employees may accumulate sick leave benefits to a maximum of 1056 accrued sick leave hours.
- B. Employees assigned to a 56-hour workweek earn sick leave benefits from the first date of employment at the rate of 6.003 hours

each biweekly pay period of continuous service and may accumulate sick leave benefits to a maximum of 1500 hours.

**SECTION 5.08. SICK LEAVE USE.** Sick leave used by an non-exempt employee shall be charged against the sick leave accrued on an hour-for-hour basis, except as otherwise provided by FLSA.

**SECTION 5.09. PAYMENT OF EXCESS ACCRUED SICK LEAVE.** In January of each year Management employees who have accrued sick leave hours in excess of 960 hours as of the last pay period in the preceding December will be paid at their regular hourly rate for fifty percent (50%) of said hours in excess of 960 hours, but the remaining fifty percent (50%) will be forfeited. Payment will be made by separate check/direct deposit.

In January of each year, employees assigned to a 56-hour workweek, who have unused sick leave hours in excess of 1344 hours as of the last pay period in the preceding December shall be paid at their base rate of pay (1/112 of basic biweekly pay) for fifty percent (50%) of said hours in excess of 1344 hours but the remaining fifty percent (50%) of hours in excess of 1344 hours will be forfeited. Payment shall be made by separate check/direct deposit.

**SECTION 5.10. PAYMENT OF ACCRUED SICK LEAVE UPON RESIGNATION, TERMINATION, OR RETIREMENT.** To the extent permitted by law, an employee who resigns, is laid off, or is dismissed from City service forfeits all further eligibility to and shall not be paid for any accrued but unused sick leave. An employee who retires from City service shall be compensated at his/her current base rate of pay for fifty (50) percent of sick leave accrued but not taken up to the date of separation and forfeits further eligibility to the remaining fifty (50) percent of accrued sick leave.

When termination is caused by the death of the employee, such pay for fifty (50) percent of sick leave accrued but not taken up to the date of death shall be made to the beneficiary the employee has designated and all further eligibility to the remaining fifty (50) percent of accrued sick leave shall be forfeited.

Should an employee be re-hired by the City of Merced within a 12 month period, the employee will be entitled to the reinstatement of up to three (3) days, but no more than twenty-four (24) hours of unused sick leave accrued during the previous employment.

**SECTION 5.11. FAMILY AND MEDICAL LEAVE ACT.** In accordance with administrative policies and procedures, management employees will be entitled to family and medical leave required by federal and state law.

**SECTION 5.12. HEALTH MAINTENANCE MEDICAL, PHYSICAL AND/OR PSYCHOLOGICAL EXAMINATIONS.** When, in the opinion of the City Manager and the appropriate Department Head, it would be in the best interest of the City to evaluate the medical or psychological condition of an employee, the City Manager may direct the Director of Support Services to schedule such employee for an examination, at City expense, with a physician, psychiatrist, or psychologist selected by the City.

In unusual circumstances where the Department Head and the City Manager believe that an employee may present a hazard to himself/herself, co-workers, or others, the City Manager may order the employee's reassignment, or compulsory leave pending results of a medical or psychological examination.

**SECTION 5.13. CATASTROPHIC LEAVE BANK.** In accordance with administrative policies and procedures, management employees will be entitled to assist other City employees who face extended leaves without pay due to a catastrophic non-industrial occurrence in their lives, and be a recipient of the catastrophic leave bank policy. For the purpose of this plan, a catastrophic occurrence is defined as a serious non-industrial injury or a prolonged illness to themselves, and the affected employee has exhausted all accrued leaves. Both the donor and the recipient must be regular full-time employees, having passed initial probation. Catastrophic leave determinations are non-greivable.

## **ARTICLE VI**

### **HEALTH AND WELFARE**

**SECTION 6.01. BENEFITS PROVIDED AND REQUIRED.** City shall provide a "cafeteria" plan. Each employee shall be required to participate in the following five benefits to a level that provides for the employee:

- Hospital/medical care benefit,
- Dental care benefit,
- Vision care benefit,
- Disability insurance benefit
- Life insurance benefit.

Employees may request a waiver for medical, dental, or vision coverage from the Support Services Department. Such waiver may be granted only if the employee shows proof of other coverage through the employee's spouse or registered domestic partner as defined in the City of Merced Administrative Policy P-27 effective December, 1, 2006. Should an employee who has obtained a waiver to this provision lose such alternative coverage, the employee shall provide proof to the Support Services Department within five (5) business days and enroll in a City-provided insurance program. If waiver of coverage is granted the allowances as outlined in Section 6.03 will be adjusted accordingly.



Participation for the employee's dependents, and participation in other coverages offered, is optional.

**SECTION 6.02. PLAN SELECTION AND EMPLOYEE BENEFIT COMMITTEE.**

The City shall provide a selection of employee health and welfare benefits for eligible employees and retirees, including but not limited to at least two options each for hospital/medical care plan, dental care plan, vision care plan, life insurance plan, and disability insurance plan. The plan shall be selected solely by the City following review of proposals by the Employee Benefits Committee. For the purpose of this section, it is understood that the role of the Employee Benefits Committee is advisory to the City Council. The Committee shall be comprised of representatives of each of the City's bargaining units and management.

**SECTION 6.03. SCHEDULE OF ALLOWANCES PER PAY PERIOD.** The City shall contribute an amount per bi-weekly pay period (based on twenty-six pay periods annually) as the Cafeteria Allowance Per Pay Period.

Effective December 18, 2017 (PP1) the per pay period allowances are as follows:

**Medical**

Employee only	\$229.50
Employee plus one	\$470.07
Employee plus two or more	\$690.93

**Dental, Vision, Disability and Life**

Employee only	\$33.73
Employee plus one	\$47.50
Employee plus two or more	\$67.71

Any increase in the sum of core premiums necessary to purchase the above listed coverages will be shared (55/45) between the City and the employee with the City paying 55% of the increase and the employee paying 45% of the increase. The City's portion shall reflect an increase in the Cafeteria Per Pay Period.

"Core" is defined as the basic offerings in the Cafeteria Plan listed in 6.01.

The employee shall be responsible for the balance of the premiums, if any, beyond the Cafeteria Allowance Per Pay Period. This applies for all insurance coverages selected, whether those coverages are part of the five basic offerings in the cafeteria, or other selections. In order to avoid issues of adverse selection and recognizing the interest of the City in avoiding escalation of insurance premium expenses, no employee shall receive cash back, except that an employee who is married and whose spouse or registered domestic partner is

also a current City of Merced employee, accepted for waiver of medical coverage, shall receive cash back equal to twenty-five percent (25%) of the core medical premium for a single individual.

Employee contributions may be made on a pretax basis if the employee elects to participate in a Section 125 plan.

#### **SECTION 6.04. MEDICAL/HEALTH, DENTAL AND VISION CARE COVERAGE AFTER RETIREMENT.**

A. In accordance with Administrative Policy and Procedure No. P-17, the City shall provide a hospital/medical care plan for eligible retirees. The hospital/medical care plan shall be selected solely by the City and shall provide essentially the same benefits to retirees as are provided to full-time employees. An employee shall be considered a retiree of the City if the employee retires in the California Public Employees' Retirement System and his/her last active place of full-time employment within the system was with the City. All retirees are eligible except as provided in (E) below and shall receive hospital/medical care coverage under the following conditions:

1. The retiree is age 50 or over with at least ten (10) years of service with the City; or
2. Retiree is retired because of a service-connected disability; or
3. Retiree is retired because of a non-service connected disability with at least ten (10) years of service.

A spouse of an eligible retiree may remain on the plan until the retiree is deceased. The spouse or registered domestic partner and retiree shall be responsible for payment of the premium for coverage of spouse.

B. For those retirees in retirement status prior to January 1, 2008 (January 1, 2009 in the case of executive management) the City agrees to contribute the amount necessary to provide a comparable hospital/medical plan for each eligible retiree.

For those active employees in confidential, supervisory and middle management categories who retire on or after January 1, 2008, and for employees in the executive management category who retire on or after January 1, 2009, the City agrees to contribute the monthly premium for each eligible retiree capped at the following amounts: \$390.55 monthly for Retirees over 65, and \$546.51 monthly for Retirees under 65. The Retiree shall pay any amount over the capped premium.

- C. Supplemental Retirement Medical Allowance. An employee retiring on or after January 1, 1999, and eligible for retirement medical benefits as provided in this Section, said retired employee and spouse or registered domestic partner and/or other dependents shall continue to be covered under the City's medical plan until both persons reach age 65. The City shall pay the premium for the retired employee, and the dependent(s) premium shall be the responsibility of the retired employee. At the age of 65, the City's medical plan shall be secondary to Medicare medical coverage or any other benefit coverage available to the retired employee and eligible spouse or registered domestic partner.
- D. An eligible employee who retires after August 1, 1998, and his/her spouse and/or dependents shall be eligible to continue coverage under the City's dental and vision plans. The premiums shall be the responsibility of the retired employee. At the age of 65, or upon the dropping of coverage by the employee, or the death of the eligible employee, the City's dental and vision plans will no longer be available to the retired employee and his/her eligible spouse or registered domestic partner and/or dependents.
- E. Management employees initially hired by the City after July 4, 2006 will not be entitled to receive the City's health/medical plan coverage after retirement, except that such employees may purchase, at their expense, coverage under the City health plan after the age of 65 as a supplement to Medicare. The participant may elect to continue coverage under COBRA if there is a qualifying event.
- F. Any employee deemed to be terminated by the City as the result of the following disciplinary actions shall not be eligible for the City of Merced health/medical/dental/vision coverage after retirement.
1. Conviction of a felony or misdemeanor involving moral turpitude. A plea or a verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction.
  2. Fraud or the submission of false information related to the employment application, payroll, or any work related record or report in an amount equal to Grand Larceny under the Penal Code.
  3. Intoxication, intemperance, or incapacity on duty or due to addiction to the use of controlled substances or alcohol.

## **ARTICLE VII**

### **LEAVES OF ABSENCE**

**SECTION 7.01. BEREAVEMENT LEAVE.** In the event of a death in the immediate family, an employee, upon request, shall be granted up to twenty-four (24) hours bereavement leave with pay without charge to accumulated sick leave or vacation. An additional twenty-four (24) hours bereavement leave shall be granted upon request of the employee, if sufficient accrued hours are available, where extensive travel is required to attend the funeral, or where other extenuating circumstances require the attendance of the employee for additional time. Such additional bereavement leave shall be charged against the employee's accumulated sick leave.

For purposes of this subsection, the immediate family is defined as father, mother, spouse, domestic partner, child as defined by law, brother, sister, mother-in-law, father-in-law, grandparents, and grandchildren related by blood, marriage or adoption.

**SECTION 7.02. OTHER FUNERAL LEAVE.** In the event of the death of a person not immediately related to an employee, as defined above, upon request, the City Manager may grant additional hours of bereavement leave which shall be charged against the employee's sick leave credits.

**SECTION 7.03. ARMED FORCES LEAVE.** Leaves of absences for armed forces service shall be granted to employees in accordance with State and Federal law.

**SECTION 7.04. ABSENCE WITHOUT OFFICIAL LEAVE (AWOL).** Failure to report for duty or failure to report for duty after a leave of absence request has been disapproved, revoked or cancelled, or at the expiration of a leave, shall be considered an absence without official leave.

**SECTION 7.05. VOLUNTARY RESIGNATION.** Any employee covered under this Plan absent without official leave for two (2) or more consecutive days or absent an aggregate of sixteen (16) hours in any calendar month without a satisfactory explanation shall be deemed to have voluntarily resigned from the City of Merced. In addition, such employee shall also be considered to be absent without leave as set forth in Section 7.04 above. However, final payment for services rendered to the City shall be made as required by law.

## **ARTICLE VIII**

### **UNIFORMS**

#### **SECTION 8.01. UNIFORMS.**

- A. UNIFORMS.** The City shall provide uniforms for employees who are required as a condition of employment to wear uniforms. The City Manager will determine the classes of positions for which uniforms will be provided and the types of uniforms that will be furnished. The City reserves the right to eliminate uniforms in any of the classes of positions. Uniform allowance is pro-rated based upon hire date

UNIFORMS FOR FIRE DEPARTMENT AND POLICE DEPARTMENT MANAGEMENT EMPLOYEES. Effective June 18, 2018 (PP14), on an annual basis the City agrees to provide \$1,050.00 per employee for each management Fire and Police employee required to wear a uniform.

Effective June 17, 2019 (PP 14) uniform allowance shall be paid at a bi-weekly amount of \$40.38.

All applicable deductions will be subtracted from payments for uniform allowance and paid by employee.

UNIFORMS FOR NON-SWORN EMPLOYEES. The Police Chief shall have the discretion to determine which Police Department non-sworn employees are required to wear a uniform. For those employees required as condition of employment to wear a uniform, the City shall provide the required uniforms and footwear. Cleaning of uniform shall be the responsibility of the employee. Replacement and/or repair of uniform and footwear shall be the responsibility of the City, and shall not be unreasonably denied. The Uniform is not a requirement to perform the duties of the job. However, if the City provides uniforms and footwear, and the employee accepts the uniforms and footwear, then the employee is required to wear the uniforms and footwear when performing his/her duties with the City. Applicable deductions will be subtracted from the employee's bi-weekly pay.

When a management employee separates from City service through resignation, termination, or retirement, said employee shall not be required to reimburse the City for uniform maintenance allowance.

**ARTICLE IX**  
**DURATION OF COMPENSATION PLAN**

**SECTION 9.01. DURATION OF COMPENSATION PLAN.**

- A. Except as otherwise set forth in this Plan, the specific provisions of this Plan shall take full force and effect upon adoption of a resolution approving this Compensation Plan by the City Council, and shall remain in effect through December 31, 2019. Solely to avoid a gap in term dates of Compensation Plans, term date will reflect as January 1, 2018 through December 31, 2019
- B. This document supersedes all previous documents which relate to management employees except as specifically referred to in this document and except as specifically authorized by ordinance, resolution, administrative directive issued by the City Manager through Administrative Policies and Procedures, the Personnel Rules and Regulations, or separate written agreement with the City.

**ARTICLE X**  
**LAYOFF**

**SECTION 10.01. LAYOFF.**

- A. In lieu of being laid off, an employee may elect demotion ("bumping") to:
  - 1. Any class in the same class series with a lower maximum salary;
  - 2. A class in the same line of work (as determined by the City) as the class of layoff, but of lesser responsibility, and with substantially the same or a lower maximum salary.
- B. In order to bump to a new classification, the employee must have more seniority than the employee that will be displaced.
- C. The employee bumping to a new classification must have held that classification at some time in his/her career with the City of Merced.
- D. Seniority is determined by the total continuous years in the City. The following provisions apply in computing total continuous service:
  - 1. Time spent on military leave shall count as service in the event the leave was taken subsequent to employment;
  - 2. Time worked in a regular and/or probationary status shall count as service;

3. Time worked in an extra help, seasonal, provisional, temporary, grant, or other limited term status, shall not count as service.
- E. To be considered for demotion in lieu of layoff, an employee must notify the Director of Support Services within seven (7) calendar days of receipt of the notice of layoff.
- F. In cases where there are two or more employees in a class from which the layoff is to be made, such employees shall be laid off in inverse order of seniority.
- G. Employees bumping to a lower or similar class shall be placed at the salary step representing the least loss of pay, without exceeding the employee's current base rate of pay.
- H. The names of persons laid off or demoted in accordance with this policy shall be entered upon a re-employment list in the order of layoff. Such list shall be used by the City Manager when a vacancy arises in the same or lower class.
- I. Names of persons laid off shall be carried on a re-employment list for two (2) years, except that persons appointed to regular positions of the same or higher level shall be dropped from the list upon such appointment. Persons re-employed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for the two (2) years.
- J. Refusal of a person to accept the first offer of re-employment within the same classification or a classification at the same or higher range shall cause the name of the person to be dropped from the re-employment list. Failure of a person to respond within seven (7) work days to the offer of re-employment shall be considered a refusal.
- K. An employee may not demote to a frozen position or a position that is being eliminated as part of the layoff, and an employee electing demotion must meet the minimum qualifications for the new classification.

## **ARTICLE XI**

### **TOBACCO PRODUCT USE**

**SECTION 11.01. TOBACCO PRODUCT USE.** The City of Merced declares a hiring policy which disqualifies habitual users of tobacco products from eligibility for employment. Employees hired for positions in one of the management categories after July 1, 2006 (including promotion, transfer, or reclassification from a position in one management category to another) shall not be permitted to

use tobacco products, consistent with this policy. Failure to follow this policy will lead to disciplinary action, up to and including dismissal.

Employees hired into a management category prior to June 30, 2006 will be permitted to use tobacco products in a manner consistent with any restrictions established by State law, administrative policy and this agreement.

Under no circumstances shall any tobacco product be used at any time inside a City building or vehicle or on City owned property.

## **ARTICLE XII**

### **EDUCATIONAL REIMBURSEMENT**

**SECTION 12.01. EDUCATIONAL REIMBURSEMENT.** Under Administrative Policy P-6, unrepresented employees may be eligible for reimbursement for graduate and post-graduate work if a proposal is filed in writing with the Department Head (or City Manager) outlining benefits to the City from such training. Said benefits to the City should be beyond those normally required within the applicable class specification.





## ADMINISTRATIVE REPORT

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**Agenda Item I.12.**

Meeting Date: 7/2/2018

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*Report Prepared by: Deneen Proctor, Director of Support Services*

**SUBJECT:** Agreement for Labor Relations Consulting, Labor Contract Negotiations and Employee Related Legal Services with Law Firm Liebert Cassidy Whitmore

### REPORT IN BRIEF

Considers approving an agreement for labor relations consulting, labor contract negotiations and employee related legal services with the law firm Liebert Cassidy Whitmore in the amount not to exceed \$100,000.

### RECOMMENDATION

**City Council** - Adopt a motion approving an agreement for professional services with Leibert Cassidy Whitmore for labor relations consulting, labor contract negotiations, and employee related matters in an amount not to exceed \$100,000 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 or specific items; or,
4. Deny.

### AUTHORITY

Charter of the City of Merced, Section 200 et. Seq.  
Merced Municipal Code Section 3.04

### CITY COUNCIL PRIORITIES

As provided for in the 2018-2019 adopted budget.

### DISCUSSION

The City has five bargaining units and four unrepresented groups. The City recently reached agreement with three of the City's bargaining groups, AFSCME, MACE and the Merced City Firefighters (IAFF Local 1479). The Memorandums for Understanding (MOUs) for two other City bargaining groups Merced Police Officers Association (MPOA) and Merced Associations of Police Sergeants are set to expire on December 31, 2018. The City will continue to use the services of an outside law firm to assist with the labor negotiations and labor related legal matters. This is a common practice used by other public agencies. While City staff will provide substantial support in

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preparation for and during the negotiation processes, internal City resources are not sufficient to meet the demands associated with the bargaining processes. In addition, the City and the bargaining processes will benefit from having the specialized legal expertise offered by a law firm that focusses in relations and labor negotiations to address complex legal issues such as employee benefits, compensation, pensions and other issues that are likely to arise during the bargaining processes.

The City has used Liebert Cassidy Whitmore for labor negotiations, and other employment related matters since 2010. During that time, the City has generally completed negotiations in a timely matter without being subject to fact-finding or unfair labor practice charges. With the current landscape of labor relations issues, it is important to have an expert legal resource at the table with the City who can communicate with City Council on labor negotiations issues. Accordingly, for the reasons stated above and for the continuity of knowledge for the bargaining processes, Staff recommends contracting with Liebert Cassidy Whitmore for labor relations legal services.

### **IMPACT ON CITY RESOURCES**

No additional appropriation is needed.

### **ATTACHMENTS**

1. LCW Agreement

## **AGREEMENT FOR SPECIAL SERVICES**

This Agreement is entered into between the law firm of LIEBERT CASSIDY WHITMORE, A Professional Corporation ("Attorney"), and the CITY OF MERCED, A Municipal Corporation ("City").

### **1. Conditions**

This Agreement will not take effect, and Attorney will have no obligation to provide services, until City returns a properly signed and executed copy of this Agreement.

### **2. Attorney's Services**

Attorney agrees to provide City with consulting, representational and legal services pertaining to employment relations matters, including representation in negotiations and in administrative and court proceedings, as requested by City or otherwise required by law.

### **3. Fees, Costs, Expenses**

City agrees to pay Attorney the sums billed monthly for time spent by Attorney in providing the services, including reasonable travel time, not to exceed \$100,000.00, unless mutually agreed upon by the parties.

