



# CITY OF MERCED

## Meeting Agenda

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

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

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Monday, October 15, 2018

6:00 PM

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

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#### Study Session at 5:00 PM / Regular Meeting at 6:00 PM

#### NOTICE TO PUBLIC

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

At least 72 hours prior to each regular City Council meeting, a complete agenda packet is available for review on the City's website at [www.cityofmerced.org](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. STUDY SESSION ROLL CALL

#### B. STUDY SESSION

B.1. [18-497](#) SUBJECT: Tax Exempt Trust 115 for Pension Study Session

#### REPORT IN BRIEF

Provide Study Session for a Tax Exempt Trust 115 for Pension.

#### C. CALL TO ORDER

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

C.2. Pledge of Allegiance to the Flag

## **D. ROLL CALL**

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

## **E. CEREMONIAL MATTERS**

E.1. [18-541](#)      **SUBJECT:** Certificate of Recognition for Merced Art Hop

### **REPORT IN BRIEF**

Mayor Murphy will present a certificate of recognition to a representative of the Merced Art Hop for their 10 Years of providing Art Events in the City.

## **F. WRITTEN PETITIONS AND COMMUNICATIONS**

## **G. 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.

## **H. 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.

H.1. [18-495](#)      **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.

H.2. [18-493](#)

**SUBJECT:** Information Only - Planning Commission Minutes of September 5, 2018

**RECOMMENDATION**

For information only.

H.3. [18-522](#)

**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of September 17, 2018 and September 27, 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 September 17, 2018 and September 27, 2018.

H.4. [18-538](#)

**SUBJECT:** Federal Emergency Management Agency (FEMA) Fiscal Year (FY) 2018 Assistance to Firefighters Grant (AFG) Application

**REPORT IN BRIEF**

Authorize the submittal of a Federal Emergency Management (FEMA) Fiscal Year (FY) 2018 Assistance to Firefighters Grant (AFG) Application.

**RECOMMENDATION**

**City Council** - Adopt a motion authorizing the submittal of a grant application for funding from the FEMA FY 2018 AFG program; and authorizing the City Manager or Assistant City Manager to sign the necessary documents;

H.5. [18-519](#)

**SUBJECT:** Consider Approval of 2018-19 Regional, State and Federal Legislative Platform

**REPORT IN BRIEF**

Council is asked to update Regional, State, and Federal Legislative Platform.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting the updated 2018-19 Regional, State and Federal Legislative Platform.

H.6. [18-419](#)

**SUBJECT:** Second Amendment to Agreement for Professional Services with AECOM Technical Services, Inc., in the Amount of \$11,508 for Well Site Design Services, Project No. 114001

**REPORT IN BRIEF**

Authorizes a second amendment to the agreement for well design services for a new production water well at the Wastewater Treatment Plant.

**RECOMMENDATION**

**City Council** - Adopt a motion approving an amendment to an agreement for professional services with AECOM Technical Services, Inc., in the amount of \$11,508 for engineering design services; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

H.7. [18-498](#)

**SUBJECT:** Award Bid to Mid Cal Pipeline & Utilities, Inc. for the Kibby Road Sewer Main Replacement, Project 117020

**REPORT IN BRIEF**

Consider awarding a construction contract to Mid Cal Pipeline & Utilities, Inc. in the amount of \$556,159 for the Kibby Road Sewer Main Replacement Project.

**RECOMMENDATION**

**City Council** - Adopt a motion awarding the Kibby Road Sewer Main Replacement Project 117020 to Mid Cal Pipeline & Utilities, Inc. in the amount of \$556,159; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

H.8. [18-494](#)

**SUBJECT:** Amendments to Land Secured Financing Policies

**REPORT IN BRIEF**

Consider adopting Amendments to the City's Land Secured Financing Policies.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Resolution 2018-68**, a Resolution of the City Council of the City of Merced, California, adopting

Land Secured Financing Policies.

**H.9.**     [18-505](#)

**SUBJECT:** Supplemental Appropriation in the Amount of \$500 in Fund 342 - Fahrens Park Assessment (Debt Service) for Additional Administrative Expense

**REPORT IN BRIEF**

Considers approving a \$500 supplemental appropriation to cover administrative fees in the Fahrens Park Debt Service Fund.

**RECOMMENDATION**

**City Council** - Adopt a motion approving a supplemental appropriation in the amount of \$500 from the unappropriated, unreserved fund balance of Fund 342 - Fahrens Park Assessment (Debt Service) to cover administrative fees.

**H.10.**     [18-507](#)

**SUBJECT:** Authorization of Signing Authority for City Bank Accounts and Local Agency Investment Fund

**REPORT IN BRIEF**

Consider granting the City's Officers signing authority for City bank accounts and Local Agency Investment Fund.

**RECOMMENDATION**

**City Council/Public Financing and Economic Development Authority/Parking Authority** - Adopt a motion:

A. Adopting **Resolution 2018-65**, a Resolution of the City Council of the City of Merced, California, authorizing signature of City checks; and,

B. Adopting **Resolution 2018-66**, a Resolution of the City Council of the City of Merced, California, authorizing investment of City of Merced monies in Local Agency Investment Fund; and,

C. Adopting **Resolution PFA 2018-02**, a Resolution of the City of Merced Public Financing and Economic Development Authority authorizing signature of Authority checks; and,

D. Adopting **Resolution PFA 2018-03**, a Resolution of the City of Merced Public Financing and Economic Development Authority authorizing investment of City of Merced monies in Local Agency Investment Fund; and,

E. Adopting **Resolution PA 2018-02**, a Resolution of the Parking Authority of the City of Merced, California, authorizing signature of Parking Authority checks; and,

F. Adopting **Resolution PA 2018-03**, a Resolution of the Parking Authority of the City of Merced, California authorizing investment of City of Merced monies in Local Agency Investment Fund.

H.11. [18-515](#)

**SUBJECT:** Street Closure for Veterans Parade

**REPORT IN BRIEF**

Consider allowing the use of City streets on November 11, 2018 for the Veteran's Day Parade.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the street closures of Calimyrna Avenue from E Main Street to E 18th Street, East Main Street, from "G" Street to Calimyrna Avenue; West Main Street, from "G" to "Canal" Streets; Canal Street from Main to 18th Street and 18th Street from Canal to "M" Street and 18th Street from "M" to "N" Streets. "H", "I", "K", and "N" Streets, from the north and south alleys of West Main Street; Canal Street, from the north alley of West Main Street to Bob Hart Square; and "O" Street, from 18th to 20th Street as requested by Ricky Pal, Merced County Veterans Services for the 2018 Veterans Day Parade on Sunday, November 11, 2018. The street closures will be between 12:00 PM and 4:00 PM; subject to the conditions outlined in the administrative report.

H.12. [18-520](#)

**SUBJECT:** Approval of a One-Year Agreement with Merced City School District for Police Services

**REPORT IN BRIEF**

Considers approving a one-year agreement with the Merced City School District for police services in the District's four middle schools.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving an Agreement with the Merced City School District to provide police services in the District's four middle schools; and,

B. Authorizing the City Manager or Assistant City Manager to execute the agreement; and,

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

**H.13.** [18-526](#)

**SUBJECT:** Approval of First Amendment to Agreement for Legal Services with Sloan, Sakai, Yeung & Wong, LLP

**REPORT IN BRIEF**

Considers approving a First Amendment to Agreement for legal services with Sloan, Sakai, Yeung & Wong, LLP for the not to exceed amount of \$85,000.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the first amendment to the agreement for legal services with Sloan, Sakai, Yeung, & Wong, LLP; and,

B. Authorizing the City Manager or Assistant City Manager to execute the agreement and any necessary documents; and,

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

**H.14.** [18-441](#)

**SUBJECT:** Approval of Fee Agreement with Rutan & Tucker, LLP. to Provide Legal Services

**REPORT IN BRIEF**

Recommends approving a fee agreement with Rutan & Tucker, LLP. to provide legal services on behalf of the City in the case *Merced Citizens for Responsible Planning v. City of Merced, et al.*, for the not to exceed amount of \$95,000.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving the fee agreement with Rutan & Tucker; and,

B. Approving a supplemental appropriation of \$95,000 from the unreserved, unencumbered fund balance of Fund 557- Water System Enterprise to a professional service account 557-1106-532-17-00; and,

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

H.15. [18-517](#)

**SUBJECT:** Second Reading of Ordinance 2493 Approving General Plan Amendment #18-01

**REPORT IN BRIEF**

Second reading of previously introduced ordinance.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2493**, an Ordinance of the City Council for the City of Merced, California, approving Site Utilization Plan Revision #13 to Planned Development (P-D) #42 changing the land use designation from Park to Single-Family Residential for approximately 5.88 acres of land generally located at the southwest corner of M Street and Arrow Wood Drive (extended) and changing the Land Use designation from Single-Family Residential to Park for approximately 5.0 acres of land generally located at the southeast corner of the future Catherine A. Hostetler Boulevard and Freemark Avenue (extended).

H.16. [18-521](#)

**SUBJECT:** Second Reading of Ordinance 2494 Amending Zoning Map

**REPORT IN BRIEF**

Second reading of previously introduced ordinances.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2494**, an Ordinance of the City Council of the City of Merced, California, amending the official zoning map by Pre-zoning land generally located at the northwest corner of North Highway 59 and Santa Fe Drive as Thoroughfare Commercial (C-T) and the land generally located at the southwest corner of North Highway 59 and Santa Fe Drive as Light Industrial (I-L).

H.17. [18-525](#)

**SUBJECT:** Second Reading of Ordinance 2495 Approving Pre-Annexation Development Agreement

**REPORT IN BRIEF**

Second reading of previously introduced ordinances.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2495**, an Ordinance of the City Council of the City of Merced, California, approving a Pre-Annexation Development Agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation.

## I. 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.

### I.1. [18-451](#)

**SUBJECT:** Public Hearing to Consider Adjustments to Water Rate Charges and Capital Facility Charges Over a Five-Year Period for all Water Rate Customers (Inside City and Outside City); Introduction of Ordinance to Amend Chapter 15.36 "Rates and Charges"; Introduction of Ordinance to Amend Chapter 15.42.050 "Water Conservation Levels and Prohibitions"

#### REPORT IN BRIEF

Hold a Public Hearing to consider approving adjustments to water rates and capital facility charges over a five-year period, through July 1, 2022, for all water rate customers (inside City and outside City); Introduction of Ordinance to Amend Chapter 15.36 of the Merced Municipal Code "Rates and Charges"; Introduction of Ordinance to Amend Chapter 15.42 of the Merced Municipal Code "Water Conservation Levels and Prohibitions."

#### RECOMMENDATION

**City Council** - Adopt a motion:

A. Approving proposed water rate changes and Capital Facility Charges; and,

B. Adopting a Categorical Exemption; and,

C. Introducing **Ordinance 2496**, an Ordinance of the City Council of the City of Merced, California, amending various sections of Chapter 15.36, "Rates and Charges," of the Merced Municipal Code dealing with water service; and,

D. Introducing **Ordinance 2497**, an Ordinance of the City Council of the City of Merced, California, amending Chapter 15.42.050, "Water Conservation Regulation," of the Merced Municipal Code.

## J. REPORTS

### J.1. [18-464](#)

**SUBJECT:** Information Only - Overview of Bellevue Ranch

**REPORT IN BRIEF**

The City Council will receive an overview of the Bellevue Ranch project and a preview of upcoming changes.

**RECOMMENDATION**

For Information Only.

**J.2.**     [18-539](#)

**SUBJECT:** Update on Yosemite Avenue Corporation Yard Satellite  
(Leaf Collection Site)

**REPORT IN BRIEF**

Provides a brief overview of the Corporation Yard Satellite facility with reduced scope.

**RECOMMENDATION**

**City Council** - Adopt a motion directing staff to open the bidding process with the revised/reduced scope.

**J.3.**     [18-537](#)

**SUBJECT:** Authority to Pursue an Exclusive Negotiation Agreement  
Regarding the Former Police Headquarters Site

**REPORT IN BRIEF**

Staff is requesting authority from the City Council to begin discussions with Valley Children's Healthcare for an Exclusive Negotiation Agreement regarding the former Police Headquarters Site.

**RECOMMENDATION**

**City Council** - Adopt a motion authorizing staff to pursue an Exclusive Negotiation Agreement with Valley Children's Healthcare for the former Police Headquarters Site; and, directing staff to return the Exclusive Negotiation Agreement to the City Council for consideration.

**K. BUSINESS**

**K.1.**     [18-540](#)

**SUBJECT:** Considers Approving the Second Amendment to the City  
Manager Employment Agreement

**REPORT IN BRIEF**

The City Council is asked to consider approving the second amendment to the employment agreement for the City Manager.



**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving the employment agreement with the City Manager/City Clerk;  
and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget  
adjustments

K.2. Request to Add Item to Future Agenda

K.3. City Council Comments

**L. ADJOURNMENT**



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item B.1.**

Meeting Date: 10/15/2018

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*Report Prepared by: Venus Rodriguez, Finance Officer*

**SUBJECT:** Tax Exempt Trust 115 for Pension Study Session

### **REPORT IN BRIEF**

Provide Study Session for a Tax Exempt Trust 115 for Pension.

### **COUNCIL PRIORITIES**

As provided for in the 2018-19 Adopted Budget

### **DISCUSSION**

Public Agency Retirement Services (PARS) to present an informational study session to the City Council and the public on establishing a tax exempt Trust 115 for Pension.

### **IMPACT ON CITY RESOURCES**

No impact on city resources.

### **ATTACHMENTS**

1. Presentation



# CITY OF MERCED

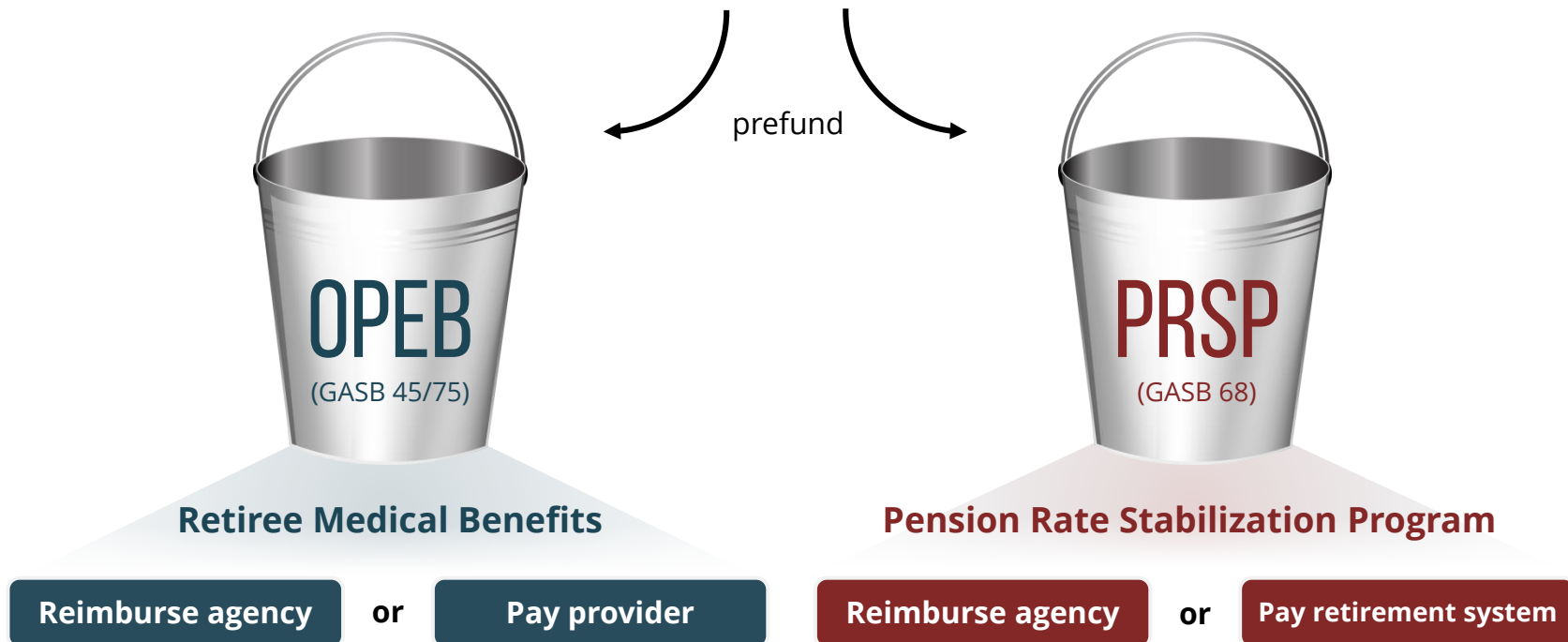
Proposal for PARS Pension Rate Stabilization Program (PRSP)  
October 15, 2018

# PARS TRUST TEAM



Trust Administrator & Consultant	Trustee	Investment Manager
<ul style="list-style-type: none"> <li>Recordkeeping/sub-trust accounting</li> <li>Actuarial coordination</li> <li>Monitor contributions/process disbursements</li> <li>Monitor plan compliance</li> <li>Ongoing client liaison</li> </ul>	<ul style="list-style-type: none"> <li>Safeguard plan assets</li> <li>Oversight protection</li> <li>Plan fiduciary</li> <li>Custodian of assets</li> </ul>	<ul style="list-style-type: none"> <li>Investment sub-advisor to U.S. Bank</li> <li>Open architecture</li> <li>Investment strategy and asset allocation development</li> <li>Investment policy assistance</li> </ul>
Corporate Experience		
34 years (1984 – 2018)	155 years (1863 – 2018)	99 years (1919 – 2018)
Plans Under Administration		
1,600+ plans, 850+ public agencies, 400,000+ participants		
Dollars under Administration		
Over \$3.2 billion	Over \$4.0 trillion	Over \$14.1 billion under management

# THE PARS IRS-APPROVED COMBINATION 115 TRUST



- Assets are sub-accounted for separately
- Prefund one now and the other later
- Addresses unfunded liabilities
- Can choose different investment risk tolerance levels for each

- Can access funds at anytime; OPEB for OPEB and pension for pension
- Assets (OPEB and Pension) aggregate and reach lower fees on tiered schedule sooner – saving money!
- No cost to set up; no fees until assets are added



# PENSION FUNDING STATUS

As of June 30, 2017, City of Merced's CalPERS pension plan is funded as follows\*:

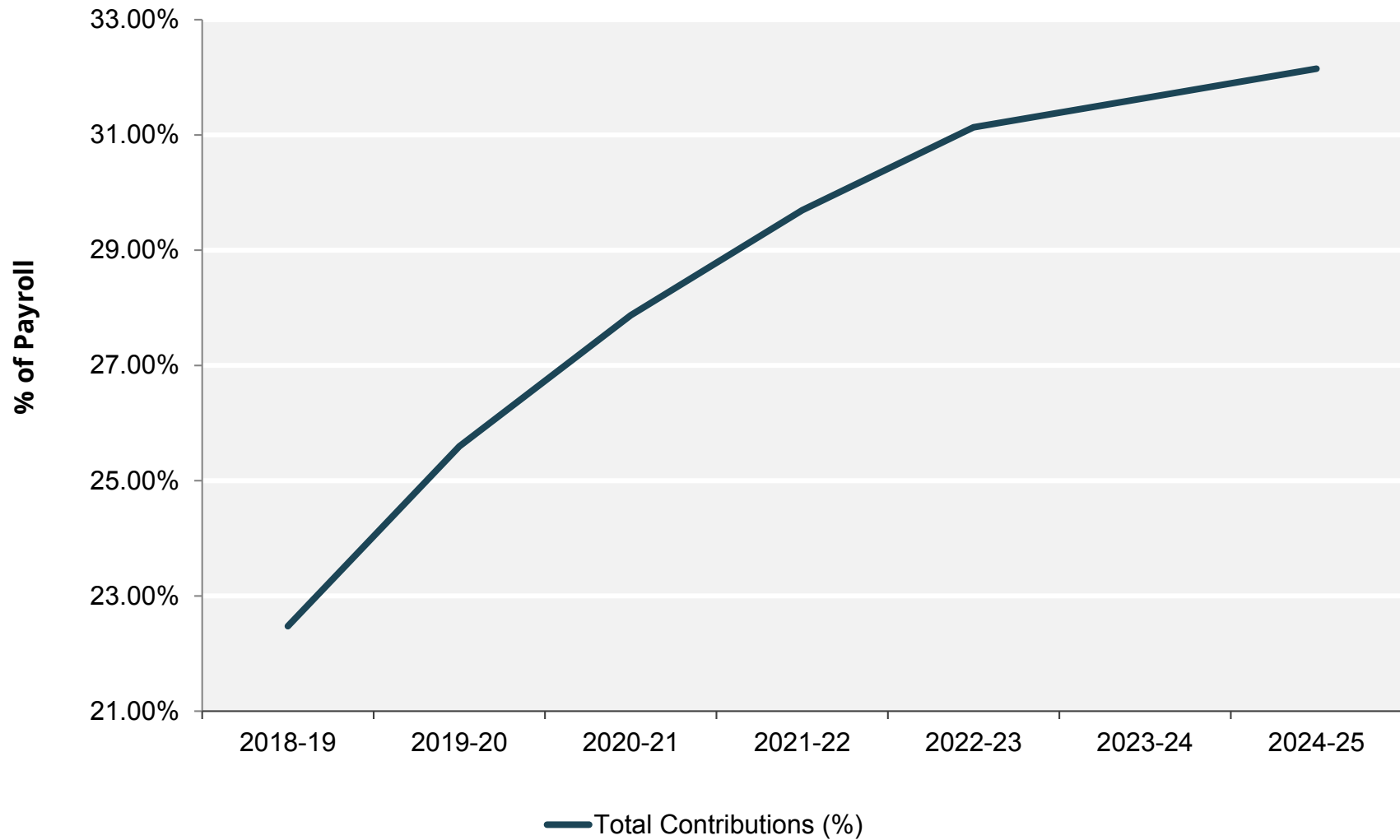
<b>Actuarial Liability</b>	<b>\$295.9 M</b>
Assets	\$214.5 M
Unfunded Liability	\$81.4 M
Funded Ratio	72.5%
Employer Contribution Amount (FY 18-19)	\$8.3 M
Projected Employer Contribution Amount (FY 24-25)	\$13.7 M (64.1% ↑)

\* Data from Agency's 2017-18 CalPERS actuarial valuation



# PROJECTED EMPLOYER CONTRIBUTIONS (MISC.)

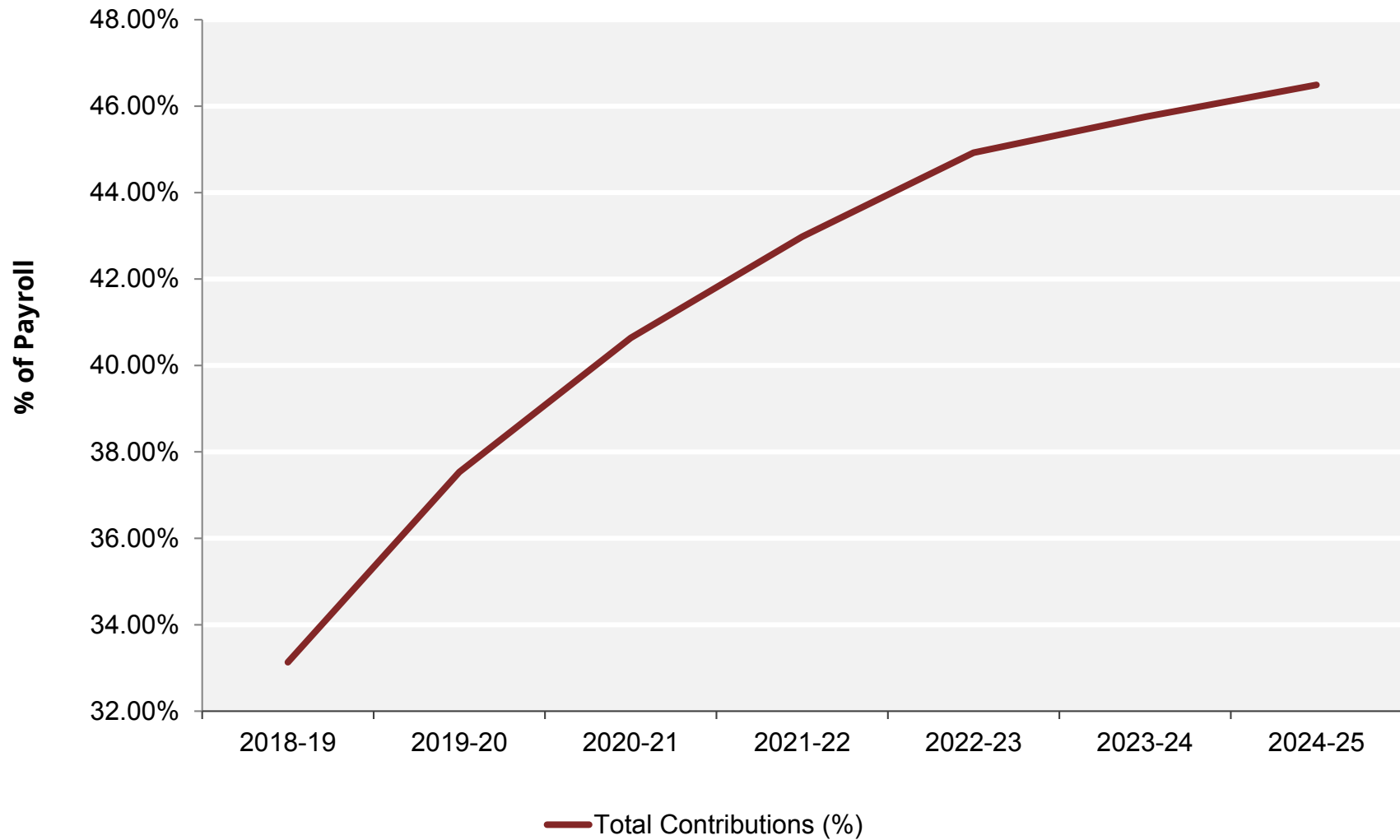
Projected misc. contributions increase from \$3.9M to \$6.4M\* (63.7% ↑)



\* Data from Agency's 2017-18 CalPERS actuarial valuation

# PROJECTED EMPLOYER CONTRIBUTIONS (SAFETY)

Projected safety contributions increase from \$4.4M to \$7.2M\* (64.4% ↑)



\* Data from Agency's 2017-18 CalPERS actuarial valuation



# WHY PREFUND PENSION OBLIGATIONS?

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1

## **Complete Local Control over Assets**

Pension Rate Stabilization Program provides an alternative to sending money directly to retirement system to address unfunded pension liabilities

2

## **Pension Rate Stabilization**

Assets can be transferred to retirement system plan at the City's direction, which can reduce or eliminate large fluctuations in Employer contributions to retirement system

3

## **Rainy Day Fund**

Emergency source of funds when Employer revenues are impaired based on economic or other conditions

4

## **Diversified Investing**

Potential for Greater Return than General Fund

# SAMPLE FUNDING POLICIES

1

Contribute 50% of a given year's realized year end surplus to address pension liability

SOLANA BEACH & ALAMEDA

2

Contribute amount equal to annual PERS employer contribution (\$6 million) in order to allow full access to trust assets at all times

BREA

3

Contribute \$4 million to stabilize PERS employer misc. Rates to 28% and safety rates to 44% through FY 23-24

HEALDSBURG

4

"One equals five plan" - Contribute \$1 million per year for 5 years based on premise that every contribution will save taxpayers \$5 million over 25 years

HUNTINGTON BEACH

5

Contribute Employer contribution equal to the 2.8% discount rate (as opposed to the standard 7.5% rate), with difference going into the Section 115 Trust

SAUSALITO

6

Maintains a 15% general fund reserve and is targeting to make contributions over and above that threshold into the Trust

REDWOOD CITY

7

Earmarked a portion of a recently approved local sales tax measure to be set aside for unfunded pension liabilities

FOUNTAIN VALLEY

8

Using one-time revenue source plus on-going savings from CalPERS unfunded liability pre-payment

PASADENA & WEST COVINA

9

Using one-time revenue source and lowering the minimum General Fund Reserve level from 30% to 20%

GLENDAL

# INVESTMENT FLEXIBILITY

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- City maintains oversight of the investment manager and the portfolio's risk tolerance level
- Investment restrictions that apply to the general fund (CA Government Code 53601) are not applicable to assets held in The PARS Section 115 Irrevocable Trust
- Assets held in the Trust can be diversified unlike assets held within the general fund
- Assets held in The PARS Section 115 Irrevocable Trust can be invested per Government Code Section 53216 and 53620
- Investments can be diversified and invested in a prudent fashion
- Investments can be tailored to the City's unique demographics and needs
- Increased risk diversification

# HIGHMARK CAPITAL MANAGEMENT RETURNS

RETURNS AS OF JUNE 30, 2018

	Equity (%)	1 Year	3 Years	5 Years
<b>Capital Appreciation</b>	65-85%	9.66%	7.64%	9.00%
<b>Balanced</b>	50-70%	7.93%	6.58%	7.47%
<b>Moderate</b>	40-60%	6.42%	5.82%	6.59%
<b>Moderately Conservative</b>	20-40%	3.80%	4.22%	4.84%
<b>Conservative</b>	5-20%	1.88%	3.04%	3.51%

*\* Past performance does not guarantee future results*

# CONTACTS

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## RACHAEL SANDERS

Manager, Consulting



[rsanders@pars.org](mailto:rsanders@pars.org)



(800) 540-6369 ext. 121



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item E.1.**

Meeting Date: 10/15/2018

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**SUBJECT:** Certificate of Recognition for Merced Art Hop

### REPORT IN BRIEF

Mayor Murphy will present a certificate of recognition to a representative of the Merced Art Hop for their 10 Years of providing Art Events in the City.

### ATTACHMENT

1. Certificate of Recognition



# *Certificate of Recognition*

*presented to:*

*Merced Art Hop*

*Congratulations on your 10 Year Anniversary*

*October 15, 2018*

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*Mike Murphy*  
*Mayor*

---

*Date*



# CITY OF MERCED

Merced Civic Center  
678 W. 18th Street  
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## ADMINISTRATIVE REPORT

---

**Agenda Item H.1.**

Meeting Date: 10/15/2018

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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 H.2.**

Meeting Date: 10/15/2018

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

**SUBJECT:** Information Only - Planning Commission Minutes of September 5, 2018

### RECOMMENDATION

For information only.

### ATTACHMENTS

1. PC Minutes 09-05-2018

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

**MINUTES**

Merced City Council Chambers  
Wednesday, September 5, 2018

Chairperson DYLINA called the meeting to order at 7:01 p.m., followed by a moment of silence and the Pledge of Allegiance.

**ROLL CALL**

Commissioners Present: Mary Camper, Scott G. Drexel, Michael Harris, Jeremy Martinez, Peter Padilla, Sam Rashe, and Chairperson Robert Dylina

Commissioners Absent: None

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

1. **APPROVAL OF AGENDA**

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

2. **MINUTES**

M/S PADILLA-HARRIS, and carried by unanimous voice vote, to approve the Minutes of August 22, 2018, as submitted.

3. **COMMUNICATIONS**

None.

4. **ITEMS**

- 4.1 (Consent) Vacation #18-02, initiated by Benchmark Engineering on behalf of Stonefield Home, Inc., to abandon an approximately 5.88-acre parcel dedicated as a park site, generally located at the southwest corner of M Street and Arrow Wood Drive.

Commissioner CAMPER recused herself due to a professional conflict.

The Commission did not request a report on this item. For further information, refer to Staff Report #18-21.

M/S HARRIS-RASHE, and carried by the following vote, to find that the proposed Vacation #18-02 (to abandon an approximately 5.88-acre parcel dedicated as a park site, generally located at the southwest corner of M Street and Arrow Wood Drive), is consistent with the *Merced Vision 2030 General Plan*.

AYES: Commissioners Drexel, Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: Commissioner Camper

Commissioner CAMPER returned to the dais.

- 4.2 Conditional Use Permit #1227, initiated by Marco Polo Antunez and Omero Antunez Ortiz on behalf of Vinay Vohra and Vikram Vohra, property owners. This application involves a request to operate a food truck within the Shell gas station parking lot, generally located on the northeast corner of R Street and Main Street (1720 R Street), within a Central Commercial (C-C) Zone.

Planner MENDOZA-GONZALEZ reviewed the report on this item. For further information, refer to Staff Report #18-22.

Public testimony was opened at 7:12 p.m.

Speaker from the Audience in Favor:

MARCO POLO ANTUNEZ (with interpreter), Applicant, Merced

The Applicant reviewed his experience running a food truck while living in Mexico.

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

Public testimony was completed at 7:14 p.m.

M/S PADILLA-HARRIS, and carried by the following vote, to adopt a Categorical Exemption regarding Environmental Review #18-55, and approve Conditional Use Permit #1227, subject to the Findings and twenty-seven (27) Conditions set forth in Staff Report #18-22 (RESOLUTION #4004):

AYES: Commissioners Camper, Drexel, Harris, Martinez,  
Padilla, Rashe, and Chairperson Dylina  
NOES: None  
ABSENT: None  
ABSTAIN: None

4.3 Overview of Bellevue Ranch Upcoming Changes

Associate Planner NELSON provided a brief overview of upcoming changes within the Bellevue Ranch Master Development Plan (BRMDP).

4.4 Commercial Cannabis Business Permit Applications for Dispensaries – Availability of Applications for Review by Planning Commission.

Planning Manager ESPINOSA announced to the Commission that redacted copies of all Commercial Cannabis Business Permits for Dispensaries were available for review. CDs with the copies of the applications were provided to the Commission at the meeting.

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.

Chairperson DYLINEA reiterated to the Commission that he will not be present at the Planning Commission meeting of September 18, 2018.

6. **ADJOURNMENT**

There being no further business, Chairperson DYLINEA adjourned the meeting at 7:51 p.m.

Respectfully submitted,



KIM ESPINOSA, Secretary  
Merced City Planning Commission

APPROVED:



ROBERT DYLINEA, Chairperson  
Merced City Planning Commission

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

**Resolution #4004**

**WHEREAS**, the Merced City Planning Commission at its regular meeting of September 5, 2018, held a public hearing and considered **Conditional Use Permit #1227**, initiated by Marco Polo Antunez and Omero Antunez Ortiz on behalf of Vinay Vohra and Vikram Vohra, property owners. This application involves a request to operate a food truck within the Shell gas station parking lot, generally located on the northeast corner of R Street and Main Street (1720 R Street), within a Central Commercial (C-C) Zone; also known as Assessor's Parcel Number 031-113-018; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through I of Staff Report #18-22; and,

**NOW THEREFORE**, after reviewing the City's Draft Environmental Determination, and discussing all the issues, the Merced City Planning Commission does resolve to hereby adopt a Categorical Exemption regarding Environmental Review #18-55, and approve Conditional Use Permit #1227, subject to the Conditions set forth in Exhibit A attached hereto and incorporated herein by this reference.

Upon motion by Commissioner PADILLA, seconded by Commissioner HARRIS, and carried by the following vote:

AYES: Commissioners Drexel, Harris, Martinez, Padilla, Rashe, and Chairperson Dylina

NOES: None

ABSENT: None

ABSTAIN: Commissioner Camper

PLANNING COMMISSION RESOLUTION # 4004

Page 2

September 5, 2018

Adopted this 5<sup>th</sup> day of September 2018



Chairperson, Planning Commission of  
the City of Merced, California

ATTEST:



Secretary

Attachment:

Exhibit A – Conditions of Approval

n:shared:planning:PC Resolutions: CUP#1227 (Food Truck-1720 R Street)

**Conditions of Approval**  
**Planning Commission Resolution # 4004**  
**Conditional Use Permit #1227**

1. The proposed project shall be constructed/designed as shown on Exhibit 1 (site plan) and Exhibit 2 (photos) - Attachments B and C of Staff Report #18-22, except as modified by the conditions.
2. All conditions contained in Resolution #1249-Amended (“Standard Conditional Use Permit Conditions”—except for Condition #16 which has been superseded by Code) shall apply.
3. The proposed project shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
4. All other applicable codes, ordinances, policies, etc., adopted by the City of Merced shall apply.
5. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted herein. Furthermore, developer/applicant shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, against any and all claims, actions, suits, proceedings, or judgments against any governmental entity in which developer/applicant’s project is subject to that other governmental entity’s approval and a condition of such approval is that the City indemnify and defend (with counsel selected by the City) such governmental entity. City shall promptly notify the developer/applicant of any claim, action, or proceeding. City shall further cooperate fully in the defense of the action. Should the City fail to either promptly notify or cooperate fully, the developer/applicant shall not thereafter be responsible to indemnify, defend, protect, or hold harmless the City, any



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

6. The developer/applicant shall construct and operate the project in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.
7. The applicant shall comply with all City of Merced business licensing requirements and with all requirements of the Merced County Environmental Health Department.
8. No outdoor tables or chairs shall be permitted on the premises, unless otherwise approved by the Planning Department.
9. At least two tamperproof trash receptacles shall be provided while food is being served. The site and the immediate surrounding area shall be maintained free of all debris and trash generated from this use.
10. All signing shall be contained on the food trailer. No A-frame signs, banners, inflatable signs, feather signs, pennant signs, flags, or other moving or portable signs shall be permitted for this use anywhere on or off the site.
11. The hours of operation shall be any span of time between 7:00 a.m. and 9:00 p.m. and the business may be open 7 days a week. However, if the business is open after dark, lights shall be provided on the vehicle or on the property that are sufficient to light the vehicle and at least a 50-foot radius around the vehicle. If lights are not provided, the business shall close at sundown.
12. If the business owners wish to extend the business hours in the future, they must obtain approval from the Development Services Director and the Police Chief, or if deemed necessary by the Development Services Director, be referred back to the Planning Commission for action.
13. Disposal of waste products shall be limited to a Merced County Environmental Health Department approved commissary or alternative approved facility.
14. The applicant shall comply with the Water Quality Control Division's (WQCD) Best Management Practices regarding the disposal of cooking grease and proper cleaning of kitchen equipment, as shown on

Attachment D of Staff Report #18-22, or as otherwise required by the WQCD.

15. If problems arise as a result of this business that may require excessive Police Department service calls to the site or within the immediate area including, but not limited to, excessive harassment, malicious property damage, lewd and/or disorderly conduct, this approval may be subject to review and revocation by the City of Merced.
16. During hours of operation, food trailer employees shall have access to a cell phone (either their own or one provided by the business owner) in case of emergencies.
17. In the future, if there are excessive calls for police assistance, the Police Chief may require the applicant to install exterior video surveillance cameras. Any video related to criminal investigations must be accessible immediately for viewing by the Merced Police Department or any other law enforcement agency. A recorded copy of surveillance video, requested in connection with a criminal investigation, must be reasonably accessible and available within 24 hours when requested by law enforcement. The business owner is responsible for maintaining the video surveillance equipment in an operable manner at all times.
18. The food trailer shall be oriented perpendicular to the parking stalls to allow room for customers to gather without being in danger of collisions from vehicles entering/exiting the site. The food trailer shall not block the driving aisle or access to the alley.
19. It shall be the operator's responsibility to ensure all customers park in an orderly fashion and don't block the driveway entrances or interfere with other customers visiting the site.
20. The applicant shall comply with all regulations found in Merced Municipal Code Section 20.44.020 - Food Trucks in Fixed Locations, except as modified by these conditions.
21. A minimum of 2 parking spaces on the site shall be dedicated to food trailer customers. These spaces shall be located as close as possible to the food trailer.
22. Food trailer activities shall in no way interfere with the operation of existing businesses on the lot, or nearby businesses, including noise, litter, loitering, and traffic circulation, and public safety must be a high priority.

23. The owner shall ensure that restroom facilities are available for the employees. These restrooms shall be provided in a permanent building that meets the Health Department's requirements for distance from the business operation. Portable toilets shall not be allowed.
24. The mobile food vendor is prohibited from selling alcohol.
25. "No Loitering" signs shall be posted on the food trailer and convenience market at specific locations approved by the City Police Department.
26. The food trailer shall maintain a minimum distance of 20 feet from all fuel pumps, or as otherwise required by Fire Department.
27. Any illegal signs and advertisements posted on the convenience market onsite shall be removed prior to the food trailer obtaining a business license.

n:\shared\planning\PC Resolutions: CUP #1227 Exhibit A



## ADMINISTRATIVE REPORT

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**Agenda Item H.3.**

Meeting Date: 10/15/2018

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**SUBJECT:** City Council/Public Financing and Economic Development/Parking Authority Meeting Minutes of September 17, 2018 and September 27, 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 September 17, 2018 and September 27, 2018.

### ALTERNATIVES

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

### ATTACHMENTS

1. Minutes of September 17, 2018
2. Minutes of September 27, 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, September 17, 2018

6:00 PM

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#### A. CLOSED SESSION ROLL CALL

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

**Absent:** 0

#### B. CLOSED SESSION

Mayor MURPHY called the Closed Session to order at 5:00 PM.

**Clerk's Note:** Council Member SERRATTO arrived to at 5:01 PM.

**B.1.** **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Merced Citizens for Responsible Planning v. City of Merced etc. et. al.; Case No. 18CV-01143; AUTHORITY: Government Code Section 54956.9(d)(1)

**B.2.** **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Bobby Chapman v. City of Merced; Workers Compensation Appeals Board Case Nos. FRE-ADJ 10483297; FRE-ADJ 10483315; FRE-ADJ 10483267; FRE-ADJ 10483217; FRE-ADJ 10969561; AUTHORITY: Government Code Section 54956.9(d)(1)

**B.3.** **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Kenneth Coe (deceased) v. City of Merced; Workers Compensation Appeals Board Case No. STK-ADJ 11228931; AUTHORITY: Government Code Section 54956.9(d)(1)

**B.4.** **SUBJECT:** CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Joseph Deliman v. City of Merced; Workers Compensation Appeals Board Case Nos. FRE-ADJ 10823278; FRE-ADJ 10823228; FRE-ADJ 10823337; AUTHORITY: Government Code Section 54956.9(d)(1)

- B.5.**                    SUBJECT: CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Ryan King v. City of Merced; Workers Compensation Appeals Board Case No. FRE-ADJ 8986644; FRE-ADJ 10788658; FRE-ADJ 10788657; AUTHORITY: Government Code Section 54956.9(d)(1)
- B.6.**                    SUBJECT: CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Chazelle Lanum v. City of Merced; Workers Compensation Appeals Board Case No. STK-ADJ 10251595; STK-ADJ 10258140; STK-ADJ 9920817; STK-ADJ 10471759; AUTHORITY: Government Code Section 54956.9(d)(1)
- B.7.**                    SUBJECT: CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Reginald Matthews v. City of Merced; Workers Compensation Appeals Board Case No. FRE-ADJ 10214501; AUTHORITY: Government Code Section 54956.9(d)(1)
- B.8.**                    SUBJECT: CONFERENCE WITH LEGAL COUNSEL -- EXISTING LITIGATION; Steven Smith v. City of Merced; Workers Compensation Appeals Board Case No. STK-ADJ 10229432; STK-ADJ 10229433; STK=ADJ 10229880; SAC-ADJ 10229434; SAC-ADJ 10885617; AUTHORITY: Government Code Section 54956.9(d)(1)
- B.9.**                    SUBJECT: PUBLIC EMPLOYEE PERFORMANCE EVALUATION AND LABOR NEGOTIATIONS - Title: City Manager; Authority: Government Code Section 54957 and 54957.6
- B.10.**                  SUBJECT: PUBLIC EMPLOYMENT - Title: City Attorney; Authority: Government Code Section 54957

**Clerk's Note:** Council adjourned from Closed Session at 6:00 PM.

## **C. CALL TO ORDER**

Mayor MURPHY called the Regular Meeting to order at 6:03 PM.

C.1. Invocation - Bruce Logue, Life Spring Church

The invocation was delivered by Bruce LOGUE from Life Spring Church.

C.2. Pledge of Allegiance to the Flag

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

## D. ROLL CALL

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

**Absent:** 0

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

## E. REPORT OUT OF CLOSED SESSION

There was no report.

## F. CEREMONIAL MATTERS

### F.1. SUBJECT: Proclamation - Constitution Week

Mayor MURPHY presented the Constitution Week Proclamation to a representative from the Daughters of the American Revolution.

## G. SPECIAL PRESENTATIONS

### G.1. High Speed Rail Update

Central Regional Director of High Speed Rail Diana GOMEZ gave a slide show presentation updating Council on the High Speed Rail Project.

### G.2. ACE Train Update

Manager of Regional Initiatives for the Altamont Corridor Express Dan LEAVITT gave a slide show presentation updating Council on the Altamont Corridor Express (ACE) Train.

## H. WRITTEN PETITIONS AND COMMUNICATIONS

There were none.

## I. ORAL COMMUNICATIONS

Belinda BURNETT, Merced - spoke on the water rate changes.

Monica VILLA, Merced - spoke on the splash park at Steven Leonard Park and the Homeless Connect Project event.

Joel DORMAN, Merced - spoke on the Go Day 2018 event.

Chris RAMOS, Merced - spoke on labor laws.

Greg HOSTETLER, Merced - presented the International Fire Association with a check for their Breast Cancer Awareness T-Shirt Fundraiser.

## **J. CONSENT CALENDAR**

Item J.8. Funding Enhancement to Existing Three Street Improvement Projects for the 2017/2018 Regional Surface Transportation Program Exchange Funds; Authorization to Submit the Required Claim Form was 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:** 7 - Council Member Belluomini, Council Member Martinez, Mayor Pro Tempore McLeod, Council Member Pedrozo, Council Member Serratto, Mayor Murphy, and Council Member Blake

**No:** 0

**Absent:** 0

#### **J.1.                    SUBJECT: Reading by Title of All Ordinances and Resolutions**

##### **REPORT IN BRIEF**

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

##### **RECOMMENDATION**

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

**This Consent Item was approved.**

#### **J.2.                    SUBJECT: Information Only-Planning Commission Minutes of August 8, 2018**

##### **RECOMMENDATION**

For information only.



This Consent Item was approved.

**J.3.**                    **SUBJECT:** Information Only-Bicycle Advisory Commission Minutes  
of June 26, 2018

**RECOMMENDATION**

For information only.

This Consent Item was approved.

**J.4.**                    **SUBJECT:** Information Only-Bicycle Advisory Commission Minutes  
of April 24, 2018

**RECOMMENDATION**

For information only.

This Consent Item was approved.

**J.5.**                    **SUBJECT:** City Council/Public Financing and Economic  
Development/Parking Authority Meeting Minutes of August 20, 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 August 20, 2018.

This Consent Item was approved.

**J.6.**                    **SUBJECT:** Entry Sign Consultant Contract

**REPORT IN BRIEF**

Seek Council approval of contract for entry sign consultant and  
appropriate funds from General Fund.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving a contract from Graphic Solutions for entry sign design  
work; and,

B. Approving a supplemental appropriation in the amount of \$15,900 from the unreserved, unencumbered General Fund balance; and,

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

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

**This Consent Item was approved.**

**J.7.**

**SUBJECT:** Street Closure Request #18-15 (Merced County Office of Education, for Use of W. Main Street Between M and K Streets, and Canal Street Between W. Main and the Alley Between W. Main and W. 18th Streets)

**REPORT IN BRIEF**

The Merced County Office of Education requests the use of City streets for the 17th Annual "Lights on After School" event, on Thursday, October 25, 2018, between 12:30 p.m. and 11:00 p.m.

**RECOMMENDATION**

**City Council** - Adopt a motion approving the street closures of W. Main Street between M and K Streets, and Canal Street between W. Main and the alley between W. Main and W. 18th Streets, on Thursday, October 25, 2018, from 12:30 p.m. to 11:00 p.m., subject to the details and conditions outlined in the administrative staff report.

**This Consent Item was approved.**

**J.9.**

**SUBJECT:** Resolution Authorizing the City Manager or His Designee to Withdraw from the Department of Resources Recycling and Recovery (CalRecycle) Rubberized Pavement Grant TRP7-16-0026

**REPORT IN BRIEF**

Seeks authorization to withdraw from the Department of Resources Recycling and Recovery (CalRecycle) Rubberized Pavement Grant TRP7-16-0026.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Adopting **Resolution 2018-63**, a Resolution of the City Council of the City of Merced, California, authorizing termination of grant from the Department of Resources Recycling and Recovery (CalRecycle) and,
- B. Authorizing the City Manager or Assistant City Manager to sign a letter withdrawing from the CalRecycle grant; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments.

**This Consent Item was approved.**

**J.10.**

**SUBJECT:** Second Reading of an Ordinance Amending Section 10.16.010, "Speed Limits." of the Merced Municipal Code

**REPORT IN BRIEF**

Second reading of previously introduced ordinance.

**RECOMMENDATION**

**City Council** - Adopt a motion adopting **Ordinance 2492**, an Ordinance of the City Council for the City of Merced, California, amending Section 10.16.010, "Speed Limits" of the Merced Municipal Code

**This Consent Item was approved.**

**J.8.**

**SUBJECT:** Funding Enhancement to Existing Three Street Improvement Projects for the 2017/2018 Regional Surface Transportation Program Exchange Funds; Authorization to Submit the Required Claim Form

**REPORT IN BRIEF**

Add additional Regional Surface Transportation (RSTP) funding to existing street improvement projects through the RSTP Exchange Funds and authorizing the filing of FY 2017/2018 claim form with Merced County Association of Governments (MCAG).

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Selecting V Street from 16th Street to 18th Street, R Street from 16th Street to 18th Street, and G Street from Child Avenue to 13th Street to be completed utilizing the FY 2017-2018 RSTP Exchange Funds; and,

B. Directing staff to complete the 2017-2018 RSTP claim form by listing the selected projects and corresponding project costs; and,

C. Adopting **Resolution 2018-58**, a Resolution of the City Council of the City of Merced California, authorizing the City Manager to file the Regional Surface Transportation Program (RSTP) Exchange Funds claim for Fiscal Year 2017-2018; and,

D. Authorizing the Finance Officer to make necessary budget adjustments for Fiscal Year 2018-2019.

Council Member MARTINEZ pulled this item to ask for clarification on the funding of the three street improvement projects.

Council and Deputy Public Works Director Steven SON discussed the allocation of funds for the three street improvement projects.

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

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

**No:** 0

**Absent:** 0

## K. PUBLIC HEARINGS

K.1. **SUBJECT:** Public Hearing - Consideration of Approval of the Consolidated Annual Performance and Evaluation Report for Program Year 2017 - 2018

### REPORT IN BRIEF

Review and approve Housing Division activities as reported in the 2017-2018 Program Year Consolidated Annual Performance and Evaluation Report (CAPER).

### RECOMMENDATION

**City Council** - Adopt a motion:

A. Adopting **Resolution 2018-62**, a Resolution of the City Council of the City of Merced, California, approving the 2017-2018 Program Year Consolidated Annual Program and Evaluation Report; and,

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

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

Housing Supervisor Mark HAMILTON gave a slide show presentation on the Consolidated Annual Performance and Evaluation Report for Program Year 2017-2018.

Mayor MURPHY opened and subsequently closed the Public Hearing at 7:00 PM due to lack of public comment.

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

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

**No:** 0

**Absent:** 0

**K.2.**

**SUBJECT: Public Hearing - Annexation and Pre-Zoning Application #15-01, General Plan Amendment #15-04, and Pre-Annexation Development Agreement, Initiated by Louann Bianchi, and Quad LLC, Property Owners**

**REPORT IN BRIEF**

Considers approval of the proposed annexation of 8.83 acres of land generally located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, along with changes in the General Plan designation, pre-zoning, and approval of a Pre-Annexation Development Agreement.

**RECOMMENDATION**

**City Council - Adopt a motion:**

A. Approving **Resolution 2018-60**, a Resolution of the City Council of the City of Merced, California, approving a Mitigated Negative Declaration for Annexation #15-01, Pre-Zoning Application #15-01, and General Plan Amendment #15-04 for 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive and 1.0 acre of land generally located at the southwest corner of North Highway 59 and

Santa Fe Drive and approving General Plan Amendment #15-05 for the 7.83 acres of land generally located at the northwest corner of North Highway 59 and Santa Fe Drive changing the General Plan land use designation from Open Space (OS) to Thoroughfare Commercial (CT); and,

B. Approving **Resolution 2018-61**, a Resolution of the City Council of the City of Merced, California, to the Local Agency Formation Commission for the annexation of uninhabited property located at the northwest and southwest corners of North Highway 59 and Santa Fe Drive, as described herein; and,

C. Introducing **Ordinance 2494**, an Ordinance of the City Council of the City of Merced, California, amending the official zoning map by Pre-zoning land generally located at the northwest corner of North Highway 59 and Santa Fe Drive as Thoroughfare Commercial (C-T) and the land generally located at the southwest corner of North Highway 59 and Santa Fe Drive as Light Industrial (I-L); and,

D. Introducing **Ordinance 2495**, an Ordinance of the City Council of the City of Merced, California, approving a Pre-Annexation Development Agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation.

Planning Manager Kim ESPINOSA gave a slide show presentation on the Annexation and Pre-Zoning Application #15-01, General Plan Amendment #15-04, and Pre-Annexation Development Agreement.

Council and Ms. ESPINOSA discussed the signal light on Santa Fe, project timeline, a General Plan designation and policy, a drawing illustrating the street changes, and the entry and exits of the proposed project.

Mayor MURPHY opened the Public Hearing at 7:21 PM.

59 Petroleum Development Representative Surina MANN spoke on the project timeline and access to the shopping center.

Council, Ms. MANN, and Staff discussed the entering and exiting of the shopping center, traffic signals, and the conditions of the developer's agreement.

Benjamin KURTZ, Merced - spoke on the comments from Council.

Chris RAMOS, Merced - spoke on addressing the blight and

homelessness in the Highway 59 corridor.

Richard FRAGNITO-LIRA - requested Council to add an item on the Twin Tunnel project on the Delta.

Ronnie DE ANDA, Merced - spoke on his concern on ignoring South Highway 59 gateway.

Josie FRAGNITO-LIRA, Merced - spoke on the traffic in Merced and suggested a flashing yellow arrow light.

Mayor MURPHY closed the Public Hearing at 7:44 PM.

Council Member BELLUOMINI made a motion to continue this item to the October 1st Council Meeting and to direct staff to provide a drawing that illustrates the new proposed lanes, a new mitigated condition about synchronizing traffic signals on Highway 59 and Santa Fe, the layout of the lanes, and the removal of the driveway.

**Clerk's Note:** Council Member BELLUOMINI'S motion failed due to a lack of a second.

Council continued discussing traffic mitigation.

A motion by Council Member SERRATTO and a second by Council Member PEDROZO to approve Resolution 2018-60, Resolution 2018-61, and introducing Ordinance 2494 and 2495 with the condition approving the elimination of the right turnout, right turn in only, and adding the condition that the light be synchronized.

**Clerk's Note:** After Council discussion, Council Member SERRATTO withdrew his motion.

Council and staff continued discussing the traffic signal.

After further discussion, Council decided to continue this item to get clarification from staff on the traffic mitigation.

**A motion was made by Mayor Murphy, seconded by Council Member Blake, to continue this item to the October 1, 2018 City Council Meeting. The motion carried by the following vote:**

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

**No:** 0

Absent: 0

**K.3.** **SUBJECT:** Public Hearing - General Plan Amendment #18-01 and Site Utilization Plan Revision #13 to Planned Development (P-D) #42 to Relocate a Park Site and Single-Family Residential Land within Bellevue Ranch West

**REPORT IN BRIEF**

Considers a proposal to relocate a park site and single-family residential land within Bellevue Ranch West.

**RECOMMENDATION**

**City Council** - Adopt a motion:

A. Approving **Resolution 2018-59**, a Resolution of the City Council of the City of Merced, California, approving Environmental Review #18-44 (CEQA Section 15162 Findings) for General Plan Amendment #18-01 to amend the land use designation from Open Space/Park (OS) to Low-Medium Density Residential (LMD) for approximately 5.88 acres of land generally located at the southwest corner of M Street and Arrow Wood Drive (extended) and amend the land use designation from Low-Medium Density Residential (LMD) to Open Space/Park(OS) for approximately 5.0 acres of land generally located at the southeast corner of the future Catherine A. Hostetler Boulevard and Freemark Avenue (extended); and,

B. Introducing **Ordinance 2493**, an Ordinance of the City Council of the City of Merced, California, approving Site Utilization Plan Revision #13 to Planned Development (P-D) #42 changing the land use designation from Park to Single-Family Residential for approximately 5.88 acres of land generally located at the southwest corner of M Street and Arrow Wood Drive (extended) and changing the Land Use designation from Single-Family Residential to Park for approximately 5.0 acres of land generally located at the southeast corner of the future Catherine A. Hostetler Boulevard and Freemark Avenue (extended); and,

C. Authorizing the City Manager or Assistant City Manager to execute the Legislative Action Agreement.

Associate Planner Julie NELSON gave a slide show presentation on the General Plan Amendment #18-01 and Site Utilization Plan Revision #13 to Planned Development #42 to Relocate a Park Site and Single-Family Residential Land within Bellevue Ranch West.

Mayor MURPHY opened the Public Hearing at 8:10 PM.



Benchmark Engineering Representative Rick MUMMERT discussed the progress of the project.

Mayor MURPHY closed the Public Hearing at 8:11 PM.

**A motion was made by Council Member Blake, seconded by Council Member Pedrozo, to approve Resolution 2018-59, introduce Ordinance 2493, and to authorize the City Manager or Assistant City Manager to execute the Legislative Action Agreement. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 0

## L. REPORTS

### L.1.

**SUBJECT:** Waiving Competitive Bidding Requirements, Supplemental Appropriation from General Fund and/or Park Reserve Fund, and Approval of a Cooperative Purchasing Agreement with Park Associates, Inc. (doing business as NSP3) Through the California Multiple Award Schedule (CMAS) for the Purchase and Installation of Playground Equipment at Applegate Park

#### REPORT IN BRIEF

Considers waiving competitive bidding requirement based on cooperative purchasing through CMAS and approving a supplemental appropriation from the General Fund and/or Park Reserve Fund to award a contract to Park Associates, Inc., (doing business as NSP3), in the amount of \$307,509.71 for the purchase and installation of playground equipment at Applegate Park.

#### RECOMMENDATION

**City Council** - Adopt a motion:

A. Approving a supplemental appropriation in the amount of \$337,510 from the General Fund and/or Fund 442 Park Reserve and authorizing the Finance Officer to make the appropriate budget adjustments based on the final funding as determined by the City Council for the Applegate Park Playground Equipment Replacement Project 118040; and,

B. Waiving the competitive bidding requirements and awarding the CMAS Contract to Park Associates, Inc., DBA NSP3, in the amount of

\$307,509.71, for the Applegate Park Playground Equipment Replacement Project 118040; and,

C. Authorizing the City Manager or Assistant City Manager to execute the necessary documents and approve change orders not to exceed the total budget appropriations.

Director of Public Works Ken ELWIN gave a brief presentation on the timeline and details of the project.

Finance Officer Venus RODRIGUEZ discussed the funding of the project.

Karla SEIJAS, Merced - spoke on the inclusivity of the park equipment.

Elisabeth MIGUEL, Merced - spoke on safety in parks in Merced.

Council and Ms. RODRIGUEZ continued discussing funding for the project.

**A motion was made by Council Member Belluomini, seconded by Council Member Blake, to approve this item with the recommendation that half the funding come from the General Fund and the other half of the funding come from the Park Reserve Fund. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 0

**L.2.                    SUBJECT: Update on Laura's Fountain at Applegate Park**

**REPORT IN BRIEF**

Presentation by staff on status of repairs to Laura's Fountain.

**RECOMMENDATION**

Provide direction to staff on how to proceed with the repairs to Laura's Fountain at Applegate Park.

Director of Public Works Ken ELWIN gave a slide show presentation on Laura's Fountain at Applegate Park.

Council and Mr. ELWIN discussed the deterioration of the fountain, funding to restore the fountain, and its historical significance.

**A motion was made by Mayor Pro Tempore McLeod, seconded by Council Member Blake, to direct staff to go out for more request for proposals and to**

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continue to work on this project in the coming budget year. The motion carried by the following vote:

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

**No:** 0

**Absent:** 0

**L.3.**

**SUBJECT:** Railroad Quiet Zone Feasibility Study and Establishment Along the Burlington Northern Santa Fe Railroad Alignment Within City Limits

**REPORT IN BRIEF**

Updates status of the request for proposals for the Railroad Quiet Zone Feasibility Study and Establishment along the Burlington Northern Santa Fe Railroad (BNSF) and requests City Council provide further direction.

**RECOMMENDATION**

Provide Staff with further direction regarding the Railroad Quiet Zone Feasibility Study.

Deputy Public Works Director Steven SON gave a brief presentation discussion the revised cost estimates on the Railroad Quiet Zone Feasibility Study and Establishment along the Burlington Northern Santa Fe Railroad Alignment within City Limits.

Wayne EISENHART, Merced - encouraged Council to keep working on this project.

Mayor Pro Tempore MCLEOD spoke on the health and safety of the community and the noise pollution that comes from the railroad.

Council Member BELLUOMINI stated his support for this project and to hire RRM Consultants.

Council Member MARTINEZ and Mr. SON discussed the cost difference between the two applicants and the scope of work for the project.

Council Members BLAKE and SERRATTO stated their support for this project to move forward.

**A motion was made by Council Member Belluomini, seconded by Mayor Pro Tempore McLeod, directing staff to hire RRM Design Group for \$49,965 from Fund 17 to complete the study of the quiet zone railroad crossing for the Burlington**

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**Northern Santa Fe Railroad. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 0

**M. BUSINESS**

**M.1.**

**SUBJECT:** Council Member Belluomini's Request to Discuss Accessory Dwelling Units (Secondary Unit Housing)

**REPORT IN BRIEF**

This item is in response to Council Member Belluomini's request to discuss accessory dwelling units within the City pursuant to City Council Administrative Policies and Procedures C-1.

**RECOMMENDATION**

It is requested Council give staff direction on this item.

Council Member BELLUOMINI gave a slide show presentation on Accessory Dwelling Units.

Director of Development Services Scott MCBRIDE discussed the fees and process for a property owner to build accessory dwelling units.

Interim City Attorney Jolie HOUSTON discussed making revisions to the zoning code.

Ronnie DE ANDA, Merced - spoke in support for accessory dwelling units.

**Clerk's Note:** Council directed staff to prepare a report regarding changes to the zoning ordinance, explaining alternative approaches to accessory dwelling units, and City policy on accessory dwelling units to be presented at the November 19th Council meeting.

**M.2.**

**SUBJECT:** City Council Discussion on District Meetings

**REPORT IN BRIEF**

This item is to initiate a Council discussion on holding individual informational meetings by Council District.

**RECOMMENDATION**

Provide staff direction on scheduling a yearly meeting in each Council Member's respective district.

Assistant City Manager Stephanie DIETZ gave a brief presentation on District Meetings.

Council Member MARTINEZ stated his support for district meetings.

Council discussed holding district meetings, staff time, and the structure of the meetings.

Council agreed that in the election years, Council Members up for election could not hold meetings between the last day of the candidate filing period until after the election.

**Clerk's Note:** No formal vote was taken.

M.3. Request to Add Item to Future Agenda

Council Member BELLUOMINI requested to add an item on a presentation from the Rescue Mission on their proposed housing project for a future Council Meeting. He also requested to add an item on improving Police Community Relations for the October 15th Council Meeting.

M.4. City Council Comments

Council Member MARTINEZ spoke on two upcoming events; Merced Feast event and Merced's Got Talent event.

Council Member BLAKE reported on attending the Kids Day event at the Boys and Girls Club.

Council Member PEDROZO reported on attending the California League of Cities conference. He also spoke on the Merced High School Homecoming.

Mayor MURPHY reported on meeting with the Majestic All-Star Cheerleaders. He also spoke on the upcoming Hmong New Year Celebration. He reported on attending the Golden Valley Neighborhood Association meeting and the Historical Society Annual Fundraiser BBQ. He also spoke about upcoming events in Merced.

**N. ADJOURNMENT**

**Clerk's Note:** The Regular Meeting was adjourned at 9:42 PM.

A motion was made by Council Member Blake, seconded by Council Member

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**Martinez, to adjourn the Regular Meeting. The motion carried by the following vote:**

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

**No:** 0

**Absent:** 0



# 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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Thursday, September 27, 2018

6:00 PM

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#### A. CALL TO ORDER

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

Pledge of Allegiance to the Flag

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

#### B. ROLL CALL

Adam Cox, President  
Jessica Kazakos, Clerk  
Mike Crass, Member  
Miguel Lopez, Member  
Emily Langdon, Member

All Board Members were present.

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

All Council Members were present with the exception of Council Member  
BLAKE.

#### C. OPENING COMMENTS

Opening comments by Mayor Mike Murphy and Board President Adam Cox

Mayor MURPHY and President COX welcomed everyone to the Joint City  
Council and Merced City School District Board of Education Meeting.

#### D. REPORTS

Sarah SANDRICK gave a video presentation on Merced is Our Home.

D.1. School Safety

Doug COLLINS and Brian MEISENHEIMER gave a slide show presentation on School Safety.

Council and Board Members discussed the safety of Merced City Schools.

D.2. Discussion on Pedestrian and Vehicle Traffic Surrounding Schools

Council and Board Members discussed pedestrian and vehicle traffic surrounding the schools.

Tammy RODRIGUEZ, Merced - spoke on traffic safety at Sheehy Elementary School.

D.3. Current and Proposed Housing Projects

Director of Development Services Scott MCBRIDE gave a slide show presentation on Current and Proposed Housing Projects.

Council and Board Members discussed the current and proposed housing projects and how it affects planning for new schools.

D.4. Development Projects Surrounding School Sites

Director of Economic Development Frank QUINTERO gave a slide show presentation on the Development Projects Surrounding School Sites.

Council and Board Members discussed the development projects within the City.

D.5. Discussion on Current and Proposed Joint and Mutual Use of Facilities

Teresa SALDIVAR-MORSE gave a presentation on Current and Proposed Joint and Mutual Use of Facilities stating the school was working on updating use agreements.

Council Member BELLUOMINI and Ms. SALDIVAR-MORSE discussed Burbank park access through Burbank School.

D.6. Discussion on Future Staff Meetings (Quarterly) to Address Interagency Issues more regularly

Assistant City Manager Stephanie DIETZ started the discussion on future staff meetings to address interagency issues.

Council and Board Members discussed future staff meetings to address



interagency issues.

**Clerk's Note:** Mayor MURPHY and President COX allowed for public comment at this time.

Joel KNOX, Merced- spoke on the traffic around Sheehy School. He also spoke on the red curb that restricts cars from parking to pick up and drop off kids.

Terry ROSS, Merced - spoke on the City and Community support for Merced City Schools.

Renee GUITIERREZ, Merced - asked about the order in which housing and schools are built.

Marilyn MOCHELLE, Merced - recommended inviting County Departments to be a part of future Joint Meetings.

Jorge GARIBAY, Merced - spoke on his concern for student safety at bus stops.

**Clerk's Note:** Council and Board Members gave their final thoughts of the meeting.

## E. ADJOURNMENT

**Clerk's Note:** The Joint Meeting adjourned at 8:09 PM.



## ADMINISTRATIVE REPORT

Agenda Item H.4.

Meeting Date: 10/15/2018

*Report Prepared by: Janet German, Secretary III, Fire*

**SUBJECT:** Federal Emergency Management Agency (FEMA) Fiscal Year (FY) 2018 Assistance to Firefighters Grant (AFG) Application

### REPORT IN BRIEF

Authorize the submittal of a Federal Emergency Management (FEMA) Fiscal Year (FY) 2018 Assistance to Firefighters Grant (AFG) Application.

### RECOMMENDATION

**City Council** - Adopt a motion authorizing the submittal of a grant application for funding from the FEMA FY 2018 AFG program; and authorizing the City Manager or Assistant City Manager to sign the necessary documents;

### ALTERNATIVES

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

### AUTHORITY

Charter of the City of Merced, Section 200  
Charter of the City of Merced, Article IV, Section 405

### CITY COUNCIL PRIORITIES

Public Safety as provided for in the 2018-19 Adopted Budget.

### DISCUSSION

The Fire Department is seeking authorization to submit a grant application in the approximate amount of \$416,485.86 with a local match of \$46,276.21, a 10% of \$462,762.07; the total project cost.

### Project Description

The purpose of this project is to replace existing portable radios within the City of Merced Fire Department (MFD). By funding this project, the AFG award will directly enhance responder safety, increase interoperability, enable new missions, and ensure Project 25 compatibility with the MFD.

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The MFD is seeking funds from the AFG within the Fire Department Operations and Safety-Equipment Section to replace 60 portable radios that will comply with NFPA 1221, 1561 and have Project 25 (P 25) compatibility. The MFD is also requesting funds for 60 temperature capable-remote speaker microphones (RSM) and charging equipment for fire apparatus and fire stations, to accompany the portable radios.

These portable radios are to replace existing units for all 56-seated positions, on each of seven front-line pieces of apparatus, four call-back-staffed apparatus, one California Emergency Master Mutual Aid Assignment apparatus, and four Chief Officer Vehicles. All Seated positions may be utilized during emergency call-back of personnel to large incidents. In addition to these portable radios, we will also use the funds to purchase 4 radios to be utilized as part of Swift Water Rescue response. Funding this project will enable us to create new missions for the organization that include ALS Fire/Rescue Medic response and Swift Water Rescue response as part of a joint response with a county law enforcement agency.

In 2017, the MFD conducted an internal risk assessment survey to identify priority needs for the organization. Upon completion of the survey, the MFD set goals and objectives for our communications program. These goals and objectives align as a high priority in the 2018 AFG funding priorities. The risk assessment identified the following deficiencies with current portable radio equipment:

1. Existing portable radios and RSMs pose safety risks to MFD firefighters, as current equipment is not designed with NFPA 1221 compliance of being, "manufactured for the environment in which they are to be used and shall be of a size and construction that allow their operation with the use of one hand."
2. Existing missions require interoperability in communicating with cooperating agencies. The MFD is unable to fulfill minimum operations with cooperating agencies due to the current radio equipment having exclusively VHF capabilities.
3. New missions within the department and new missions coordinated with neighboring agencies, require the use of UHF and 800 MHZ capabilities.
4. The manufacturer deemed current portable radios obsolete in July of 2015 and discontinued the product. Existing portable radios are not P 25 capable.
5. The current portable radios are not Intrinsically Safe (IS). In other words, IS radios are designed to operate in potentially explosive atmospheres without the risk of becoming an ignition source or creating a spark that might cause a fire or explosion.

The estimated cost to update the portable radio equipment:

60 High Tier All Band Portable Radios with Batteries: \$385,667.40

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Charging Equipment:	\$19,584.40
60 RSM:	\$21,600.00
Mandatory Sales Tax (8.25%):	\$35,215.27
Shipping Charges:	\$695.00
Total:	\$462,762.07

The MFD agrees to maintain, during the term of the grant, expenditures relating to activities required in the 2018 AFG NOFO Section C. Eligibility Information.

**Operations Cost/Benefit**

Communication safety and operability was identified as a priority need within our department. The objective of the MFD is to provide safe, reliable and effective communications during emergency response.

The benefits of new portable radio equipment include, but are not limited to increased responder safety, increased civilian safety, increased level of service, increased reliability of our communications equipment, increased communications with our adjoining agencies, and increased statutory compliance.

Daily communications between the county contracted ambulance provider and the MFD take place via dispatch-to-dispatch phone calls. This ineffective medium of communication can create delays in messages, which can also delay providing care during emergency medical calls. Information can also be misconstrued as it is relayed between multiple answering points. With the implementation of All-Band portable radios, a clear and direct line of communication will be utilized, positively affecting the safety of first responders and benefiting the citizens of Merced. This will affect day-to-day operations as well as mass casualty incidents.

A new mission of the MFD is the implementation of rescue paramedics on engine companies. With this new program, our agency must now meet the requirement for communications between hospital facilities and field paramedics. The hospital utilizes UHF radios that are inoperable with our current radio equipment. The implementation of all-band portable radios will create a successful communication link between hospital physicians and paramedics operating at emergency scenes. With these capabilities, the MFD will provide Advanced Life-Saving skills within minutes of being dispatched and ultimately increase our life saving capabilities.

The winter of 2017 brought record breaking rains and flooding to the County of Merced. This local disaster resulted in swollen waterways that displaced citizens, caused numerous rescues, and in many cases resulted in disastrous outcomes for the citizens that we serve. In order to combat these risks and increase safety, the implementation of a joint agency Swift Water Rescue team has been created as a new mission between the MFD and the Merced County Sheriff's office. A cadre of certified rescuers, supplied by the MFD and the Sheriff's office, will staff this collaborative, regional approach. The immediate goal of this program is to provide effective swift water and flood response throughout Merced County, with future goals including a rescue typing for this team, and participation

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in Statewide and Federal emergency response. With the implementation of new portable radios with all band capabilities, the MFD will be able to safely and effectively carry out this mission with coordinated communications. This joint mission will increase our operational area capabilities and increase the level of service provided to the citizens of our county.

Also in 2017, Golden Valley High School in Merced was the site of a possible catastrophic event, as local agencies received reports of an active shooter. Ten local agencies responded to the High School. While the event proved to be a hoax, major problems in coordinated communications were identified. Agency's responding were unable to communicate due to varying bands radio frequencies. With the implementation of All Band portable radios, the MFD will be able to communicate with all local agencies without exception.

If awarded the funds through the AFG, new portable radios will ensure Project 25 capabilities in recognition of The Office for Interoperability and Compatibility (OIC). The use of 700 MHZ band is not utilized by the MFD and therefore does not require testing for permitted exceptions and approvals by the OIC.

### **IMPACT ON CITY RESOURCES**

If awarded, a \$46,276.21 supplemental appropriation from the unappropriated General Fund balance to 001-0901-523.43-00 for use as the City of Merced's local match of 10% will be required. Additionally, the use of pooled cash to cover the \$416,485.86 grant would be required until grant funds are reimbursed.



## ADMINISTRATIVE REPORT

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### Agenda Item H.5.

Meeting Date: 10/15/2018

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

**SUBJECT:** Consider Approval of 2018-19 Regional, State and Federal Legislative Platform

### REPORT IN BRIEF

Council is asked to update Regional, State, and Federal Legislative Platform.

### RECOMMENDATION

**City Council** - Adopt a motion adopting the updated 2018-19 Regional, State and Federal Legislative Platform.

### 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 consideration 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, Chapter 200

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget

### DISCUSSION

The City Council adopted its first Legislative Platform in August 2017 after the Council expressed a desire for the City to take a stronger role advocating on behalf of the City in the regional, state and federal arenas. The Legislative Platform serves as the policy document to guide the City's advocacy efforts. It has been used to respond to State and Federal legislation that has been proposed during the year.

The City hired Townsend Public Affairs in October 2017 to provide advocacy services. Their representatives and staff have reviewed the Legislative Platform, reorganizing it and making some revisions and adding elements.

- The major addition in this year's update was a section to stress the Regional Partnerships that the City has with different agencies. While much City business is carried out independently,

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the City relies on a variety of partners and networks on everything from groundwater basins to multi-use pathway projects to anti-gang grants. Even in cases when the City is not the lead agency, or directly involved, it is in our best interests to be supportive of other agency's projects or legislative efforts.

- The 2018-19 Legislative Platform is reorganized to better group and categorize issues.

Staff will continue to use the Legislative Platform to advocate on behalf of the City using a variety of means including letters, phone calls, personal meetings, testimony and media outreach. Council will be kept aware of staffs efforts and receive copies of materials that are distributed. Monthly Legislative updates are provided to Council and Townsend representatives have provided Council with annual updates at their meetings.

If there are matters not addressed in the Legislative Platform that come up staff will bring them before Council for its consideration. The entire Legislative Platform will be brought back annually to the City Council for review and adoption after the California legislative session ends in October.

## **IMPACT ON CITY RESOURCES**

No appropriation of funds are needed.

## **ATTACHMENTS**

1. 2018-19 Regional, State and Federal Legislative Platform
2. 2018-19 Regional, State and Federal Legislative Platform, redline version



# City of Merced

## 2018-19 Regional, State and Federal Legislative Platform

### Platform Overview

The purpose of the Legislative Platform is to provide a means for summarizing the City of Merced's core legislative principles for the purpose of advocacy efforts at the regional, state and federal level. The Legislative Platform contains broad policy statements pertaining to a variety of issues that impact the City of Merced.

The Legislative Platform sets forth the City of Merced's legislative objectives for the 2018-19 Congressional and State Legislative Sessions and provides direction for our legislative advocates as they work to secure clear and strategic initiatives in Sacramento and Washington, D.C. Approval of the Legislative Platform also streamlines the City of Merced's process and allows the Executive team, Mayor and Mayor Pro Tem to effectively respond and take immediate action on pressing legislation under City Council direction.

The City Manager's Office will annually update the Legislative Platform taking into account new issues or priorities and State and federal budget as they relate to Merced or other regional partners. Additionally, the policies established within the platform do not preclude City Council consideration of additional legislative matters arising throughout the year that may be brought forward for City Council action.

The City of Merced's primary legislative focus includes protecting local government control, maintaining local government revenue, and obtaining funding for environmental sustainability, public safety, transportation, recreational, technology and infrastructure improvements.

Council will receive copies of correspondence to representatives and regulators regarding pending legislation, policies and rules, along with updates on any substantial meetings that take place.



The Legislative Platform includes the following guiding principles:

- The City favors legislation that enhances our ability to provide services to our residents;
- The City favors legislation that relieves the local government from rules and regulations with advantages and benefits that exceed the disadvantages to City residents;
- The City favors legislation that provides additional revenue or enables us to seek new or innovative revenue streams;
- The City opposes legislation that limits our self-rule or inhibits the ability of our residents to participate in local government decisions;
- The City opposes legislation that adds new or unjustified rules and regulations with disadvantages that exceed the benefits and advantages to City residents; and
- The City oppose unfunded mandates or any other legislation that adds more costs to City operations that aren't reimbursed, or takes away City funding or revenue streams without replacing the funds.

The Legislative Platform is organized into several broad categories that cover the breadth of the City of Merced's services, operations and assets, and other responsibilities. These categories include:

1. General Government
  - a. Local Control
  - b. Economic Sustainability
  - c. Sustainable Public Pensions
2. Public Safety, Emergency Management and Homeland Security
3. Community Development and Transportation
4. Community Services, Housing and Homelessness
5. Water and Utilities
6. Environmental Sustainability
7. Regional Partnerships

## **1. General Government**

- Oppose additional State and Federal unfunded mandates.
- Oppose any State or Federal mandates without the direct or indirect reimbursement for the costs associated with complying with new and/or modified laws, regulations, policies, procedures, permits and/or programs.
- Oppose legislation that would result in the City and/or its residents to be unduly burdened by new or increased fees, levies, rates, charges or taxes that don't have a direct and measurably benefit to the public.
- Oppose legislation that would require public agencies to share information that could be used by malicious intended groups or individuals to compromise the systems, services or private information of public employees or citizens.
- Support best practices in fiscal sustainability and best practices administrative initiatives to ensure the delivery of superlative City services.
- Monitor initiatives which seek changes in fiscal relationships at the local, State and Federal level.
- Support legislation that guarantees on-going revenue sources for local government.
- Pursue funding opportunities for public facilities and services including capital improvement projects, public works projects, homeland security, public safety, technology, and parks and recreation.
- Support legislation that would prohibit the flying of helicopters or other aircraft at low altitudes over residential neighborhoods excluding police, fire or other public safety or other health and safety or industrial aircraft.
- Support legislation that would establish statewide regulations prohibiting the use of unmanned aircraft to record or transmit any visual or audio recording of any person or private real property in which the subject person or owner of property has a reasonable expectation of privacy, excluding public safety agencies.

### **Local Control**

- Support legislation that enhances local control of resources and allows cities to address the needs of local constituents within a framework of regional cooperation.
- Oppose pre-emption of local authority whether by State or Federal legislation or ballot propositions.

- Support legislation that encourages the use of Federal and State incentives for local government action rather than mandates.
- Oppose legislation that would prevent public comment or review where it is currently allowed, prevents public comments from being used for the basis of regulatory decisions and oppose legislation that removes Council oversight of land use and other regulatory processes.
- Monitor land use issues and support legislative and administrative efforts to maintain the integrity of local government's control over land use, planning and zoning matters.
- Support legislation that would preserve local control for regulation of medicinal and recreational cannabis sales, delivery, distribution, warehousing, growing and testing facilities. Also support preserving the City's right to tax the sales of cannabis products and keep revenues from local taxes, and prevent lowering the consumer protections of Proposition 64 and 215.
- Support measures increasing local autonomy, protecting privacy and maintaining local authority over public records. This includes measures that provide for the recovery of costs with regards to public records requests.
- Support transparent government and the role of the California Public Records Act while simultaneously observing and protecting the current Rule of Law in California including better legislation the protection of privacy of public records and enhancing laws related to digital records.
- Oppose any legislation that would undermine voter-approved initiatives to guarantee on-going revenue sources for local government.
- Oppose legislation that would pre-empt local authority over local taxes and fees.
- Protect the City's right to levy and collect Transient Occupancy Taxes from hotels, including online hotel intermediaries.
- Oppose any Federal or State legislation that would provide immunity to online hotel intermediaries and/or prohibit the City from collecting, retroactively or otherwise, Transient Occupancy Taxes.
- Oppose any attempt to eliminate or limit the traditional tax exemption for municipal bonds.

- Engage in, and advocate for, legislation or ballot measures to prevent the State from borrowing, raiding or otherwise redirecting local government funds (local taxes, property taxes, etc.).
- Continue to promote increased flexibility for the utilization of municipally-generated revenues.
- Support legislation that includes operational expenses as an acceptable use of public, educational, government access (PEG) funds, collected from cable franchise fees per the Federal Communications Commission, for government access stations.

### **Economic Sustainability**

- Advocate for measures that support the City's continued efforts to retain and promote the success of local businesses and industries.
- Support tourism and its role in creating jobs and economic benefits to the City.
- Support legislation that would allow local brick-and-mortar retailers to compete more effectively against out-of-state internet sellers.
- Support legislative efforts on behalf of the Investing in Opportunity Act that would result in the creation of Economic Opportunity Zones, and, support efforts to have the Governor designate Economic Opportunity Zones in Merced.

### **Sustainable Public Pensions**

- Support League of California Cities and other legislative efforts for reform and to achieve sustainability of pensions and other post-employment benefits (OPEB).
- Oppose legislative efforts that constrain the ability of the California Public Employees' Retirement System (CalPERS) to effectively manage its investment portfolio or otherwise impair the sustainability of the pension system.
- Monitor legislative initiatives designed to achieve public employee pension reform.

## **2. Public Safety, Emergency Management and Homeland Security**

- Support legislation and seek funding that will assist in preventing and reducing crimes, primarily related to drugs, violence, mental illness, and pedestrian safety.
- Oppose legislation to expand “early release” for low-risk serious and violent offenders without an increase in sustained funding to ensure responsible supervision by parole agents and for local agencies that provide post-release supervision.
- Oppose any efforts to further decriminalize existing crimes in California or lessen the sentences of any offenses that would result in the release of serious criminals who would further harm the safety of the public and law enforcement personnel.
- Support a more effective and relevant reporting of local public safety agency data, and ensure that any disclosed data be fair and equitable.
- Advocate to maintain peace officer privacy rights in Pitchess motions and Public Record Act requests.
- Advocate against any extension of the statute of limitations in public safety worker’s compensation cases.
- Support strategies, legislation and funding that promote emergency management, resilience and recovery efforts.
- Oppose legislation or other administrative actions that seek to limit the Police Department’s ability to collect and utilize asset forfeiture funds for a wide variety of police services.
- Support legislation that provides frontline funding for police services associated with the early release of state prisoners as a result of State-mandated criminal justice realignment.
- Support the development and use of new firefighting technology that result in higher levels of health and safety.
- Advocate for legislation and funding that would take advantage of current technology to prevent crime (i.e. the ability to use surveillance cameras and automatic license plate recognition technology).
- Support the deployment and research of new emerging technologies that provide law enforcement with tools to provide the highest level of service including:
  - Next Generation 911
  - Mobile & Body Worn Cameras
  - New generation Investigative Technology

- Collect, store and retain digital evidence
- Support interoperable communication solutions that meet radio spectrum needs of first responders and funding to digitize public safety communications.
- Advocate for Interagency Communications Interoperability System (I.C.I. System) participation among jurisdictions and funding for equipment and operations.
- Support efforts to eradicate human trafficking.
- Support legislation that aids paramedics and other emergency medical service practitioners in their ability to be responsive to community needs.
- Seek grants and pilot project/demonstration project funding for public safety programs and priorities.
- Support funding initiatives for Peace Officers Standards and Training (POST) and other law enforcement support organizations.
- Support and encourage legislation and budget negotiations that retain funding for State and local law enforcement agencies, including behavioral health treatment, drug and trafficking taskforces, crisis intervention teams, and adequate patrol staffing.
- Identify opportunities for reimbursements to supplement increased custodial and supervision costs resulting from prison realignment.
- Oppose legislation with mandates for local agency adherence to operations and programs that may not be reimbursable by State budget funds.
- Support legislation that expands the treatment of, and response to, mentally ill persons and the growing issues associated with the mentally ill.
- Support funding for the increased demand being placed on fire and law enforcement for response to societal issues including homelessness; substance abuse and dependency; and unpredictable and potentially harmful behavior towards the public and public safety officers.
- Support funding opportunities for local homeland security, public safety and emergency management programs including, training, and new technology and equipment (e.g. closed-circuit television) that does not supplant other City funding, services or operations.
- Seek grants and pilot project/demonstration project funding for City homeland security, public safety and emergency management priorities.

### **3. Community Development and Transportation**

- Support legislation to streamline and increase efficiency of the California Environmental Quality Act (CEQA) while ensuring environmental stewardship is retained.
- Oppose legislation that adds more mandatory elements or requirements to City and County General Plans, including the Housing Element, or reduces or eliminates public input into local land use decisions.
- Support legislation that furthers the needs of UC Merced and oppose legislation that would impede its mission to educate students and continue its research mission.
- Support measures and discretionary grant opportunities that provide funding for critical transportation infrastructure projects to improve goods movement, safety and mobility for residents and visitors in and around Merced.
- Support legislation that expands transportation, planning, funding, and voluntary incentives to include an increasingly multi-modal perspective focusing on transit, alternative fuel vehicles and fleets, pedestrian walkways, bikeways, multi-use trails and parking.
- Support legislation that brings the California High-Speed Rail Project to Merced and oppose legislation that impedes its progress. Support strategies, legislation, regulatory efforts and funding that promote the location of the California High Speed Rail Heavy Maintenance Facility and other support facilities in Merced and advocate with the High-Speed Rail Authority on behalf of that location.
- Support legislation that brings the Altamont Commuter Express (ACE) to Merced and oppose legislation that impedes its progress.
- Oppose legislation that would prevent the City from providing regulatory oversight or requiring licensing to online transportation networks.
- Support State and federal legislation that enhances the safety of City streets for automobile, bicycle and pedestrian traffic, including issues related to photo speed radar enforcement, traffic congestion reduction programs, air quality improvement and regional transportation improvements.
- Support measures which provide the City's fair share of funding from the State's cap and trade funding sources.
- Support legislation that would discourage the misuse of disabled parking placards.

- Work with other agencies in the region to support current State and Federal funding levels and encourage increased funding and flexibility in both operating and capital funding for mass transit.
- In conjunction with Merced Association of Governments (MCAG) and other agencies, support legislation that provides incentives for the development of local transportation corridors.
- Support local, regional, State and Federal legislative, administrative, and regulatory efforts that will expand and/or supplement funding for maintaining and upgrading major thoroughfares in the City, allowing for better traffic flow, goods movement, improved air quality and pedestrian safety.
- Support efforts to increase State or Federal funding for necessary infrastructure improvements.
- Support increased State and Federal resources to mitigate traffic congestion and improve air quality on City streets and rebuild and maintain roads.

#### **4. Community Services, Housing and Homelessness**

- Continue to support legislation that enhances the health of the general population, with an emphasis on programs that focus on youth, adult, aging and at-risk populations.
- Support legislation that encourages policies and programming that promote healthy lifestyles; e.g. physical activity, preventative screenings, healthful eating and core wellness for people of all ages and abilities.
- Support efforts to increase State resources for local arts, cultural events, and education and library programs, including performing and visual arts programs.
- Support funding for ADA facility, sidewalk and park upgrades.
- Support legislative and administrative efforts that ensure equitable and transparent distribution of funding from Proposition 68 for park, recreation and related purposes.
- Support legislation that provides for increased services to, or funding for, at-risk populations such as adult and aging, homeless, disabled and other challenged populations.
- Support legislation that addresses the need for housing and supportive services, (e.g. health, mental health and social services) for the City's homeless population.



- Support legislative efforts to regulate second-hand smoke of any substance.
- Support efforts to provide additional services to veterans, especially homeless veterans, ranging from medical care to counseling to education and employment.
- Pursue incentive-based housing legislation to encourage expanding the housing supply in the City, including more flexibility for local jurisdictions to work together to provide housing that counts towards Regional Housing Needs Assessment (RHNA) requirements.
- Support Federal and State funding for affordable senior and veteran housing opportunities and projects.
- Support continued or expanded funding for the Community Development Block Grant (CDBG) Program.

## **5. Environmental Sustainability**

- Advocate for cost-effective, sustainable, and responsible environmental policy and programs in the areas of energy efficiency, greenhouse gases, potable water, clean air, and wastewater, solid waste removal and storm water.
- Support legislation protecting, preserving and restoring the natural environment where it does not conflict with local control and land use designations.
- Support efforts to create partnerships between the City government, County government, School Districts, Water Agencies, other entities, businesses, residents and all other community stakeholders as necessary to achieve a sustainable community.
- Support funding to foster an energy-efficient, walk-able community that provides ample goods, services and benefits to all residents while respecting the local environment.

## **6. Water and Utilities**

- Ensure the State continues to fund the California Department of Transportation (Caltrans) capital construction budget for offsetting their requirements to limit their total maximum daily load (TMDL) for pollutant discharge. Encourage Caltrans to continue to enter into Cooperative Implementation Agreements with local jurisdictions to fund storm water capture and retention projects.

- Ensure the State Water Resources Control Board continues to provide Caltrans a Compliance-Based Credit System that includes compliance based on using funding to support storm water projects that would meet statewide TMDLs.
- Support legislation for funding storm water infrastructure improvements, including building facilities to capture storm water runoff and integrate with local, regional and statewide water resources.
- Support legislation that would provide pragmatic compliance in statewide and regional National Pollution Discharge Elimination System (NPDES) permits.
- Support State and regional efforts to develop avenues for agencies to collect revenue to support storm water retention efforts.
- Support legislation that would classify storm water as a utility similar to water, wastewater and solid waste services.
- Support measures that uphold the ability of locally-elected City Councils to regulate and manage their publicly-owned water utility so that local authority is not eroded by State or federal agencies, authorities or other regulatory agencies.
- Oppose legislation that adds requirements to provide services that utility customers do not value, want or need.
- Support legislation that ensures local ratemaking authority is preserved and remains meaningful.
- Support policies that recognize, support and credit the role of water conservation and use of efficiency in reducing greenhouse gas emissions.
- Support local control of groundwater uses and groundwater rights.
- Support local control for planning management and use of water supplies to address local needs and contribute to long-term sustainability.
- Support efforts that seek to bring federal sources of funding to California for water infrastructure development and renewable energy development through water management.
- Support cost-effective water conservation programs and incentives that are funded by the State or federal government.
- Support flexible funding options that will help local communities upgrade and replace water and wastewater infrastructure.

- Support legislation for State and Federal funding and permitting for the development of local water supplies and water conservation efforts, along with additional surface water and groundwater storage and recharge efforts.
- Support legislative and administrative efforts that ensure equitable and transparent distribution of funding from Propositions 1 and 68, as well as any future bond measures, for water- and wastewater-related projects.

## **7. Regional Partnerships**

- Support legislation in conjunction with Merced County that will result in additional funding, services or programs that will benefit City residents including law enforcement, homeless housing, veterans support, transportation and mental health services, and work with Merced County to oppose legislation or regulations that would cut those services, programs or funding.
- Support legislation working with local educational institutions including the Merced City School District, Weaver Union School District, Merced Union High School District, Merced County Office of Education, Merced College and the University of California, Merced, that will result in additional funding, services or programs that will benefit City residents including job training, STEAM teaching and new and upgraded facilities.
- Support legislation working with the Merced Irrigation District and other water partners that will result in additional funding, services or programs that will benefit City residents, including funding groundwater basin studies and floodwater mitigation measures, or creating additional water storage.



# City of Merced

## 2018-19 Regional, State and Federal Legislative Platform

### Platform Overview

The purpose of the Legislative Platform is to provide a means for summarizing the City of Merced's core legislative principles for the purpose of advocacy efforts at the regional, state and federal level. The Legislative Platform contains broad policy statements pertaining to a variety of issues that impact the City of Merced.

The Legislative Platform sets forth the City of Merced's legislative objectives for the ~~2017-18~~ 2018-19 Congressional and State Legislative Sessions and provides direction for our legislative advocates as they work to secure clear and strategic initiatives in Sacramento and Washington, D.C. Approval of the Legislative Platform also streamlines the City of Merced's process and allows the Executive team, Mayor and Mayor Pro Tem to effectively respond and take immediate action on pressing legislation under City Council direction.

The City Manager's Office will annually update the Legislative Platform taking into account new issues or priorities and State and federal budget as they relate to Merced or other regional partners. Additionally, the policies established within the platform do not preclude City Council consideration of additional legislative matters arising throughout the year that may be brought forward for City Council action.

The City of Merced's primary legislative focus includes protecting local government control, maintaining local government revenue, and obtaining funding for environmental sustainability, public safety, transportation, recreational, technology and infrastructure improvements.

Council will receive copies of correspondence to representatives and regulators regarding pending legislation, policies and rules, along with updates on any substantial meetings that take place.

The Legislative Platform includes the following guiding principles:

- The City favors legislation that enhances our ability to provide services to our residents;
- The City favors legislation that relieves the local government from rules and regulations with advantages and benefits that exceed the disadvantages to City residents;
- The City favors legislation that provides additional revenue or enables us to seek new or innovative revenue streams;
- The City opposes legislation that limits our self-rule or inhibits the ability of our residents to participate in local government decisions;
- The City opposes legislation that adds new or unjustified rules and regulations with disadvantages that exceed the benefits and advantages to City residents; and
- The City oppose unfunded mandates or any other legislation that adds more costs to City operations that aren't reimbursed, or takes away City funding or revenue streams without replacing the funds.

The Legislative Platform is organized into several broad categories that cover the breadth of the City of Merced's services, operations and assets, and other responsibilities. These categories include:

1. General Government
  - ~~→a.~~ Local Control
  - ~~→b.~~ Economic Sustainability
  - ~~→c.~~ Sustainable Public Pensions ~~Reform~~
- ~~5.~~ Public Safety
- ~~6-2.~~ Emergency Management and Homeland Security
- ~~7-3.~~ Community Development and Transportation
- ~~4.~~ Community Services, Housing and Homelessness
- ~~8-5.~~ Water and Utilities
- ~~9.~~ Housing
- ~~10-6.~~ Environmental Sustainability
- ~~Public Works~~ ~~Water and Utilities~~
- ~~11-7.~~ Regional Partnerships

## 1. General Government

- ~~• Support legislation that encourages policies and programming that promote healthy lifestyles; e.g. physical activity, preventative screenings, healthful eating and core wellness for people of all ages and abilities.~~
- ~~• Support efforts to increase State resources for local arts, cultural events, and education and library programs, including performing and visual arts programs.~~
- ~~• Support efforts to increase State or Federal funding for necessary infrastructure improvements.~~
- Oppose additional State and FFederal unfunded mandates.
- Oppose any State or Federal mandates without the direct or indirect reimbursement for the costs associated with complying with new and/or modified laws, regulations, policies, procedures, permits and/or programs.
- Oppose legislation that would result in the City and/or its residents to be unduly burdened by new or increased fees, levies, rates, charges or taxes that don't have a direct and measurably benefit to the public.
- Oppose legislation that would require public agencies to share information that could be used by malicious intended groups or individuals to compromise the systems, services or private information of public employees or citizens.
- Support best practices in fiscal sustainability and best practices administrative initiatives to ensure the delivery of superlative City services.
- Monitor initiatives which seek changes in fiscal relationships at the local, State and Federal level.
- Support legislation that guarantees on-going revenue sources for local government.
- Pursue funding opportunities for public facilities and services including capital improvement projects, public works projects, homeland security, public safety, technology, and parks and recreation.
- Support legislation that would prohibit the flying of helicopters or other aircraft at low altitudes over residential neighborhoods excluding police, fire or other public safety or other health and safety or industrial aircraft.
- Support legislation that would establish statewide regulations prohibiting the use of unmanned aircraft to record or transmit any visual or audio recording of any

person or private real property in which the subject person or owner of property has a reasonable expectation of privacy, excluding public safety agencies.

- ~~• Oppose legislation that would require public agencies to share information that could be used by malicious intended groups or individuals to compromise the systems, services or private information of public employees or citizens.~~
- ~~• Advocate to maintain peace officer privacy rights in Pitchess motions and Public Record Act requests.~~
- ~~• Advocate against any extension of the statute of limitations in public safety worker's compensation cases.~~
- Oppose legislation that would result in the City and/or its residents to be unduly burdened by new or increased fees, levies, rates, charges or taxes that don't have a direct and measurably benefit to the public.

## **2. Local Control**

- Support legislation that enhances local control of resources and allows cities to address the needs of local constituents within a framework of regional cooperation.
- Oppose pre-emption of local authority whether by State or Federal legislation or ballot propositions.
- Support legislation that encourages the use of ~~f~~Federal and State incentives for local government action rather than mandates.
- ~~○ Oppose any State or Ffederal mandates without the direct or indirect reimbursement for the costs associated with complying with new and/or modified laws, regulations, policies, procedures, permits and/or programs.~~
- Oppose legislation that would prevent public comment or review where it is currently allowed, prevents public comments from being used for the basis of regulatory decisions and oppose legislation that removes Council oversight of land use and other regulatory processes.
- Monitor land use issues and support legislative and administrative efforts to maintain the integrity of local government's control over land use, planning and zoning matters.
- ~~○ Oppose pre-emption of local authority whether by State or Ffederal legislation or ballot propositions.~~

- Support legislation that would preserve local control for regulation of medicinal and recreational cannabis sales, delivery, distribution, warehousing, growing and testing facilities. Also support preserving the City's right to tax the sales of cannabis products and keep revenues from local taxes, and prevent lowering the consumer protections of Proposition 64 and 215.
- Support measures increasing local autonomy, protecting privacy and maintaining local authority over public records. This includes measures that provide for the recovery of costs with regards to public records requests.
- Support transparent government and the role of the California Public Records Act while simultaneously observing and protecting the current Rule of Law in California including better legislation the protection of privacy of public records and enhancing laws related to digital records.
- ~~○ Support best practices in fiscal sustainability and best practices administrative initiatives to ensure the delivery of superlative City services.~~
- ~~○ Monitor initiatives which seek changes in fiscal relationships at the local, State and Federal level.~~
- ~~○ Support legislation that guarantees on-going revenue sources for local government.~~
- ~~○ Pursue funding opportunities for public facilities and services including capital improvement projects, public works projects, homeland security, public safety, technology, and parks and recreation.~~
- Oppose any legislation that would undermine voter-approved initiatives to guarantee on-going revenue sources for local government.
- Oppose legislation that would pre-empt local authority over local taxes and fees.
- Protect the City's right to levy and collect Transient Occupancy Taxes from hotels, including online hotel intermediaries.
- Oppose any Federal or State legislation that would provide immunity to online hotel intermediaries and/or prohibit the City from collecting, retroactively or otherwise, Transient Occupancy Taxes.
- ~~○ Support continued or expanded funding for the Community Development Block Grant (CDBG) Program.~~



- Oppose any attempt to eliminate or limit the traditional tax exemption for municipal bonds.
- Engage in, and advocate for, legislation or ballot measures to prevent the State from borrowing, raiding or otherwise redirecting local government funds (local taxes, property taxes, etc.).
- Continue to promote increased flexibility for the utilization of municipally-generated revenues.
- Support legislation that includes operational expenses as an acceptable use of public, educational, government access (PEG) funds, collected from cable franchise fees per the Federal Communications Commission, for government access stations.

### **3. Economic Sustainability**

- Advocate for measures that support the City's continued efforts to retain and promote the success of local businesses and industries.
- Support tourism and its role in creating jobs and economic benefits to the City.
- Support legislation that would allow local brick-and-mortar retailers to compete more effectively against out-of-state internet sellers.
- Support legislative efforts on behalf of the Investing in Opportunity Act that would result in the creation of Economic Opportunity Zones, and, ~~if passed,~~ support efforts to have the Governor designate Economic Opportunity Zones in Merced.

### **4. Sustainable Public Pensions Reform**

- Support League of California Cities and other legislative efforts for ~~pension~~ reform and to achieve sustainability of pensions and other post-employment benefits (OPEB).
- Oppose legislative efforts that constrain the ability of the California Public Employees' Retirement System (CalPERS) to effectively manage its investment portfolio or otherwise impair the sustainability of the pension system.
- Monitor legislative initiatives designed to achieve public employee pension reform.

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## **52. Public Safety, Emergency Management and Homeland Security**

- Support legislation and seek funding that will assist in preventing and reducing crimes, primarily related to drugs, violence, mental illness, and pedestrian safety.
- Oppose legislation to expand “early release” for low-risk serious and violent offenders without an increase in sustained funding to ensure responsible supervision by parole agents and for local agencies that provide post-release supervision.
- Oppose any efforts to further decriminalize existing crimes in California or lessen the sentences of any offenses that would result in the release of serious criminals who would further harm the safety of the public and law enforcement personnel.
- Support a more effective and relevant reporting of local public safety agency data, and ensure that any disclosed data be fair and equitable.
- Advocate to maintain peace officer privacy rights in Pitchess motions and Public Record Act requests.
- Advocate against any extension of the statute of limitations in public safety worker’s compensation cases.
- Support strategies, legislation and funding that promote emergency management, resilience and recovery efforts.
- Oppose legislation or other administrative actions that seek to limit the Police Department’s ability to collect and utilize asset forfeiture funds for a wide variety of police services.
- Support legislation that provides frontline funding for police services associated with the early release of state prisoners as a result of State-mandated criminal justice realignment.
- Support the development and use of new firefighting technology that result in higher levels of health and safety.
- Advocate for legislation and funding that would take advantage of current technology to prevent crime (i.e. the ability to use surveillance cameras and automatic license plate recognition technology).
- Support the deployment and research of new emerging technologies that provide law enforcement with tools to provide the highest level of service including:
  - Next Generation 911
  - Mobile & Body Worn Cameras
  - New generation Investigative Technology

- Collect, store and retain digital evidence
- ~~● Support legislation and seek funding that will assist in preventing and reducing crimes, primarily related to drugs, violence, mental illness, and pedestrian safety.~~
- ~~● Oppose legislation to expand “early release” for low risk serious and violent offenders without an increase in sustained funding to ensure responsible supervision by parole agents and for local agencies that provide post-release supervision.~~
- ~~● Oppose any efforts to further decriminalize existing crimes in California or lessen the sentences of any offenses that would result in the release of serious criminals who would further harm the safety of the public and law enforcement personnel.~~
- Support interoperable communication solutions that meet radio spectrum needs of first responders and funding to digitize public safety communications.
- Advocate for Interagency Communications Interoperability System (I.C.I. System) participation among jurisdictions and funding for equipment and operations.
- Support efforts to eradicate human trafficking.
- Support legislation that aids paramedics and other emergency medical service practitioners in their ability to be responsive to community needs.
- Seek grants and pilot project/demonstration project funding for public safety programs and priorities.
- Support funding initiatives for Peace Officers Standards and Training (POST) and other law enforcement support organizations.
- Support and encourage legislation and budget negotiations that retain funding for State and local law enforcement agencies, including behavioral health treatment, drug and trafficking taskforces, crisis intervention teams, and adequate patrol staffing.
- Identify opportunities for reimbursements to supplement increased custodial and supervision costs resulting from prison realignment.
- Oppose legislation with mandates for local agency adherence to operations and programs that may not be reimbursable by State budget funds.
- Support legislation that expands the treatment of, and response to, mentally ill persons and the growing issues associated with the mentally ill.

- Support funding for the increased demand being placed on fire and law enforcement for response to societal issues including homelessness; substance abuse and dependency; and unpredictable and potentially harmful behavior towards the public and public safety officers.

~~Support a more effective and relevant reporting of local public safety agency data, and ensure that any disclosed data be fair and equitable.~~

~~Advocate to maintain peace officer privacy rights in Pitchess motions and Public Record Act requests.~~

~~Advocate against any extension of the statute of limitations in public safety worker's compensation cases.~~

## **~~6. Emergency Management and Homeland Security~~**

- ~~• Support strategies, legislation and funding that promote emergency management, resilience and recovery efforts.~~
- ~~• Advocate for Interagency Communications Interoperability System (I.C.I. System) participation among jurisdictions and funding for equipment and operations.~~
- Support funding opportunities for local homeland security, public safety and emergency management programs including, training, and new technology and equipment (e.g. closed-circuit television) that does not supplant other City funding, services or operations.
- Seek grants and pilot project/demonstration project funding for City homeland security, public safety and emergency management priorities.

## **73. Community Development and Transportation**

- Support legislation to streamline and increase efficiency of the California Environmental Quality Act (CEQA) while ensuring environmental stewardship is retained.
- ~~• Monitor land use issues and support legislative and administrative efforts to maintain the integrity of local government's control over land use, planning and zoning matters.~~
- Oppose legislation that adds more mandatory elements or requirements to City and County General Plans, including the Housing Element, or reduces or eliminates public input into local land use decisions.

- Support legislation that furthers the needs of UC Merced and oppose legislation that would impede its mission to educate students and continue its research mission.
- Support measures and discretionary grant opportunities that provide funding for critical transportation infrastructure projects to improve goods movement, safety and mobility for residents and visitors in and around Merced.
- Support legislation that expands transportation, planning, funding, and voluntary incentives to include an increasingly multi-modal perspective focusing on transit, alternative fuel vehicles and fleets, pedestrian walkways, bikeways, multi-use trails and parking.
- ~~Support legislation that furthers the needs of UC Merced and oppose legislation that would impede its mission to educate students and continue its research mission.~~
- Support legislation that brings the California High-Speed Rail Project to Merced and oppose legislation that impedes its progress. Support strategies, legislation, regulatory efforts and funding that promote the location of the California High Speed Rail Heavy Maintenance Facility and other support facilities in Merced and advocate with the High-Speed Rail Authority on behalf of that location.
- Support legislation that brings the Altamont Commuter Express (ACE) to Merced and oppose legislation that impedes its progress.
- Oppose legislation that would prevent the City from providing regulatory oversight or requiring licensing to online transportation networks.
- Support State and federal legislation that enhances the safety of City streets for automobile, bicycle and pedestrian traffic, including issues related to photo speed radar enforcement, traffic congestion reduction programs, air quality improvement and regional transportation improvements.
- Support measures which provide the City's fair share of funding from the State's cap and trade funding sources.
- Support legislation that would discourage the misuse of disabled parking placards.
- Work with other agencies in the region to support current State and Ffederal funding levels and encourage increased funding and flexibility in both operating and capital funding for mass transit.
- In conjunction with Merced Association of Governments (MCAG) and other agencies, support legislation that provides incentives for the development of local transportation corridors.

- Support local, regional, State and [f](#)~~F~~ederal legislative, administrative, and regulatory efforts that will expand and/or supplement funding for maintaining and upgrading major thoroughfares in the City, allowing for better traffic flow, goods movement, improved air quality and pedestrian safety.
- [Support efforts to increase State or Federal funding for necessary infrastructure improvements.](#)
- Support increased State and [f](#)~~F~~ederal resources to mitigate traffic congestion and improve air quality on City streets and rebuild and maintain roads.

#### **[84. Community Services, Housing and Homelessness](#)**

- Continue to support legislation that enhances the health of the general population, with an emphasis on programs that focus on youth, adult, aging and at-risk populations.
- [Support legislation that encourages policies and programing that promote healthy lifestyles; e.g. physical activity, preventative screenings, healthful eating and core wellness for people of all ages and abilities.](#)
- [Support efforts to increase State resources for local arts, cultural events, and education and library programs, including performing and visual arts programs.](#)
- [Support funding for ADA facility, sidewalk and park upgrades.](#)
- [Support legislative and administrative efforts that ensure equitable and transparent distribution of funding from Proposition 68 for park, recreation and related purposes.](#)
- Support legislation that provides for increased services to, or funding for, at-risk populations such as adult and aging, homeless, disabled and other challenged populations.
- Support legislation that addresses the need for housing and supportive services, (e.g. health, mental health and social services) for the City's homeless population.
- Support legislative efforts to regulate second-hand smoke of any substance.
- Support efforts to provide additional services to veterans, especially homeless veterans, ranging from medical care to counseling to education and employment.

#### **[9. Housing](#)**

- Pursue incentive-based housing legislation to encourage expanding the housing supply in the City, including more flexibility for local jurisdictions to work together to provide housing that counts towards Regional Housing Needs Assessment (RHNA) requirements.
- Support ~~f~~Eederal and State funding for affordable senior and veteran housing opportunities and projects.
- Support continued or expanded funding for the Community Development Block Grant (CDBG) Program.

#### **105. Environmental Sustainability**

- Advocate for cost-effective, sustainable, and responsible environmental policy and programs in the areas of energy efficiency, greenhouse gases, potable water, clean air, and wastewater, solid waste removal and storm water.
- Support legislation protecting, preserving and restoring the natural environment where it does not conflict with local control and land use designations.
- Support efforts to create partnerships between the City government, County government, School Districts, Water Agencies, other entities, businesses, residents and all other community stakeholders as necessary to achieve a sustainable community.
- Support funding to foster an energy-efficient, walk-able community that provides ample goods, services and benefits to all residents while respecting the local environment.

#### **116. Public Works—Water and Utilities**

- Ensure the State continues to fund the California Department of Transportation (Caltrans) capital construction budget for offsetting their requirements to limit their total maximum daily load (TMDL) for pollutant discharge. Encourage Caltrans to continue to enter into Cooperative Implementation Agreements with local jurisdictions to fund storm water capture and retention projects.
- Ensure the State Water Resources Control Board continues to provide Caltrans a Compliance-Based Credit System that includes compliance based on using funding to support storm water projects that would meet statewide TMDLs.



- Support legislation for funding storm water infrastructure improvements, including building facilities to capture storm water runoff and integrate with local, regional and statewide water resources.
- Support legislation that would provide pragmatic compliance in statewide and regional National Pollution Discharge Elimination System (NPDES) permits.
- Support State and regional efforts to develop avenues for agencies to collect revenue to support storm water retention efforts.
- Support legislation that would classify storm water as a utility similar to water, wastewater and solid waste services.
- Support measures that uphold the ability of locally-elected City Councils to regulate and manage their publicly-owned water utility so that local authority is not eroded by State or federal agencies, authorities or other regulatory agencies.
- Oppose legislation that adds requirements to provide services that utility customers do not value, want or need.
- Support legislation that ensures local ratemaking authority is preserved and remains meaningful.
- Support policies that recognize, support and credit the role of water conservation and use of efficiency in reducing greenhouse gas emissions.
- Support local control of groundwater uses and groundwater rights.
- Support local control for planning management and use of water supplies to address local needs and contribute to long-term sustainability.
- Support efforts that seek to bring federal sources of funding to California for water infrastructure development and renewable energy development through water management.
- Support cost-effective water conservation programs and incentives that are funded by the State or federal government.
- Support flexible funding options that will help local communities upgrade and replace water and wastewater infrastructure.
- Support legislation for State and Federal funding and permitting for the development of local water supplies and water conservation efforts, along with additional surface water and groundwater storage and recharge efforts.

- Support legislative and administrative efforts that ensure equitable and transparent distribution of funding from Propositions 1 and 68, as well as any future bond measures, for water- and wastewater-related projects.

#### **117. Regional Partnerships**

- Support legislation in conjunction with Merced County that will result in additional funding, services or programs that will benefit City residents including law enforcement, homeless housing, veterans support, transportation and mental health services, and work with Merced County to oppose legislation or regulations that would cut those services, programs or funding.
- Support legislation working with local educational institutions including the Merced City School District, Weaver Union School District, Merced Union High School District, Merced County Office of Education, Merced College and the University of California, Merced, that will result in additional funding, services or programs that will benefit City residents including job training, STEAM teaching and new and upgraded facilities.
- Support legislation working with the Merced Irrigation District and other water partners that will result in additional funding, services or programs that will benefit City residents, including funding groundwater basin studies and floodwater mitigation measures, or creating additional water storage.



## ADMINISTRATIVE REPORT

**Agenda Item H.6.**

Meeting Date: 10/15/2018

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

**SUBJECT:** Second Amendment to Agreement for Professional Services with AECOM Technical Services, Inc., in the Amount of \$11,508 for Well Site Design Services, Project No. 114001

### REPORT IN BRIEF

Authorizes a second amendment to the agreement for well design services for a new production water well at the Wastewater Treatment Plant.

### RECOMMENDATION

**City Council** - Adopt a motion approving an amendment to an agreement for professional services with AECOM Technical Services, Inc., in the amount of \$11,508 for engineering design services; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Approve, subject to modifications as conditioned by City Council; or,
3. Deny.

### AUTHORITY

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

Services with an estimated value greater than \$31,000.00 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

The City of Merced Wastewater Treatment Plant is located at 10260 Gove Road in south Merced. The facility's fresh water needs for the restrooms, laboratory, etc. are served by an existing groundwater production well that is over thirty years old. When the well is occasionally taken off-line for maintenance and repairs there is no fresh water supply to the facility.

A new well has been installed, Well #2, to provide redundant capacity for when the existing well is off-line. The pump station for the new well is currently under construction. The project generally consists of: submersible pump, concrete pad, electrical service, chlorine feed, pressure tank, and associated plumbing.

On April 6, 2015, the City Council awarded an engineering design professional services agreement with AECOM Technical Services, Inc. (AECOM), for the new water well system. Under staff direction AECOM developed plans and specifications for the pump station construction bid that was awarded to Soracco Junior General Engineering (Soracco).

Soracco's bid package included an electrical subcontractor, Amerine Systems (Amerine), to perform electrical integration services to tie the new water system into the existing plant operations. Soracco began the process of submitting electric component data in accordance with contract provisions. The City forwarded these to AECOM staff who then questioned the qualifications of Amerine as the submittals did not meet the project standards. Staff notified Soracco of this finding and they informed the City in December 2017 that Amerine is not qualified to perform the required electrical control integration work.

In March 2018, Soracco submitted the qualifications of a newly hired electrical subcontractor-Automated Control & Technical Services. This action resulted in the need to re-submit electrical component data for additional review by AECOM's electrical engineers. The City informed Soracco that AECOM's additional review costs incurred due to their change in subcontractor would be deducted from their contract payments.

The contract amendment under consideration is necessary to reimburse AECOM for unanticipated additional costs related to the project electrical system completion. Staff recommend approval of the AECOM contract amendment, as their continuing additional services are necessary for project completion.

### **Past Actions**

On April 4, 2016, the City Council awarded a contract to Nor-Cal Pump and Well Drilling to construct the new Well #2 at the Waste Water Treatment Plant. The new well was installed in the summer of 2016.

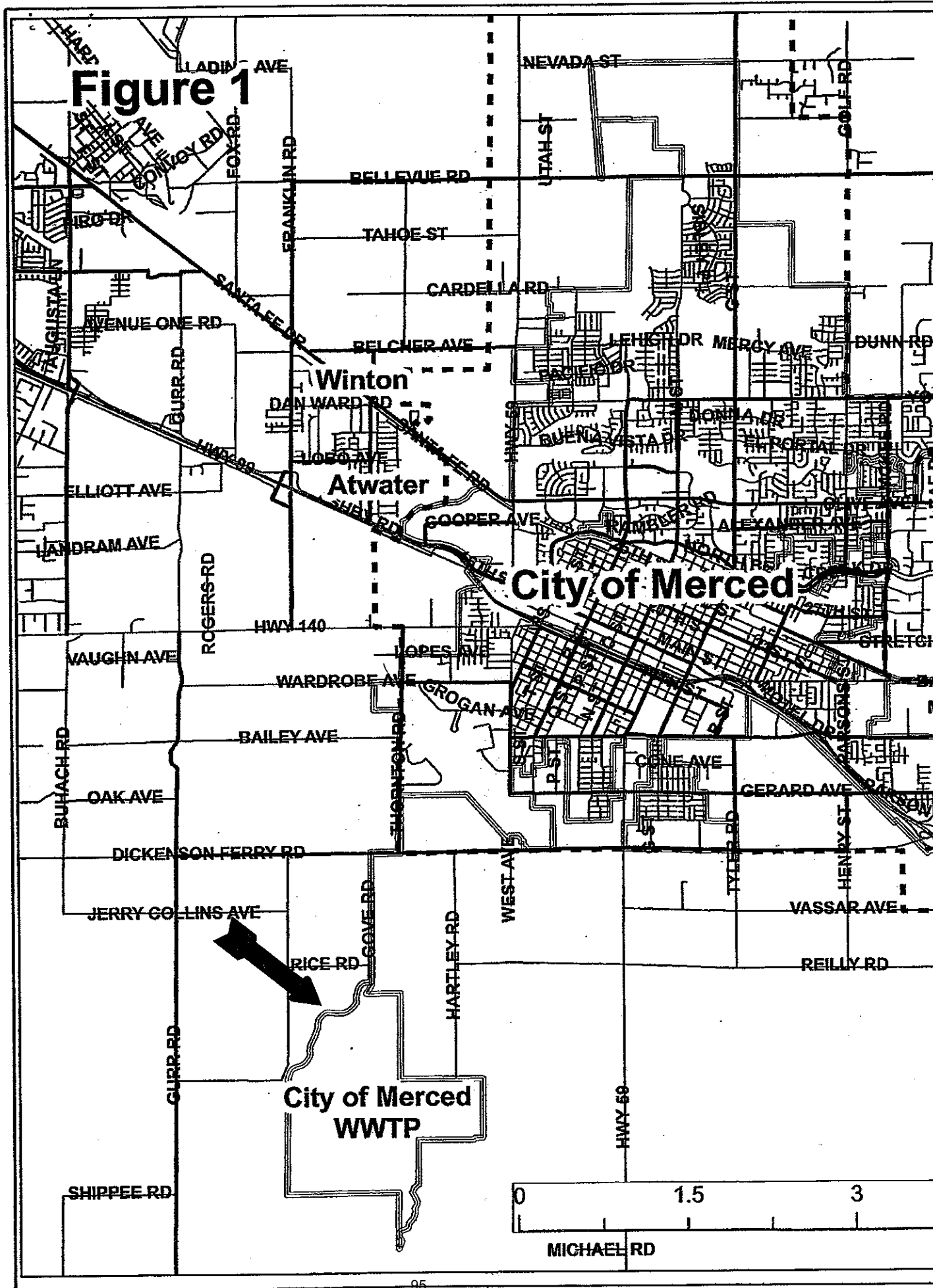
On April 3, 2017, the City Council awarded a construction contract to Soracco Junior General Engineering to build the new Well #2 electrical and plumbing systems to tie the new well into the existing infrastructure.

### **IMPACT ON CITY RESOURCES**

This project was established as a Capital Improvement Project and account 553-1108-637.65-00-114001 contains sufficient funding to complete the project.

### **ATTACHMENTS**

1. Vicinity Map
2. Location Map
3. Contract Amendment







EXISTING WELL  
SITE

PROPOSED NEW  
WELL SITE

GOVE RD

96

ATTACHMENT 2



**SECOND AMENDMENT TO AGREEMENT FOR  
PROFESSIONAL SERVICES  
(Design Professional)**

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 ("City"), and AECOM Technical Services, Inc., a California Corporation whose address of record is 1360 East Spruce Avenue, Suite 101, Fresno, California 93720, ("Consultant").

WHEREAS, City is undertaking a project to install a new water supply well at the City's Wastewater Treatment Plant; and

WHEREAS, City and Consultant have previously entered into an Agreement for Professional Services ("Agreement") dated April 6, 2015 and a First Amendment dated February 20, 2018; and

WHEREAS, City and Consultant desire to amend said Agreement to provide for additional 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 August 22, 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 Eleven Thousand Five Hundred Eight Dollars (\$11,508.00) 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 April 6, 2015 and First Amendment dated February 20, 2018, 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: \_\_\_\_\_  
Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  9-12-2018  
City Attorney Date

ACCOUNT DATA:

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



CONSULTANT  
AECOM TECHNICAL SERVICES,  
INC., A California Corporation

BY: Masood Mesbah  
(Signature)

MASOOD MESBAH  
(Typed Name)

Its: Vice President  
(Title)

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

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

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

Taxpayer I.D. No. 95-2661922

ADDRESS: 1360 E. Spruce Ave.  
Suite 101  
Fresno, CA 93720

TELEPHONE: (559) 490-8309  
FAX: (559) 448-8233  
E-MAIL: [stephen.spencer@aecom.com](mailto:stephen.spencer@aecom.com)



AECOM  
1380 E. Spruce Avenue  
Suite 101  
Fresno, CA 93720  
www.aecom.com

559.448.8222 tel  
559.448.8233 fax

August 22, 2018

Mr. Joe Angulo  
City of Merced  
678 West 18th Street  
Merced, CA 95340

**New Water Supply Well for Wastewater Treatment Plant – Addendum 2**

Mr. Angulo,

The attached spreadsheet summarizes our effort necessary to review the additional submittals generated by Soracco, Inc. for the subject project. These submittals were in excess of what is considered typical for a project of this type, mostly due to the fact that Soracco had to replace their electrical subcontractor during construction. The spreadsheet lists the submittal number, the date received, the date returned, and the hours spent by AECOM staff reviewing and responding to that submittal.

The out-of-scope work began in September 2017, and shortly thereafter we prepared an amendment (Amendment #1) to cover the work that had been done as well as an estimate of future work based on available data. The amendment was first submitted to the City in November 2017. Contract Amendment #1 was finally executed in February 2018; work related to additional submittal reviews was billed to our project task 2.4 up to that point, and then to project task 2.5 following execution.

Unfortunately, the number of additional submittals from Soracco has exceeded our original estimate and work continues. Therefore, we have prepared the attached Contract Amendment #2 to cover the effort necessary to complete the engineering support portion of the project.

In addition to the above, Amendment #2 covers an inspection of the electrical construction completed at the site for compliance with current electrical codes.

I appreciate your understanding with regard to these issues. Please let me know if you have any questions or require additional information.

Sincerely,

Stephen Spencer, PE  
Project Manager

**EXHIBIT 1**

Merced WWTP Well 2 Additional Submittals through May 11, 2018 (Invoiced May 24, 2018)

Number	Reviser Description	Specification	Received	Responded	Status	Week Ending	Submitted	Reviewer	Hours Billed	Rate	Total	Billed W/E	Task
1 b	Tank	434117	8/22/2017	8/23/2017	MCN	8/25/2017							
23 b	Metering Pump	432160	9/12/2017	9/20/2017	NET	9/22/2017		Plath, J	2	\$ 47.50	\$ 95.00	9/22/2017	2.4
36 c-52	Rigid Steel Conduit	260000	9/5/2017	9/20/2017	NET	9/22/2017		52 Cisco	0.4	\$ 130.00	\$ 52.00	9/29/2018	2.4
36 c-52	Rigid Steel Conduit	260000	9/5/2017	9/20/2017	NET	9/22/2017		52 Randall	0.4	\$ 210.00	\$ 84.00	9/29/2018	2.4
36 c-53	Liquid Tight Flexible Conduit	260000	9/5/2017	9/20/2017	NET	9/22/2017		53 Cisco	0.4	\$ 130.00	\$ 52.00	9/29/2018	2.4
36 c-53	Liquid Tight Flexible Conduit	260000	9/5/2017	9/20/2017	NET	9/22/2017		53 Randall	0.4	\$ 210.00	\$ 84.00	9/29/2018	2.4
36 c-54	Low Voltage Wire	260000	9/5/2017	9/20/2017	NET	9/22/2017		54 Cisco	0.4	\$ 130.00	\$ 52.00	9/29/2018	2.4
36 c-54	Low Voltage Wire	260000	9/5/2017	9/20/2017	NET	9/22/2017		54 Randall	0.4	\$ 210.00	\$ 84.00	9/29/2018	2.4
36 c-55	Cat 5 Cable	E-103	9/5/2017	9/20/2017	NET	9/22/2017		55 Cisco	0.4	\$ 130.00	\$ 52.00	9/29/2018	2.4
36 c-55	Cat 5 Cable	E-103	9/5/2017	9/20/2017	NET	9/22/2017		55 Randall	0.4	\$ 210.00	\$ 84.00	9/29/2018	2.4
36 c-56	Tsp Instrumentation Cable	E-103	9/5/2017	9/20/2017	NET	9/22/2017		56 Cisco	0.4	\$ 130.00	\$ 52.00	9/29/2018	2.4
28 b	Lako Motor Shell	432152-262652	10/2/2017	10/2/2017	NET	10/8/2017		Plath	1	\$ 47.50	\$ 47.50		2.4
31 b	Morrills Well Seal	432152	10/10/2017	10/11/2017	NET	10/13/2017		Plath	1	\$ 47.50	\$ 47.50		2.4
21 b	Brass Cap and Adapter	402020	10/24/2017	10/25/2017	NET	10/27/2017		Plath	0				
22 b	Compressor	421216	10/25/2017	11/7/2017	A&R	11/10/2017		Kunal	1	\$ 125.00	\$ 125.00	11/10/2017	2.4
20 b	Pressure Switch	409715	11/30/2017	12/5/2017	A&R	12/8/2017		Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
20 c	Pressure Switch	409715	12/6/2017	12/7/2017	A&R	12/8/2017		Cisco	1	\$ 160.00	\$ 160.00	12/15/2017	2.4
20 c	Pressure Switch	409715	12/6/2017	12/7/2017	A&R	12/8/2017		Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
20 c-69	Single Stage Pressure Switch	409715	12/6/2017	12/7/2017	A&R	12/8/2017		Cisco	1	\$ 160.00	\$ 160.00	12/15/2017	2.4
20 c-69	Single Stage Pressure Switch	409715	12/6/2017	12/7/2017	A&R	12/8/2017		69 Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
20 c-70	Two Stage Pressure Switch	409715	12/6/2017	12/7/2017	A&R	12/8/2017		70 Kunal	1	\$ 160.00	\$ 160.00	12/15/2017	2.4
20 c-70	Two Stage Pressure Switch	409715	12/6/2017	12/7/2017	A&R	12/8/2017		70 Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
29 b	MCC	262419	11/16/2017	12/7/2017	NET	12/8/2017		Cisco	1	\$ 160.00	\$ 160.00	12/15/2017	2.4
36 b	Wire and Conduit	260000	11/16/2017	12/5/2017	NET	12/8/2017		Cisco	2	\$ 160.00	\$ 320.00	12/15/2017	2.4
22 c	Compressor	421216	11/15/2017	12/14/2017	A&R	12/15/2017		Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
11 a-68	Pressure Gauges	409715	12/11/2017	12/13/2017	A&R	12/15/2017		68 Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
20 d	Pressure Switch	409715	12/11/2017	12/13/2017	A&R/MCN	12/15/2017		Kunal	0.5	\$ 125.00	\$ 62.50	12/15/2017	2.4
19 a-78	Check Valve	400520	2/13/2018	2/19/2018	MCN	2/23/2018		78 Plath	2	\$ 100.00	\$ 200.00	2/23/2018	2.5
19 a-78	Check Valve	400520	2/13/2018	2/19/2018	MCN	2/23/2018		78 Spencer	0.75	\$ 150.00	\$ 112.50	2/23/2018	2.5
22 e	Compressor	421216	4/17/2018	4/25/2018	A&R	4/27/2018		Plath	9	\$ 100.00	\$ 900.00	5/11/2018	2.5
22 e	Compressor	421216	4/17/2018	4/25/2018	A&R	4/27/2018		Cisco	2	\$ 160.00	\$ 320.00	5/11/2018	2.5
22 d	Compressor	421216	4/17/2018	5/5/2018	A&R	5/4/2018		Spencer	0.25	\$ 150.00	\$ 37.50	5/11/2018	2.5
22 d	Compressor	421216	4/17/2018	5/5/2018	A&R	5/4/2018		Plath	5	\$ 100.00	\$ 500.00	5/11/2018	2.5
22 d	Compressor	421216	4/17/2018	5/5/2018	A&R	5/4/2018		Cisco	2	\$ 160.00	\$ 320.00	5/11/2018	2.5
22 f	Compressor	421216	4/17/2018	5/11/2018	A&R	5/11/2018		Spencer	1	\$ 150.00	\$ 150.00	5/11/2018	2.5
22 f	Compressor	421216	4/17/2018	5/11/2018	A&R	5/11/2018		Cisco	1	\$ 160.00	\$ 160.00	5/11/2018	2.5

Total 35 (Revision b or greater)

\$ 4,848.50

**AECOM Scope of Services**  
**Amendment No. 2**  
**Additional Engineering Support During Construction for**  
**City of Merced**  
**New Water Supply Well for Wastewater Treatment Plant**

**Project Background**

This scope and fee has been prepared to amend the current Agreement for Professional Services between the City of Merced and AECOM Technical Services, Inc. executed on April 6, 2015 (Agreement).

**AECOM Tasks**

AECOM shall perform the following tasks. The task numbering sequence is an extension of the sequence from the current Agreement:

**Task 2 – Design and Install Supply Well**

During construction of the supply well site, several additional submittal reviews and responses to contractor RFIs were required because the Contractor replaced their originally proposed electrical contractor. This amendment documents those additions and requests additional fee to cover out-of-scope work. AECOM's services will be as described in the following tasks:

**Subtask 2.6 - Additional Design and Construction Support Services**

The construction contractor, Soracco, Inc., indicated to the City last year that their original electrical subcontractor was not qualified to provide the necessary integration between the new Well 2 system controls and the existing WWTP SCADA system, and therefore Soracco contracted with a new electrical subcontractor to complete the project. AECOM had provided additional review of the electrical and controls submittals and will review the new electrical subcontractor submittals through the end of October once received.

**Subtask 2.7 – Electrical Inspection Services**

AECOM will provide an on-site inspection of the existing electrical construction to review for adherence to current electrical codes. An AECOM electrical engineer will spend one day on site reviewing construction, and then prepare a report documenting any code compliance issues that were identified.

**Assumptions/Exclusions**

**Reuse:** Any reuse of Consultant-prepared work, except for the specific purposes intended hereunder, will be at City's sole risk and without liability or legal exposure to Consultant or its subconsultants.

**Safety:** Consultant shall not have control over or charge of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, including safety precautions and procedures, as these are solely the responsibility of the construction contractor. Consultant shall not have the authority to stop the work of the construction contractor. In no event shall Consultant be liable for the acts or omissions of any construction contractors, their subcontractors, any of their agents or employees, or any other persons or entities performing any work related to this project, or for the failure of any them to carry out construction work under contract with the City.

Delay: Consultant shall not be responsible for delays due to causes beyond Consultant's reasonable control. In the case of any such delay, the time of completion shall be extended accordingly.

Entitled to Rely: Consistent with the professional standard of care and except as otherwise expressly set forth herein, Consultant shall be entitled to rely upon the accuracy of data and information provided by City or others without independent review or evaluation.

Opinions of Construction Cost: Any Opinion of the Construction Cost prepared by Consultant represents its judgment as a design professional and is supplied for the general guidance of City. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost to City.

Hazardous Materials: Notwithstanding anything in this Agreement, Consultant shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure to persons to hazardous materials in any form, at the project site.

#### **Schedule**

Project construction has extended beyond the originally anticipated finish date used to estimate our April 6, 2015 Agreement schedule and cost estimate. Contract Amendment No. 1 assumed construction would be completed in May 2018. At this time, assuming the current project Contractor stays on the project, we now anticipate construction ending in October 2018. Therefore, this amendment assumes AECOM's work will be completed in December 2018 (allowing for preparation of record drawings and final start-up support). If construction is not completed by the end of October 2018, an additional contract amendment may be required.

#### **Compensation**

AECOM shall be compensated monthly with progress payments by the Client for services provided by AECOM during the previous month pursuant to this Amendment No. 2 and in accordance with AECOM's Hourly Rate Schedule contained in the Agreement. Maximum compensation for AECOM's services as described in Tasks 2.6 and 2.7 shall not exceed \$11,508.00 without the prior written approval of the Client. AECOM's total fee authorized by the Client is presented in the table below.

Date	Contract Summary	Fee
04/6/2015	Original contract	\$138,630
02/20/2018	Amendment 1 – Additional Design and Construction Support Services	\$15,382
	Amendment 2 – Additional Engineering Support During Construction	\$11,508
	Total	\$165,520

# Project Contract Budget

New WWTP Supply Well - Amendment No. 2  
Additional Construction Support Services

City of Merced  
22-Aug-18

Task Description	Personnel Hours							Budget					
	PM/Principal Eng	Principal Elec Eng	Senior Engineer II	Senior Engineer I	Asst. Engineer II	Design CAD Operator	Technical Typist	Total Hours	Labor	Subconsultants	Other Direct Costs	Total Non-Labor	Total
Task 2 - Design and Install Supply Well													
Task 2.6- Additional Design & Construction Support Services													
Civil utilities	1		4		10	4	4	23	\$ 2,565		\$ 103	\$ 103	\$ 2,668
Electrical		1	8	4				13	\$ 2,090		\$ 84	\$ 84	\$ 2,174
Instrumentation		1	8	4				13	\$ 2,090		\$ 84	\$ 84	\$ 2,174
Task 2.7 Electrical Inspection Services													
Electrical		16	4				4	24	\$ 4,320		\$ 173	\$ 173	\$ 4,493
Subtotal	1	18	24	8	10	4	8	73	11,065	-	443	443	11,508
Total	1	18	24	8	10	4	8	73	11,065	-	443	443	11,508

Personnel Category \$/HR  
 PM/Principal Eng \$205.00  
 Principal Elec Eng \$210.00  
 Senior Engineer II \$160.00  
 Senior Engineer I \$150.00  
 Assistant Engineer II \$100.00  
 Design CAD Operator \$100.00  
 Technical Typist \$80.00



## ADMINISTRATIVE REPORT

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### Agenda Item H.7.

Meeting Date: 10/15/2018

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*Report Prepared by: Paul Flores, Engineering Technician III, Engineering Division*

**SUBJECT:** Award Bid to Mid Cal Pipeline & Utilities, Inc. for the Kibby Road Sewer Main Replacement, Project 117020

### REPORT IN BRIEF

Consider awarding a construction contract to Mid Cal Pipeline & Utilities, Inc. in the amount of \$556,159 for the Kibby Road Sewer Main Replacement Project.

### RECOMMENDATION

**City Council** - Adopt a motion awarding the Kibby Road Sewer Main Replacement Project 117020 to Mid Cal Pipeline & Utilities, Inc. in the amount of \$556,159; and, authorizing the City Manager or Assistant City Manager to execute the necessary documents and to approve change orders not to exceed 10% of the total contract.

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Reject all bids and direct Staff to rebid the project; or,
3. Continue to a future meeting (date and time to be specified in the motion).

### AUTHORITY

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

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget.

### DISCUSSION

The work will consist of the removal and disposal of a 24-inch corrugated metal pipe (CMP) existing sewer main and replacing it with a new 30-inch Sanitite High Performance (HP) sewer main along Kibby Road, from Childs Avenue to State Highway 140. The work will also consist of installation of a sewer by-pass system, removal of existing manholes, and reconnection of exiting sewer laterals. The pavement on Kibby Road will be saw cut and replaced with hot mix asphalt (HMA) and aggregate base.

Staff prepared construction plans and specifications, and the project was advertised for bids. The project was advertised in Merced County Times. The bids were opened on September 18, 2018, with the following results:

1. Mid Cal Pipeline & Utilities, Inc. (Merced, CA)	\$ 556,159.00
2. Rolfe Construction Company (Atwater, CA)	\$ 690,227.00
3. Bill Nelson GEC, Inc. (Fresno, CA)	\$ 797,627.00

The following is the proposed budget for the project:

Construction	\$ 556,159.00
Contingency	\$ 55,615.90
Engineering, Testing & Inspection	\$ 27,807.95
<b>TOTAL:</b>	<b>\$ 639,582.85</b>

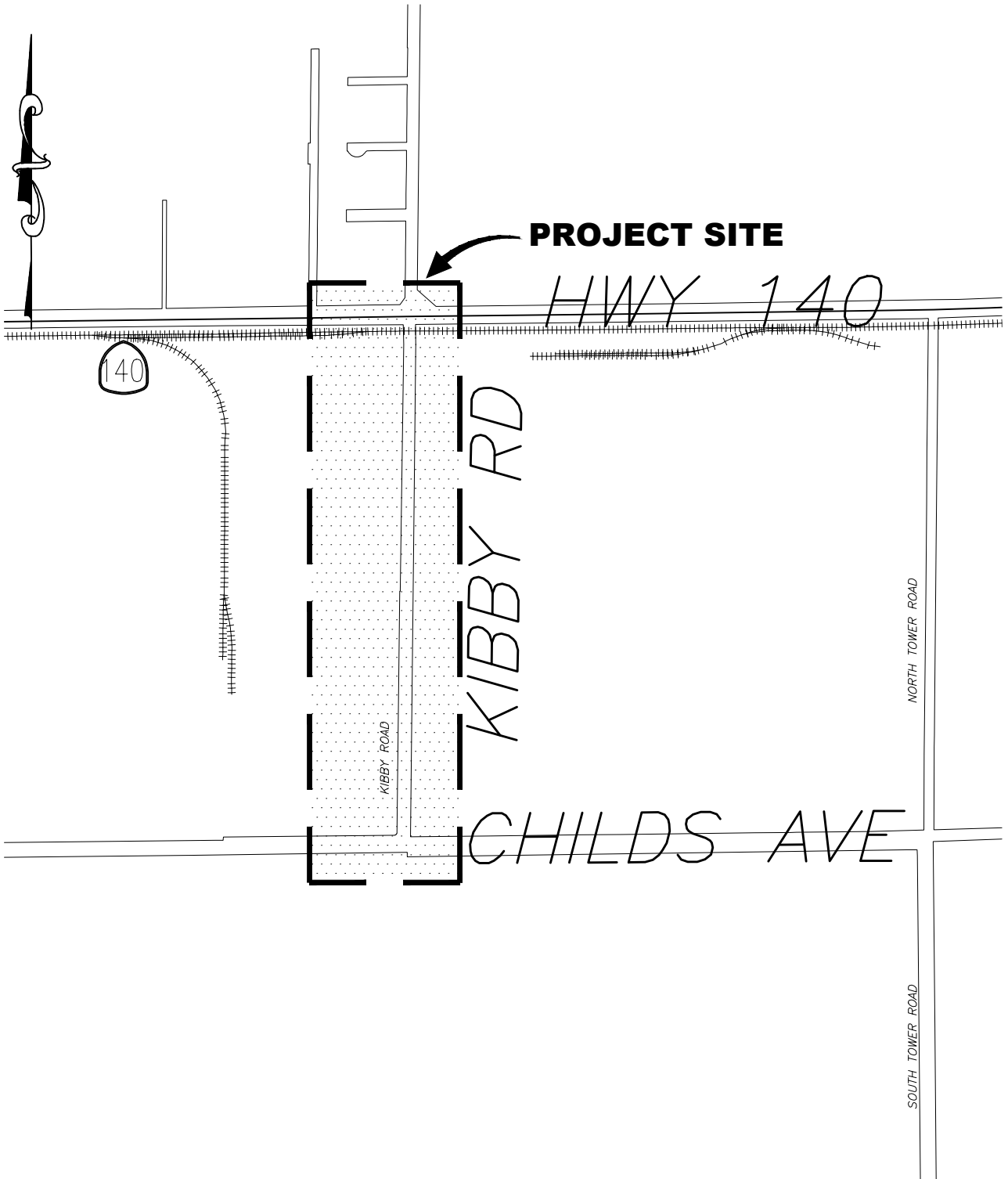
### **IMPACT ON CITY RESOURCES**

This project was established as a Capital Improvement Project and account 553-1107-637.65-00 and project 117020 contains sufficient funding to complete the project.