The current range of hourly rates for Attorney time is from Two Hundred to Three Hundred Fifty Dollars (\$200.00 - \$350.00), One Hundred Ninety-Five Dollars to Two Hundred Thirty Dollars (\$195.00 - \$230.00) for time of Labor Relations/HR Consultant and from Seventy-Five to One Hundred Seventy Dollars (\$75.00 - \$170.00) for time of paraprofessional and litigation support staff. Attorney reviews its hourly rates on an annual basis and, if appropriate, adjusts them effective July 1. Attorney will provide the

City with written notification of any adjustment in the range of rates. Attorneys, paraprofessional and litigation support staff bill their time in minimum units of one-tenth of an hour.

City agrees to reimburse Attorney for necessary costs and expenses incurred by Attorney on behalf of City. Attorney bills photocopying charges at Fifteen Cents (\$0.15) per page and facsimile charges at Twenty-Five Cents (\$0.25) per page. A Public Agency Fee Schedule is attached to this Agreement.

Payment by City against monthly billings is due upon receipt of statements, and is considered delinquent if payment is not received within thirty (30) days of the date of the invoice.

The California Business & Professions Code requires us to inform you whether we maintain errors and omissions insurance coverage applicable to the services to be rendered to you. We hereby confirm that the firm does maintain such insurance coverage.

**4. Arbitration of Professional Liability or Other Claims**

Disputes. If a dispute between City and Attorney arises over fees charged for services, the controversy will be submitted to binding arbitration in accordance with the rules of the California State Bar Fee Arbitration Program, set forth in California Business and Professions Code, sections 6200 through 6206. The arbitrator or arbitration panel shall have the authority to award to the prevailing party attorneys' fees, costs and interest incurred. Any arbitration award may be served by mail upon either side and personal service shall not be required.



If a dispute arises between City and Attorney over any other aspect of the attorney-client relationship, including, without limitation, a claim for breach of professional duty, that dispute will also be resolved by arbitration. It is understood that any dispute as to any alleged breach of professional duty (that is, as to whether any legal services rendered under this agreement were allegedly unnecessary, unauthorized, omitted entirely, or were improperly, negligently or incompetently rendered) will be determined by submission to arbitration as provided by California law, and not by a lawsuit or resort to court process except as California law provides for judicial review of arbitration proceedings. **Both parties to this agreement, by entering into it, are giving up their constitutional right to have any such dispute decided in a court of law before a jury, and instead are accepting the use of arbitration.** Each party is to bear its own attorney's fees and costs.

**5. File Retention**

After our services conclude, Attorney will, upon City's request, deliver the file for the matter to City, along with any funds or property of City's in our possession. If City requests the file for the matter, Attorney will retain a copy of the file at the City's expense. If City does not request the file for this matter, we will retain it for a period of seven (7) years after this matter is closed. If City does not request delivery of the file for this matter before the end of the seven (7) year period, we will have no further obligation to retain the file and may, at our discretion, destroy it without further notice to City. At any point during the seven (7) year period, City may request delivery of the file.

**6. Assignment**

This Agreement is not assignable without the written consent of City.

7. **Independent Contractor**

It is understood and agreed that Attorney, while engaged in performing the terms of this Agreement, is an independent contractor and not an employee of City.

8. **Authority**

The signators to this Agreement represent that they hold the positions set forth below their signatures, and that they are authorized to execute this Agreement on behalf of their respective parties and to bind their respective parties hereto.

9. **Term**

This Agreement is effective July 1, 2018, ongoing and may be modified by mutual agreement of the parties. This agreement shall be terminable by either party upon thirty (30) days written notice.

LIEBERT CASSIDY WHITMORE,  
A Professional Corporation

CITY OF MERCED,  
A Municipal Corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

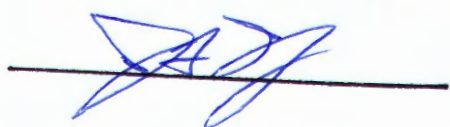
Title: \_\_\_\_\_

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

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

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

**APPROVED AS TO FORM:**



I. PUBLIC AGENCY FEE SCHEDULE

Hourly Rates (As of Agreement Effective Date)

Partners	\$350.00
Senior Counsel	\$305.00
Associates	\$200.00 - \$285.00
Labor Relations/HR Consultant	\$195.00 - \$230.00
Paraprofessionals & Litigation Support	\$75.00 - \$170.00

II. COST SCHEDULE

- |                          |                 |
|--------------------------|-----------------|
| 1. Photocopies           | \$0.15 per copy |
| 2. Facsimile Transmittal | \$0.25 per page |



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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### Agenda Item I.13.

Meeting Date: 7/2/2018

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*Report Prepared by: Joseph D. Angulo, Environmental Project Manager, Engineering*

**SUBJECT:** Two Amendments to Agreements for Professional Services with Provost and Pritchard Engineering Group, Incorporated, Project No. 119049

### REPORT IN BRIEF

Considers authorizing two separate agreements for environmental remediation services for a combined total of \$288,500.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving the Second Amendment to Agreement for Professional Services (cleanup contract) with Provost and Pritchard Engineering Group, Incorporated, in the amount of \$230,000 for groundwater cleanup; and,
- B. Approving the Second Amendment to Agreement for Professional Services (reporting contract) with Provost and Pritchard Engineering Group, Incorporated, in the amount of \$58,500 for report drafting; and,
- C. 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 City Council; or,
- 3. Refer to staff for reconsideration of specific items; or,
- 4. Deny.

### AUTHORITY

Charter of the City of Merced, Section 200 et seq.

Services with an estimated value greater than \$30,000 are made by written contract in accordance with Merced Municipal Code, Title 3 - Revenue and Finance, Chapter 3.04.

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget.



## DISCUSSION

### PCE Groundwater Cleanup - History and Past Actions

On September 22, 2008, the City Council approved a settlement and cleanup agreement with the California Regional Water Quality Control Board (Board) for the City's PCE (tetrachloroethylene) groundwater project. Under the agreement, the City agreed to commit \$250,000 annually to fund work specified in a mutually approved Action Plan. The Action Plan includes provisions for an annual work plan that generally includes tasks to be completed at the subject seven PCE sites by the City for each following fiscal year.

The Council approved an Agreement for Professional Services with Provost and Pritchard Engineering Group, Inc., at its July 5, 2016, meeting, and a first contract amendment at its July 5, 2017, meeting.

### Current Site Status

- One Hour Martinizing, 2828 G Street- The Board issued closure for the site on April 22, 2015. The site's wells have been destroyed and the treatment system trailer transferred to the Sunshine site. This is the first of the seven sites to receive complete closure for the groundwater cleanup.

Status of the remaining PCE Sites (6):

- Former Sunshine Cleaners, 1227 W. Main Street- The treatment system trailer formerly located at the above G Street site was transferred to the Sunshine site to initiate soil vapor extraction to remove PCE vapors. The system continues to operate.
- Former Parkway Cleaners, 1530 Yosemite Parkway- A groundwater cleanup system is in operation. The system consists of air injection into groundwater with soil vapor extraction to remove PCE vapors. Although groundwater cleanup is occurring, it is progressing slowly.
- One Hour Martinizing, 1818 R Street- Staff requested closure for PCE impacts to soils at the site and the Board agreed in 2015. Groundwater monitoring only is occurring, and further action is deferred in accordance with the Settlement Agreement priority list.
- Former Simpson's Dry Cleaners, 618 W. Main Street- The Board granted closure for PCE in soils at this parcel and concurred that the property may be developed. The Board has not issued closure for PCE in groundwater. Groundwater monitoring only is occurring and further action is deferred in accordance with the Settlement Agreement priority list.
- Former Bel Air Cleaners, 950 W. Main Street- Groundwater monitoring only is occurring, further action is deferred in accordance with the Settlement Agreement priority list.
- Merced Laundry, 160 W. Main Street- Groundwater monitoring only is occurring, further action is deferred in accordance with the Settlement Agreement.

The new Provost and Pritchard Engineering Group, Inc., \$230,000 contract amendment under

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consideration includes the following tasks for Fiscal Year 2018-2019:

Former Parkway Cleaners

- Operation and maintenance costs of the treatment system;
- Carbon filter media replacement;
- Performing a 5-month dual phase extraction pilot test;
- System evaluation reporting.

Former Sunshine Cleaners

- Operation and maintenance costs of the treatment system;
- Carbon filter media replacement;
- Performing a 5-month dual phase extraction pilot test;
- System evaluation reporting.

The groundwater cleanup at the two above sites is progressing slowly due to the persistent nature of the chemical PCE. Dual phase extraction involves applying a vacuum on a groundwater well to simultaneously extract PCE impacted soil vapor and groundwater. As the water is removed more of the soil column is exposed to vacuum to remove the PCE. The soil vapors are captured utilizing carbon absorption and the extracted water is containerized for off-site disposal.

If the dual phase extraction pilot test proves effective at the Parkway and Sunshine sites then permanent modifications to the cleanup systems will be considered.

The balance of the annual \$250,000 PCE cleanup funding commitment will be used to pay Board oversight fees for Fiscal Year 2018-2019.

PCE Reporting - History and Past Actions

This Agreement for Professional Services is for consultant services to prepare quarterly monitoring reports on the status of PCE in groundwater in the City. The reports are necessary to demonstrate that the City is completing its obligations under agreements with the Board. The quarterly reporting task changes over time with added complexity as the PCE groundwater cleanup project advances.

The Council approved an Agreement for Professional Services for report drafting with Provost and Pritchard Engineering Group, Inc., at its July 5, 2016, meeting, and a first contract amendment at its July 5, 2017, meeting. This second contract amendment is for Quarterly Monitoring Reports for the last two quarters of 2018 and the first two quarters of 2019 (fiscal year 2018/2019) at a cost of \$58,500. Provost and Pritchard Engineering Group, Inc., has provided satisfactory service for the PCE project.

## **IMPACT ON CITY RESOURCES**

### PCE Cleanup Contract

On December 18, 2006, the City Council approved water service rates that include an amount of \$250,000 annually to provide for source water protection and remediation costs at the seven PCE sites. Funds are available in the Fiscal Year 2018-2019 budget in PCE CIP Enterprise Fund 463 to cover the cost of the cleanup contract.

### PCE Reporting Contract

There are sufficient funds in the Fiscal Year 2018-2019 budget in Fund 557-Water Operations to cover the amount of the contract.

## **ATTACHMENTS**

1. PCE Cleanup Contract
2. PCE Reporting Contract

## **SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES**

THIS SECOND AMENDMENT TO 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 18<sup>th</sup> Street, Merced, California 95340, ("City"), and Provost & Pritchard Engineering Group, Inc., a California Corporation, whose address of record is 2505 Alluvial Avenue, Clovis, California 93611, ("Consultant").

WHEREAS, City is undertaking a project to do assessment and remediation of PCE impacted sites; and

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services ("Agreement") dated July 5, 2016, and a First Amendment on July 5, 2017; and

WHEREAS, City and Consultant desire to amend the Agreement to modify the scope of services in connection with said project.

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

1. Section 24, "ADDITIONAL WORK," is hereby added to the Agreement to read as follows:

"SECTION 24. ADDITIONAL WORK. Consultant shall perform the additional work outlined in the proposal from Consultant to City dated April 26, 2018, attached hereto as Exhibit "1".

2. Section 25, "ADDITIONAL COMPENSATION," is hereby added to the Agreement to read as follows:

"SECTION 25. ADDITIONAL COMPENSATION. City shall pay to Consultant the not to exceed additional sum of Two Hundred Thirty Thousand Dollars (\$230,000.00) for the additional work described in the

proposal attached hereto as Exhibit "1" and in accordance with the rates set forth on Exhibit "1."

3. Except as herein amended, the Agreement dated July 5, 2016, and First Amendment dated July 5, 2017, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to 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: K. Flores 5/8/18  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

CONSULTANT  
PROVOST & PRITCHARD  
ENGINEERING GROUP, INC.,  
A California Corporation

BY:   
(Signature)

RANDY HOPKINS  
(Typed Name)

Its: VICE PRESIDENT  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Taxpayer I.D. No. 94-2187078

ADDRESS: 2505 Alluvial Ave.  
Clovis, CA 93611

TELEPHONE: (559) 326-1100  
FAX: (559) 326-1090  
E-MAIL: [www.ppeng.com](http://www.ppeng.com)

April 26, 2018

Mr. Joseph Angulo  
Environmental Project Manager  
City of Merced  
678 18<sup>th</sup> Street  
Merced, CA 95340

SUBJECT: Fee Estimates For the Annual Work Plan  
Third and Fourth Quarter 2018 and the  
First and Second Quarter 2019  
For PCE Project including 1-Hour R Street Site, Parkway, Sunshine, Bel  
Air, Simpson's, and Merced Laundry Dry Cleaners, City of Merced

Dear Mr. Angulo,

At your request, Provost & Prichard Consulting Group (P&P) is providing you with our cost estimate to provide continuing remedial support including operation, maintenance (O&M) and dual phase extraction at the Parkway site, and continuing remedial support and operation and maintenance (O&M) and dual phase extraction at the Sunshine site. All costs are based solely on the tasks listed in the City's Annual PCE work plan submitted to the RWQCB. Additional work scopes can be conducted as requested.

At the Parkway site we have included typical bi-weekly O&M expenses similar to the previous year, preparing a Dual Phase Extraction Workplan, and completing a five month pilot test with Dual Phase Extraction. At the Sunshine site, we have included typical bi-weekly O&M and dual phase extraction expenses similar to Parkway.

This project cost is based on our 2018 Fee Schedule (also attached).

## LIMITATIONS

P&P offers various levels of investigative, engineering and design services to suit the varying needs of our Clients. Although risk can never be eliminated, more detailed and extensive investigations yield more information, which help understand and manage the level of risk. Since detailed investigation and analysis involves greater expenses, our Clients assist with determining levels of services that will provide adequate information for their purposes at acceptable levels of risk. Acceptance of this proposal indicates the City of Merced has reviewed the scope of work and determined you do not need or want a greater level of services than that being proposed. Any exception should be noted and may result in high fees.

Regulations and professional standards applicable to P&P services are continually evolving. Techniques are, by necessity, often new and relatively untried. Different professionals may reasonably adopt different approaches to similar problems.



Therefore, no warranty or guarantee, express or implied, will be included in P&P's scope of services.

#### **AUTHORIZATION**

If there is a need for any change in the scope of services described in this fee estimate please call us immediately. Changes may require revision of the proposed fee that will be communicated to you.

All information gathered during this project is considered confidential and will be released only upon written authorization of the City of Merced or as required by law.

We appreciate the opportunity to submit this fee estimate and look forward to working with you on this project. If you have any questions or need additional information, please contact Dave or Stephanie in our Clovis Office at (559) 326-1100.

Sincerely,

#### **Provost and Pritchard Consulting Group**

  
Stephanie Gillaspy, EIT  
Senior Environmental Specialist

  
David W. Norman  
Principal Environmental Specialist

DWN:SEG



**PROVOST & PRITCHARD CONSULTING GROUP**  
**STANDARD FEE SCHEDULE**  
**Effective 1/1/2018**  
**(hourly rates)**

This schedule supersedes previously published fee schedules as of the effective date  
*Multi-year contracts are subject to any subsequent changes in these rates*

	<u>Fee</u>
<b><u>ENGINEERING STAFF:</u></b>	
Assistant Engineer	\$ 90.00 - \$110.00
Associate Engineer	\$115.00 - \$135.00
Senior Engineer	\$140.00 - \$170.00
Principal Engineer	\$175.00 - \$215.00
<b><u>SPECIALISTS:</u></b>	
Assistant Environmental Specialist	\$ 80.00 - \$105.00
Associate Environmental Specialist	\$112.00 - \$142.00
Senior Environmental Specialist	\$145.00 - \$170.00
Principal Environmental Specialist	\$180.00 - \$210.00
Associate GIS Specialist	\$ 90.00 - \$110.00
Senior GIS Specialist	\$115.00 - \$145.00
Associate Geologist/Hydrogeologist	\$110.00 - \$135.00
Senior Geologist/Hydrogeologist	\$145.00 - \$175.00
Water Resources Specialist	\$115.00 - \$145.00
<b><u>PLANNING STAFF:</u></b>	
Assistant Planner/CEQA-NEPA Specialist	\$ 70.00 - \$ 95.00
Associate Planner/CEQA-NEPA Specialist	\$100.00 - \$125.00
Senior Planner/CEQA-NEPA Specialist	\$135.00 - \$160.00
Principal Planner/CEQA-NEPA Specialist	\$165.00 - \$190.00
<b><u>TECHNICAL STAFF:</u></b>	
Assistant Technician	\$ 70.00 - \$ 90.00
Associate Technician	\$ 95.00 - \$115.00
Senior Technician	\$125.00 - \$140.00
<b><u>CONSTRUCTION SERVICES:</u></b>	
Associate Construction Manager	\$110.00 - \$130.00
Senior Construction Manager	\$135.00 - \$157.00
Principal Construction Manager	\$165.00 - \$195.00
Construction Manager Prevailing Wage <sup>(1) (2)</sup>	\$137.00 - \$162.00
<b><u>SUPPORT STAFF:</u></b>	
Administrative Assistant	\$ 60.00 - \$ 80.00
Project Administrator	\$ 70.00 - \$ 90.00
Project Manager	\$120.00
Intern	\$ 60.00
<b><u>SURVEYING SERVICES:</u></b>	
LSIT Surveyor	\$ 90.00 - \$110.00
Licensed Surveyor	\$120.00 - \$155.00
	<u>Prev. Wage (1)</u>
1 Man Survey Crew	\$160.00
2 Man Survey Crew	\$225.00
2 Man Survey Crew including LS	\$260.00
1 Man CORS Survey Crew	\$175.00
2 Man CORS Survey Crew	\$225.00
UAV (Drone) Services	\$200.00
(Field Work not including survey equipment billed at individual standard rate plus vehicle as appropriate)	

**EXPERT WITNESS:** As quoted.

**TRAVEL TIME** (for greater than 1 hour from employee's base office): \$80/hr (unless the individual's rate is less)

**PROJECT COSTS:**

Mileage	IRS value + 15%
Outside Consultants	Cost + 15%
Direct Costs	Cost + 15%

- (1) Prevailing wage rates shown for San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties, other counties as quoted.
- (2) Overtime for Construction Services prevailing wage will be calculated at 125% of the standard prevailing wage rate.

## **SECOND AMENDMENT TO AGREEMENT FOR PROFESSIONAL SERVICES**

THIS SECOND AMENDMENT TO 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 18<sup>th</sup> Street, Merced, California 95340, ("City"), and Provost & Pritchard Engineering Group, Inc., a California Corporation, whose address of record is 2505 Alluvial Avenue, Clovis, California 93611, ("Consultant").

WHEREAS, City is undertaking a project to do quarterly groundwater monitoring reports; and

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services ("Agreement") dated July 5, 2016, and a First Amendment on July 5, 2017; and

WHEREAS, City and Consultant desire to amend the Agreement to modify the scope of services in connection with said project.

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

1. Section 24, "ADDITIONAL WORK," is hereby added to the Agreement to read as follows:

"SECTION 24. ADDITIONAL WORK. Consultant shall perform the additional work outlined in the proposal from Consultant to City dated April 26, 2018, attached hereto as Exhibit "1".

2. Section 25, "ADDITIONAL COMPENSATION," is hereby added to the Agreement to read as follows:

"SECTION 25. ADDITIONAL COMPENSATION. City shall pay to Consultant the not to exceed additional sum of Fifty-Eight Thousand Five Hundred Dollars (\$58,500.00) for the additional work described in the

proposal attached hereto as Exhibit "1" and in accordance with the rates set forth on Exhibit "1."

3. Except as herein amended, the Agreement dated July 5, 2016, and First Amendment dated July 5, 2017, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Second Amendment to 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

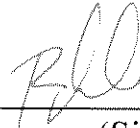
APPROVED AS TO FORM:

BY: K. Howe 5.15.18  
City Attorney Date

ACCOUNT DATA:

BY: \_\_\_\_\_  
Verified by Finance Officer

CONSULTANT  
PROVOST & PRITCHARD  
ENGINEERING GROUP, INC.,  
A California Corporation

BY:   
(Signature)

RANDY HOPKINS  
(Typed Name)

Its: VICE - PRESIDENT  
(Title)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed Name)

Its: \_\_\_\_\_  
(Title)

Taxpayer I.D. No. 94-2187078

ADDRESS: 2505 Alluvial Ave.  
Clovis, CA 93611

TELEPHONE: (559) 326-1100

FAX: (559) 326-1090

E-MAIL: www.ppeng.com

April 26, 2018

Mr. Joseph Angulo  
Environmental Project Manager  
City of Merced  
678 18<sup>th</sup> Street  
Merced, CA 95340

**SUBJECT:** Quarterly Ground Water Monitoring Reports for the  
Third and Fourth Quarter 2018 and the  
First and Second Quarter 2019  
For PCE Project including 1-Hour R Street Site, Parkway, Sunshine, Bel  
Air, Simpson's, and Merced Laundry Dry Cleaners, City of Merced

Dear Mr. Angulo,

At your request, Provost & Prichard Consulting Group (P&P) is providing you with our cost estimate to provide continuing quarterly groundwater reporting for the PCE project. As you indicated this contract would be for a time period covering the Third and Fourth (annual report) Quarter 2018 and the First and Second Quarter 2019. The quarterly reporting will include the data from the six dry cleaners sites currently being monitored by the City for the "PCE project." The City has designated specific wells for each of these sites. The City has indicated sampling up to 75 groundwater monitoring wells for this program as amended a number of times to reduce the total number of wells sampled since 2007. All wells are monitored for depth to groundwater each quarter.