### **ATTACHMENTS**

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





## LOCATION MAP

NOT TO SCALE



*City of Merced*  
"Gateway to Yosemite"

**DEVELOPMENT SERVICES**  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

**PROJECT NO. 117020**

**KIBBY ROAD**  
**SEWER MIAN REPLACEMENT**

DR. BY: PAF
DATE: 5/7/18
CH. BY:
DATE:
File No. 0952
SCALE: AS SHOWN

**CITY OF MERCED**  
**PROJECT NO. 117020**  
**KIBBY ROAD SEWER MAIN REPLACEMENT, CHILDS AVENUE TO HIGHWAY 140**

**Bid Opening 09/18/18**

				MID CAL PIPELINE & UTILITIES, INC. (Merced, CA)			ROLFE CONSTRUCTION COMPANY (Atwater, CA)			BILL NELSON GEC, INC. (Fresno, CA)		
NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	UNIT PRICE	ITEM TOTAL	
1	Permits, Bonds & Licenses	LS	1	\$ 22,000.00	\$ 22,000.00	\$ 30,056.00	\$ 30,056.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	\$ 80,000.00	
2	Dust Control	LS	1	\$ 1,000.00	\$ 1,000.00	\$ 9,800.00	\$ 9,800.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	\$ 20,000.00	
3	Public Convenience and Safety	LS	1	\$ 2,000.00	\$ 2,000.00	\$ 9,800.00	\$ 9,800.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	
4	Water Pollution Control	LS	1	\$ 3,000.00	\$ 3,000.00	\$ 15,000.00	\$ 15,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	\$ 10,000.00	
5	Surveying Services	LS	1	\$ 6,000.00	\$ 6,000.00	\$ 10,000.00	\$ 10,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	\$ 6,000.00	
6	Monumentation	EA	3	\$ 800.00	\$ 2,400.00	\$ 2,000.00	\$ 6,000.00	\$ 1,750.00	\$ 5,250.00	\$ 1,750.00	\$ 5,250.00	
7	Existing Facilities and Potholing	LS	1	\$ 3,000.00	\$ 3,000.00	\$ 15,000.00	\$ 15,000.00	\$ 8,750.00	\$ 8,750.00	\$ 8,750.00	\$ 8,750.00	
8	Remove Existing 24" CMP Sewer Pipe	LF	2,528	\$ 8.00	\$ 20,224.00	\$ 9.50	\$ 24,016.00	\$ 25.00	\$ 63,200.00	\$ 25.00	\$ 63,200.00	
9	Remove Existing Manhole	EA	7	\$ 1,200.00	\$ 8,400.00	\$ 3,000.00	\$ 21,000.00	\$ 2,500.00	\$ 17,500.00	\$ 2,500.00	\$ 17,500.00	
10	Remove Existing Pavement	SF	4,715	\$ 3.00	\$ 14,145.00	\$ 6.00	\$ 28,290.00	\$ 3.00	\$ 14,145.00	\$ 3.00	\$ 14,145.00	
11	Asphalt Concrete	Ton	153	\$ 200.00	\$ 30,600.00	\$ 340.00	\$ 52,020.00	\$ 150.00	\$ 22,950.00	\$ 150.00	\$ 22,950.00	
12	Aggregate Base	CY	190	\$ 75.00	\$ 14,250.00	\$ 160.00	\$ 30,400.00	\$ 160.00	\$ 30,400.00	\$ 160.00	\$ 30,400.00	
13	30" Sanitite HP Sewer Main	LF	2,528	\$ 130.00	\$ 328,640.00	\$ 85.00	\$ 214,880.00	\$ 94.00	\$ 237,632.00	\$ 94.00	\$ 237,632.00	
14	60" Sanitary Sewer Manhole w/Concrete Collar	EA	7	\$ 8,000.00	\$ 56,000.00	\$ 9,995.00	\$ 69,965.00	\$ 7,100.00	\$ 49,700.00	\$ 7,100.00	\$ 49,700.00	
15	Re-connect Existing Sewer Lateral	EA	5	\$ 3,000.00	\$ 15,000.00	\$ 4,500.00	\$ 22,500.00	\$ 3,500.00	\$ 17,500.00	\$ 3,500.00	\$ 17,500.00	
16	Manhole Connection	LS	1	\$ 3,500.00	\$ 3,500.00	\$ 5,500.00	\$ 5,500.00	\$ 7,100.00	\$ 7,100.00	\$ 7,100.00	\$ 7,100.00	
17	Sewer Pump By-Pass System	LS	1	\$ 8,000.00	\$ 8,000.00	\$ 60,000.00	\$ 60,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	\$ 150,000.00	
18	Shoring and Bracing	LS	1	\$ 8,000.00	\$ 8,000.00	\$ 40,000.00	\$ 40,000.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	\$ 2,500.00	
19	Restoration	LS	1	\$ 10,000.00	\$ 10,000.00	\$ 26,000.00	\$ 26,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	\$ 25,000.00	
				\$ 556,159.00		\$ 690,227.00		\$ 797,627.00				

## GENERAL CONSTRUCTION CONTRACT

THIS CONTRACT made on \_\_\_\_\_, by and between the CITY OF MERCED, a municipal corporation of the State of California, hereinafter called the Owner, and **Mid-Cal Pipeline & Utilities, Inc.**, hereinafter called the Contractor:

WITNESSETH:

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

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

- (1) This General Construction Contract;
- (2) Faithful Performance Bond;
- (3) Laborers and Materialmens Bond;
- (4) Guaranty;
- (5) Special Provisions for **PROJECT NO. 117020**;
- (6) Amendments to the Standard Specifications;
- (7) Project Plans;
- (8) Standard Specifications;
- (9) City Standards;
- (10) Proposal;
- (11) Instructions to Bidders;
- (12) Notice Inviting Bids;
- (13) Bidder's Bond;
- (14) Notice of Determination of Prevailing Wages;
- (15) List of Subcontractors and Material Dealers; and
- (16) Safety Provisions.

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

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

2. **THE WORK.** Said Contractor agrees to furnish all tools, equipment, apparatus, facilities, labor, transportation, and material necessary to perform and complete in a good and workmanlike manner all work of improvement in accordance with Contract Documents in the manner designated in, and in strict conformity with, the Plans and Specifications for **PROJECT NO. 117020**, which said Plans and Specifications are entitled, "**KIBBY ROAD SEWER MAIN REPLACEMENT PROJECT**," for construction in Merced County in Merced, and which were included in the award of bid made by the City Council of the City of Merced on \_\_\_\_\_, 2018.

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

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

**BID SCHEDULE FOR KIBBY ROAD SEWER MAIN REPLACEMENT - PROJECT 117020**

ITEM NO.	ITEM	UNIT OF MEASURE	ESTIMATED QUANTITY	UNIT PRICE (IN FIGURES)	ITEM TOTAL (IN FIGURES)
1	Permits, Bonds, Licenses & Insurance	LS	1	\$ 22,000.00	\$ 22,000.00
2	Dust Control	LS	1	\$ 1,000.00	\$ 1,000.00
3	Public Convenience and Safety	LS	1	\$ 2,000.00	\$ 2,000.00
4	Water Pollution Control	LS	1	\$ 3,000.00	\$ 3,000.00
5	Surveying Services	LS	1	\$ 6,000.00	\$ 6,000.00
6	Monumentation	EA	3	\$ 800.00	\$ 2,400.00
7	Existing Facilities and Potholing	LS	1	\$ 3,000.00	\$ 3,000.00
8	Remove Existing 24" CMP Sewer Main	LF	2,528	\$ 8.00	\$ 20,224.00
9	Remove Existing Manhole	EA	7	\$ 1,200.00	\$ 8,400.00
10	Remove Existing Pavement	SF	4,715	\$ 3.00	\$ 14,145.00
11	Asphalt Concrete	Ton	153	\$ 200.00	\$ 30,600.00
12	Aggregate Base	CY	190	\$ 75.00	\$ 14,250.00
13	30" Sanitite HP Sewer Main	LF	2,528	\$ 130.00	\$ 328,640.00
14	60" Sanitary Sewer Manhole	EA	7	\$ 8,000.00	\$ 56,000.00
15	Re-Connect Existing Sewer Lateral	EA	5	\$ 3,000.00	\$ 15,000.00
16	Manhole Connection	LS	1	\$ 3,500.00	\$ 3,500.00
17	Sewer Pump By-Pass System	LS	1	\$ 8,000.00	\$ 8,000.00
18	Shoring and Bracing	LS	1	\$ 8,000.00	\$ 8,000.00
19	Restoration	LS	1	\$ 10,000.00	\$ 10,000.00

**TOTAL BID ITEMS 1 THROUGH 19: \$ 556,159.00**

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

In the event of any such termination, the Owner shall immediately serve written notice thereof upon the surety and the Contractor, and the surety shall have the right to take over and perform the Contract; provided however, that if the surety within fifteen (15) days after the serving upon it of notice of termination does not give the Owner written notice of its intention to take over and perform the Contract or does not

commence performance thereof within thirty (30) days from the date of the serving of such notice, the Owner may take over the work and prosecute the same to completion by contract or by any other method it may deem advisable, for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the Owner for any excess cost occasioned the Owner thereby, and in such event the Owner may, without liability for so doing, take possession of and utilize in completing the work such materials, appliances, plant, and other property belonging to the Contractor as may be on the site of the work and necessary therefor.

5. NOTICE AND SERVICE THEREOF. Any notice from one party to the other under the Contract shall be in writing and shall be dated and signed by the party giving such notice, or by a duly authorized representative of such party. Any such notice shall not be effective for any purpose whatsoever unless served in the following manner; namely, (a) if the notice is given to the Owner, per personal delivery thereof to the City Engineer of said Owner, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to the Owner, postage prepaid and registered; (b) if the notice is given to the Contractor, by personal delivery thereof to said Contractor or to his duly authorized representative at the site of the project, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to said Contractor at **P.O Box 2406, Merced CA 95344**, postage prepaid and registered; and (c) if the notice is given to the surety or any other person, by personal delivery to such surety or other person, or by depositing the same in the United States mails enclosed in a sealed envelope, addressed to such surety or person, as the case may be, at the address of such surety or person last communicated by him to the party giving the notice, postage prepaid and registered.

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

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

8. INSURANCE. The Contractor shall furnish the City a policy or certificate of liability insurance in which the City is the named insured or is named as an additional insured with the Contractor. Notwithstanding any inconsistent statement in the policy or any subsequent endorsement attached thereto, the City shall be the insured or named as an additional insured covering the work, whether liability is attributable to the Contractor or the City. The policy shall insure the City, its officers, employees and agents while acting within the scope of their duties on the work, against all claims arising out of or in connection with the work. ***Endorsement for additional insured shall be submitted on standard form CG 20101185. Endorsement forms CG 20101001 and CG 20371001, when used together, are acceptable in lieu of CG 20101185 for Public Works projects.***

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

Bodily Injury	\$ 500,000 each person
	\$1,000,000 each occurrence
	\$1,000,000 aggregate products and completed operations

Property Damage	\$ 250,000 each occurrence
	\$ 500,000 aggregate

A combined single limit policy with aggregate limits in the amount of \$1,250,000 will be considered equivalent to the required minimum limits.

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

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

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

All Insurance required shall be from a California admitted insurance company.

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

#### CANCELLATION CLAUSE

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

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

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance

policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

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

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

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

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

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

12. CALIFORNIA LABOR CODE. The Contractor is aware of, and hereby agrees to comply with Sections 1770, 1773, 1776, and 1777.5 of the California Labor Code.

13. SUBSTITUTION OF SECURITIES FOR WITHHELD AMOUNTS. Pursuant to Section 22,300 of the Public Contracts Code of the State of California, securities may be substituted for any moneys withheld by a public agency to ensure performance under a contract. At the request and expense of the Contractor, securities equivalent to the amount withheld shall be deposited with the public agency, or with a State or Federally-chartered bank as the escrow agent, who shall pay such moneys to the Contractor upon satisfactory completion of the Contract.

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

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

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

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

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

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

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

- (a) "Claim" means a separate demand by the Contractor for (1) a time extension, (2) payment of money or damages arising from work done by, or on behalf of, the Contractor pursuant to this contract, and payment of which is not otherwise expressly provided for or the Contractor not otherwise entitled to, or (3) an amount the payment of which is disputed by the City.
- (b) The claim shall be in writing and include the documents necessary to substantiate the claim. Claims must be filed on or before the date of final payment. Nothing herein shall extend the time limit or supersede notice requirements otherwise provided by contract for the filing of claims.
- (c) For claims of less than fifty thousand dollars (\$50,000), the City shall respond in writing to any written claim within forty-five (45) days of receipt of the claim or may request, in writing within



thirty (30) days of receipt of the claim, any additional documentation supporting the claim or relating to defenses or claims the City may have against the Contractor.

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

- (2) If the matter remains in dispute, the case shall be submitted to judicial arbitration pursuant to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (Article 3 commencing with Section 2016) of Chapter 3 of Title 3 of Part 4 of the Code of Civil Procedure shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration.
- (3) In addition to Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3 of the Code of Civil Procedure, (A) arbitrators shall, when possible, be experienced in construction law, and (B) any party appealing an arbitration award who does not obtain a more favorable judgment shall, in addition to payment of costs and fees under that chapter, also pay the attorney's fees on appeal of the other party.
- (h) The City shall not fail to pay money as to any portion of a claim which is undisputed, except as otherwise provided in this contract.
- (i) In any suit filed under Section 20104.4, the City shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the suit is filed in a court of law.

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

ATTEST:

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

By: \_\_\_\_\_  
Deputy City Clerk

By: \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

MID-CAL PIPELINE & UTILITIES, INC.  
(Herein called Contractor)

By: \_\_\_\_\_  
City Attorney

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

ACCOUNT DATA:

LICENSE NO. 455113

**PROJECT NUMBER 117020**

TAXPAYER I.D. NO: \_\_\_\_\_

VENDOR NUMBER: 360

Project Account Number:

ADDRESS:

**553-1107-637.65-00-117020**

P.O. Box 2406

Amount: **\$556,159.00**

Merced, CA 95344

PHONE: (209) 383-7473

By: \_\_\_\_\_  
Finance Officer Verification

FAX: (209) 383-7477

EMAIL: joesmcp@aol.com

**GUARANTY**

To the City of Merced, California:

**PROJECT NO. 117020**

**KIBBY ROAD SEWER MAIN REPLACEMENT**

The undersigned guarantees the construction and installation of the work included in this project as described in the Contract Documents.

Should any of the materials or equipment prove defective or should the work as a whole prove defective, due to faulty workmanship, material furnished or methods of installation, or should the work or any part thereof fail to operate properly as originally intended and in accordance with the plans and specifications, due to any of the above causes, within one year after date on which the "Notice of Completion" is recorded by the City, the undersigned agrees to reimburse the City, upon demand, for its expenses incurred in restoring said work to that contemplated in said project, including the cost of any such equipment or materials replaced and the cost of removing and replacing any other work necessary to make such replacement or repairs, or, upon demand by the City, to replace any such material and to repair said work completely without cost to the City so that said work will function as contemplated.

The City shall have the unqualified option to make any needed replacements or repairs itself or to have such replacements or repairs done by the undersigned. In the event the City elects to have said work performed by the undersigned, the undersigned agrees that the repairs shall be made and such materials as are necessary shall be furnished and installed within a reasonable time after the receipt of demand from the City. If the undersigned shall fail or refuse to comply with his obligations under this guaranty, the City shall be entitled to all costs and expenses, including attorney's fees, reasonably incurred by reason of said failure or refusal.

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

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

**FAITHFUL PERFORMANCE BOND**  
(Contract)

WHEREAS, the City of Merced, State of California, and \_\_\_\_\_, the Contractor, have entered into a contract to perform certain work as set forth in the contract for **PROJECT NO. 117020**; and,

WHEREAS, \_\_\_\_\_, hereinafter designated as Principal, has agreed to install and complete said work.

NOW, THEREFORE, we the Principal and \_\_\_\_\_, as Surety, are held and firmly bound unto the City of Merced, hereinafter called "City" in the penal sum of \$ \_\_\_\_\_, lawful money of the United States, for payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bounded Principal, his or its heirs, executors, administrators, successors or assigns shall in all things stand to and abide by and well and truly keep and perform the covenants, conditions and provisions of said improvement requirements, and any lawful modification thereof, on their part, and such work is performed at the time and in the manner specified by the City, and shall indemnify and save harmless the City, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect. As a part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by the City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered. The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed, or to the specifications accompanying such work shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the work or to the specifications.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named on \_\_\_\_\_, 2018.

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

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

**LABORERS AND MATERIALMENS BOND**  
(Contract)

WHEREAS, the City of Merced, State of California, and \_\_\_\_\_, the Contractor, have entered into a contract to perform certain work as set forth in the contract for **PROJECT NO. 117020**; and

WHEREAS, \_\_\_\_\_, hereinafter designated as Principal, has agreed to install and complete said work; and,

WHEREAS, said Principal is required under the terms of the Contract Specifications to furnish a bond to secure the claims to which reference is made in Title 15 commencing with Section 3082 of Part 4 of Division 3 of the Civil Code of the State of California. Now, said Principal and the undersigned as Surety are held and firmly bound unto the City of Merced, hereinafter called the City, and all contractors, subcontractors, laborers, materialsmen and other persons employed in the performance of the work and referred to in the aforesaid Code of Civil Procedure in the sum of \$ \_\_\_\_\_, lawful money of the United States, for materials furnished or labor thereon of any kind or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount hereinabove set forth and also in case suit is brought upon this bond, will pay in addition to the face amount thereof costs and reasonable expenses and fees, including reasonable attorneys' fees incurred by the City in successfully enforcing such obligation, to be awarded and fixed by the court and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 commencing with Section 3082 of Part 4 of Division 3 of the Civil Code so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void. Otherwise, it shall be and remain in full force and effect. The Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said conditions or work shall in any manner affect its obligation on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the Principal and Surety above named on \_\_\_\_\_, 2018.

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

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



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item H.8.**

Meeting Date: 10/15/2018

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*Report Prepared by: Venus Rodriguez, Finance Officer*

**SUBJECT:** Amendments to Land Secured Financing Policies

### REPORT IN BRIEF

Consider adopting Amendments to the City's Land Secured Financing Policies.

### RECOMMENDATION

**City Council** - Adopt a motion adopting **Resolution 2018-68**, a Resolution of the City Council of the City of Merced, California, adopting Land Secured Financing Policies.

### ALTERNATIVES

1. Approve, as recommended by staff; or
2. Deny; or
3. Refer back to staff for reconsideration.

### AUTHORITY

Government Code Section 53311.

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget.

### DISCUSSION

The Mello-Roos Community Facilities Act of 1982 (beginning with Government Code Section 53311) (the "Act") is the statutory framework that provides the authority and describes the methodology that local agencies may use to form Community Facilities Districts (CFDs) and levy special taxes within the boundaries of those CFDs. Under the Act, CFDs may be used to fund the provision of certain authorized public services or maintenance, and to finance the purchase, construction, expansion, improvement or rehabilitation of public facilities. CFDs may issue bonds secured by special taxes as a financing instrument. The Act requires that, prior to initiating any proceedings to establish a CFD, a local agency must consider and adopt local goals and policies concerning the use of the Act. This is also true for land secured debt issued for assessments districts formed pursuant to the Municipal Improvement Acts of 1911 and 1913.

In recognition of the need to adopt policies and procedures for land based financings, the City Council was provided education through a study session on "Basic Municipal Financing Concepts" in 2002. Based on the discussion during the study session Fieldman, Rolapp & Associates prepared

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the Land Secured Financing Policies that were adopted and approved by the City Council on September 16, 2002.

Due to change in development, financing market, and/or circumstances it is good practice to review and update, if and as needed, the Land Secured Financing Policies every five years. The City Council approved the last proposed revisions to the policies on September 4, 2007.

City staff working with our municipal advisor, Fieldman, Rolapp & Associates, have recently reviewed the current Land Secured Policies. The revisions recommended today are substantially to reformat and expand on the document. Other recommended changes are to provide stronger security for the City and bond holders, while allowing some flexibility for determining which developments could qualify for Land Secured Financing.

#### ANALYSIS

In general, the City's existing Land Secured Financing Policies cover the issues outlined below.

- Setting the City's priorities for using the special taxes generated by a Mello-Roos CFD so that revenue generated from special taxes is dedicated to the public facilities and services most important to the City.
- Establishing the City's expectation for credit quality when Mello-Roos taxes are used to secure bonds. While Mello-Roos bonds are a limited obligation of the property in the CFD, not a general obligation of the City, the credit quality requirements help to ensure that these limited obligation financings will be repaid.
- Providing specific steps and mechanisms to ensure that prospective property purchasers are aware that the property is subject to a special tax.
- Providing specific criteria for evaluating special tax formulas to make sure that they are fair and that the maximum tax rate on residential owner-occupied property, including all general property and special taxes, does not exceed 1.8% of the property value.
- Defining the City's standards for the appraisals that support the assumptions about property values.
- Defining the City's process for securing advance deposits and reimbursements of its costs for establishing CFDs.
- Defining the City's goals for coordinating bond sales with development phases.

The proposed amendments are generally intended to provide clarification of the City's Land Secured Financing Policies. Major changes include:

- Clarifying that when the City evaluates special taxes with respect to credit quality and bond sales, it will include any taxes pledged to fund services and maintenance in this evaluation;



- Clarifying that specific steps and mechanisms to ensure that prospective property purchasers are aware that the property is subject to a special tax is a policy of the City, not a goal;
- Clarifying that the City will not allow the use of escalator on special taxes that secure bonds for residential districts (because debt service costs are fixed).

The proposed amendments also make relatively minor changes to bring the Land Secured Financing Policies current with the underlying laws and to better coordinate reviews by the City and potential CFD proponents during the formation process.

The Building Industry Association (BIA) reviewed the amended policies and requested three changes. We did accommodate two of the three changes. The third change requested was to change the value-to-lien ratio requirement from 4:1 to 3:1. The adopted policies have never had the value-to-lien ratio as low as 3:1. The original policy had the value-to-lien ratio at 3.5:1, the current policy is 4:1. The amended policies proposed tonight keeps the value-to-lien ratio at 4:1 but adds language stating “a slightly lesser value-to-lien ratio may be considered when recommended for approval, upon compelling justification, by both bond counsel and the City’s municipal advisor. In no event shall a value-to-lien of less than 3.5:1 be allowed.”

At this time staff does not recommend lowering the value-to-lien requirement for the security of the bond holders. We notified the BIA what our recommendation to City Council would be and had not heard back as of the due date of this report.

## **IMPACT ON CITY RESOURCES**

There is no impact on City resources.

## **ATTACHMENTS**

1. Resolution with Amended Land Secured Financing Policies
2. Current Land Secured Financing Policies

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

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
ADOPTING LAND SECURED FINANCING  
POLICIES**

WHEREAS, on September 16, 2002, the City Council adopted the Land Secured Financing Policies; and

WHEREAS, on September 4, 2007, the City Council approved revisions to the Policies; and

WHEREAS, the City's Finance Officer has reviewed the Policies and desires to make changes based on the current financing environment; and

WHEREAS, the City Council desires to amend the Land Secured Financing Policies to include the proposed changes; and

WHEREAS, the Land Secured Financing Policies has been amended to incorporate the proposed changes.

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

SECTION 1. That certain document entitled, "Land Secured Financing Policies" is hereby adopted as the official policy for the City of Merced.

SECTION 2. The City Manager and Finance Officer are hereby authorized and directed to implement and comply with the Land Secured Financing Policies effective immediately.

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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 vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Kelly Finane 10-8-18  
City Attorney Date

**CITY OF MERCED**

**LAND SECURED FINANCING POLICIES**

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City of Merced  
Land Secured Financing Policies

Definitions

Unless the context otherwise requires, the terms employed in the following policies shall have the meanings specified below:

"Assessment Acts" means the Improvement Bond Act of 1911 and/or the Municipal Improvement Act of 1913 and/or the Improvement Bond Act of 1915; the Landscaping and Lighting Act of 1972; the Benefit Assessment Act of 1982.

"Bonds" means bonds authorized and issued under the Mello-Roos" Act or Improvement Bond Act of 1915.

"Bulk Sale Value" means the most probable price, in a sale of all parcels within a tract or development project, to a single purchaser or purchasers, over a reasonable absorption period, discounted to a present value, as of a specified date, in cash or in terms equivalent to cash, for which the property rights should sell after reasonable exposure, in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably and for self-interest, and assuming that neither is under undue stress.

"City" means the City of Merced.

"Discounted Cash Flow" means the measurement of the cash flows associated with the development and sale of real estate parcels, based on an independent judgment of the prices and times at which individual parcels or properties would be sold, after applying a discount rate to such cash flows to reflect the risk- adjusted rate of return necessary to attract the debt and equity investment necessary to undertake and complete the acquisition, entitlement, development and sale of the parcels or properties.

"District" means a community facilities district formed under the Mello-Roos Community Facilities Act of 1982 or an assessment district formed under the Improvement Act of 1911 or the Municipal Improvement Act of 1913.

"Lien" means, in the case of public debt imposed on a parcel or parcels, the aggregate amount of public debt attributable to such parcel, as measured by an assessment engineer; or, in the case of Mello-Roos Community Facilities District debt, the amount of debt attributable to a parcel or parcels, based on an apportionment of the debt to such parcel or parcels in relation to the probable debt service to be borne by such parcel or parcels.

"Public Facilities" means improvements authorized to be constructed or acquired under the Mello-Roos and Assessment Acts including, but not limited to, fees for capital facilities imposed by public agencies as a condition to approval of the development encompassed by the district or as a condition to service the district.

"Value" or "Fair Market Value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.

"Value-to-lien ratio" means the ratio of the Value, Fair Market Value or current assessed value applied by the County of Merced's Assessor's Office of a parcel or parcels in relation to the lien or liens imposed by an issue of bonds.

#### Introductory Statement

Land secured debt, issued through Community Facilities Districts formed by the City through the Mello-Roos Act or Assessment Districts formed through the Municipal Improvement Acts of 1911 and 1913, is issued on behalf of local property owners and property developers in order to finance the cost of infrastructure on undeveloped property. This type of debt is limited to authorized public improvements with a useful life greater than five years.

The City of Merced will consider developer or property owner initiated applications requesting the formation of community facilities or assessment districts and the issuance of bonds to finance eligible Public Facilities necessary to serve newly developing residential, commercial and/or industrial projects under the conditions set forth herein. There will be a clearly articulated public purpose in forming an assessment or special tax district in financing public infrastructure improvements. Council approval must be obtained to use this form of financing.

The City shall have final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a district. The City shall evaluate the priority of such items on a project by project basis. The City may also require applicants to commit significant equity to projects for which public financing assistance is requested.

Projects primarily comprised of residential property may make application to the City only in the following instances:



1. The tax-exempt financing of project Public Facilities will result in a significant public benefit, as such public benefit is determined by the City; and
2. The City has negotiated and executed a development agreement (or similar agreement) addressing project implementation and providing for financing of all required public infrastructure.
3. Issuance of bonds for Financing of Public Facilities will typically not be less than \$5,000,000. The City can determine on a case by case basis if a lower amount is justified.

The above criteria will be applied by the City staff with final determination and findings to be made by the City Council.

Generally, only regional or community serving Public Facilities such as major collector and arterial streets and highways, state highways and bridges, freeways and freeway interchanges, railroad crossings, traffic signals, parks and open space acquisitions, public works facilities (including water, wastewater, storm drainage processing and distribution systems), community facilities (including youth facilities, sports complexes, bikeways and community/youth centers), public safety facilities (including police and fire facilities) and other appropriate public facilities will be eligible for this program. Facilities will be financed in accordance with the provisions of the Assessment Acts, or the Mello-Roos Community Facilities Act of 1982. The priority for community facilities district ("CFD") financing shall be given to otherwise eligible facilities as follows: (a) facilities needed to serve approved development which is deficient in infrastructure or other public facilities needed to develop the area as planned; (b) other facilities for which there is a clearly demonstrated public benefit; and (c) other facilities permitted by the Act.

The improvements eligible to be financed by a CFD must be owned and/or operated by a public agency except that CFD funds (i.e., special taxes and up to five percent of the proceeds of a tax-exempt bond issue may be owned and/or operated by a privately-owned public utility), and must have a useful life of five or more years. The development proposed within a CFD must be consistent with the City's General Plan. The construction or acquisition of improvements pursuant to a CFD shall not vest any rights to future entitlements on any properties, including those which are responsible for paying special taxes. The funding of facilities to be owned and/or operated by agencies other than the City shall be considered on a case-by-case basis.

Prior to the initiation of CFD formation proceedings, the applicant(s) shall meet and confer with City staff for the purpose of delineating a list of proposed facilities to be financed. As part of any CFD application or property owner petition, all public facilities

shall be described and prioritized, including those City facilities that would be included in the CFD.

Each time a community facilities district or an assessment district is formed for the benefit of a development project, the City will require annexation into a Community Facilities District-Services. The Community Facilities District may be established pursuant to the provisions of the Community Facilities Act of 1982, or such other provision of state law or appropriate local code or charter provisions, and will serve for the purpose of paying for any unfunded on-going City maintenance costs associated with the development project.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the Assessment Acts or the Mello-Roos Community Facilities Act. The City may confer with other district consultants and the applicant to learn of any unique district requirements such as regional serving facilities or long-term development phasing prior to making any final determination.

All proposed community facilities districts or assessment districts shall be reviewed by City staff for adherence to policy prior to being presented to the City Council. Any variance from policy as well as any other material information will be noted by City staff and reported to the Council with recommendation for action.

#### Resource Consultants

- Bond Counsel
- Disclosure Counsel
- Independent Registered Municipal Advisor
- Assessment Engineer
- Special Tax Consultant
- Appraiser
- Economist/Market Absorption Specialist
- Bond Underwriter/Placement Agent
- Trustee/Fiscal Agent

The City has the sole discretion as to the selection of consultants and determination of fees and expenses of all consultants necessary for the formation of a community facilities district or an assessment district and the issuance of bonds. Prior consent of the developer(s) or property owner(s) will not be required in the determination by the City of the consulting and financing team.

No firm may serve as both design engineer and engineer of work and assessment engineer or special tax consultant on the same project, pursuant to Section 87100 of the Government Code. No law firm may serve as bond counsel if any project proponent has

engaged such firm at any time during the three-year period immediately preceding the formation of the proposed district.

All City and consultant costs incurred in the evaluation of new development, district applications and the establishment of districts must be paid by the applicant(s) by advance deposit increments. The City will not incur any non-reimbursable expense for processing assessment or community facilities districts. Expenses not prepaid and chargeable to the district shall be solely for the account of the applicant.

### Eligible Public Facilities

Facilities to be financed must be public facilities for which the City, or a public agency as determined appropriate by the City, will be the owner or will have normal operating and maintenance responsibility except that CFD funds (i.e., special taxes and up to five percent of the proceeds of a tax-exempt bond issue may be owned and/or operated by a privately owned utility), and must have a useful life of five or more years. Except as otherwise determined by the Council when proceedings for district formation are commenced, preference in financing public improvements through a land secured district will be given for those public improvements that help achieve clearly identified community facility and infrastructure goals. Such improvements and types of facilities eligible to be financed include study, design, construction and/or acquisition of:

1. Public safety facilities;
2. Streets, highways, and bridges;
3. Flood control facilities;
4. Street lighting;
5. Libraries;
6. Traffic signal and safety lighting;
7. Public utilities;
8. Park facilities, open space;
9. Recreational facilities;
10. Storm drain facilities;
11. Sanitary sewer facilities measures involving land acquisition, dedication, and revegetation;
12. Biological mitigation.
13. Potable and reclaimed water facilities;
14. Sewer facilities and water facilities;
15. Facilities authorized pursuant to development agreements, impact fee programs, capital improvement programs and capital facility fee programs of the City;
16. Other governmental facilities and improvements such as offices, information

technology systems and telecommunication systems.

17. Other facilities authorized pursuant to the Mello-Roos Act, as such act may be amended from time to time.

The City will retain final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a district financing. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City and bond counsel on a case-by-case basis. Generally, in-tract improvements will not be considered eligible, unless specific circumstances and credit conditions warrant such inclusion.

### Credit Conditions

- **Value-to-Lien:** In order to minimize the likelihood of a district defaulting on its payment to bond owners, all CFD or assessment district bond issues shall require at least a four to one (4:1) value-to-lien ratio taking into account, in addition to the other aspects of value, the value of the improvements to be financed, and considering all special tax and special assessment liens applicable to the subject property. A slightly lesser value-to-lien ratio may be considered when recommended for approval, upon compelling justification, by both bond counsel and the City's municipal advisor. In no event shall a value-to-lien of less than 3.5:1 be allowed.

Property value may be based on either an appraisal, or on assessed values of the subject property as indicated on the county's assessor's tax roll, or a combination of both. Appraisals, when used to establish property values, shall be performed by a state certified real estate appraiser selected by the City, as defined in subdivision (c) of Section 11340 of the California Business and Professions Code, in accordance with the State of California appraisal standards and the Uniform Standards of Professional Appraisal Practice. The definitions, standards and assumptions to be used in such an appraisal shall be the definitions, standards and assumptions set forth in the California Debt and Investment Advisory Commission's "Appraisal Standards for Land-Secured Financings," May, 1994, revised July, 2004. The appraisal must be dated within ninety days of the date the bonds are issued or if dated more than ninety days of the date the bonds are issued, a "bring down" or "update" letter from the appraiser shall be provided. The public lien amount shall be based on the size of the bond issue currently being sold, plus any parity, public indebtedness currently existing against the properties secured by special taxes or special assessments. This timeframe may be decreased due to then-current underwriting criteria as determined by the City, its municipal advisor, and the underwriter.

In addition to an appraisal, a market absorption study may be required. The appraisal and/or absorption study shall be coordinated by, under the direction of, and addressed to the City. All costs associated with the preparation of the appraisal report and/or market absorption study shall be paid by the developer(s) or property owner(s) through the advance deposit mechanism.

- **Reserve Fund:** A bond reserve fund equal to the least of (i) ten percent (10%) of the original proceeds of the bond issue, (ii) the maximum annual debt service on all outstanding bonds, or (iii) 125 percent of the average annual debt service on all outstanding bonds shall be required for all bond issues in districts where less than 90 percent of the buildable acreage has been developed. Notwithstanding the foregoing, a smaller reserve fund may be permitted by the City for private placements or bond issues in districts where a significant portion of the buildable acreage has been developed and the value-to-lien ratio for undeveloped property is in excess of the minimum required value-to-lien ratio described in the preceding section.

For smaller CFDs or improvement areas within a CFD, a Special Reserve Fund in addition to the standard reserve fund may be required. The reserve fund level will be determined by the City based on the recommendation of the Registered Municipal Advisor. The reserve fund may be funded with cash or an acceptable reserve surety or other credit facility.

- **Anticipated Tax Rate:** The special tax applicable to any parcel in a community facilities district ("CFD") or an assessment district which is expected to be developed for for-sale residential purposes shall be limited to an amount which, at the time of adoption of a rate and method of apportionment of special taxes for such district, and at the time a bond financing is approved by the Council, is not expected to cause the total tax projected to be levied on such parcel in the year following its initial sale to a homebuyer to exceed 1.8% of the estimated initial sales price thereof, as estimated by the City's market absorption consultant. In connection with the foregoing, the estimated sales price shall be determined assuming that the subject home is complete and ready for occupancy and is being marketed contemporaneously with the adoption of the rate and method of apportionment of special taxes. The City, at its sole discretion, may limit the total tax burden to less than 1.8% for certain market segments, such as seniors in age-restricted communities, if homeowners in such segments have demonstrated market sensitivity to tax burdens of 1.8%.

The total of the following burdens, when taken in the aggregate, will be used in calculating the total tax on a parcel: ad valorem property taxes levied by the County, voter approved ad valorem taxes levied by the County in excess of one percent (1%) of the Fair Market Value, any other existing special tax liens or assessments levied

on the property for any CFD or assessment or maintenance district for the payment of bonded indebtedness or services, and the maximum special tax for the proposed district.

The Special Tax formulas for CFDs financing capital improvements shall not include escalating special tax rates for residential property. Community Facilities Districts-Services may provide for an escalating special tax.

The maximum special tax formula shall adhere to the following requirements:

- a) The maximum special tax shall include the annual administrative costs of the City to administer the district (a portion of these costs may be established as superior in lien position to the debt service).
- b) The special tax formula shall not include escalator rates allowing annual tax increases above the maximum special tax established upon district formation.
- c) The maximum special tax shall establish for undeveloped land, tax rates corresponding to the adopted land use designations on each parcel. Undeveloped land may be taxed up to the maximum amount allowed for developed parcels, but debt service will first be paid by taxing developed parcels the maximum rate and to the extent that additional special tax is required to pay debt service and pay administrative costs, an amount up to the maximum special tax may be levied on undeveloped land.
- d) The City shall have discretion to allow a special tax in excess of the established limits for any lands within the CFD which are designated as commercial or industrial.
- e) For residential districts, once property sale actively commences, the City will not take any actions to modify the established special tax formula.

The City shall retain a special tax consultant to prepare a report which recommends a special tax method for the proposed CFD, and evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable), and other related expenditures. Such analysis shall also address the resulting aggregate tax burden of all proposed special taxes, ad valorem taxes and assessments on properties within the CFD.

- **Delinquency Level:** The property tax delinquency rate on properties within a

district shall be no greater than 5.0% at the time of any sale of bonds in connection with such district, with exception for the issuance of refunding bonds.

- **Security:** For new development, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes during the build-out period. The City in certain instances may require additional security such as credit enhancement as discussed in further detail in the following section.
- **Exceptions:** The City may consider exceptions to these policies for bond issues that do not represent an unusual credit risk, either due to credit enhancement or other reasons specified by the City, or for private placements of bonds to accredited investors or qualified institutional buyers. Furthermore, the City may consider exceptions to these policies for projects which meet public policy goals.

### Appraisal Standards

- **Definition of Appraisal:** An appraisal is a written self-contained report independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- **Standards of Appraisal:** A detailed complete appraisal shall be prepared for complex appraisal problems. A detailed complete appraisal shall reflect nationally recognized appraisal standards including, to the extent appropriate, the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation, the Code of Professional Ethics and the Standards of Professional Appraisal Practice of the Appraisal Institute. An appraisal should also generally conform to the Appraisal Standards for Land-Secured Financings provided by the California Debt and Investment Advisory Commission ("CDIAC"). Appraisals undertaken to establish value-to-lien ratios in CFDs should value the fee simple estate, subject to special assessment and special tax liens. The estimate of Market Value should be refined to reflect the Retail Value of fully improved and occupied properties and the Bulk Sale Value of all vacant properties, including both unimproved properties and improved or partially improved but unoccupied properties. An appraisal must contain sufficient documentation including valuation data and the appraiser's analysis of the data to support his or her opinion of value. At a minimum, the appraisal shall contain the following:
  - a) The purpose and/or function of the appraisal, an identification of the property being appraised, the intended use, the identity of the current and intended uses, and a statement of the assumptions and limiting conditions

affecting the appraisal.

- b) An adequate description of the physical characteristics of the property being appraised, location, zoning, present use, and an analysis of highest and best use.
  - c) Relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. If a discounted cash flow analysis is used, it should be supported with at least one other valuation method, such as a market approach using sales that are at the same stage of land development. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.
  - d) A description of comparable sales, including a description of all relevant physical, legal and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.
  - e) A statement of the value of real property.
  - f) The effective date of valuation, date of appraisal, signature and certification of the appraiser.
- **Conflict of Interest:** No appraiser shall have any interest direct or indirect in the real property being appraised for the City that would in any way conflict with the preparation or review of the appraisal.
  - **Refunding and Restructuring:** In the context of a workout or bond restructuring, including a refunding, the requirement for an appraisal shall be based on findings of the City Council in light of the particular bond structure and the nature of the bond owners of the new restructured obligations.

### Bond Sale Guidelines

The timing of any sale of bonds in connection with a district and the conditions that must be satisfied prior to any such sale shall be determined by the City Council in its sole discretion; and, in connection therewith and in order to address the then prevailing conditions in the bond market, the Council may elect not to issue any such bonds unless and until the property whose special taxes or assessments will secure such bonds is all or substantially all developed and all or substantially all of the for-sale properties located in



the district have been conveyed to end-users thereof.

### Financial Participation

The proponent(s) of a district will be expected to advance sufficient funds to pay all costs associated with the formation of the district and all costs associated with the issuance and sale of bonds, as required and/or deemed necessary by the City. Any reimbursement of such costs from the proceeds of the bond sale will be at the sole discretion of the City.

### Acquisition of Facilities

In the event the acquisition provision of the Municipal Improvement Act of 1913 or the Mello-Roos Act is utilized, the City at its sole discretion, will determine the facilities to be acquired and the method of determining reasonable acquisition costs. A funding and acquisition agreement shall be required and approved by the City Council prior to the adoption of the Resolution of Formation to form the district. Bidding and prevailing wage requirements will be addressed during the preparation of the agreement.

### Terms and Conditions of Bonds

The City shall be responsible for determining the financing method to be used, the structure of the bonds to be issued including the method of sale (negotiated, competitive, or private placement), its consultants for the financing, the investment of bond proceeds, and all other terms and conditions incidental to structuring and closing a land-secured bond issue. Unless otherwise authorized by the City, the following shall serve as bond requirements:

- **Reserve Fund:** A reserve fund equal to the lesser of the three tests described in applicable federal tax regulations.
- **Special Tax Levy – CFD:** Special taxes shall be levied upon developed property which obtains an occupancy permit and, in all cases, in advance of the issuance of CFD bonds, in accordance with the rate and method of apportionment. Special taxes may be levied to fund a special reserve to pay debt service and administration fees. Special taxes may also be levied for authorized improvements prior to bond sale. These improvement funds will be held in a deposit account until such time as bonds are sold, in order to ensure sufficient project funds while maintaining an effective tax rate of 1.8% or lower at the time of bond sale. In the event of extenuating circumstances which make issuing bonds in a reasonable manner unfeasible, the funds in the deposit account could be released at the discretion of the City.

- **Capitalized Interest:** Interest may not be funded (capitalized) beyond the earliest principal payment date for which sufficient special tax or assessment revenues can be made available.
- **Debt Service Structure:** Beginning with the commencement of the repayment of principal, annual debt service shall be level. The City will consider an increasing annual debt service for commercial and/or industrial districts only, but such increases shall not exceed one percent (1%) per year.
- **Equity of Proposed Special Tax or Assessment:** The maximum special tax shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least 110% of the average annual debt service after funding of the reasonable and necessary administrative expenses of the district. The allocation of any assessment or special tax shall be consistent with the methodology established by the engineers report and/or the Rate & Method of Apportionment (RMA) as applicable. Under no circumstances shall the special tax levied on any parcel of developed residential property be increased by more than ten percent (10%) as a consequence of delinquency or default by the owner of any other parcel.

All special tax formulas shall include a maximum tax and a formula for prepayment. The City will evaluate the equity of the proposed allocation of a special assessment or special tax consistent with the applicable statutes. Exceptions from the special tax may be given to parcels which are publicly owned, are held by a property owners association, are used for a public purpose such as open space or wetlands, are affected by easements making impractical their utilization for other than the purposes set forth in the easements, or have insufficient value to support bonded indebtedness or as otherwise determined by the City Council.

- **Adherence to these Policies:** Prior to sale of bonds, the City shall have received from its municipal advisor a letter that states to the best of its knowledge to date, these policies have been met, or if not, why a waiver was in the City's best interest.
- **Priority of Funding:** In instances where multiple series of bonds are to be issued, the first series shall include public facilities of highest priority to the City, as determined by the City.
- **Timing of Bond Sale:** The timing for bond sales is solely at the discretion of the City. Guidelines to assist in determining the appropriate timing of a Bond sale include (but are not limited to): appropriate land-use entitlements being in place and finalized; appropriate environmental clearances completed and certified; in-tract improvements related to parcels securing bonds significantly complete and

certified; for residential projects, completion of model home complex(es), initiation of construction of production homes, and having at least 10% of saleable residential units in escrow or sold and closed.

- **Refunding Guidelines:** In general, current refundings of outstanding bonds for economic savings will be undertaken only when net present value savings of at least three percent (3%) of the refunded debt can be achieved. If the refunding is an advance refunding, then the minimum desired net present value savings shall be at least five percent (5%). Advance refundings that produce net present value savings of less than five percent will be considered on a case-by-case basis, provided that the present value savings are at least three percent (3%) of the refunded debt. Refundings with savings of less than three percent (3%), or with negative savings, will not be considered unless there is a compelling public policy objective, as determined by the City. The measurement of the 3% or 5% savings may, but is not required to, consider other benefits to the City, other than the proposed bond transaction, if deemed appropriate by the City.
- **Security:** For new development, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes during the build-out period. The City in certain instances may require additional security such as credit enhancement.

The Developer/Land Owner(s) will be required to post a Letter of Credit in the amount of up to two years of maximum annual debt service as long as they have a 20% or greater share of the special tax payments.

If the City requires letters or credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the district applicant or developer, not the City or district.

- **Disclosure:** Owners of land securing 10% or more of the debt service on bonds will be required to provide financial information, deemed appropriate by the City, for inclusion in the continuing disclosure document the City must provide annually and will also be required to provide written undertakings to provide financial and operating data as required by the SEC's Rule 15c2-12 and by the underwriter of the bonds.

It is the intent of the City that purchasers of property within a community facilities district or an assessment district and purchasers of the bonds be fully informed of the amount and nature of the assessment or special tax. In addition to all requirements of law, the City shall require the proponent(s)/applicant(s) of such

district to provide disclosure of such information as the City deems appropriate to the purchasers of property (both existing and future property owners) within the district, with respect to the existence of the district, amounts of special taxes or assessments to be levied within the district and the terms and conditions of bonds issued on behalf of the district. Such disclosure may include homebuyer notifications requiring signature prior to the home purchases, as well as methods to notify subsequent home purchasers. Upon request by staff, the proponent(s) shall provide a certificate of compliance with the disclosure requirements.

#### District Cost Deposits and Reimbursements

All City and consultant costs incurred in the evaluation of district applications and the establishment of districts will be paid by the applicant by advance deposit increments. The City shall not incur any non-reimbursable expenses for processing and administering developer-initiated assessment districts or CFDs. Expenses not chargeable to the district shall be directly borne by the applicant.

Each application for formation of an assessment district or CFD shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with district review and implementation. If additional funds are needed to offset costs and expenses incurred by the district, the City shall make written demand upon the applicant for such funds and the applicant shall comply with each demand within ten (10) calendar days of receipt of such notice. If the applicant fails to make any deposit of additional funds for the proceedings, the City will suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the proceedings, including but not limited to, legal, engineering, appraisal, special tax consultant and financial advisory expenses; administrative costs and expenses; required notifications; and printing and publication of legal matters.

The City shall refund any unexpended portion of the deposits upon the following conditions:

- a) The District is not formed;
- b) Bonds are not issued and sold by the District;
- c) The proceedings for formation of the District or issuance of bonds is disapproved by the City; or
- d) The proceedings for formation of the District or issuance of bonds are abandoned in writing by the applicant.

Except as otherwise provided herein, the applicant shall be entitled to reimbursement for all reasonable costs and expenses incident to the proceedings and construction of the public facilities as provided under the Mello-Roos Community Facilities Act of 1982 or the Municipal Improvement Act of 1911 or 1913 and the Improvement Bond Act of 1915, provided that all such costs and expenses shall be verified by the City as a condition of reimbursement.

The applicant or property owner shall not be entitled to reimbursement from bond proceeds for any of the following:

- a) In-house administrative and overhead expenses incurred by the applicant, or expenses of applicant's counsel or consultants;
- b) Interest expense incurred by the applicant on moneys advanced or expended during the proceedings and construction of public facilities; and
- c) Any other costs and expenses incurred by the applicant which are not otherwise authorized for reimbursement under the Mello-Roos or Assessment Acts.
- d) Any fees for public facilities, school, roads, or any other fee or any permits for engineering, construction, planning or inspections.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the City nor the district shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the district. Excess funds on deposit after the formation of the proposed district will be refunded to the depositor.

#### Agreements

The applicant shall provide all necessary agreements incident to district proceedings in a form satisfactory to the City and consistent with these policies. These agreements shall include, but not be limited to:

- a) Reimbursement Agreement
- b) Agreements with any other public agency entitled to receive any portion of the bond proceeds or entitled to own and operate any of the public facilities financed by bond proceeds.

As a condition to the issuance and sale of the bonds, all of the agreements specified shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by bond counsel and the City Attorney and approved by

the City Council.

### Acquisition Provisions

The City is generally opposed to construction districts. The City shall have final determination as to whether it will allow the financing of public facilities through construction as opposed to acquisition, and will grant exceptions only where an overriding justification exists concerning public benefit, safety or health. Such waiver shall be subject to City Council approval.

The City and the applicant or property owner shall mutually agree upon facilities to be acquired and the method of determining reasonable acquisition costs. A funding and acquisition agreement shall be required and approved by the city council on or prior to the adoption of the Resolution of Intention to form the district.

### Property Owner Support

In the instance of multiple property owners, the district applicant shall be required to produce letters evidencing other property owner support for the scope and establishment of the district as an attachment to the district application. The City will require that developer initiated districts have concurrence of not less than two-thirds of the property owners to be included in the proposed district, unless there is an overriding need for the public facilities, or the applicant is willing to separately fund the facilities on the non-participating property(s). The City reserves the right to require demonstration of a greater or lesser degree of public support for the formation of the proposed district.

### Land Use Approvals

Proposed district properties must possess a land use determination such that proposed development land uses and specific facility requirements can be adequately assessed. The City will accept applications for assessment and/or Mello-Roos financing only when properties to be included within a proposed district have City-approved zoning or site plan approval.

### Minimum Standards: Waiver and Amendment

The policies set forth herein reflect the minimum standards under which the City will assist development of land-secured districts. The City may, in its discretion, require additional measures and procedures, enhanced security and higher standards in particular cases.

The City may, in limited and exceptional circumstances and to the extent permitted by law,

in its discretion, waive any of the policies set forth herein in particular cases given identified special City benefits to be derived from such waiver. Such waivers are granted only by action of the City Council and based upon a specific public purpose and/or health and safety findings. The policies set forth herein may be amended at any time and from time to time by the City.

CITY OF MERCED

LAND SECURED FINANCING POLICIES



CITY OF MERCED  
LAND SECURED FINANCING POLICIES

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Attachment: Application for Land-Secured Financing

City of Merced  
Land Secured Financing Policies  
New Development Projects

Definitions

Unless the context otherwise requires, the terms employed in the following policies shall have the meanings specified below:

"Assessment Acts" means the Improvement Bond Act of 1911 and/or the Municipal Improvement Act of 1913 and/or the Improvement Bond Act of 1915; the Landscaping and Lighting Act of 1972; the Benefit Assessment Act of 1982;.

"Bonds" means bonds authorized and issued under the Mello-Roos"Act or Improvement Bond Act of 1915.

"Bulk Sale Value" means the most probable price, in a sale of all parcels within a tract or development project, to a single purchaser or purchasers, over a reasonable absorption period, discounted to a present value, as of a specified date, in cash or in terms equivalent to cash, for which the property rights should sell after reasonable exposure, in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgably and for self-interest, and assuming that neither is under undue stress.

"City" means the City of Merced.

"Discounted Cash Flow" means the measurement of the cash flows associated with the development and sale of real estate parcels, based on an independent judgment of the prices and times at which individual parcels or properties would be sold, after applying a discount rate to such cash flows to reflect the risk-adjusted rate of return necessary to attract the debt and equity investment necessary to undertake and complete the acquisition, entitlement, development and sale of the parcels or properties.

"District" means a community facilities district formed under the Mello-Roos Community Facilities Act of 1982 or an assessment district formed under the Improvement Act of 1911 or the Municipal Improvement Act of 1913.

"Lien" means, in the case of public debt imposed on a parcel or parcels, the aggregate amount of public debt attributable to such parcel, as measured by an assessment engineer; or, in the case of Mello-Roos Community Facilities District debt, the amount of debt attributable to a parcel or parcels, based on an apportionment of the debt to such parcel or parcels in relation to the probable debt service to be borne by such parcel or parcels.

"Public Facilities" means improvements authorized to be constructed or acquired under the Mello-Roos and Assessment Acts including, but not limited to, fees for capital facilities imposed **by** public agencies as a condition to approval of the development encompassed by the district or as a condition to service the district.

"Value" or "Fair Market Value" means the amount of cash or its equivalent which property would bring if exposed for sale in the open market under conditions in which neither buyer nor seller could take advantage of the exigencies of the

other and both have knowledge of all of the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions upon uses and purposes.

"Value-to-lien ratio" means the ratio of the Value, Fair Market Value or current assessed value applied by the County of Merced's Assessor's Office of a parcel or parcels in relation to the lien or liens imposed by an issue of bonds.

#### Introductory Statement

The City of Merced will consider developer or property owner initiated applications requesting the formation of community facilities or assessment districts and the issuance of bonds to finance eligible Public Facilities necessary to serve newly developing commercial and/or industrial projects under the conditions set forth herein. Projects primarily comprised of residential property may make application to the City only in the following instances:

1. The tax-exempt financing of project Public Facilities will result in a significant public benefit, as such public benefit is determined by the City; and
2. The City has negotiated and executed a development agreement (or similar agreement) addressing project implementation and providing for financing of all required public infrastructure.
3. Issuance of bonds for Financing of Public Facilities will not be less than \$5,000,000.

The above criteria will be applied by the City staff with final determination and findings to be made by the City Council.

Generally, only regional or community serving Public Facilities such as major collector and arterial streets and highways, state highways and bridges, freeways and freeway interchanges, railroad crossings, traffic signals, parks and open space acquisitions, public works facilities (including water, wastewater, storm drainage processing and distribution systems), community facilities (including youth facilities, sports complexes, bikeways and community/youth centers), public safety facilities (including police and fire facilities) and other appropriate public facilities will be eligible for this program. Facilities will be financed in accordance with the provisions of the Assessment Acts, or the Mello-Roos Community Facilities Act of 1982.

Each time a community facilities or assessment district is formed for the benefit of a development project, the City will require annexation into a Community Facilities District - Services. The Community Facilities District may be established pursuant to the provisions of the Community Facilities Act of 1982, or such other provision of state law or appropriate local code or charter provisions, and will serve for the purpose of paying for any unfunded on-going City maintenance costs associated with the development project.

The City shall make the determination as to whether a proposed district shall proceed under the provisions of the Assessment Acts or the Mello-Roos Community Facilities Act. The City may confer with other district consultants and the applicant to learn of any unique district requirements such as regional serving

facilities or long-term development phasing prior to making any final determination.

All City and consultant costs incurred in the evaluation of new development, district applications and the establishment of districts must be paid by the applicant(s) by advance deposit increments. The City will not incur any non-reimbursable expense for processing assessment or community facilities districts. Expenses not prepaid and chargeable to the district shall be solely for the account of the applicant.

#### Eligible Public Facilities

Facilities to be financed must be public facilities for which the City, or a public agency as determined appropriate by the City, will be the owner or will have normal operating and maintenance responsibility. The types of facilities eligible **to be** financed are:

- A. Streets, roads and highways
  - 1. Arterial roads and state highways
  - 2. Collector streets, **as** determined by the City (**ie.**, no residential frontage allowed)
  - 3. Bridges and freeway interchanges
  - 4. Traffic signals **and** railroad crossings, including grade separations.
- B. Parks, open space and community facilities
  - 1. Youth facilities, youth centers, community facilities
  - 2. Sports facilities and complexes
  - 3. Bikeways
  - 4. Parks and recreational facilities.
- C. Public safety facilities
  - 1. Police stations, sub-stations, and other facilities
  - 2. Fire stations and facilities.
- D. Public works facilities
  - 1. Water and wastewater treatment, storage and distribution facilities
  - 2. Storm drainage facilities

The City will retain final determination as to any facility's eligibility for financing, as well as the prioritization of facilities to be included within a

district financing. Use of bond proceeds for grading and right-of-way acquisition will be reviewed by the City and bond counsel on a case-by-case basis. Generally, "in-tract" improvements will not be considered eligible, unless specific circumstances and credit conditions warrant such inclusion.

#### Value-To-Lien

The district (or improvement area) property value-to-lien ratio should be at least 4.0:1 after calculating the value of the financed public improvements to be installed and considering any prior or pending special taxes or improvement liens. A slightly lesser value-to-lien ratio may be considered when recommended for approval, upon compelling justification, by both bond counsel and the City's financial advisor. In no event shall a lien of less than 3.5:1 be allowed.

The value-to-lien ratio shall be determined based upon an appraisal of the proposed district. The appraisal shall be coordinated by and under the direction of the City. All costs associated with the preparation of the appraisal report shall be paid by the applicant through the advance deposit mechanism. The appraisal shall be conducted in accordance with criteria established by the City, based upon the recommendations received by the City from its Bond Counsel and/or Financial Advisor. In every case, the appraisal shall employ either a discounted cash flow or utilize bulk sale comparables and shall fully conform to published guidelines of the California Debt and Investment Advisory Commission.

The time-frame from the date of value of the appraisal and the bond closing date should be no more than ninety days. This time frame may be decreased due to then-current underwriting criteria as determined by the City, it's financial advisor, and the underwriter.

The City shall have discretion to retain a consultant to prepare a report to verify market absorption assumptions and projected sales prices of the properties, which may be subject to the maximum special tax or assessments in the district. Such a report may be used by appraisers in determining the value of property to be assessed or taxed.

#### Security

For new development, the applicant or property owner must demonstrate its financial plan and ability to pay all assessments and/or special taxes during the build-out period. The City in certain instances may require additional security such as credit enhancement.

The Developer/Land Owner(s) will be required to post a Letter of Credit in the amount of up to two years of maximum annual debt service as long as they have a 20% or greater share of the special tax payments.

If the City requires letters of credit or other security, the credit enhancement shall be issued by an institution in a form and upon terms and conditions satisfactory to the City. All fees payable on the letter of credit or other security shall be the sole responsibility of the district applicant or developer, not the City or district.

#### Special Tax Formula

For Mello-Roos Community Facilities Districts ("CFDs"), the maximum special tax

submitted to the qualified electors of the CFD shall not exceed three-quarters of one percent (0.75%) of the anticipated base sales price of all housing units as estimated by City market absorption consultant. Furthermore, the total of the following burdens, when taken in the aggregate, may not exceed at time of bond sale one and eight-tenths percent (1.8%) of the appraised Fair Market Value of the subject properties:

- A. Ad valorem property taxes levied by the County.
- B. Voter approved ad valorem taxes levied by the County in excess of one percent (1%) of the Fair Market Value.
- C. The Special Tax formulas for CFD's financing capital improvements shall not include escalating special tax rates for residential property. Community Facilities Districts-Services may provide for an escalating special tax.
- D. Assessments levied for any assessment district or maintenance district for the payment of bonded indebtedness or services and, the maximum special tax for the proposed CFD.

The maximum special tax formula shall adhere to the following requirements:

- A. The maximum special tax shall include the annual administrative costs of the City to administer the district (A portion of these costs may be established as superior in lien position to the debt service).
- B. The special tax formula shall not include escalator rates allowing annual tax increases above the maximum special tax established upon district formation.
- C. The maximum special tax shall establish for undeveloped land, tax rates corresponding to the adopted land use designations on each parcel. Undeveloped land may be taxed up to the maximum amount allowed for developed parcels, but debt service will first be paid by taxing developed parcels the maximum rate and to the extent that additional special tax is required to pay debt service and pay administrative costs, an amount up to the maximum special tax may be levied on undeveloped land.
- D. The City shall have discretion to allow a special tax in excess of the established limits for any lands within the CFD which are designated as commercial or industrial.
- E. For residential districts, once property sale actively commences, the City will not take any actions to modify the established special tax formula.

The City shall retain a special tax consultant to prepare a report which:

- A. Recommends a special tax method for the proposed CFD, and
- B. Evaluates the special tax proposed to determine its ability to adequately fund identified public facilities, City administrative costs, services (if applicable) and other related expenditures. Such analysis shall also address the resulting aggregate tax burden

of all proposed special taxes plus existing special taxes, ad valorem taxes and assessments on the properties within the CFD.

#### Terms and Conditions of Bonds

All terms and conditions of the bonds shall be established by the City. The City will control, manage and invest all district issued-bond proceeds. Unless otherwise authorized by the City, the following shall serve as bond requirements:

- A. A reserve fund equal to the lesser of three tests described in applicable federal tax regulations.
- B. The special taxes shall be levied for the first fiscal year following sale of the bonds for which they may be levied. Interest may not be funded (capitalized) beyond the earliest interest payment date for which sufficient special tax or assessment revenues will be available for payment of interest.
- C. The repayment of principal shall begin on the earliest principal payment date for which sufficient special tax or assessment revenues can be made available.
- D. Beginning with the commencement of the repayment of principal, annual debt service shall be level. The City will consider an increasing annual debt service for commercial and/or industrial districts only, but such increases shall not exceed one percent (1%) per year.
- E. The maximum special tax shall be established to assure that the annual revenue produced by levy of the maximum special tax shall be equal to at least 110% of the average annual debt service.
- F. Prior to sale of bonds the City shall have received from its financial advisor a letter that states to the best of its knowledge to date, these policies have been met, or if not, why a waiver was in the City's best interest.
- G. In instances where multiple series of bonds are to be issued, the first series shall include public facilities of highest priority to the City, as determined by the City.
- H. The timing for bond sales is solely at the discretion of the City. Guidelines to assist in determining the appropriate timing of a Bond sale include (but is not limited to): appropriate land-use entitlements being in place and finalized; appropriate environmental clearances completed and certified; in-tract improvements related to parcels securing bonds significantly complete and certified; for residential projects, completion of model home complex(es), initiation of construction of production homes, and having at least 10% of saleable residential units in **escrow** or sold and closed.

In general, advance refundings of outstanding bonds for economic savings will be undertaken only when net present value savings of at least five percent (5%) of

the refunded debt can be achieved. Current refundings that produce net present value savings of less than five percent will be considered on a case-by-case basis, provided that the present value savings are at least three percent {3%} of the refunded debt. Refundings with savings of less than three percent (3%), or with negative savings, will not be considered unless there is a compelling public policy objective, as determined by the City. The measurement of the 3% or 5% savings may, but is not required to, consider other benefits to the City, other than the proposed bond transaction, if deemed appropriate by the City.

#### District Cost Deposits and Reimbursements

All City and consultant costs incurred in the evaluation of district applications and the establishment of districts will be paid by the applicant by advance deposit increments. The City shall not incur any non-reimbursable expenses for processing and administering developer initiated assessment districts or CFD's. Expenses not chargeable to the district shall be directly borne by the applicant.

Each application for formation of an assessment district or CFD shall be accompanied by an initial deposit in the amount determined by the City to fund initial staff and consultant costs associated with district review and implementation. If additional funds are needed to off-set costs and expenses incurred by the district, the City shall make written demand upon the applicant for such funds and the applicant shall comply with each demand within seven (7) calendar days of receipt of such notice. If the applicant fails to make any deposit of additional funds for the proceedings the City may suspend all proceedings until receipt of such additional deposit.

The deposits shall be used by the City to pay for costs and expenses incurred by the City incident to the proceedings, including but not limited to, legal, engineering, appraisal, special tax consultant and financial advisory expenses; administrative costs and expenses; required notifications; and printing and publication of legal matters.

The District shall refund any unexpended portion of the deposits upon the following conditions:

- A. The District is not formed;
- B. Bonds are not issued and sold by the District;
- C. The proceedings for formation of the District or issuance of bonds is disapproved by the City; or
- D. The proceedings for formation of the District or issuance of bonds is abandoned in writing by the applicant.

Except as otherwise provided herein, the applicant shall be entitled to reimbursement for all reasonable costs and expenses incident to the proceedings and construction of the public facilities as provided under the Mello-Roos Community Facilities Act of 1982 or the Municipal Improvement Act of 1911 or 1913 and the Improvement Bond Act of 1915, provided that all such costs and expenses shall be verified by the City as a condition of reimbursement.

The applicant or property owner shall not be entitled to reimbursement from bond proceeds for any of the following:



- A. In-house administrative and overhead expenses incurred by the applicant, or expenses of applicant's counsel or consultants;
- B. Interest expense incurred by the applicant on moneys advanced or expended during the proceedings and construction of public facilities; and
- C. Any other costs and expenses incurred by the applicant which are not otherwise authorized for reimbursement under the Mello-Roos or Assessment Acts.
- D. Any fees for public facilities, school, roads, or any other fee or any permits for engineering, construction, planning or inspections.

The City shall not accrue or pay any interest on any portion of the deposit refunded to the applicant or the costs and expenses reimbursed to the applicant. Neither the City nor the district shall be required to reimburse the applicant or property owner from any funds other than the proceeds of bonds issued by the district. Excess funds on deposit after the formation of the proposed district will be refunded to the depositor.

#### Agreements

The applicant shall provide all necessary agreements incident to district proceedings in a form satisfactory to the City and consistent with these policies. These agreements shall include, but not be limited to:

- A. Reimbursement Agreement
- B. Agreements with any other public agency entitled to receive any portion of the bond proceeds or entitled to own and operate any of the public facilities financed by bond proceeds.

As a condition to the issuance and sale of the bonds, all of the agreements specified shall be duly approved and executed by the parties thereto. Prior to execution of any agreements, such agreements shall be reviewed by bond counsel and the City Attorney and approved by the City Council.

#### Use of Consultants

The City shall select all consultants necessary for the formation of the district and the issuance of bonds, including the underwriters, bond counsel, financial advisor, assessment engineer, appraiser, market study consultant, and the special tax consultant. Prior consent of the applicant shall not be required in the determination by the City of the consulting and financing team.

No firm may serve as both design engineer and engineer of work and assessment engineer or special tax consultant on the same district. **No** law firm may serve as bond counsel if any project proponent has engaged such firm at any time during the three-year period immediately preceding the formation of the proposed district.

No law firm may serve as both bond counsel and disclosure counsel.

### Acquisition Provisions

The City is generally opposed to construction districts. The City shall have final determination as to whether it will allow the financing of public facilities through construction as opposed to acquisition, and will grant exceptions only where an overriding justification exists concerning public benefit, safety or health. Such waiver shall be subject to City council approval.

The City and the applicant or property owner shall mutually agree upon facilities to be acquired and the method of determining reasonable acquisition costs. A funding and acquisition agreement shall be required and approved by the city council on or prior to the adoption of the Resolution of Intention to form the district.

### Disclosure to Purchasers

The applicant or property owner will be required to demonstrate to the satisfaction of the City that there will be full disclosure of this and any other special tax, assessment or other liens on individual parcels to existing and future property owners. In addition to all requirements of law, the City shall require the applicant to provide disclosure of such information as the City deems appropriate to the purchasers of property within the district, with respect to the existence of the district, amounts of special taxes to be levied within the district and the terms and conditions of bonds issued on behalf of the district. Such disclosure may include homebuyer notifications requiring signature prior to home purchasers, as well as methods to notify subsequent homepurchasers.

### Property Owner Support

In the instance of multiple property owners, the district applicant shall be required to produce letters evidencing other property owner support for the scope and establishment of the district as an attachment to the district application. The City will require that developer initiated districts have concurrence of not less than two-thirds of the property owners to be included in the proposed district, unless there is an overriding need for the public facilities, or the applicant is willing to separately fund the facilities on the non-participating property(s). The City reserves the right to require demonstration of a greater or lesser degree of public support for the formation of the proposed district.

### Land Use Approvals

Proposed district properties must possess a land use determination such that proposed development land uses and specific facility requirements can be adequately assessed. The city will accept applications for assessment and/or Mello-Roos financing only when properties to be included within a proposed district have City approved zoning or site plan approval.

#### Exceptions to These Policies

The City may find in limited and exceptional instances that a waiver to any of the above stated policies is reasonable given identified special City benefits to be derived from such waiver. Such waivers are granted only by action of the City Council and based upon specific public purpose and/or health and safety findings.

CITY OF MERCED  
MELLO-ROOS AND ASSESSMENT FINANCING PROGRAM

APPLICATION FORM

(Please submit 3 copies of this application and any attachments.)  
(Use separate sheets if necessary.)

I. APPLICANT INFORMATION

1. Applicant Information

Project: \_\_\_\_\_

Previous name(s) under which project has been known or processed by the City:

\_\_\_\_\_

Applicant: \_\_\_\_\_

Relationship to Property Owners: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Major Property Owner(s) \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact: \_\_\_\_\_

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

Phone: \_\_\_\_\_

**Fax:** \_\_\_\_\_

Developer: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Contact: \_\_\_\_\_

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

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Please complete all above items as applicable. If any item is not applicable, please so state. Be sure to include:

Name(s) of owner(s) of record.

If applicant is not the current owner of record, describe the nature of developer's current interest in the property and expected date that escrow will close.

State when the applicant purchased the property and whether the purchase has been completely consummated.

\_\_\_\_\_

State whether the purchase of the property or the purchase price is contingent in any way on the future development of the property.

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## II. DISTRICT INFORMATION

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2. Financing Method. (Check all that apply)

Special Assessments  
Mello-Roos Community Facilities Act  
Other or Undecided

3. District Boundaries.

Define the boundaries of the proposed Assessment/Mello-Roos district, or attach a map of the proposed district.

4. Public Improvement Proposed.

Describe the improvements to be financed through an Assessment/Mello-Roos district. Include a cost breakdown, construction timetable and the operating cost impact on the City. Do not include financing costs, interest income assumptions or other financial factors. Do include detail of construction costs that identifies soft costs, land, and/or right-of-way acquisitions, construction costs, engineering costs, and contingencies separately.

5. Public Benefit.

Describe the public benefit provided. Public benefits include, without limitation: (i) regional improvements which benefit a population beyond the immediate impact area of your project (e.g., libraries, fire stations, and freeway on-ramps); (ii) low and very low income housing; (iii) environmental benefits such as preservation of wetlands or the construction of storm water treatment facilities; and (iv) additional public improvements (e.g., improvements beyond those required by the City's Development Services Department as a condition of your project's approval). NOTE: You may list as public benefits any environmental mitigation measures or other exactions to be provided pursuant to a development agreement, if any, you have negotiated with the City concerning this project.

6. District Financing Plan.

State the estimated dollar amount of the proposed Assessment/Mello-Roos bond(s) and your assumptions, including interest rates, maturity and capitalized interest, if available. As a guideline, use a maximum 20-year maturity and a maximum one-year of capitalized interest.

Interest cost assumptions will be provided by the City based on the most recently available information on outstanding comparable Assessment/Mello-Roos transactions.

7. Other Public Infrastructure Needs.

List all other required public infrastructure not financed with the requested Assessment/Mello-Roos district. Provide cost estimates and funding methods.

---

8. Taxes, Assessment and Liens.

List all existing and proposed taxes, assessments, and liens on properties in the proposed district. Provide a recent preliminary title report and recent property tax bill.

9. Other District on the Property.

Have you, or anyone else, filed a petition with another public agency {e.g., school or water district) to form an Assessment/Mello-Roos district on the property or portion of?

10. Other Property Owners.

Identify other property owners who may be included in the proposed district but who were not indicated in #1, above, and attach a map identifying their properties.

11. Additional Information.

Do you foresee any unusual requirements, problems or opportunities associated with establishing this district or financing the improvements?

---

III. PROJECT INFORMATION

---

12. Project Description.

Provide a map identifying your project. Attach a full description of the project, including number of units/acres by land use, development schedule and utility and transportation requirements. Break down development by commercial, industrial and residential uses. For residential development, please furnish the following:

	Total Of Units	# Size in sq. ft.	Estimated Price Range	#of Units Completed	# of Units Under Constr.	#of Escrows Closed
S.F. Attached						
S.F. Detached						
Townhouses						
Condominiums						
Apartments						
Retail/Industrial						
Commercial						
Totals						

13. Governmental Approvals.

List status of City planning approvals required for your project, including processing numbers, projected approval dates, and any development agreements. Describe status of zoning changes required, tentative tract map filings, building permits, "will serve" letters for water and sewer facilities, etc.

---

14. Civil Engineer.

Provide name, address, contact, and telephone number of the project's civil engineer.

**15. Market Absorption Study.**

Attach a copy of any market absorption study already undertaken, specifying date and contact person. An Absorption Study will be required for any project to be secured by new development. The City will select market absorption consultants.

**16. Appraisal(s).**

List the date and amount of most recent appraisal(s) and name of appraiser, if any. Attach a copy of the appraisal(s). The City will rely on an independent MAI appraiser, selected by the City to determine appraised value of the property for purposes of complying with City policy.

**17. Environmental Impacts.**

Please attach copies of complete EIR(s) or indicate status. What efforts are planned to mitigate traffic congestion or other impacts, and will such efforts be financed by Assessment/Mello-Roos financing? Please also include copies of any soils or hazardous material survey prepared in connection with such EIR(s). Is the property securing the Assessment or Mello-Roos financing located in a flood plain?

**18. Environmental Audit.**

Please attach a Phase I environment audit for the subject real property or properties (prepared by a reputable environmental consulting firm).

Note: The City may designate a representative to receive and review confidential materials described in Question 19 and Question 20, below.

**19. Project Pro Forms.**

Provide project proformas (a) assuming conventional financing for the infrastructure improvements and (b) assuming tax-exempt public financing.

**20. Project Guarantees.**

Identify proposed mechanism for guaranteeing special tax or assessment payments prior to positive project cash flow.

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IV. APPLICANT EXPERIENCE/REFERENCES

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The City may designate a representative to receive and review confidential materials required below:

**21. Financial Statements and References.**

(a) List up to three banking references, one of which should be the current project lender, if applicable. Include name, address, contact person and telephone number.

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(b) Provide recent financial statement of developer (or other relevant entity), or provide other information demonstrating past financial performance and current financial condition.

(c) If construction financing has been obtained, describe source and terms. Otherwise, indicate status of construction financing.

**22. Prior Development Experience.**

List previous experience on similar developments and any other development ventures in California. Include location, project mix, size (number of units/square footage), year built and role of your development firm. Also, provide the name of a city official that you worked with on the project.

**23. Prior Assessment/Mello-Roos Experience.**

List all Assessment/Mello-Roos financings in which you have participated.

Have you ever failed to file an annual report required under the provisions of Rule 15c2-12 of the Securities and Exchange Commission?

Has an application for such financing on this property been previously denied or have you ever been party to an abandoned, defaulted or court challenged Assessment/Mello-Roos district? If so, please explain.

**24. Bankruptcy.**

Have any of the developers of the project(s) described in No. 1 above ever filed for bankruptcy or been declared a bankrupt? If so, specify date and location of court where bankruptcy action tookplace.

**25. Creditor Compromises.**

Have any of the developers of the project(s) described in Section I above, within the past ten years, offered a "deed in lieu of foreclosure" or made a compromise with secured lenders which resulted in such lenders receiving repayment of less than 100% of outstanding principal? If so. specify circumstances, amounts, and names of lenders.

**26. Other Indebtedness.**

Are there currently any outstanding loans for which the property is pledged as security? If so, state the name of the lending institution and the approximate loan amount. If so, are principal and interest payments current?

**27. Litigation.**

Has any claim or suit been made, or is any claim or suit now pending or threatened against the owner(s) or the property? If so, please attach a copy of the complaint or, if unavailable, please list the court in which the action is pending, the case number, and the amount involved.



28. Property Taxes.

Have any of the property taxes or assessments on the property been delinquent any time in the past 5 years? If so, please explain and state the current status.

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V. CONCLUDING MATTERS

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29. Application Fee.

Please include a non-refundable [amount of deposit] initial application deposit payable to the City of Merced. A Deposit and Reimbursement Agreement between the applicant and the City will be required prior to the City beginning its comprehensive project review.

Submitted By:

Firm: \_\_\_\_\_

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

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

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

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

30. Contact Person.

Please provide the names and telephone numbers of persons the City should contact for further information about the following: Overall development; environmental clearances, mapping, permitting and entitlements; appraisals; absorption; engineering; financial projections; and, legal matters.

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## ADMINISTRATIVE REPORT

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### Agenda Item H.9.

Meeting Date: 10/15/2018

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*Report Prepared by: Deborah Richardson, Accountant II*

**SUBJECT:** Supplemental Appropriation in the Amount of \$500 in Fund 342 - Fahrens Park Assessment (Debt Service) for Additional Administrative Expense

### REPORT IN BRIEF

Considers approving a \$500 supplemental appropriation to cover administrative fees in the Fahrens Park Debt Service Fund.

### RECOMMENDATION

**City Council** - Adopt a motion approving a supplemental appropriation in the amount of \$500 from the unappropriated, unreserved fund balance of Fund 342 - Fahrens Park Assessment (Debt Service) to cover administrative fees.

### ALTERNATIVES

1. Approve as recommended by staff; or,
2. Return to staff with specific direction; or,
3. Deny.

### AUTHORITY

Article XI, Fiscal Administration of the Merced Municipal Code - At any meeting after the adoption of the budget, the City Council may amend or supplement the budget by motion adopted by the affirmative votes of at least five members.

### CITY COUNCIL PRIORITIES

As provided in the Fiscal Year 2018-19 budget.

### DISCUSSION

In 2002, the City sold bonds and confirmed assessments for the formation of the Specific Plan Assessment District No. 2002 (Fahrens Park), (the "District"), pursuant to the Municipal Improvement Act of 1913, Division 12 of the California Streets and Highways Code. The public improvements funded by the District consist principally of roadway, water, drainage, and sewer improvements, which provide improved access and services to the properties within the District boundaries, which are owned, operated and maintained by the City.

Generally, the District lies in the northwestern portion of the City north of Buena Vista Drive, south of Yosemite Avenue between Highway 59 and North "R" Street. The total area within the District consists of approximately 147 acres.

In 2004, the City completed proceedings and confirmed reassessments for the Reassessment District No. 2004 (FahrensPark), (the "2004 Reassessment District"), pursuant to the Refunding Act.

The assessments are collected in semi-annual installments on the County tax roll on which general taxes on real property are collected. These annual installments are paid into the Debt Service Fund held by the Finance Officer of the City, transferred to the Fiscal Agent and used to pay principal and interest for the bonds plus administrative fees.

For fiscal year 2018-19 fiscal agent fees were budgeted at \$1,100. The district recently received an invoice for \$1,200. The requested appropriation will cover the additional amount of the invoice and leave a small amount for contingency.

### **IMPACT ON CITY RESOURCES**

A supplemental appropriation in the amount of \$500 is available from Fund 342 - Fahrens Park Assessment (Debt Service) unreserved, unappropriated Fund Balance.



## ADMINISTRATIVE REPORT

**Agenda Item H.10.**

Meeting Date: 10/15/2018

*Report Prepared by: Deborah Richardson, Accountant II*

**SUBJECT:** Authorization of Signing Authority for City Bank Accounts and Local Agency Investment Fund

### REPORT IN BRIEF

Consider granting the City's Officers signing authority for City bank accounts and Local Agency Investment Fund.

### RECOMMENDATION

**City Council/Public Financing and Economic Development Authority/Parking Authority - Adopt a motion:**

- A. Adopting **Resolution 2018-65**, a Resolution of the City Council of the City of Merced, California, authorizing signature of City checks; and,
- B. Adopting **Resolution 2018-66**, a Resolution of the City Council of the City of Merced, California, authorizing investment of City of Merced monies in Local Agency Investment Fund; and,
- C. Adopting **Resolution PFA 2018-02**, a Resolution of the City of Merced Public Financing and Economic Development Authority authorizing signature of Authority checks; and,
- D. Adopting **Resolution PFA 2018-03**, a Resolution of the City of Merced Public Financing and Economic Development Authority authorizing investment of City of Merced monies in Local Agency Investment Fund; and,
- E. Adopting **Resolution PA 2018-02**, a Resolution of the Parking Authority of the City of Merced, California, authorizing signature of Parking Authority checks; and,
- F. Adopting **Resolution PA 2018-03**, a Resolution of the Parking Authority of the City of Merced, California authorizing investment of City of Merced monies in Local Agency Investment Fund.

### ALTERNATIVES

- 1. Approve as recommended; or
- 2. Deny; or
- 3. Refer to staff for further study; or
- 4. Continue to a future meeting.

## **AUTHORITY**

City Charter Sections 200 and 405.

## **CITY COUNCIL PRIORITIES**

As provided for in the 2018-2019 Adopted Budget

## **DISCUSSION**

On December 18, 2017, the City Council approved resolutions for specific signors to sign on behalf of the City to City's bank accounts and the Local Agency Investment Fund. At that time, M. Venus Rodriguez was authorized as the Interim Finance Officer.

As of February 5, 2018, M. Venus Rodriguez, was officially promoted to Finance Officer. To properly reflect her title, new authorizations need to be granted so she can sign the City checks and other documents evidencing payment of funds on behalf of the City of Merced and to use a facsimile signature. Modifications to who is authorized to withdraw City Funds from the Local Agency Investment Fund in the State Treasury is also required.

The following individuals will be authorized upon adoption of the attached resolutions:

1. M. Venus Rodriguez, Finance Officer
2. Julie A. Trujillo, Deputy Finance Officer
3. Stephanie R. Dietz, Assistant City Manager
4. Steve Carrigan, City Manager

## **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

## **ATTACHMENTS**

1. Resolution 2018- 65
2. Resolution 2018- 66
3. Resolution PFA 2018-02
4. Resolution PFA 2018-03
5. Resolution PA 2018-02
6. Resolution PA 2018-03

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

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AUTHORIZING SIGNATURE OF CITY CHECKS**

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

SECTION 1. In order to carry out her functions, M. Venus Rodriguez (Finance Officer) or, in her absence, Julie A. Trujillo, (Deputy Finance Officer) or, in her absence, Stephanie R. Dietz (Assistant City Manager), or in her absence, Steve Carrigan (City Manager) are hereby authorized to sign City of Merced checks and other documents evidencing payment of City of Merced funds on behalf of the City of Merced and to use a facsimile signature therefore.

SECTION 2. The banks, as designated depositories of the City of Merced, are hereby requested, authorized and directed to honor all checks, drafts or other orders for payment of money drawn in the name of the City of Merced on its accounts when bearing one of the signatures authorized by Section 1 of this Resolution.

SECTION 3. The Finance Officer is authorized to establish regulations consistent with this policy relating to the signing of checks or other documents evidencing payment of City of Merced.

SECTION 4. All other resolutions relating to the authority to sign checks and other documents evidencing payment of City of Merced funds on behalf of the City of Merced are hereby repealed.

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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 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:

 4-26-2018  
\_\_\_\_\_  
City Attorney Date

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

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AUTHORIZING INVESTMENT OF CITY OF  
MERCED MONIES IN LOCAL AGENCY  
INVESTMENT FUND**

WHEREAS, Pursuant to Chapter 730 of the Statutes of 1976, Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and,

WHEREAS, The City Council does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purposes of investment as stated therein is in the best interests of the City of Merced.

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

SECTION 1. The City Council hereby authorizes the deposit and withdrawal of the City of Merced monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein.

SECTION 2. The following City of Merced officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund: M. Venus Rodriguez, Finance Officer; Julie A. Trujillo, Deputy Finance Officer; Stephanie R. Dietz, Assistant City Manager or Steve Carrigan, City Manager.

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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 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:

 9-26-2018  
\_\_\_\_\_  
City Attorney Date

**RESOLUTION NO. PFA\_\_\_\_\_**

**A RESOLUTION OF THE CITY OF MERCED  
PUBLIC FINANCING AND ECONOMIC  
DEVELOPMENT AUTHORITY AUTHORIZING  
SIGNATURE OF AUTHORITY CHECKS**

THE CITY OF MERCED PUBLIC FINANCING AND ECONOMIC  
DEVELOPMENT AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. In order to carry out her functions, M. Venus Rodriguez (Finance Officer) or, in her absence, Julie A. Trujillo, (Deputy Finance Officer) or, in her absence, Stephanie R. Dietz (Assistant Executive Director), or in her absence, Steve Carrigan (Executive Director) are hereby authorized to sign City of Merced Public Financing and Economic Development Authority ("Authority") checks and other documents evidencing payment of Authority funds on behalf of the Authority and to use a facsimile signature therefore.

SECTION 2. The banks, as designated depositories of the Authority, are hereby requested, authorized and directed to honor all checks, drafts or other orders for payment of money drawn in the name of the Authority on its accounts when bearing one of the signatures authorized by Section 1 of this Resolution.

SECTION 3. The Finance Officer is authorized to establish regulations consistent with this policy relating to the signing of checks or other documents evidencing payment of Authority.

SECTION 4. All other resolutions relating to the authority to sign checks and other documents evidencing payment of Authority funds on behalf of the Authority are hereby repealed.

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PASSED AND ADOPTED by the City of Merced Public Financing and  
Economic Development Authority at a regular meeting held on the \_\_\_\_ day of  
\_\_\_\_\_ 2018, by the following vote:

AYES: Authority Members:

NOES: Authority Members:

ABSENT: Authority Members:

ABSTAIN: Authority Members:

APPROVED:

\_\_\_\_\_  
Chairman

ATTEST:  
AUTHORITY SECRETARY

BY: \_\_\_\_\_  
Assistant/Deputy Authority Secretary

(SEAL)

APPROVED AS TO FORM:

 9-26-2018  
\_\_\_\_\_  
Authority General Counsel Date

**RESOLUTION NO. PFA\_\_\_\_\_**

**A RESOLUTION OF THE CITY OF MERCED  
PUBLIC FINANCING AND ECONOMIC  
DEVELOPMENT AUTHORITY AUTHORIZING  
INVESTMENT OF CITY OF MERCED MONIES IN  
LOCAL AGENCY INVESTMENT FUND**

WHEREAS, Pursuant to Chapter 730 of the Statutes of 1976, Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and,

WHEREAS, The City of Merced Public Financing and Economic Development Authority (“Authority”) does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purposes of investment as stated therein is in the best interests of the Authority.

NOW, THEREFORE, THE CITY OF MERCED PUBLIC FINANCING AND ECONOMIC DEVELOPMENT AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. The Authority hereby authorize the deposit and withdrawal of the Authority monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein.

SECTION 2. The following Authority officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund: M. Venus Rodriguez, Finance Officer; Julie A. Trujillo, Deputy Finance Officer; Stephanie R. Dietz, Assistant Executive Director or Steve Carrigan, Executive Director.

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PASSED AND ADOPTED by the City of Merced Public Financing and Economic Development Authority at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following vote:

AYES: Authority Members:

NOES: Authority Members:

ABSENT: Authority Members:

ABSTAIN: Authority Members:

APPROVED:

\_\_\_\_\_  
Chairman

ATTEST:  
AUTHORITY SECRETARY

BY: \_\_\_\_\_  
Assistant/Deputy Authority Secretary

(SEAL)

APPROVED AS TO FORM:

 9-26-2018  
\_\_\_\_\_  
Authority General Counsel Date

**RESOLUTION NO. PA\_\_\_\_\_**

**A RESOLUTION OF THE PARKING AUTHORITY  
OF THE CITY OF MERCED, CALIFORNIA,  
AUTHORIZING SIGNATURE OF PARKING  
AUTHORITY CHECKS**

THE PARKING AUTHORITY OF THE CITY OF MERCED DOES  
HEREBY RESOLVE AS FOLLOWS:

SECTION 1. In order to carry out her functions, M. Venus Rodriguez (Finance Officer) or, in her absence, Julie A. Trujillo, (Deputy Finance Officer) or, in her absence, Stephanie R. Dietz (Assistant Executive Director), or in her absence, Steve Carrigan (Executive Director) are hereby authorized to sign Parking Authority of the City of Merced ("Authority") checks and other documents evidencing payment of Authority funds on behalf of the Authority and to use a facsimile signature therefore.

SECTION 2. The banks, as designated depositories of the Authority, are hereby requested, authorized and directed to honor all checks, drafts or other orders for payment of money drawn in the name of the Authority on its accounts when bearing one of the signatures authorized by Section 1 of this Resolution.

SECTION 3. The Finance Officer is authorized to establish regulations consistent with this policy relating to the signing of checks or other documents evidencing payment of Authority.

SECTION 4. All other resolutions relating to the authority to sign checks and other documents evidencing payment of Authority funds on behalf of the Authority are hereby repealed.

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

AYES: Authority Members:

NOES: Authority Members:

ABSENT: Authority Members:

ABSTAIN: Authority Members:

APPROVED:

\_\_\_\_\_  
Chairman

ATTEST:  
AUTHORITY SECRETARY

BY: \_\_\_\_\_  
Assistant/Deputy Authority Secretary

(SEAL)

APPROVED AS TO FORM:

 9-26-2018  
\_\_\_\_\_  
Authority General Counsel Date

**RESOLUTION NO. PA\_\_\_\_\_**

**A RESOLUTION OF THE PARKING AUTHORITY  
OF THE CITY OF MERCED, CALIFORNIA  
AUTHORIZING INVESTMENT OF CITY OF  
MERCED MONIES IN LOCAL AGENCY  
INVESTMENT FUND**

WHEREAS, Pursuant to Chapter 730 of the Statutes of 1976, Section 16429.1 was added to the California Government Code to create a Local Agency Investment Fund in the State Treasury for the deposit of money of a local agency for purposes of investment by the State Treasurer; and,

WHEREAS, The Parking Authority of the City of Merced (“Authority”) does hereby find that the deposit and withdrawal of money in the Local Agency Investment Fund in accordance with the provisions of Section 16429.1 of the Government Code for the purposes of investment as stated therein is in the best interests of the Authority.

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

SECTION 1. The Authority hereby authorize the deposit and withdrawal of the Authority monies in the Local Agency Investment Fund in the State Treasury in accordance with the provisions of Section 16429.1 of the Government Code for the purpose of investment as stated therein.

SECTION 2. The following Authority officers or their successors in office shall be authorized to order the deposit or withdrawal of monies in the Local Agency Investment Fund: M. Venus Rodriguez, Finance Officer; Julie A. Trujillo, Deputy Finance Officer; Stephanie R. Dietz, Assistant Executive Director or Steve Carrigan, Executive Director.

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

AYES: Authority Members:

NOES: Authority Members:

ABSENT: Authority Members:

ABSTAIN: Authority Members:

APPROVED:

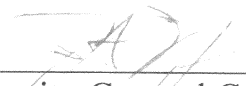
\_\_\_\_\_  
Chairman

ATTEST:  
AUTHORITY SECRETARY

BY: \_\_\_\_\_  
Assistant/Deputy Authority Secretary

(SEAL)

APPROVED AS TO FORM:

 9-26-2018  
\_\_\_\_\_  
Authority General Counsel Date



## ADMINISTRATIVE REPORT

**Agenda Item H.11.**

Meeting Date: 10/15/2018

*Report Prepared by: Alan Ward, Police Lieutenant*

**SUBJECT:** Street Closure for Veterans Parade

### REPORT IN BRIEF

Consider allowing the use of City streets on November 11, 2018 for the Veteran's Day Parade.

### RECOMMENDATION

**City Council** - Adopt a motion approving the street closures of Calimyrna Avenue from E Main Street to E 18<sup>th</sup> Street, East Main Street, from "G" Street to Calimyrna Avenue; West Main Street, from "G" to "Canal" Streets; Canal Street from Main to 18<sup>th</sup> Street and 18<sup>th</sup> Street from Canal to "M" Street and 18<sup>th</sup> Street from "M" to "N" Streets. "H", "I", "K", and "N" Streets, from the north and south alleys of West Main Street; Canal Street, from the north alley of West Main Street to Bob Hart Square; and "O" Street, from 18<sup>th</sup> to 20<sup>th</sup> Street as requested by Ricky Pal, Merced County Veterans Services for the 2018 Veterans Day Parade on Sunday, November 11, 2018. The street closures will be between 12:00 PM and 4:00 PM; subject to the conditions outlined in the administrative report.

### 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 consideration of specific items.

### AUTHORITY

City of Merced Charter Section 200  
City of Merced Municipal Code Section 12.42.010  
State of California Vehicle Code Section 21101(e)

### CITY COUNCIL PRIORITIES

As provided for in the 2018-19 Adopted Budget.

### DISCUSSION

A request has been received from Ricky Pal, Merced County Veterans Office to close East Main Street and West Main Street for the 2018 Veterans Day Parade. The request is for the closure of the following streets:

- East Main Street from "G" Street to Calimyrna Avenue (East Main Street will be closed for the parade assembly).

- Calimyrna Ave to E 18<sup>th</sup> Street
- “D” Street to thru traffic at E. Main Street
- “E” Street to thru traffic at E. Main Street
- “K” Street from north and south alleys of West Main Street
- “I” Street from north and south alleys of West Main Street
- “H” Street from north and south alleys of West Main Street
- Canal Street from north and south alleys of 18<sup>th</sup> Street to West Main Street to Bob Hart Square.
- “N” Street from north and south alleys of 18<sup>th</sup> Street
- West Main Street between “G” Street and “Canal” Street (This is for the parade route)
- “N” from 18<sup>th</sup> Street to 19<sup>th</sup> Street.

The date of this event is scheduled for Sunday, November 11, 2018 and the time of the street closure will be from 12:00 PM. to 4:00 P.M. East Main Street from “G” Street to Calimyrna Avenue will be closed at 10:30 A.M. for parade staging and assembly. West Main Street from “G” Street to “O” Street will be closed from 11:30 A.M. until 4:00 P.M. for the parade (If the parade finishes prior to 4:00 P.M. West Main Street will be opened earlier at the completion of the parade). The Parade start time is approximately 12:30 P.M.

Merced County Veterans Office will take full responsibility for notifying the businesses and residences along the parade route and providing ample notification of the event. The posting of “No Parking” signs, along the parade route, shall be done no less than 24 hours prior to the event. The expected attendance is 1500 to 2000 spectators.

The Merced Police Department will provide traffic control services during this event. The Merced Police Department will utilize sworn police officers, reserve police officers, explorer scouts, citizen volunteers and community service officers to provide traffic control. If other City services are needed beyond the assistance of the Merced Police Department, the request will be made separately and to the appropriate departments.

The Merced Police Department will utilize approximately two (2) Police Sergeants, one (1) Police Community Service Officers, six (6) Police Officers, one (1) Police Volunteer and thirty (30) Police Explorer Scouts to conduct traffic control for this event.

The 2018 Veterans Day Parade will be held subject to the following conditions:

1. Event sponsors shall furnish a certificate of liability insurance with coverage of no less than \$500,000.00 and naming the City of Merced as additional insured.
2. Event sponsors shall contact all businesses and residences affected by the street closure, advising them of the hours, conditions and reason thereof.
3. Event sponsor shall be responsible for placing and removing all traffic barricades and posting of parking restrictions where streets are closed no less than 24 hours prior to the parade.
4. Event sponsor shall be responsible for disposing of any trash and debris generated from the event.
5. Event sponsor shall provide adequate supervision throughout the parade route as required

by the Police Department.

6. Event sponsors shall agree to indemnify and hold harmless the City, its officers, agents, and employees from any and all liability, costs, damages, or injuries to persons or damage to property which might arise out of or in any way be connected with the use of an encroachment/street closure permit for this event.

### **IMPACT ON CITY RESOURCES**

The Merced Police Department will utilize approximately two (2) Police Sergeants, six (6) Police Officers, one (1) Citizen Volunteers and thirty (30) Police Explorer Scouts to conduct traffic control for this event.

### **ATTACHMENTS**

1. Street closure application
2. Insurance certificate



## STREET CLOSURE APPLICATION REQUIRING CITY COUNCIL APPROVAL (OVER 400 FEET).



\$303.00 FEE (Make check payable to City of Merced)

RECEIPT NO. \_\_\_\_\_

### CHECKLIST:

Prior to submitting your application, please confirm by checking (☑) the boxes below that all the following have been completed.

- x   Have you completed the "Description of Event" below and signed the application on page 3? (Incomplete information may delay your application.)
- x   Have you allowed at least 8-10 weeks prior to the event for your application to be placed on a City Council agenda?
- Have you obtained the required insurance and do you have proof of that insurance to submit with your application?--(See "Insurance" section on page 3 for details) .....
- Has the Indemnification Agreement on page 3 of this application been signed by an authorized representative of the sponsoring organization?

After obtaining approval from the City but prior to the event, please make sure you have done the following:

- Have you read the conditions of approval and is your event prepared to abide by all conditions?
- Have you given public notice of the street closure to all the surrounding businesses within ½ mile at least 72 hours prior to the event as required in Condition #2 below? A form is provided at page 6 which can be used to inform the public. A copy of the form should be signed and returned to the Planning Division at least 24 hours before your event affirming that notice has been given per the above requirements.
- Have you posted "No Parking" at least 24 hours prior to the event as required in Condition #1 below and using the standards outlined on page 5?
- Have you arranged for "Special Event" City Refuse Service by calling 385-6800?
- Have you made arrangements for any temporary barricades? (The City does NOT provide the barricades for street closures.)
- Have you made arrangements for supplying any necessary electricity to your event? (Plugging outlets into City light poles is NOT allowed unless prior approval is obtained. Please call City Public Works at 385-6800 for additional information.)
- If you are selling alcohol at your event, have you obtained an Alcoholic Beverage Control (ABC) license or permit for this event?

### DESCRIPTION OF EVENT:

APPLICANT/EVENT SPONSOR Merced County and United Way

CONTACT PERSON Ricky Pal PHONE (209)385-7588 x5417

ADDRESS 3376 N Hwy 59 STE D Merced CA 95341

DRIVER'S LICENSE NO. \_\_\_\_\_ E-MAIL rpal@hsa.co.merced.ca.us

Street Closure Application (Over 400 Feet)--Page 1

**DESCRIPTION OF EVENT (Continued):**

DESCRIPTION OF EVENT (include equipment, obstructions, etc., to be placed in the encroachment area)  
2018 Veterans Day Parade

THIS EVENT WILL SELL OR SERVE ALCOHOL: Yes \_\_\_\_\_ or No x

ESTIMATED NUMBER OF PEOPLE IN ATTENDANCE 2,500

DATE(S) OF EVENT 11/11/2018 HOURS 12pm - 4pm

**LIST ALL STREETS PROPOSED FOR CLOSURE:**

E18th and Calimyrna Avenue to Main Street, Main Street to Canal Street, Canal Street to West 18th Street, West 18th to N Street, N Street to Courthouse Park. Ends at Courthouse Park

(PLEASE ATTACH A MAP TO IDENTIFY PARADE ROUTES, STREET CLOSURES, AND ANY OBSTRUCTIONS TO BE PLACED WITHIN THE RIGHT-OF-WAY)

**STANDARD CONDITIONS FOR STREET/PARKING LOT CLOSURES/PARADES**

1. Event Sponsor shall be responsible for placing and removing traffic barricades and posting of parking restrictions. "No Parking" signs shall be posted at least twenty-four (24) hours prior to towing of vehicle(s) per California Vehicle Code Section 22651(m)—see page 5.
2. Event Sponsor shall contact all businesses affected by the street/parking lot closure or parade advising them of hours, conditions and reason thereof within one-half mile of the encroachment area at least seventy-two (72) hours prior to the event. Event Sponsor shall provide the City confirmation that the proper notification was given. (A form is provided on page 6 to help the applicant with this requirement.)
3. Event Sponsor must remove all equipment, trash and debris, including "no parking" signs, generated by the event prior to the expiration of the encroachment permit.
4. Street closures shall not include major arterial streets.
5. Supervision/security shall be provided by event sponsor to ensure the safety of event participants and the public if required by the Police Department.
6. Event Sponsor shall pay for any City services required for supervision/security.
7. Alcoholic beverages may be served or sold, subject to Alcoholic Beverage Control Licensing Requirements, and subject to the Liquor Liability Insurance Policy of the City (see page 4).
8. Provisions addressed in Ordinance #1941 Chapter 12.42 (Temporary Street Closures) shall apply.
9. Event Sponsor shall be responsible for insuring that all vendors involved with the event obtain a City of Merced business license.
10. The applicant shall arrange and pay for special event City Refuse service by contacting Public Works at (209) 385-6800.
11. The applicant shall comply with the Indemnification and Insurance provisions as outlined on page 3 of this application.
12. Event sponsor shall provide and maintain a minimum 22-foot-wide emergency vehicle access path into and through the closure area at all times via movable barriers. Fire hydrant access shall not be blocked at any time whatsoever.
13. \_\_\_\_\_
14. \_\_\_\_\_

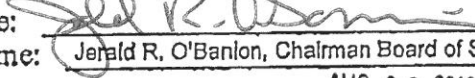
(Additional conditions may be imposed as deemed necessary)

**INDEMNIFICATION:** Event Sponsor shall indemnify, protect, defend, (with counsel selected by the City) save and hold City, its officers, employees, agents, and volunteers harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or omissions of Event Sponsor or Event Sponsor's officers, employees, agents, volunteers, and participants during performance of the Event, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Event Sponsor or its officers, employees, agents, volunteers, or participants, or resulting from the negligence of the City, its officers, employees, agents, and volunteers, except for loss caused solely by the gross negligence of the City. Acceptance by City of insurance certificates and endorsements required for this Event does not relieve Event Sponsor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply.

**INSURANCE:** Prior to engaging in the event, Event Sponsor shall complete and file with the City a special events, general liability and automobile policy of at least \$500,000 combined limit for bodily injury and property damage which covers the entire event. Said policy shall stipulate that this insurance will operate as primary insurance and that no other insurance will be called on to cover a loss covered thereunder. Additional insured endorsements evidencing this special events, general liability and automobile coverage, naming the City and its officers, agents, and employees as additional insureds, must be submitted to the City prior to the event. This certificate shall provide that thirty (30) days written notice of cancellation shall be given to the City.

**REFUSAL OR REVOCATION OF PERMIT:** Failure to comply with any law, rule or regulation applicable to the use of said streets shall be grounds to revoke any such permit and, in such circumstances, the Chief of Police shall immediately revoke said permit. The Event Sponsor or permit holder, in such case, shall have the right to appeal said revocation to the City Council.

The undersigned declares under penalty of perjury that he/she has the authority to sign for and bind the Event Sponsor to the conditions imposed by the City upon the granting of this Application.

Signature:   
Print Name: Gerald R. O'Banlon, Chairman Board of Supervisors  
Date: AUG 28 2018

**OFFICE USE**

APPLICATION APPROVED SUBJECT TO CONDITIONS \_\_\_\_\_

BY \_\_\_\_\_  
Development Services Department (385-6858)

DATE \_\_\_\_\_

BY \_\_\_\_\_  
Merced Police Department (385-6912)

DATE \_\_\_\_\_

BY \_\_\_\_\_  
Merced Fire Department (385-6891)

DATE \_\_\_\_\_

NOTIFICATION REQUIREMENTS FOR POSTING "NO PARKING"

**NO PARKING**

**DATE and TIMES**

(Example: Wednesday, September 9, 2011,  
6:00 am to 5:00 pm)

**VIOLATORS VEHICLE MAY BE TOWED  
AT OWNERS EXPENSE**

**MERCED POLICE DEPARTMENT**

**(209) 385-6912**

**21351 CVC / 22651(n) CVC**

SIZE REQUIREMENTS

SIGN MUST BE 17" x 22" LETTERS ARE TO BE AT LEAST 1" IN HEIGHT. SIGNS  
MUST BE POSTED ALONG ENTIRE PARADE, STREET CLOSURE, AND/OR STAGING  
ROUTE OR ALONG ANY CONSTRUCTION AREA.

SIGNS MUST BE PLACED LESS THAN 3 PER BLOCK, EVENLY SPACED ON BOTH  
SIDES OF THE STREET, ALONG THE ENTIRE STREET CLOSURE.





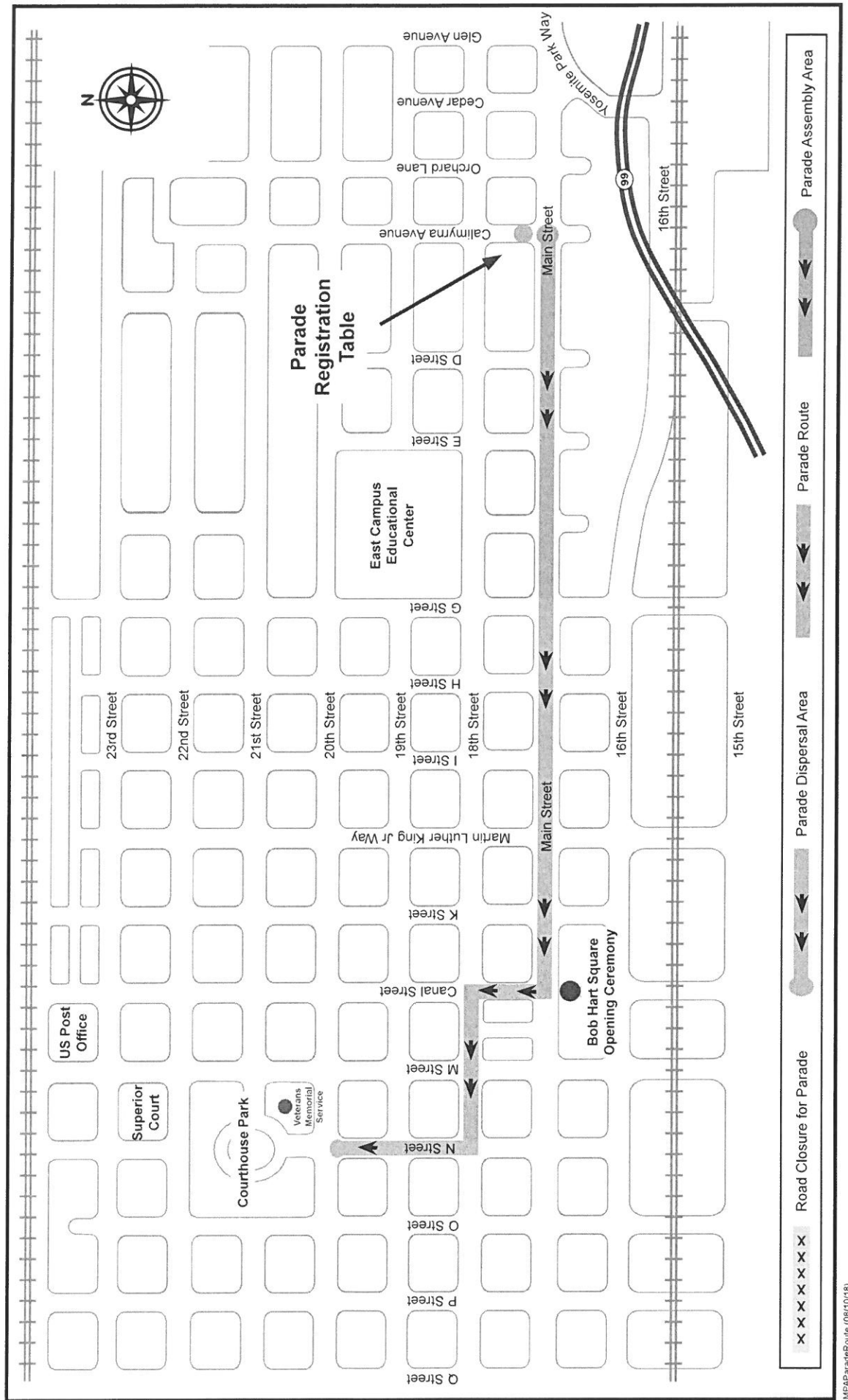
MERCED COUNTY  
VETERANS SERVICES

# PARADE ROUTE

MERCED COUNTY

## VETERANS DAY PARADE

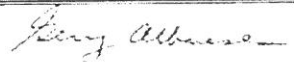
Sunday, November 11, 2018



EVANSTON INSURANCE COMPANY  
 CERTIFICATE NO.:

CERTIFICATE OF INSURANCE  
 SPECIAL EVENT LIABILITY PROGRAM

<b>PRODUCER</b> Alliant Insurance Services, Inc. in conjunction with Apex Insurance Services P. O. Box 6450 Newport Beach, CA 92658 License No: OC 36861		<b>PUBLIC ENTITY (ADDITIONAL INSURED)</b>	
<b>NAMED INSURED (EVENT HOLDER):</b> Merced County Merced County Department of Human Services-Veterans Services 2222 M St Rm 9 Merced, CA 95340		<b>EVENT INFORMATION:</b> TYPE: <u>Merced Veterans Day Parade</u> DATE(S): <u>November 11, 2018</u> LOCATION: <u>City of Merced Downtown Streets</u> *Liquor Liability Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> ***Liquor Liability after 12 am ends before 2 am <input type="checkbox"/>	
This is to certify that the insurance policy listed below has been issued to the above insured named (event holder) for the policy period indicated. The insurance described herein is subject to all the terms, exclusions and conditions of such policy(ies) unless amended as described in Special Conditions.			
<b>INSURANCE CARRIER:</b> Evanston Insurance Company <b>MASTER POLICY NUMBER:</b> SEP41026 <b>MASTER POLICY DATES:</b> EFFECTIVE: JANUARY 1, 2018 EXPIRATION: JANUARY 1, 2019			
<b>COMMERCIAL GENERAL LIABILITY</b> General Aggregate Limit \$2,000,000 Products & Completed Operations 1,000,000 Personal & Advertising Injury 1,000,000 Each Occurrence Limit 1,000,000 Damage To Premises Rented To You Any One Premises 100,000 Medical Payments Any One Person 5,000 Liquor Liability (If purchased) 1,000,000 <b>Optional Limits Purchased</b> <input type="checkbox"/> \$1,000,000/\$3,000,000 <input type="checkbox"/> \$2,000,000/\$2,000,000 <b>Damage To Property (If purchased)</b>		<b>OCCURRENCE FORM</b>	<b>DEDUCTIBLE: NONE</b>  <b>SPECIAL CONDITIONS:</b> The following endorsements attached to the Master Policy do not apply to this Certificate Of Insurance. MEGL643
The limits of insurance apply separately to each event insured by this policy as if a separate policy of insurance has been issued for that event.			
<b>OTHER ADDITIONAL INSUREDS</b>			
<b>THE CITY OF MERCED, ITS ELECTIVE AND APPOINTIVE BOARDS, OFFICERS, AGENTS, EMPLOYEES AND VOLUNTEERS</b>		Merced County Veterans Council Merced County H.S.A	
<b>CANCELLATION:</b> Should the above described policy be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.			

  
 AUTHORIZED REPRESENTATIVE: \_\_\_\_\_  
 DATE ISSUED: 9/4/18



## ADMINISTRATIVE REPORT

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**Agenda Item H.12.**

Meeting Date: 10/15/2018

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*Report Prepared by: Joe Weiss, Police Lieutenant, City of Merced Police Department*

**SUBJECT:** Approval of a One-Year Agreement with Merced City School District for Police Services

### REPORT IN BRIEF

Considers approving a one-year agreement with the Merced City School District for police services in the District's four middle schools.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving an Agreement with the Merced City School District to provide police services in the District's four middle schools; and,
- B. Authorizing the City Manager or Assistant City Manager to execute the agreement; and,
- C. Authorizing the Finance Officer to make the appropriate budget adjustments.

### 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 City Council meeting.

### AUTHORITY:

Charter of the City of Merced, Section 200.

### CITY COUNCIL PRIORITIES

Council Requested Projects - Elementary School District - School Resource Officers.

### DISCUSSION

Historically, the Merced Police Department has assigned officers to the four middle schools as School Resource Officers (SRO) on a part-time basis. The Merced City School District (MCSD) and the Merced Police Department have decided that full-time School Resource Officers would be more

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effective in implementing the School Resource Officer Program in the middle schools.

In the 2018-2019 school year, MCSD and the City of Merced negotiated an Agreement to implement the School Resource Program. The school district would like to continue the SRO program and have signed the attached Agreement with the City of Merced.

Under the proposed one-year agreement, one or more full-time School Resource Officers will be used to implement the program.

Under the agreement, the City agrees to provide and pay the SRO's salary and employment benefits in accordance with the applicable salary schedules and employment practices of the City which are in effect during the time of this Agreement. During the term of the Agreement, MCSD agrees to reimburse the City for 70% of the actual cost, including salary and benefits, of each full-time SRO selected to serve the District. The amount billed for SRO services will not exceed the Senior Police Officer step 5 rate.

Pursuant to the Agreement, the SRO's will be assigned to Tenaya, Rivera, Hoover and Cruickshanks Middle Schools. When school is in session, the SRO will work an equivalent of 40 hours per week. MCSD may request an SRO to work during the evening or weekends beyond the scheduled 40 hour work week (overtime). MCSD shall pay the City all costs that the City incurs in providing additional services.

The SRO will be assigned to work with school administrators, staff and students at the District's middle schools. The objective is to promote and facilitate a safe learning environment for staff and students.

In addition to providing basic police services in the middle schools, implementing the School Resource Officer Program is one intervention strategy that has been effective in identifying at-risk youth and providing services that help the schools and the families of at-risk youth to establish and maintain acceptable standards of behavior in schools and in their neighborhoods.

## **IMPACT ON CITY RESOURCES**

Not Applicable.

## **ATTACHMENTS:**

1. Memorandum of Understanding between the City of Merced and the Merced City School District.

**MEMORANDUM OF UNDERSTANDING  
CITY OF MERCED  
AND THE  
MERCED CITY SCHOOL DISTRICT**  
School Resource Officers Program – Partnership Agreement  
2018-2019

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**THIS AGREEMENT** is made and entered into on July 1, 2018, by and between the City of Merced (hereinafter referred to as “the City”) and the Merced City School District (hereinafter referred to as “MCSD”).

**WHEREAS**, The MCSD and the City’s desire to set forth in this Memorandum of Understanding (hereinafter “MOU” or “Agreement”) the specific terms and conditions of the services to be performed and provided by the School Resource Officers (hereinafter referred to as “SRO”) at Merced City School District (hereinafter referred to as “District”).

**NOW, THEREFORE**, in consideration of the mutual covenants and promises herein contained, the parties hereby agree as follows:

**1.0 Goals and Objectives** - It is understood and agreed that the MCSD and the City officials share the following goals and objectives with regard to the School Resource Officer Program in the school:

- 1.1** To foster educational programs and activities that will increase students’ knowledge of and respect for the law and the function of law enforcement agencies;
- 1.2** For the SRO to attend extra-curricular activities held at school, such as parent meetings, athletic events and concerts; when appropriate for the site and planned collaboratively between the SRO and the principals;
- 1.3** To act swiftly and cooperatively when responding to major disruptions and flagrant criminal offenses at school sites, such as: disorderly conduct by trespassers (parents, community members, et al), the possession and use of weapons on campus, the illegal sales and/or distribution of controlled substances, and riots;
- 1.4** To report serious crimes that occur on campus and to cooperate with the law enforcement officials in their investigation of crimes that occur at school;
- 1.5** To cooperate with law enforcement officials in their investigations of criminal offenses which occur off campus.

**2.0 Employment, Compensation and Assignment of School Resource Officer**

- 2.1** The City agrees to make one or more SROs available during the term of this Agreement. The number of SROs employed under this Agreement is dependent on the City’s ability to employ qualified police officers who have both the ability and required skill set to perform the required duties of a SRO for the purposes intended by

this Agreement. The SROs shall be employees of the City of Merced and be subject to the administration, supervision and control of the Merced Police Department except as such administration, supervision and control are subject to the terms and conditions of this Agreement. The SRO shall also be subject to all personnel rules, policies and practices of the Merced Police Department and the City except as such policies or practices may have to be modified to comply with the terms and conditions of this Agreement.

- 2.2** The City agrees to provide and to pay the SRO's salary and employment benefits in accordance with the applicable salary schedules and employment practices of the City which are in effect during the time of this Agreement, including, but not necessarily limited to: sick leave, vacation leave, compensatory time off, holiday in lieu, retirement contribution, workers compensation, unemployment compensation, life insurance, dental insurance, vision insurance and medical insurance.
- 2.3** During the term of this Agreement, MCSD agrees to reimburse the City for 70% of the actual cost of each full-time SRO selected to serve the District. The Police Officer at step 5 of the City's pay scale is \$133,483.42, with 70% amount, which includes administrative costs, at \$107,454.16. This amount is highest rate option for SRO service and is inclusive of salary and benefits. Pending the selection of SROs by the City and MCSD, the amount billed for SRO services will not exceed the Police Officer, step 5 rate. A cost detail for the SRO's position is set forth in greater detail in Exhibit A, which is attached to this Agreement and incorporated by reference herein.

MCSD may request City to provide additional services (i.e., services in addition to those performed during the SRO's normal working hours of a 40- hour work week) by a SRO during evening or weekend events such as: meetings, Back-to-School Nights, Open House(s), sporting event(s), dance(s), or other school sponsored events. MCSD shall pay City all costs that City incurs in providing additional services as requested by the District representative, with the understanding that City is generally required to pay officers at least one and one-half (1 ½) times their regular rate of pay for overtime. The maximum hourly overtime rate for a SRO under this agreement is \$64.17 per hour. The actual hourly rate to be charged will be based on the selection of SROs to serve MCSD. A cost detail of the overtime hourly rate of pay is set forth in further detail in Exhibit A.

- 2.4** The City, in its sole discretion, shall have the power to hire, discharge and discipline the SRO; however, a MCSD school representative will participate in the selection of the SRO to be placed on each campus.
- 2.5** In the event an SRO is absent from work, the SRO shall notify his/her supervisor and duty Sergeant in the Merced Police Department and the Principal (or designee) of the school to which the SRO is assigned.

### **3.0 Duty Hours**

The officer in charge of the SRO Program shall set specific SRO duty hours at the assigned schools by mutual agreement between the two agencies. Both Parties agree that SROs will be primarily assigned to Tenya, Rivera, Hoover, and Cruickshank Middle Schools. In the event of an emergency at a different school site within the District, the use of SROs will be requested by the District Office and notify the Supervising Sergeant. In addition, the MCSD and City agree to meet monthly to evaluate the need for SRO use on other school sites outside of the primary assignment.

When school is in session, the SRO will work an equivalent of 40 hours per week (full-time) in and around the school and perform community-policing activities. The SRO will obtain written approval by the site Principal or Program Administrator prior to working any overtime hours. Community policing activities may include:

- 3.1** Follow-up home visits when needed as a result of school related student problems.
- 3.2** District related off campus activities when officer participation is requested by the principal and approved by City;
- 3.3** Responses to off campus district related criminal activities;
- 3.4** Responses to emergency law enforcement or court appearances;
- 3.5** Scheduled officer training.
- 3.6** Responses to other MCSD campuses as the need arises.

### **4.0 Basic Qualifications of School Resource Officers (SRO)**

To be a SRO, an officer must first meet all of the following minimum qualifications:

- 4.1** Shall be a city employed Police Officer with two years of law enforcement experience;
- 4.2** Shall possess sufficient knowledge of the applicable Federal and State laws and regulations;
- 4.3** Shall be capable of conducting criminal investigations;
- 4.4** Shall possess an even temperament and set a good example for students; and
- 4.5** Shall possess communication skills, which would enable the officer to function effectively within the school environment.

## **5.0 Duties of School Resource Officer**

- 5.1** The SRO shall coordinate all of his/her activities with the Principal (or designee) and will seek permission, advice and guidance prior to enacting any program within the schools.
- 5.2** The SRO shall develop expertise in presenting various subjects to the students, staff, parents and community. Such subjects shall include, but not be limited to: a basic understanding of the law, the role of the police officer and law related areas.
- 5.3** The SRO shall encourage individual and small group discussions with students, based upon material presented in class to further establish rapport with students.
- 5.4** When requested by the principal, the SRO shall attend parent/staff/administrative meetings to solicit support and understanding of the program, including the SRO Collaborative Meeting.
- 5.5** The SRO shall make himself/herself available for conference with students, parents and faculty members in order to assist them with problems of a law enforcement or crime prevention nature at primary locations. Any need for these supportive services at other schools within the district will be requested by the District Office and approved by the Supervising Sargent. The SRO will work collaboratively with the district staff to develop plans and strategies, presentations and programs for staff, students, parents and the community.
- 5.6** The SRO shall become familiar with all community agencies which offer assistance to youths and their families such as mental health clinics, drug treatment centers, etc.
- 5.7** The SRO shall assist the Associate Superintendent of Personnel Services, the Director of Pupil Services, the principal, or their designees in developing plans and strategies to prevent and/or minimize dangerous situations that may result in student arrest.
- 5.8** Should it become necessary to conduct formal police interviews with students, the SRO shall adhere to school board policy, police policy and legal requirements for conducting such interviews.
- 5.9** The SRO shall take all law enforcement action as required. As soon as practical, the SRO shall make the principal or his/her designee aware of such action. The SRO shall take appropriate law enforcement actions against intruders and unwanted guests who may appear at the school and related school functions, to the extent that the SRO may do so under the authority of law.
- 5.10** The SRO shall, whenever possible, participate in and/or attend school functions.
- 5.11** The SRO shall give assistance to other law enforcement personnel in matters regarding his/her school assignment as well as responding to an officer needing assistance.



- 5.12** The SRO shall maintain detailed and accurate records of the operation of the School Resource Officer Program. These records requested by the MCSD supervisor of the SRO Program shall include, but not be limited to, statistical findings from his/her school. These records will be submitted to the supervisor of the School Resource Officer Program.
- 5.13** The SRO shall not act as a school disciplinarian, as disciplining students is a school responsibility. However if the principal believes an incident is a violation of the law, the principal may contact the SRO, and the SRO shall then determine whether law enforcement action is appropriate.

## **6.0 Chain of Command**

- 6.1** As employees of the Merced City Police Department, the SRO shall follow the chain of command as set forth in the Merced Police Department Policies and Procedures Manual.
- 6.2** In the performance of their duties, the SRO shall make every reasonable effort to coordinate and communicate with the Associate Superintendent of Personnel Services, the Director of Pupil Services, the principals or the principals' designee(s) of the assigned schools as set forth in this agreement.

## **7.0 Training**

- 7.1** The SRO shall be required by the Merced Police Department to attend police training sessions. Training sessions will be conducted to provide SROs with appropriate in-service training, such as updates in the law, in-service firearm training and law enforcement-school related training. The MCSD will not be responsible for reimbursement of salary during required training sessions. Efforts will be made to schedule training on days when school is not in session.
- 7.2** The School District also may provide training in Board of Education policies, regulations and procedures.

## **8.0 Supplies and Equipment**

- 8.1** The Merced Police Department agrees to provide SRO's with standard issue equipment, firearm and rounds of ammunition as needed to perform their duties.
- 8.2** The Merced Police Department agrees to provide the SROs with the required duty uniform.
- 8.3** The School District agrees to provide an office, desk, desk chair, computer and the usual and customary office supplies to the SROs.

## **9.0 Access to Education Records**

- 9.1** School officials shall allow the SRO to inspect and copy any public records maintained by the school including student directory information, classroom

assignments and discipline files. However, the SRO may not inspect and/or copy confidential student education records except as allowed by law.

- 9.2** If some information in a student's cumulative record is needed in an emergency to protect the health or safety of the student or other individuals, school officials may disclose to the SRO that information which is needed to respond to the emergency situation based on the seriousness of the threat to someone's health or safety; the need of the information to meet the emergency situation and the extent to which time is of the essence.
- 9.3** If confidential student records information is needed, but no emergency situation exists, the information may be released only upon the issuance of a search warrant or subpoena to produce the records.

## **10.0 Evaluation**

It is mutually agreed that the MCSD and the Schools shall evaluate annually the SRO program and the performance of any assigned SROs. It is further understood that the MCSD and the School's evaluation of each officer is advisory only and that the Merced Police Department retains the final authority to evaluate the performance of the SRO.

## **11.0 Term of Agreement**

The term of agreement is one year, commencing on July 1, 2018, ending June 30, 2019, unless sooner terminated in accordance with this Agreement.

## **12.0 Notices**

All notices, requests, demands or other communications under this Agreement shall be in writing. Notice shall be sufficiently given for all purposes as follows:

- A. Personal Delivery. When personally delivered to the recipient, notice is effective upon delivery.
- B. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three mail delivery days after deposit in a United States Postal Service office of mailbox.
- C. Certified Mail. When mailed certified mail, return receipt requested, notice is effective upon receipt if delivery is confirmed by a return receipt.
- D. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.
- E. Facsimile Transmission. When sent by fax to the last fax number of the recipient known to the party giving notice, notice is effective upon receipt, provided that: a) a duplicate copy of the notice is promptly given by first class mail or certified mail or by overnight delivery, or b) the receiving party

delivers a written confirmation of receipt. Any notice given by fax shall be deemed received on the next business day if received after 5:00 p.m. or on a non-business day.

Any correctly addressed notice that is refused, unclaimed or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messengers or overnight delivery service.

Mailing and contact information for notice to the parties to this Agreement at the time of endorsement of this Agreement is as follows:

**Merced City School District**  
444 W. 23<sup>rd</sup> Street  
Merced, CA 95340

RoseMary Parga-Duran  
Superintendent  
  
(209) 385-6640

**City of Merced**  
678 W. 18<sup>th</sup> Street  
Merced, CA 95340

Steve Carrigan, City Manager  
(209) 385-6834

Doug Collins  
Associate Superintendent- Personnel  
Services  
(209) 385-6759

**Merced Police Department**  
611 W. 22<sup>nd</sup> Street  
Merced, CA 95340

Christopher Goodwin, Chief of Police  
(209) 385-6915

Any party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

### **13.0 Termination**

This Agreement, notwithstanding anything to the contrary herein, may be terminated by either party at any time without cause or legal excuse by providing the other party with thirty (30) calendar days written notice of such termination.

### **14.0 Disposition of Work Upon Termination**

In the event of termination, all finished or unfinished documents and other materials, if any, at the option of the MCSD and to the extent permitted by law, shall become the property of the MCSD.

### **15.0 Modification of Agreement**

Notwithstanding any of the provisions of this Agreement, the parties may agree to amend the Agreement. No alteration of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto.

## **16.0 Indemnification**

- 16.1** The District shall indemnify, defend, and hold harmless the City, its officers, officials, employees, and volunteers from and against any and all liability, claims, damage, cost, expenses, awards, fines, judgments, and expenses of litigation (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost) of every nature arising out of or in connection with the assigned officer's performance of work or his or her failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the active negligence by the City, or the gross or willful misconduct of the assigned officer.
- 16.2** If the District rejects a tender of defense by the City and/or the assigned officer under this Agreement, and it is later determined that the City and/or the officer breached no duty of care and/or was immune from liability, the District shall reimburse the City and/or officer for any and all litigation expenses (including, without limitation, costs, attorney fees, expert witness fees and prevailing party fees and cost). A duty of care or immunity determination may be made by a jury or a court, including a declaratory relief determination by a court after the City and/or officer settles a liability claim, with or without participation by the District.
- 16.3** The Parties acknowledge that it is not the intent of the Agreement to create a duty of care by the City or its assigned officer that they would not owe in the absence of the Agreement. The Agreement does not create an affirmative duty of care (including, without limitation, a duty to protect, a duty to deter and/or a duty to intervene) by the City or the assigned officer and the absence of the assigned officer and/or the patrol vehicle is not a material breach of this Agreement. The Parties further acknowledge that by entering into this Agreement neither the City nor its assigned officer intends to waive any immunities to which they would be entitled in the absence of the Agreement.

## **17.0 Completeness of Contract**

This Agreement and any additional or supplementary document or documents incorporated herein by specific reference contain all the terms and conditions agreed upon by the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement or any part thereof shall have any validity or bind any of the parties hereto.

## **18.0 Applicable Law; Venue**

Any dispute concerning any question of fact or law arising under this Agreement or any litigation or arbitration arising out of this Agreement, shall be tried in Merced County, unless the parties agree otherwise or are otherwise required by law.

## **19.0 Confidentiality**

This Agreement shall comply with all applicable Federal, State and County laws relating to the confidentiality of information. The MCSD and the City shall not publish, use or permit or cause to be published, disclose, or use confidential information pertaining to any minor, without express written permission from the minor's parent or legal guardian, except as permitted by law.

## **20.0 Nondiscrimination in Employment, Services, Benefits and Facilities**

- 20.1** The MCSD and the City shall comply with all applicable Federal, State and local antidiscrimination laws, regulations, and ordinances. Neither party shall unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of the other, or recipient of services contemplated to be provided or actually provided under this Agreement because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. Both parties shall ensure that evaluation and treatment of their employees and applicants for employment, and recipients of services, are free from such discrimination and harassment.
- 20.2** Both parties represent that they are in compliance with and agree to continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.), the Fair Employment and Housing Act (Government Code §12900 et seq.), and regulations and guidelines issued pursuant thereto.

## **21.0 Agency Relationship**

This Agreement is not intended to and shall not create the relationship of principal-agent, master-servant, or employer-employee between the City and the MCSD. There is no employee relationship between the SRO's and MCSD.

## **22.0 Severability**

If a court of competent jurisdiction holds any provisions of this Agreement to be illegal, unenforceable or invalid, in whole or in part, for any reason, the validity and enforceability of the remaining provisions, or portion of them will not be affected.

## **23.0 Integration of Prior Terms and Conditions**

This Agreement, including all recitals, constitutes the entire agreement of the Parties. This Agreement may be amended or modified only by the mutual written agreement of the Parties. This Agreement is invalid unless approved by the legislative body of each Party, although it may be executed by an authorized agent of each Party. An authorized agent of the City shall be a person specifically authorized by the legislative body of the City to execute this Agreement, at the level of City Manager or City Attorney or equivalent.

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

**CITY OF MERCED**  
A Municipal Corporation

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

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Christopher Goodwin, Chief of Police

\_\_\_\_\_  
Date

**MERCED CITY SCHOOL DISTRICT**

By: Rose Mary Parga-Duran  
Rose Mary Parga-Duran, Superintendent

10/3/18  
Date

By: Douglas J. Collins  
Douglas J. Collins, Associate Superintendent

10/5/18  
Date

**Approved as to Form:**

By: Kelly Emme  
City Attorney

10-8-18  
Date

**Account Data:**

By: \_\_\_\_\_  
Verified by Finance Officer

\_\_\_\_\_  
Date

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

By \_\_\_\_\_  
Assistant/Deputy City Clerk

This workpaper has been prepared to calculate the total average hourly rate and benefits provided to a Full-time Police Officer, Step 5.

**Police Officer, FY 18-19**

<b>Full Benefits</b>	<b>Yearly</b>
Salary 18/19 (hourly rate \$36.3303*2080)	75,566.92
Uniform Allowance	1,050.00
Holiday Pay (88 hours * 36.3303)	3,197.07
Projection - Education Pay	0.00
<u>Total Salary</u>	<u>79,813.99</u>
Medicare @ 1.45%	1,157.30
Social Security @ 6.20%	4,948.47
PERS employer @ 16.783%	13,395.18
PERS Normal @ 9%	7,183.26
PERS Unfunded Liability Cost @ 16.20%	12,929.87
Cafeteria Plan - budget @ 816.87 per pay period	21,238.62
<u>Total Benefits</u>	<u>60,852.70</u>
<u>Total Expense</u>	<u>140,666.68</u>
Less Employee Share PERS	(\$7,183.26)
Net Cost	<u>133,483.42</u>
Admin/Overhead Expenses - Police	20,022.51
TOTAL	153,505.94
70% of the cost is	107,454.16

Total Expense per hour \$ 64.17

Prepared by: Joni Vierra, 8/27/18



## ADMINISTRATIVE REPORT

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**Agenda Item H.13.**

Meeting Date: 10/15/2018

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

**SUBJECT:** Approval of First Amendment to Agreement for Legal Services with Sloan, Sakai, Yeung & Wong, LLP

### REPORT IN BRIEF

Considers approving a First Amendment to Agreement for legal services with Sloan, Sakai, Yeung & Wong, LLP for the not to exceed amount of \$85,000.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving the first amendment to the agreement for legal services with Sloan, Sakai, Yeung, & Wong, LLP; and,
- B. Authorizing the City Manager or Assistant City Manager to execute the agreement and any necessary documents; and,
- C. Authorizing the Finance Officer to make any necessary budget adjustments.

### ALTERNATIVES

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

### AUTHORITY

City of Merced Charter, section 200.

### CITY COUNCIL PRIORITIES

Not applicable.

### DISCUSSION

In October 2017, the City entered into a legal services agreement with the law firm Renne Sloan Holzman and Sakai, Public Law Group for employment related legal services. In May 2017, the firm changed its name to Sloan Sakai Yeung & Wong, LLP.



The firm has provided a variety of legal services for the City which necessitates an increase in the contract amount to the not to exceed amount of \$85,000. Staff recommends that the City Council approve this increase to allow for payment for these legal services.

**IMPACT ON CITY RESOURCES**

This amendment will be funded by the City Attorney and Police Departments. Funding is available within the fiscal year 2018-19 budget.

**ATTACHMENTS**

1. First Amendment to Agreement for Legal Services

**FIRST AMENDMENT TO AGREEMENT  
FOR LEGAL SERVICES**

THIS FIRST AMENDMENT TO AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Merced, a California Charter Municipal Corporation ("City"), and Sloan, Sakai, Yeung & Wong, LLP, ("Firm") whose address of record is 555 Capitol Mall, Suite 600, Sacramento, CA 95814.

WHEREAS, Firm, under the name of Renne, Sloan, Holtzman & Sakai, Public Law Group, and the City previously entered into an Agreement for Legal Services ("Agreement") dated October 26, 2017; and

WHEREAS, City and Firm desire to amend said Agreement to provide for the name change of the Firm; and,

WHEREAS, the parties desire to increase the contract amount to a total maximum amount of \$85,000.

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

1. The Agreement dated October 26, 2017, between the City and Firm shall be amended to reflect the change of the Firm to Sloan, Sakai, Yeung & Wong, LLP.
2. The amount of the Agreement shall not exceed \$85,000.
3. Except as herein amended, the Agreement dated October 26, 2017, shall remain in full force and effect.

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IN WITNESS WHEREOF, the parties have caused this First Amendment to Agreement for Legal Services to be executed on the date first above written.

CITY OF MERCED  
A California Charter Municipal  
Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

APPROVED AS TO FORM:

BY: Kelly Turner 10-2-18  
City Attorney Date

ACCOUNT DATA:

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

SLOAN, SAKAI, YEUNG & WONG, LLP.

BY: [Signature]  
Printed Name: Tim Yeung

Taxpayer I.D. No. 73-1700480

ADDRESS: 555 Capitol Mall, Ste. 600  
Sacramento, CA 95340

TELEPHONE: (916) 258-8800



ADMINISTRATIVE REPORT

Agenda Item H.14.

Meeting Date: 10/15/2018

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

**SUBJECT:** Approval of Fee Agreement with Rutan & Tucker, LLP. to Provide Legal Services

**REPORT IN BRIEF**

Recommends approving a fee agreement with Rutan & Tucker, LLP. to provide legal services on behalf of the City in the case *Merced Citizens for Responsible Planning v. City of Merced, et al.*, for the not to exceed amount of \$95,000.

**RECOMMENDATION**

**City Council** - Adopt a motion:

- A. Approving the fee agreement with Rutan & Tucker; and,
- B. Approving a supplemental appropriation of \$95,000 from the unreserved, unencumbered fund balance of Fund 557- Water System Enterprise to a professional service account 557-1106-532-17-00; and,
- C. Authorizing the City Manager or Assistant City Manager to execute the agreement.

**ALTERNATIVES**

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

**AUTHORITY**

Merced Municipal Code section 200.

**CITY COUNCIL PRIORITIES**

N/A.

**DISCUSSION**

In August 2018, the City was served with an Amended Petition for Writ of Administrative Mandate or Traditional Mandate which was filed by the Merced Citizens for Responsible Planning. This matter concerns the City's approval of their 2015 Urban Water Management Plan. As the City believes that the allegations in this Petition have no merit, it is important to vigorously defend this case.

The City Attorney's Office is requesting approval to hire Katherine Jenson, who is a partner with the law firm Rutan & Tucker to represent the City in this matter. Ms. Jenson has represented the City on prior occasions, most notably in the case, *Merced Alliance For Responsible Growth et al., v, City of Merced, Wal-Mart Stores East, L.P. et al.* In that case, Ms. Jenson successfully represented the City in the Superior Court and the Court of Appeal in a challenge to the City's approval of a proposal to build a regional distribution center.

The City Attorney's Office recommends that the City Council approve and enter into the attached fee agreement with Rutan & Tucker for the not to exceed amount of \$95,000.

### **IMPACT ON CITY RESOURCES**

A supplemental appropriation of \$95,000 is needed from the unreserved, unencumbered fund balance of Fund 557 - Water System Enterprise to professional service account 557-1106-532-17-00 to cover the cost of the agreement.

### **ATTACHMENTS**

1. Fee Agreement With Rutan & Tucker

August 24, 2018

**VIA ELECTRONIC MAIL**

Steven S. Carrigan  
City Manager  
City of Merced  
678 West 18th Street  
Merced, CA 95340

Re: Representation Letter – Merced Citizens For Responsible Planning v. City of Merced, et al, Merced Superior Court Case No. 18CV-01143

Dear Mr. Carrigan:

Chief Deputy City Attorney Kelly Fincher requested that I submit this letter by which the City may retain Rutan & Tucker, LLP to provide legal services with respect to the above-referenced lawsuit. This letter sets forth our proposal for the basic terms of the engagement and the arrangement for fees and costs that will apply to the engagement.

If you have any questions about these provisions, or if you would like to discuss possible modifications, do not hesitate to call. Otherwise, if you agree, please sign the enclosed copy of this letter in the space provided below. We are pleased to have the opportunity to serve you.

1. *Client; Scope of Representation.* Our client in this matter will be the City of Merced and the Merced City Council ("City"). We will be engaged to provide legal representation in the litigation entitled *Merced Citizens for Responsible Planning v. City of Merced, etc. et al*, Merced County Superior Court Case No. 18CV-01143. You may limit or expand the scope of our representation from time to time, provided that we must agree to any substantial expansion or limitation of the representation. The firm will perform these services, will take reasonable steps to keep you informed of progress, respond to your inquiries, and will consult with you as necessary. This letter covers all preliminary work we have already performed, as well as future services we will perform.

2. *Duties of Client.* You agree to timely provide us such information, assistance and cooperation as is necessary for us to effectively perform our services and to timely pay our bills for fees, costs and expenses as further described herein.

3. *General Terms; Fees and Expenses.* To assist you in understanding our billing practices and other general terms, I enclose a copy of our current Policy on Professional Fees and General Terms of Engagement (the "General Terms"). The General Terms are incorporated in this letter. The General Terms describe the ranges of hourly rates for our attorneys and

Steven S. Carrigan  
August 24, 2018  
Page 2

paraprofessionals and our policies regarding reimbursement of costs and expenses. Please specifically note that we have agreed to the following rate schedule: (1) \$395 per hour composite rate for all attorneys; (2) \$200 per hour for all paralegals; and (3) \$90 per hour for document clerks. I and my partner, Peter Howell, will be the lead working attorneys for this matter, and we will be assisted by attorneys and staff members as needed. I was requested to provide an initial estimate of costs, which is difficult to do at this stage. However, as an initial estimate, we believe attorneys' fees and costs will be \$95,000. This estimate is subject to supplementation.

4. *Term of Engagement.* In accordance with the General Terms, either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable Rules of Professional Conduct.

5. *Retainer.* It is customary under certain circumstances that we receive a retainer as an advance against fees, costs and expenses prior to commencing work on the matter. We have not, however, requested a retainer for the initial representation in this matter. It occasionally may be appropriate to require a retainer or an additional retainer (as the case may be) after the commencement of the engagement, or to require an increase in a retainer, depending on, among other things, your payment history or on the scope of the work. For example, before a trial, we may require a retainer sufficient to cover expected fees, costs and expenses. We also customarily request an advance retainer for the purpose of paying substantial out-of-pocket costs we incur on your behalf. Any retainer received by this firm will be held in our trust account as security for your payment of all amounts owing to us and applied to the final billing in the matter. It may also be applied before the final billing to out-of-pocket costs and expenses which must be advanced on your behalf or to unpaid fees in our discretion.

6. *Binding Arbitration.* We appreciate the opportunity to serve as your attorneys and anticipate a productive, harmonious relationship. If you become dissatisfied for any reason with the services we have performed, the fees charged, or any other aspect of the attorney-client relationship, we encourage you to bring that to our attention immediately. Similarly, if we perceive a problem with the representation, we will discuss it with you. Most such problems can be rectified by communication and discussion. Although in our experience disputes of any type are rare, a dispute conceivably could arise between us which cannot be resolved by discussion or negotiation. We believe such attorney-client disputes are most satisfactorily resolved through binding arbitration rather than by litigation in court.

Arbitration is, as you likely know, a process by which both parties to a dispute agree to submit the matter to a retired judge or other arbitrator who has expertise in the area and to abide by the arbitrator's decision, instead of litigating in court. In arbitration, there is no right to a trial by jury and the arbitrator's legal and factual determinations are generally not subject to appellate review. Arbitration rules of evidence and procedure are often less formal and rigid than in a court trial. Arbitration often results in a decision much more quickly than proceedings in court, and the attorneys' fees and other costs incurred by both sides are often substantially less.

Steven S. Carrigan  
August 24, 2018  
Page 3

Both the United States and California Supreme Courts have endorsed arbitration as an accepted and favored method of resolving disputes, because it is economical and expeditious. Arbitration is also less acrimonious and more confidential than traditional litigation and is, therefore, particularly suited to resolution of disputes between attorneys and their clients.