Since the beginning of the PCE project several modifications have been incorporated into the reporting in response to comments from the Regional Water Quality Control Board (RWQCB) for additional groundwater mapping and soil vapor extraction system and ozone/ air sparging data for one operating system at Parkway and operation of a remediation system at Sunshine. The cost estimate is intended to include the preparation of the required and anticipated reporting during the contract period. This cost estimate includes the preparation of three (3) quarterly reports and one annual report, following our receipt of laboratory data from the City contracted lab and the field sampling records from the City contracted consultant in accordance with RWQCB requests as approved by the City.

## **SCOPE OF WORK**

P&P will prepare four quarterly groundwater monitoring reports in accordance with the City's directions, the City's approval of RWQCB requests and generally accepted standards for such reporting.

The 2018/2019 quarterly reports will build on the data and format of previous reporting and provide updated graphs, tables and maps for review and consideration by the RWQCB, the court and the City. The Fourth Quarter report will double as the annual

report and will include additional sections and data interpretations based on the previous year's data. Seasonal fluctuations of water levels and the affect (if any) on PCE concentrations, plume movement and the results of the previous month's remedial activities (PCE removal or destruction rates) with project totals will be discussed.

## **ASSUMPTIONS AND ESTIMATED COSTS**

P&P will continue to upload the lab data in EDF format provided by the contract laboratory to Geotracker, as well as the quarterly report. P&P will invoice for our service on a time and material basis not to exceed the estimated fee, without prior written approval. We have increased this year's budget up approximately 3 percent to account for some increase in cost. The invoicing will occur monthly for the level of effort expended during the billing cycle. Fee will be based on P&Ps 2018 Fee schedule (attached). P&P will perform the scope of work discussed herein for an estimated fee of \$58,500.

## **FEE ESTIMATE**

Four Quarterly Reports	\$58,500
<b>TOTAL CONTRACT</b>	<b>\$58,500</b>

## **LIMITATIONS**

P&P offers various levels of investigative, engineering and design services to suit the varying needs of our Clients. Although risk can never be eliminated, more detailed and extensive investigations yield more information, which help understand and manage the level of risk. Since detailed investigation and analysis involves greater expenses, our Clients assist with determining levels of services that will provide adequate information for their purposes at acceptable levels of risk. Acceptance of this proposal indicates the City of Merced has reviewed the scope of work and determined you do not need or want a greater level of services than that being proposed. Any exception should be noted and may result in high fees.

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We appreciate the opportunity to submit this fee estimate and look forward to working with you on this project. If you have any questions or need additional information, please contact Dave or Stephanie in our Clovis Office at (559) 326-1100.

Sincerely,

**Provost and Pritchard Consulting Group**

  
Stephanie Gillaspy, EIT  
Senior Environmental Specialist

  
David W. Norman  
Principal Environmental Specialist

**PROVOST & PRITCHARD CONSULTING GROUP**  
**STANDARD FEE SCHEDULE**  
**Effective 1/1/2018**  
(hourly rates)

This schedule supersedes previously published fee schedules as of the effective date  
*Multi-year contracts are subject to any subsequent changes in these rates*

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(Field Work not including survey equipment billed at individual standard rate plus vehicle as appropriate)	

**EXPERT WITNESS:** As quoted.

**TRAVEL TIME** (for greater than 1 hour from employee's base office): \$80/hr (unless the individual's rate is less)

**PROJECT COSTS:**

Mileage	IRS value + 15%
Outside Consultants	Cost + 15%
Direct Costs	Cost + 15%

- (1) Prevailing wage rates shown for San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings and Kern Counties, other counties as quoted.
- (2) Overtime for Construction Services prevailing wage will be calculated at 125% of the standard prevailing wage rate.





ADMINISTRATIVE REPORT

Agenda Item I.14.

Meeting Date: 7/2/2018

*Report Prepared by: Joe Cardoso, P.L.S., City Surveyor, Engineering Department*

**SUBJECT:** Administering Agency State Program Supplement No. 030-F and Agreement Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant for the Motel Drive Sidewalks

**REPORT IN BRIEF**

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$53,983 in CMAQ Grant funding for Preliminary Engineering for the Motel Drive Sidewalk from Merced Avenue to Carol Avenue.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-49**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. 030-F; and,
- B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321.32-00 by \$53,983 and appropriating the same to account 450-1104-637.65-00 (Project No. 119043) for preliminary engineering costs associated with design of sidewalk on Motel Drive; and,
- C. Approving the use of pooled cash until reimbursement is received from the grant; and,
- D. 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 conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

**AUTHORITY**

Charter of the City of Merced, Section 200.

Caltrans Procedures for Administering Local Grant Projects in the State Transportation Improvement Program (STP) are used to comply with the changes to the programming and funding statutes

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brought about by Charter 622 of the Statutes of 1997 (SB 45, KOPP). The procedures have been modified to remain consistent with and complimentary to the various guidelines and policies adopted by the California Transportation Commission (CTC), including the current 2010 STP Guidelines (adopted on October 14, 2009).

## **CITY COUNCIL PRIORITIES**

As provided for in the 2018-19 Adopted Budget.

## **DISCUSSION**

In November 2016, the City applied for Congestion Mitigation and Air Quality Improvement (CMAQ) funds to install approximately 1,314 linear feet of multi-use path (sidewalk and bicycle lanes), corresponding curb and gutter and ADA compliant curb ramps and driveway on Motel Drive from Carol Avenue to Merced Avenue.

Installing a multi-use path along Motel Drive from Carol Avenue to Merced Avenue will allow for both bike and sidewalk connectivity for Golden Valley High School students, residential community, tenants at the hotels/inn/motels to access restaurants and stores along the Motel Drive corridor.

This portion of the project is for Preliminary Engineering, which will allow for design, prepare engineering plans and specifications, environmental review and public outreach. Federal-Aid Projects Program Supplement Agreement No. 030-F allows \$53,983 in grant funds and a local match of \$6,995 toward the Preliminary Engineering of this project.

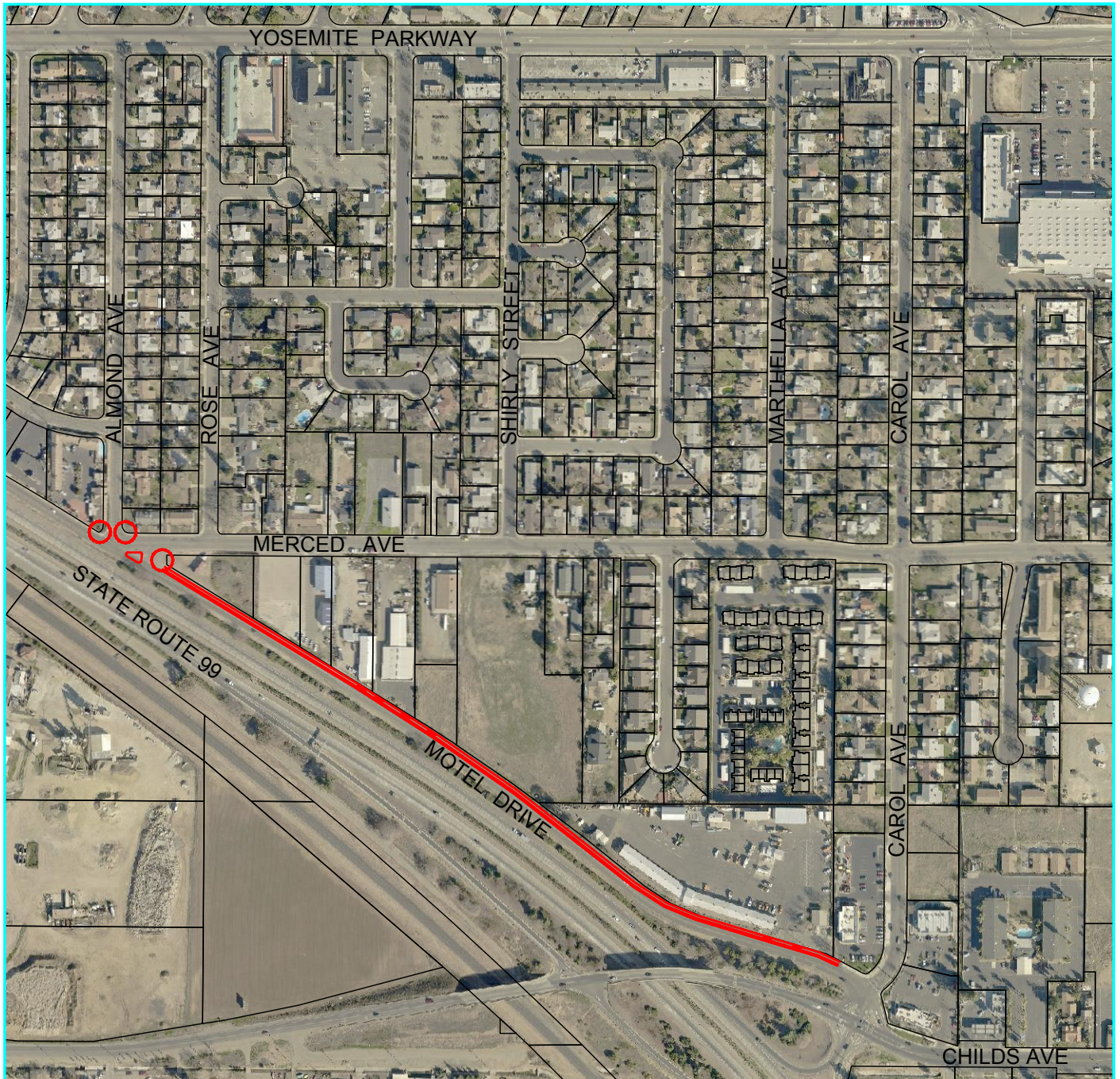
## **IMPACT ON CITY RESOURCES**



Staff recommends accepting grant funds from the State of California adopted CMAQ Program, increasing revenue account 450-1104-321.32-00 in the amount of \$53,983, and appropriating the same to account 450-1104-637.65-00-119043 for Preliminary Engineering costs. Additionally, Fund 075-Measure V Alternative Modes will be used for the matching funds in the amount of \$6,995.

## **ATTACHMENTS**

1. Location Map
2. Resolution
3. Finance Letter
4. Program Supplement
5. CML-5085(049) E-76 PE





LEGEND	
	ADA RAMP
	SIDEWALK / MULTI-USE PATH

# LOCATION MAP

SCALE: NTS



*City of Merced*  
 "Gateway to Yosemite"  
**DEVELOPMENT SERVICES**  
 ENGINEERING PROJECTS AND STANDARDS  
 678 W. 18th Street (209) 385-6846

**MOTEL DRIVE PROJECT**  
**CMAQ 2016-2017 GRANT**  
**CITY OF MERCED**

DR. BY: JCS  
 DATE: 11/1/2016  
 CH. BY: JSagin  
 DATE: 11/1/2016  
 File No. XXXXX  
 SCALE: AS SHOWN

**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING FEDERAL-AID PROJECTS  
PROGRAM SUPPLEMENT AGREEMENT  
NO. 030-F**

WHEREAS, the City of Merced is eligible to receive Federal and/or State funding for certain transportation projects through the California Department of Transportation; and

WHEREAS, Program Supplemental Agreements need to be executed with the California Department of Transportation before such funds may be claimed.

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

SECTION 1. Program Supplement Agreement No. 030-F, attached hereto and made a part hereof, is hereby approved.

SECTION 2. The City Manager and the City Clerk, respectively, are hereby authorized to execute and attest said Agreement on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

K. Flores      5/29/2018  
City Attorney      Date



Date: 05/18/2018  
D\_CO\_RT: 10-MER-0-MER  
Project No: CML-5085(049)  
Adv Project Id: 1018000225  
EA No:  
Agreement End Date:

Attention: City of Merced

FINANCE ITEMS	PRO RATA OR LUMP SUM	TOTAL COST OF WORK	FEDERAL PART. COST	FED. REIMB %	FEDERAL Z003	LOCAL
Agency Preliminary Engineering	Lump Sum	\$60,978.00	\$60,978.00	88.53%	\$53,983.00	\$6,995.00
Totals:		\$60,978.00	\$60,978.00	0.00%	\$53,983.00	\$6,995.00

Participation Ratio: 100.00% This Finance Letter was created based on specific financial information provided by the responsible local agency. The following encumbrance history is prepared by Local Assistance Accounting Office and is provided here for local agency's information and action.

Signature:

Title: HQ Sr. Area Engineer

For questions regarding finance letter, contact:

Printed Name : Peter B. Anderson

Telephone No: 916-653-8431

Remarks: SEQ 1 - Authorizing PE (\$53,983 Z003) as lump sum appropriation. Funds are being advanced from 18/19 to 17/18 via EPSP. CMAQ Emission Reduction (lb/yr): ROG - 21.59; NOx - 25.18; PM2.5 - 5.10; PM10 - 7.85. AED: 06/18/2021. \*\*\*\*\*Final design shall not start until NEPA is approved. \*\*\*\*

ACCOUNTING INFORMATION

ADV. PROJECT ID	APPROP. UNIT	STATE PROG.	FED/STATE	ENCUMBRANCE AMOUNT	APPROP YEAR	EXPENDITURE AMOUNT	ENCUMBRANCE BALANCE	REVERSION DATE	APPROVED AMOUNT	EXPIRATION DATE
1018000225	18102F	2030010820	F	\$53,983.00	1718	\$0.00	\$53,983.00	06/30/23		

CML-5085(049)

Cooperative Work Agreement

**PROGRAM SUPPLEMENT NO. F030**  
**to**  
**ADMINISTERING AGENCY-STATE AGREEMENT**  
**FOR FEDERAL-AID PROJECTS NO 10-5085F15**

**Adv Project ID** 1018000225 **Date:** May 10, 2018  
**Location:** 10-MER-0-MER  
**Project Number:** CML-5085(049)  
**E.A. Number:**  
**Locode:** 5085

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on \_\_\_\_\_ and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. \_\_\_\_\_ approved by the Administering Agency on \_\_\_\_\_ (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:**

In Merced on Motel Drive between Carol Avenue and Merced Avenue

**TYPE OF WORK:** Construct Pedestrian/Bike Improvements

**LENGTH:** 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds		
	2003		LOCAL		OTHER
\$60,978.00		\$53,983.00	\$6,995.00		\$0.00

**CITY OF MERCED**

By \_\_\_\_\_  
 Title \_\_\_\_\_  
 Date \_\_\_\_\_  
 Attest \_\_\_\_\_

**STATE OF CALIFORNIA**

**Department of Transportation**

By \_\_\_\_\_  
 Chief, Office of Project Implementation  
 Division of Local Assistance

Date \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

**Accounting Officer** Jessamine Pelos **Date** 5/11/2018 \$53,983.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

TO: STATE CONTROLLER'S OFFICE		DATE PREPARED:	PROJECT NUMBER:
Claims Audits		5/11/2018	1018000225
3301 "C" Street, Rm 404		REQUISITION NUMBER / CONTRACT NUMBER:	
Sacramento, CA 95816		CML-5085(049) RQS 101800000408	
FROM:			
Department of Transportation			
SUBJECT:			
Encumbrance Document			
VENDOR / LOCAL AGENCY:			
CITY OF MERCED			
\$	53,983.00		

## Local Assistance

<b>CHAPTER</b>	<b>STATUTES</b>	<b>ITEM</b>	<b>YEAR</b>	<b>PEC / PECT</b>	<b>TASK / SUBTASK</b>	<b>AMOUNT</b>
14	2017	2660-102-0890	2017-2018	2030010820	2620/0400	\$ 53,983.00
					Total	\$ 53,983.00

**ADA Notice:** For individuals with sensory disabilities, this document is available in alternate formats. For information, call (915) 654-6410 of TDD (916) -3880 or write Records and Forms Management, 1120 N. Street, MS-89, Sacramento, CA 95814.



**SPECIAL COVENANTS OR REMARKS**

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

**SPECIAL COVENANTS OR REMARKS**

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at [www.sam.gov](http://www.sam.gov).

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

**SPECIAL COVENANTS OR REMARKS**

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

**SPECIAL COVENANTS OR REMARKS**

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

**SPECIAL COVENANTS OR REMARKS**

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. In the event that right of way acquisition for or construction of this project of the initial federal authorization for preliminary engineering is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

# AUTHORIZATION / AGREEMENT SUMMARY - (E-76)

CALIFORNIA DEPARTMENT OF TRANSPORTATION

## FEDERAL AID PROGRAM

DLA LOCATOR: 10-MER-0-MER  
 PREFIX: CML  
 PROJECT NO: 5085(049)  
 SEQ NO: 1  
 STATE PROJ NO: 1018000225L-N  
 AGENCY: MERCED

PROJECT LOCATION:  
 IN MERCED ON MOTEL DRIVE BETWEEN CAROL AVENUE AND MERCED AVENUE  
 TYPE OF WORK:  
 CONSTRUCT PEDESTRIAN/BIKE IMPROVEMENTS  
 FED RR NO'S:  
 PUC CODES:  
 PROJ OVERSIGHT: ASSUMED/LOCAL ADMIN  
 ENV STATUS / DT:  
 RW STATUS / DT:  
 INV RTE:  
 BEG MP:  
 END MP:

## PREV AUTH / AGREE DATES:

PE:  
 R/W:  
 CON:  
 SPR:  
 MCS:  
 OTH:

## DISASTER NO:

## TIP DATA

MPO: MCAG  
 FSTIP YR: 18/19  
 STIP REF: 20500000263  
 FSTIP ID NO: CMAQ17-5

## BRIDGE NO:

PROG CODE	LINE NO	IMPV TYPE	FUNC SYS	URBAN AREA	URB/RURAL	DEMO ID
Z003	10	15				

## FUNDING SUMMARY

PHASE	PROJECT COST	FEDERAL COST	AC COST
PE	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$60,978.00	\$53,983.00	\$0.00
	SUBTOTAL \$60,978.00	\$53,983.00	\$0.00
R/W	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
CON	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
OTH	PREV. OBLIGATION \$0.00	\$0.00	\$0.00
	THIS REQUEST \$0.00	\$0.00	\$0.00
	SUBTOTAL \$0.00	\$0.00	\$0.00
TOTAL:		\$60,978.00	\$53,983.00
			\$0.00

## STATE REMARKS

04/23/2018 Seq 1: MCAG approves EPSP from FY 18/19 to FY 17/18. PE Request for authorization is for \$53,983 federal CMAQ funds.

04/24/2018 SEQ 1 - Authorizing PE (\$53,983 Z003) as lump sum appropriation. Funds are being advanced from 18/19 to 17/18 via EPSP. CMAQ Emission Reduction (lb/yr): ROG - 21.59; NOx - 25.18; PM2.5 - 5.10; PM10 - 7.85. \*\*\*\*Final design shall not start until NEPA is approved.\*\*\*\*

## FEDERAL REMARKS

## AUTHORIZATION

AUTHORIZATION TO PROCEED WITH REQUEST: PRE  
 FOR: PE  
 DOCUMENT TYPE: AAGR

PREPARED IN FADS BY: FUKANO, JOHN  
 REVIEWED IN FADS BY: GIONGCO, DAVID  
 SUBMITTED IN FADS BY: GIONGCO, DAVID  
 PROCESSED IN FADS BY: HUEY, SHUN  
 E-76 AUTHORIZED DATE IN FMIS BY: JESSICA GORDON

ON 2018-04-23 948-3755  
 ON 2018-04-24 653-4797  
 ON 2018-04-24 FOR CALTRANS  
 ON 2018-04-24 FOR FHWA  
 ON 2018-04-26 18:47:33.0

SIGNATURE HISTORY FOR PROJECT NUMBER 5085(049) AS OF 04/30/2018

FHWA FMIS SIGNATURE HISTORY

MOD #	SIGNED BY	SIGNED ON
0	SHUN HUEY	04/25/2018
	KEATON BROWDER	04/25/2018
	JESSICA GORDON	04/26/2018

FHWA FMIS 3.0 SIGNATURE HISTORY

CALTRANS SIGNATURE HISTORY

DOCUMENT TYPE	SIGNED BY	SIGNED ON
AUTH/AGREE	GIONGCO, DAVID	04/24/2018



## ADMINISTRATIVE REPORT

Agenda Item I.15.