Your agreement to arbitrate disputes is not a condition of our agreeing to represent you, and if you do not wish to agree to arbitrate, then you should advise me before signing the copy of this letter, so we can delete this section of the agreement. You are free to discuss the advisability of arbitration with us or your independent counsel or any of your other advisors.

By signing this agreement, you agree that if any dispute arises out of or relating to this agreement, our relationship, or the services performed by us (including but not limited to any disputes regarding our fees and expenses and any failure by you to pay such fees and expenses in accordance with this agreement, claims of professional negligence, breach of contract or fiduciary duty, fraud or any claim based upon a statute), such dispute shall be resolved by submission to final and binding arbitration in Orange County, California, before a retired judge or justice of the California Superior Court or a higher court. Please be advised that by agreeing to binding arbitration, you are waiving any right to a jury trial on any such dispute. If you and we are unable to agree on a retired judge or justice, each party will name one retired judge or justice and the two named persons will select a neutral judge or justice who will act as the sole arbitrator. Should you elect to have any fee dispute arbitrated pursuant to non-binding arbitration under statutory or case law (including your rights to request mandatory fee arbitration under the rules of the Orange County Bar Association), then such non-binding arbitration shall determine only the issue of the amount of fees properly chargeable to you. Any other claims or disputes between us, including claims for professional negligence, shall remain subject to binding arbitration pursuant to this agreement. In the event of such an arbitration, the parties shall be entitled to take discovery in accordance with the provisions of the California Code of Civil Procedure, but either party may request that the arbitrator limit the amount or scope of such discovery, and in determining whether to do so, the arbitrator shall balance the need for the discovery against the parties' mutual desire to resolve disputes expeditiously and inexpensively.

7. *Conflicts in this Matter.* We cannot, without appropriate consents, represent any party if there is a conflict of interest with any of our other clients. In order to avoid conflicts of interest among our clients, we maintain an index of relevant names. In connection with this matter, we have searched our index for the following names: (i) the City of Merced and the Merced City Council as potential client(s); (ii) Merced Citizens for Responsible Planning and San Joaquin Valley Environmental Defense Center as potential adverse parties; and (iii) the State of California Central Valley Regional Water Quality Control Board as co-defendants. We have not discovered any conflict which requires further action before undertaking our representation. Please advise us, at or before the time you return the signed copy of this letter, if you know of any other individuals or entities which may be involved in this matter. In addition, please inform us at once if you learn



Steven S. Carrigan  
August 24, 2018  
Page 4

in the future of other persons or entities who may be involved so we can make a conflict of interest search with respect to them.

8. *Conflicts Waiver.* In undertaking this representation, our objective is to represent you to the best of our ability without forfeiting the continuing representation of our general clients. One purpose of this letter, therefore, is to avoid our disqualification from representing clients which we represent on a more general basis or which we regularly represent in particular matters or controversies. Given the limited nature of our representation, there are certain conditions to our engagement which we would like to explain to you and to which we would like to secure your approval and consent. Rutan & Tucker, LLP is a large law firm which has represented, and continues to represent, many different corporate and individual clients with various interests in numerous industries. It is possible that, during the time we are representing your interests in this matter, you may become involved in transactions and/or disputes in which your interests are adverse to those of one of the firm's present or future clients. Therefore, as a specific condition to our undertaking your representation, you understand and agree that this firm may continue to represent or may undertake in the future to represent existing or new clients in any matter that is not substantially related to our work for you even if the interests of such clients in those other matters are directly adverse to your interests. We agree, however, that your prospective consent to conflicting representation contained in the preceding sentence shall not apply in any instance where, as a result of our representation of you, we have obtained proprietary or other confidential information of a nonpublic nature, that, if known to such other client, could be used in any such other matter by such client to your material disadvantage.

Please be aware that you have the right to obtain the advice of independent counsel regarding the terms of this agreement, and you should feel free to do so.

This letter and the attached General Terms constitute the entire agreement between you and Rutan & Tucker, LLP with respect to our engagement. No prior oral or written understanding shall be of any force or effect with respect to these matters. This agreement may not be modified, except by a document in writing executed by both parties. A waiver of any party of any breach of any of the conditions, terms or time requirements under this letter shall not be construed as a waiver of any succeeding breach. This letter may be executed in multiple counterparts, each of which shall be deemed an original.

Please review this letter and the General Terms attached hereto carefully. If the terms and conditions of our representation and the billing arrangements under this agreement meet with your approval, please sign the enclosed copy of this letter and return it to me. Please call if you have any questions.

Steven S. Carrigan  
August 24, 2018  
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Once again, we are pleased to have this opportunity to work with you.

Very truly yours,

RUTAN & TUCKER, LLP

  
M. Katherine Jensen

Enclosure

ACCEPTED AND AGREED:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**APPROVED AS TO FORM:**

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

**POLICY ON PROFESSIONAL FEES  
AND  
GENERAL TERMS OF ENGAGEMENT**

Professional Fees and Billing Procedures.

Experience has shown that the attorney-client relationship works best when there is a mutual understanding about fees and payment terms. The following is intended to explain briefly our present billing policies and procedures. These policies and procedures are subject to change. We encourage you to discuss with us at any time any questions you might have concerning these policies and procedures.

Unless otherwise agreed in writing by you and us, our professional fees will be based on the hourly rates of the attorneys and paraprofessionals working on your matter(s). Our hourly rates for attorneys and paraprofessionals are adjusted from time to time and generally as of January 1st of each year. Adjustments in billing rates will be reflected in the invoice for legal services which constitutes our written notice to you. The current hourly billing rates for attorneys and paraprofessionals at the firm for 2018 are as follows: (i) partners range from \$325.00 to \$995.00 per hour, (ii) associates range from \$260.00 to \$485.00 per hour and (iii) paralegals, law clerks, legal interns, legal assistants, document clerks and other paraprofessionals range from \$75.00 to \$280.00.

Rutan & Tucker, LLP bills its clients for costs advanced on a client's behalf, such as filing fees, transcript and deposition fees, reasonable travel expenses, and expert witness fees. The firm also charges for certain costs and expenses incurred on behalf of clients such as long-distance telephone calls, facsimile and telecopier transmissions, copying, scanning, printing, postage, mileage, messengers, and computerized research. Notwithstanding the foregoing, we may forward to you large disbursement invoices for your direct payment to the supplier.

We make every effort to include disbursements in the statement for the month in which the disbursements are incurred. Some disbursements, however, may not be available to us until the following months, in which case a subsequent statement may be rendered to you for these additional charges, or an estimated amount may be included in the initial billing and an adjustment made when the actual disbursement information is available.

In the absence of other arrangements, our billing statements ordinarily will be rendered to you on a monthly basis.

Our billing statements are due and payable upon receipt. We ask and expect payment of our statements on a current basis, as delayed payment adds to our overall costs of providing services. Unless you notify us of any objection to any such billing statement (specifically describing the basis for such objection), within thirty (30) days after the date we send the billing statement to you, we will presume that you have no objection to the amounts set forth in the billing statement. If any statement remains unpaid for more than thirty (30) days after the date the statement is sent by this firm, interest may be added at the rate of 10% per annum on the unpaid balance.

Unless specifically agreed in writing, we cannot make any guarantee as to the amount which you will incur for attorneys' fees and costs in any matter, as those figures will wholly depend on the time and effort required to be devoted to such matter. Any estimates of anticipated fees and costs, whether for budgeting purposes or otherwise, are, due to the uncertainties involved, necessarily only an approximation of potential fees and costs. Unless specifically agreed in writing, such estimates are not a maximum or minimum quotation and are not binding. The actual fees and costs will be determined in accordance with the policies described above.

#### General Terms.

We have been engaged to represent the person(s), company(ies) or organization(s) agreed to in writing by this firm. Unless agreed to in writing, we are not representing any of their respective members, shareholders, affiliates, subsidiaries, parent companies, joint ventures, officers, directors, partners, principals, investors, or employees. Accordingly, we can take on matters that may be adverse to these related parties or their legal interests, unless precluded by reason of the Rules of Professional Conduct.

Either of us may terminate the engagement at any time for any reason by written notice, subject on our part to applicable Rules of Professional Conduct. If we terminate the engagement, we will take such steps as are reasonably practicable to protect your interests in the matter(s) for which we have been engaged. If you so request, we will use reasonable efforts to suggest to you possible successor counsel and provide it with whatever documents you have provided to us, but will retain materials that we have generated, as noted below.

Unless previously terminated, our representation of you in any matter will terminate upon our sending to you our final invoice for services rendered for such matter. Upon the termination of such representation, our own lawyer work product documents, notes and files (the "Work Product Files") pertaining to your matter will be retained by the firm. Your documents, property and files that are not Work Product Files (the "Client Files") will be, at your request, returned to you upon the termination of such representation. Both the Client Files (unless otherwise returned to you at your request) and the Work Product Files will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to destroy or otherwise dispose of any such documents, property, files or other materials retained by us within a reasonable time after the termination of the engagement. Specifically, it is our current policy to store your Client Files for a period of five (5) years and at the conclusion of such five (5) year period we will make an attempt to contact you as to the disposition of your Client Files, but if we are unable to locate you, we reserve the right to destroy such Client Files.

You are engaging the firm to provide legal services in connection with specific matter(s). After completion, changes may occur in the applicable laws or regulations that could have an impact upon your future rights and liabilities. Unless you actually engage us after these matters have been completed to provide additional advice on issues arising from these matters, this firm has no continuing obligation to advise you with respect to future legal developments. In particular, please be advised that this firm does not undertake to perform further actions on your behalf in connection with renewal of perfection of liens, filing of UCC continuation statements, and the like

in connection with any loan related matter. Further, we do not offer the service of annuity/maintenance fee payments with respect to patent prosecution.

We have made no representations, promises or guarantees to you regarding the outcome of your matter. Any comments about the outcome of your matter at any time during the performance of services do not constitute promises, guarantees, or assurances, as to the outcome of your matter.

Unless otherwise agreed in a signed writing, the firm shall have no responsibility to investigate or evaluate whether insurance is available for any matter covered by this engagement or to tender any matter covered by this engagement to any insurance carrier.

If we are required to respond to a subpoena of our records relating to services we have performed for you, or testify by deposition or otherwise concerning such services, then we will take reasonable steps to consult with you as to whether you wish to supply the information demanded or assert objections to the extent you may properly do so. You agree to pay us for our time and costs incurred in responding to any such demand, in accordance with the provisions of this letter, including, but not limited to, time and expense incurred in search and photocopying costs, reviewing documents, appearing at depositions or hearings, and otherwise litigating issues raised by the request.

In order to maximize efficiency, please be advised that attorneys and paraprofessionals at this firm routinely use the following communications methods to the fullest extent possible: e-mail, document transfer by computer, mobile telephones, and facsimile transfers.

Although not required in California, some states require that a law firm disclose the existence of errors and omissions insurance coverage applicable to the services to be rendered. Rutan & Tucker, LLP hereby confirms the existence of such insurance coverage for the purposes of complying with such a requirement.

#### Duty to Preserve Relevant Evidence in the Event of Litigation or Disputes.

If you are currently involved in a dispute which has resulted or is likely to result in litigation, or if you become involved in such a dispute at a later date, please be aware that you have a legal obligation to preserve "documents and data" potentially relevant to any such dispute. In addition to the obvious fact that we may need the evidence to help prove or defend your case, the primary reason we need to tell you about this obligation is because, if you do not take such steps, you could suffer severe sanctions in any litigation (or arbitration) that might arise. Those sanctions could include, among others, direct and substantial monetary sanctions, "issue sanctions", resulting in a directed finding against you on certain issues in the case, or even possibly a directed judgment against you, resulting in loss of the entire case.

Compliance with the obligation to preserve all potentially relevant evidence may not be as easy as it sounds. Preservation obligations include, for example, the obligation to suspend normal document destruction routines and otherwise protect against inadvertent deletion of evidence, especially electronic evidence. You need to notify and work with all of your employees and managerial personnel who might possess any such evidence, and consider all of the places where such evidence might be located, such as, e.g., home computers, laptop computers, cell phones, backup devices, and a wide range of other electronic devices and physical locations outside your

normal offices and outside your network. You also need to evaluate the extent to which any of your agents, outside professionals, or consultants may have evidence which should be preserved. Furthermore, all of this needs to be documented.

We ask that you coordinate with our professional staff to ensure that proper steps have been taken to preserve all potentially relevant evidence, including electronic evidence whenever litigation, or a dispute which may lead to litigation, arises. To the extent that you have qualified and sophisticated in-house personnel experienced with document preservation activities, such coordination may simply consist of providing us with the documentation reflecting the steps taken and review of that documentation and the processes reflected. To the extent you do not have such in-house capabilities, our staff can help lead you through the process. In either event, it is very important for us to confirm the steps that have been taken so that we can later both establish your compliance with the obligation to preserve potentially relevant evidence and also utilize the documentation to coordinate the efficient identification, retrieval, and production of evidence for the presentation of your case.

Please let me know if you have any questions and, in any event, please let me know who within your organization would be best to coordinate these efforts so that I can put them in touch with our staff.



## ADMINISTRATIVE REPORT

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**Agenda Item H.15.**

Meeting Date: 10/15/2018

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**SUBJECT:** Second Reading of Ordinance 2493 Approving General Plan Amendment #18-01

### REPORT IN BRIEF

Second reading of previously introduced ordinance.

### RECOMMENDATION

**City Council** - Adopt a motion adopting **Ordinance 2493**, an Ordinance of the City Council for the City of Merced, California, approving Site Utilization Plan Revision #13 to Planned Development (P-D) #42 changing the land use designation from Park to Single-Family Residential for approximately 5.88 acres of land generally located at the southwest corner of M Street and Arrow Wood Drive (extended) and changing the Land Use designation from Single-Family Residential to Park for approximately 5.0 acres of land generally located at the southeast corner of the future Catherine A. Hostetler Boulevard and Freemark Avenue (extended).

### ALTERNATIVES

1. Approve, as recommended by staff; or,
2. Refer to staff for reconsideration of specific items; or,
3. Deny.

### AUTHORITY

Charter of the City of Merced, Section 200.

### CITY COUNCIL PRIORITIES

As provided for in the FY 2016-17 General Fund appropriation.

### ATTACHMENTS

1. Ordinance 2493

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING SITE UTILIZATION PLAN REVISION  
#13 TO PLANNED DEVELOPMENT (P-D) #42  
CHANGING THE LAND USE DESIGNATION  
FROM PARK TO SINGLE-FAMILY RESIDENTIAL  
FOR APPROXIMATELY 5.88 ACRES OF LAND  
GENERALLY LOCATED AT THE SOUTHWEST  
CORNER OF M STREET AND ARROW WOOD  
DRIVE (EXTENDED) AND CHANGING THE LAND  
USE DESIGNATION FROM SINGLE-FAMILY  
RESIDENTIAL TO PARK FOR APPROXIMATELY  
5.0 ACRES OF LAND GENERALLY LOCATED AT  
THE SOUTHEAST CORNER OF THE FUTURE  
CATHERINE A. HOSTETLER BOULEVARD AND  
FREEMARK AVENUE (EXTENDED)**

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

SECTION 1. AMENDMENT TO CODE. The property described in Exhibits A and C and shown on the maps at Exhibits B and D, attached hereto, and by reference made a part of this Ordinance, is hereby re-designated as shown on said Official Site Utilization Plan as follows: Site No. 1 is changed from “Park” to “Single-Family Residential” and Site No. 2 is changed from “Single-Family Residential” to “Park” as shown on the map at Exhibit E.

SECTION 2. CHANGE OF MAP. The Director of Development Services is hereby directed to make the appropriate markings on the Official Site Utilization Plan for Planned Development #42 in conformance with this Ordinance and the provisions of Title 20 of the Merced Municipal Code.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after its adoption.

SECTION 4. 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 5. PUBLICATION. The City Clerk is directed to cause a summary of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption showing the vote thereon.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the \_\_\_\_ day of \_\_\_\_\_, 2018, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

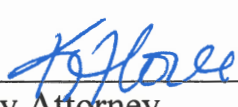
\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

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

**LEGAL DESCRIPTION**

**VILLAGE 12, PHASE 1, LOT A**

All that certain real property situate, lying, and being Lot A (Park), as shown on that certain map of "Bellevue Ranch West, Village 12 – Phase 1", filed in Volume 80 of Official Plats, at Pages 1 through 6, Merced County Records, lying in the City of Merced, County of Merced, State of California.

Containing a total of 5.88 acres, more or less.

D.N. 2018-003677, M.C.R.

ARROW WOOD DRIVE

N89°49'57"E 725.22'

LOT A (PARK)  
5.88 ACRES

N0°10'03"W 338.46'

N45°10'03"W  
21.21'

S89°49'57"W 529.07'

N89°02'16"W  
59.00'  
S45°23'51"W  
21.00'

N0°57'44"E  
35.29'

N89°02'16"W  
100.44'

S0°57'44"W 377.25'

M STREET

SCALE

1" = 150'

BELLEVUE RANCH WEST  
VILLAGE 12 - PHASE 1  
80-O.P.-1

## NOTES

1. ALL DISTANCES AND DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.
2. ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.

DATE: 8/10/2018 10:04 FILE: M:\125971\Survey Drawings\PARK SITE\LOT A.dwg



**BENCHMARK ENGINEERING, INC.**  
**CIVIL ENGINEERING & LAND SURVEYING**  
915 17TH STREET • MODESTO, CALIFORNIA • 95354  
(209) 548-9300 FAX:(209) 548-9305

**PHASE 1 - LOT A**  
**BELLEVUE RANCH WEST**  
MERCED, CALIFORNIA

DRAWN BY: SYD  
DATE: 2018-08-10  
SHEET: 1 OF 2  
JOB: 125971

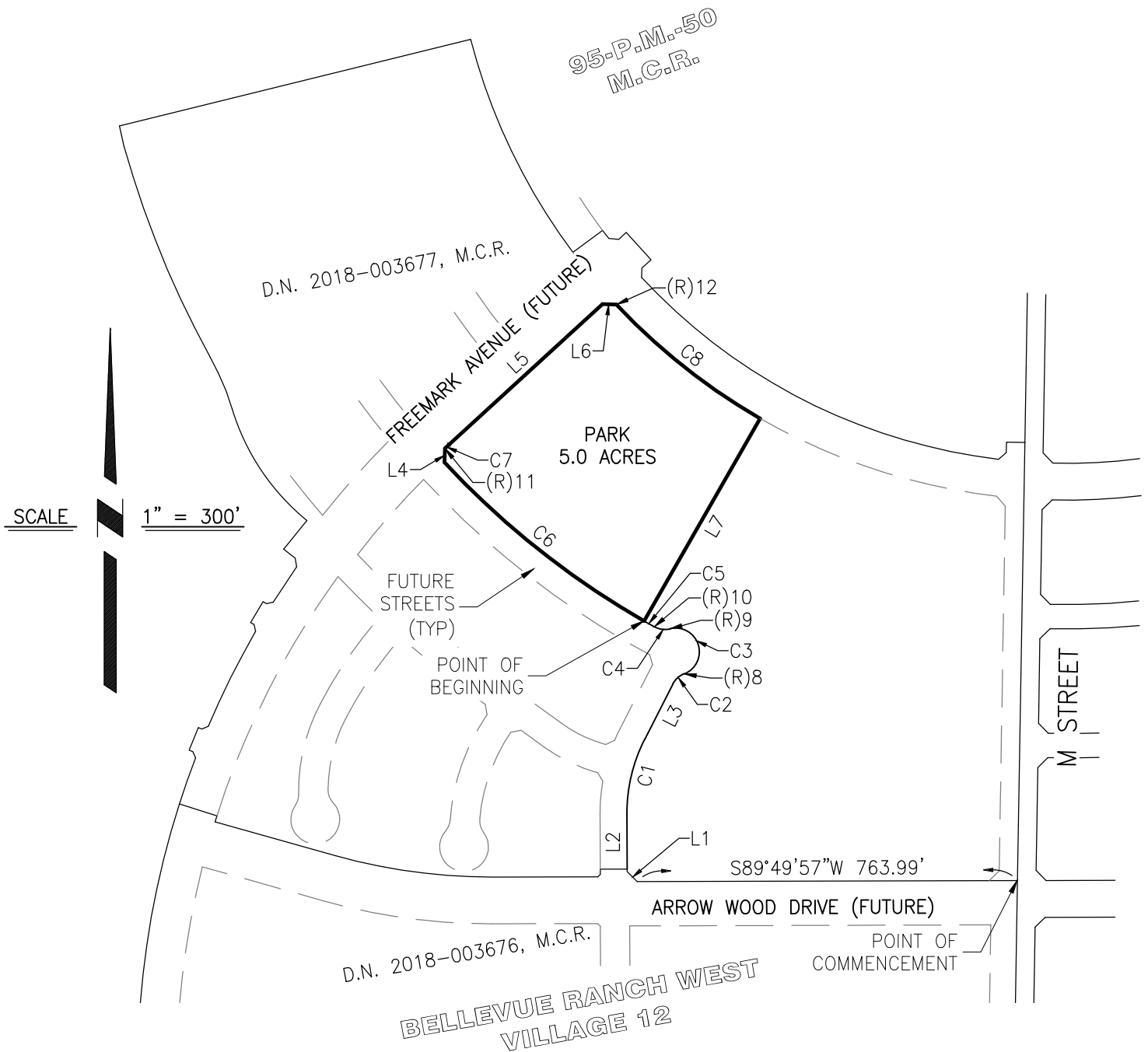
## LEGAL DESCRIPTION

### PROPOSED CITY PARK SITE

All that certain real property situate, lying, and being a portion of Adjusted Lot 1 as described in Certificate of Compliance #2017-09, filed as Document No. 2018-003677, Merced County Records, lying in the City of Merced, County of Merced, State of California, being more particularly described as follows:

COMMENCING at the southeast corner of said Adjusted Lot 1, thence along the southerly line of said Adjusted Lot 1, South 89°49'57" West 763.99 feet; thence, continuing along the southerly line of said Adjusted Lot 1, North 45°10'03" West 28.28 feet; thence North 0°10'03" West 116.56 feet, to the beginning of a curve, concave to the southeast, having a radius of 325.50 feet and a central angle of 27°09'46"; thence, along the arc of said curve, 154.31 feet; thence North 26°59'43" East 124.53 feet, to the beginning of a curve, concave to the southeast, having a radius of 44.50 feet and a central angle of 41°24'35"; thence, along the arc of said curve, 32.16 feet, to the beginning of a reverse curve, concave to the southwest, from which a radial line bears South 21°35'42" East, having a radius of 47.50 feet, and a central angle of 171°48'06"; thence, along the arc of said curve, 142.43 feet, to the beginning of a reverse curve, concave to the north, from which a radial line bears North 13°23'47" West, having a radius of 44.50 feet, and a central angle of 42°26'54"; thence, along the arc of said curve, 32.97 feet, to the beginning of a compound curve, concave to the northeast, from which a radial line bears North 29°03'06" East, having a radius of 1706.00 feet, and a central angle of 0°47'24"; thence, along the arc of said curve, 23.52 feet, to the beginning of a compound curve, concave to the northeast, from which a radial line bears North 29°50'30" East, having a radius of 1706.00 feet, and a central angle of 17°15'46"; said point also being the POINT OF BEGINNING of this description; thence, along the arc of said curve, 514.01 feet; thence North 2°08'33" East 28.30 feet, to the beginning of a non-tangent curve, concave to the southeast, from which a radial line bears South 42°49'11" East, having a radius of 1713.00 feet, and a central angle of 0°22'03"; thence, along the arc of said curve, 10.99 feet; thence North 47°32'52" East 418.16 feet; thence South 87°44'55" East 28.14 feet, to the beginning of a non-tangent curve, concave to the northeast, from which a radial line bears North 46°57'18" East, having a radius of 1237.00 feet, and a central angle of 17°06'48"; thence, along the arc of said curve, 369.47 feet; thence South 29°50'30" West 469.00 feet, to the point of beginning.

Containing a total of 5.0 acres, more or less.



## NOTES

1. ALL DISTANCES AND DIMENSIONS SHOWN ARE IN FEET AND DECIMAL PARTS THEREOF.
2. ALL RECORD INFORMATION SHOWN IS FROM MERCED COUNTY RECORDS.
3. SEE SHEET 2 FOR LINE AND CURVE DATA TABLES.

DATE: 8/10/2018 9:31 FILE: M:\125971\Survey Drawings\PARK SITE\BRW-PARK.dwg



**BENCHMARK ENGINEERING, INC.**  
**CIVIL ENGINEERING & LAND SURVEYING**  
 915 17TH STREET • MODESTO, CALIFORNIA • 95354  
 (209) 548-9300 FAX:(209) 548-9305

**PARK SITE**  
**BELLEVUE RANCH WEST**  
 MERCED, CALIFORNIA

DRAWN BY: SYD  
 DATE: 2018-08-10  
 SHEET: 1 OF 2  
 JOB: 125971

LINE DATA TABLE		
LINE	BEARING	DISTANCE
L1	N45°10'03"W	28.28'
L2	N0°10'03"W	116.56'
L3	N26°59'43"E	124.53'
L4	N2°08'33"E	28.30'
L5	N47°32'52"E	418.16'
L6	S87°44'55"E	28.14'
L7	S29°50'30"W	469.00'

CURVE DATA TABLE			
CURVE	DELTA	RADIUS	LENGTH
C1	27°09'46"	325.50'	154.31'
C2	41°24'35"	44.50'	32.16'
C3	171°48'06"	47.50'	142.43'
C4	42°26'54"	44.50'	32.97'
C5	0°47'24"	1706.00'	23.52'
C6	17°15'46"	1706.00'	514.01'
C7	0°22'03"	1713.00'	10.99'
C8	17°06'48"	1237.00'	369.47'

RADIAL BEARING DATA	
RADIAL	BEARING
(R)8	S21°35'42"E
(R)9	N13°23'47"W
(R)10	N29°03'06"E
(R)11	S42°49'11"E
(R)12	N46°57'18"E

DATE: 8/10/2018 9:31 FILE: M:\125971\Survey Drawings\PARK SITE\BRW-PARK.dwg



**BENCHMARK ENGINEERING, INC.**  
**CIVIL ENGINEERING & LAND SURVEYING**  
 915 17TH STREET • MODESTO, CALIFORNIA • 95354  
 (209) 548-9300 FAX:(209) 548-9305

**PARK SITE**  
**BELLEVUE RANCH WEST**  
 MERCED, CALIFORNIA

DRAWN BY: SYD  
 DATE: 2018-08-10  
 SHEET: 2 OF 2  
 JOB: 125971

# Site Utilization Plan Revision #13 to Planned Development (P-D) #42

High Density  
Residential

High Density  
Residential

## SITE UTILIZATION PLAN:

Site #2 - Change from Single-Family Residential  
to Park (Approximately 5.0 Acres)

Low-Medium  
Density  
Residential

Future  
School

Low-Medium  
Density  
Residential

Low Density  
Residential

ARROW WOOD

## SITE UTILIZATION PLAN:

Site #1 - Change from Park to Single Family  
Residential (Approximately 5.88 Acres)







# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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**Agenda Item H.16.**

Meeting Date: 10/15/2018

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**SUBJECT:** Second Reading of Ordinance 2494 Amending Zoning Map

### REPORT IN BRIEF

Second reading of previously introduced ordinances.

### RECOMMENDATION

**City Council** - Adopt a motion adopting **Ordinance 2494**, an Ordinance of the City Council of the City of Merced, California, amending the official zoning map by Pre-zoning land generally located at the northwest corner of North Highway 59 and Santa Fe Drive as Thoroughfare Commercial (C-T) and the land generally located at the southwest corner of North Highway 59 and Santa Fe Drive as Light Industrial (I-L).

### ALTERNATIVES

1. Approve the request as recommended by the Planning Commission and staff; or,
2. Approve subject to modifications as conditioned by the City Council; or,
3. Deny the request; or,
4. Refer back 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

The State of California's Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, outlines the procedures governing the annexation of uninhabited territory to local jurisdictions. Title 19 of the Merced Municipal Code outlines environmental review procedures and Title 20 of the Merced Municipal Code (Zoning) regulates the use of land within the Thoroughfare Commercial (C-T) zone. Pre-annexation development agreements are authorized by Government Code Section 65864 *et seq.* and Merced Municipal Code Section 20.86.150.

### ATTACHMENTS

1. Ordinance 2494

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING THE OFFICIAL ZONING MAP BY  
PREZONING LAND GENERALLY LOCATED AT  
THE NORTHWEST CORNER OF NORTH  
HIGHWAY 59 AND SANTA FE DRIVE AS  
THOROUGHFARE COMMERCIAL (C-T) AND  
THE LAND GENERALLY LOCATED AT THE  
SOUTHWEST CORNER OF NORTH HIGHWAY  
59 AND SANTA FE DRIVE AS LIGHT  
INDUSTRIAL (I-L)**

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

**SECTION 1. AMENDMENT TO CODE.** The property described in Exhibit “A” attached hereto, and by this reference made a part hereof, is hereby prezoned as shown on said map as Thoroughfare Commercial (C-T) and Light Industrial (I-L).

**SECTION 2. CHANGE OF MAP.** The Director of Development Services is hereby directed to make the appropriate markings on the Official Zoning Map in conformance with this Ordinance and the provisions of Title 20 of the Merced Municipal Code.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 4. 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 5. PUBLICATION.** The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the \_\_\_\_ day of \_\_\_\_\_ 2018, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_ 2018, by the following called vote:

**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

\_\_\_\_\_  
**Mayor**

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

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

**(SEAL)**

**APPROVED AS TO FORM:**

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

**EXHIBIT A**  
**PROPOSED ANNEXATION AREA LEGAL DESCRIPTION**

The land referred to herein is situated in the unincorporated area of the County of Merced, State of California, and is described as follows:

**PARCEL 1:**

A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

**COMMENCING** at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being **THE TRUE POINT OF BEGINNING** of this description; thence South 53° 11' 43" East, 308.33 feet along said Northeasterly line of Santa Fe Drive; thence Southeasterly along said Northeasterly line of Santa Fe Drive along a 1,464.11 foot radius curve to the left, the long chord of which bears South 69° 35' 30" East 825.20 feet, through a central angle of 32° 44' 12", an arc distance of 836.54 feet, thence North 18° 36' 31" East 17.45 feet along said Northeasterly line of Santa Fe Drive to a point on the West line of State Highway 59; thence North 01° 24' 30" East 375.88 feet along the West line of State Highway 59 to the Southeast corner of that certain real property described as Parcel II in deed from Crocker Land Company to Merced Water Company recorded in Volume 1483, Official Records, Page 111, Merced County Records; thence North 88° 35' 30" West 100.00 feet to the Southwest corner of said Parcel II; thence North 01° 24' 30" East 180.34 feet along the West line of said Parcel II to a point on the North line of the aforesaid Lot 96; thence South 83° 48' 00" West 945.08 feet along the North line of said Lot 96 to **THE TRUE POINT OF BEGINNING**, all as delineated on Map entitled, "Record of Survey for J.F. Collins Co.", recorded in Book 13 of Surveys, Page 35, Merced County Records.

**EXCEPTING** therefrom all that portion conveyed to the County of Merced for road widening by deed recorded January 13, 1984, in Volume 2407, Page 718, Merced County Records.

**ALSO EXCEPTING** therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961, in Volume 1539, Page 504, as Instrument No. 14501, Official Records, March 3, 1972, in Volume 1881, Page 555, as Instrument No. 3989, Official Records and March 3, 1972, in Volume 1881, Page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

**EXHIBIT A  
PROPOSED ANNEXATION AREA LEGAL DESCRIPTION**

Exhibit A Parcel 1 continues:

Containing a total of 7.39 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 057-200-067

**END OF DISCRIPTION.**



  
Kaiser I. Shahbaz, L. S. 8599

9/17/2018  
Date

**EXHIBIT A**  
**PROPOSED ANNEXATION AREA LEGAL DESCRIPTION**

**PARCEL 2:**

A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

**COMMENCING** at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 1028.62 feet along the North line of said Lot 96 to **THE POINT OF BEGINNING**; thence North 01°24'30" East 9.49 feet; thence South 51°57'00" East 74.78 feet to the Westerly line of a 100.00 feet wide abandoned railroad right of way; thence leaving last said line South 40°05'55" East 60.36 feet to the Westerly line of State Highway 59 and the City/County limit line; thence along last said line South 01°24'30" West 100.00 feet; thence leaving last said line North 88°35'30" West 100.00 feet; thence North 01°24'30" East 189.83 feet to **THE POINT OF BEGINNING**, all as delineated on Map entitled, "Record of Survey for J.F. Collins Co.", recorded in Book 13 of Surveys, Page 35, Merced County Records.


Containing a total of 0.34 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 057-200-029

**END OF DISCRIPTION.**

  
Kaiser I. Shahbaz, L. S. 8599

9/17/2018  
Date





**EXHIBIT A**  
**PROPOSED ANNEXATION AREA LEGAL DESCRIPTION**

**PARCEL 3:**

A portion of Lot 96, MAP OF CROCKER COLONY, in the County of Merced, State of California, as per plat recorded in Book 5 of Maps, Page 6, records of said County and a portion of the Yosemite Valley Railroad right of way (now abandoned), described as follows:

**BEGINNING** at the southeast corner of the aforesaid Lot 96 and running thence northwesterly along the northerly line of the A.T. & S.F. Railroad right of way along an 11,409.16 foot radius curve to the right, through a central angle of 03° 07' 59" an arc distance of 623.88 feet to a point on the southerly line of Santa Fe Drive (a County Road); thence easterly along the southerly line of Santa Fe Drive along a 1,260.00 foot radius curve to the left through a central angle of 26° 32' 37" an arc distance of 583.72 feet; thence South 22° 47' 55" East 22.73 feet along the southerly line of said Santa Fe Drive to a point on the west line of State Highway 59; thence South 01° 24' 30" West 153.60 feet; thence North 88° 35' 30" West 40.00 feet to **THE POINT OF BEGINNING** all as delineated on map entitled, "RECORD OF SURVEY FOR J. F. COLLINS CO.", recorded in Book 13 of Surveys at Page 35, Merced County Records.

**EXCEPTING** therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961 in Vol. 1539 of Official Records, Page 594, as Instrument NO. 14501, March 3, 1972 in Vol. 1881 of Official Records, Page. 555, as Instrument No. 3989, and March 3, 1972 in Vol. 1881 of Official Records, page 572, as Instrument No. 3991, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Containing a total of 1.01 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

APN: 57-200-42

  
Kaiser I. Shahbaz, L. S. 8599

9/17/2018  
Date



**EXHIBIT A**  
**PROPOSED ANNEXATION AREA LEGAL DESCRIPTION**

**PORTION OF RASCAL CREEK:**

A portion of Canal Reserve property as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portion being described as a whole as follows:

**COMMENCING** at the Northwest corner of said Lot 96 and running thence North 83° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being **THE POINT OF BEGINNING** of this description; thence North 53°11'12" West 260.35 feet along said Northeasterly line of Santa Fe Drive; thence leaving last said line and along the Northerly line of said Canal Reserve property the following five (5) courses: (1) South 70°04'35" East 176.18 feet; (2) North 83°48'00" East 825.98 feet; (3) North 80°52'54" East 178.90 feet; (4) North 51°57'00" East 61.30 feet to the Westerly line of a 100.00 feet wide abandoned railroad right of way; thence leaving last said line; (5) North 83°48'00" East 40.36 feet to the Westerly line of State Highway 59 and the City/County limit line; thence along last said line South 01°24'30" West 236.41 feet to the Southerly line of said Canal Reservation property; thence along said last line the following four (4) courses: (1) North 40°05'55" West 60.36 feet; (2) North 51°57'00" West 74.78 feet; (3) South 01°24'30" West 9.49 feet; (4) South 83°48'00" West 945.08 feet to **THE POINT OF BEGINNING**.

n Volume 1881, Page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

Containing a total of 2.78 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

  
Kaiser I. Shahbaz, L. S. 8599

9/17/2018  
Date





**EXHIBIT A**  
**PROPOSED ANNEXATION AREA LEGAL DESCRIPTION**

**PORTION OF SANTA FE DRIVE:**

A portion of Canal Reserve property as shown on the Map entitled, Map of the Crocker Colony, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portion being described as a whole as follows:

**COMMENCING** at the Northwest corner of said Lot 96 and running thence North 51°48'45" West along the Southwesterly line of Santa Fe Drive and the Northeasterly line of Santa Fe Railroad, a distance of 200.57 feet; thence leaving last said line North 38°11'15" East 52.15 feet to the Northeasterly line of said Santa Fe Drive; thence along the Northeasterly line of said Santa Fe Drive the following five (5) courses: (1) South 53°11'45" East 260.35 to the Northerly line of Lot 96 as shown on said Official Map; (2) along the Northerly line of said Lot 96, North 83°48'00" East 81.00 feet; (3) leaving the Northerly line of said Lot 96, South 52°42'37" East 416.32 feet to beginning of a curve concave to the Northeast having a radius of 1139.23 feet; (4) along said curve through a central angle of 33°09'44" an arc distance of 659.37 feet; (5) North 18°36'31" East 17.45 feet to the Westerly line of State Highway No. 59; thence leaving the Northeasterly line of said Santa Fe Drive South 01°24'30" West along the Westerly line of said State Highway No. 59, a distance of 168.02 feet to the Southwesterly line of said Santa Fe Drive; thence along the Southwesterly line of said Santa Fe Drive the following four (4) courses: (1) North 22°47'55" West 22.73 feet to beginning of a curve having a radius of 1260.00 feet and a radial bearing of South 04°35'37" West; (2) along said curve through a central angle of 26°32'36" an arc distance of 583.72 feet to a non-tangent curve concave to the Northeast having a radius of 11409.16 feet and a radial bearing of South 35°48'32" West; (3) along said curve through a central angle of 02°22'43" an arc distance of 473.66 feet; (4) North 51°48'45" West 212.60 feet to **THE POINT OF BEGINNING.**

Containing a total of 3.60 acres, more or less.

Subject to covenants, conditions, restrictions, reservations, rights, rights-of-way, and easements of record, if any.

See Exhibit B attached hereto and made a part hereof.

**END OF DISCRIPTIONS.**

**Area Note: Proposed total area to be annexed to the City of Merced is 15.12 acres, more or less.**

  
Kaiser I. Shahbaz, L. S. 8599

9/17/2018  
Date







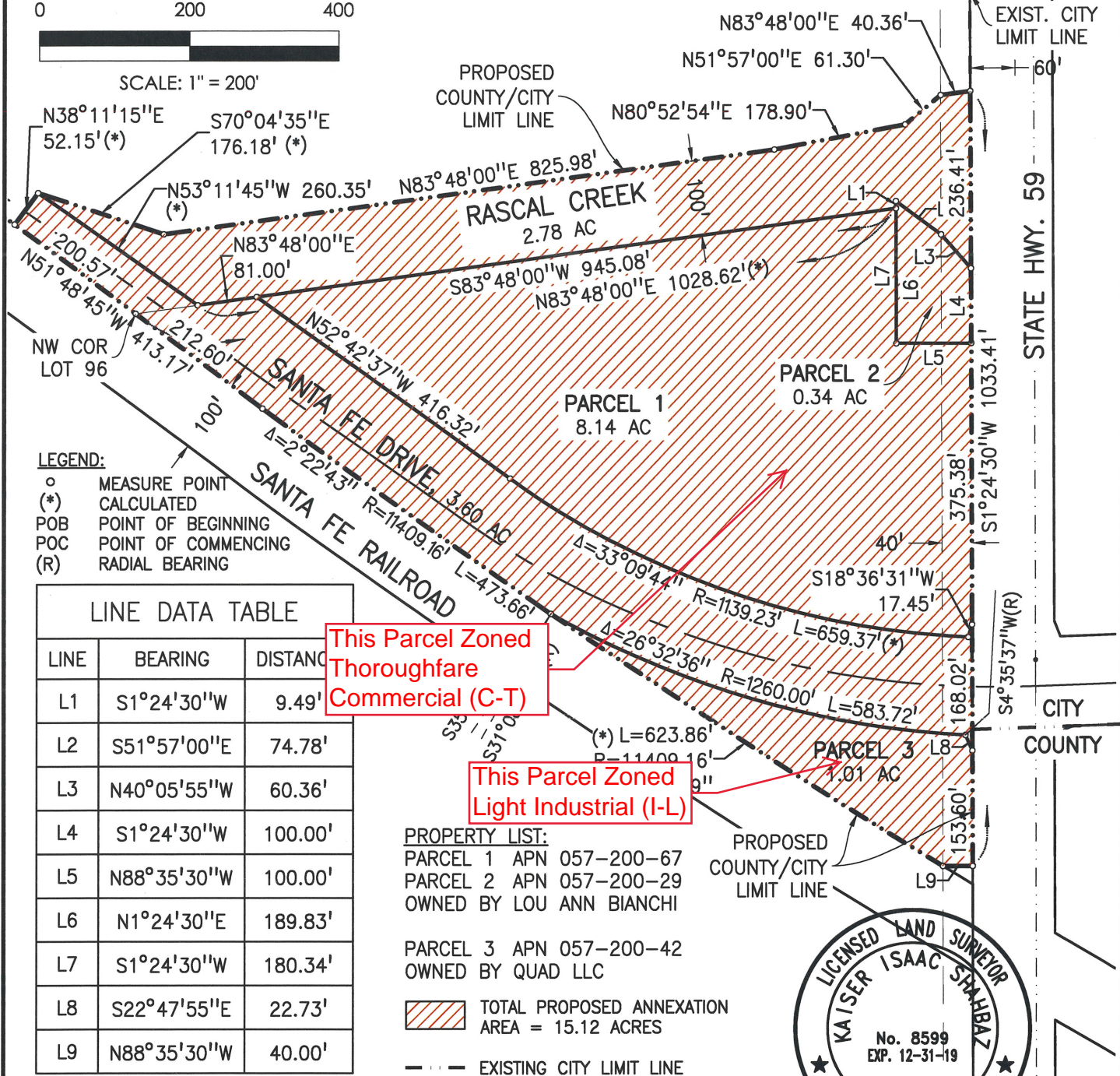
0 200 400



SCALE: 1" = 200'

**REFERENCE:**

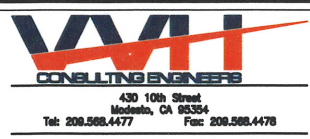
- (R1) VOLUME 13 OF SURVEYS, PAGE 35, MCR  
(R2) VOL 3473 OR, P 725, NO.996-17324, MCR  
(R3) VOL 1483 OR, P 111, PARCEL II, MCR  
(R4) D.N. 2017000068, MCR



**NOTE:**  
ALL MEASUREMENTS SHOWN ON THIS PLAT ARE BASED ON VOLUME 13 OF SURVEYS, PAGE 35, MCR, UNLESS OTHERWISE NOTED

*Karl*  
9/17/2018

SHEET 1 OF 1



W:\10670101\survey\drawing\sheet files\10670101\_EXHIBIT B.dwg 9/17/18 14:30

PREPARED FOR  
ELITE BUSINESS ENTERPRISES, INC  
2190 MERIDIAN PARK BLVD., SUITE G  
CONCORD, CA 94520

ANNEXATION AREA TO THE CITY  
APN 057-200-029, 067, 042  
& PORTION OF RASCAL CREEK

KS 6/01/2018  
EXHIBIT  
**B**



## ADMINISTRATIVE REPORT

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**Agenda Item H.17.**

Meeting Date: 10/15/2018

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**SUBJECT:** Second Reading of Ordinance 2495 Approving Pre-Annexation Development Agreement

### REPORT IN BRIEF

Second reading of previously introduced ordinances.

### RECOMMENDATION

**City Council** - Adopt a motion adopting **Ordinance 2495**, an Ordinance of the City Council of the City of Merced, California, approving a Pre-Annexation Development Agreement between the City of Merced and Lou Ann Bianchi for the Highway 59 and Santa Fe Annexation.

### ALTERNATIVES

1. Approve the request as recommended by the Planning Commission and staff; or,
2. Approve subject to modifications as conditioned by the City Council; or,
3. Deny the request; or,
4. Refer back 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

The State of California's Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, outlines the procedures governing the annexation of uninhabited territory to local jurisdictions. Title 19 of the Merced Municipal Code outlines environmental review procedures and Title 20 of the Merced Municipal Code (Zoning) regulates the use of land within the Thoroughfare Commercial (C-T) zone. Pre-annexation development agreements are authorized by Government Code Section 65864 *et seq.* and Merced Municipal Code Section 20.86.150.

### ATTACHMENTS

1. Ordinance 2495

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
APPROVING A PRE-ANNEXATION  
DEVELOPMENT AGREEMENT BETWEEN THE  
CITY OF MERCED AND LOU ANN BIANCHI FOR  
THE HIGHWAY 59 AND SANTA FE  
ANNEXATION**

**WHEREAS**, Section 65864 *et seq.* of the Government Code of the State of California and City of Merced Resolution 2005-101 authorize the execution of agreements establishing and maintaining requirements applicable to the development of real property; and,

**WHEREAS**, In accordance with the procedure specified in said Resolution, Lou Ann Bianchi, hereinafter “the Developer” has filed with the City of Merced an application for a Pre-Annexation Development Agreement (hereinafter “this Agreement”), for property generally located at the northwest corner of North Highway 59 and Santa Fe Drive, and said application has been reviewed and accepted for filing by the Director of Development Services; and,

**WHEREAS**, Notice of the City’s intention to consider adoption of this Agreement with the Developer has been duly given in the form and manner required by law, and the Planning Commission and City Council of said City have each conducted public hearings on June 6, 2018 (Planning Commission), and July 16, 2018 (City Council) at which time each heard and considered all evidence relevant and material to said subject.

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

**SECTION 1. FINDINGS.** The City Council hereby finds and determines, with respect to this Agreement by and between the City of Merced and the Developer, that it:

- A. Is consistent with the objectives, policies, general land uses, and programs specified in the City of Merced’s General Plan in that this Agreement makes reasonable provision for the use of certain real

property for commercial development consistent with the General Plan's land use designation of Thoroughfare Commercial (CT);

- B. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Subject Property referred to therein is located as this Agreement provides for commercial development;
- C. Is in conformity with the public convenience, general welfare, and good land use practice because it makes reasonable provision for a balance of land uses compatible with the remainder of the City;
- D. Will not be detrimental to the health, safety, or general welfare because it provides adequate assurances for the protection thereof;
- E. Notice of the public hearing before the Planning Commission was published in a newspaper of general circulation at least ten (10) days before the Planning Commission public hearing, and mailed or delivered at least ten (10) days prior to the hearing to the project applicant and to each agency expected to provide water, sewer, schools, police protection, and fire protection, and to all property owners within three hundred feet (300') of the property as shown on the latest equalized assessment roll;
- F. Notice of the public hearing before the Planning Commission included the date, time, and place of the public hearing, the identity of the hearing body, a general explanation of the matter to be considered, a general description and text or by diagram of the location of the real property that is the subject of the hearing, and of the need to exhaust administrative remedies;
- G. Notice of the public hearing before the City Council was published in a newspaper of general circulation at least ten (10) days prior to the City Council public hearing, mailed at least ten (10) days prior to the hearing to the project applicant, to each agency expected to provide water, sewer, schools, police protection, and fire protection, and to all property owners within three hundred feet (300') of the property as shown on the latest equalized assessment roll;

- H. Notice of the City Council hearing included the date, the time, and place of the public hearing, the identity of the hearing body, the general explanation of the matter to be considered, a general description in text or by diagram of the location of the Subject Property that is the subject of the hearing, and the notice of the need to exhaust administrative remedies;
- I. City Council approved this Agreement by Ordinance based upon evidence and findings of the Planning Commission and new evidence presented at its hearing on this Agreement, giving its reasons therefore and set forth their relationship between this Agreement and the General Plan;
- J. The benefits that will accrue to the people of the City of Merced from this legislation and this Agreement are as follows:
  - a. Participation in future Financing Districts to finance the expansion of the City's sewer facilities and system to upgrade the City's sewer treatment facility;
  - b. Upgrade, improvement, and replacement of existing public infrastructure adjacent to and within the Subject Property, including as follows:
    - i. Install all public improvements, including but not limited to, sidewalk, curb, gutter, street lights, and street trees along the property frontage along North Highway 59 and Santa Fe Drive;
    - ii. Extension of City water and sewer facilities across the full frontage of the property along Santa Fe Avenue;
    - iii. Provide fire hydrants as determined by the Fire Marshal; and,
    - iv. Provide storm drainage tie-in into existing storm water drainage system.



- c. Underground all utilities within the Subject Property site, but shall not be responsible for undergrounding existing utilities outside of the Subject Property;
- d. Connect all development to the City water system and pay all applicable connection fees;
- e. Developer agrees to form a Mello-Roos Community Facilities District (CFD) for infrastructure and maintenance within the Subject Property with waiver of protest rights;
- f. Improve/upgrade/replace all existing County infrastructure (road, utilities, etc.) adjacent to and within the Subject Property consistent with City of Merced standards.

The foregoing improvements are to be constructed and paid for by Developer.

**SECTION 2. APPROVAL.** This Agreement, attached hereto and incorporated herein by this reference as Attachment “1” is hereby approved. The City Manager is authorized and directed to evidence such approval by executing this Agreement for, and in the name of, the City of Merced; and the City Clerk is directed to attest thereto; provided, however, that this Agreement shall not be executed by the City until this Ordinance takes effect and the City has received from the applicant two executed originals of said Agreement.

**SECTION 3. EFFECTIVE DATE.** This Ordinance shall be in full force and effect thirty (30) days after its adoption.

**SECTION 4. 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 5. PUBLICATION.** The City Clerk is directed to cause a copy of this Ordinance to be published in the official newspaper at least once within fifteen (15) days after its adoption.

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:**

 6-15-2018  
City Attorney Date

RECORDED AT THE REQUEST OF  
City Clerk  
City of Merced  
A California Charter Municipal Corporation

WHEN RECORDED RETURN TO  
City Clerk  
City of Merced  
678 West 18<sup>th</sup> Street  
Merced, California 95340

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(Space Above Line For Recorder's Use)

**PRE-ANNEXATION DEVELOPMENT AGREEMENT**

PENDING ANNEXATION/PRE-ZONING NO. 15-01

“HIGHWAY 59 & SANTA FE ANNEXATION”

LOUANN BIANCHI

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

**PRE-ANNEXATION DEVELOPMENT AGREEMENT  
BETWEEN  
CITY OF MERCED  
AND  
LOUANN BIANCHI**

---

This Pre-Annexation Development Agreement ("Agreement") is entered into to be effective on the date it is recorded with the Merced County Clerk/County Recorder (the "Effective Date") by and among the City of Merced, a California Charter Municipal Corporation ("City") and the persons listed below ("Owner"):

Louann Bianchi  
151 N. Ulukoa Pl.  
Lahaina, HI 96761-1969

**RECITALS**

A. To provide for orderly planning, City has the authority pursuant to California Government Code Sections 65300 and 65301 to include in its General Plan land outside its boundaries which is in the City's sphere of influence or in the City's judgment bears a relation to its planning and, pursuant to Section 65450, to adopt specific plans for any part of the area covered by the General Plan. City also has the authority pursuant to California Government Code Section 65859 to pre-zone property adjoining the City for the purpose of determining the zoning designation that will apply to the property in the event of a subsequent annexation of the property to the City.

B. The Legislature of the State of California has adopted California Government Code Section 65864-65869.5 ("Development Agreement Legislation") which authorizes a city to enter into a binding development agreement with persons having legal or equitable interests in real property located within a city's municipal boundaries or in unincorporated territory within a city's sphere of influence for the development of such property in order to, among other things: encourage and provide for the development of public facilities; to support development projects; provide certainty in approval of development projects in order to avoid a waste of resources and escalation in project costs and encourage

an investment in and commitment to comprehensive planning, which will make maximum efficient utilization of resources at the least economic cost to the public land; provide assurance to the applicants for development projects that they may proceed with their projects in accordance with existing policies, rules and regulations and subject to the conditions of approval of such projects as provided in such annexation and/or development agreements.

C. Pursuant and subject to the Development Agreement Legislation, the City's police powers, and City Council Resolution No. 95-6, City is authorized to enter into binding agreements with persons having legal or equitable interest in real property located within the City's municipal boundaries or sphere of influence thereby establishing the conditions under which such property may be developed in the City or may be annexed into the City and governing development of such property upon its annexation.

D. By electing to enter into this Agreement, City shall bind future Members of the City Council of City by the obligations specified herein and further limit the future exercise of certain governmental and proprietary powers by any Member of the City Council to the extent such limitation is provided in the Development Agreement Legislation.

E. The terms and conditions of this Agreement have undergone extensive review by the staff of the City, the City's Planning Commission, the City Council of City, and Owner, and have been found to be fair, just, and reasonable.

F. City finds and determines that it will be in the best interests of its citizens and the public health, safety and welfare will be served by entering into this Agreement.

G. All of the procedures of the California Environmental Quality Act have been met with respect to this Agreement.

H. City was incorporated on April 1, 1889, and the City Charter was approved on April 12, 1949 and last amended on in January 2008.

I. Owner is the fee or equitable owner of two parcels totaling approximately 7.83 acres of undeveloped land located within the City's sphere of influence, hereinafter referred to as the "Property" as legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and made a part herein by this reference.

J. Owner has requested City to apply to the Merced County Local Agency Formation Commission ("LAFCO") to annex the Property. City is not opposed to Owner's request and will consider said request upon Owner's execution of this Agreement.

K. City and Owner desire that the Property be developed pursuant to the land uses and conditions of Pending Annexation and Rezoning #15-01 and Expanded Initial Study #15-36.

L. The City Council of City hereby finds and determines that:

(1) The environmental impacts of the Project have been reviewed and all measures deemed feasible to mitigate adverse impacts thereof have been incorporated into the City approvals for the Project.

(2) No other mitigation measures for environmental impacts created by the Project, as presently approved, shall be required for development of the Project unless mandated by law.

(3) City may, pursuant to and in accordance with its rules, regulations, and ordinances, conduct an environmental review of subsequent discretionary entitlements for the development of the Project or any changes, amendments, or modifications to the Project. The City, as a result of such review, may impose additional measures (or conditions) to mitigate as permitted by law the adverse environmental impacts of such development entitlement which were not considered or mitigated at the time of approval of the Project.

M. As a Mitigated Negative Declaration was prepared for the Project vested by this Agreement, the following language is to be included:

(1) Within forty-eight (48) hours of the effective date of this Agreement, Owner shall deliver to the City's Planning Department a check payable to the County Clerk in the amount of Two Thousand Three Hundred Thirty Dollars and Seventy-Five Cents (\$2,330.75.), which includes the Two Thousand Two Hundred Eighty Dollars and Seventy-Five Cents (\$2,280.75) fee required by Fish and Game Code Section 711.4(d)(3) plus the Fifty Dollar (\$50.00) County administrative fee to enable the City to file the Notice of Determination required under Public Resources Code Section 21152 and 14 Cal. Code of Regulations 15075. If within such forty-eight (48) hour period the Owner has not delivered to the City's Planning Department the check required above, this Agreement shall be

void by reason of failure of a material condition, Fish and Game Code Section 711.4.

N. City Council of City has approved this Agreement by Ordinance No. \_\_\_\_ adopted on \_\_\_\_\_, 2018, and effective on \_\_\_\_\_, 2018.

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

1. Incorporation of Recitals. The RECITALS above are true and correct and constitute an enforceable provision of this Agreement.

2. Definitions. In this Agreement, unless the context otherwise requires, the following words and phrases shall have the meaning set forth below:

2.1 "City" is the City of Merced.

2.2 "County" is the County of Merced.

2.3 "Development Exaction" means any requirement of City in connection with or pursuant to any Land Use Regulation or Existing Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

2.4 "Development Plan" means the Existing Development Approvals defined in Section 2.6 below which are applicable to development of the Project.

2.5 "Effective Date" means the date upon which the Ordinance approving this Agreement becomes effective, which date is thirty (30) days following the date the City Council adopted such Ordinance absent a referendum challenge.

2.6 "Existing Development Approval(s)" means those certain development approvals in effect as of the effective date of this Agreement with respect to the Property, including, without limitation, the "Existing Development Approvals" listed in Exhibit "B" attached hereto and incorporated herein by this reference, which were approved by the City.

2.7 "Financing District" means a Community Facilities District formed pursuant to the Mello-Roos Community Facilities Act of 1982, (California Government Code Sections 53311 *et seq.*, as amended, and referred to hererin as the "Mello-Roos" Law); an assessment district formed pursuant to the Landscaping and Lighting Act of 1972, (California Streets and Highways Code Sections 22500 *et seq.*, as amended); a special assessment district formed pursuant to the Municipal Improvement Act of 1913, (California Streets and Highways Code Section 10100, *et seq.*, as amended); or any other special assessment district pursuant to State law or by virtue of the City's status as a Charter City, formed for the purposes of financing the cost of public improvements, facilities, services and/or public facilities fees within a specific geographical area of the City.

2.8 "Future General Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City applicable to all properties in the City after the Effective Date and as stipulated in Section 14 of this Agreement.

2.9 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations, and official policies of City, governing the development and use of land including without limitation, the permitted use of land; the density or intensity of use; subdivision requirements; the maximum height and size of proposed buildings; the provisions for reservation or dedication of land for public purposes; and the design, improvement, and construction standards and specifications applicable to the development of the Property listed on Exhibit "C" attached hereto and incorporated herein by this reference, which are a matter of public record on the Effective Date of this Agreement. "Land Use Regulations" does not include any County or City ordinance, resolution, code, rule, regulation, or official policy governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services;

- (e) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (f) The exercise of the power of eminent domain.

2.10 "Owner" means the person or entity having a legal or equitable interest in the Property and Project and all successors, transferees, or assigns thereof;

2.11 "Project" or "Projects" is the development of the Property in accordance with the Development Plan.

2.12 "Property" is the real property legally described in Exhibit "A" and depicted on the map thereto, both attached hereto and incorporated herein by this reference.

2.13 "Subdivision" shall have the same meaning as that term is defined in Government Code Section 66424.

2.14 "Subsequent Development Approvals" means all development approvals required subsequent to the Effective Date in connection with development of the Property.

2.15 "Subsequent Land Use Regulation" means any Land Use Regulation adopted and effective after the Effective Date of this Agreement.

3. Interest of Owner. Owner represents that it has the fee title or equitable interest in the Property, and that all other persons holding legal or equitable interests in the Property are to be bound by this Agreement.

4. Exhibits. The following documents are referred to in this Agreement attached hereto, incorporated herein, and made a part hereof by this reference:

<u>Exhibit Designation</u>	<u>Description</u>
Exhibit A	Property Legal Description and Map
Exhibit B	Existing Development Approvals
Exhibit C	Land Use Regulations
Exhibit D	Public Benefits
Exhibit E	Notice of Default to Mortgagee
Exhibit F	Planning Commission Resolution #3095



5. Term of Agreement.

5.1 Term. The term of this Agreement shall commence on the Effective Date and shall extend for a period of ten (10) years thereafter, unless this Agreement is sooner terminated, modified, or extended by circumstances set forth in this Agreement or by mutual consent of the parties hereto.

5.2 Time to Annex. Except as otherwise expressly provided in this Agreement, this Agreement shall terminate and be of no further force and effect if the change of organization or reorganization ("Annexation") of the Property is not approved by the Merced County Local Agency Formation Commission ("LAFCO") and the City Council of City and any other appropriate public agencies having jurisdiction thereover within two (2) years after the effective date of this Agreement unless extended in writing by mutual agreement of the parties.

5.3 Termination by Litigation. This Agreement shall terminate and be of no force and effect upon the occurrence of the entry of a final judgment or issuance of a final order after exhaustion of any appeals directed against the City as a result of any lawsuit filed against the City to set aside, withdraw, or abrogate the approval by the City Council of City of this Agreement.

5.4 Subdivision Map Act Compliance. Any tentative map prepared for the Subdivision under this Agreement shall comply with the provisions of Government Code Section 66473.7.

6. Permitted Use and Density. The permitted use of the Property is a commercial center to include a gas station, mini-market, car wash, fast-food restaurant, and drive-through coffee shop along with other unknown commercial uses.

7. Public Benefits. In accordance with Section 1 of City Resolution No. 2005-101, specific public benefits are provided to City beyond those already forthcoming through Project approvals in return for the City's commitments to maintain present plans as regulations for the determinate period set forth in this Agreement. These specific public benefits are set forth on Exhibit "D" attached

hereto and incorporated herein by this reference as if set forth in full. Owner agrees to provide all public benefits identified in said Exhibit "D" in such manner and within such timeframe as provided therein.

8. Annexation.

8.1 Annexation-Owner's Obligations. Owner shall take all actions reasonably necessary to process and complete proceedings before LAFCO on the Annexation. Owner shall pay all LAFCO processing fees required in connection with the Annexation and shall pay any generally applicable City processing fees required for the Annexation. Owner shall reimburse City for its actual and reasonable costs incurred in the processing of this Agreement. Owner agrees to take all steps reasonably necessary to support annexation to the City, including voting in favor of annexation. Owner shall assist City in preparing the Plan of Services required by LAFCO.

8.2 City's Duty to Cooperate. City shall cooperate and assist in the processing of the Annexation before LAFCO by timely taking the following actions:

- (a) Providing all information reasonably required or requested by LAFCO with respect to the Annexation including, without limitation, a Plan of Services providing information to LAFCO with respect to the provision of municipal services to the Annexation Property by the City; and,
- (b) Providing a written statement of support for the Annexation to LAFCO prior to the LAFCO public hearing on the Annexation.

9. Assignment.

9.1 Right to Assign. The Owner shall have the right to sell, transfer, or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Sections 66410, *et seq.*, or Chapter 18.04 of the Merced Municipal Code to any person, partnership, joint venture, firm, limited liability company, or corporation at any time during the term of this Agreement; provided, however, that any such sale, transfer, or assignment shall include the assignment and assumption of the

rights, duties, and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

- (a) No sale, transfer, or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer, or assignment of all or a part of the Property. Owner agrees to provide specific notice of this Agreement, including the record or document number, where a true and correct copy of this Agreement may be obtained from the County Clerk/County Recorder of the County of Merced, in any grant deed or other document purporting to transfer the title or an interest in the Property during the term of this Agreement or any extension thereof.
- (b) No less than thirty (30) business days prior to any such sale, transfer, or assignment, the Owner shall notify City, in writing, of such sale, transfer, or assignment and shall provide City with an executed Assignment and Assumption Agreement, in a form acceptable to the City Attorney, by the purchaser, transferee, or assignee and providing therein that the purchaser, transferee, or assignee expressly and unconditionally assumes all the duties and obligations of the owner under this Agreement. Where multiple sales, transfers, or assignments are contemplated by Owner to more than one purchaser, transferee, or assignee, said Assignment and Assumption Agreement shall expressly specify and apportion shared obligations amongst various purchasers, transferees, or assignees.

Any sale, transfer, or assignment not made in strict compliance with the foregoing conditions shall be null and void and shall constitute a material default by the Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by Paragraph (b) of this Subsection, the burdens of this Agreement placed upon Owner shall run with the land and shall be binding upon any purchaser, transferee, or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee, or assignee until and unless such agreement is executed.

9.2 Release of Transferring Owner. Notwithstanding any sale, transfer, or assignment, a transferring Owner shall continue to be obligated under this Agreement unless such transferring Owner is given a release in writing by City, which release shall be provided by City upon the full satisfaction by such transferring Owner of ALL of the following conditions:

- (a) The Owner no longer has a legal interest in all or any part of the Property except as a beneficiary under a deed of trust.
- (b) The Owner is not then in default under this Agreement.
- (c) The Owner or purchaser has provided City with the notice and executed Assignment and Assumption Agreement required under Paragraph (b) of Subsection 9.1 above.
- (d) The purchaser, transferee, or assignee provides City with security equivalent to or better than any security previously provided by Owner to secure performance of its obligations hereunder.
- (e) The Owner has reimbursed City for any and all City costs associated with Owner's transfer of all or a portion of the Property.
- (f) The Owner has reimbursed City for any and all costs relating to this Agreement.
- (g) The conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds) have been completely satisfied, are no longer required or the obligations under Section 20.4 have been completely and unequivocally assumed by the subsequent Owner.

9.3 Termination of Agreement with Respect to Individual Lots upon Sale to Public and Completion of Construction. With the exception of Section 20.4, the provisions of Subsection 9.1 shall not apply to the sale or lease (for a period longer than one year) of any lot which has been finally subdivided and is individually (and not in "bulk") sold or leased to a member of the public or other ultimate user. Notwithstanding any other provisions of this Agreement, this Agreement shall terminate with respect to any lot and such lot shall be

released and no longer be subject to this Agreement without the execution or recordation of any further document upon satisfaction of all of the following conditions:

- (a) The lot has been finally subdivided and individually (and not in "bulk") sold or leased (for a period longer than one year) to a member of the public or other ultimate user; and
- (b) A Certificate of Occupancy has been issued for a building on a lot, and the fees set forth in this Agreement have been paid; and
- (c) The conditions in Section 20.4 (Sewer Facility Capital Expansion Improvement Bonds) have been completely satisfied or are no longer required.

9.4 Subsequent Assignment. Any subsequent sale, transfer, or assignment after an initial sale, transfer, or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

10. Mortgagee Protection. Neither entering into this Agreement nor committing a Default under this Agreement shall defeat, render invalid, diminish, or impair the lien of Mortgagees having a Mortgage on any portion of the Property made in good faith and for value, unless otherwise required by law. No Mortgagee shall have an obligation or duty under this Agreement to perform Owner's obligations, or to guarantee such performance prior to any foreclosure or deed in lieu of foreclosure, but upon acquiring the right to possession pursuant to a Mortgage on the Property or any portion thereof, the Mortgagee shall be subject to the terms and conditions of this Agreement. The term of this Agreement shall not be extended based on the fact that a Mortgagee held title to the Property for all or any part of the term of this Agreement.

11. Notice of Default to Mortgagee; Right to Cure.

11.1 Timely Notice to City Clerk. If the City Clerk timely receives notice, on the form set forth on Exhibit "E," attached hereto and incorporated herein by this reference, from a Mortgagee requesting a copy of any Notice of Default given to Owner under the terms of the Agreement, the City shall endeavor to provide a copy of that notice to the Mortgagee within ten (10) days of sending the Notice of Default to Owner. City shall have no

liability for damages or otherwise to Owner, Owner's successor, or to any Mortgagee or successor therefor for failure to provide such notice.

11.2 Mortgagee Right to Cure. The Mortgagee shall have the right, but not the obligation, for a period up to ninety (90) days after the receipt of such notice from the City to cure or remedy, or to commence to cure or remedy, the Default unless a further extension of time to cure is granted in writing by the City. However, a Mortgagee to avail itself of the rights provided by this Section must notify the City in writing of its intent to attempt to remedy or cure within twenty (20) days of the date of the Notice of Default from City to Mortgagee. A failure by a Mortgagee to provide such timely notice to City shall extinguish the rights and protections provided by this Section. By providing the notice to City, Mortgagee is agreeing and consenting to the provisions of this Section and is further waiving the right to claim a prior lien on the Property. If the Default is of a nature which can only be remedied or cured by such Mortgagee upon obtaining possession, such Mortgagee shall seek to obtain possession with diligence and continually through foreclosure, a receiver, or otherwise, and shall thereafter remedy or cure the Default within thirty (30) days after obtaining possession. If the Default cannot, with diligence, be remedied or cured within this thirty (30) day period, then the Mortgagee shall have such additional time as the City Council determines is reasonably necessary to remedy or cure the Default, if the Mortgagee commences cure during the thirty (30) day period and thereafter diligently pursues and completes the cure.

11.3 City Council Review of Mortgagee's Efforts. Such diligence by the Mortgagee on effectuating such cure shall be reviewed by the City's City Council every thirty (30) days thereafter until any and all Defaults are cured. If at any such review, the City Council determines that the Mortgagee is not making good faith efforts to cure any and all Defaults, the City Council shall have the authority to terminate this Agreement at its sole and complete discretion.

11.4 Reservation of City's Rights During Cure Period. In return for City granting to Owner, Owner's successors and transferees, and the Mortgagees of each of them, an extended time to remedy or cure a Default, Owner, Owner's successors and transferees, and the Mortgagees of each of them agree that once a Default is declared by City's City Council, the City may take the actions set forth below and lien and burden the Property for the costs thereof

-- irrespective of any lien priority, construction loan, deed of trust, or other encumbrance. Such actions include the following:

- (a) Abate public nuisances following the City-adopted public nuisance ordinance;
- (b) Remedy any health or safety threat posed by the Property, construction, or other activities going on on the Property;
- (c) Control storm water run-off from the Property pursuant to Chapter 8.08 of the Merced Municipal Code and in compliance with all Post Construction Standards required by the City's Municipal Separate Storm Sewer System (MS-4) Permit;
- (d) Screen any unsightly appearance on the Property for aesthetic purposes;
- (e) Abate weeds; and,
- (f) Control noise, dust, or other offensive conditions on the Property.

11.5 Mortgagee Extension of Cure to Possession of Agency. In the event any obligation of Owner is for the payment of money or fees, other than standard permit or processing fees, and a Default is declared by City based upon such failure to pay, a Mortgagee may be granted an extended time to remedy or cure until such time as Mortgagee obtains possession of the Property; provided, Mortgagee agrees that any money due City which remains unpaid shall bear the higher of the legal rate of interest or the United States Department of Labor San Francisco-Oakland-San Jose Consumer Price Index as the measure of inflation.

12. Mortgagee Rights. The parties hereto agree that this Agreement shall not prevent or limit Owner, in any manner, at Owner's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust, or other security device securing financing with respect to the Property. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with the Owner and representatives of such lenders to negotiate in good faith any such request for interpretation or

modification. City will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Owner shall reimburse City for any and all of City's reasonable costs associated with said negotiations, interpretations, and modifications and shall make reimbursement payments to City within thirty (30) days or receipt of an invoice from City.

Any Mortgagee of the Property shall be able to rely upon the provisions hereof and except as expressly provided in this Agreement, neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law or specified herein.

13. California Codes. This Agreement does not prevent the City from adopting and amending in compliance with State law certain Codes which are based on recommendations of a multi-state professional organization and which become applicable throughout the City -- including the Project and Property subject to this Agreement. Such Codes include, but are not limited to, the California Building Code, California Mechanical Code, California Electrical Code, and California Fire Code.

14. Public Health and Safety Concerns, Application to Project of Future General Regulations.

14.1 City Authority to Adopt Future General Regulations. This Agreement does not prevent the City from adopting Future General Regulations and applying such Future General Regulations to the Project and the Property, provided the City Council adopts findings that a failure to apply such Future General Regulations would result in a condition injurious or detrimental to the public health and safety. These findings shall be based upon substantial evidence in the record from a hearing conducted by the City Council at which the Owner was provided at least ten (10) days advance written notice.