Meeting Date: 7/2/2018

*Report Prepared by: Joe Cardoso, P.L.S., City Surveyor*

**SUBJECT:** Administering Agency State Program Supplement No. 029-F and Agreement Summary (E-76) for a Congestion Mitigation and Air Quality Improvement (CMAQ) Grant CML-5085(048) for the John Muir School Sidewalks

### REPORT IN BRIEF

Considers a resolution approving a California Department of Transportation Program Supplement for the use of \$67,906 in CMAQ Grant funding for Preliminary Engineering for the sidewalks near John Muir School.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-48**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Supplement Agreement No. 029-F; and,
- B. Accepting CMAQ grant funds and increasing revenue in account 450-1104-321-32-00 by \$67,906 and appropriating the same to account 450-1104-637-65 (Project No. 119042) for preliminary engineering costs associated with design of sidewalk near John Muir School; and,
- C. Approving the use of pooled cash until reimbursement is received from the grant; and,
- D. 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 conditions other than recommended by Staff (identify specific findings and/or conditions amended to be addressed in the motion); or,
- 3. Deny; or,
- 4. Continue to a future meeting (date and time to be specified in the motion).

### AUTHORITY

Charter of the City of Merced, Section 200.

Caltrans Procedures for Administering Local Grant Projects in the State Transportation Improvement Program (STP) are used to comply with the changes to the programming and funding statutes



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brought about by Charter 622 of the Statutes of 1997 (SB 45, KOPP). The procedures have been modified to remain consistent with and complimentary to the various guidelines and policies adopted by the California Transportation Commission (CTC), including the current 2010 STP Guidelines (adopted on October 14, 2009).

## **CITY COUNCIL PRIORITIES**

As provided for in the 2018-19 Adopted Budget

## **DISCUSSION**

In November 2016, the City applied for Congestion Mitigation and Air Quality Improvement (CMAQ) funds to install a continuous path of travel for students and the residential community surrounding and leading to John Muir School. The project would include approximately 4,000 linear feet of new sidewalk on I Street near BNSF Railroad to West 28th Street, on Martin Luther King, Jr. Way from 26th Street to West 28th Street and on K Street from West 26th Street to West 28th Street.

These improvements also include approximately 33 curb ramps and 6 alley driveways to provide for accessibility along I Street, Martin Luther King, Jr. Way and K Street within the sidewalk improvement limits.

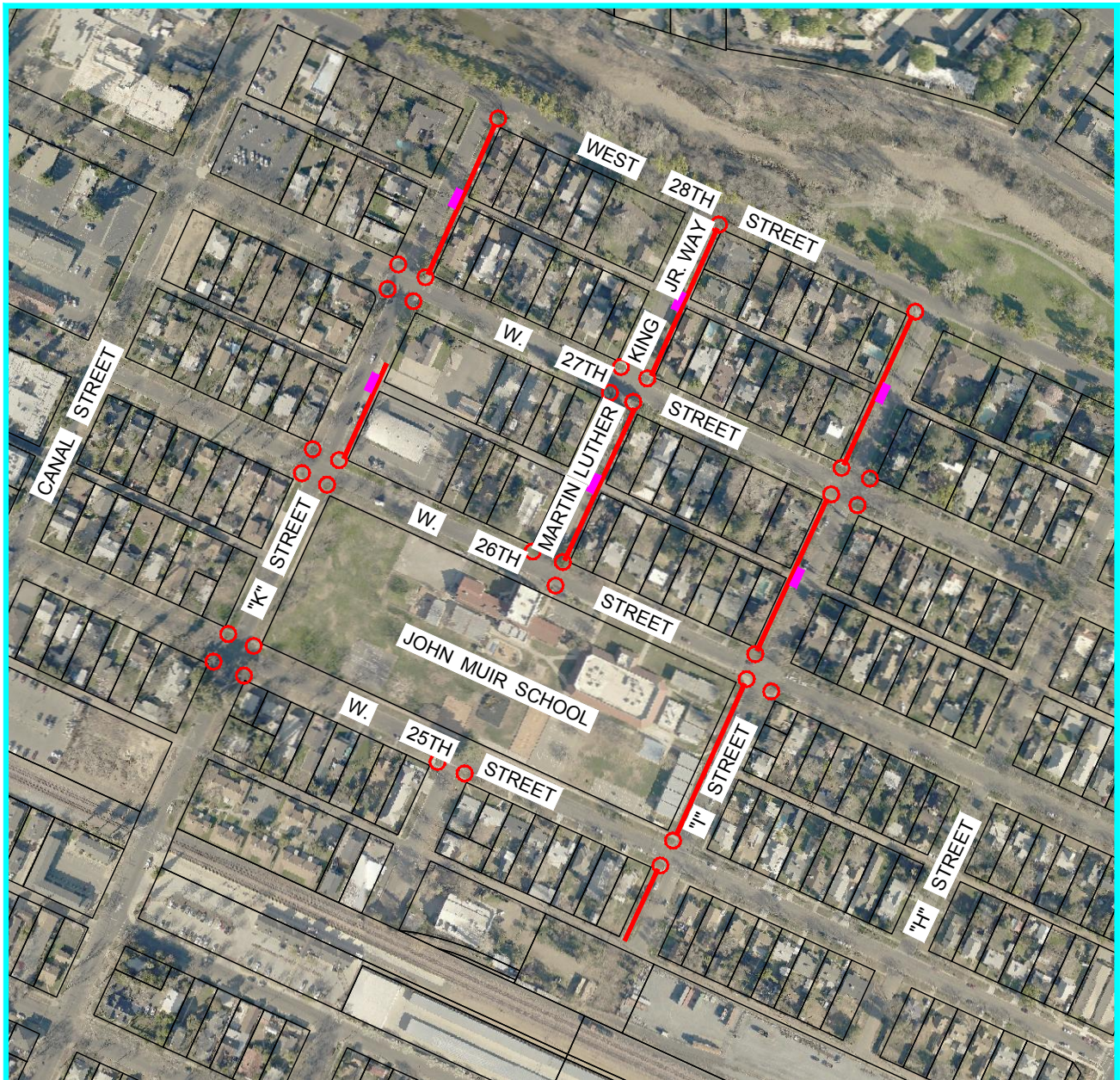
This portion of the project is for Preliminary Engineering, which will allow for design, prepare engineering plans and specifications, environmental review, and public outreach. The Federal-Aid Projects Program Supplement Agreement No. 029-F allows \$67,609 in grant funds and a local match of \$8,798 toward the Preliminary Engineering of this project.

## **IMPACT ON CITY RESOURCES**

Staff recommends accepting grant funds from the State of California adopted Congestion Mitigation and Air Quality Improvement (CMAQ) Program, increasing revenue in account 450-1104-321.32-00 in the amount of \$67,906 and appropriating the same to account 450-1104-637.65-00-119042 for the Preliminary Engineering costs. Additionally, Fund 075-Measure V Alternative Modes will be used for the matching funds in the amount of \$8,798.

## **ATTACHMENTS**

1. Location Map
2. Resolution
3. Finance Letter
4. Program Supplement
5. E-76 CML-5085(048)



LEGEND	
	ADA RAMP
	NEW ADA ALLEY APPROACH
	NEW SIDEWALK

# LOCATION MAP

SCALE: NTS



*City of Merced*  
 "Gateway to Yosemite"  
**DEVELOPMENT SERVICES**  
 ENGINEERING PROJECTS AND STANDARDS  
 678 W. 18th Street (209) 385-6846

**JOHN MUIR PROJECT**  
**CMAQ 2016-2017 GRANT**  
**CITY OF MERCED**

DR. BY: JCS
DATE: 11/1/2016
CH. BY: JSegin
DATE: 11/1/2016
File No. XXXXXX
SCALE: AS SHOWN

**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING FEDERAL-AID PROJECTS  
PROGRAM SUPPLEMENT AGREEMENT  
NO. 029-F**

WHEREAS, the City of Merced is eligible to receive Federal and/or State funding for certain transportation projects through the California Department of Transportation; and

WHEREAS, Program Supplemental Agreements need to be executed with the California Department of Transportation before such funds may be claimed.

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

SECTION 1. Program Supplement Agreement No. 029-F, attached hereto and made a part hereof, is hereby approved.

SECTION 2. The City Manager and the City Clerk, respectively, are hereby authorized to execute and attest said Agreement on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:



APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

K. Flores      5/29/18  
City Attorney      Date

DEPARTMENT OF TRANSPORTATION  
DIVISION OF ACCOUNTING  
LOCAL PROGRAM ACCOUNTING BRANCH

FINANCE LETTER

Date: 04/30/2018  
D\_CO\_RT: 10-MER-0-MER  
Project No: CML-5085(048)  
Adv Project Id: 1018000206  
Period of Performance End Date:  
Agreement End Date:

Attention: Merced County

FINANCE ITEMS	PRO RATA OR LUMP SUM	TOTAL COST OF WORK	FEDERAL PART. COST	FED. REIMB %	FEDERAL M003	LOCAL
Agency Preliminary Engineering	Lump Sum	\$76,704.00	\$76,704.00	88.53%	\$67,906.00	\$8,798.00
Totals:		\$76,704.00	\$76,704.00	0.00%	\$67,906.00	\$8,798.00

Participation Ratio: 100.00% This Finance Letter was created based on specific financial information provided by the responsible local agency. The following encumbrance history is prepared by Local Assistance Accounting Office and is provided here for local agency's information and action.

Signature:

Title: HQ Area Engineer

For questions regarding finance letter, contact:

Printed Name : David Giongco

Telephone No: 916-653-4797

Remarks: SEQ 1 - Authorizing PE (\$164,641 Z003) as lump sum appropriation. CMAQ Emission Reduction (lb/yr): ROG - 21.62; NOx - 13.38; PM2.5 - 4.17; PM10 - 6.41. AED: 12/01/2021. \*\*\*\*Final design shall not start until NEPA is approved. \*\*\*\*

ACCOUNTING INFORMATION										Cooperative Work Agreement	
CML-5085(048)											
ADV. PROJECT ID	APPROP. UNIT	STATE PROG.	FED/STATE	ENCUMBRANCE AMOUNT	APPROP YEAR	EXPENDITURE AMOUNT	ENCUMBRANCE BALANCE	REVERSION DATE	APPROVED AMOUNT	EXPIRATION DATE	
1018000206	18102F	2030010820	F	\$67,906.00	1718	\$0.00	\$67,906.00	06/30/23			

**PROGRAM SUPPLEMENT NO. F029**  
**to**  
**ADMINISTERING AGENCY-STATE AGREEMENT**  
**FOR FEDERAL-AID PROJECTS NO 10-5085F15**

**Adv Project ID**      **Date:** April 20, 2018  
1018000206      **Location:** 10-MER-0-MER  
**Project Number:** CML-5085(048)  
**E.A. Number:**  
**Locode:** 5085

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on \_\_\_\_\_ and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. \_\_\_\_\_ approved by the Administering Agency on \_\_\_\_\_ (See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

**PROJECT LOCATION:**

1. I St from south of W 25th St to W 28th St   2. Martin Luther King Jr. Way from W 26th St to W 28th St   3. K St from W 26th St to W 28th St

**TYPE OF WORK:** Construct Pedestrian Improvements near John Muir School

**LENGTH:** 0.0(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	M003	\$67,906.00	LOCAL	OTHER
\$76,704.00			\$8,798.00	\$0.00

**CITY OF MERCED**

By \_\_\_\_\_  
Title \_\_\_\_\_  
Date \_\_\_\_\_  
Attest \_\_\_\_\_

**STATE OF CALIFORNIA**  
**Department of Transportation**

By \_\_\_\_\_  
**Chief, Office of Project Implementation**  
**Division of Local Assistance**

Date \_\_\_\_\_

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

**Accounting Officer** Jennie Yee      **Date** 4/20/18      \$67,906.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

STATE OF CALIFORNIA. DEPARTMENT OF TRANSPORTATION  
**PROGRAM SUPPLEMENT AND CERTIFICATION FORM**  
PSCF (REV. 01/2010)

Page 1 of 1

<b>TO: STATE CONTROLLER'S OFFICE</b> <b>Claims Audits</b> <b>3301 "C" Street, Rm 404</b> <b>Sacramento, CA 95816</b>	<b>DATE PREPARED:</b> <b>4/20/2018</b>	<b>PROJECT NUMBER:</b> <b>1018000206</b>
	<b>REQUISITION NUMBER / CONTRACT NUMBER:</b> <b>RQS-2660-10180000356</b>	
<b>FROM:</b> <b>Department of Transportation</b>		
<b>SUBJECT:</b> <b>Encumbrance Document</b>		
<b>VENDOR / LOCAL AGENCY:</b> <b>CITY OF MERCED</b>		

**\$67,906.00**

$$\overline{V}$$

## Local Assistance

[illegible]

## ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information, call (915) 654-6410 of TDD (916) -3880 or write Records and Forms Management, 1120 N. Street, MS-89, Sacramento, CA 95814.

**SPECIAL COVENANTS OR REMARKS**

1. A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.

B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).

C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.

D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.

E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.

F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-



**SPECIAL COVENANTS OR REMARKS**

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance; in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at [www.sam.gov](http://www.sam.gov).

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

**SPECIAL COVENANTS OR REMARKS**

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

**SPECIAL COVENANTS OR REMARKS**

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

**SPECIAL COVENANTS OR REMARKS**

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

3. In the event that right of way acquisition for or construction of this project of the initial federal authorization for preliminary engineering is not started by the close of the tenth fiscal year following the fiscal year in which the project is authorized, the ADMINISTERING AGENCY shall repay the Federal Highway Administration through Caltrans the sum of Federal funds paid under the terms of this agreement.

*[Faint, illegible text, possibly a signature or stamp]*

# AUTHORIZATION / AGREEMENT SUMMARY - (E-76)

CALIFORNIA DEPARTMENT OF TRANSPORTATION

## FEDERAL AID PROGRAM

DLA LOCATOR: 10-MER-0-MER  
 PREFIX: CML  
 PROJECT NO: 5085(048)  
 SEQ NO: 1  
 STATE PROJ NO: 1018000206L-N  
 AGENCY: MERCED

## PROJECT LOCATION:

1. I ST FROM SOUTH OF W 25TH ST TO W 28TH ST, 2. MARTIN LUTHER KING JR. WAY FROM W 26TH ST TO W 28TH ST, 3. K ST FROM W 26TH ST TO

## TYPE OF WORK:

CONSTRUCT PEDESTRIAN IMPROVEMENTS NEAR JOHN MUIR SCHOOL

## PREV AUTH / AGREE DATES:

FED RR NO'S:

PE:

PUC CODES:

R/W:

PROJ OVERSIGHT: ASSUMED/LOCAL ADMIN

CON:

ENV STATUS / DT:

SPR:

RW STATUS / DT:

MCS:

INV RTE:

OTH:

BEG MP:

END MP:

## DISASTER NO:

## TIP DATA

MPO: MCAG  
 FSTIP YR: 17/18  
 STIP REF: 205-0000-0262  
 FSTIP ID NO: CMAQ17-4

## BRIDGE NO:

PROG CODE	LINE NO	IMPV TYPE	FUNC SYS	URBAN AREA	URB/RURAL	DEMO ID
M003	10	15				

## FUNDING SUMMARY

PHASE	PROJECT COST	FEDERAL COST	AC COST
PE	PREV. OBLIGATION THIS REQUEST SUBTOTAL	\$0.00 \$76,704.00 \$76,704.00	\$0.00 \$67,906.00 \$67,906.00
R/W	PREV. OBLIGATION THIS REQUEST SUBTOTAL	\$0.00 \$0.00 \$0.00	\$0.00 \$0.00 \$0.00
CON	PREV. OBLIGATION THIS REQUEST SUBTOTAL	\$0.00 \$0.00 \$0.00	\$0.00 \$0.00 \$0.00
OTH	PREV. OBLIGATION THIS REQUEST SUBTOTAL	\$0.00 \$0.00 \$0.00	\$0.00 \$0.00 \$0.00
TOTAL:		\$76,704.00	\$67,906.00

## STATE REMARKS

04/03/2018 SEQ 1 - Authorizing PE (\$164,641 Z003) as lump sum appropriation. CMAQ Emission Reduction (lb/yr): ROG - 21.62; NOx - 13.38; PM2.5 - 4.17; PM10 - 6.41. \*\*\*\*Final design shall not start until NEPA is approved.\*\*\*\*

## FEDERAL REMARKS

## AUTHORIZATION

AUTHORIZATION TO PROCEED WITH REQUEST: PRE  
 FOR: PE  
 DOCUMENT TYPE: AAGR

PREPARED IN FADS BY: FUKANO, JOHN  
 REVIEWED IN FADS BY: GIONGCO, DAVID  
 SUBMITTED IN FADS BY: GIONGCO, DAVID  
 PROCESSED IN FADS BY: HUEY, SHUN  
 E-76 AUTHORIZED DATE IN FMIS BY: VENESHIA SMITH

ON 2018-03-29 948-3755  
 ON 2018-04-03 653-4797  
 ON 2018-04-03 FOR CALTRANS  
 ON 2018-04-04 FOR FHWA  
 ON 2018-04-11 12:53:04.0

SIGNATURE HISTORY FOR PROJECT NUMBER 5085(048) AS OF 04/12/2018

FHWA FMIS SIGNATURE HISTORY

MOD #	SIGNED BY	SIGNED ON
0	SHUN HUEY	04/05/2018
	KEATON BROWDER	04/06/2018
	VENESHIA SMITH	04/11/2018

FHWA FMIS 3.0 SIGNATURE HISTORY

CALTRANS SIGNATURE HISTORY

DOCUMENT TYPE	SIGNED BY	SIGNED ON
AUTH/AGREE	GIONGCO, DAVID	04/03/2018



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

**Agenda Item I.16.**

Meeting Date: 7/2/2018

*Report Prepared by: Joe Cardoso, P.L.S., City Surveyor, Engineering Department*

**SUBJECT:** Administering Agency - State Master Agreement for Federal-Aid Projects - Program Master Agreement No. 10-5085F15

### REPORT IN BRIEF

Considers approving the Administering Agency - State Master Agreement for Federal-Aid

### RECOMMENDATION

**City Council** - Adopt a motion approving **Resolution 2018-51**, a Resolution of the City Council of the City of Merced, California, approving Federal-Aid Projects Program Master Agreement No.10-5085F15.

### ALTERNATIVES

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

### AUTHORITY

Charter of the City of Merced, Section 200 et seq.

Caltrans Procedures for Administering of Local Assistance Procedures Manual and the Local Assistance Program Guidelines as related to federal-aid programs, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements.

### CITY COUNCIL PRIORITIES

Not applicable.

### DISCUSSION

The City of Merced must enter into a Master Agreement with the State of California, acting by and through its Department of Transportation (Caltrans) to continue receiving certain federal-aid funds. In addition to the Master Agreement, the City must execute and return a project-specific Program Supplemental for each individual project within a 90-day period unless otherwise agreed by the State

in writing.

This Master Agreement would replace the old agreement with new and updated laws and regulations.

### **IMPACT ON CITY RESOURCES**

The City of Merced would not be eligible to receive certain federal-aid funds without this Master Agreement in place.

### **ATTACHMENTS**

1. Resolution
2. Master Agreement



**RESOLUTION NO. 2018-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING FEDERAL-AID PROJECTS  
PROGRAM MASTER AGREEMENT  
NO. 10-5085F15**

WHEREAS, the City of Merced is eligible to receive Federal and/or State funding for certain transportation projects through the California Department of Transportation; and

WHEREAS, Program Master Agreement needs to be executed with the California Department of Transportation before such funds may be claimed.

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

SECTION 1. Program Master Agreement No. 10-5085F15, attached hereto and made a part hereof, is hereby approved.

SECTION 2. The City Manager and the City Clerk, respectively, are hereby authorized to execute and attest said Agreement on behalf of the City of Merced.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

BY: \_\_\_\_\_  
Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

K. Flores      5/29/2018  
City Attorney      Date

MASTER AGREEMENT  
ADMINISTERING AGENCY-STATE AGREEMENT FOR  
FEDERAL-AID PROJECTS

10      City of Merced

-----  
District    Administering Agency

Agreement No. 10-5085F15

This AGREEMENT, is entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between City of Merced, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs; and
2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
3. WHEREAS, before federal funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

## ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific "Authorization/Agreement Summary", herein referred to as "E-76" document, is approved by STATE and the Federal Highway Administration (FHWA).
2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE and the Federal Highway Administration (FHWA).
3. The E-76/E-76 (AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these federal funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of federal funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
7. Federal, state and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no further federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".
9. ADMINISTERING AGENCY shall conform to all state statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.
10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.
11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and, where appropriate, an executed Cooperative Agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.
12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.
13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.
14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT who is not a consultant.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

## ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.
2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.
3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from federal funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT-displaced persons as provided in 49 CFR, Part 24.

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.



### ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.
2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.
3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

## ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of federal funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed invoices in arrears for reimbursement of participating PROJECT costs on a regular basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, at a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess federal funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

11. The estimated total cost of PROJECT, the amount of federal funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-federal funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal funds encumbered for PROJECT are available for liquidation for a period of six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

19. ADMINISTERING AGENCY agrees, and will ensure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

20. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

21. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V  
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.
6. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contract over \$10,000, or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and provisions 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with the LOCAL ASSISTANCE PROCEDURES.

## ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

## ARTICLE VII - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all state funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.
4. Each project-specific E-76 or E-76 (AMOD), PROGRAM SUPPLEMENT and Finance Letter shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.
5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or Federal Transit Administration (FTA) that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.
9. ADMINISTERING AGENCY hereby certifies that it does not have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.



10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA

DEPARTMENT OF TRANSPORTATION      City of Merced

By \_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_  
Chief, Office of Project Implementation  
Division of Local Assistance

\_\_\_\_\_  
City of Merced  
Representative Name & Title  
(Authorized Governing Body Representative)

Date \_\_\_\_\_

Date \_\_\_\_\_

APPROVED AS TO FORM:

*K. Flores* 5/29/2018  
*Interim Deputy City Attorney*

## EXHIBIT A

### FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

## EXHIBIT B

### NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively ensure that in any agreement entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

## APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.



(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

#### APPENDIX B TO EXHIBIT B

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) \*

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.\*

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

## APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)\*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

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\* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.



## ADMINISTRATIVE REPORT

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**Agenda Item I.17.**

Meeting Date: 7/2/2018

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*Report Prepared by: Lance Eber, Crime Analyst, Police Department*

**SUBJECT:** Approval of Agreement with PredPol, Inc., for Predictive Policing Software Subscription

### REPORT IN BRIEF

Considers approving an agreement with Predpol, Inc. to provide predictive policing software that will assign probabilities and locations of future crimes.

### RECOMMENDATION

**City Council** - Adopt a motion approving the contract with Predpol, Inc., and; authorizing the City Manager or Assistant City Manager to execute the necessary documents.

### ALTERNATIVES

1. Approve execution of the contract as recommended; or
2. Decline to award contract; or
3. Refer to staff with direction

### AUTHORITY

Section 3.04.120 of the Merced Municipal Code

### CITY COUNCIL PRIORITIES

To enhance police staffing by providing tools to assist officers in carrying out law enforcement duties.

### DISCUSSION

Predictive policing will enhance the Department's ability to assign probabilities of future crime events to each districts, present estimated crime risk in a useable framework to law enforcement decision makers and lead to more efficient & more accurate resource deployment by local law enforcement agencies.

### How PredPol Works:

Using only three data points - past type, place and time of crime and a unique algorithm based on criminal behavior patterns, PredPol's powerful software provides Merced Police Department with customized crime predictions for the places and times that crimes are most likely to occur. PredPol pinpoints small areas, depicted in 500 feet by 500 feet boxes on maps - that are automatically generated for each shift of each day.

PredPol's tool enables law enforcement to enhance and better direct the patrol resources they have. It does not replace, but requires, the insights of veteran officers and crime analysts. Typically, patrol officers spend a few minutes in PredPol boxes to deter crime when they're not responding to calls for service or performing other duties. Some of these boxes are places that officers routinely cover, but many others are places that might not otherwise receive attention. This also provides officers an opportunity to interact with residents, aiding in relationship building and strengthening community ties.

The Merced Police Department's Command Staff recommends the use of this software to help reduce crime and provide more efficient service to our community. Modesto Police Department has already started using this technology and appears to have been beneficial to their city.

City Council approved a contract for this service on July 20, 2015, for the contract amount of \$44,700 for the period of 7/2015 through 7/2018. That original contract is expiring. This contract is for one year to run 7/2018 through 7/2019 at a cost of \$14,900. The contract can be renewed annually for one-year terms.

### **IMPACT ON CITY RESOURCES**

Funding is available in the Fiscal Year 2018-19 budget under account 061-1026-522-17-00.

### **ATTACHMENTS**

1. Predpol contract

## PredPol Predictive Policing SaaS Subscription Agreement

This Subscription Agreement ("**Agreement**") between PredPol, Inc., a California corporation, PO Box 2870, Santa Cruz, CA 95063-2870 ("**PredPol**") and the City of Merced, with offices at 678 W. 18<sup>th</sup> Street, Merced, CA 95340 ("**Client**") effective as of July 24, 2018 (the "**Effective Date**"). This Agreement governs Client's access to and use of the Services as they are defined herein.

This agreement replaces the previous Subscription Agreement effective July 24, 2015 which will automatically expire on July 23, 2018. The parties hereby agree to extend the relationship based upon the terms of this new agreement.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby mutually acknowledged, the parties hereto hereby agree as follows:

**1. Definitions.** All capitalized terms used in this Agreement and any attachments hereto shall have the meanings assigned to them below.

- A) "Admin Account(s)"** means the administrative account(s) provided to Client by PredPol for the purpose of administering the Services. The use of the Admin Account(s) requires a password, which PredPol will provide to Client.
- B) "Administrators"** means the Client-designated technical personnel who administer the Services to End Users on Client's behalf.
- C) "Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.
- D) "Brand Features"** means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.
- E) "Confidential Information"** means information disclosed by a party to the other party under this Agreement that is marked as confidential or would normally be considered confidential under the circumstances. Client Data is Client's Confidential Information. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.
- F) "Client Data"** means data, including crime data, provided, generated, transmitted or displayed via the Services by Client or End Users.
- G) "Data Pipe"** means the server software used by PredPol to extract crime data from Client's RMS, encrypt it, and send to the PredPol servers to use to deliver the Service.

- H) "Emergency Security Issue"** means either: (a) Client's use of the Services in violation of the Acceptable Use Policy, which could disrupt: (i) the Services; (ii) other Client's use of the Services; or (iii) the PredPol network or servers used to provide the Services; or (b) unauthorized third party access to the Services.
- I) "End Users"** means the individuals Client permits to use the Services.
- J) "End User Account"** means a PredPol-hosted account established by Client through the Services for an End User.
- K) "Fees"** means the amounts invoiced to Client by PredPol for the Services as described in the Statement of Work.
- L) "Intellectual Property Rights"** means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, and moral rights law, and other similar rights.
- M) "RMS"** means Records Management System database, an agency-wide system that provides for the storage, retrieval, retention, manipulation, archiving, and viewing of information, records, documents, or files pertaining to law enforcement operations.
- N) "Services"** means the applicable PredPol product or service, as described in this Agreement or the Statement of Work.
- O) "SaaS"** means software as a service, which describes the manner in which PredPol delivers the Services via access to a hosted software platform rather than through a software license.
- P) "Services Term"** means the applicable Contract Term (see Section 3.A) and all renewal terms for the applicable Services as set out in the Statement of Work.
- Q) "Statement of Work"** means the statement of work attached hereto as Exhibit A that contains additional details regarding the Services to be provided to Client per the terms of this Agreement.
- R) "Subscription Terms"** means the order document reflecting the financial terms of the subscription, including: (i) the Services; (ii) Fees;; and (iii) Contract Term.
- S) "Suspend"** means the immediate disabling of access to the Services, or components of the Services, as applicable, to prevent further use of the Services.
- T) "Term"** means the term of the Agreement, which will begin on the Effective Date and continue until the earlier of (i) the end of the Services Term or (ii) termination date of the Agreement (or Statement of Work) as set forth herein.

## **2. Product and Payment.**



- A) **Product.** In consideration of the pricing and other obligations described herein, Client shall receive PredPol Services as they are described in Exhibit A.
- B) **Fees and Payment Terms.** Fees due for the services described herein are outlined in Exhibit A. Fees for orders where PredPol issues an invoice are due upon Client's receipt of the invoice and are considered delinquent thirty days after the date of the applicable invoice. Payments shall be made in U.S. Dollars by either wire transfer or check.
- C) **Revising Rates.** Rates may not be changed during the Services Term of this Agreement without consent of both Parties. Following the end of the Services Term, PredPol may revise its rates by providing Client written notice (which may be by email) at least thirty days prior to the effective date of the revision.
- D) **Delinquent Payments.** Delinquent payments shall bear interest at the rate of one-and-one-half percent per month (or the highest rate permitted by law if less) from the payment due date until paid in full. Client will be responsible for all reasonable expenses (including attorneys' fees) incurred by PredPol in collecting such delinquent amounts except where such delinquent amounts are due to PredPol's billing inaccuracies.

### 3. **Term and Termination.**

- A) **Term.** This Agreement shall begin on July 24, 2018 and continue for one (1) year ("Contract Term"). This Agreement shall then be renewed for additional terms of one (1) year each unless either Party provides the other Party with written notice of its intent not to renew no less than sixty (60) days prior to the end of the then current term.
- B) **Termination Resulting from Breach of Agreement.** This Agreement may be terminated immediately by either Party upon the failure of the other Party to correct a material breach of this Agreement within thirty (30) days after notice of such material breach by the non-breaching Party to the other Party.
- C) **Termination Resulting From Insolvency Events.** Either Party may terminate this Agreement immediately upon written notice to the other Party in the event a receiver, trustee or similar officer is appointed for the other Party or a substantial portion of the other Party's assets or businesses is assigned or transferred to a third party for the benefit of its creditors, or a petition or application is filed by or against the other Party under any bankruptcy law, or if an assignment is made of the other Party's business or assets for the benefit of its creditors.
- D) **Obligations Upon Termination.** Upon any termination of this Agreement, the Parties shall return to each other any and all confidential information and any and all equipment, documents and materials, including all copies thereof, which it received from the other Party in connection with this Agreement.

**E) Remedies for Breach of Agreement.** If termination is the result of a material breach by a Party, the non-breaching Party shall be entitled to pursue any and all rights and remedies it has under law.

**F) Survival Provisions.** Termination of the Agreement shall not relieve either Party from its continuing obligation to protect Confidential Information and proprietary rights of the other Party. In addition, the rights and obligations of the Parties under Sections 1, 2, 3, 4, 6.G, 6.H, 8, 9, 10, 11, 12, 13 and 14 shall survive the expiration or termination of this Agreement.

#### **4. License Grants, Ownership, and Security.**

**A) License.** Subject to the terms and conditions of this Agreement and solely for the duration that it remains in effect, PredPol hereby grants to Client a limited, non-transferable, non-exclusive, non-sublicensable license to use the Services as provided as an SaaS. The Services are protected by copyright, trade secret, and other intellectual property laws. You are only granted the right to use the Services, and only for the purposes described herein. PredPol reserves all other rights in the Services.

**B) Ownership.** The Parties acknowledge and agree that, as between the Parties, all worldwide ownership rights, title and interest in and to the Services, its underlying software, and all other resulting material conceived, made or discovered by PredPol as a result of or in connection with the Services, together with any and all modifications and derivative works thereof, and any and all manuals, work in process, notes, drawings, designs, flowcharts, and other results of the Services, including, without limitation, each and every discovery, invention or improvement which may be conceived or developed as a result of or in connection with the Services (collectively as the "Work Products"), shall be the sole property of PredPol.

Notwithstanding anything to the contrary herein, each Party agrees that it shall not acquire any rights, title or interest in or to the other Party's Marks (as defined below) pursuant to this Agreement. Each Party will not contest the other Party's right, title or interest in and to the other Party's Marks.

"Marks" means the respective trademarks, service marks, trade names, domain names, or any other source identifiers of each Party.

**C) Facilities and Data Transfer.** Facilities used to store and process Client Data will adhere to security standards no less protective than the standards used for PredPol's own information and shall be compliant with applicable laws.

**D) Modifications to the Services.** PredPol may make commercially reasonable changes to the Services. If PredPol materially changes the Services, PredPol will inform Client.

**E) Retention.** PredPol will have no obligation to retain archived Client Data.

- 5. License to Client Data.** Client understands and agrees that Client is solely responsible for ensuring it has all rights in or to any Client Data as necessary to upload such data to the System without violation of any laws, regulations or guidelines, or any privacy or property rights of any third parties. In connection with such data, Client hereby represents and warrants that:
- A)** Client owns, or otherwise has the necessary licenses, rights, consents, and permissions under all intellectual property and/or proprietary rights in Client Data to enable inclusion and use of the Client Data by PredPol and its agents in the manner permitted by this Agreement;
  - B)** PredPol's receipt and/or storage of such Client Data on the System pursuant to this Agreement, does not and will not: (a) infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right; (b) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (c) violate any applicable law, regulation or guideline; and
  - C)** Client retains ownership at all times of the Client Data. Client hereby grants to PredPol and its agents the right to use, store, publish, reproduce, and otherwise possess and utilize the Client Data in connection with and as reasonably necessary for PredPol to provide the Services to Client hereunder, and to disclose Client Data to its officers, employees, agents, consultants, contractors and representatives for the purposes of performing Services for the Client.

Client hereby agrees to indemnify and hold harmless PredPol from any third party claim arising from or otherwise related to Client's breach of any of the representations and warranties in this Section 5.

**6. Additional Client Obligations.**

- A)** The Client also agrees to: a) support testing of new features/tools; b) contribute to requested case studies; c) respond to inquiries from other agencies regarding Client's use of PredPol; and d) provide user feedback.
- B)** Client shall (i) continue to provide access to the Internet at Client's own expense from a provider selected by Client so that Client can continue to communicate with the System, and (ii) select, obtain and maintain all equipment necessary to permit Client to communicate with the Web based interfaces of the Software. PredPol will have no obligations with respect to any hardware, software, or services chosen and/or used by Client to access the Services. Notwithstanding anything to the contrary within this Agreement, PredPol's obligation to provide Services is met upon PredPol making the relevant data accessible to Client via the internet. PredPol will not have any liability if Client is unable to access or utilize the Services due to a fault or failure in any such hardware, software and/or services.

- C) Client shall continue to provide access for the Data Pipe to the Client's server which houses applicable crime data. Client shall ensure their server is running at all times and communicate any pertinent changes to their server or database to PredPol in a timely manner.
- D) **Compliance.** Client will use the Services in accordance with this Agreement, the Statement of Work and all applicable laws.
- E) **Login IDs and Passwords.** Client is solely responsible for monitoring and protecting the confidentiality of all Login IDs and Passwords issued to it and its End Users.
- F) **Client Administration of the Services.** Client may specify one or more Administrators with the rights to administer the End User Accounts. Client is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating individuals authorized to access the Admin Account(s); and (c) ensuring activities that occur in connection with the Admin Account(s) comply with this Agreement. Client agrees that PredPol's responsibilities do not extend to Client's internal management or administration of the Services.
- G) **Unauthorized Use.** Client will use commercially reasonable efforts to prevent unauthorized use of the Services and to terminate any unauthorized use. Client will promptly notify PredPol of any unauthorized use of or access to the Services of which it becomes aware.
- H) **Restrictions on Use.** Unless PredPol specifically agrees in writing, Client will not, and will use commercially reasonable efforts to make sure a third party does not: (i) intentionally store or send software viruses, worms, Trojan horses or other harmful computer code, files, scripts or programs; (ii) modify any software programs on the System; (iii) use any programs on the System other than the Application as installed and maintained by PredPol; (iv) access the System in any manner other than via the Software's Web based administrative, user and mobile interfaces; (v) remove, circumvent, disable, damage or otherwise interfere with any security-related features of the System, or features that enforce limitations on the use of the System; (vi) attempt to gain unauthorized access to the System, or any part of it, other accounts, computer systems or networks connected to the System through hacking, password mining or any other means; (vii) assign, sell, resell, rent, lease, distribute, delegate or otherwise transfer any rights or obligations under or in connection with this Agreement or the System; (viii) use the System, or sell access to the System, on a time-sharing, service bureau, application service provider, or similar basis; (ix) reverse engineer, decompile, reverse compile, disassemble, or reverse assemble, any aspect or element of the System, or attempt to do so, except if and to the extent permitted by relevant law applicable to Client; (xi) take any action the intent or likely result of which would be to reveal or reconstruct all or any portion of the design of the System; (xii) use the System in a manner that violates any applicable law; (xv) use the facilities or capabilities of the System to conduct any business or activity or solicit the performance of any activity which is prohibited by law; or (xvi) upload into the System, or cause or permit the

System to store, copy, process, communicate, distribute or publish, any data, information or materials (including without limitation, the Crime Data) to the extent that so doing actually, or allegedly, (a) creates any liability for, or imposes any obligations upon, PredPol (b) violates any legal requirement, violates any rights of any person or entity or violates any duty to any person or entity, (c) damages any person or entity, (d) would be abusive, profane or sexually offensive to an average person as judged by PredPol, (e) infringes, misappropriates or violates any intellectual property right or any personal right of any person or entity anywhere at any time, including, but not limited to, rights arising out of, or related to, copyright, patent, trade secret, trademark, service mark, privacy and publicity or (f) gives rise to any claims by any person or entity anywhere at any time for slander, liable, false light, invasion of privacy, unfair competition or misappropriation.

- I) Third Party Requests.** Client is responsible for responding to Third Party Requests. PredPol will, to the extent allowed by law and by the terms of the Third Party Request: (a) promptly notify Client of its receipt of a Third Party Request; (b) comply with Client's reasonable requests regarding Client's efforts to respond to a Third Party Request; and (c) provide Client with the information or tools required for Client to respond to the Third Party Request. Client will first seek to obtain the information required to respond to the Third Party Request on its own and will contact PredPol only if it cannot reasonably obtain such information.
- J) End User Requests.** Client will, at its own expense, respond to questions and complaints from End Users or third parties. Client will use commercially reasonable efforts to resolve support issues before escalating them to PredPol. Should Client need to escalate the issue to PredPol, contact will be made in accordance with Notices, Section 14(b).

## **7. Suspension Of End User Accounts by PredPol.**

- A)** If PredPol becomes aware of an End User's violation of the Agreement, PredPol may request that Client suspend the applicable End User Account. If Client fails to comply with PredPol's request, PredPol may suspend the End User Account. The suspension will continue until the applicable End User has cured the breach.
- B)** If there is an emergency security issue (determined solely in PredPol's reasonable business judgment), PredPol may suspend the offending use without Client's consent. Suspension will be to the extent and duration required to prevent or terminate the emergency security issue. If PredPol suspends an End User Account without prior notice to Client, at Client's request, PredPol will provide Client the reason for the suspension.

## **8. Confidential Information.**

- A) Asset of PredPol.** Client acknowledges and agrees that the System and results generated therefrom constitute valuable, proprietary and confidential assets of PredPol and its licensors, successors and assigns. The foregoing shall be considered the Confidential Information of PredPol.

For purposes of this Agreement, "Confidential Information" means any tangible or intangible information relating to or disclosed in the course of performing the Agreement that is marked or designated as confidential by the disclosing Party, including, without limitation, designs, specifications, routines, protocols, formulas, source codes, technical processes, unpublished financial information, product and business plans, projections, customer information and employee information. Confidential Information does not include information that (i) becomes publicly known through no fault of the receiving Party, (ii) is lawfully received from a third party not bound by confidentiality obligations, or (iii) is independently developed by a Party without using any Confidential Information of the other Party.

- B) Obligations.** Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own; and (b) not disclose Confidential Information except to affiliates, employees and agents who need to know it and who have agreed in writing to keep it confidential. Confidential Information may only be used to exercise rights and fulfill obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for the actions of its affiliates' employees.
- C) Required Disclosure.** Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

## **9. Intellectual Property Rights; Brand Features.**

- A) Intellectual Property Rights.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content, brand features or intellectual property.