14.2 Application of Future General Regulations to Project. Notwithstanding Section 14.1 above, the City shall not apply to the Project or the Property any Future General Regulations which prevent, preclude, or unreasonably delay or alter or in any way affect the implementation of all or any portion of the Development Plan, unless the City Council, in accordance with Section 14.1 above also makes a finding that such Future General Regulations are reasonably necessary to correct or avoid such injurious or detrimental condition. Any Future General Regulations applied to the Project



or the Property pursuant to this Section 14.2 shall only apply for the duration necessary to correct or avoid such injurious or detrimental condition.

15. Binding Effect of Agreement. The burdens of this Agreement bind and the benefits of the Agreement inure to the successors-in-interest to the parties to it in accordance with the provisions of and subject to the limitations of this Agreement.

16. Project as a Private Undertaking/Relationship of Parties. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants, and conditions contained in this Agreement. No partnership, joint venture, or other association of any kind is formed by this Agreement. The only relationship between City and Owner is that of a government entity regulating the development of private property and the owner of such property.

17. Changes in Project. City may expand the permitted uses for the Property without amending this Agreement so long as Owner or Owner's successor retains his/her/their existing entitlements.

18. Timing of Development; Pardee Construction case. The parties acknowledge that Owner cannot at this time predict when, or at the rate at which the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Owner, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties, it is the parties intent to cure that deficiency by acknowledging and providing that the Owner shall have the right to develop the Property in such order, at such rate, and at such times as the Owner deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Development Plan and this Agreement.

19. Indemnity and Cost of Litigation.

19.1 Hold Harmless. The Owner shall indemnify, protect, defend, and hold harmless the City, and any agency or instrumentality thereof,

and officers, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, employees, or agents thereof to attack, modify, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the Property, the Project, and the approvals related thereto. Furthermore, Owner shall indemnify, protect, defend, and hold harmless the City, or any agency or instrumentality thereof, and officers, employees, or agents thereof, against any and all claims, actions, suits, proceedings, or judgments against another governmental entity in which Owner's project is subject to that other governmental entity's approval and a condition of such approval is that the City indemnify and defend such governmental entity. City shall promptly notify the Owner of any claim, action, or proceeding. City shall further cooperate in the defense of the action by providing staff witnesses, documents, and related information. It is understood that the duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability under this indemnification and hold harmless clause. Owner agrees to and shall indemnify, protect, defend, and hold harmless the City and its officers, employees, agents, and representatives from actions for damages caused or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Project. This indemnification requirement shall extend beyond the termination or expiration of this Agreement. By execution of this Agreement, Owner acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

19.2 Hold Harmless—Damages & Injury. Owner further agrees to and shall indemnify, protect, defend, and hold City, its officers, employees, agents, and representatives harmless from liability for any and all damage or claims for damage for personal injury, including death, and claims for property damage, resulting from intentional or negligent acts, errors, or omissions which may arise from the direct or indirect operations of the Owner or those of its employees, officers, agents, contractors, subcontractors, or other person acting on its behalf which relate to the Project, or from any violation of any federal, state, municipal law, ordinance, or regulation, to the extent caused, in whole or in part, by the intentional or negligent acts, errors, or omissions of Owner or its employees, officers, agents, contractors, subcontractors, or other person acting

on its behalf, or by the quality or character of Owner's work, or resulting from the negligence of the City, its officers, employees, volunteers and agents, except for loss caused by the sole negligence of the City. It is understood that the duty of Owner to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Owner from liability under this indemnification and hold harmless clause. Owner agrees to and shall indemnify, protect, defend, and hold harmless the City and its officers, employees, agents, and representatives from actions for damages caused or alleged to have been suffered by reason of the operations referred to in this paragraph, regardless of whether or not City prepared, supplied, or approved plans or specifications for the Project. This indemnification requirement shall extend beyond the termination or expiration of this Agreement. By execution of this Agreement, Owner acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

19.3 Third Party Litigation Concerning Agreement. Owner shall indemnify, protect, defend, and hold harmless City, its officers, employees, or agents against any loss, cost, expense, claim, or counter-claim, complaint, or proceeding to attack, modify, set aside, void, or annul the approval of this Agreement or the approval of any permit or entitlement granted pursuant to this Agreement brought by a third party. City shall promptly notify Owner of any such claim, action, or proceeding, and City shall cooperate in the defense of the action by providing staff witnesses, documents, and related information. If City fails to promptly notify Owner of any such claim, action, or proceeding, or if City fails to cooperate in the defense, Owner shall not thereafter be responsible to indemnify, protect, defend, or hold harmless City. City may in its discretion participate in the defense of any such claim, action, or proceeding.

19.4 Environmental Assurances. Owner shall indemnify, protect, defend, and hold harmless City, its officers, employees, agents, assigns, and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred,

or suffered by, or asserted against, City or its officers, employees, or agents arising from or attributable to any repair, cleanup, or detoxification, or preparation and implementation of any removal, remedial, response, closure, or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Substance or hazardous wastes at any place within the Property which is the subject of this Agreement. The foregoing indemnity extends beyond the term of this Agreement and is intended to operate as an agreement pursuant to Section 107(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, "CERCLA," 42 U.S.C. Section 9607(e), and California Health and Safety Code Section 25364, and their successor statutes, to insure, protect, defend, hold harmless, and indemnify City from liability.

19.5 Release. Except for non-damage remedies, including the remedy of specific performance and judicial review as provided for in Sections 27.4 and 27.5 hereof, Owner, for itself, its successors and assignees, hereby releases the City, its officers, agents, and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms and/or operation of this Agreement.

19.6 Reservation of Rights. Owner's obligation to indemnify, protect, defend, and hold harmless under Sections 19.1 to 19.3 herein shall be provided at Owner's sole expense, including but not limited to attorneys' fees and court costs, with legal counsel which Owner selects, hires, or otherwise engages to defend City hereunder to be approved by City. City reserves the right to conduct its own defense, provided, however, that Owner shall reimburse City forthwith for any and all reasonable expenses incurred for such defense, including, but not limited to, attorneys' fees and court costs, upon billing and accounting therefor.

19.7 Survival. The provisions of this Section 19 shall survive the termination of this Agreement.

## 20. Public Benefits, Public Improvements and Facilities.

20.1 Intent. The parties acknowledge and agree that this Agreement confers private benefits on the Owner which should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on the Owner by providing more fully for the satisfaction of the public needs resulting from development of the Project, as set forth on Exhibit "D" attached hereto and incorporated herein by this reference. Owner agrees to provide all public benefits identified in said Exhibit "D" in such manner and within such timeframe as provided therein.

20.2 Development Fees. Owner shall also pay all other customary and typical development exactions, for a Project of this size and nature, in existence as of the Effective Date and throughout the term of this Agreement, including but not limited to, Fire, Traffic Signal Mitigation, Public Facility Financing Plan Impact Fees, School Impact Fees (SB50), sewer and water connection fees, and permit fees pursuant to the provisions of City ordinances and resolutions in existence at the time of payment, including any periodic adjustments provided by said ordinances and resolutions.

20.3 Public Improvements. If Owner is required by this Agreement, or any other obligation, to construct any public improvements which will be dedicated to City or any other public agency upon completion, and if required by applicable laws to do so, Owner shall construct such improvements in the same manner and subject to the same requirements as would be applicable to City or such other public agency should it have undertaken such construction.

As required by Mitigation Measure TRA-1 of Environmental Review #15-36, adopted by City Council and found at Exhibit G, a traffic signal may be required at such time as the City Engineer deems it necessary for safety reasons based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of Owner.

20.4 Sewer Facility Capital Expansion Improvement Bond. The City anticipates (i) forming one or more Financing Districts to finance the expansion of its sewer facilities and system to upgrade the City's sewer treatment facility to accommodate the additional sewer capacity required for growth attributable to the Project, and (ii) issuing sewer facility capital expansion improvement bonds or other indebtedness (the "Bonds") to be secured in whole or in part from assessments or special taxes levied within such Financing Districts, or similar fees and charges. Owner, on behalf of itself and

its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to form or annex to a Financing District or pay fees and charges in lieu thereof when established, agrees to include the Property within a Financing District, and agrees to pledge and encumber the Property for purposes of the issuance of the Bonds and authorize, by petition, vote, or otherwise, that inclusion of the Property in the Financing District, the issuance of the Bonds, and the imposition by the City of a special tax or assessment on the Property in order to secure the Bonds. The Owner acknowledges that an assessment lien or special tax lien will be recorded against the Property and that the lien will continue in force and effect until the assessment or special tax obligation is prepaid or permanently satisfied and the lien cancelled in accordance with the law. By executing this Agreement, Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees and consents to waive any protest, suit, claim, or challenge to the Bond or any proceedings related thereto. The terms and condition in this Section 20.4 shall run with the land and shall survive beyond the termination or expiration of this Agreement.

21. Reservation of Authority.

21.1 Limitations, Reservations, and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property:

- (a) Processing fees and charges imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals.
- (b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure.
- (c) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exactions shall be applicable to development of the Property unless such Development Exactions are applied uniformly to development throughout the City.

- (d) Regulations governing construction standards and specifications including without limitation, the City's Building Code, Plumbing Code, Mechanical Code, Electrical Code, and Fire Code.
- (e) Regulations governing:
  - (1) The control and abatement of public nuisances;
  - (2) Storm water run-off from the Property;
  - (3) The remedy of any health or safety threat posted by the Property; and,
  - (4) The provision, maintenance, expansion, termination, conditions and limitations of municipal water and sewer services.
- (f) Regulations which are in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.
- (g) Regulations which are in conflict with the Development Plan provided Owner has given written consent to the application of such regulations to development of the Property.

21.2 Subsequent Development Approvals. This Agreement shall not prevent City, in acting on Subsequent Development Approvals, from applying the Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent City from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing or Subsequent Land Use Regulations not in conflict with the Development Plan.

21.3 Modification or Suspension by State or Federal Law. In the event that State or Federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be

modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

21.4 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of City possess authority to regulate aspects of the development of the Property separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.

22. Development of the Property, Vesting, and Changes/Amendments.

22.1 Rights to Develop. Contingent upon approval of Owner's annexation request by LAFCO and subject to the terms of this Agreement, Owner shall have a vested right to develop the Property in accordance with, and to the extent of the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, and provisions for reservation and dedication of land for public purposes shall be those set forth in the City's Zoning Ordinance for Thoroughfare Commercial (C-T) Zone. In exchange for the vested right to develop pursuant to this Agreement, Owner expressly waives for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, the right to challenge or contest the validity of the annexation and any condition of approval attached to any entitlement which is a part of the Development Plan.

22.2 Payment of Fees. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, agrees to pay all City and school district fees, taxes, and/or assessments in effect on the Effective Date of this Agreement, any increase in those fees, taxes, and/or assessments, and any new fees, taxes, and/or assessments which are in effect at the time building permits are issued, which may include public facility impact fees, other impact fees as applicable, and any special assessments or Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by a special assessment law or the Mello-Roos law, etc., (and to comply with the additional conditions set forth in Exhibit "F," attached hereto and incorporated herein by this reference).



Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City mandates or permits payment of such fees, taxes, and/or assessments at an earlier or subsequent time.

22.3 Compliance with Conditions. Owner agrees to comply with the conditions of approval set forth in Planning Commission Resolution No. 3095, attached hereto as Exhibit “F,” and within this Agreement and acknowledges that the conditions are necessary to mitigate the environmental impacts, if any, caused by Owner’s development or are necessary to offset the costs to the City generated by Owner’s development including sewer connection costs pursuant to Chapter 15.16 of the Merced Municipal Code.

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

22.5 Building Permits & Wastewater Treatment Plant Capacity. No building permit or other permit for the Project shall be issued if Owner is not in full compliance with this Agreement. Notwithstanding any provision to the contrary, in the event the City’s Wastewater Treatment Plant’s capacity or operation is insufficient to serve all development projects in the City seeking connections, available building permits and sewer connections (hereinafter “Connection Permit”), shall be allocated as follows:

- (a) The City reserves 5% of the available capacity, but not less than 100,000 gallons per day, to serve new commercial and industrial projects;
- (b) Among residential projects, first priority shall be given for up to 5% of available capacity, but not less than 100,000 gallons per day, for projects legally covenanted and required to sell or lease to persons of low or moderate income;
- (c) The balance of available capacity shall be allocated through the issuance of Connection Permits to Projects that have pledged their Property subject to this Agreement as security for the public financing essential to the expansion of the City’s Wastewater Treatment Plant,

and among those Projects that have done so meet the following additional criteria:

- (1) Have approved final maps for their Project and completed all other discretionary approvals (such as Conditional Use Permits);
- (2) Agree and are able to commence construction of buildings within 120 days of receiving a building permit;
- (3) Agree pursuant to a construction phasing plan submitted with the Connection Permit application to diligently pursue construction until completion in accordance with the phasing plan; and,
- (4) Allocation of Connection Permits shall be based on those applications approved meeting the requirements above with those approved first in time getting priority over those filing subsequent thereto.

Insufficient capacity shall be determined by the City Engineer considering existing agreements to serve and maximum flow to the Wastewater Treatment Plant at its highest average point.

This allocation method for Connection Permits shall continue until such time as capacity at the Wastewater Treatment Plant is able to meet all of the requests for service, as determined by the City Engineer, with a sufficient reserve capacity to meet unexpected needs or opportunities for the City.

If construction is not commenced within the time limit specified in Section 22.5(c)(2), any Connection Permit for which construction has not commenced under the building permit shall be deemed void and subject to reallocation.

Once a Connection Permit is issued for a Project, the Connection Permit is not transferable by the permit holder to another site or location. The Connection Permit may be transferred between parties, such as when one company buys out a site to complete the Project, so long as the location does not change. Any attempted transfer to another location shall be void and cause the Connection Permit to be immediately voided and subject to reallocation.

If construction of the Project is not commenced within five (5) years, any sewer capacity allocated to this Property by this annexation shall be terminated. If, after five (5) years the sewer capacity allocation is terminated, the City Engineer shall determine when sufficient capacity is available for development.

22.6 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations, and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the existing Land Use Regulations in effect on the Effective Date of this Agreement. City shall exercise its lawful reasonable discretion in connection with Subsequent Development Approvals in accordance with the Development Plan, and as provided by this Agreement. City shall accept for processing, review, and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters. City may, at the request of Owner, contract for planning and engineering consultant services to expedite the review and processing of Subsequent Development Approvals, the cost of which shall be borne by Owner.

22.7 Changes and Amendments. The parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event the Owner finds that a change in the Existing Development Approvals is necessary or appropriate, the Owner shall apply for a Subsequent Development Approval to effectuate such change. If approved by City under Section 25 below, any such change in the Existing Development Approvals shall be incorporated herein as addendum to this Agreement and may be further changed from time to time as provided in this Section. Owner, shall, within thirty (30) days of written demand by City, reimburse City for any and all reasonable costs, associated with any amendment or change to this Agreement that is initiated by Owner or Owner's successor -- without regard to the outcome of the request for amendment or change to this Agreement. Unless otherwise required by law, as determined in City's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the density or intensity of use of the Property as a whole; or,
- (c) Increase the maximum height and size of permitted buildings; or,
- (d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,
- (e) Constitute a project requiring a subsequent or a supplemental Environmental Impact Report pursuant to Section 21166 of the Public Resources Code.

Notwithstanding the forgoing, the City is neither obligated nor required to make any change or amendment to this Agreement.

23. Periodic Review of Compliance with Agreement.

23.1 City Compliance Review. Pursuant to City Council Resolution No. 95-6, as it may be subsequently amended, City may review this Agreement at least once during every twelve (12) month period from the Effective Date of this Agreement. The Owner or successor shall reimburse City for the reasonable and necessary costs of this review, within thirty (30) days of written demand from City.

23.2 Owner Good Faith Compliance. During each periodic review by City, the Owner is required to demonstrate good faith compliance with the terms of this Agreement. The Owner agrees to furnish such evidence of good faith compliance as City in the exercise of its discretion may require.

24. Financing District. In addition to any Financing District required by Section 20.4 hereof, upon the request of Owner, the parties shall cooperate in exploring the use of special assessment districts, special tax districts, and other similar financing districts for the financing of the construction, improvement, or acquisition of public infrastructure, facilities, lands, and improvements to serve the Project, whether located within or outside the Property. It is acknowledged that nothing contained in this Agreement shall be construed as requiring City or City Council to form such a district or to issue or sell bonds therefor.

25. Amendment or Cancellation of Agreement. This Agreement shall not be amended, modified, or canceled, in whole or in part, unless in writing signed by both parties hereto, and only by mutual consent of the parties and in the manner provided for in Government Code Sections 65868, 65867, and 65867.5. The provisions of this Section do not impact the right of the City to terminate this Agreement because of Owner's breach or failure to comply in good faith with the requirements of this Agreement.

26. Enforcement. Unless amended or canceled as herein provided, this Agreement is enforceable by any party to it notwithstanding a change in the applicable general or specific plan, zoning, subdivision, or building regulations adopted by the City which alter or amend the rules, regulations, or policies governing permitted uses of the land, density, design, improvement, and construction standards and specifications.

27. Enforced Delay, Default, Remedies and Termination.

27.1 Default by Owner. If the City alleges an Owner Default, the City shall provide sixty (60) days prior written notice of the alleged Owner Default and then conduct a hearing utilizing the Annual Review procedures in Section 23(a) before the City may terminate this Agreement. Failure by Owner to reserve or dedicate any property pursuant to the Development Plan, or to pay fees and charges as required by the Land Use Regulations and this Agreement as they become due, shall constitute a separate material Owner Default. It shall also be deemed a material Owner Default of a material provision of this Agreement for more than forty-five (45) days to pass from City's written demand for reimbursement of any reimbursable costs under this Agreement and the receipt by City of such reimbursement. In the event of Owner Default, and in addition to any other remedy available to the City, the City shall have the right to rezone the Property back to its original designation.

27.2 Default by City. If Owner alleges a City Default the Owner shall provide written notice of the alleged City Default and the City shall have ninety (90) days to cure said Default. If the City has not cured the Default within ninety (90) days, Owner may pursue any legal or equitable remedy available to it under this Agreement. It is acknowledged by the parties that City would not have entered into this Agreement if City were to be subject to or liable for damages -- including monetary damages -- under or with respect to this Agreement or the application thereof, or with respect to the Project. Owner, for itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, expressly waives the right to

seek damages -- including monetary damages -- against the City or any officer, employee, or agent thereof, for any default or breach of this Agreement. Owner, on behalf of itself and its successors, transferees, assignees, and subsequent purchasers of the Property, or any portion thereof, covenants and agrees not to sue for or claim any damages -- including monetary damages -- for any purported breach of this Agreement by City. During the time when Owner alleges the existence of a City Default and without limiting any of its other available remedies, Owner shall not be obligated to proceed with or complete the Project or any phase of the Project, nor to reserve or dedicate any property pursuant to the Development Plan or this Agreement. Upon a City Default, any resulting delays in Owner's performance shall neither be an Owner Default nor constitute grounds for termination or cancellation of this Agreement by the City.

27.3 Waiver. Failure or delay in giving Notice of Default shall not waive a Party's right to give future Notice of the same or any other Default, provided, however, this Section 27.3 shall not preclude a Party from the protections provided under law or equity by the defenses of estoppel and/or laches.

27.4 Specific Performance Remedy. Due to the elimination of damages as a remedy against City and to the size, nature, and scope of the Project, it will not be practical or possible to restore the Property to its pre-existing condition once implementation of this Agreement has begun. After such implementation, Owner may be foreclosed from other choices it may have had to utilize the Property and provide for other benefits. Owner has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement. It is not possible to determine the sum of money which would adequately compensate Owner for such efforts. For the above reasons, the City and Owner agree that damages would not be an adequate remedy if the City fails to carry out its obligations under this Agreement. Therefore, no money damages are available against City, or any officer, employee, or agent thereof. Specific performance of this Agreement is necessary as the exclusive remedy to compensate Owner if the City fails to carry out its obligations under this Agreement and is also available to City, if Owner defaults hereunder.

27.5 Judicial Review. In the event City elects to terminate this Agreement pursuant to the provisions of Sections 11.7, 25, or 27.1, the Owner may challenge such termination by instituting legal proceedings in which event the court shall exercise its review, based on substantial evidence, as to the existence of cause for termination.

28. Events of Default. Owner is in default under this Agreement upon the happening of one or more of the following events or conditions:

- (a) If a warranty, representation, or statement made or furnished by Owner to City is false or proves to have been false in any material respect when it was made;
- (b) More than forty-five (45) days have passed since City's making of a written request to Owner for payment or reimbursement for a fee or service authorized or agreed to pursuant to this Agreement;
- (c) Failure by Owner to reserve or dedicate any property pursuant to the Development Plan, or to pay fees and charges as required by the Land Use Regulations and this Agreement as they become due; or
- (d) A finding and determination by City that upon the basis of substantial evidence the Owner has not complied in good faith with one or more of the terms or conditions of this Agreement.

29. Attorney's Fees and Costs. If legal action by either party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and court costs.

30. Notices. All notices required or provided for under this Agreement shall be in writing and delivered in person or sent by certified mail, postage prepaid and presumed delivered upon actual receipt by personal delivery or within three (3) days following deposit thereof in United States Mail. Notice required to be given to City shall be addressed as follows:

To City:                      City of Merced  
                                     678 West 18<sup>th</sup> Street  
                                     Merced, California 95340  
                                     Attn: City Clerk

Notices required to be given to Owner shall be addressed as follows:

To Owner:        Louann Bianchi  
                      151 N. Ulukoa Pl.  
                      Lahaina, HI 96761-1969

A party may change the address by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

31.    Cooperation. City agrees that it shall accept for processing and promptly take action on all applications, provided they are in a proper form and acceptable for required processing for discretionary permits, tract or parcel maps, or other land use entitlement for development of the Project in accordance with the provisions of this Agreement. City shall cooperate with Owner in providing expeditious review of any such applications, permits, or land use entitlement and, upon request and payment of any costs and/or extra fees associated therewith by Owner, City shall assign to the Project planner(s), building inspector(s), and/or other staff personnel as required to insure the timely processing and completion of the Project.

32.    Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent necessary to implement this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement. In the event, Owner or Owner's successor requires supplemental or additional agreements for purposes of securing financing or similar purposes, City will endeavor to assist in this respect, provided, however, Owner or Owner's successor shall reimburse the City for any and all costs associated with processing, reviewing, negotiating, or acting on such agreements. Owner or Owner's successor agrees to reimburse City within thirty (30) days of written demand therefor.

33.    Rules of Construction and Miscellaneous Terms.

- (a)    The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.



- (b) If there is more than one signer of this Agreement their obligations are joint and several.
- (c) The time limits set forth in this Agreement may be extended by mutual written consent of the parties in accordance with the procedures for adoption of the Agreement.
- (d) This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person, including but not limited to third party beneficiaries, shall have any right of action based upon any provision of this Agreement.

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

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

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

37. Entire Agreement. This Agreement and the exhibits hereto contain the complete, final, entire, and exclusive expression of the agreement between the parties hereto, and is intended by the parties to completely state the agreement in full. Any agreement or representation respecting the matters dealt with herein or the duties of any party in relation thereto not expressly set forth in this Agreement shall be null and void.

38. Counterparts. This Agreement may be executed in multiple counterparts, each of which so fully executed counterpart shall be deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterpart executed by the other party to this Agreement is in the physical possession of the party seeking enforcement thereof.

39. Authority to Execute. Each party hereto expressly warrants and represents that he/she/they has/have the authority to execute this Agreement on behalf of his/her/their corporation, partnership, business entity, or governmental entity and warrants and represents that he/she/they has/have the authority to bind his/her/their entity to the performance of its obligations hereunder.

IN WITNESS WHEREOF this Pre-Annexation Development Agreement has been executed by the authorized representatives of the parties hereto.

CITY:

CITY OF MERCED  
A California Charter Municipal Corporation

BY: \_\_\_\_\_  
City Manager

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

APPROVED AS TO FORM:

BY:  8-22-2018  
City Attorney Date

**ACCOUNT DATA:**

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

**OWNER:**

**BY:** \_\_\_\_\_  
Louann Bianchi

**Taxpayer I.D. No.** \_\_\_\_\_

**ADDRESS:** 151 N. Ulukoa Pl.  
Lahaina, HI 96761-1969

**TELEPHONE:** \_\_\_\_\_

**FACSIMILE:** \_\_\_\_\_

**E-MAIL:** \_\_\_\_\_

**EXHIBIT A**  
**PROPERTY LEGAL DESCRIPTION AND MAP**

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**PARCEL 1:** A portion of lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned) as shown on the map entitled, **MAP OF THE CROCKER COLONY**, recorded in Volume 5 of Official Plats, Page 6, Merced County Records, said portions being described as a whole as follows:

Commencing at the Northwest corner of said Lot 96 and running thence North 85° 48' 00" East 83.54 feet along the North line of said Lot 96 to a point on the Northeasterly line of Santa Fe Drive (a County Road) said point being the true point of beginning of this description; thence South 53° 11' 13" East, 308.33 feet along said Northeasterly line of Santa Fe Drive; thence Southeasterly along said northeasterly line of Santa Fe Drive along a 1,464.11 foot radius curve to the left, the long chord of which bears south 69° 35' 30" East 825.20 feet, through a central angle of 32° 44' 12", an arc distance of 836.54 feet, thence North 18° 36' 31" East 17.45 feet along said Northeasterly line of Santa Fe Drive to a point on the West line of State Highway 59; thence North 01° 24' 30" East 375.88 feet along the West line of State Highway 59 to the southeast corner of that certain real property described as Parcel II in deed from Crocker Land Company to Merced Water Company recorded in Volume 1483, Official Records, page 111, Merced County Records; thence North 8° 35' 30" West 100.00 feet to the Southwest corner of said Parcel II; thence North 01° 24' 30" East 180.34 feet along the West line of said Parcel II to a point on the North line of the aforesaid Lot 96; thence south 83° 48' 00" West 945.081 feet along the North line of said Lot 96 to the true point of beginning, all as delineated on map entitled, "RECORD OF SURVEY FOR J.F. COLLINS CO.", recorded in Book 13 of surveys, page 35, Merced County Records.

EXCEPTING therefrom all that portion conveyed to the County of Merced for road widening by deed recorded January 13, 1984, in volume 2407, page 718, Merced County Records.

ALSO EXCEPTING therefrom the property and property rights and reserved in deeds recorded August 4, 1961, in Volume 1539, page 504, as Instrument No. 14501, Official Records, March 3, 1971, in Volume 1881, page 555, as Instrument No. 3989, Official Records and March 3, 1972, in volume 1881, page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

APN: 057-200-067

**PARCEL 2:** A portion of Lot 96 and a portion of the West 40 feet of the 100 foot wide Southern Pacific Railroad-Oakdale Branch right-of-way (now abandoned), according to the map entitled, **MAP OF CROCKER COLONY**, filed June 7, 1911, in book 5 of Maps, page 6 Merced County Records, and more particularly described as follows:

Commencing at a point that is the Southeast corner of said Lot 96, said point also being on the Northerly line of the Santa Fe Railroad right-of-way; thence South 88° 35' 30" East, 40.00 feet; thence North 01° 24' 30" West, a distance of 697 feet, to the true point of beginning; thence north 88° 25' 30" West, a distance of 100.00 feet; thence North 01° 24' 30" East, a distance of 189.93

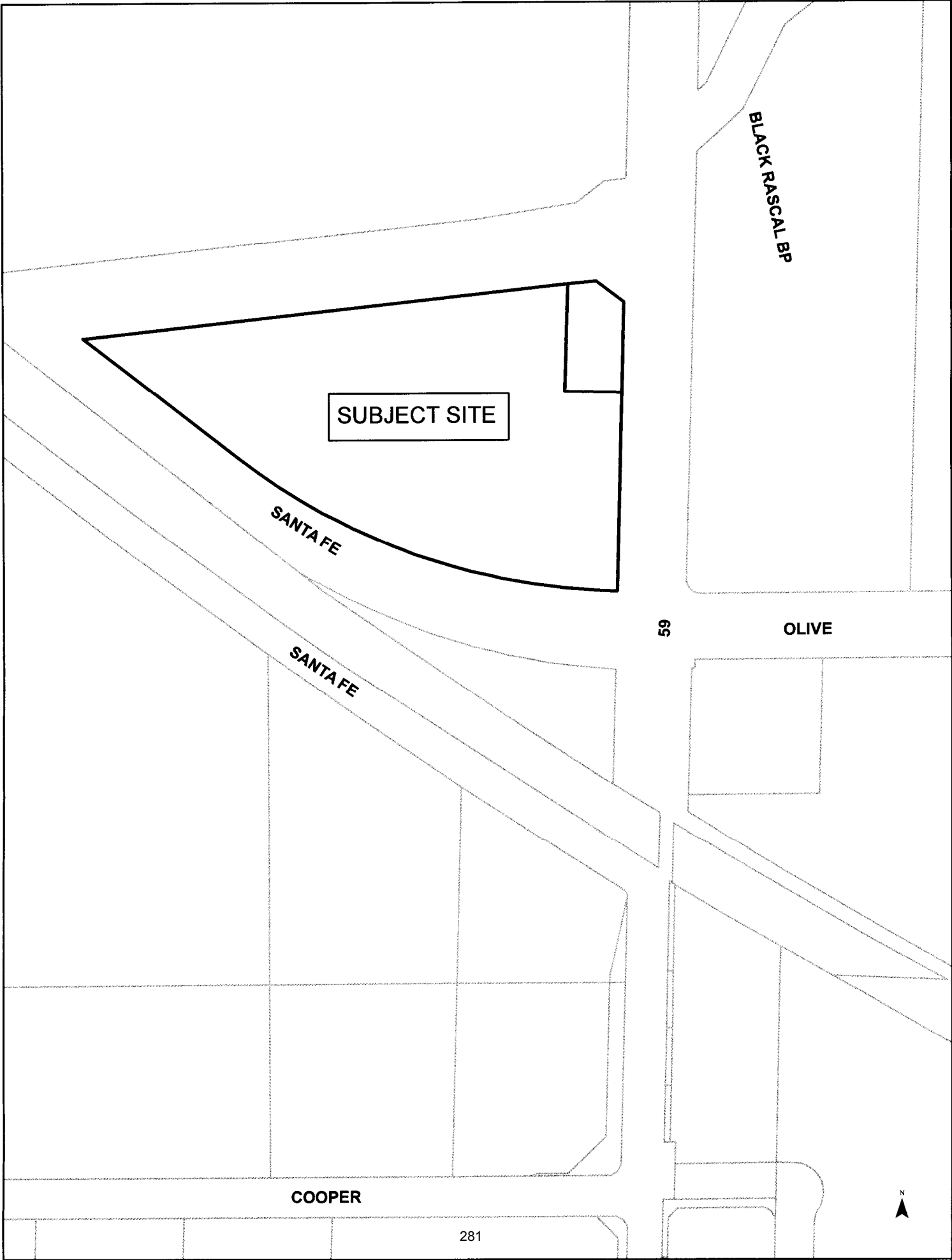
## LEGAL DESCRIPTION

Page 2

feet; thence South 51° 47' 00" East, a distance of 74.78 feet; thence South 40° 05' 55" East, a distance of 60.36 feet; thence South 01° 24' 30" West, a distance of 100.00 feet to the true point of beginning.

EXCEPTING therefrom the property and property rights excepted and reserved in deeds recorded August 4, 1961, in Volume 1539, page 504, as Instrument No. 14501, Official Records, March 3, 1971, in Volume 1881, page 555, as Instrument No. 3989, Official Records and March 3, 1972, in Volume 1881, page 572, as Instrument No. 3991, Official Records, being all oil, gas and other hydrocarbons and all other mines and minerals found in solid, gaseous or viscid state lying below a depth of 500 feet.

APN: 057-200-029



SUBJECT SITE

BLACK RASCAL BP

SANTA FE

SANTA FE

59

OLIVE

COOPER

281



**EXHIBIT B**  
**DEVELOPMENT APPROVALS**

- Annexation/Pre-Zoning No. 15-01
- General Plan Amendment No. 15-04
- Expanded Initial Study No. 15-36 (Mitigated Negative Declaration and Mitigation Monitoring Program)



**EXHIBIT C**  
**LAND USE REGULATIONS**

- Merced Vision 2030 General Plan.
- Charter of the City of Merced.
- Merced Municipal Code.
- City of Merced Design Standards.

**EXHIBIT D**  
**PUBLIC BENEFITS**

1. Owner shall participate in the upgrade to the sewer treatment plant and sewer transmission lines in proportion to the growth attributable to the Project, as called for in Section 4.4.
2. Owner shall improve/upgrade/replace the following County infrastructure (roads, utilities, etc.) adjacent to and within the Project consistent with City of Merced standards, pursuant to this Agreement:
  - a) Construct curb, gutter, sidewalk, install street lights and street trees along the full property frontage on Santa Fe Avenue and North State Highway 59.
  - b) Provide fire hydrants as determined by the City of Merced Fire Department.
  - c) Extend water and sewer lines across the entire property frontage on Santa Fe Avenue and North Highway 59.
  - d) Provide storm drainage tie-in into the existing storm drainage system.
3. Owner shall underground all utilities serving the property along the property frontage, but is not responsible for undergrounding existing utilities beyond the property frontage.
4. Owner shall connect all development to the City sewer and water system and pay all applicable connection fees.
5. Owner must agree to annex into the City Community Facilities District for Services (CFD No. 2003-2) for the maintenance of street lights, storm drain facilities, landscaping in the public right-of-way, and the cost of police and fire services.

The forgoing improvements are to be jointly and severally constructed and paid for by Owner.

**EXHIBIT E**  
**REQUEST FOR NOTICE OF DEFAULT UNDER**  
**PRE-ANNEXATION DEVELOPMENT AGREEMENT**

Pre-Annexation Development Agreement:  
Specific Plan No. , {Name of Development/  
Planning Application No.

Date:

To: City Clerk and Director of Development Services, City of Merced

Pursuant to Section 6(b) and (c) of the above-referenced Pre-Annexation Development Agreement, request is hereby made by as Mortgagee for the property (or portion thereof) to receive copies of any Notice of Default issued by City against Owner in accordance with the terms and conditions of such Pre-Annexation Development Agreement. Copies of any such Notices should be mailed to the following address:

\_\_\_\_\_ (Mortgagee)  
\_\_\_\_\_ (Person/Department)  
\_\_\_\_\_ (Address)  
\_\_\_\_\_ (City/State/Zip)  
\_\_\_\_\_ (Telephone No.)

A copy of this Notice should be filed with the project file to insure proper and timely notice is given. **Under the terms of said Pre-Annexation Development Agreement, \_\_\_\_\_ as Mortgagee is entitled to receive copies of any Notice of Default within ten (10) days of sending any such Notice to Owner. Failure to send any such Notice may have serious legal consequences for the City.**

This request is to remain in effect until revoked by \_\_\_\_\_ as Mortgagee or the Pre-Annexation Development Agreement is terminated.

The person executing this document on behalf of said Mortgagee warrants and represents that the entity he/she represents is a bonafide Mortgagee of said property and is entitled to receive copies of Notices of Default under said Pre-Annexation Development Agreement.

The undersigned declares the above information is true and correct under the penalty of perjury under the laws of the State of California.

Dated: \_\_\_\_\_, 20\_\_\_\_.

MORTGAGEE

By:

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

Its:

\_\_\_\_\_  
(title)

[Notary required]

This Notice is to be sent to both the City Clerk and Director of Development Services for the City of Merced at 678 West 18<sup>th</sup> Street, Merced, California 95340 or such other location as Merced City Hall may be located in the future.

**EXHIBIT F**  
**PLANNING COMMISSION RESOLUTION**  
**INCLUDING THE MITIGATION MONITORING PROGRAM**  
**FOR EXPANDED INITIAL STUDY #15-36**

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

**Resolution #3095**

Modified by City Council October 1, 2018 (see page 5 of Exhibit A)
---

**WHEREAS**, the Merced City Planning Commission at its regular meeting of June 6, 2018, held a public hearing and considered **Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04**, initiated by Louann Bianchi, and Quad LLC, property owners. This application involves annexing 8.83 acres of land at the northwest and southwest corners of North Highway 59 and Santa Fe Drive into the City of Merced; changing the General Plan designation for the northwest corner from Open Space (OS) to Thoroughfare Commercial (CT) and pre-zoning the northwest corner as Thoroughfare Commercial (C-T) for the Thoroughfare Commercial development. The General Plan designation for the southwest corner would remain Industrial (IL) and this corner would be pre-zoned Light Industrial (I-L); also known as Assessor's Parcel Numbers 057-200-029, 057-200-067, and 057-200-042; and,

**WHEREAS**, the Merced City Planning Commission concurs with Findings A through M of Staff Report # 18-14; and,

**WHEREAS**, after reviewing the City's Initial Study and Draft Environmental Determination, and fully discussing all the issues, the Merced City Planning Commission does resolve to hereby recommend to City Council adoption of a Mitigated Negative Declaration and Mitigation Monitoring Program (Exhibit B) regarding Initial Study #15-36, and approval of Pending Annexation and Pre-zoning Applications #15-01 and General Plan Amendment #15-04, subject to the Conditions set forth in Exhibit A attached hereto.

Upon motion by Commissioner ALSHAMI, seconded by Commissioner MARTINEZ, and carried by the following vote:

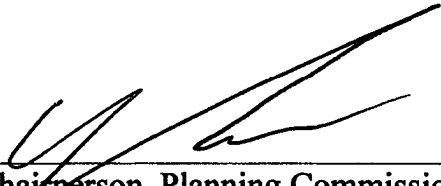
AYES: Commissioners Alshami, Camper, Colby, Martinez, and Chairperson Dylina  
NOES: Commissioner Padilla  
ABSENT: None, (One Vacancy)  
ABSTAIN: None

PLANNING COMMISSION RESOLUTION # 3095

Page 2

June 6, 2018

Adopted this 6<sup>th</sup> day of June, 2018

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

ATTEST:

  
\_\_\_\_\_  
Secretary

Attachment:

Exhibit A – Conditions of Approval

Exhibit B – Mitigation Monitoring Program

n:\shared\planning\PC Resolutions\ANX-PREZ#15-01 & GPA#15-04 NorCal Foods

**Conditions of Approval**  
**Planning Commission Resolution #3095**  
**Pending Annexation and Pre-zoning Applications #15-01**  
**and General Plan Amendment #15-04**

1. All new construction within the annexation area (including modifications to the developed site at the southwest corner of North Highway 59 and Santa Fe Drive) shall comply with all standard Municipal Code and Subdivision Map Act requirements as applied by the City Engineering Department.
2. All other applicable codes, ordinances, policies, etc. adopted by the City of Merced shall apply.
3. Approval of Pre-Annexation #15-01, Pre-zoning Application #15-01, and General Plan Amendment #15-04 is subject to the applicant's entering into a written (legislative action) agreement that they agree to all the conditions and shall pay all City and school district fees, taxes, and/or assessments, in effect on the date of any subsequent subdivision and/or permit approval, any increase in those fees, taxes, or assessments, and any new fees, taxes, or assessments, which are in effect at the time the building permits are issued, which may include public facilities impact fees, a regional traffic impact fee, Mello-Roos taxes—whether for infrastructure, services, or any other activity or project authorized by the Mello-Roos law, etc. Payment shall be made for each phase at the time of building permit issuance for such phase unless an Ordinance or other requirement of the City requires payment of such fees, taxes, and or assessments at an earlier or subsequent time. Said agreement to be approved by the City Council prior to the adoption of the ordinance, resolution, or minute action.
4. The developer/applicant shall indemnify, protect, defend (with counsel selected by the City), and hold harmless the City, and any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof, from any and all claims, actions, suits, proceedings, or judgments against the City, or any agency or instrumentality thereof, and any officers, officials, employees, or agents thereof to attack, set aside, void, or annul, an approval of the City, or any agency or instrumentality thereof, advisory agency, appeal board, or legislative body, including actions approved by the voters of the City, concerning the project and the approvals granted

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #3095

Page 1



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

5. The developer/applicant shall construct and operate all future projects within the annexation area in strict compliance with the approvals granted herein, City standards, laws, and ordinances, and in compliance with all State and Federal laws, regulations, and standards. In the event of a conflict between City laws and standards and a State or Federal law, regulation, or standard, the stricter or higher standard shall control.

The following conditions apply to new construction within the annexation area:

6. Community Facilities District (CFD) formation is required for annual operating costs for police and fire services as well as storm drainage, public landscaping, public landscaping within State rights-of-way, street trees, street lights, parks and open space. CFD procedures shall be initiated before final map or first building permit approval. Developer/Owner shall submit a request agreeing to such a procedure, waiving right to protest and post deposit as determined by the City Engineer to be sufficient to cover procedure costs and maintenance costs expected prior to first assessments being received.

The following conditions apply to the future development at the northwest corner of North Highway 59 and Santa Fe Drive:

7. All development shall be subject to the Mitigation Measures outlined in the Mitigation Monitoring Program for Initial Study #15-36.

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #3095

Page 2

8. Site Plan Review is required prior to construction on the northwest corner, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driveway further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination (Mitigation Measure TRA-1).
9. The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans (Mitigation Measure TRA-1a).
10. The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue (Mitigation Measure TRA-1b):
  - Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,
  - Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,
  - Reconstruct the existing northbound right turn lane as a "free" right turn with a median island separating eastbound and right-turning traffic. Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.
11. Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59 (Mitigation Measure TRA-6).
12. Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses (Mitigation Measure NOI-2):
  - Road/Railroad - Required Setback
  - Santa Fe Drive - 54 Ft.

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #3095

Page 3

- North Highway 59 - 89 Ft.
  - BNSF Railroad - 137 F
13. At the time of construction, all required public improvements shall be installed along the property frontage. This includes, but is not limited to, sidewalk, curb, gutter, street lights, and street trees.
  14. The developer shall work with Caltrans and obtain all necessary permits for all work done within the state right of way.
  15. All construction shall comply with Post Construction Standards in accordance with the requirement for the City's Phase II MS-4 Permit (Municipal Separate Storm Sewer System).
  16. All new utilities serving the site shall be installed underground.
  17. All City sewer, water, and storm drain lines serving the site shall be extended across the full frontage of the property unless it is determined by the Public Works Director that these lines are not likely to be extended to serve any other property (consistent with Merced Municipal Code Section 15.40.030).
  18. All storm water shall be contained onsite and metered out to the City's storm water system in accordance with City Standards.
  19. A minimum turning radius of 33 feet inside, curb-to-curb and 49 feet wall-to-wall for fire apparatus access must be provided throughout the project site or as required by the Fire Department.
  20. The future commercial development shall provide pedestrian and bicycle access throughout the site. Connectivity throughout the site shall be provided by pedestrian pathways. Bicycle parking shall be provided as required by the City's Zoning Ordinance.
  21. The developer shall use proper dust control procedures during site development in accordance with San Joaquin Valley Air Pollution Control District rules.
  22. All landscaping shall be in compliance with the City's Water Efficient Landscaping and Irrigation Ordinance (Merced Municipal Code Section 17.60) and all state-mandated conservation and drought restrictions as well as the City's Zoning Ordinance Section 20.36 – Landscaping. This shall include the use of xeriscape landscaping as appropriate.

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #3095

Page 4

23. Irrigation for all onsite landscaping shall be provided by a low-volume system in accordance with the State's Emergency Regulation for Statewide Urban Water Conservation or any other state or city-mandated water regulations dealing with the current drought conditions.
24. All landscaping in the public right-of-way shall comply with the most recently adopted water regulations by the State and City addressing water conservation measures. If turf is proposed to be installed in medians or parkstrips, high quality artificial turf (approved by the City Engineer and Development Services Director) shall be installed.
25. Parking lot trees shall be installed per the City's Parking Lot Landscape Standards. Trees shall be a minimum of 15 gallons, and be of a type that provides a 30-foot minimum canopy at maturity (trees shall be selected from the City's approved tree list). Trees shall be installed at a ratio of 1 tree for every 6 parking spaces. A reduced number of trees may be required where there are carports with solar panels over the parking spaces. However, if all the parking spaces are covered by a carport with solar panels, then additional trees may be required at the discretion of the Development Services Director. Trees within the PG&E easement shall comply with the regulations of this easement which limits the height of trees to a maximum of 15 feet at full maturity.
26. All mechanical equipment shall be screened from public view.

**October 1, 2018:** At their regularly scheduled meeting of October 1, 2018, the City Council considered and approved Pending Annexation and Pre-Zoning Applications #15-01 and General Plan Amendment #15-04, subject to the conditions contained within this resolution with the addition of Conditions #27, #28, and #29, and the modification of Mitigation Measure TRA-1 (by a vote of 6 ayes and 1 no) as shown below. (New language underlined, deleted language "~~strikethrough~~.")

27. The traffic signal at the western driveway and Santa Fe Drive, when warranted and required by the City Engineer, shall be synchronized with the traffic signal at the intersection of North State Highway 59 and Santa Fe Drive/Olive Avenue so as to ensure traffic stops and goes through both signals simultaneously.

EXHIBIT A  
OF PLANNING COMMISSION RESOLUTION #3095

Page 5

28. The eastern driveway shall be an entrance-only driveway, allowing only right turns into the site.
29. With the first phase of construction, the western driveway shall be constructed with a left-turn pocket (raised median) restricting left turns out of the site, but allowing left turns into the site.

*TRA-1: A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer. Prior to construction, the Site Plan Review Committee shall review the site design and determine which alternative at the western driveway is best to reduce the expected impacts. The alternatives may include those alternatives included in the traffic analysis or another alternative such as moving the driving further to the west. The developer shall provide any additional documentation or studies needed for the Site Plan Review Committee to make this determination.*

Upon motion by Council Member Belluomini, seconded by Council Member Blake, and carried by the following vote:

AYES: Council Members Belluomini, Blake, McLoed, Murphy, Pedrozo, Serratto

NOES: Council Member Martinez

ABSENT: None

ABSTAIN: None

n:\shared\planning\PC Resolutions\ANX-PREZ#15-01 & GPA#15-04 Exhibit A

**ENVIRONMENTAL REVIEW #15-36**  
**Mitigation Monitoring Program**  
**Revised August 22, 2018**

**MITIGATION MONITORING CONTENTS**

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

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

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

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

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

- 1) The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

**MITIGATION MONITORING PROCEDURES**

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

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

#### **GENERAL PLAN MITIGATION MEASURES**

As a second tier environmental document, Initial Study #15-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

#### **NONCOMPLIANCE COMPLAINTS**

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

#### **MONITORING MATRIX**

**The following pages provide a series of tables identifying the mitigation measures proposed specifically for Annexation and Pre-zone Application #15-01 and General Plan Amendment #15-04. The columns within the tables are defined as follows:**

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

**Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04  
Mitigation Monitoring Checklist**

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

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



<b>A) Aesthetics</b>				
<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>AES-4</b>	<p>AES-4) Lighting should be designed to provide ambiance, safety, and security without unnecessary spillover or glare onto adjacent properties.  The quality of light, level of light (measured in foot-candles) and the type of bulb or source should be carefully addressed. Lighting levels should not be so intense as to draw attention to the flow or glare of the project site. The lighting plan should incorporate current energy-efficient fixtures and technology.  Glare from any site lighting should be shielded from adjacent properties and directed at a specific object or target area. Exposed bulbs shall not be used.  Wall-mounted light fixtures shall not extend above the height of the wall to which the fixtures are mounted.  Blinking and flashing lights used to illuminate building facades or to outline buildings shall not be used.  When security lighting is necessary, it should be recessed, hooded and located to illuminate only the intended area.  Off-site glare and light trespass is prohibited.  Pedestrian areas, sidewalks, parking lots, and building entrances shall be adequately lit to provide safety and security.  All exterior lighting fixtures shall be efficient in terms of design and energy use.</p>	Building Permits	Planning Department	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>AES-4</b>	AES4a - The project shall comply with Mitigation Measure 3.1-4 required by the Mitigation and Reporting Program for the Merced Vision 2030 General Plan EIR.	Building Permits	Planning Department	
<b>D) Biological Resources</b>				
<b>BIO-1</b>	BIO-1) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for nesting Swainson's hawks within 0.25 miles of the project site shall be done if construction commences between March 1 and September 15. If active nests are found, a qualified biologist shall determine the need (if any) for temporal restrictions on construction. The determination shall utilize criteria set forth by CDFW (CDFG 1994).	Building Permit	Planning Department	
	BIO-1a) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for western pond turtles and their nests shall be conducted if construction commences between April 1 through October 31. This survey shall include a search for nests in uplands adjacent to the creek. If nest sites are located, a 50-foot buffer area around the nest, a 50-foot buffer area around the nest shall be established and work shall be delayed until hatching is complete and the young have left the nest site.	Building Permit	Planning Department	
	BIO-1b) Pre-construction surveys by a qualified biologist or other qualified professional shall be conducted for birds protected by the Migratory Bird Treaty Act of 1918. If nesting birds are found, work in the vicinity of the nest shall be delayed until the young fledge.	Building Permit	Engineering Department	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>BIO-3</b>	BIO-3) Avoidance of jurisdictional Waters of the U.S. is recommended, if possible. If complete avoidance of Black Rascal Creek is infeasible, impact shall be minimized to the maximum extent practicable, and permits from ACOE, CDFW, RWQCB, and possibly CVFPS shall be secured prior to the placement of any fill material (e.g., culverts, fill dirt, rock) within jurisdictional Waters of the U.S.	Building Permit	Planning/ Engineering Department	
<b>CUL-1</b>	CUL-1) In the event that buried historic or archaeological resources are discovered during construction, operations shall stop within 50 feet of the find and a qualified archaeologist shall be consulted to evaluate the resource in accordance with CEQA Guidelines 15064.5. The applicant shall include a standard inadvertent discovery clause in every construction contract to inform contractors of this requirement. If the resource does not qualify as a significant resource, then no further protection or study is necessary. If the resource does qualify as a significant resource then the impacts shall be avoided by project activities. If the resource cannot be avoided, adverse impacts to the resource shall be addressed. The archaeologist shall make recommendations concerning appropriate mitigation measures that shall be implemented to protect the resources, including but not limited to excavation and evaluation of the finds in accordance with Section 15064.5 of the CEQA Guidelines. Any previously undiscovered resources found during construction within the project area should be recorded on appropriate Department of Parks and Recreation (DPR) 523 forms and evaluated for significance in terms of CEQA criteria.	Grading	Inspection Services/ Planning Department	

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<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>CUL-4</b>	<p>CUL-4) Guidelines Section 15064.5, Health and Safety Code Section 7050.5, and Public Resources Code (PRC) Sections 5097.94 and 5097.98 must be followed. If during the course of project development there is accidental discovery or recognition of any human remains, the following steps shall be taken:</p> <p>1. There shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent human remains until the County Coroner is contacted and determines if the remains are Native American and if an investigation of the cause of death is required. If the coroner determines the remains to be Native American, the coroner shall contact the Native American Heritage Commission (NAHC) within 24 hours, and the NAHC shall identify the person or persons it believes to be the most likely descendant (MLD) of the deceased Native American. The MLD may make recommendations to the landowner or the person responsible for the excavation work within 48 hours, for means of treating or disposing of, with appropriate dignity, the human remains and any associated grave goods as provided in PRC Section 5097.98.</p> <p>2. Where the following conditions occur, the landowner or his or her authorized representative shall rebury the Native American human remains and associated grave goods with appropriate dignity either in accordance with the recommendations of the most likely descendant or on the project site in a location not subject to further subsurface disturbance:</p>	Grading	Inspection Services/ Panning Department	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
	<ul style="list-style-type: none"> <li>The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission.</li> <li>The descendant identified fails to make a recommendation.</li> <li>The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner.</li> </ul> <p>Additionally, California Public Resources Code Section 15064.5 requires the following with regards to Native American Remains:</p> <p>When an initial study identifies the existence of, or the probable likelihood of, Native American Remains within a project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans as identified by the NAHC.</p>	Grading	Inspection Services/Panning Department	
<b>GEO-2</b>	GEO-2) Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage and storm water run-off control systems and their component facilities to ensure that these systems are non-erosive in design.	Tentative Map Building Permit	Engineering Department	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>GEO-2</b>	GEO-2a) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to re-vegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Inspection Services	
<b>GEO-4</b>	GEO-4 A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.	Building Permit	Inspection Services/ Engineering	
<b>HAZ-5</b>	HAZ-5 Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.	Site Plan Review/Building Permit	Planning Department	
<b>HYD-1</b>	HYD 1a Prior to the issuance of grading permits, the applicant shall file a "Notice of Intent" with and obtain a facility identification number from the State Water Resources Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMP's) to prevent stormwater pollution during construction activities. (continued on next page)	Grading Permit	Inspection Services/ Engineering	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>HYD-1</b>	<p>The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:</p> <ul style="list-style-type: none"> <li>• Comply with the requirements of the State of California's most current Construction Stormwater Permit.</li> <li>• Temporary erosion control measures shall be implemented on all disturbed areas.</li> <li>• Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season.</li> <li>• Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs.</li> <li>• The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains.</li> <li>• BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure. (continues on next page)</li> </ul>	Grading Permit	Inspection Services/ Engineering	



<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>HYD-1</b>	<i>In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.</i>			
<b>HYD-1</b>	<b>HYD-1b</b> Prior to the issuance of building permits, the project applicant shall submit a final Storm Water Mitigation Plan (SWMP) to the City of Merced for review and approval. The plan shall be developed using the California Stormwater Quality Association's "New Development and Redevelopment Handbook." The SWMP shall identify pollution prevention measures and BMPs necessary to control stormwater pollution from operational activities and facilities, and provide for appropriate maintenance over time. The SWMP shall include design concepts that are intended to accomplish a "first flush" objective that would remove contaminants from the first 2 inches of stormwater before it enters area waterways. The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.	Grading Permit	Inspection Services/ Engineering	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>HYD-5</b>	HYD-5 Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.	Grading Permit	Inspection Services/ Engineering	
<b>HYD-8</b>	HYD-8 Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation). A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7 ft. (NAVD88 vertical datum)	Grading Permit	Inspection Services/ Engineering	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>NOI-1</b>	NOI-1 The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Grading Permit	Inspection Services/ Engineering	
<b>NOI-1</b>	NOI-2 Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses:  Road/Railroad Santa Fe Drive North Highway 59 BNSF Railroad  Required Setback 54 Ft. 89 Ft. 137 Ft.	Building Permit	Inspection Services/ Planning	
<b>TRA-1</b>	TRA-1 The following improvements shall be incorporated into the development of the northwest corner of North Highway 59 and Santa Fe Drive. These improvements are the sole responsibility of the property owner/developer.  1. Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access. This will improve the Level of Service by accommodating two-step left turns,  2. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway.	Building Permit	Engineering/ Planning	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>TRA-1</b>	A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer.	Building Permit	Engineering/Planning	
Modified by City Council 10/1/2018. See Page 6 of Exhibit A.				
	TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.	Building Permit	Engineering/Planning	
	TRA-1b The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue: <ul style="list-style-type: none"> <li>• Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,</li> <li>• Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,</li> <li>• Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic.</li> <li>• Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.</li> </ul>	Building Permit	Planning	

TRA-6	TRA-6	Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59.	Building Permit	Planning	
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**Certificate of Completion:**

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

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

\_\_\_\_\_  
Date

**EXHIBIT G**  
**MITIGATION MEASURES ADOPTED BY**  
**CITY COUNCIL**

G-1

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**ENVIRONMENTAL REVIEW #15-36**  
**Mitigation Monitoring Program**  
**Revised August 22, 2018**

**MITIGATION MONITORING CONTENTS**

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

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

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

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

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

- 1) The requirements of the adopted mitigation monitoring program for Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04 shall run with the real property. Successive owners, heirs, and assigns of this real property are bound to comply with all of the requirements of the adopted program.
- 2) Prior to any lease, sale, transfer, or conveyance of any portion of the subject real property, the applicant shall provide a copy of the adopted program to the prospective lessee, buyer, transferee, or one to whom the conveyance is made.

**MITIGATION MONITORING PROCEDURES**

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

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

#### **GENERAL PLAN MITIGATION MEASURES**

As a second tier environmental document, Initial Study #15-36 incorporates some mitigation measures adopted as part of the *Merced Vision 2030 General Plan Program Environmental Impact Report* (SCH# 2008071069), as mitigation for potential impacts of the Project.

#### **NONCOMPLIANCE COMPLAINTS**

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

#### **MONITORING MATRIX**

**The following pages provide a series of tables identifying the mitigation measures proposed specifically for Annexation and Pre-zone Application #15-01 and General Plan Amendment #15-04. The columns within the tables are defined as follows:**

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



**Annexation and Pre-Zone Application #15-01 and General Plan Amendment #15-04  
Mitigation Monitoring Checklist**

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

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

<b>A) Aesthetics</b>				
<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
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<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
	<ul style="list-style-type: none"> <li>The NAHC is unable to identify a most likely descendent or the most likely descendent failed to make a recommendation within 48 hours after being notified by the commission.</li> <li>The descendant identified fails to make a recommendation.</li> <li>The landowner or his authorized representative rejects the recommendation of the descendant, and mediation by the NAHC fails to provide measures acceptable to the landowner.</li> </ul> <p>Additionally, California Public Resources Code Section 15064.5 requires the following with regards to Native American Remains:</p> <p>When an initial study identifies the existence of, or the probable likelihood of, Native American Remains within a project, a lead agency shall work with the appropriate Native Americans as identified by the Native American Heritage Commission as provided in Public Resources Code Section 5097.98. The applicant may develop a plan for treating or disposing of, with appropriate dignity, the human remains and any items associated with Native American Burials with the appropriate Native Americans as identified by the NAHC.</p>	Grading	Inspection Services/Panning Department	
<b>GEO-2</b>	<p>GEO-2) Prior to the approval of a tentative subdivision map or building permit, the City shall review plans for drainage and storm water run-off control systems and their component facilities to ensure that these systems are non-erosive in design.</p>	Tentative Map Building Permit	Engineering Department	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>GEO-2</b>	GEO-2a) Upon completion of phased construction, subsequent phases shall re-vegetate all exposed soil surfaces within 30 days, or as otherwise approved by the City, to minimize potential topsoil erosion. Reasonable alternatives to re-vegetation may be employed, especially during peak high temperature periods or to avoid negative impacts to nearby agricultural activities, subject to the approval of the City.	Building Permit	Inspection Services	
<b>GEO-4</b>	GEO-4 A geotechnical study shall be provided prior to the issuance of a building or grading permit for this site. All recommendations for addressing expansive soils and site grading shall be implemented as well as any other recommendations determined relevant by the Chief Building Official or City Engineer.	Building Permit	Inspection Services/ Engineering	
<b>HAZ-5</b>	HAZ-5 Prior to the issuance of any subsequent land use entitlement for construction of a building or the issuance of a building permit, the developer shall demonstrate compliance with the requirements of the Merced County Airport Land Use Compatibility Plan (ALUCP). If compliance is not feasible, the development plan shall be modified to make compliance possible.	Site Plan Review/Building Permit	Planning Department	
<b>HYD-1</b>	HYD 1a Prior to the issuance of grading permits, the applicant shall file a "Notice of Intent" with and obtain a facility identification number from the State Water Resources Control Board. The project shall also submit a Stormwater Pollution Prevention Plan (SWPPP) to the City of Merced that identifies specific actions and Best Management Practices (BMP's) to prevent stormwater pollution during construction activities. (continued on next page)	Grading Permit	Inspection Services/ Engineering	



<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>HYD-1</b>	<p>The SWPPP shall identify a practical sequence for BMP implementation, site restoration, contingency measures, responsible parties, and agency contacts. The SWPPP shall include, but not be limited to, the following elements:</p> <ul style="list-style-type: none"> <li>• Comply with the requirements of the State of California's most current Construction Stormwater Permit.</li> <li>• Temporary erosion control measures shall be implemented on all disturbed areas.</li> <li>• Disturbed surfaces shall be treated with erosion control measures during the October 15 to April 15 rainy season.</li> <li>• Sediment shall be retained on-site by a system of sediment basins, traps, or other BMPs.</li> <li>• The construction contractor shall prepare Standard Operating Procedures for the handling of hazardous materials on the construction site to eliminate discharge of materials to storm drains.</li> <li>• BMP performance and effectiveness shall be determined either by visual means where applicable (e.g., observation of above-normal sediment release), or by actual water sampling in cases where verification of contaminant reduction or elimination (such as inadvertent petroleum release) is required by the Central Valley Regional Water Quality Control Board to determine adequacy of the measure. (continues on next page)</li> </ul>	Grading Permit	Inspection Services/ Engineering	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>HYD-1</b>	<i>In the event of significant construction delays or delays in final landscape installation, native grasses or other appropriate vegetative cover shall be established on the construction site as soon as possible after disturbance, as an interim erosion control measure throughout the wet season.</i>			
<b>HYD-1</b>	<i>Prior to the issuance of building permits, the project applicant shall submit a final Storm Water Mitigation Plan (SWMP) to the City of Merced for review and approval. The plan shall be developed using the California Stormwater Quality Association's "New Development and Redevelopment Handbook." The SWMP shall identify pollution prevention measures and BMPs necessary to control stormwater pollution from operational activities and facilities, and provide for appropriate maintenance over time. The SWMP shall include design concepts that are intended to accomplish a "first flush" objective that would remove contaminants from the first 2 inches of stormwater before it enters area waterways. The project applicant shall also prepare and submit an Operations and Maintenance Agreement to the City identifying procedures to ensure that stormwater quality control measures work properly during operations.</i>	<i>Grading Permit</i>	<i>Inspection Services/ Engineering</i>	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>HYD-5</b>	<p>HYD-5 Prior to the issuance of a building permit for this project, the applicant shall demonstrate to the City that proposed storm drainage facilities are adequate to meet the Project demands and that improvements are consistent with the City's Storm Drainage Master Plan and the Post Construction Standards for the City's Phase II MS4 permit.</p>	Grading Permit	Inspection Services/ Engineering	
<b>HYD-8</b>	<p>HYD-8 Development of the site is required to provide fill dirt to raise the elevation of the site and achieve protection from flooding. The fill must be elevated above the computed 200-year flood elevation and freeboard is highly recommended by DWR (note: freeboard is the difference between the fill elevation and the computed flood elevation).</p> <p>A freeboard of 1-foot or greater will help to account for the inherent uncertainty in estimating peak flood discharges and the computed flood elevations. A Summary of the proposed fill elevations is provided in the Table below. The required fill elevation ranges from 168.4 to 167.7 ft. (NAVD88 vertical datum)</p>	Grading Permit	Inspection Services/ Engineering	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>NOI-1</b>	<b>NOI-1</b> The construction contractor shall limit all noise-producing construction activities, including deliveries and warming up of equipment, to the hours of 7:00 a.m. to 7:00 p.m., Monday through Saturday. No such work shall be permitted on Sundays or federal holidays without prior approval from the City.	Grading Permit	Inspection Services/ Engineering	
<b>NOI-1</b>	<b>NOI-2</b> Any outdoor dining areas or other outdoor uses shall have the following setbacks to maintain an acceptable noise level of 70 dB for outdoor uses:  Road/Railroad Santa Fe Drive North Highway 59 BNSF Railroad  Required Setback 54 Ft. 89 Ft. 137 Ft.	Building Permit	Inspection Services/ Planning	
<b>TRA-1</b>	<b>TRA-1</b> The following improvements shall be incorporated into the development of the northwest corner of North Highway 59 and Santa Fe Drive. These improvements are the sole responsibility of the property owner/developer.  1. Restripe Santa Fe Drive to create a two-way left-turn (TWLT) lane east of the western access. This will improve the Level of Service by accommodating two-step left turns.  2. Modify the layout of the access to Santa Fe Drive to either prohibit outbound right turns from the eastern driveway or provide a continuous auxiliary acceleration-deceleration lane between the driveways. These measures will address the horizontal curve on the alignment of Santa Fe Drive as it relates to the western driveway.	Building Permit	Engineering/ Planning	

<b>Impact No.</b>	<b>Mitigation Measures</b>	<b>Timing</b>	<b>Agency or Department</b>	<b>City Verification (date and initials)</b>
<b>TRA-1</b>	<i>A traffic signal may be required at the western-most driveway. Traffic conditions at the western access shall be monitored and a traffic signal shall be installed if determined to be needed by the City Engineer based on warrants associated with preventable accidents. The cost of the traffic signal shall be the responsibility of the owner/developer.</i>	<i>Building Permit</i>	<i>Engineering/ Planning</i>	
	<i>TRA-1a The southbound left-turn lane on SR 59 shall be lengthened as determined by the City Engineer and approved by Caltrans.</i>	<i>Building Permit</i>	<i>Engineering/ Planning</i>	
	<p><i>TRA-1b The development shall contribute its fair share to the cost of improvements for the intersection of SR 59 and Olive Avenue:</i></p> <ul style="list-style-type: none"> <li><i>Reconstruct westbound Olive Avenue to provide dual left turn lanes on southbound SR 59; and,</i></li> <li><i>Reconfigure the westbound right turn lane to create a combination through and right turn lane, and extend that through lane across SR 59 along the project's frontage; and,</i></li> <li><i>Reconstruct the existing northbound right turn lane as a "free" right turn with median island separating eastbound and right turning traffic.</i></li> <li><i>Reconstruct the eastbound Santa Fe Drive approach to provide dual left turn lanes.</i></li> </ul>	<i>Building Permit</i>	<i>Planning</i>	

TRA-6	TRA-6	Prior to the issuance of a building permit, the developer shall work with the Merced County Transit Authority (aka: The Bus) to determine if a bus stop is needed at this location. If a bus stop is required, the stop shall be in an area to allow the bus to move completely out of the travel lanes. The location of all bus stops shall be subject to approval by the City Engineer and Caltrans if along SR 59.	Building Permit	Planning

**Certificate of Completion:**

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

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

\_\_\_\_\_  
Date



## ADMINISTRATIVE REPORT

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### Agenda Item I.1.

Meeting Date: 10/15/2018

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

**SUBJECT:** Public Hearing to Consider Adjustments to Water Rate Charges and Capital Facility Charges Over a Five-Year Period for all Water Rate Customers (Inside City and Outside City); Introduction of Ordinance to Amend Chapter 15.36 "Rates and Charges"; Introduction of Ordinance to Amend Chapter 15.42.050 "Water Conservation Levels and Prohibitions"

### REPORT IN BRIEF

Hold a Public Hearing to consider approving adjustments to water rates and capital facility charges over a five-year period, through July 1, 2022, for all water rate customers (inside City and outside City); Introduction of Ordinance to Amend Chapter 15.36 of the Merced Municipal Code "Rates and Charges"; Introduction of Ordinance to Amend Chapter 15.42 of the Merced Municipal Code "Water Conservation Levels and Prohibitions."

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving proposed water rate changes and Capital Facility Charges; and,
- B. Adopting a Categorical Exemption; and,
- C. Introducing **Ordinance 2496**, an Ordinance of the City Council of the City of Merced, California, amending various sections of Chapter 15.36, "Rates and Charges," of the Merced Municipal Code dealing with water service; and,
- D. Introducing **Ordinance 2497**, an Ordinance of the City Council of the City of Merced, California, amending Chapter 15.42.050, "Water Conservation Regulation," of the Merced Municipal Code.

### ALTERNATIVES

- 1. Approve the changes in the water rates and Capital Facility Charges and amend the ordinances as recommended; or,
- 2. Deny the changes to the water rates and Capital Facility Charges; or,
- 3. Refer to staff for reconsideration of specific items; or,
- 4. Continue action to a future City Council meeting, specify date.

### AUTHORITY

Article II, Section 200 and Article IV, Section 405 of the Charter of the City of Merced, and Article XIII

D of the California State Constitution in accordance with Title 15 of the Merced Municipal Code.

## **CITY COUNCIL PRIORITIES**

As provided for in the 2018-19 Adopted Budget.

## **DISCUSSION**

The City last revised its water service charges in 2012 with no increases through the year 2017. On January 1, 2018, the base water service charge was adjusted based on a formula set forth in Merced Municipal Code (MMC) Section 15.36.045.

On December 18, 2017, the City entered into an Agreement for Professional Services with Stantec Consulting Services, Inc, for the completion of a Water Rate Study. The study was completed and a report of the water rate study was drafted with assistance of staff and input from members of the City Council's Utility Rate Review Committee, which included City Councilmembers Matthew Serratto, Joshua Pedrozo, and Jill McLeod. On August 20, 2018, the City Council unanimously accepted the Draft Water Rate & Capital Facility Charge Study and directed staff to proceed with issuing the Proposition 218 notification process.

The 218 Notice of Public Hearing on the Proposed Water Rate Adjustment was mailed to all water customers and was delivered by August 31, 2018. Notice of the Public Hearing was also published in the Merced County Times on October 4, 2018.

The proposed rate structure was designed to:

- Fairly and equitably recover costs through rates;
- Conform to accepted industry practice and legal requirements;
- Provide fiscal stability and recovery of fixed costs of the system; and,
- Promote affordability for customers that try to minimize water usage.

The overall changes proposed result in a net increase of 2% per year beginning January 1st, then every July 1st thru 2021, to coincide with our Fiscal Year start date.

The new water rates and Capital Facility charges are reflected in the proposed amendment to Chapter 15.36 "Rates and Charges."

Staff is also seeking to amend Section 15.42.050 of MMC Chapter 15.42 "Water Conservation Levels and Prohibitions" to allow the City Council to declare Level 3 Conservation Water Restrictions. The current language of Section 15.42.050 provides that Level 3 Restrictions are triggered by the Governor declaring a State of Emergency. The amendment also allows the City Council to implement the drought Water Rate schedule set forth in MMC section 15.36.070.

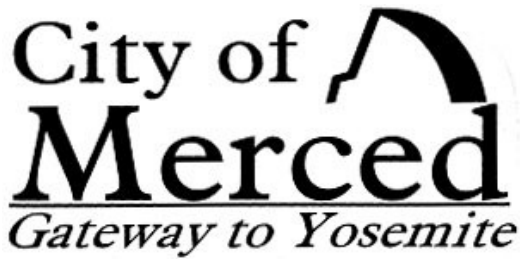
## **IMPACT ON CITY RESOURCES**



No appropriation of funds is needed.