## **10. Disclaimers.**

- A) Disclaimers.** TO THE EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY PROVIDED FOR HEREIN; (i). PREDPOL MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE SERVICES AND DOES NOT GUARANTEE THAT THE SERVICES WILL PREDICT ALL CRIMES IN YOUR JURISDICTION; AND (ii) THE SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OR CONDITIONS OF ANY KIND, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, QUIET ENJOYMENT, ACCURACY OF DATA, SYSTEM INTEGRATION, COURSE OF PERFORMANCE AND FITNESS FOR A PARTICULAR PURPOSE. PREDPOL AND ITS SUPPLIERS DO NOT GUARANTEE OR WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CLIENT ACKNOWLEDGES THAT THE SERVICES ARE NOT A TELEPHONY SERVICE AND THAT THE SERVICES ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS INCLUDING

## EMERGENCY SERVICES CALLS OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

- B) **Warranty.** PredPol warrants all work performed or services rendered under the Agreement to be of good quality and free from any defective or faulty material and workmanship.

### 11. Indemnification.

- A) **By Client.** Client will indemnify, defend, and hold harmless PredPol from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys' fees) arising out of a third party claim: (i) regarding Client Data; or (ii) regarding Client's use of the Services in violation of this Agreement or applicable law.
- B) **By PredPol.** PredPol will defend and hold harmless Client against any third party claim that the Services infringe or misappropriate the intellectual property of a third party ("Infringement Claim"), and indemnify Client from all resulting costs and damages actually awarded against Client to the third party making such Infringement Claim by a court of competent jurisdiction or agreed to in settlement. PredPol will have no obligations or liability under this section arising from: (i) use of any Services or PredPol Brand Features in a modified form or in combination with materials not furnished by PredPol, (ii) any content, information or data provided by Client, End Users or other third parties; (iii) any modifications or additions made at the request of Client and/or per Client's instructions; or (iv) use of the Services in any manner not expressly allowed per the terms of this Agreement.
- C) **General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (a) any settlement requiring the party seeking indemnification to admit liability or to pay money will require that party's prior written consent, such consent not to be unreasonably withheld or delayed; (b) the other party reasonably cooperates with requests for assistance; and (c) the other party may join in the defense with its own counsel at its own expense. **THE INDEMNITIES ABOVE ARE A PARTY'S SOLE REMEDY FOR VIOLATION BY THE OTHER PARTY OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

### 12. Possible Infringement.

- A) **Repair, Replace, or Modify.** If PredPol reasonably believes the Services infringe a third party's Intellectual Property Rights, then PredPol will: (a) obtain the right for Client, at PredPol's expense, to continue using the Services; (b) provide a non-infringing functionally equivalent replacement; or (c) modify the Services so that they no longer infringe.
- B) **Suspension or Termination.** If PredPol does not believe the foregoing options are commercially reasonable, then PredPol may suspend or terminate Client's use of the

impacted Services. If PredPol terminates the impacted Services, then PredPol will provide a pro-rata refund of the unearned fees.

### **13. Limitation of Liability.**

- A) Limitation on Indirect Liability.** NEITHER PARTY WILL BE LIABLE UNDER THIS AGREEMENT FOR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY.
- B) Limitation on Amount of Liability.** EXCEPT AS PROVIDED HEREIN, PREDPOL SHALL NOT BE HELD LIABLE UNDER THIS AGREEMENT FOR MORE THAN THE AMOUNT PAID BY CLIENT TO PREDPOL HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.
- C) Exceptions to Limitations.** These limitations of liability apply to the fullest extent permitted by applicable law but do not apply to breaches of confidentiality obligations, violations of a party's Intellectual Property Rights by the other party, or indemnification obligations.

### **14. Miscellaneous.**

- A) Privacy Rights:** Without limiting any of the foregoing, Client hereby agrees to strictly comply with all laws, regulations and guidelines relating to the privacy rights of any individuals applicable to its use of the System, including, without limitation, personally identifiable information.
- B) Notices.** (a) All notices must be in writing and addressed to the attention of the other party's legal department and primary point of contact and (b) notice will be deemed given: (i) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (ii) when verified by automated receipt or electronic logs if sent by facsimile or email.

Point of Contact, PredPol:  
Customer Account Management:  
[Customers@predpol.com](mailto:Customers@predpol.com)

Point of Contact, Client:  
Christopher Goodwin, Interim Chief of Police  
611 W. 22<sup>nd</sup> Street, Merced, CA 95340 (209) 385-6913  
[goodwinc@cityofmerced.org](mailto:goodwinc@cityofmerced.org)



- C) Change of Control.** Upon a change of control (a) the party experiencing the change of control will provide written notice to the other party within thirty days after the change of control; and (b) upon such change of control by Client, PredPol may terminate this Agreement any time between the change of control and thirty days after it receives the notice.
- D) Force Majeure.** Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war, riot, labor condition, governmental action, and Internet disturbance) beyond the party's reasonable control; provided, that obligations that are purely financial in nature shall not be subject to this provision
- E) No Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver.
- F) Severability.** If any provision of this Agreement is found unenforceable, the balance of the Agreement will remain in full force and effect.
- G) No Agency.** The Parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture.
- H) Equitable Relief.** Nothing in this Agreement will limit either party's ability to seek equitable relief.
- I) Governing Law.** This Agreement is governed by California law, excluding that state's choice of law rules. FOR ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE PARTIES CONSENT TO PERSONAL JURISDICTION IN, AND THE EXCLUSIVE VENUE OF, THE COURTS IN SANTA CRUZ COUNTY, CALIFORNIA. The Parties explicitly agree that no other laws, treaties or regulations shall control this Agreement.
- J) Amendments.** Any amendment must be in writing and expressly state that it is amending this Agreement.
- K) Entire Agreement.** This Agreement, and all documents referenced herein, is the Parties' entire agreement relating to its subject and supersedes any prior or contemporaneous agreements on that subject.
- L) Interpretation of Conflicting Terms.** If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the Agreement, the terms located at any URL, then the Subscription Terms set forth in any separate quote prepared by PredPol. If Client signs a physical agreement with PredPol to receive the Services, the physical agreement will override any online agreement.

**M) Counterparts.** The Parties may enter into this Agreement in counterparts, including facsimile, PDF or other electronic copies, which taken together will constitute one instrument.

*[Signature page follows.]*

EXECUTED as a sealed instrument as of the day and year first set forth below by the last counter-signatory.

Each party represents that it has full power and authority to enter into the Agreement. If you are accepting on behalf of your employer or another entity, you represent and warrant that: (i) you have full legal authority to bind your employer, or the applicable entity, to these terms and conditions; (ii) you have read and understand this Agreement; and (iii) you agree, on behalf of the party that you represent, to this Agreement. Each party warrants that it will comply with all laws and regulations applicable to its provision, or use of the Services.

**PredPol, Inc.:**

**Client:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

## **EXHIBIT A**

### **STATEMENT OF WORK**

#### **PREDPOL SAAS SERVICES DESCRIPTION**

PredPol shall provide client with the following services per the terms of this Agreement

#### **1. SERVICE OVERVIEW**

PredPol provides predictions for where and when crime is most likely to occur (“Predictive Services”). This includes property crime, gun violence, gang activity, and traffic incidents. Predictions may be generated for different time windows and delivered on paper or to any internet-connected device. The predictions are shown on maps as 500 foot by 500 foot boxes (approximately the size of a large intersection; referred to herein as “Prediction Boxes”) that officers may patrol during their shift when not responding to calls for service or performing other duties.

Three types of crime data – type of crime, place of crime, and time of crime – are delivered through a secure Data Pipe from Client’s RMS to the PredPol Service. Predictions are then generated and made available anytime the Client logs in to the system.

An additional service is Automated Vehicle Location (“AVL”) Integrated Dosage Calculations. With this service, PredPol provides AVL based, real time dosage reporting for patrols using our predictive services. Reports are accessible from the web based interface by command staff and patrol supervisors (filtered by user permissions) and provide feedback on which zones are being under patrolled, patrolled sufficiently, or over patrolled to prevent crime. This feature provides visibility into vehicle path which shows the path history for a selected vehicle.

#### **2. SERVICES DESCRIPTION**

##### **A. Services and Technical Support**

- a. Services. PredPol will make the following Services accessible to Client via the internet per the terms of the Service Level Agreement set out below, for the duration that this Agreement and this Statement of Work remain in effect.
  - i. Predictive Services: Data to be transferred is restricted to fields related to type of crime, place of crime, and time of crime. There shall be no limit on the number of Client users, mission and shift combinations predicted or prediction views.
    1. Predictions of where and when specific crimes are most likely to occur including latitude and longitude information of the center of Prediction Boxes. Prediction Boxes shall be for crime types as defined and mutually agreed to by Client and PredPol;

2. Historical location of Prediction Boxes as defined and mutually agreed to by Client and PredPol;
  3. Ability to manage patrol operations including the ability to set missions by shift and district; and
  4. Analytics and reporting that will provide deeper insight into crime patterns and patrol operations.
- b. AVL Integrated Dosage Calculations.
  - c. Technical Support. PredPol will provide Client with online and e-mail technical and operational use support.

### **3. SERVICE LEVEL AGREEMENT**

- A. Service Availability. The PredPol SaaS service shall have an uptime of 98%, calculated as the percentage time said service is accessible from the Internet in any whole calendar month after SaaS service initiation ("Service Month"). Downtime resulting from scheduled maintenance and force majeure events shall not be included in the uptime calculation. Additionally, in the situation where the Client's technical architecture or the RMS data formats within the record management system are changed by the Client without 60- day advance notice, any resulting downtime will not be included in the uptime calculation.
- B. Service Response Time. PredPol shall take reasonable measures to ensure that the SaaS service response times do not materially fall behind industry standards.
- C. Service Credits. Client's sole remedy for any failure for PredPol to meet the foregoing shall be a credit of 1/12 a percent for each percent below 98% the calculated uptime is in a Service Month, on Client's next annual invoice. Said credits shall have no cash value.

### **4. FEES**

- A. SaaS and Technical Support Fees. As consideration for the services provided per Section 2.A of this Exhibit A, Client shall pay to PredPol an annual subscription fee of \$14,900 for Predictive Services and AVL for the Initial Services Term and every year that this contract remains in effect thereafter. The subscription fee due for the Services Term shall be invoiced upon the full execution of this Agreement. The subscription fee due for subsequent one (1) year periods that this contract remains in effect shall be invoiced thirty (30) days prior to the conclusion of the Services Term, and the annual anniversaries thereof.
- B. Software updates to the SaaS provided herein shall be provided at no additional charge during the Services Term. The fee for the continued provision of said software updates shall be mutually agreed to by the parties at the conclusion of the Services Term.

- C. All fees described herein shall be paid by Client within thirty (30) days of the invoice date.

## **5. CLIENT OBLIGATIONS**

- A. Client shall make commercially reasonable efforts to performing the following during the term of this Agreement:
  - i. utilize the PredPol services according to PredPol's recommended best practices;
  - ii. generally support the deployment of any new features and/or tools, including providing user feedback, as requested by PredPol;
  - iii. provide access to relevant databases and shared databases to which Client has access, pursuant to all applicable laws and access agreements; and
  - iv. occasionally respond to inquiries from other agencies.



## ADMINISTRATIVE REPORT

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**Agenda Item I.18.**

Meeting Date: 7/2/2018

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*Report Prepared by: Matt Williams, Captain, Police Department*

**SUBJECT:** Fiscal Year 2017 State Homeland Security Grant Program (SHSGP)

### REPORT IN BRIEF

Considers accepting Fiscal Year (FY) 2017 State Homeland Security Grant Program (SHSGP) funds to purchase Bomb Unit (EOD) equipment for the Merced Police Department Bomb Team

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Accepting FY 2017 SHSGP grant funds in the amount of \$3,000.00 as revenue in account 001-1002-324-02-00; and,
- B. Appropriating \$3,000.00 to Machinery/Equipment expense account 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 or Assistant City Manager to execute the necessary documents.

### ALTERNATIVES

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

### AUTHORITY

Charter of the City of Merced, Section 200 - Powers.  
Charter of the City of Merced, Section 405 - Powers Vested in the City Council.  
Charter of the City of Merced, Section 1105 - Budget Appropriations.

### CITY COUNCIL PRIORITIES

As it relates to Council priority for Public Safety.

### DISCUSSION

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The Merced County Office of Emergency Services (OES) has awarded funds through the FY2017 State Homeland Security Grant Program (SHSGP). The scope of the grant includes funding for emergency management equipment, Incident Command System training, law enforcement equipment, fire department equipment, and Health Department equipment. Within the parameters and requirements of the grant program, monies have been awarded by the Merced Big 5 Committee to the individual agencies and jurisdictions within the County.

On December 14, 2017, the City of Merced Police Department was awarded \$3,000.00 of the FY 2017 SHSGP funds to purchase EOD Unit equipment. The Merced Police Department has a Bomb Unit that services not only the City of Merced but Merced and Mariposa Counties as well. A Bomb Squad is defined as: a bomb response organization consisting of at least one bomb team that meets Type I or Type II standards as defined in Section 7.1 of the National Guidelines for Bomb Technicians, published by the U.S. Department of Justice Federal Bureau of Investigation.

The duties of the team are to: render safe and/or remove suspected Improvised Explosive Devices (IEDs), incendiary devices, military ordinance, explosives, explosive chemicals, pyrotechnics and military ammunition of .50 caliber and above. In addition, the Bomb Unit provides support to the department's Special Weapons and Tactics Team at a minimum in the following areas:

- Crisis negotiations
- Breaching
- Render-safe procedures (RSP)
- Identification and elimination of booby traps

The grant funds will allow the Bomb Unit to have the necessary equipment for testing of electrical circuitry while investigating suspicious packages. The funds will be used to purchase specialized testing meters, allowing Unit members to respond to active scenes with explosive devices and be able to test electrical circuitry.

## **IMPACT ON CITY RESOURCES**

The acceptance of this grant funding will cover the purchase of the desired equipment for the Bomb Unit.

## **ATTACHMENTS**

No attachments available.



**ADMINISTRATIVE REPORT**

**Agenda Item I.19.**

Meeting Date: 7/2/2018

*Report Prepared by: Matt Williams, Captain, Police Department*

**SUBJECT:** Acceptance of Fiscal Year 2017 State Homeland Security Grant Program Funds to Purchase Additional License Plate Reader Equipment; Waiver of the Competitive Bidding Requirement

**REPORT IN BRIEF**

Considers accepting Fiscal Year (FY) 2017 State Homeland Security Grant Program (SHSGP) funds in the amount of \$48,000 to purchase additional automated license plate reader cameras with a request to waive the competitive bidding process.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Accepting FY 2017 SHSGP grant funds and increasing revenue budget in the amount of \$48,000; in account 001-1002-324-02-00 and,
- B. Appropriating \$48,000.00 to Machinery/Equipment expense account 001-1002-523-43-00; and,
- C. Approving the use of pooled cash until reimbursement from the grant is received; and,
- D. Waiving the competitive bidding requirements, as stated in Section 3.04.210 of the Merced Municipal Code, and authorizing the City to Sole Source purchase the requested license plate reader equipment and its installation through Lehr Auto for an amount not to exceed \$55,505.19; and,
- E. 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 other than recommended by staff; or,
3. Deny; or,
4. Refer to staff for reconsideration of specific items; or,
5. Continue to a future meeting.

**AUTHORITY**

Charter of the City of Merced, Section 200 - Powers.  
Charter of the City of Merced, Section 405 - Powers Vested in the City Council.  
Charter of the City of Merced, Section 1105 - Budget Appropriations.



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Article III of Title 3, Chapter 3.04, of the Merced Municipal Code relating to purchases over twenty-nine thousand dollars; and Section 3.04.210, exemptions from competitive bidding.

## **CITY COUNCIL PRIORITIES**

As it relates to Council priority for Public Safety.

## **DISCUSSION**

The Merced County Office of Emergency Services (OES) has awarded funds through the FY2017 State Homeland Security Grant Program (SHSGP). The scope of the grant includes funding for emergency management equipment, Incident Command System training, law enforcement equipment, fire department equipment, and Health Department equipment. Within the parameters and requirements of the grant program, monies have been awarded by the Merced Big 5 Committee to the individual agencies and jurisdictions within the County.

On March 22, 2018, the City of Merced Police Department was awarded \$48,000.00 of the FY 2017 SHSGP funds to purchase additional license plate reader cameras. The Merced Police Department has existing license plate reader cameras in operation and plans to purchase 5 more cameras with these grant funds. The purchase of the additional equipment will allow the department to expand its existing system, which has been a valuable asset not only to the Merced Police Department, but to other law enforcement agencies within the county. This system has been used by investigators to identify stolen vehicles and also to identify suspects in several types of felony crimes, including robbery, aggravated assault, grand theft, arson and homicide.

We are requesting approval to waive the competitive bidding process for this purchase. As was done with the initial purchase of license plate reader equipment, the purchase of the additional equipment will be made through Lehr Auto Electric, who is the authorized vendor for Vigilant Solutions, the company that developed the software and license plate reader equipment we currently utilize. By purchasing the equipment through Lehr, we will ensure that the new cameras will integrate with our existing system.

The total cost of the purchase, including installation will not exceed \$55,505.19. The \$48,000 in grant funding would cover the majority of the cost; however, \$7,505.19 would come from the existing police department budget to supplement the purchase.

## **IMPACT ON CITY RESOURCES**

The purchase of additional LPR cameras does not have an impact on city resources. The purchase will be made with the grant funding and money currently in the Police Department's Budget.

## **ATTACHMENTS**

1. Quote from Lehr Auto



## **Quote For:**

**Merced Police Department  
Fixed Camera**

## **Quoted By:**

**Lehr  
Steve Adair**

**Date: 06-20-18**



**Be Smart. Be Safe. Be Vigilant.**

		<b>Lehr</b> <b>4707 Northgate Blvd.</b> <b>Sacramento, California 95834</b> <b>(P) 916-267-5547</b>			
Attention:	Merced Police Department	Date	6/20/2018		
Project Name:	Fixed Camera	Quote Number:	STA-0671-03		

## PROJECT QUOTATION

We at Lehr are pleased to quote the following systems for the above referenced project:

Qty	Item #	Description
(1)	<b>Fixed Camera LPR SYS-1</b> (5)VSF-XXX-H-RE	<b>Vigilant Fixed LPR Camera with Integrated Smart Processor</b> <u>Hardware:</u> <ul style="list-style-type: none"> <li>Integrated (Internal) solid state DSP Smart processor units - No moving parts <ul style="list-style-type: none"> <li>Plug-N-PlayIP based camera with Power Over Ethernet (POE)</li> </ul> </li> <li>Includes field installed J-Box</li> <li>Combination IR and Color lens config to be selected at time of order <ul style="list-style-type: none"> <li>Includes RAM mounting bracket</li> </ul> </li> </ul> <u>Software:</u> <ul style="list-style-type: none"> <li>Direct connect to Vigilant's nationally hosted LEARN LPR data server <ul style="list-style-type: none"> <li>Includes CarDetector LPR software for local server hosting</li> </ul> </li> <li>LPR vehicle license plate scanning / real time alerting <ul style="list-style-type: none"> <li>Full suite of LPR tools including data analytics</li> </ul> </li> </ul>
<b>Subtotal Price</b> (Excluding sales tax)		<b>\$41,375.00</b>

Qty	Item #	Description
(5)	SSUPSYS-COM	<b>Vigilant System Start Up &amp; Commissioning of 'In Field' LPR system</b> <ul style="list-style-type: none"> <li>Vigilant technician to visit customer site</li> <li>Includes system start up, configuration and commissioning of LPR system</li> <li>Applies to mobile (1 System) and fixed (1 Camera) LPR systems</li> </ul>
<b>Subtotal Price</b> (Excluding sales tax)		<b>\$4,375.00</b>

Qty	Item #	Description
(1)	VSPTRVL-01	<b>Vigilant Certified Partner Travel via Client Site Visit</b> <ul style="list-style-type: none"> <li>Vigilant certified technician to visit client site</li> <li>Includes all travel costs for onsite support services</li> </ul>
<b>Subtotal Price</b> (Excluding sales tax)		<b>\$875.00</b>

Qty	Item #	Description
(5)	VS-FX-UNI-POLE-WALL-BRKT_REV_B	<b>Fixed LPR Camera Bracket</b> <ul style="list-style-type: none"> <li>Pole or Wall Mount - UPR ARM ASSY POLE &amp; WALL MOUNT BLK REV B</li> </ul>
<b>Subtotal Price</b> (Excluding sales tax)		<b>\$1,750.00</b>

Qty	Item #	Description
(5)	VS-SHP-02	<b>Vigilant Shipping &amp; Handling Charges</b> <ul style="list-style-type: none"> <li>• Applies to each fixed camera LPR System</li> <li>• Shipping Method is FOB Shipping</li> </ul>
<b>Subtotal Price</b> (Excluding sales tax)		<b>\$275.00</b>

Qty	Item #	Description
(1)	VSBSCSVC-01	<b>Vigilant LPR Basic Service Package for Hosted/Managed LPR Deployments</b> <ul style="list-style-type: none"> <li>• Managed/hosted server account services by Vigilant <ul style="list-style-type: none"> <li>◦ Includes access to all LEARN or Client Portal and CarDetector software updates</li> </ul> </li> <li>• Priced per camera per year for up to 14 total camera units registered</li> <li>• Requires new/existing Enterprise Service Agreement (ESA)</li> </ul>
<b>Subtotal Price</b> (Excluding sales tax)		<b>\$2,625.00</b>

CA Sales Tax-Merced City 8-1/4 %

\$4,230.19

**Quote Notes:**

1. All prices are quoted in USD and will remain firm and in effect for 60 days.
2. Complete system to be delivered within 30 days of AOR (After Receipt of Order).
3. This Quote does not include anything outside the above stated bill of materials.
4. Lehr is a Sole Source provider for Merced Police Department Fixed Project

**Quoted by: Steve Adair - 916-267-5547 - [steve@lehrauto.com](mailto:steve@lehrauto.com)**

<b>Total Price</b> (Including sales tax)	<b>\$55,505.19</b>
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## ADMINISTRATIVE REPORT

**Agenda Item I.20.**

Meeting Date: 7/2/2018

*Report Prepared by: Marvin Dillsaver, Communications Supervisor, Police Department*

**SUBJECT:** Purchase and Installation of New Motorola Radio Base Stations and Voting Receivers for the Police Department and Waiving the Competitive Bidding Requirement

### REPORT IN BRIEF

Considers authorizing the purchase (including installation costs) of new Motorola radio base stations and voting receivers for the Police Department using revenue currently available and waives the competitive bidding requirement for the purchase.

### RECOMMENDATION

**City Council** - Adopt a motion waiving the competitive bidding requirements, as stated in Section 3.04.210 of the Merced Municipal Code, and authorizing the City to purchase the requested radio equipment through J's Communications, Inc. for equipment and installation costs not to exceed \$90,206.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Refer back to staff for reconsideration of specific items as requested by Council; or,
3. Take no action.

### AUTHORITY

Merced Municipal Code Section 3.04

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget.

### DISCUSSION

It is essential to upgrade the current Motorola MTR2000 (radio base stations) and the voting receivers currently being used by the Police Department with new updated equipment. A malfunction to the base stations or voting receivers in use today could have a significant negative impact to the normal daily operation of the Police Department.

The base stations and voting receivers used in the Communications Center at the Merced Police Department were originally purchased in November of 2004 and were installed in February of 2005. Both the radio base stations and the voting receivers have exceeded their life expectancy. Per Motorola, the Motorola MTR2000 base stations and voting receivers have reached their end of their

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useful life. Motorola has discontinued all replacement parts and service for the equipment we currently use.

This report covers the purchase and installation of new base station radios and voting receivers for a projected total purchase and installation cost of \$90,206, (See attached quotes for details). The Police Department would like to purchase all equipment and installation through a sole-source purchase with J's Communications Inc. J's Communications Inc. is the City's assigned Motorola's Manufacturing Representative. Since 2005, J's Communications has been the city's public safety radio provider and they maintain our 24-hour Emergency Maintenance contracts for our base station radios and voting receivers. J's Communications is familiar with all of our radio infrastructure and how the equipment is currently installed and operated. The contract pricing being offered to the City for this purchase is the contract pricing Motorola gave to Los Angeles County for the purchase of similar equipment.

The Police Department requests approval to purchase the equipment and installation on a sole-source basis from J's Communications.

### **IMPACT ON CITY RESOURCES**

There are no budget appropriation of funds needed for this purchase. The funding is available within the FY2018-19 approved budget.

### **ATTACHMENTS**

1. Exhibit A - Quote from Motorola Inc.
2. Exhibit B - Quote from Motorola Inc. for back up base stations
3. Exhibit C - Quote from J's Communications Inc. for Installs
4. Exhibit D - Motorola Cancellation Notice
5. Exhibit E - Motorola Letter



**Quote Number:** QU0000443193

**Effective:** 11 JUN 2018

**Effective To:** 10 AUG 2018

**Bill-To:**

MERCED, CITY OF  
678 W 18TH ST  
MERCED, CA 95340  
United States

**Ultimate Destination:**

MERCED, CITY OF  
611 WEST 22ND ST  
MERCED, CA 95340  
United States

**Attention:**

**Name:** Marvin Dillsaver  
**Email:** dillsaverm@cityofmerced.org  
**Phone:** 209-385-8870

**Sales Contact:**

**Name:** Randy Emerzian  
**Email:** randye@j-scommunications.com  
**Phone:** 5594424400

**Request For Quote:** G-Series Voting Upgrade  
**Contract Number:** LA COUNTY (CA)  
**Freight terms:** Prepay and Add to Invoice  
**Payment terms:** Net 30 Due

Item	Quantity	Nomenclature	Description	List price	Your price	Extended Price
1	1	T7039A	GTR 8000 Base Radio	-	-	-
(Notes)POLIE CH 1 Repeater						
1a	1	X153AW	ADD: RACK MOUNT HARDWARE	\$50.00	\$40.00	\$40.00
1b	1	X265AM	BR PRESECTOR, 150-174 MHZ	\$500.00	\$400.00	\$400.00
1c	1	X530BG	ADD: VHF (136-174 MHZ)	\$6,300.00	\$5,040.00	\$5,040.00
1d	1	CA01949AA	ADD: ANALOG ONLY CONV SW	\$6,000.00	\$4,800.00	\$4,800.00
1e	1	CA01951AA	ADD: ANALOG CONVENTIONAL VOTING SOFTWARE	-	-	-
1f	1	CA00975AA	ADD: BATTERY TEMP SENSOR	\$200.00	\$160.00	\$160.00
1g	1	CA01400AA	EXTENSION CABLE ADD: POWER CABLE, DC	-	-	-
2	6	T7540A	GPW 8000 RECEIVER	\$1,000.00	\$800.00	\$4,800.00
(Notes)Police Voting RX CH1 & CH2						
2a	12	X530BH	ADD: VHF (136-174 MHZ)	\$3,200.00	\$2,560.00	\$30,720.00
2b	6	X302AR	ADD: QTY 2 GPW 8000 RECEIVER	\$800.00	\$640.00	\$3,840.00
2c	6	X153AW	ADD: RACK MOUNT HARDWARE	\$50.00	\$40.00	\$240.00
2d	12	CA01949AB	ADD: ANALOG ONLY CONV SW R/X ONLY	-	-	-
3	1	T7039A	GTR 8000 Base Radio	-	-	-
(Notes)POLICE CH 2 Repeater						
3a	1	X153AW	ADD: RACK MOUNT HARDWARE	\$50.00	\$40.00	\$40.00
3b	1	X265AM	BR PRESECTOR, 150-174 MHZ	\$500.00	\$400.00	\$400.00
3c	1	X530BG	ADD: VHF (136-174 MHZ)	\$6,300.00	\$5,040.00	\$5,040.00
3d	1	CA01949AA	ADD: ANALOG ONLY CONV SW	\$6,000.00	\$4,800.00	\$4,800.00
3e	1	CA01951AA	ADD: ANALOG CONVENTIONAL VOTING SOFTWARE	-	-	-
3f	1	CA00975AA	ADD: BATTERY TEMP SENSOR	\$200.00	\$160.00	\$160.00
3g	1	CA01400AA	EXTENSION CABLE ADD: POWER CABLE, DC	-	-	-
4	1	T7540A	GPW 8000 RECEIVER	\$1,000.00	\$800.00	\$800.00
(Notes)PD-1 RX Mercy Hosp						
4a	1	X530BH	ADD: VHF (136-174 MHZ)	\$3,200.00	\$2,560.00	\$2,560.00
4b	1	X301AR	ADD: QTY 1 GPW 8000 RECEIVER	-	-	-
4c	1	X153AW	ADD: RACK MOUNT HARDWARE	\$50.00	\$40.00	\$40.00

Item	Quantity	Nomenclature	Description	List price	Your price	Extended Price
4d	1	CA01949AB	ADD: ANALOG ONLY CONV SW R/X ONLY	-	-	-
<b>Estimated Tax Amount</b>						\$5,270.10
<b>Estimated Freight Amount</b>						\$702.68
<b>Total Quote in USD</b>						<b>\$69,852.78</b>

Installation on Separate Quote

PO Issued to Motorola Solutions Inc. must:

- >Be a valid Purchase Order (PO)/Contract/Notice to Proceed on Company Letterhead. Note: Purchase Requisitions cannot be accepted
- >Have a PO Number/Contract Number & Date
- >Identify "Motorola Solutions Inc." as the Vendor
- >Have Payment Terms or Contract Number
- >Be issued in the Legal Entity's Name
- >Include a Bill-To Address with a Contact Name and Phone Number
- >Include a Ship-To Address with a Contact Name and Phone Number
- >Include an Ultimate Address (only if different than the Ship-To)
- >Be Greater than or Equal to the Value of the Order
- >Be in a Non-Editable Format
- >Identify Tax Exemption Status (where applicable)
- >Include a Signature (as Required)





**Quote Number:** QU0000433689

**Effective:** 06 MAR 2018

**Effective To:** 05 MAY 2018

**Bill-To:**

MERCED, CITY OF  
678 W 18TH ST  
MERCED, CA 95340  
United States

**Ultimate Destination:**

MERCED, CITY OF  
611 WEST 22ND ST  
MERCED, CA 95340  
United States

**Attention:**

**Name:** Marvin Dillsaver  
**Email:** dillsaverm@cityofmerced.org  
**Phone:** 209-385-8870

**Sales Contact:**

**Name:** Randy Emerzian  
**Email:** randye@j-scommunications.com  
**Phone:** 5594424400

**Request For Quote:** Dispatch Base Station BU & SO  
**Contract Number:** LA COUNTY (CA)  
**Freight terms:** Prepay and Add to Invoice  
**Payment terms:** Net 30 Due

Item	Quantity	Nomenclature	Description	List price	Your price	Extended Price
1	1	L30KSS9PW1AN	APX CONSOLETTTE VHF	\$4,554.00	\$3,324.42	\$3,324.42
1a	1	GA00306AA	ADD: VHF MP PRIMARY BAND	-	-	-
1b	1	L998AA	ADD: LIMITED FRONT PANEL W/CLOCK/VU	\$480.00	\$350.40	\$350.40
1c	1	GA00237AA	ADD: NO USER/INSTALL CD NEEDED	-	-	-
1d	1	GA05100AA	ENH: STD WARRANTY APPLIES-NO SFS	-	-	-
1e	1	G241AP	ENH: SW ASTRO READY (ANALOG)	-	-	-
1f	1	CA01598AB	ADD: AC LINE CORD US	-	-	-
1g	1	G48BB	ENH: CONVENTIONAL OPERATION	\$800.00	\$584.00	\$584.00
1h	1	G444AE	ADD: APX CONTROL HEAD SOFTWARE	-	-	-
2	1	L30URS9PW1AN	APX CONSOLETTTE 7/800	\$4,554.00	\$3,324.42	\$3,324.42
2a	1	GA00244AA	ADD: 7/800MHZ PRIMARY BAND	-	-	-
2b	1	L998AA	ADD: LIMITED FRONT PANEL W/CLOCK/VU	\$480.00	\$350.40	\$350.40
2c	1	GA05100AA	ENH: STD WARRANTY APPLIES-NO SFS	-	-	-
2d	1	G241AP	ENH: SW ASTRO READY (ANALOG)	-	-	-
2e	1	CA01598AB	ADD: AC LINE CORD US	-	-	-
2f	1	G50AT	ENH: SMARTNET OPERATION APX	\$1,200.00	\$876.00	\$876.00
2g	1	G444AE	ADD: APX CONTROL HEAD SOFTWARE	-	-	-
3	2	HKN6233C	APX CONSOLETTTE RACK MOUNT KIT	\$200.00	\$146.00	\$292.00

**Estimated Tax Amount**

\$750.88

**Estimated Freight Amount**

\$100.11

**Total Quote in USD**

**\$9,952.63**

Installation and programming on separate quote.

PO Issued to Motorola Solutions Inc. must:

>Be a valid Purchase Order (PO)/Contract/Notice to Proceed on Company Letterhead. Note: Purchase Requisitions cannot be accepted

>Have a PO Number/Contract Number & Date

- >Identify "Motorola Solutions Inc." as the Vendor
- >Have Payment Terms or Contract Number
- >Be issued in the Legal Entity's Name
- >Include a Bill-To Address with a Contact Name and Phone Number
- >Include a Ship-To Address with a Contact Name and Phone Number
- >Include an Ultimate Address (only if different than the Ship-To)
- >Be Greater than or Equal to the Value of the Order
- >Be in a Non-Editable Format
- >Identify Tax Exemption Status (where applicable)
- >Include a Signature (as Required)

**J's Communications, Inc.**

3733 S. Bagley

Suite C

Fresno, CA 93725-2436



# Proposal

**Proposal Date:** 3/6/2018**Proposal #:** 68186**Project:****Bill To:**

MERCED, CITY OF (POLICE DEPT)

ATTN: ACCOUNTS PAYABLE

611 W. 22ND STREET

MERCED, CA 95340

\*\*EMAIL INVOICES\*\*

Description	Qty.	Rate	Total
INSTALLATION LABOR	1	9,600.00	9,600.00
Travel Charge	5	0.00	0.00
PROGRAMMING	16	25.00	400.00
NEW GTR System			
REMOVAL	16	25.00	400.00
Sales Tax		8.25%	0.00
<b>Total</b>			<b>\$10,400.00</b>

CONFIDENTIAL

## MTR2000 Intent to Cancel Announcement – 5/4/2011

### MTR2000 Base Station & Receiver (All Bands-UHF/VHF/800/900) Intent to Cancel

#### Product Information:

MTR2000 Cancellation - Models & Band Options impacted:

- T5544 (MTR2000 Station - Direct channel)
- T5766 (MTR2000 Station - Indirect channel)

#### Orders for MTR2000 base station /repeaters will be accepted per the schedule below:

	UHF	800	900	VHF
<b>Band Options</b>	X340, X341, X540,	X450	X460	X330, X345, X530
<b>Last Order Date</b>	Completed 4/1/2010	11/1/2010	11/1/2010	3/1/2011
<b>Last Ship Date</b>	Completed 4/30/2010	11/30/2010	11/30/2010	3/31/2011

- T5731 (MTR2000 Receiver - Direct channel)
- T5769 (MTR2000 Receiver - Indirect channel)

#### • Orders for MTR2000 receivers will be extended per the schedule below:

	UHF	800	900	VHF
<b>Band Options</b>	X320	X600	X663	X319
<b>Last Order Date</b>	September 01, 2011	September 01, 2011	September 01, 2011	September 01, 2011
<b>Last Ship Date</b>	September 30, 2011	September 30, 2011	September 30, 2011	September 30, 2011

Note: The MTR2000 is not included in the U.S. Government Services Administration contract (GSA).

#### Replacement Product:

The MTR2000 station will be replaced by the MTR3000 station for analog conventional operation. MTR3000 is also MOTOTRBO Digital capable. SMARTNET and SmartZone trunking are not compatible with MTR3000; Quantar stations are still available through 2011 as analog trunking alternatives. Please see details below or contact your sales account team on the MTR3000 station or its future rollout plans:

MTR Band	Release Date
<b>MTR3000 UHF Station</b>	Released 1/29/2010
<b>MTR 3000 800/900 Station</b>	Released 9/17/2010
<b>MTR3000 VHF Station</b>	Released 12/17/2010
<b>MTR3000 Analog Receiver</b>	Scheduled 9/30/2011

#### Regional Impact:

The MTR2000 base station/receiver (all bands-UHF/VHF/800MHz/900MHz) cancellation is effective in ALL regions (North America, Latin America, Asia Pacific, Europe, Middle East, Africa, and Israel) where product models and corresponding hardware options and accessories are sold.

**Systems Impact:**

- SMARTNET/SmartZone - MTR3000 is not certified for SN/SZ. To add channels to these 3600-baud trunking systems, the Quantar station can be purchased through December 2011.
- Analog Conventional - MTR3000 supports analog conventional operation. Refer to the comparison matrix in the information repository below for a list of exceptions and operational differences between MTR2000 and MTR3000

**Service Impact:**

Commercially reasonable efforts will be made to provide aftermarket product support via the Customer Fulfillment Center for up to 7 years as follows:

MTR Band	Last Shipment Date	Service Support End Date
MTR2000 UHF	4/30/2010	3/31/2018
MTR2000 800/900 MHz	11/30/2010	3/31/2018
MTR2000 VHF	2/28/2011	3/31/2018

**Contacts:**

For MTR2000/MTR3000 product specific implications of this cancellation:

**Urvi Purani**

[urvipurani@motorola.com](mailto:urvipurani@motorola.com)

847.576.2387

For SMARTNET/SmartZone System implications of this cancellation:

**Scott Segin**

[Scott.Segin@motorola.com](mailto:Scott.Segin@motorola.com)

847.576.9065

For system / network specific inquiries, please contact your local account team.

For service or support inquiries, please contact your local team or contact

**Motorola Solutions Customer Fulfillment Center**

In the US, call 1-800-422-4210

In Canada, call 1-800-543-3222

In Latin America, Asia, Middle East, and Europe, call 1-847-538-8023

Federal Inquiries, call 1-800-826-1913

Motorola Solutions, Inc.  
10680 Treena Street, Suite 200  
San Diego, CA 93121

June 20, 2018

**MERCED POLICE DEPARTMENT**

Attn: Marvin Dillsaver  
611 W. 22<sup>nd</sup> St.  
Merced, CA 95340  
209-385-8870

Mr. Dillsaver,

Motorola Solutions, Inc. supplies a wide array of communications products. Some products are available from our Direct Sales Team and Manufacture Representatives (MR) or our In-Direct Sales Channels, while others, often depending on complexity or degree of engineering requirements, are only available through one channel or the other. Our products are distributed through our Direct Salespeople or designated Manufacturer Representatives. We assign only one MR to each State/Local/Education account and J's Communications, Inc. is assigned to Merced Police Department.

In this case as a manufacturer representative, J's Communications, Inc. is an agent for Motorola Solutions, Inc.. We authorize J's Communications, Inc. to use our contract pricing (i.e. LA County Contract), promotions, and services to our customers and accept PO's to Motorola for these transactions. Products like GTR, GPW and APX Consolette can only be purchased through Motorola Solutions, Inc. and our MR's.

If you should have any questions please feel free to contact me at 916-796-7000. Thank you for your valued business and partnership.

Respectfully,  
Motorola Solutions, Inc.

*Ian Castro*

Ian Castro  
Senior Account Manager,  
Government & Public Safety  
[ian.castro@motorolasolutions.com](mailto:ian.castro@motorolasolutions.com)



## ADMINISTRATIVE REPORT

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### Agenda Item J.1.

Meeting Date: 7/2/2018

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

**SUBJECT:** Ordinance Establishing an Arts and Culture Advisory Commission for the City of Merced

### REPORT IN BRIEF

Asking the City Council to establish a Public Arts and Culture Advisory Commission in the City of Merced.

### RECOMMENDATION

**City Council** - Adopt a motion introducing **Ordinance 2489**, an Ordinance of the City Council of the City of Merced, California, adding Chapter, 2.54 "Arts and Culture Advisory Commission," to the Merced Municipal Code.

### ALTERNATIVES

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

### AUTHORITY

Article VII, Sections 700, 702, 702.1, 707 and 708 of the Merced City Charter.

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget

### DISCUSSION

On August 7, 2017, Council Member Martinez presented the concept of establishing an Arts Commission within the City of Merced. Council provided staff direction to explore the necessary steps to move forward. On November 6, 2017 staff presented the research that took place, including what other jurisdictions have done to establish and implement a local Arts Commission and the benefits to the community. Staff received direction from the Council to reach out to local partners and explore options.

Staff held three meetings with stakeholders: March 9, April 17 and May 4. The group discussed

elements that were needed to draft an ordinance including: purpose, membership, duties and responsibilities and funding.

Council was given an update March 19, 2018 and further direction was provided to staff. The information from the Council was incorporated into the next meeting with the stakeholders on April 17, 2018, which was held after regular work hours.

After the first two stakeholder meetings staff created a draft ordinance forming an Arts Commission using the information and framework provided by the group and the Council. The proposed ordinance was presented to the group at the May 4, 2018 meeting. The stakeholders reviewed the document and provided comments. They decided that arts and culture were inter-related and that the commission's scope should be broadened to encompass both. In addition, the group spent time focusing the responsibilities of the Commission to seven areas.

Staff presented the draft ordinance to the City Council at the May 21, 2018 meeting for review. Council requested that a Council member be added to the Commission as a non-voting member and that the ordinance include that the Commission can draw upon staff support.