**ATTACHMENTS**

1. Notice of Public Hearing on Proposed Water Rate Adjustments
2. Notice of Exemption
3. Ordinance 2496
4. Ordinance 2497



## **Notice of Public Hearing On Proposed**

### **Water Rate Adjustment**

**Monday, October 15, 2018**

**At 6:00 p.m.**

**City Council Chambers, City Hall**

**678 West 18th Street, Merced, CA**

The City of Merced is proposing a multi-year water rate program adjustment for all residential and commercial customers. The proposal will be considered by the City Council at a Public Hearing on **Monday, October 15, 2018**. If approved, the water rate adjustments will commence January 2019. You are receiving this notification in compliance with California Constitution Article XIII C and D (**Proposition 218**) requirements that all impacted property owner(s) are mailed notice of proposed rate changes at least 45 days prior to a public hearing. Proposition 218 also establishes a protest process for the public to follow if they wish to oppose the proposed rates.

**For more information on the proposed water service charges, please call: (209) 385-6800.**

**Para mas informacion acerca de los cargos propuestos por servicio de agua, favor de llamar al 209-385-6800.**

**Yog koj muaj lub noog txog nqi dej, thov hu rau (209) 385-6800.**

[www.cityofmerced.org/WaterRates](http://www.cityofmerced.org/WaterRates)

#### **HOW TO PROTEST THE PROPOSED WATER RATE ADJUSTMENT**

*Written protests on the proposed adjustments in the monthly water charges may be mailed or delivered to the City Clerk, at the Civic Center, 678 West 18th Street, Merced, CA 95340, and must identify the property owner(s) of the property or properties. Protests must be received prior to the close of the Public Hearing on October 15, 2018. E-mail protests will not be accepted. If written protests are presented by owners from a majority of properties, the City Council cannot approve the increase.*

**THE CITY OF MERCED IS PROPOSING TO MODIFY ITS WATER RATES, THOSE CHANGES ARE LISTED HERE AND THE FULL TEXT OF THE WATER RATE STUDY CAN BE FOUND ON OUR WEBPAGE AT [www.cityofmerced.org/WaterRates](http://www.cityofmerced.org/WaterRates)**

The City is required by City policy to collect revenues sufficient to cover the cost of operating the water system. These revenues allow the City to protect public health and safety and reliably convey and treat the water. Costs that must be covered through the rate revenue include electricity, equipment and supplies, treatment chemicals, debt service, and salaries and benefits. Additionally, revenues generated from the water rates would be used to finance the ongoing operation, the repair and renovation of the existing aging water infrastructure.

The proposed rate structure was designed to meet all legal requirements and fairly and equitably recover costs through the rates, conform to accepted industry practice(s) , provide fiscal stability and recovery of fixed costs of the system and, promote affordability for customers that try to minimize water usage.

The proposed rate structure was designed based on a standard meter equivalency schedule that is published by the American Water Works Association (AWWA) . This element was a key factor in the changes to the water rates included in the base monthly charges. The current allocation of water included in the Base Monthly Charges ranges from 30 HCF (hundred cubic feet) to 50 HCF. The proposed water allocations will be adjusted based on meter size and will range from 20 HCF for most residential single family homes to 1350 HCF for our largest metered accounts. It should also be noted that the proposed volumetric rate decreased, so during the months when usage might go over the base allotted amount, the volumetric cost per HCF will start out at \$0.73 (as compared to our current rate of \$0.89).

When analyzing customers' water use patterns, it was found that during the winter the average household uses about 13.6 HCF of water and in the summer 26 HCF. The annual average use is 18.75 HCF, which is under the proposed base of 20 HCF.

**Proposed Base Monthly Charges**

Meter Size	Current Water Allocation HCF	Current Rate	Proposed Water Allocation HCF	Effective In January 2019	Effective In July 2019	Effective In July 2020	Effective In July 2021
3/4"	30	\$ 34.24	20	\$ 30.39	\$ 31.00	\$ 31.62	\$ 32.25
1"	30	\$ 35.64	20	\$ 30.39	\$ 31.00	\$ 31.62	\$ 32.25
1 1/2"	40	\$ 47.52	40	\$ 60.32	\$ 61.53	\$ 62.76	\$ 64.02
2"	50	\$ 65.50	64	\$ 96.24	\$ 98.16	\$ 100.12	\$ 102.12
3"	50	\$ 76.13	128	\$ 192.01	\$ 195.85	\$ 199.77	\$ 203.77
4"	50	\$ 89.80	200	\$ 299.76	\$ 305.76	\$ 311.88	\$ 318.12
6"	50	\$ 104.99	400	\$ 599.06	\$ 611.04	\$ 623.26	\$ 635.73
8"	50	\$ 150.58	640	\$ 958.22	\$ 977.38	\$ 996.93	\$1,016.87
10"	50	\$ 196.12	960	\$1,437.10	\$1,465.84	\$1,495.16	\$1,525.06
12"	50	\$ 241.42	1350	\$2,020.74	\$2,061.15	\$2,102.37	\$2,144.42
Volumetric Charge:		\$0.89 / HCF		\$0.73 / HCF	\$0.74 / HCF	\$0.75 / HCF	\$0.77 / HCF

The proposed rate schedule includes a Drought Rate Schedule, which will be implemented only during times of significant drought. This Drought Rate Schedule will only go into effect in the event of a Level 3 Drought as declared by the City Council.

**Proposed: Drought Water Rate Schedule  
Monthly Charges**

Meter Size	Proposed Included HCF	Effective In January 2019	Effective In July 2019	Effective In July 2020	Effective In July 2021
3/4"	20	\$ 31.10	\$ 31.72	\$ 32.35	\$ 33.00
1"	20	\$ 31.10	\$ 31.72	\$ 32.35	\$ 33.00
1 1/2"	40	\$ 61.74	\$ 62.97	\$ 64.23	\$ 65.51
2"	64	\$ 98.51	\$ 100.48	\$ 102.49	\$ 104.54
3"	128	\$ 196.56	\$ 200.49	\$ 204.50	\$ 208.59
4"	200	\$ 306.86	\$ 313.00	\$ 319.26	\$ 325.65
6"	400	\$ 613.26	\$ 625.53	\$ 638.04	\$ 650.80
8"	640	\$ 980.94	\$ 1,000.56	\$ 1,020.57	\$ 1,040.98
10"	960	\$ 1,471.18	\$ 1,500.60	\$ 1,530.61	\$ 1,561.22
12"	1350	\$ 2,068.66	\$ 2,110.03	\$ 2,152.23	\$ 2,195.27
Volumetric Charge		\$0.98 / HCF	\$1.00 / HCF	\$1.02 / HCF	\$1.04/ HCF

The following rates are for accounts that have a dedicated service line for fire protection. Private properties with a public fire hydrant are also subject to the charge.

**Private Fire Monthly Charges**

Connection Size	Current Monthly Charge	Effective In January 2019	Effective In July 2019	Effective In July 2020	Effective In July 2021
2"	n/a	\$ 1.36	\$ 1.39	\$ 1.42	\$ 1.45
3"	n/a	\$ 3.96	\$ 4.04	\$ 4.12	\$ 4.20
4"	\$ 17.54	\$ 8.44	\$ 8.61	\$ 8.78	\$ 8.96
6"	\$ 20.47	\$ 24.53	\$ 25.02	\$ 25.52	\$ 26.03
8"	\$ 29.24	\$ 52.28	\$ 53.33	\$ 54.40	\$ 55.49
10"	\$ 38.01	\$ 94.01	\$ 95.89	\$ 97.81	\$ 99.77
12"	\$ 60.66	\$ 151.85	\$ 154.89	\$ 157.99	\$ 161.15
Fire Hydrant	\$ 19.83	\$ 15.19	\$ 15.49	\$ 15.80	\$ 16.12

Another new aspect to the rates include an outside the City boundaries surcharge. The City of Merced provides water service to retail customers located outside of the City's jurisdictional boundaries and is authorized to receive a reasonable return on investment and risk for its delivery of services to non-owner customers. The proposed water service rates includes the following new outside the City surcharge:

Outside City Monthly Charge								
Meter Size	Effective In January 2019		Effective In July 2019		Effective In July 2020		Effective In July 2021	
3/4"	\$	5.51	\$	5.62	\$	5.73	\$	5.84
1"	\$	5.51	\$	5.62	\$	5.73	\$	5.84
1 1/2"	\$	11.03	\$	11.25	\$	11.48	\$	11.71
2"	\$	17.64	\$	17.99	\$	18.35	\$	18.72
3"	\$	35.28	\$	35.99	\$	36.71	\$	37.44
4"	\$	55.13	\$	56.23	\$	57.35	\$	58.50
6"	\$	110.25	\$	112.46	\$	114.71	\$	117.00
8"	\$	176.40	\$	179.93	\$	183.53	\$	187.20

The City requires the installation of backflow prevention assemblies whenever a potential hazard is present within a consumer's premises. Backflow is the undesirable reversal of flow of non-potable water or other substances through a cross-connection and into the public water system or a consumer's potable water system. Accounts that pose any potential risk of backflow are required to install backflow assemblies to protect the public water supply. The following proposed rates reflect the cost of service provided:

Backflow Monthly Charge									
Current Rate		Effective In January 2019		Effective In July 2019		Effective In July 2020		Effective In July 2021	
\$	5.00	\$	8.75	\$	8.93	\$	9.11	\$	9.29

Starting July 1, 2022, the above base water service charges shall be adjusted annually based on a formula set forth in Merced Municipal Code Section 15.36.045.

## NOTICE OF EXEMPTION

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

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

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

**Project Title:** Ordinance of the City of Merced amending various sections in Chapter 15.36 "Rates and Charges," of the Merced Municipal Code dealing with Water Service, Environmental Review #18-59

**Project Applicant:** City of Merced

**Project Location (Specific):** City of Merced (City Wide)

**Project Location - City:** Merced

**Project Location - County:** Merced

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

The proposed Ordinance would set new water rates for residential, industrial, and commercial metered services. It also amends flat rate customer rates, updates connection charges, and adds annual consumer index based increases. The rate updates are necessary to adequately provide funding for operations and capital for facilities to provide domestic water services.

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

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

**Exempt Status:** (check one)

- ☐ Ministerial (Sec. 21080(b)(1); 15268);  
☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));  
☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
☐ Categorical Exemption. State Type and Section Number:  
☒ Statutory Exemptions. State Code Number: 15273 – Rates, Tolls, Fares, and Charges.  
☐ General Rule (Sec. 15061 (b)(3))

**Reasons why Project is Exempt:**

The proposed Ordinance has been reviewed by City Staff in accordance with the Environmental Checklist form (Appendix G of the CEQA Guidelines) to determine if there would be any possibility that the proposed ordinance would create any significant environmental impacts. City Staff has determined that the establishment of the utility rates and connection charges are needed to maintain services and therefore do not meet any of the thresholds contained in the Checklist that would trigger a significant environmental impact. They are also exempt as a Statutory Exemption as provided under section 15273 Rates, Tolls, Fares, and Charges, 15273(a) and 15273 (b).

**Lead Agency:** City of Merced

**Contact Person:** \_\_\_\_\_ **Area Code/Telephone:** (209) 385-6858

**Signature:**  **Date:** 10/10/18 **Title:** Dir. of Dev. Services.

X Signed by Lead Agency

Date Received for Filing at OPR: \_\_\_\_\_  
(If applicable)

Authority Cited: Sections 21083

Reference: Sections 21108(b)(8), Public Resources Code

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING VARIOUS SECTIONS IN CHAPTER  
15.36, "RATES AND CHARGES," OF THE  
MERCED MUNICIPAL CODE DEALING WITH  
WATER SERVICE**

**WHEREAS**, the Council finds that adoption of this Ordinance is exempt from review under the California Environmental Quality Act (CEQA) because CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, and other charges by public agencies which the public agency finds are for the purpose of: meeting operating expenses, including employee wage rates and fringe benefits; purchasing or leasing supplies, equipment, or materials; meeting financial reserve needs and requirements; and obtaining funds for capital projects, necessary to maintain service within existing service areas. California Public Resources Code section 21080(b)(8) and CEQA Guidelines section 15273(a).

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

**SECTION 1. AMENDMENT TO CODE.** Sections 15.36.045, "Formula—Base Water Service Charge, 15.36.050, "Residential, Industrial, and Commercial Metered Service – Schedule," 15.36.070, "Flat Rate – Residence and Church," 15.36.080, "Reserved," 15.36.090, "Flat Rate – Hydrants and Fire Protection Service," and 15.36.160, "Connection – Major Water Facilities," of the Merced Municipal Code are hereby amended to read as follows:

**"15.36.045 Formula—Base Water Service Charge.**

Unless otherwise indicated, starting July 1, 2022, all base water service rates and charges in this Chapter shall be adjusted annually by an amount equal to the percent change in the All Urban Consumers Index, U.S. City Average (USCA), as supplied by the Bureau of Labor



Statistics, unless or until such time new rates are set by the City Council. The amount of such base water charge shall be computed as follows:

		Current Consumer Year		
Monthly Water Rate	=	<u>Price Index</u> (USCA) Ending Scheduled Year CPI (USCA	x	Base Charge

**15.36.050 Residential, Industrial, and Commercial  
Metered Service – Schedule.**

The base rate for metered water service per one hundred cubic feet or fraction thereof is as follows:

<b>Base Rate</b>	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
Charge per HCF	\$0.73	\$0.74	\$0.75	\$0.77

A minimum base monthly fee will be charged as follows:

<b>Minimum Base Monthly Fee</b>					
<b>Meter Size</b>	<b>Water Use Included (hcf)</b>	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
3/4-inch or smaller	20	\$30.39	\$31.00	\$31.62	\$32.25
1-inch meter	20	\$30.39	\$31.00	\$31.62	\$32.25
1-1/2 inch meter	40	\$60.32	\$61.53	\$62.76	\$64.02
2-inch meter	64	\$96.24	\$98.16	\$100.12	\$102.12
3-inch meter	128	\$192.01	\$195.85	\$199.77	\$203.77
4-inch meter	200	\$299.76	\$305.76	\$311.88	\$318.12

6-inch meter	400	\$599.06	\$611.04	\$623.26	\$635.73
8-inch meter	640	\$958.22	\$977.38	\$996.93	\$1,016.87
10-inch meter	960	\$1,437.10	\$1,465.84	\$1,495.16	\$1,525.06
12-inch meter	1350	\$2,020.74	\$2,061.15	\$2,102.37	\$2,144.42

In addition, for each reduced pressure backflow preventer served from the same service connection, a base monthly fee for annual testing and inspection shall be paid as follows:

<b>Base Rate</b>	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
Backflow Device Charge	\$8.75	\$8.93	\$9.11	\$9.29

\* Starting July 1, 2022, the base water service charge shall be adjusted annually based on a formula set forth in Section 15.36.045.

The new rates set forth in this Section shall be implemented on January 1, 2019, with subsequent scheduled increases implemented on July first of each year.

#### **15.36.070 Drought Water Rate Schedule.**

The rate schedule includes a Drought Rate Schedule, which will be implemented only during times of significant drought. This Drought Rate Schedule will only go into effect in the event of a Level 3 Drought as declared by the City Council.

### Monthly Charges

<b>Meter Size</b>	<b>Included (hcf)</b>	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
3/4-inch or smaller	20	\$31.10	\$31.72	\$32.35	\$33.00
1-inch meter	20	\$31.10	\$31.72	\$32.35	\$33.00
1-1/2 inch meter	40	\$61.74	\$62.97	\$64.23	\$65.51
2-inch meter	64	\$98.51	\$100.48	\$102.49	\$104.54
3-inch meter	128	\$196.56	\$200.49	\$204.50	\$208.59
4-inch meter	200	\$306.86	\$313.00	\$319.26	\$325.65
6-inch meter	400	\$613.26	\$625.53	\$638.04	\$650.80
8-inch meter	640	\$980.94	\$1,000.56	\$1,020.57	\$1,040.98
10-inch meter	960	\$1,471.18	\$1,500.60	\$1,530.61	\$1,561.22
12-inch meter	1350	\$2,068.66	\$2,110.03	\$2,152.23	\$2,195.27
Volumetric Charge		\$0.98 / HCF	\$1.00 / HCF	\$1.02 / HCF	\$1.04 / HCF

### **15.36.080 Outside the City Boundaries Surcharge.**

The City of Merced provides water service to retail customers located outside of the City's jurisdictional boundaries and is authorized to receive a reasonable return on investment and risk for its delivery of services to non-owner customers. The water service rates includes the following outside the City surcharge:

### **Outside City Monthly Charge**

<b>Meter Size</b>	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
3/4-inch or smaller	\$5.51	\$5.62	\$5.73	\$5.84
1-inch meter	\$5.51	\$5.62	\$5.73	\$5.84
1-1/2 inch meter	\$11.03	\$11.25	\$11.48	\$11.71

2-inch meter	\$17.64	\$17.99	\$18.35	\$18.72
3-inch meter	\$35.28	\$35.99	\$36.71	\$37.44
4-inch meter	\$55.13	\$56.23	\$57.35	\$58.50
6-inch meter	\$110.25	\$112.46	\$114.71	\$117.00
8-inch meter	\$176.40	\$179.93	\$183.53	\$187.20

**15.36.090 Flat Rate – Hydrant and Fire Protection Service.**

A. For public fire hydrant service on private property, the per hydrant base charge is as follows:

<b>Flat Rate-Hydrants and Fire Protection Service</b>				
	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
Fire Hydrants	\$15.19	\$15.49	\$15.80	\$16.12

B. 1. For private fire protection service, the following base rates shall be applicable to all automatic fire sprinkler systems:

<b>Flat Rate-Hydrants and Fire Protection Service Private Fire Monthly Charges</b>				
<b>Connection Size</b>	<b>January 2019</b>	<b>July 2019</b>	<b>July 2020</b>	<b>July 2021</b>
2"	\$1.36	\$1.39	\$1.42	\$1.45
3"	\$3.96	\$4.04	\$4.12	\$4.20
4"	\$8.44	\$8.61	\$8.78	\$8.96
6"	\$24.53	\$25.02	\$25.52	\$26.03
8"	\$52.28	\$53.33	\$54.40	\$55.49
10"	\$94.01	\$95.89	\$97.81	\$99.77
12"	\$151.85	\$154.89	\$157.99	\$161.15

2. The applicant shall pay the cost of installing the fire sprinkler service.

3. The above rates are applicable only to fire sprinklers systems to which no connections for other than fire protection purposes are allowed, which are regularly inspected by the underwriters having jurisdiction, are installed according to the specifications of the City and are maintained to the satisfaction of the City.

4. If a distribution main of adequate size to serve a fire sprinkler system in addition to all other normal service does not exist in the street or alley adjacent to the premises to be served hereunder, a service main from the nearest existing main of adequate capacity will be installed by the City at the expense of the applicant.

5. The City may install, at the applicant's expense, the standard detector type meter approved by the board of fire underwriters for protection against theft, leakage, or waste of water.

6. The City will be required to supply only such water at such pressure as may be available from time to time as a result of the normal operation of the system. Customers may take water under this schedule only in case of fire or for purpose of periodical tests and inspections.

C. For service from fire hydrants, the following rates shall apply to water service furnished from fire hydrants for municipal, construction, and temporary usages:

1. For the City (internal service charge), flushing sewers and street sweepers shall be charged on a monthly basis \$84.19\*.

2. At the option of the City, a meter may be installed, at the applicant's expense, for service under this schedule.

3. Applicants for service under this schedule must obtain specific authority from the City prior to taking any delivery of water and shall use only the hydrants designed by the City.

\* Starting July 1, 2022, the base water service charge shall be adjusted annually based on a formula set forth in Section 15.36.045.

The new rates set forth in this Section shall be implemented on January 1, 2019, with subsequent scheduled increases implemented on July first of each year.

\*\*Unless otherwise indicated, starting July 1, 2022 all base water service rates and charges in this Chapter shall be adjusted annually by an amount equally to the percent change in the All Urban Consumer Index, U.S. Average (USCA), as supplied by the Bureau of Labor Statistics, unless or until such time new rates are set by the City Council. The amount of such base water charge shall be computed as follows:

$$\text{Monthly Water Rate} = \frac{\text{Current Year Consumer Price Index (USCA)}}{\text{Ending Scheduled Year CPI (USCA)}} \times \text{Base Charge}$$

### **Capital Facility Charge Schedule**

<b>Meter Size</b>	<b>Capital Facility Charge</b>
1"	\$6,037
1.5"	\$12,074

2"	\$19,318
3"	\$38,637
4"	\$60,370
6"	\$120,740
8"	\$193,184
10"	\$289,776
12"	\$407,498

### **15.36.160 Connection – Major Water Facilities.**

A. Each property owner who applies for connection of any building or premises to the City water system, or who applies for replacement of an existing water service connection with one (1) of larger size, shall, prior to issuance of the permit for such connection or replacement, pay to the City a major water facilities charge, based upon the size of the water service required for such building or premises. Each quarter, the major water facilities charge shall be adjusted by an amount equal to the percent change in the All Urban Consumers Index, U.S. City Average (USCA), as supplied by the Bureau of Labor Statistics.

The amount of such major water facilities charge shall be computed as follows:

$$\begin{array}{l} \text{Major} \\ \text{Water} \\ \text{Facility} \\ \text{Charge} \end{array} = \begin{array}{l} \text{Current} \\ \text{Quarter} \\ \text{CPI} \\ \text{(USCA)} \\ 184^* \end{array} \times \text{Basic Charge}$$

\*Base year index (January 2004)

### Base Water Facilities Charge

<b>Meter Size</b>	<b>Capital Facility Charge</b>
1"	\$6,037
1.5"	\$12,074
2"	\$19,318
3"	\$38,637
4"	\$60,370
6"	\$120,740
8"	\$193,184
10"	\$289,776
12"	\$407,498

### Fire Flow Charge:

Fire Flow Charge will be calculated for any extra fire flow required above the standard (1" meter) fire flow requirement of 1,500 gpm for 2 hours. The Fire Flow Charge will be based on the incremental increase in the fire flow requirements above the "Standard" (1" meter). The incremental Fire Flow Charge will be calculated as follows:

#### *Fire Flow Charge*

$$= \left[ \left( \frac{\text{Fire Flow Req't (gpm)} \times \text{Duration (hours)}}{1,500 \text{ gpm} \times 2 \text{ hours}} \right) - 1 \right] \times \text{Capital Facility Charge for 1" Meter}$$

B. In the case of replacement of an existing water service connection with one (1) of larger size, credit shall be given against the major water facilities charge for the amount which was paid for the smaller connection, or would have paid therefore if this Section had been in effect at the time such smaller connection



was applied for provided the service is actually removed from the system.

C. All funds collected pursuant to this Section shall be deposited in the water fund.”

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

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

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

The foregoing Ordinance was introduced at a regular meeting of the City Council of the City of Merced on the \_\_\_\_ day of \_\_\_\_\_, 2018, and was passed and adopted at a regular meeting of said City Council held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following called vote:

AYES: Council Members:

NOES: Council Members:

ABSTAIN: Council Members:

ABSENT: Council Members:

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:  
STEVE CARRIGAN, CITY CLERK

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

(SEAL)

APPROVED AS TO FORM:

Kelly Fincher      10-10-18  
City Attorney                      Date

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

**AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF MERCED, CALIFORNIA,  
AMENDING SECTION 15.42.050, "WATER  
CONSERVATION LEVELS AND  
PROHIBITIONS," OF THE MERCED MUNICIPAL  
CODE**

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

**SECTION 1. AMENDMENT TO CODE.** Section 15.42.050, "Water Conservation Levels and Prohibitions," of the Merced Municipal Code is hereby amended to read as follows:

**"15.42.050 Water Conservation Levels and  
Prohibitions.**

Notwithstanding any other provision of this Chapter, at least one (1) of the following four (4) levels of water conservation restrictions shall apply at all times. The applicable level(s) of water conservation restrictions shall be based upon the Condition of Groundwater Basin determination of the California State Department of Water Resources then in effect, or by resolution of the City Council based upon a recommendation by the Director.

The current level of water conservation restrictions, and any change in said level of water conservation restrictions, shall be communicated to the public by reasonable means to ensure compliance, including but not limited to, posting on the City's website, publishing in the local newspaper, and written notice to be included with the City's water bills.

All persons using water supplied by the City shall comply with the following mandatory water conservation restrictions:

A. Level 1: This level is in effect at all times and establishes the baseline conservation measures for the City.

1. Water Waste Prohibition: The following uses of water are defined as 'water waste' and are hereby prohibited except as otherwise authorized:

(a) The washing of sidewalks, driveways, filling station aprons, porches or other outdoor surfaces except when necessary to protect the public health and safety.

(b) The washing of the exterior of dwellings, buildings, and structures, with the following exceptions:

(1) Window washing,

(2) Washing in conjunction with the painting of the exterior of a dwelling, building or structure,

(3) Washing of a dwelling, building or structure may be allowed once every twelve (12) months.

All exceptions listed above must comply with Sections 15.42.100(A) and (B) and the hose(s) must be fitted with an automatic shutoff device(s).

(c) The operation of any ornamental fountain or other such structure making use of water from the City domestic water

system, unless such fountain or structure uses a recirculating water system.

(d) The use of water, except for domestic use, where an adequate source of water is available whether such alternate source is reclaimed water, well water, spring water, or other source.

(e) The external washing of trailers, trailer houses, mobile homes, and home exteriors unless in conjunction with painting the exterior of such trailers, or homes with an automatic shut-off device.

(f) The washing of boats or motor vehicles with a hose that is not fitted with an automatic shut-off device.

(g) The indiscriminate running of water or washing with water not otherwise prohibited above which is wasteful and without reasonable purpose.

(h) The application of potable water to outdoor landscapes during and within forty-eight (48) hours after measurable rainfall.

(i) All car wash fundraisers must be held at an established car washing facility that collects and recycles the run-off water before it enters the City's sewer system. When held in a parking lot, car washes can cause pollutants such as soap, dirt, oil grease, and other automotive fluids to enter the storm drain system.

(j) The serving of drinking water other than upon request in eating or drinking establishments, including but not limited to

restaurants, hotels, cafes, cafeterias, bars, or other public places where food or drink are served and/or purchased.

(k) To promote water conservation, operators of hotels and motels shall provide guests with the option of choosing not to have towels and linens laundered daily. The hotel or motel shall prominently display notice of this option in each guestroom using clear and easily understood language.

B. Level 2: This level shall be in effect when the Department of Water Resources determines the condition of Groundwater Basin is in a state of critical Over Draft. During any time in which Level 2 restrictions are imposed the following mandatory conservation restrictions shall apply in addition to all Level 1 restrictions on water waste.

1. Three Day Watering Schedule:

(a) Any sprinkling, watering, or irrigation between the mid-day hours of nine a.m. and nine p.m. is prohibited.

(b) Watering by persons with even numbered addresses or on properties without an assigned address is only allowed on Tuesdays, Thursdays, and Saturdays.

(c) Watering by persons with odd numbered addresses is only allowed on Wednesdays, Fridays, and Sundays.

(d) Any watering by persons on Mondays with the exception of parks is prohibited.

C. Level 3: This level shall be in effect when the City Council has declared a state of emergency due to drought. During any time in which level 3 restrictions are imposed the following mandatory conservation restrictions shall apply in addition to all non-conflicting Level 1 and Level 2 restrictions.

1. Two Day Watering Schedule:

(a) Any sprinkling, watering, or irrigation between the mid-day hours of nine a.m. and nine p.m.

(b) Watering by persons with even numbered addresses or on properties without an assigned address is only allowed on Tuesdays and Saturdays.

(c) Watering by persons with odd numbered addresses is only allowed on Wednesdays and Sundays.

(d) Parks, commercial nurseries, cemeteries, and schools are exempt from subsections C.1 of this section but will be requested to curtail all nonessential water use.

2. The Drought Water Rate Schedule pursuant to Merced Municipal Code Section 15.36.070 will be implemented.

D. Level 4: This level shall be in effect during times of catastrophe, i.e., system failure, natural disaster and/or when City Council deems it necessary. During any time in which Level 4 restrictions are imposed the following mandatory conservation restrictions shall apply in addition to all non-conflicting Level 1, Level 2, and Level 3 restrictions.

1. Restricted Watering:

(a) All landscape irrigation shall be prohibited.

(b) Minimal essential watering of trees and shrubs with a bucket, handheld hose with a positive shutoff nozzle, or low volume non-spray irrigation shall be allowed.

(c) Maintenance of landscaping within active public parks and playing fields, schools, and cemeteries, provided that such irrigation does not exceed two (2) days per week according to the schedule established in Level 3.

(d) All leaks detected in landscape irrigation systems or water systems shall be repaired within twenty four (24) hours of notification by the City of Merced unless other arrangements are made with the Director.”

**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.



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**AYES: Council Members:**

**NOES: Council Members:**

**ABSTAIN: Council Members:**

**ABSENT: Council Members:**

**APPROVED:**

\_\_\_\_\_  
**Mayor**

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

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

**(SEAL)**

**APPROVED AS TO FORM:**

Kelly Emmer 10-8-18  
**City Attorney Date**



## ADMINISTRATIVE REPORT

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### Agenda Item J.1.

Meeting Date: 10/15/2018

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*Report Prepared by: Julie Nelson, Associate Planner, Development Services Department*

**SUBJECT:** Information Only - Overview of Bellevue Ranch

### REPORT IN BRIEF

The City Council will receive an overview of the Bellevue Ranch project and a preview of upcoming changes.

### RECOMMENDATION

For Information Only.

### DISCUSSION

The Bellevue Ranch Master Development Plan (BRMDP) was originally approved in 1995 and included a 1,385-acre area (Attachment 1). The BRMDP provided a vision and standards for the development that would include commercial, transit, and low and high density residential uses (Attachment 2). Development within the Master Plan area was done in phases with the area east of M Street and south of Bellevue Road being the first phase to develop; this area is commonly referred to as Bellevue Ranch East. The area west of M Street and south of Bellevue Road is commonly referred to as Bellevue Ranch West, and the area north of Bellevue Road is commonly referred to as Bellevue Ranch North. These areas are shown on the map at Attachment 1. Within each sub-area (East, West, North), the land was subdivided into larger parcels or villages to allow the development of subdivisions; there are a total of 36 villages within the Master Plan Area. The proposed land use map at Attachment 3 shows the location of each of the villages within the Master Plan Area.

Through the years, some of the original land uses have been changed, and currently there are changes that the developer is proposing (Attachment 3) in Bellevue Ranch West and Bellevue Ranch North. Staff will provide an overview of past changes and proposed changes at the City Council meeting. The proposed changes would be reviewed by both the Planning Commission and City Council at future meetings for action or recommendation to the City Council.

One of the greatest challenges with the development of the Bellevue Ranch area is the large amount of infrastructure needed. There are a number of bridges, roads, and traffic signals that are needed to complete the circulation within this area. The timing of the construction of the required infrastructure is specified in Table 6.1 of the BRMDP. Staff is working with the developer on possible changes to the timing of the infrastructure; changes to Table 6.1 would require a General Plan Amendment and would go before the Planning Commission for recommendation prior to coming before the City Council for final action.

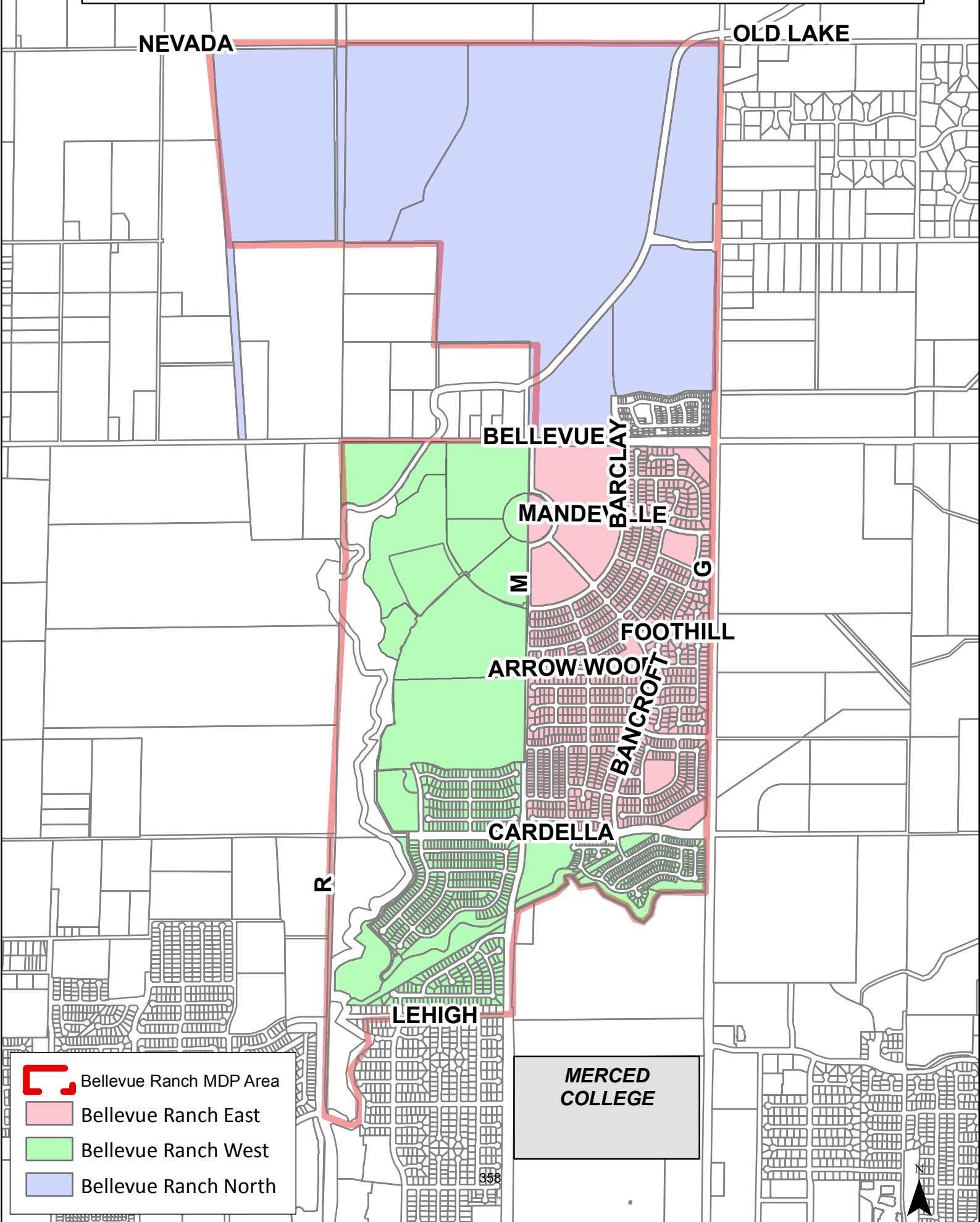
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There are many aspects to the development of the Bellevue Ranch area. At the meeting, staff will attempt to provide some history as well as a look at future changes that will come before the City Council in order to help the Council better understand the issues with this large development.

**ATTACHMENTS**

1. Location Map
2. Original Land Use Map
3. Proposed Land Uses and Villages
4. Presentation

# BELLEVUE RANCH MASTER DEVELOPMENT PLAN AREA



# RANCH

**CALIFORNIA**



**MERCED, CALIFORNIA**



# Bellevue Ranch Overview

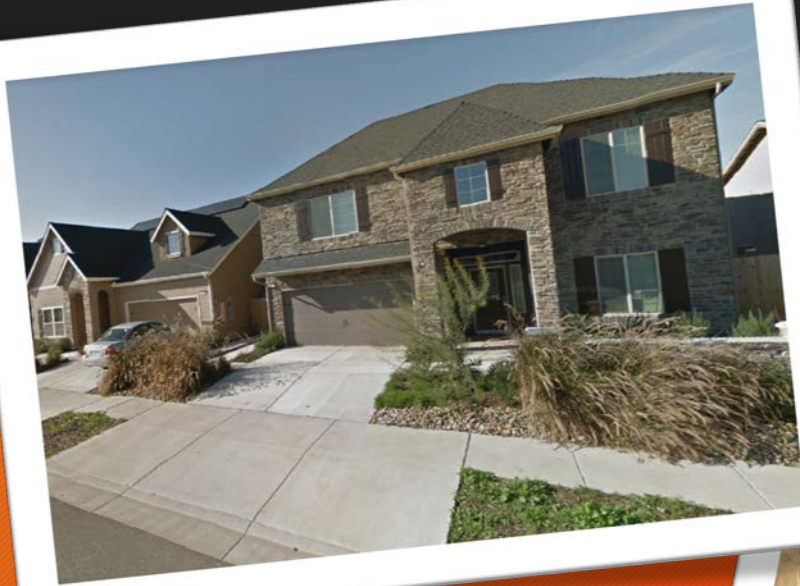
City Council October 15, 2018



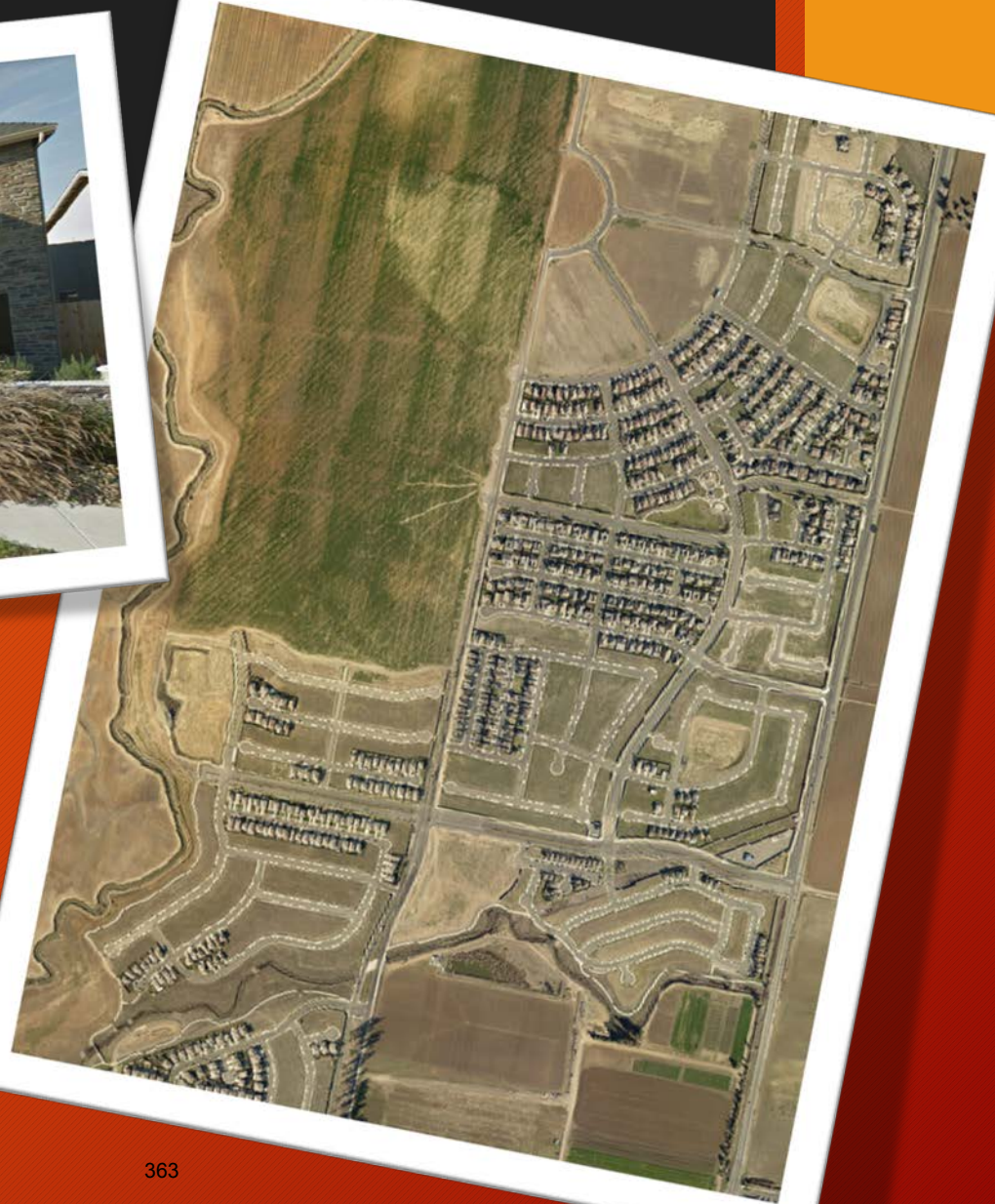


Bellevue Ranch - Days of Old...





## Bellevue Ranch Today

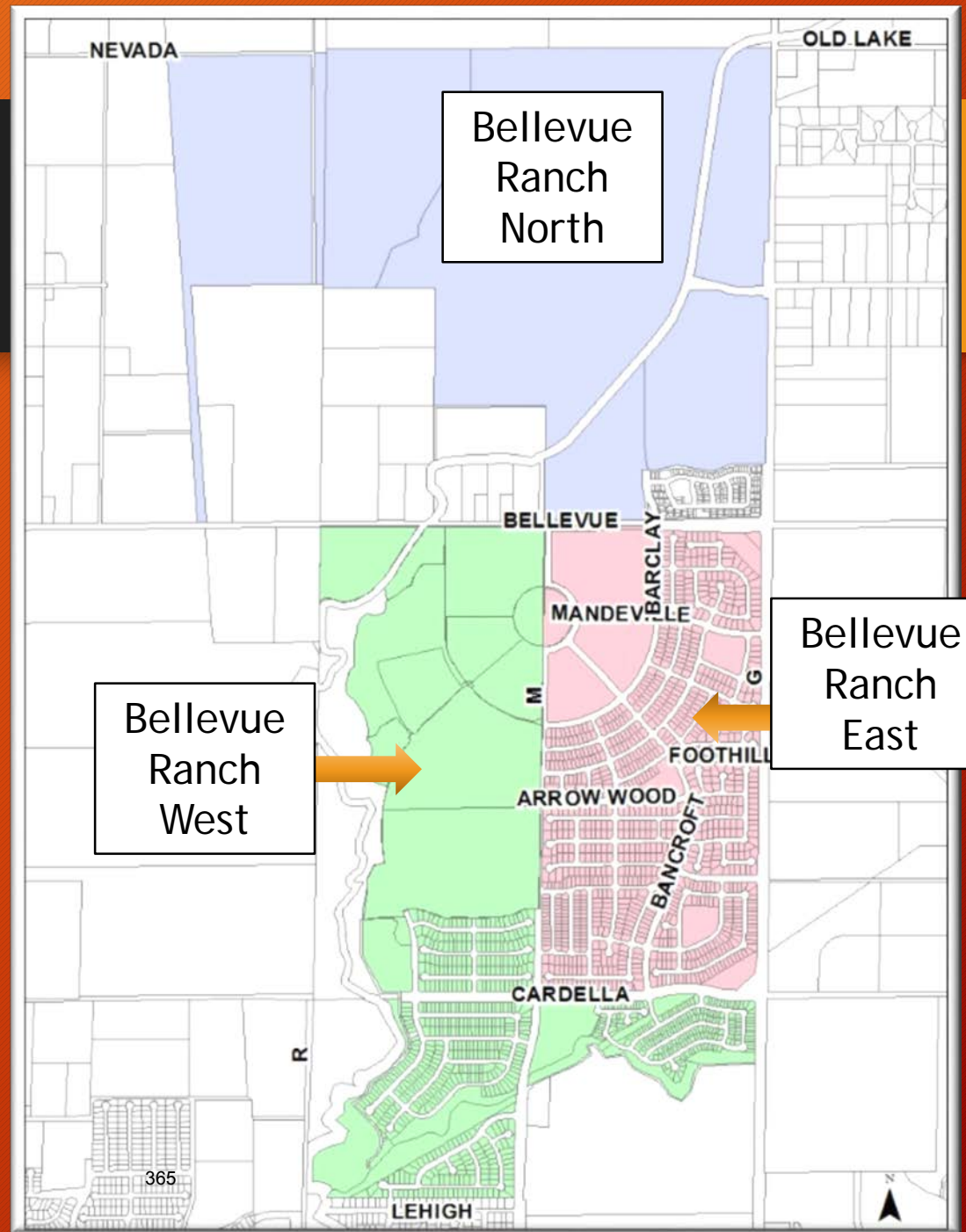
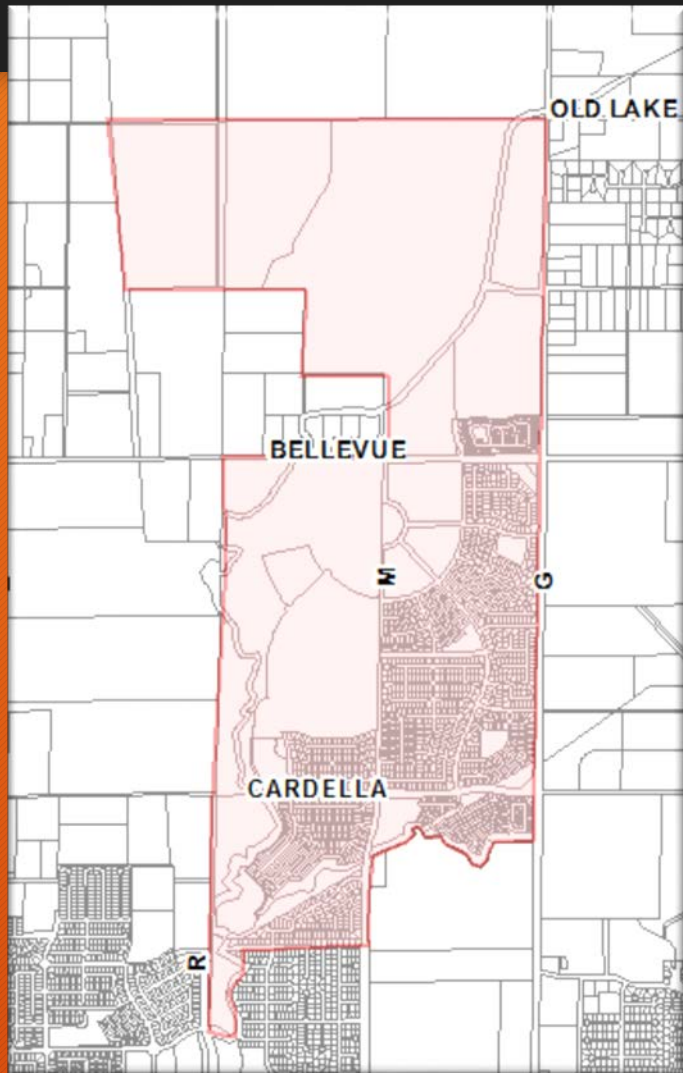


# MASTER DEVELOPMENT PLAN

- ADOPTED BY CITY COUNCIL MAY 15, 1995
- INCLUDES 7 SECTIONS
  1. INTRODUCTION
  2. LAND USE
  3. CIRCULATION
  4. PARKS/OPEN SPACE AND RECREATION
  5. PUBLIC FACILITIES, SERVICES, & INFRASTRUCTURE
  6. PHASING, INFRASTRUCTURE SEQUENCING, FACILITIES BENEFITS AND FINANCING MECHANISMS
  7. CONSISTENCY ANALYSIS



# MASTER DEVELOPMENT PLAN AREA



# DEVELOPMENT AGREEMENT

- ADOPTED BY CITY COUNCIL MAY 15, 1995
- 40-YEAR TERM
- DEVELOPMENT AGREEMENT TERMINATED FOR VILLAGES 1, 2, 3, 4, 5, and 10 - ORD. #2331 (May 4, 2009)
- TERM REDUCED TO 25 YEARS FOR PORTIONS OF BELLEVUE RANCH WEST
- CURRENT DEVELOPER WILL BE SUBMITTING A REQUEST TO CHANGE THE AGREEMENT BACK TO THE ORIGINAL 40 YEAR TERM.

1,365 Acres

# Original Proposed Land Use Summary

LAND USE	GROSS ACRES	D.U. RANGE	DWELLING UNITS
Single Family Detached Standard Homes	561.7	4.0-5.0 du/ac	2,247-2,808
Single Family Detached Patio Homes	334.0	5.5-6.5 du/ac	1,837-2,171
Multi-Family	75.9	10.0-22.0 du/ac	759-1,669
Commercial	91.8		
Office	23.1	Total Single-Family Homes - 4,084 to 4,979	
Elementary Schools	20.8		
Park and Transit Station	14.7		
Park	78.2		
Open Space/ Creeks/Easements/Corridors	119.9		
High School	43.0		
Fire Stations	2.5 <sup>367</sup>		

# Land Use Changes

Application	Land Use Change
General Plan Amendment #04-01	Changed Villages 2 & 3 from Low Density (LD) to Low-Medium Density (LMD)
General Plan Amendment #04-09	Changed Lot Q from High School to Low Density (LD) and Low-Medium Density (LMD)
SUP Revision #4	Removed park site from Lot Q
Site Plan Review #252	Removed Fire Station designation from Village 7
General Plan Amendment #07-02	Changed Village 20 from Low Density (LD) to High School

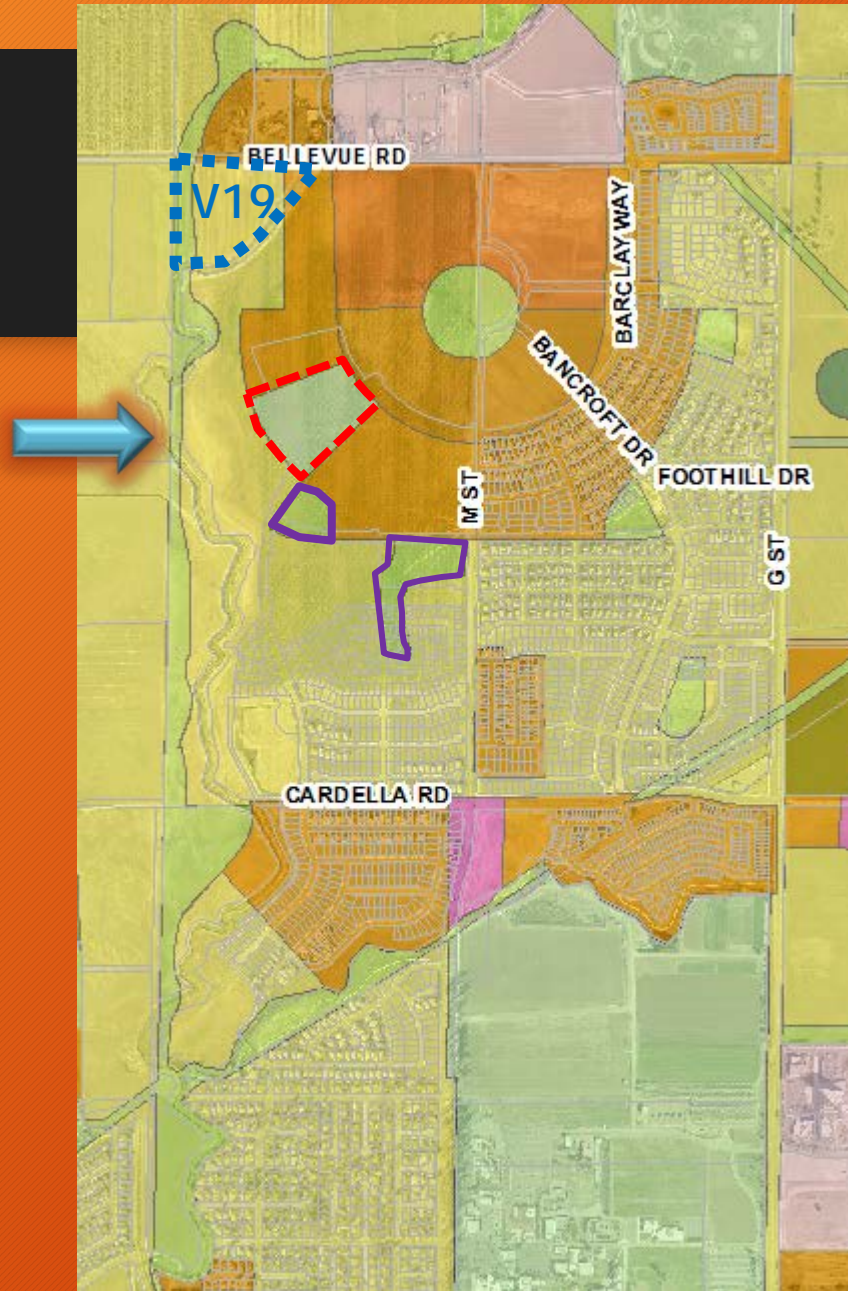


# Land Use Changes

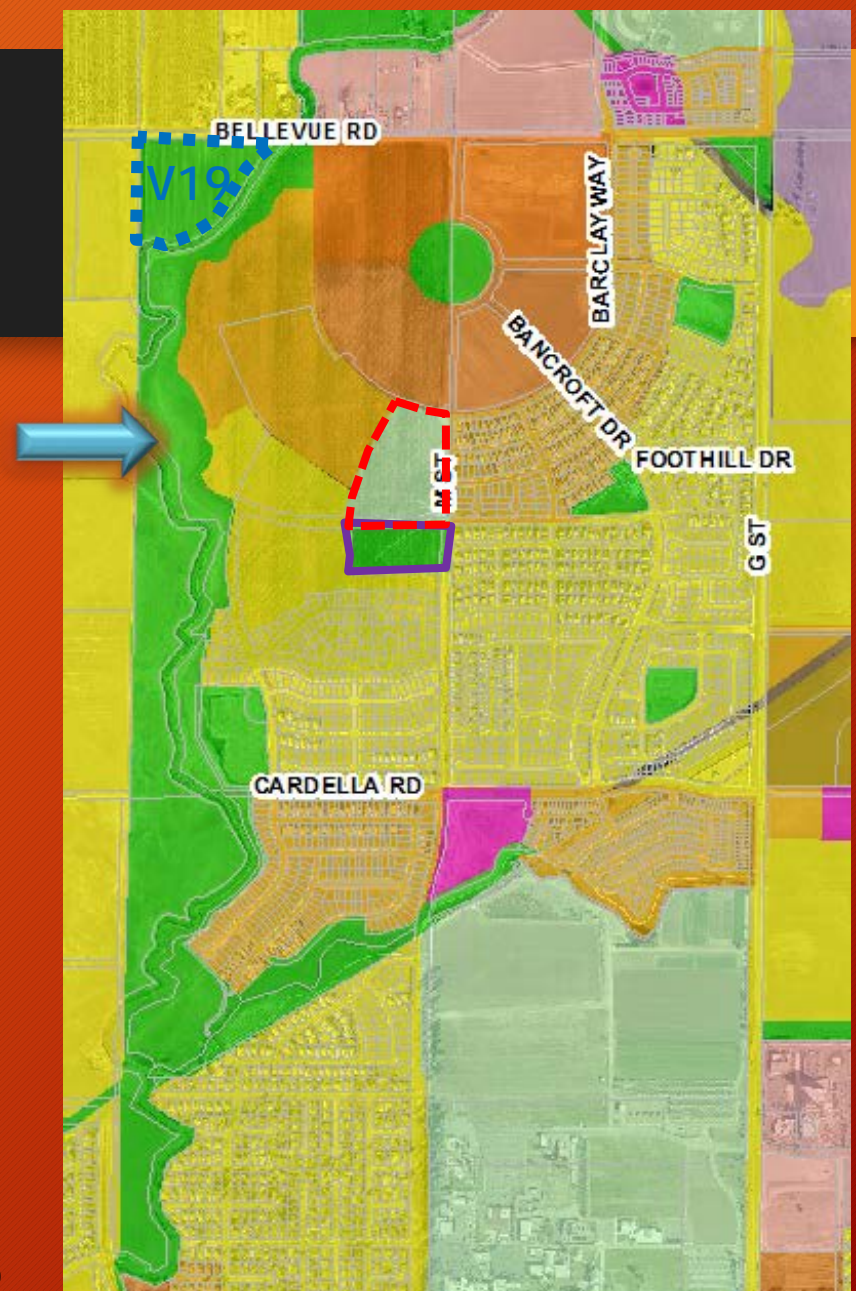
## Changes made with General Plan Update

- Moved School Site from Village 18 to Village 17.
- Moved Park location in Village 17 (and reduced park size).
- Reduced Park Size in Village 12.
- Changed Village 19 from Single-Family to Open Space

# 2015 General Plan



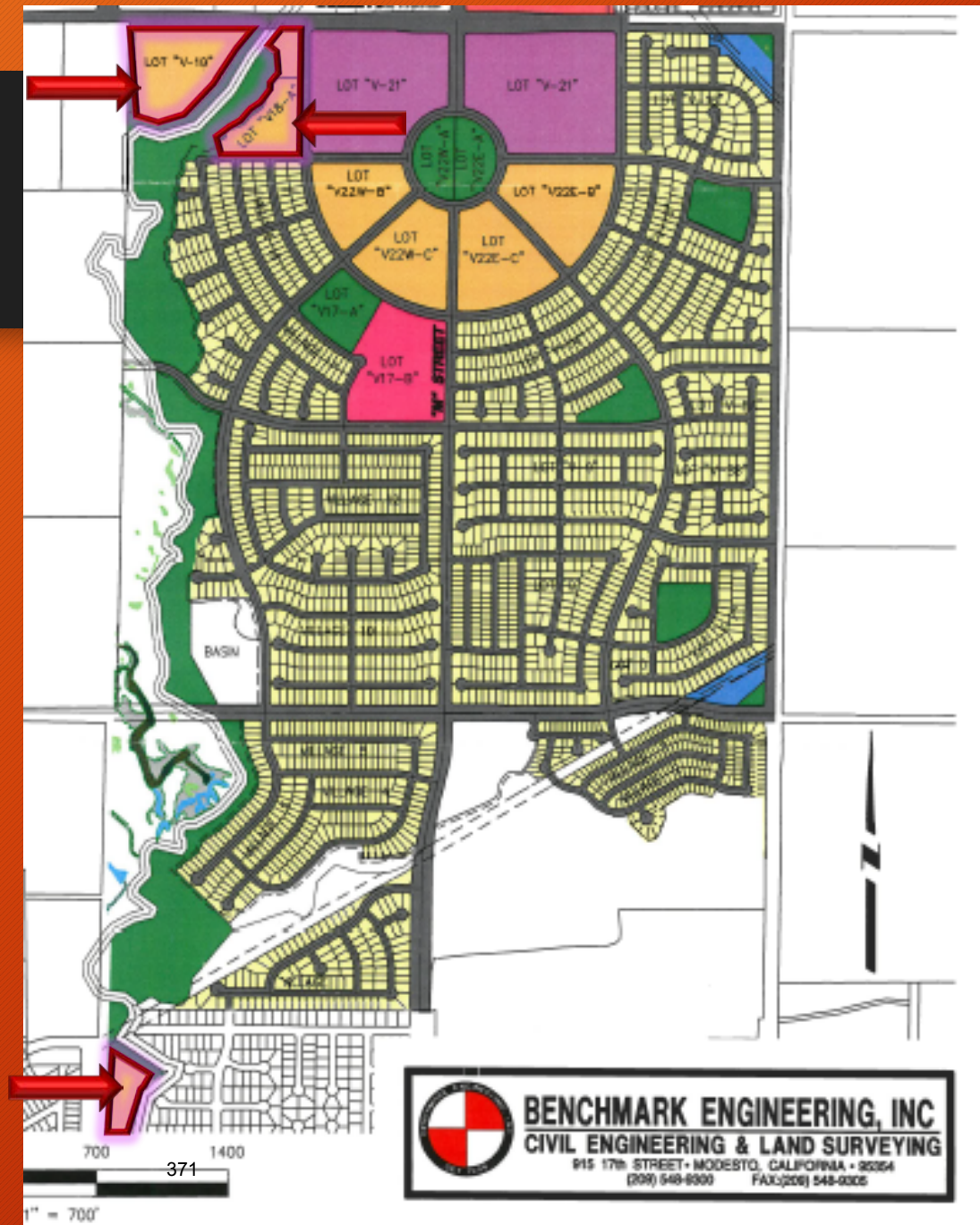
# 2030 General Plan



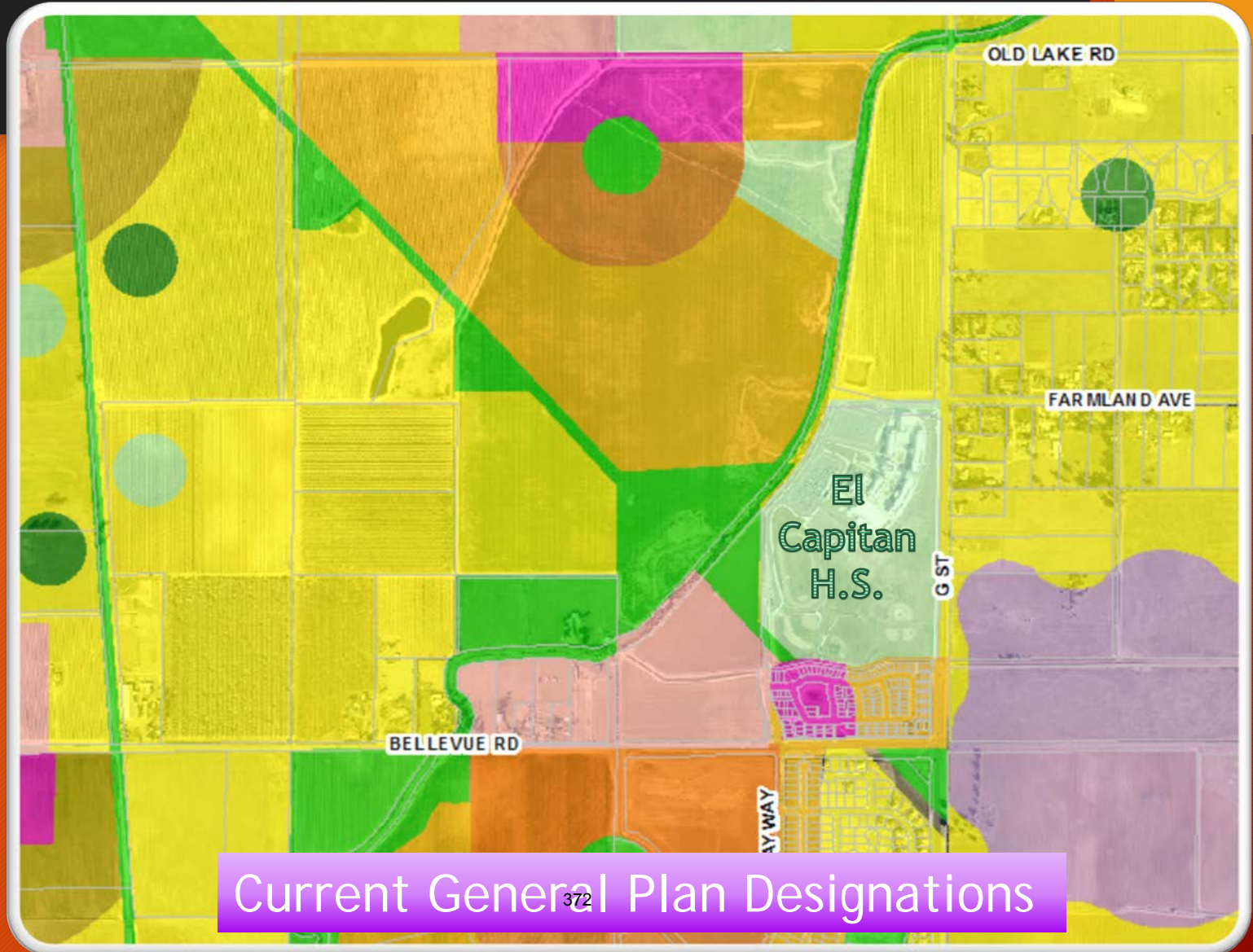


# Future Land Use Changes

Future changes to  
Villages 18 & 19  
and  
Open Space Area on  
R Street, South of  
Lehigh Dr.



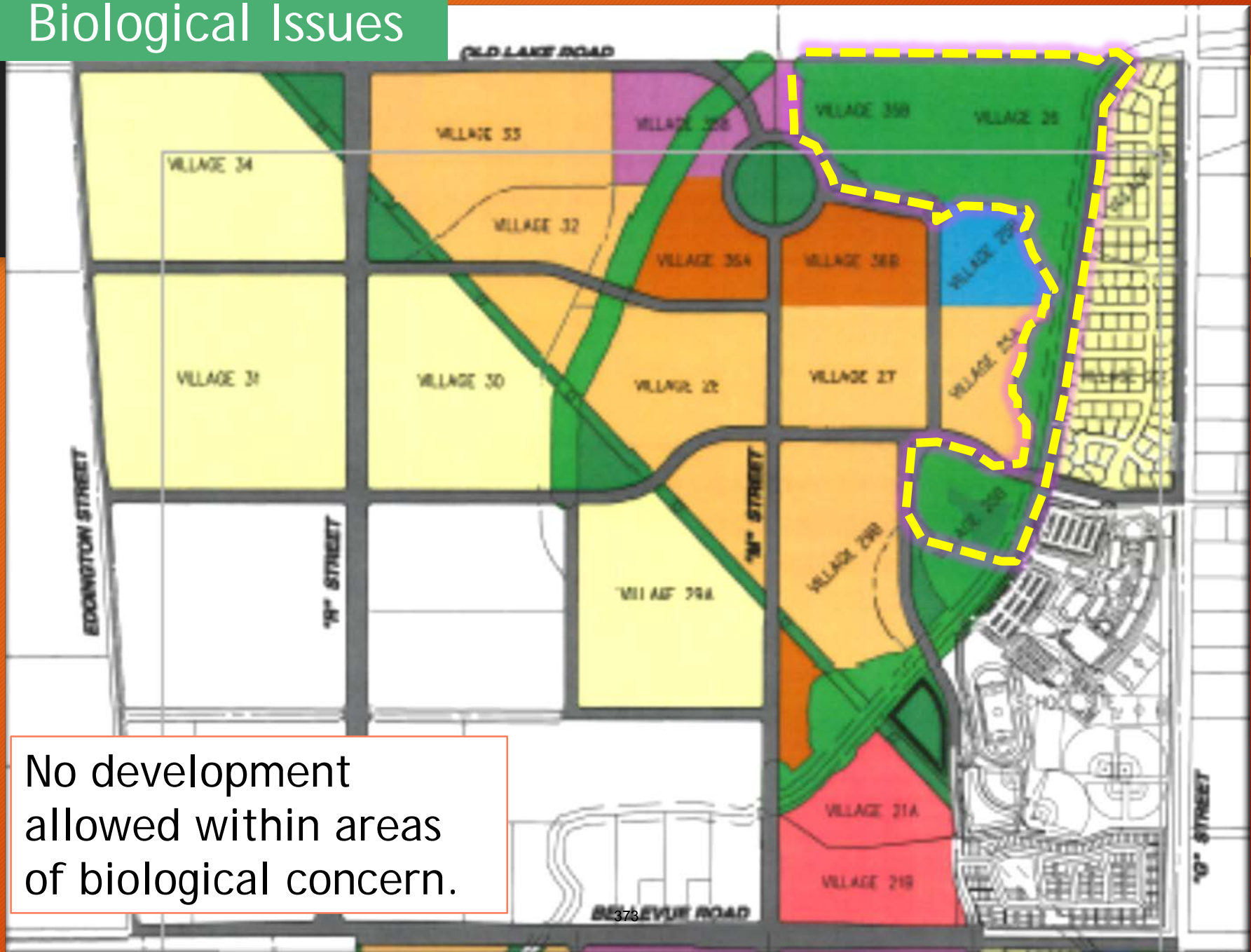
# Bellevue Ranch North



Current General Plan Designations



# Biological Issues



No development  
allowed within areas  
of biological concern.

## SECTION 3 CIRCULATION

A key goal of the Master Development Plan is to provide a multi-modal transit oriented circulation system which will accommodate safe and efficient movement of vehicles, pedestrians, and bicyclists within and through the Plan Area.