The final draft of the ordinance has been circulated to the stakeholders for review and no changes were received.

It was the goal of the ordinance to capture the intent of the City Council and the stakeholders group who:

Believe that the arts serve an important role in establishing and enhancing the quality of life in the community;

Believe that the arts instill in the community civic pride and a sense of cultural identity and serve to bring together the people of the city; and

Believe that the arts should be supported and sustained for the betterment of the community; and

Believe that public art and the performing arts have a multitude of benefits to the community and that the City has supported public art and the performing arts through such projects as the Merced MultiCultural Arts Center, the murals on the MainPlace Merced Theatre, the murals on the G Street Undercrossing, the Merced Open Air Theatre and the Merced Theatre; and

Believe that the Merced County Arts Council has inspired and nurtured the arts in the community for four decades, and that the City of Merced Arts and Cultural Advisory Commission should work in collaboration with the Merced County Arts Council and other community arts groups; and

Believe that an Arts and Culture Advisory Commission can further the Council's goal of promoting public art and cultural activities within the City, provide oversight in public art and enrich the community's appreciation of arts and culture.



**IMPACT ON CITY RESOURCES**

No appropriation of funds is needed at this time.

**ATTACHMENTS**

1. Arts and Culture Advisory Commission Ordinance

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA, ADDING  
CHAPTER, 2.54 "ARTS AND CULTURE  
ADVISORY COMMISSION," TO THE MERCED  
MUNICIPAL CODE**

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

**SECTION 1. ADDITION TO CODE.** Chapter 2.54, "Arts and Culture Advisory Commission," is hereby added to the Merced Municipal Code to read as follows:

**"CHAPTER 2.54  
ARTS AND CULTURE ADVISORY  
COMMISSION**

**Section:**

- |                 |  |
|-----------------|--|
| <b>2.54.010</b> | <b>Purpose.</b>                        |
| <b>2.54.020</b> | <b>Establishment.</b>                  |
| <b>2.54.030</b> | <b>Terms.</b>                          |
| <b>2.54.040</b> | <b>Meetings.</b>                       |
| <b>2.54.050</b> | <b>Officials.</b>                      |
| <b>2.54.060</b> | <b>Jurisdiction of the Commission.</b> |

**2.54.010 Purpose.**

The purpose of the Arts and Culture Advisory Commission is to serve as an advisory body to the City Council on matters having to do with public art, art projects, cultural programs and activities and the promotion of the arts within the City of Merced. In forming the Arts and Culture Advisory Commission, it is the intent of the City Council to foster the arts in the City of Merced, and to help implement policy, programs, and standards for public art.

## **2.54.020 Establishment.**

Pursuant to Section 700 of the Charter, there is hereby established an Arts and Culture Advisory Commission which shall consist of seven (7) voting members. Six (6) voting members of the commission shall be from the established City Council voting districts and the seventh member shall be appointed at large. All seven (7) voting members must be qualified electors of the City of Merced.

A. Members shall have knowledge, expertise or experience in one of more of the following areas:

1. Visual, performing, literary, music or other types of art;
2. Planning, historical, preservation, architectural background;
3. Economic development, business, marketing, public relations;
4. Member of artistic, cultural, community organization; or
5. Educational partner.

B. A majority of the voting members of the commission shall constitute a quorum.

C. In accordance with Section 702 of the Charter, members shall be appointed by at least four (4) affirmative votes of the City Council and subject to removal by motion of the City Council adopted by at least five (5) affirmative votes.

D. The City Council may appoint an additional four (4) members to sit on the commission as ex-officio, nonvoting members. Said ex-officio, nonvoting members may be non-city residents who live within the City of Merced's sphere of influence who demonstrate expertise in any number of art disciplines, or other areas of

expertise or knowledge. One of the ex-officio members shall be a member of the City Council.

E. The services of the City staff shall be made available to the commission.

#### **2.54.030 Terms.**

A. In accordance with Section 702 of the Charter, the Arts and Culture Advisory Commission members shall serve for a term of four (4) years and until their respective successors are appointed and qualified.

B. Notwithstanding subsection A of this section, the members of the Arts and Culture Advisory Commission shall, on the first meeting following the establishment of the commission, draw lots to determine the three (3) initial members that will serve for a term of two (2) years.

#### **2.54.040 Meetings.**

Regular Arts and Culture Advisory Commission meetings shall be held on \_\_\_\_\_ at \_\_\_\_\_ or as otherwise set by resolution of the City Council. The meetings shall be conducted in accordance with Section 704 of the Charter.

#### **2.54.050 Officials.**

A. In accordance with Section 704 of the Charter, the members of the Arts and Culture Advisory Commission shall, as soon as practical following the first day of July, organize by electing two (2) of the seven (7) voting members to serve as chair and vice-chair at the pleasure of the commission.

B. Notwithstanding subsection A of this section, the members of the Arts and Culture Advisory Commission shall, on the first meeting held following the



establishment of the commission, elect a chair and vice-chair to serve until their successor is elected following the first day of July.

#### **2.54.060 Jurisdiction of the Commission.**

The Arts and Culture Advisory Commission shall have the responsibilities as provided below:

A. Provide recommendations to the City Council and other appointed bodies and City departments for the following:

1. Displays of art within a public facility, or any public art within the City, or exterior space for outdoor visual art, or promote the arts for city beautification and to enhance the quality of life;
2. Programs that promote art or enhance cultural development;
3. Act as a resource to the community and local arts and culture for mentorship, internships, facilitating process, marketing and advocating;
4. Coordinate and collaborate with the Merced County Arts Council, and other individuals and groups, both private and public, to support, promote, enhance and recognize artistic endeavors and cultural activities that are reflective of the community across all cultures, races and stages of life;
5. Recommend funding options that maximize opportunities for sustainable projects that incorporate preventative maintenance for public arts projects and cultural activities throughout the City;
6. Recommend the establishment of artistic standards across disciplines; and
7. Such other duties as the City Council may proscribe.”

**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:**

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**Mayor**

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

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

**(SEAL)**

**APPROVED AS TO FORM:**

K. Flores                      5/29/2018  
**City Attorney**                      **Date**



**ADMINISTRATIVE REPORT**

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**Agenda Item K.1.**

Meeting Date: 7/2/2018

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

**SUBJECT:** Update on Commercial Cannabis Business Permits

**REPORT IN BRIEF**

City Staff will update the City Council on the status of the Commercial Cannabis Business Permit applications.

**RECOMMENDATION**

For information only.

**ALTERNATIVES**

None

**AUTHORITY**

City of Merced Ordinance No. 2480, or Merced Municipal Code 20.44.170, addresses Commercial Cannabis Business Permits.

**CITY COUNCIL PRIORITIES**

This process implements the City Council's FY 2017-18 Priority regarding Cannabis Regulations.

**DISCUSSION**

At the meeting, City staff will update the City Council on the status of the Commercial Cannabis Business Permit applications received thus far and discuss a tentative schedule for approving the applications.

**IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

**ATTACHMENTS**

None





## ADMINISTRATIVE REPORT

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**Agenda Item K.2.**

Meeting Date: 7/2/2018

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*Report Prepared by: Stephanie Dietz, Assistant City Manager*

**SUBJECT:** Update on Public Facilities Bond Measure Survey Results

### REPORT IN BRIEF

City Staff will provide an update to the City Council on the results of a recent survey conducted to test the viability of a Public Facilities Bond Measure on the November 2018 ballot.

### RECOMMENDATION

Provide staff direction on next steps for pursuing Public Facilities financing options.

### ALTERNATIVES

None

### AUTHORITY

City of Merced Charter, Section 200

### CITY COUNCIL PRIORITIES

FY 2018/19 City Council Priorities

### DISCUSSION

On August 7, 2017, the City Council approved the Purchase and Sale Agreement and Lease between McClatchy Newspapers, Inc. and the City of Merced for the Property at 3033 North "G" Street. During the consideration of this agreement, the Council requested that staff provide an update on the status of all public facilities within the City.

On August 21, 2017, staff provided the Council with an update on the current condition of all City-owned facilities and presented options for construction financing. During this meeting, direction was provided to staff to take the initial step of conducting an opinion survey to determine if the community would support a ballot initiative that would directly fund the construction of a new Police Headquarters Station, two new Fire Stations, an expansion of the Corporation Yard, and the remodeling of ten existing bathrooms within City of Merced parks.

At the Council's direction, staff worked quickly to secure professional services to develop and conduct a public opinion survey. The survey was conducted between October 24<sup>th</sup> and October 29<sup>th</sup> and the results were posted on the City's website on December 7, 2017. Based on the findings of the survey, it was recommended to continue education and outreach efforts with a goal of performing a second survey in the Spring 2018.

On January 2, 2018, the Council approved an amendment to the Professional Services Agreement with the Lew Edwards Group to develop ballot language and put together an aggressive outreach strategy to educate the community about the need for enhanced public facilities within the City of Merced. As part of the education strategy, priority surveys were conducted, staff attended meetings and shared information with service clubs and neighborhood watch groups, and educational material was mailed to residents.

At the conclusion of the education efforts, a second survey was conducted between the dates of June 14<sup>th</sup> through June 18<sup>th</sup>. Staff is prepared to share the results of the survey with the City Council during the report of this item and is seeking direction on the potential next steps.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

### **ATTACHMENTS**

None



## ADMINISTRATIVE REPORT

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**Agenda Item L.1.**

Meeting Date: 7/2/2018

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

**SUBJECT:** Boards and Commissions Reappointments - Recreation and Parks Commission (2)

### REPORT IN BRIEF

Consider reappointing currently seated individuals to an additional term.

### RECOMMENDATION

**City Council** - Adopt a motion reappointing qualified individuals who are eligible for, and interested in, an additional term on the Recreation and Parks Commission.

### ALTERNATIVES

1. Reappoint as recommended by staff; or,
2. Reappoint select individuals; or,
3. Refer back to staff with direction to resume recruitment of applicants.

### AUTHORITY

Article VII, Sections 700, 702, 702.1, 707 and 708 of the Merced City Charter.

### CITY COUNCIL PRIORITIES

Not applicable.

### DISCUSSION

Yesenia Curiel was appointed to the Recreation and Parks Commission on July 17, 2017 as a replacement and has served a partial term. Ms. Curiel is eligible for reappointment to a full term on the Commission and has expressed her desire for reappointment.

Jeremy Jenkins was appointed to the Recreation and Parks Commission on May 5, 2014 and has served one full term. Mr. Jenkins is eligible for reappointment to a second term on the Commission and has expressed his desire for reappointment.

### History and Past Actions:

The Recreation and Parks Commission was created to advise City Council on all matters pertaining to recreation and parks and to assist in the planning of recreation programs for the citizens of Merced. The Commission consists of seven members who serve four-year terms.

Attached is the current roster for the Recreation and Parks Commission and the current applications

on file for members seeking reappointment. The matter is now before the Council.

### **IMPACT ON CITY RESOURCES**

No impact on City resources.

### **ATTACHMENTS**

1. Recreation and Parks Commission Roster
2. Application of Jeremy Jenkins
3. Application of Yesinia Curiel



# RECREATION AND PARKS COMMISSION

## BOARD ROSTER



**JEREMY L JENKINS**

**1st Term** Jul 01, 2014 - Jul 01, 2018

**Appointing Authority** City Council

**Position** Chair

**Office/Role** Commissioner



**YESENIA CURIEL**

**1st Term** Jul 01, 2014 - Jul 01, 2018

**Appointing Authority** City Council

**Position** Commissioner

**Office/Role** Commissioner



**MICHAEL D PIERICK**

**1st Term** Jul 01, 2014 - Jul 01, 2018

**Appointing Authority** City Council

**Position** Commissioner



**JUSTIN J ANDERSON**

**1st Term** Jul 01, 2015 - Jul 01, 2019

**Appointing Authority** City Council

**Position** Commissioner

**Office/Role** Commissioner



**MICHAEL R BELLUOMINI**

**1st Term** Dec 19, 2016 - Jul 01, 2019

**Appointing Authority** City Council

**Position** Ex-Officio



**NORMA C CARDONA**

**1st Term** Jul 01, 2017 - Jul 01, 2021

**Appointing Authority** City Council

**Position** Commissioner



**ERIC MOORE**

**1st Term** Jul 01, 2017 - Jul 01, 2021

**Appointing Authority** City Council

**Position** Vice-Chair



**RALPH W. MORRIS**

**1st Term** Jul 01, 2017 - Jul 01, 2021

**Appointing Authority** City Council

**Position** Commissioner

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## Profile

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Jeremy

First Name

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L

Middle Initial

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Jenkins

Last Name

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Employer

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Job Title

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Email Address

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Primary Phone

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Alternate Phone

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### Are you 18 years of age or older? (Required)

☒ Yes ☐ No

Question applies to multiple boards

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### Do you live within the City Limits of Merced? (Required)

☒ Yes ☐ No

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Street Address

---

City

---

Suite or Apt

State

---

Postal Code

Question applies to multiple boards

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### Are you a registered voter in the City of Merced? (Required)

☒ Yes ☐ No

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### Recreation and Parks Commission

Are you currently serving on a Board or Commission? If so, please list:

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### Which Boards would you like to apply for?

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Recreation and Parks Commission: Appointed

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Question applies to multiple boards

**Highest Level of Education Completed: \***

☒ Some College, No Degree

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**Communication**

**The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?**

☒ Yes ☐ No

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If you selected no, please identify how you would like to be contacted:

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**Interests & Experiences**

**Tell us about yourself, and why you are applying for this particular Board or Commission:**

I have been apart of the Commission for a while now I'm serving as chair and I love the experience and love being involved in our community

**Please list your current employer and relevant volunteer experience.**

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**What is your understanding of the roles and responsibilities of this Board or Commission?**

To be the people's voice and to help create healthier and fun Environments for families to go and play and bbq and help create new programs with staff to bring more Recreation to Merced and its residents

**Do you have experience or special knowledge pertaining to this Board or Commission?**

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**Any other comments you would like to add that may assist the City Council in their decision?**

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Upload a Resume

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## Requirements

Question applies to multiple boards

### AB 1234 Ethics Training

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☒ I Agree \*

Question applies to multiple boards

### Attendance Policy

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☒ I Agree \*

### Statement of Economic Interests - FPPC Form 700

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☒ I Agree \*

Question applies to multiple boards

### Oath of Office

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☒ I Agree \*

Question applies to multiple boards

### Public Scrutiny

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☒ I Agree \*



## How did you hear about this vacancy? \*

☒ Other

## I've been on Commission

If you selected other, please indicate how you learned about the vacancy:

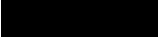
## Demographics

### Ethnicity

☒ Hispanic

### Gender

☒ Male

  
Date of Birth

## Submission

Jj

I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.

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## Profile

Yesenia

First Name

Curiel

Last Name

Middle Initial

UC Merced

Employer

Director

Job Title

Email Address

Primary Phone

Alternate Phone

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### Are you 18 years of age or older? (Required)

☒ Yes ☐ No

Question applies to multiple boards

---

### Do you live within the City Limits of Merced? (Required)

☒ Yes ☐ No

Street Address

Suite or Apt

State

City

Postal Code

Question applies to multiple boards

---

### Are you a registered voter in the City of Merced? (Required)

☒ Yes ☐ No

No

Are you currently serving on a Board or Commission? If so, please list:

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### Which Boards would you like to apply for?

Recreation and Parks Commission: Appointed

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Question applies to multiple boards

**Highest Level of Education Completed: \***

☒ Master's Degree

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**Communication**

**The City of Merced uses email as a preferred method of communication regarding your application. Is this acceptable to you?**

☒ Yes ☐ No

---

If you selected no, please identify how you would like to be contacted:

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**Interests & Experiences**

**Tell us about yourself, and why you are applying for this particular Board or Commission:**

I am new to the City of Merced due to relocating in the summer of 2016 for a new career opportunity at UC Merced. I have over 15 years experience providing program for youth in reference to youth empowerment, education about sexual assault prevention and leadership. I served as the Latina representative for the City of Santa Barbara Community Development Block Grant (CDBG) Committee. I want to be involved with Recreation and Parks Commission because I want to be a liaison to the university. I want to ensure that the community is connected to the campus to ensure youth aspire to be UC Merced students.

**Please list your current employer and relevant volunteer experience.**

I relocated from Santa Barbara in late June 2016 where I was working for the Santa Barbara Behavioral Wellness Department. Prior to 2014, I worked for Santa Barbara Rape Crisis Center for almost 14 years. I volunteered for the YMCA St. George Youth Center from 2002-2016 where I provided services to youth 11-19 years old and their parents. I helped develop program, fundraising events and summer programs.

**What is your understanding of the roles and responsibilities of this Board or Commission?**

The commission provides oversight of the budget, services and staff employed by the City of Merced Recreation and Parks Department. I feel that the commission's role is to provide insight to staff of community needs and to collaborate with staff to negotiate an understanding of the mission.

**Do you have experience or special knowledge pertaining to this Board or Commission?**

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I was on the City of Santa Barbara Community Development Block Grant (CDBG) Committee for over 9 years and provided oversight to a budget between 1.5 and 2.5 million dollars.

**Any other comments you would like to add that may assist the City Council in their decision?**

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I am new to the areas, however I feel that I have a lot to contribute to the commission. I am excited to become involved with my new community and look forward to learning more about the City of Merced culture. I am also bilingual and bicultural.

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**Requirements**

Question applies to multiple boards

**AB 1234 Ethics Training**

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☒ I Agree \*

Question applies to multiple boards

**Attendance Policy**

---

☒ I Agree \*

**Statement of Economic Interests - FPPC Form 700**

---

☒ I Agree \*

Question applies to multiple boards

## Oath of Office

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☒ I Agree \*

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Question applies to multiple boards

## Public Scrutiny

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☒ I Agree \*

## How did you hear about this vacancy? \*

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☒ Other

## The 4/26 meeting

If you selected other, please indicate how you learned about the vacancy:

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## Demographics

### Ethnicity


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☒ Other

### Gender

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☒ Female

  
Date of Birth

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## Submission

### YC

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I declare under penalty of disqualification or termination that all statements in this application are true and complete to the best of my knowledge.



## ADMINISTRATIVE REPORT

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**Agenda Item L.2.**

Meeting Date: 7/2/2018

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*Report Prepared by: Stephanie Dietz, Assistant City Manager*

**SUBJECT:** City Council/Merced City School District Joint Meeting Request

### REPORT IN BRIEF

The Merced City School District Board of Education has invited the City Council to hold a joint meeting to discuss items of mutual interest.

### RECOMMENDATION

Provide staff direction on holding a joint meeting and possible dates and times that would work best for the Council.

### ALTERNATIVES

None

### AUTHORITY

Charter of the City of Merced, Section 200

### CITY COUNCIL PRIORITIES

FY 2018/19 City Council Priorities

### DISCUSSION

Mayor Murphy received a letter from the Merced City Schools District Board President, Adam Cox, inviting the Council to participate in a joint meeting. The purpose of the meeting would be to discuss items of mutual interest, including but not limited to school safety and training, traffic and road improvements, housing and future develop, and the continued joint use of City and School facilities.

The Merced City School District recommends has offered to host the meeting at Rivera Middle School. With a recommended start time of 6pm, the School Board has provided the following suggested dates as options:

- July 24, 2018
- August 8, 2018
- August 9, 2018
- August 13, 2018

Staff is seeking direction on a date that would work best for the joint meeting.

**IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

**ATTACHMENTS**

1. Invitation Letter

**Board of Education:** President Adam Cox; Clerk Jessica Kazakos; Mike Crass; Miguel Lopez; Emily Langdon  
**District Superintendent:** RoseMary Parga Duran, Ed.D.

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May 22, 2018

Michael Murphy  
Mayor of Merced  
678 W. 18<sup>th</sup> St.  
Merced, CA 95340

Dear Mr. Murphy,

On behalf of the Merced City School District Board of Education I would like to invite the Merced City Council to hold a joint City Council/School Board meeting to discuss items of mutual interest. So as not to infringe on your regularly scheduled council meetings and our regularly scheduled board meetings, we would like to consider meeting on a day other than Monday or Tuesday. Our hope is to also schedule this meeting either in late July or early August so that this meeting can take place before the start of the 2018-2019 school year.

Please feel free to contact Debbie Bottjer, Dr. Parga Duran's Administrative Assistant, to look at possible dates in July or August 2018. Ms. Bottjer can be reached at (209) 385-6640 or by email at [dbottjer@mcsd.k12.ca.us](mailto:dbottjer@mcsd.k12.ca.us).

I would also be delighted to speak with you personally about the Board of Education's vision for this joint session.

The District looks forward to hearing from you.

Sincerely,



Adam Cox  
Board President  
Merced City School District