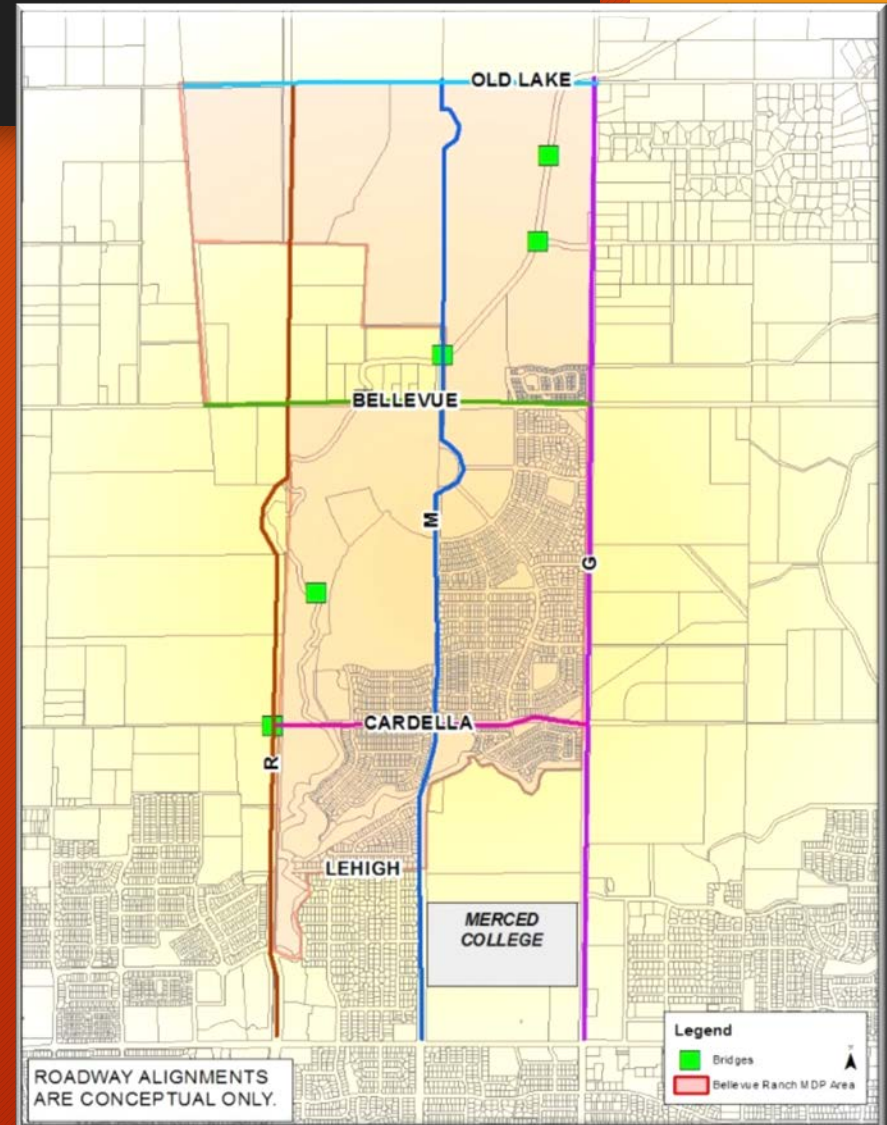


# SECTION 3 CIRCULATION

## MAJOR ROADS:

- ☐ G STREET
- ☐ M STREET
- ☐ R STREET
- ☐ CARDELLA ROAD
- ☐ BELLEVUE ROAD
- ☐ OLD LAKE ROAD

## BRIDGES TO BE CONSTRUCTED



# Major Roads/Bridges Needed

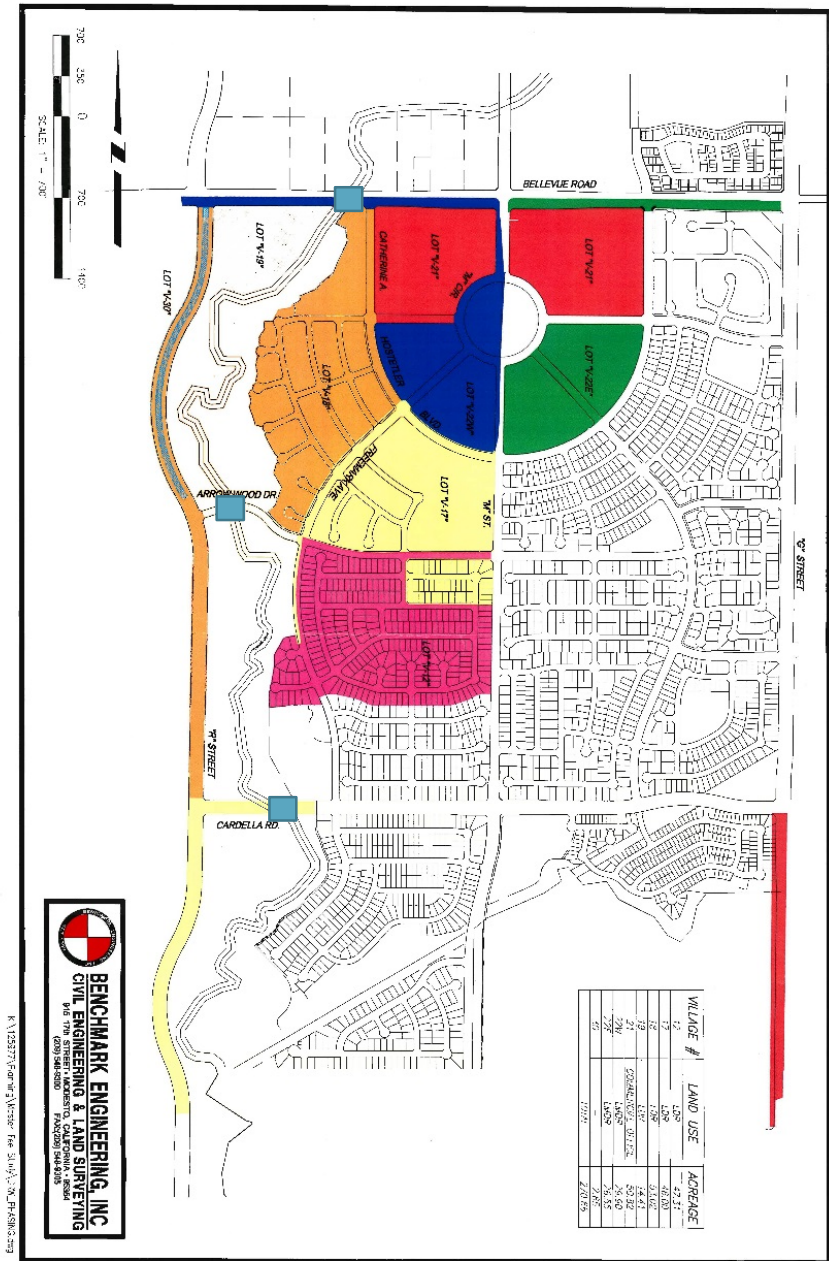
## BELLEVUE RANCH WEST

- G Street at Cottonwood Creek
- R Street from current terminus to Bellevue Road
- Bellevue Road from R Street (extended) to G Street
- Bridges
  - Cardella Road
  - Bellevue Road
  - Arrow Wood Drive

# Roads/Bridges

# BELLEVUE RANCH WEST

- G Street from Cardella South to Mercy Drive
- R Street from current terminus to Bellevue Road
- Bellevue Road R Street to G Street
- Complete M Circle
- Bridges
  - Cardella Road
  - Bellevue Road
  - Arrow Wood Drive



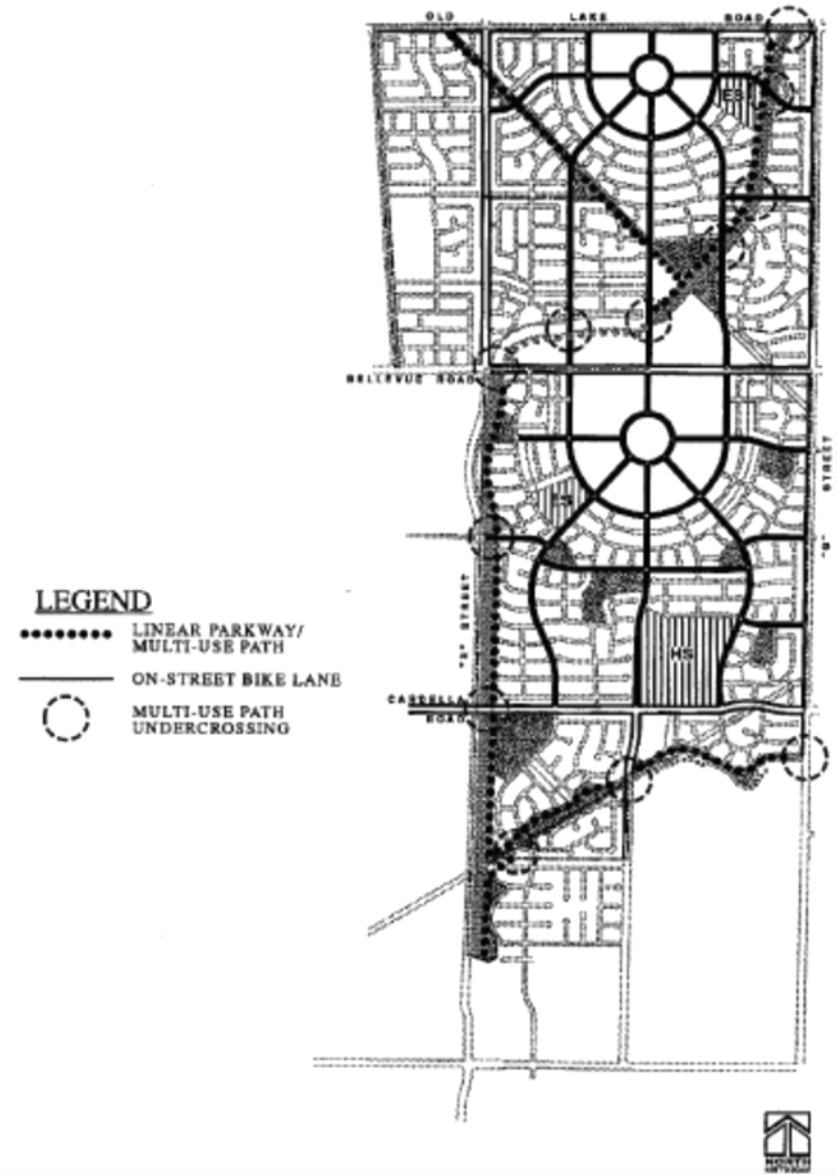


# Bikeways

Class 1 Bike Lanes along arterial and collector roads.

Bike Path along linear parks. Fahrens Creek (north/south) and Cottonwood Creek (east/west)

## NON-VEHICULAR CIRCULATION SYSTEM BELLEVUE RANCH



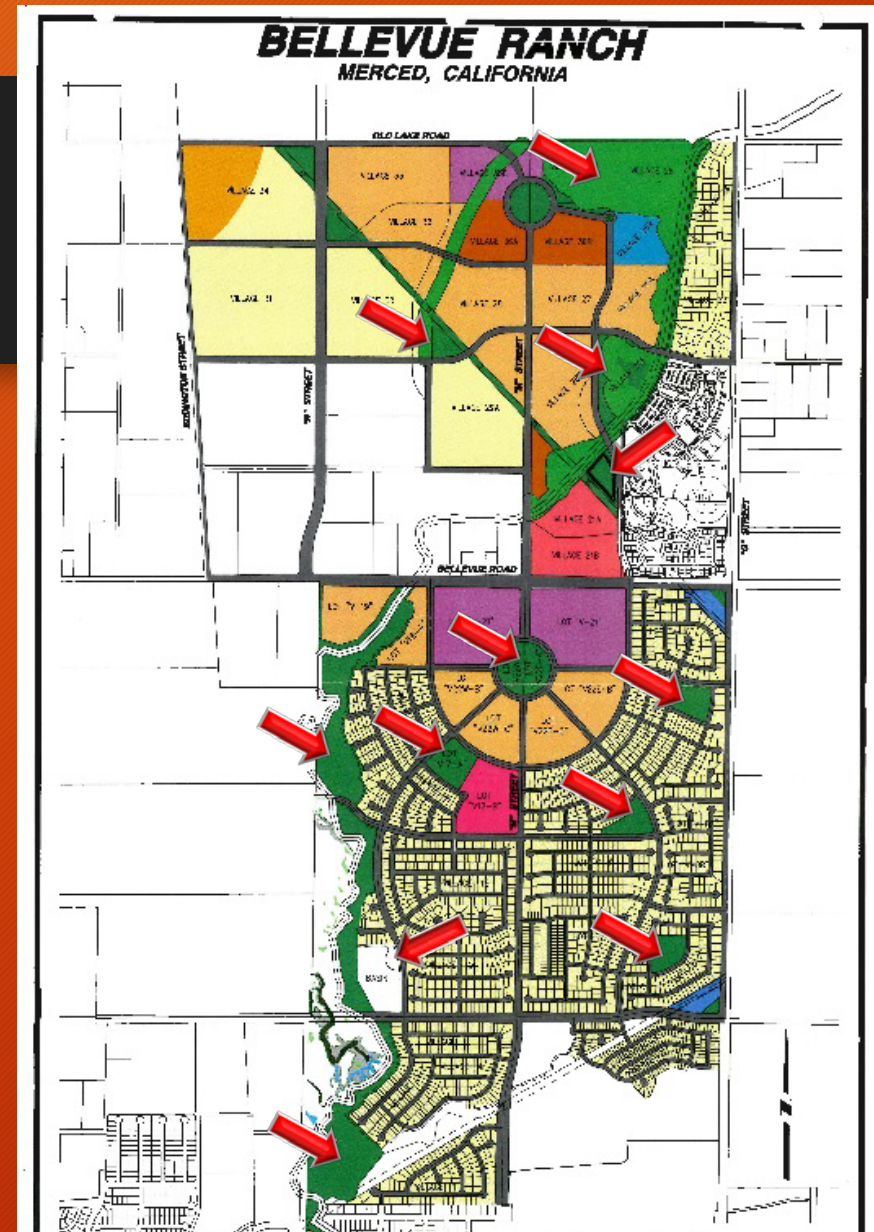


## SECTION 4 OPEN SPACE/PARKS

- The Merced Parks & Open Space Plan identifies a park dedication of 5.0 acres per 1,000 population.
- The Plan calls for open space along Fahrens Creek, bicycle/pedestrian paths, natural Creekside amenities and pocket parks.
- The plan identifies a Class I bikeway along Fahrens and Cottonwood Creeks and Class II bikeways along arterial roads.

# Park Sites

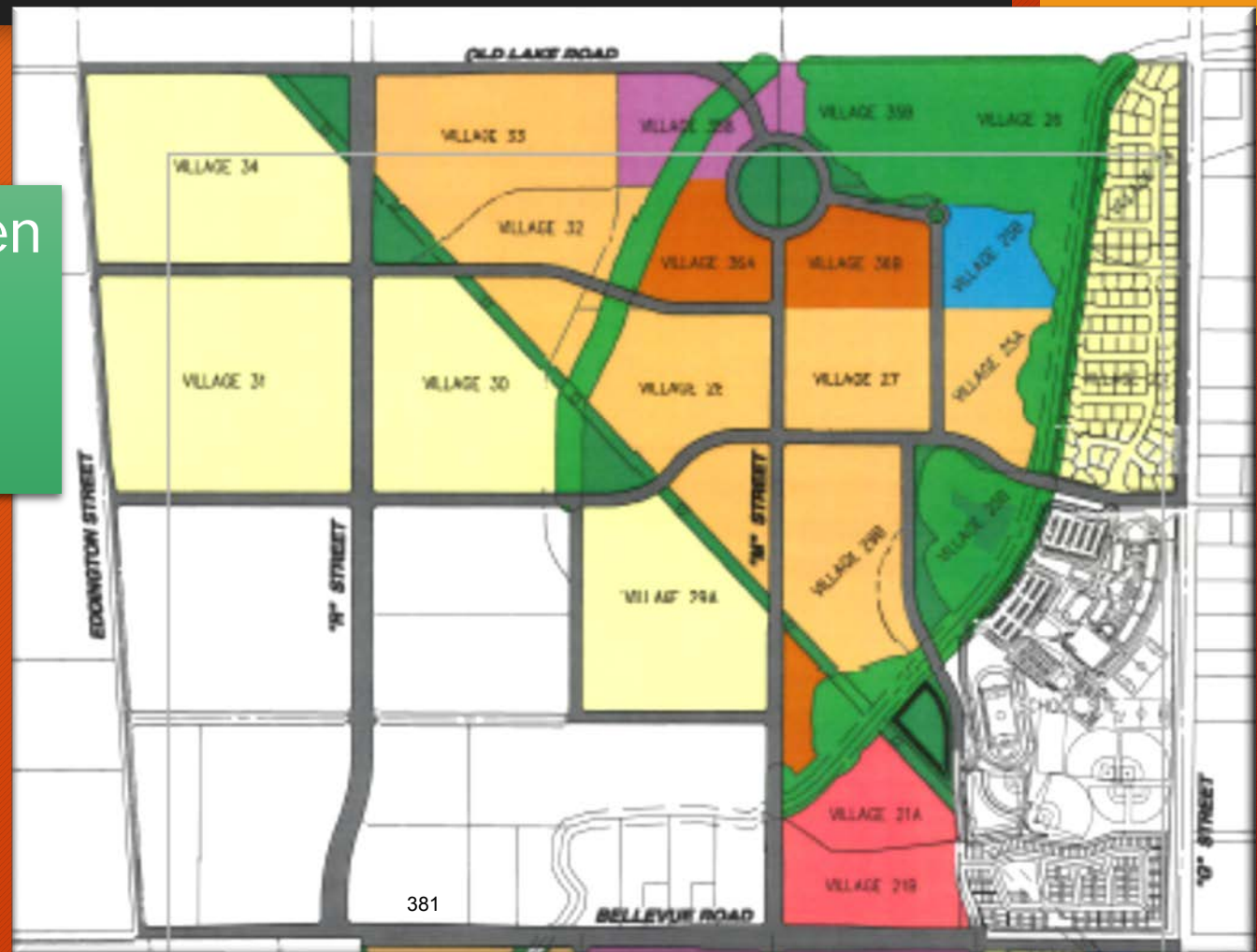
- 3 Park Sites in Bellevue Ranch East
- 2 Park Sites in Bellevue Ranch West (BRW)
- Linear Park in BRW
- 4 Park Sites in Bellevue Ranch North (BRN)
- Open Space and Linear Park in BRN



Future land use changes needed for some of the open space in BRN.

# Future Changes to Open Space

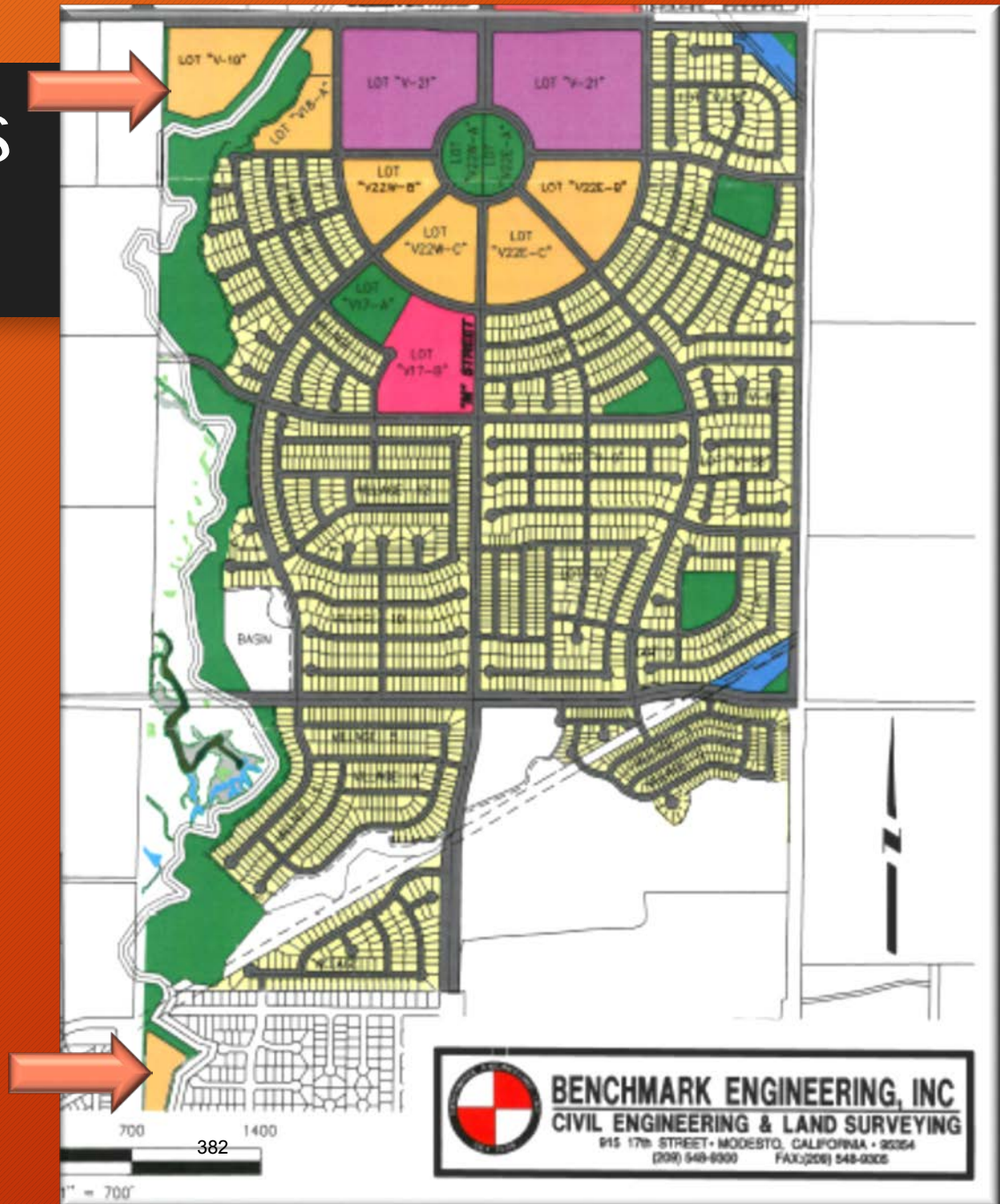
Additional open space due to biological issues.





# Future Changes To Open Space

Change from  
Open Space  
to Multi-  
Family



# SECTION 6 INFRASTRUCTURE SEQUENCING

**Bellevue Ranch Master Development Plan (MDP) Table 6.1  
Major Infrastructure Phasing**  
(Revised & Adopted by City Council on June 21, 2004)  
(Revision & Adopted by Planning Staff on August 17, 2005)  
(Revision & Adopted by Planning Commission on June 18, 2008)

The following table shows the same circulation and major infrastructure improvements listed in the MDP Table 6.1, adopted by the City Council May 15, 1995, in the columns for contiguous and non-contiguous improvements. Two new columns have been added to show the village interior improvements as well as concurrent construction phasing. This table indicates when certain improvements are **warranted** by Sub-Phase development. It does not address funding sources or the timing of available funding. In general, each Developer shall be responsible for construction of the warranted improvements, with the exception of wells, which the City will construct.

The Sub-Phases have been reorganized to show the order in which the Villages are now expected to be developed by Crosswinds and Woodside, for the area south of Bellevue Road. North of Bellevue Road the order shown in the adopted Table 6.1 shall be maintained except as noted. MDP Villages 6, 11, 13 and 19 have been excluded from this proposed sequence due to floodplain constraints.

Sub-Phase (Village)	Contiguous Improvements	Non-Contiguous Improvements	Interior Improvements	Villages Able to Construct out of sequence with this sub-phase
BIIP I	None	<ul style="list-style-type: none"> <li>M St (Barclay Rd. to Lehigh)(1/2 street)</li> <li>M St Cottonwood Creek Bridge (1/2 Street)</li> <li>Well Site (G St/ Cardella Rd)</li> </ul>	<ul style="list-style-type: none"> <li>BIIP I Collectors</li> <li>Sewer, Drain and Water</li> <li>Detention Basins DB-P, T and U</li> <li>Storm Drain and Sewer Pump Stations Outfalls</li> </ul>	<ul style="list-style-type: none"> <li>Village 15, 16, 8A, 14 and 9</li> </ul>
8A	None	None	<ul style="list-style-type: none"> <li>V-8A streets and utilities</li> </ul>	<ul style="list-style-type: none"> <li>Concurrent with BIIP I</li> </ul>
15	None	<ul style="list-style-type: none"> <li>Fire Station Dedication</li> </ul>	<ul style="list-style-type: none"> <li>Village-15 streets and utilities</li> </ul>	<ul style="list-style-type: none"> <li>Concurrent with BIIP I</li> </ul>
1	<ul style="list-style-type: none"> <li>M St: Lehigh to Cottonwood Ck (1/2 Street)</li> <li>M St: Cottonwood Bridge (1/2 street) and bike crossing</li> </ul>	<ul style="list-style-type: none"> <li>M St: Cottonwood Ck to Cardella Rd intersection (1/2 street)</li> </ul>	<ul style="list-style-type: none"> <li>V-1 streets and utilities</li> </ul>	<ul style="list-style-type: none"> <li>None</li> </ul> <p>Note: Sub-Phase (Village) 1 is not dependent on Sub-Phases BIIP I, 8A, and 15.</p>
9	None	None	<ul style="list-style-type: none"> <li>V-9 streets and utilities</li> </ul>	<ul style="list-style-type: none"> <li>Concurrent with BIIP I</li> </ul>

TABLE 6.1

ADOPTED WITH BRMDP IN 1995  
REVISED IN 2004, 2005, & 2008

# Table 6.1 Explained

- Divided by Villages
- Contiguous Improvement Requirements
- Non-contiguous Improvement Requirements
- Interior Improvements Requirements
- Villages able to construct out of phase

BIIP - Backbone  
Infrastructure  
Improvement Plan

Bellevue Ranch Master Development Plan Table 6.1—Major Infrastructure Phasing				
Sub-Phase (Village)	Contiguous Improvements	Non-Contiguous Improvements	Interior Improvements	Villages Able to Construct out of sequence with this sub-phase
BIIP I	None	<ul style="list-style-type: none"> <li>• M St (Barclay Rd. to Lehigh)(1/2 street)</li> <li>• M St Cottonwood Creek Bridge (1/2 Street)</li> <li>• Well Site (G St/ Cardella Rd)</li> </ul>	<ul style="list-style-type: none"> <li>• BIIP I Collectors</li> <li>• Sewer, Drain and Water</li> <li>• Detention Basins DB-P, T and U</li> <li>• Storm Drain and Sewer Pump Stations Outfalls</li> </ul>	<ul style="list-style-type: none"> <li>• Village 15, 16, 8A, 14 and 9</li> </ul>
	384			



# Revisions to Table 6.1

- A number of changes have been made to Table 6.1.
- Changes shifted the timing of infrastructure improvements between villages.
- Changes removed certain improvements from the plan.
- Removed Villages 6, 11, 13, and 19.

# Cost of Infrastructure

- The developer estimates the cost for backbone infrastructure for Bellevue Ranch West to be approximately \$30,600,000.
- The cost estimate for backbone infrastructure for Bellevue Ranch North is approximately \$21,600,000.
- Some costs are reimbursable from the City's Public Facilities Financing Plan (PFFP).
- Staff is working with developer on a plan to revise Table 6.1 to more evenly spread the cost of this infrastructure.
- Staff is also looking into a development fee for Bellevue Ranch to help with the costs of these improvements.





# Loss of units due to biological constraints

- Large amount of land is now undevelopable due to biological constraints.
- This reduces the total number of lots and units able to be constructed.
- The cost of infrastructure per lot/development is higher due to the loss of this land.



# Future Revisions to Table 6.1

- Shifting the responsibility for certain improvements between villages to distribute the cost more evenly.
- Possible removal of certain improvements due to environmental constraints.

**BELLEVUE RANCH**

# Upcoming Projects

- Tentative Map for Village 23 in Bellevue Ranch North.
- General Plan Amendment for Bellevue Ranch West.
- General Plan Amendment for Bellevue Ranch North.

Things to come....



# TSM for Village 23



Gated  
Community.

Between 60 and  
70 lots.





# General Plan Amendment

## Bellevue Ranch North

Remove ¼-mile collector bridge between Villages 23 & 24.

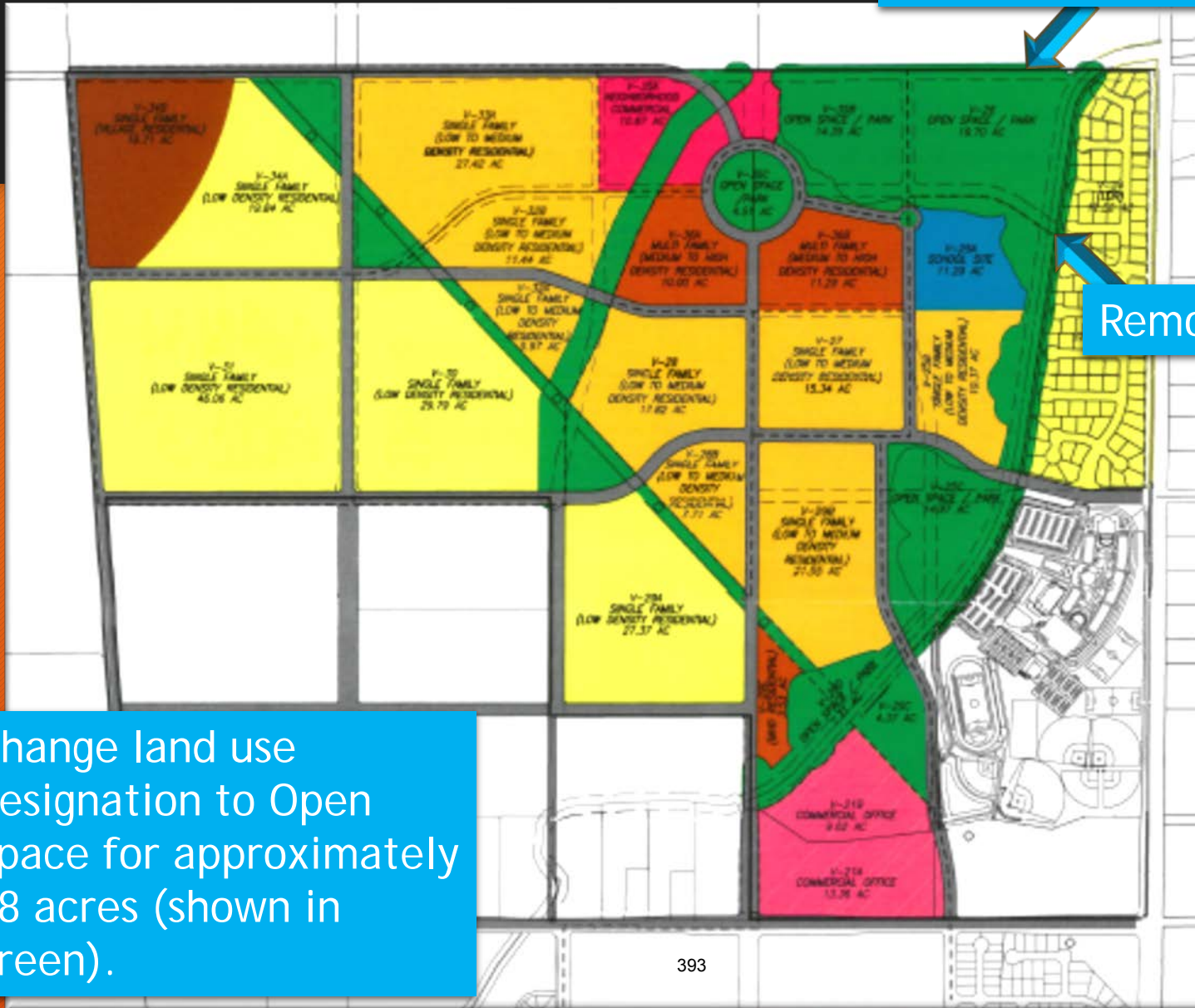
Change land use designations due to biological constraints.

Determine alignment for Old Lake Road.

Determine Alignment of  
Old Lake Road.

Remove bridge.

Change land use  
designation to Open  
Space for approximately  
48 acres (shown in  
green).



# LOT AND UNIT COUNT

Phase	Single-Family Lots	Multi-Family Units
Bellevue Ranch East	1,015	415
Bellevue Ranch West	1,245	800
Bellevue Ranch North	1,365	685
TOTAL	3,625	1,900
ORIGINAL ESTIMATES FROM BRMDP		
SINGLE-FAMILY	4,084 to 4,979	
MULTI-FAMILY		759 to 1,669



# QUESTIONS.....





## ADMINISTRATIVE REPORT

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**Agenda Item J.2.**

Meeting Date: 10/15/2018

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*Report Prepared by:* Steven C. Son, City Engineer, Engineering

**SUBJECT:** Update on Yosemite Avenue Corporation Yard Satellite (Leaf Collection Site)

### REPORT IN BRIEF

Provides a brief overview of the Corporation Yard Satellite facility with reduced scope.

### RECOMMENDATION

**City Council** - Adopt a motion directing staff to open the bidding process with the revised/reduced scope.

### AUTHORITY

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

### CITY COUNCIL PRIORITIES

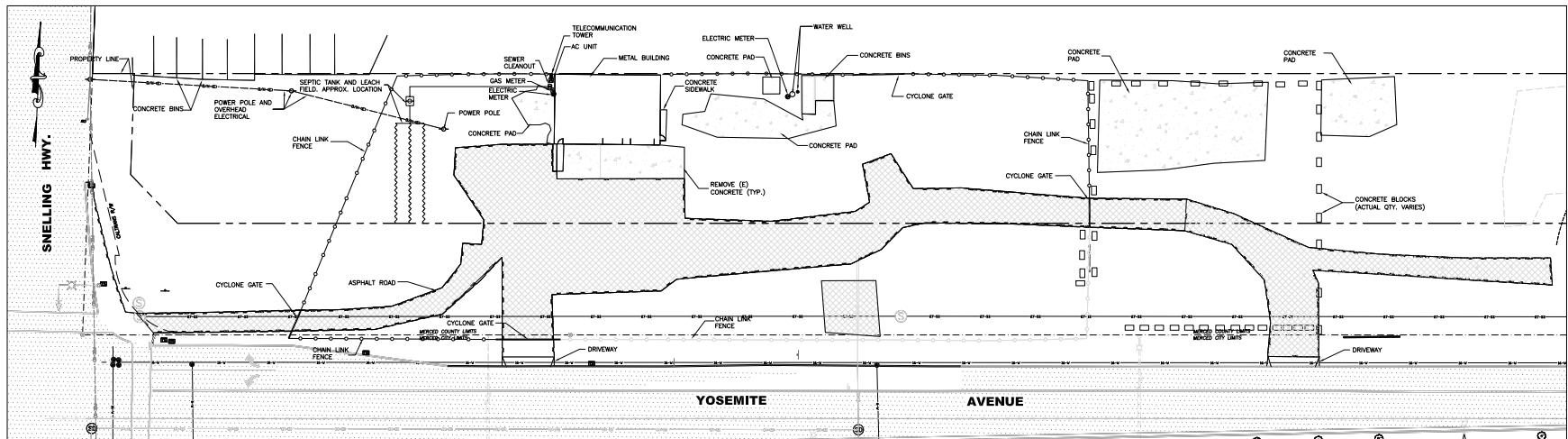
As provided for in the 2018-19 Adopted Budget

### DISCUSSION

On September 4, 2018, Staff requested Council reject all bids due to lack of project funding. With Staff's recommendation, Council rejected all bid and directed Staff to bring a revised site layout before Council as a recommendation and receive direction on how to proceed with the bidding process. Attached for the Council's consideration are the current site layout, the original scope of the project and the recommended revision to the site layout.

### ATTACHMENTS

1. Current site layout
2. Original rejected site layout
3. Revised site layout



### TOPOGRAPHIC SYMBOLS

---	STORM DRAIN	---	GUY WIRE
---	SEWER MAIN	---	GAS VALVE
---	WATER MAIN	---	POWER POLE
---	GAS MAIN	---	SEWER MANHOLE
---	UNDERGROUND ELECTRIC	---	STORM DRAIN MANHOLE
---	STREET LIGHT CONDUIT	---	STREET LIGHT
---	BENCHMARK	---	TRAFFIC SIGN
---	CATCH BASIN	---	TRAFFIC SIGNAL BOX
---	CABLE TV BOX	---	TRAFFIC CONTROL BOX
---	COMMUNICATION BOX	---	TRAFFIC SIGNAL
---	ELECTROLIER	---	TELEPHONE BOX
---	ELECTRIC BOX	---	UTILITY VAULT
---	TELEPHONE BOX	---	WATER METER
---	FOUND MONUMENT	---	WATER VALVE
---	FIRE HYDRANT	---	SPOT ELEVATION
---	TREE (SIZE INDICATED)	---	RADIO ANTENNA
---	AC UNIT	---	GAS VALVE
---	CLEAN OUT		
---	ELECTRIC METER		

### LEGEND

---	ON-SITE ASPHALT ROADWAY
---	EXISTING ROADWAY - OFFSITE
---	CONCRETE
---	EXISTING CONCRETE BLOCK
---	EXISTING SEPTIC TANK
---	PROPERTY LINE
---	RIGHT OF WAY LINE
---	LEACH FIELD

NO.	DATE	BY	REVISION MADE
1	6/05/06	JC	UPDATED RIGHT-OF-WAY

**Underground Service Alert**

**TWO DAYS BEFORE YOU DIG**

CHS: TOLL FREE 1 (800) 642-2444

NOTE: ALL REFERENCES AND WRITTEN DIMENSIONS SHALL TAKE PREFERENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE SITE. ANY DISCREPANCY SHALL BE BROUGHT TO NOTICE OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF ANY WORK.

**City of Merced**

*"Gateway to Yosemite"*

**PUBLIC WORKS**

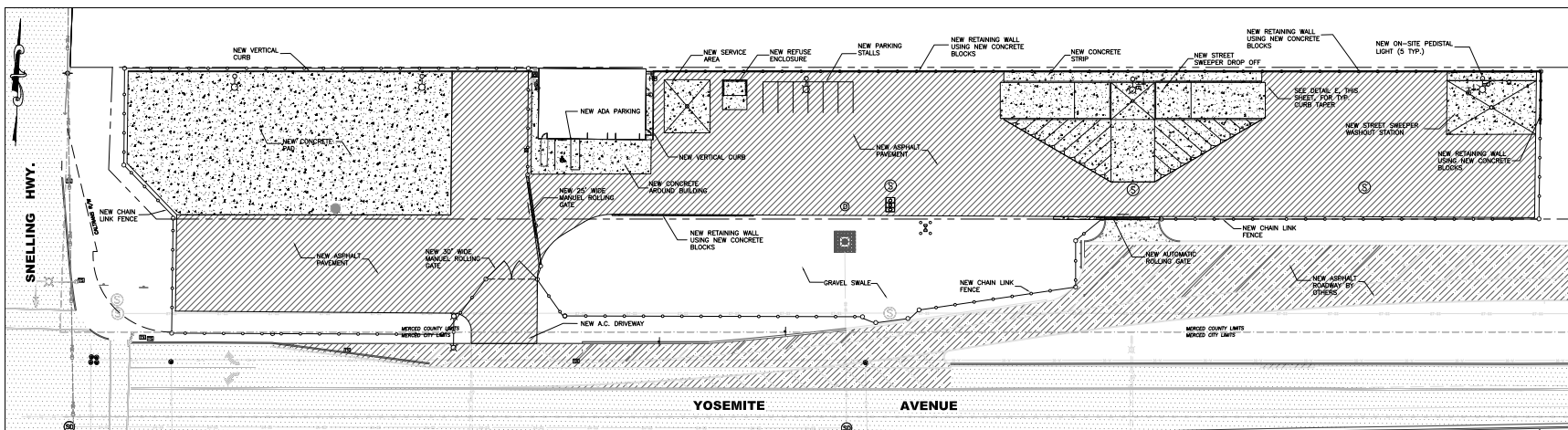
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

**EXISTING**

**PROJECT NO. 116017**  
**YOSEMITE AVE LEAF**  
**COLLECTION SITE**

DR. BY: PAF  
DATE: 3/9/18  
CH. BY:  
DATE:  
SCALE: 1"=30'

File No. 0952  
Sheet  
**1**  
of 3



# LEGEND

	NEW ASPHALT PAVEMENT		NEW WATERPROOF OUTDOOR ELECTRICAL OUTLET
	NEW CONCRETE		NEW CATCH BASIN
	EXISTING ASPHALT PAVEMENT		NEW STORM DRAIN MANHOLE
	NEW YOSEMITE AVE ALIGNMENT BY OTHERS		NEW 1500 GAL. SAND AND OIL INTERCEPTOR
	NEW CHAIN LINK FENCE		NEW SEWER CLEANOUT
	NEW FENCE SLIDING GATE		NEW REDUCED PRESSURE PRINCIPLE BACKFLOW PREVENTER WITH COMPOUND METER
	NEW FENCE SWING GATE		NEW HOSE BIB
	NEW ON-SITE STREET LIGHT		NEW WHARF HYDRANT
	STORM DRAIN INLET BY OTHERS		ELECTRICAL CONDUIT RISER
			SEWER MANHOLE
			BOLLARD

NO.	DATE	BY	REVISION MADE
1	6/05/06	JC	UPDATED RIGHT-OF-WAY

**Underground Service Alert**

**TWO DAYS BEFORE YOU DIG**

CHS: TOLL FREE 1 (800) 642-2444

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**City of Merced**  
"Gateway to Yosemite"

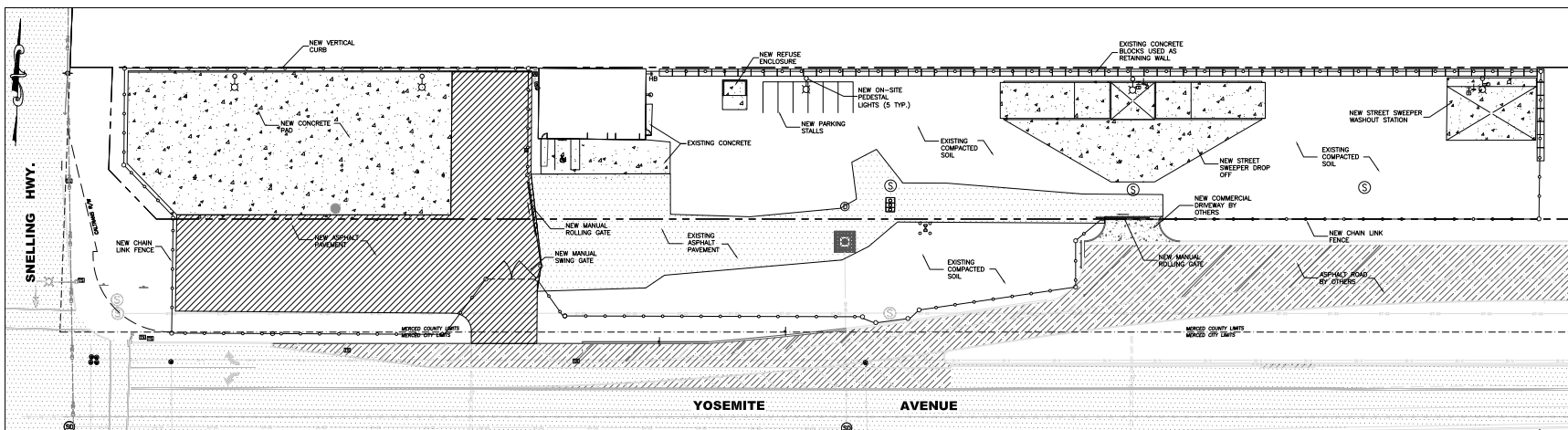
**PUBLIC WORKS**  
 ENGINEERING PROJECTS AND STANDARDS  
 678 W. 18th Street (209) 385-6846

**PROPOSED (OLD)**

**PROJECT NO. 116017  
 YOSEMITE AVE LEAF  
 COLLECTION SITE**

DR. BY: PAF
DATE: 9/18/16
CH. BY:
DATE:
SCALE: 1"=30'

File No. 0952
Sheet
<b>2</b>
of 3



# LEGEND

- |  |                                      |  |   |
|--|--------------------------------------|--|---|
|  | NEW ASPHALT PAVEMENT                 |  | NEW WATERPROOF OUTDOOR ELECTRICAL OUTLET                              |
|  | NEW CONCRETE                         |  | NEW CATCH BASIN   |
|  | EXISTING ASPHALT PAVEMENT            |  | NEW STORM DRAIN MANHOLE   |
|  | NEW YOSEMITE AVE ALIGNMENT BY OTHERS |  | NEW 1500 GAL. SAND AND OIL INTERCEPTOR                                |
|  | NEW CHAIN LINK FENCE                 |  | NEW SEWER CLEANOUT  |
|  | NEW FENCE SLIDING GATE               |  | NEW REDUCED PRESSURE PRINCIPLE BACKFLOW PREVENTER WITH COMPOUND METER |
|  | NEW FENCE SWING GATE                 |  | NEW HOSE BIB  |
|  | NEW ON-SITE STREET LIGHT             |  | NEW WHARF HYDRANT   |
|  | STORM DRAIN INLET BY OTHERS          |  | ELECTRICAL CONDUIT RISER  |
|  |                                      |  | SEWER MANHOLE   |
|  |                                      |  | ROLLARD   |

NO.	DATE	BY	REVISION MADE
1	6/05/06	JC	UPDATED RIGHT-OF-WAY

**Underground Service Alert**

**TWO DAYS BEFORE YOU DIG**

CHS: TOLL FREE 1 (800) 642-2444

NOTE:  
ALL REFERENCES AND WRITTEN DIMENSIONS SHALL TAKE PRECEDENCE OVER SCALED DIMENSIONS AND SHALL BE VERIFIED ON THE SITE. ANY DISCREPANCY SHALL BE BROUGHT TO NOTICE OF THE ENGINEER PRIOR TO THE COMMENCEMENT OF ANY WORK.

**City of Merced**  
"Gateway to Yosemite"

**PUBLIC WORKS**  
ENGINEERING PROJECTS AND STANDARDS  
678 W. 18th Street (209) 385-6846

**PROPOSED (NEW)**

**PROJECT NO. 116017  
YOSEMITE AVE LEAF  
COLLECTION SITE**

DR. BY: PAF  
DATE: 9/18/18  
CH. BY:  
DATE:  
SCALE: 1"=30'

File No. 0952  
Sheet  
**3**  
of 3



## ADMINISTRATIVE REPORT

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### Agenda Item J.3.

Meeting Date: 10/15/2018

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*Report Prepared by: Frank Quintero, Director of Economic Development*

**SUBJECT:** Authority to Pursue an Exclusive Negotiation Agreement Regarding the Former Police Headquarters Site

### REPORT IN BRIEF

Staff is requesting authority from the City Council to begin discussions with Valley Children's Healthcare for an Exclusive Negotiation Agreement regarding the former Police Headquarters Site.

### RECOMMENDATION

**City Council** - Adopt a motion authorizing staff to pursue an Exclusive Negotiation Agreement with Valley Children's Healthcare for the former Police Headquarters Site; and, directing staff to return the Exclusive Negotiation Agreement to the City Council for consideration.

### ALTERNATIVES

1. Authorize staff to pursue an Exclusive Negotiation Agreement with Valley Children's Hospital as recommended by staff; or,
2. Direct staff to pursue an Exclusive Negotiation Agreement with True North Properties for a hotel and restaurant; or,
3. Direct staff to re-issue a Request for Proposal for the Former Police Headquarters Site; or,
4. Refer to staff for consideration 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); or,
6. Deny

### AUTHORITY

Merced City Charter, Section 200

### CITY COUNCIL PRIORITIES

City of Merced Adopted Budget Fiscal Year 2018-2019, Section 10 - Public Safety, Police, Police Headquarters - "In accordance with Council Goals & Priorities concerning Future Planning, the Merced Police Department will continue to work closely with City staff to compose an accurate needs assessment and ideas for possible funding options for the construction of a new Police Headquarters."

### DISCUSSION

On September 10, 2018, staff issued a Request for Proposal soliciting development proposals for the former 4.54-acre Police Headquarters site located on the northwest corner of Yosemite Avenue and Mansionette Drive (ATTACHMENTS 1 and 2). The proposals were due on September 21, 2018.

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With 15 persons expressing interest in receiving the RFP for the development opportunity, staff received two proposals. Valley Children's Healthcare proposes to develop a medical center on the subject site, and the True North Properties proposes to develop a hotel and restaurant on the subject site.

### Evaluation Committee

Staff formed an internal Evaluation Committee consisting of Assistant City Manager Stephanie Dietz, Finance Officer Venus Rodriguez, and Director of Economic Development Frank Quintero. The Committee unanimously agreed that the proposal from Valley Children's Healthcare would best suit the City of Merced because of its uniqueness, opportunity to serve as a draw to the community, and the area's need for advanced medical care.

The Evaluation Committee is requesting the City Council authorize staff to pursue an Exclusive Negotiation Agreement with Valley Children's Healthcare.

### The Request for Proposal

Key components of the Request for Proposal (RFP) focused on the developer's ability to deliver a quality, well designed, and planned project. The proposed development should be consistent with the land use designation of neighborhood commercial, and would be unique, or different, for the community, and complement the surrounding land uses. The minimum bid considered for the subject site, \$1,980,000.00.

Other information asked for through the RFP included information about the development team members, relevant project experience, ability to pay for the property, and economic data such as building value and jobs. The RFP calls out that the selected respondent and the City would make best efforts to negotiate an Exclusive Negotiation Agreement (ENA), 60-days from selection. Should the top proposer and City not agree on terms for an ENA, the City retains the right to end discussions with the top respondent, and may pursue an ENA with next best proposer.

### Proposal - Valley Children's Healthcare

To expand services in Merced, Valley Children's Healthcare proposes to develop a pediatric primary and specialty care medical office building on the Former Police Headquarters Site. Valley Children's pediatricians and pediatric specialists would be the occupants of the medical office building. The first phase of the building may consist of 15,000 to 20,000 square feet. They anticipate that demand for pediatric services in Merced could grow to require a 40,000-square-foot medical office at full build-out.

Over the past three years, Valley Children's has envisioned and executed three similar projects around the Valley. In July 2018, VCH opened an 18,716-square-foot medical office building in Clovis. On October 1, 2018, VCH opened a new 51,517-square-foot medical office building in Bakersfield. A 40,243-square-foot medical office building in Modesto is slated to open in February 2019. The Merced medical office building will be similar in design concept to the Clovis location (ATTACHMENT 3).

Other proposed project information (estimated):

**Land Price:** Valley Children's offering price is \$1,980,000 for the site, all cash at close of escrow. In addition, VCH is offering five percent above another third party's bona fide offer in excess of \$1,980,000 for the site.

**Project Value:** \$20 to \$30 million at full build-out.

**Job Creation:** 50 to 60 full-time equivalent employees at full build-out

**Salary and Benefits:** \$4 million to \$5 million at full-build out

**Property Taxes:** VCH is a tax-exempt organization

**Sales Taxes:** Medical services provided by VCH are not subject to sales taxes

Valley Children's Healthcare anticipates that the City of Merced will receive financial benefit from the families who visit the medical offices. At full build-out, VCH estimates serving 12,000 patients from outside Merced.

Proposal - True North Properties

True North Properties (TNP) believes there is a need for a new, high quality extended-stay style hotel in the subject area since all the existing hotels are oriented to State Route 99. The proposer feels the subject site is an ideal location for a 3-4 story hotel that will encompass approximately 2.5 acres of the site (ATTACHMENT 4 - Example projects included). The hotel use may require a General Plan Amendment since the proposed land use is not allowed in the neighborhood commercial land use designation.

The 3-story hotel will encompass approximately 2.5-acres leaving approximately 2-acres for a sit down restaurant or multi-tenant retail building. True North Properties has not had time to market the property, but they do have some specific tenant(s) that would be well suited for the remainder of the property.

True North Properties intends to market and design both the former Police HQ Site and the Wathen property into one integrated project. The Wathen family members, who currently own the adjacent 22-acres, will remain partners in both the future 22-acre development, and possibly the former Police HQ Site.

Since the City acquired the subject property from the Wathen Family with the purpose of constructing a Police Headquarters, True North Properties believes there are benefits to combining the two properties into a single integrated development. Benefits for integrating the two sites include supporting architectural styles, landscaping, complimentary uses, marketing efforts, and consistent on-going management.



Other proposed project information (estimated):

Land Price: True North Properties proposes a purchase price of \$2,000,000 subject to obtaining a General Plan Amendment and other entitlements.

Project Value: \$15 to \$18 million at full build-out.

Job Creation: Subject to the brand of hotel selected and commercial uses

Salary and Benefits: Subject to the brand of hotel selected and commercial uses

Property Taxes: Subject to the brand of hotel selected and commercial uses

Sales Taxes: Subject to the brand of hotel selected and commercial uses

Staff understands that hotel corporations and commercial establishments have different building, machinery, equipment, operation, and employee requirements. With this in mind staff appreciates that some data could not provide as part of the proposal. The hotel developer listed as a partner in True North Properties' proposal is The Hotel Group. The company has relationships with Marriott, Hilton, Hyatt and other national brands. True North Properties re-used a former bank building in Merced at the southwest corner of R Street and W. Olive Avenue, and has connections with major commercial users.

### Property History

The subject site, 4.54-acre Former Police HQ Site, was acquired from the Estate of Spaulding Wathen on March 1, 2010 for \$1,090,135.00. As the Great Recession took its toll on construction in Merced, the City did not collect sufficient development fees to start build on the subject site. The City Council re-considered the Police Headquarters project, and concluded the site was not the optimal location to serve the community as a whole. Council directed staff to find another location for the Police HQ Project.

The former Merced Sun Star site was acquired as the new Police HQ site, and staff started the process to meet the Surplus Land Act offering required public entities the property for affordable housing projects or park purposes. The City did not receive correspondence requesting acquisition of the parcel.

Staff retained the subject site with the thought that the asset could be included as part of a funding or construction transaction such as a Public Private Partnership (P3). Although a P3 remains an option to complete the Police HQ Project, staff concluded that the economic conditions best supported the sale of the subject site and using the proceeds as capital to advance the Police HQ Project.

### **IMPACT ON CITY RESOURCES**

No appropriation of funds is needed.

**ATTACHMENTS**

1. Subject Site Map
2. Surrounding Land Uses
3. VCH Site Plans and Elevations
4. True North Site Plan, Elevations & Example Projects



ATTACHMENT 1

SUBJECT SITE  
+/- 4.54 acres

MAISONNETTE DR

YOSEMITE AVE



*Inventing California's Future*

City of Merced  
Former Police HQ Site  
APN 231-040-021

N









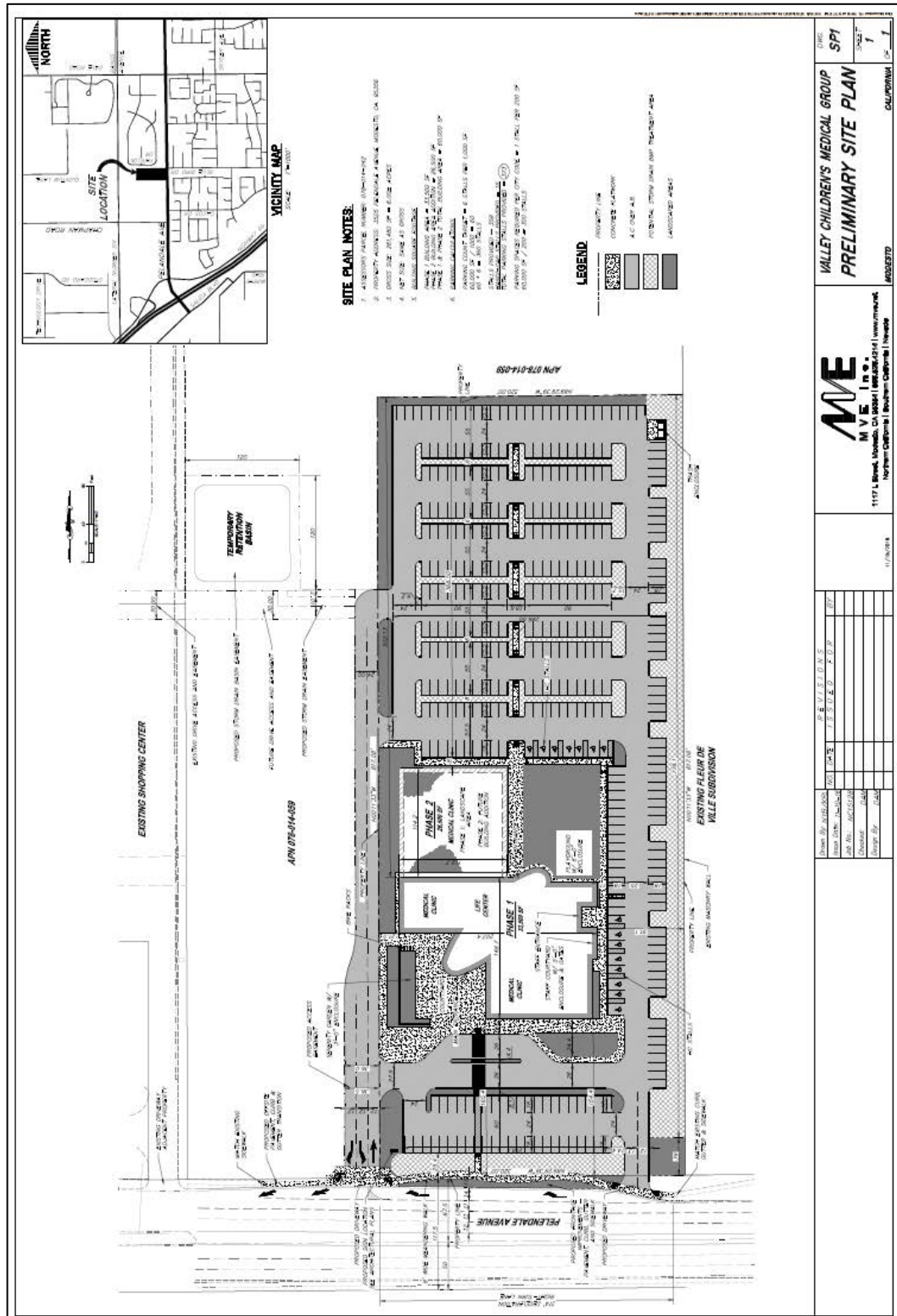
## Valley Children's Healthcare

### Site Plans from Other Projects

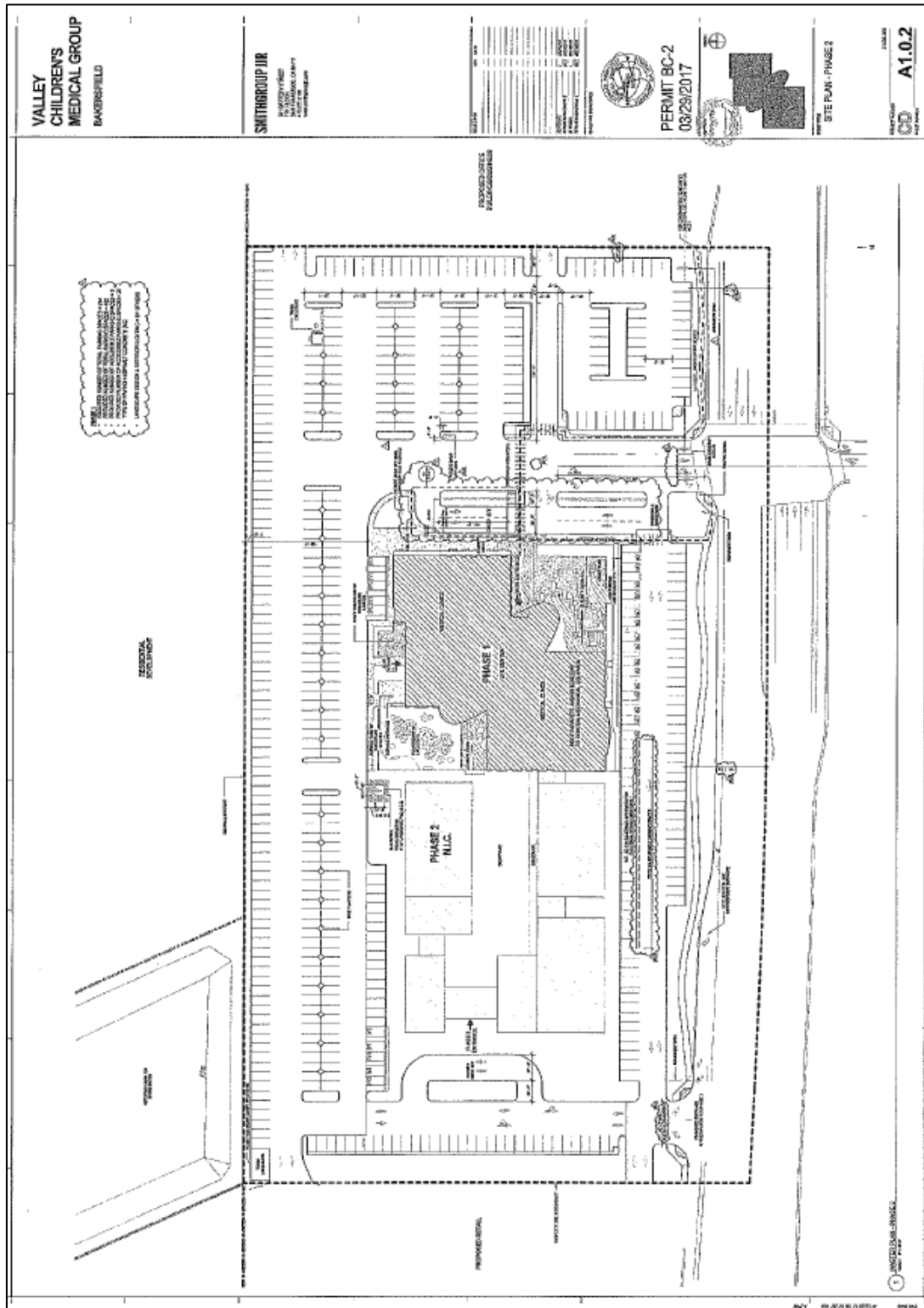
# Clovis Site Plan

[illegible]

## Modesto Site Plan



## Bakersfield Site Plan





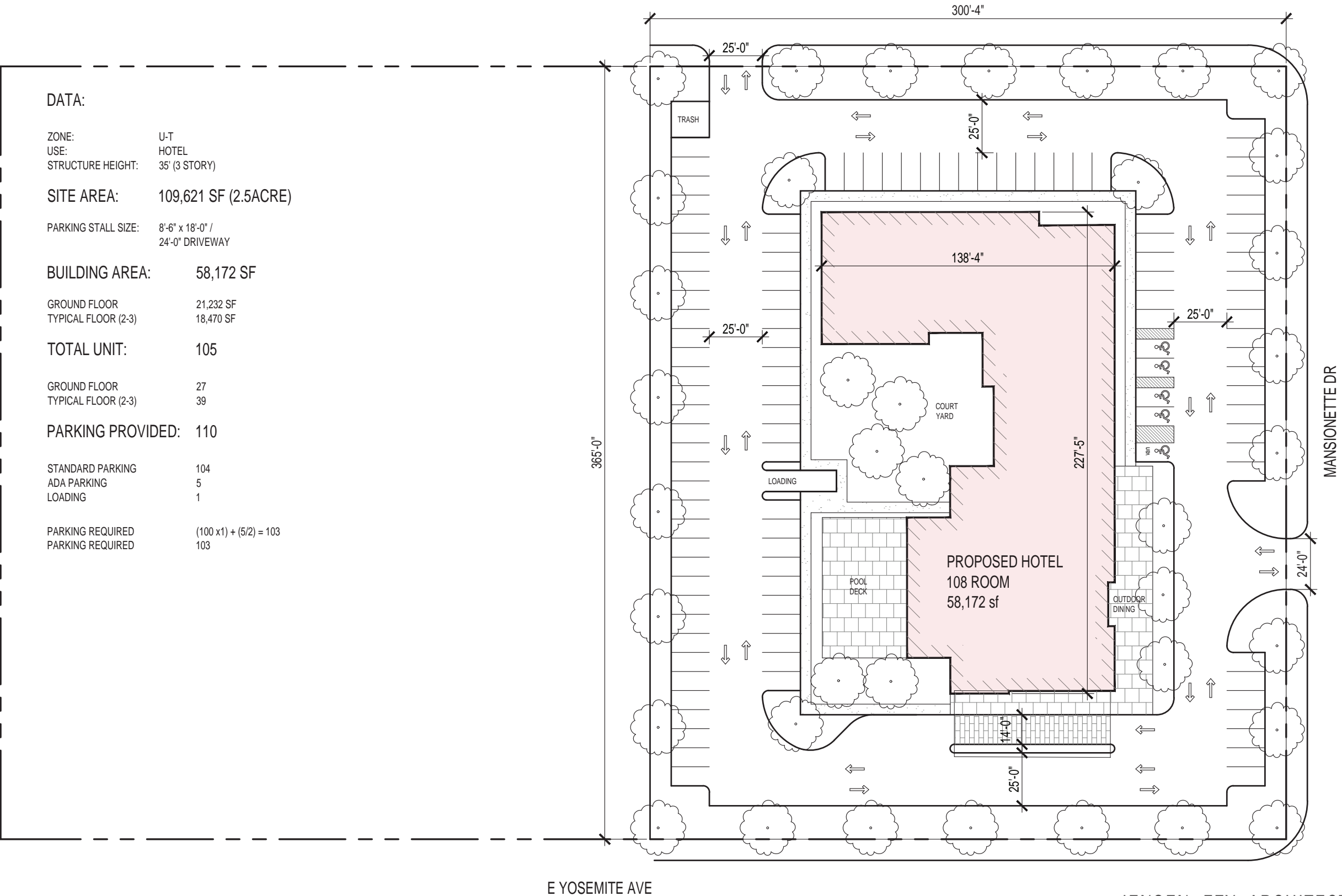
VALLEY CHILDREN'S HEALTHCARE  
SAMPLE ELEVATIONS  
CLOVIS, MODESTO, AND BAKERSFIELD PROJECTS





Bakersfield Medical Office Building





**DATA:**

ZONE: U-T  
 USE: HOTEL  
 STRUCTURE HEIGHT: 35' (3 STORY)

SITE AREA: 109,621 SF (2.5ACRE)

PARKING STALL SIZE: 8'-6" x 18'-0" /  
 24'-0" DRIVEWAY

BUILDING AREA: 58,172 SF

GROUND FLOOR 21,232 SF  
 TYPICAL FLOOR (2-3) 18,470 SF

TOTAL UNIT: 105

GROUND FLOOR 27  
 TYPICAL FLOOR (2-3) 39

PARKING PROVIDED: 110

STANDARD PARKING 104  
 ADA PARKING 5  
 LOADING 1

PARKING REQUIRED (100 x1) + (5/2) = 103  
 PARKING REQUIRED 103



**SITE PLAN 1" = 50'**

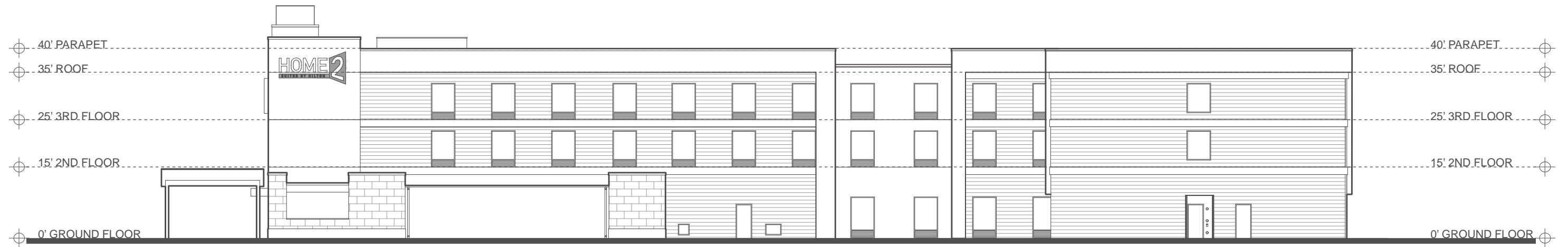
E YOSEMITE AVE

JENSEN FEY ARCHITECTS  
 7730 LEARY WAY NE REDMOND, WA 98052  
 www.jensenfey.com

9.20.2018

MERCED, CA





**WEST ELEVATION** nts



**EAST ELEVATION** nts



**SOUTH ELEVATION** nts

**NORTH ELEVATION** nts

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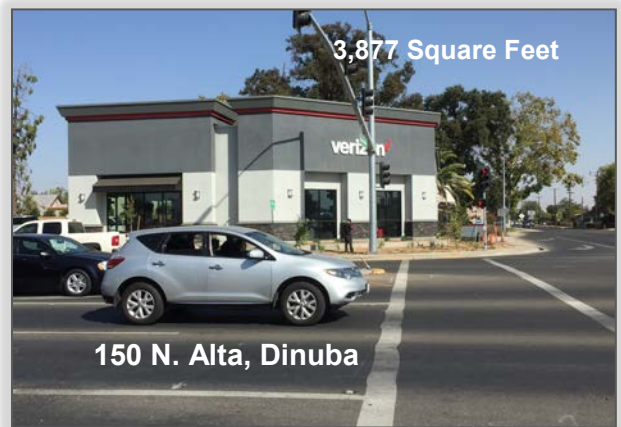
MERCED, CA

# HIGH-IDENTITY COMMERCIAL/OFFICE





# RETAIL





# SINGLE-TENANT BUILD-TO-SUIT WESTERN DENTAL PROJECTS

In addition to a long-standing brokerage relationship that has resulted in over 80 lease transactions, we have constructed 18 free-standing, build-to-suit facilities.

1524 Richland, Ceres



3,773 Square Feet

285 E. El Monte Way, Dinuba



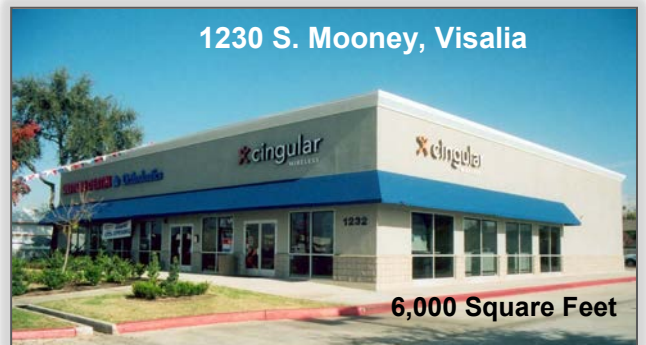
4,008 Square Feet

4195 E. Shields, Fresno



3,800 Square Feet

1230 S. Mooney, Visalia



6,000 Square Feet

320 Cherokee Lane, Lodi



4,590 Square Feet

210 N. 11th, Hanford



6,000 Square Feet

1100 E. Gateway Drive, Madera



4,100 Square Feet

5501 Stockton Blvd, Sacramento



4,997 Square Feet



# CITY OF MERCED

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

## ADMINISTRATIVE REPORT

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### Agenda Item K.1.

Meeting Date: 10/15/2018

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*Report Prepared by: Stephanie Dietz, Assistant City Manager*

**SUBJECT:** Considers Approving the Second Amendment to the City Manager Employment Agreement

### REPORT IN BRIEF

The City Council is asked to consider approving the second amendment to the employment agreement for the City Manager.

### RECOMMENDATION

**City Council** - Adopt a motion:

- A. Approving the employment agreement with the City Manager/City Clerk; and,
- B. Authorizing the Mayor to sign on behalf of the City; and,
- C. Authorizing the Finance Officer to make the necessary budget adjustments

### 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 603 and 1105

### CITY COUNCIL PRIORITIES

N/A

### DISCUSSION

The City Manager began his employment with the City of Merced January 25, 2016, with an employment contract that extended until January 24, 2019. Having completed the personnel evaluation for the City Manager, the attached Second Amendment to the Employment Agreement has been prepared for the City Council's consideration.

**IMPACT ON CITY RESOURCES**

Although the contract amendment results in a salary increase, sufficient funding is available in the City Manager 2018-19 budget.

**ATTACHMENTS**

1. Second Amendment to Employment Agreement



**SECOND AMENDMENT TO  
CITY MANAGER EMPLOYMENT AGREEMENT**

This SECOND AMENDMENT TO CITY MANAGER EMPLOYMENT AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF MERCED, a California Municipal Corporation and Charter City ("Employer" or "City") and STEVE CARRIGAN ("Employee") an individual (collectively referred to herein as the "Parties").

**RECITALS**

- A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. The Parties entered into the City Manager Employment Agreement on or about December 7, 2013 (the "Agreement"), and the Agreement was unanimously approved by the Merced City Council.
- C. The Agreement was/is effective as of January 25, 2016, for a period of three (3) years, and will expire, unless extended by written agreement of the Parties, on January 25, 2019.
- D. A First Amendment to the Agreement was entered into on June 20, 2016 (the "First Amendment").
- E. The Parties desire to amend certain provision of the Agreement and extend the term of the Agreement.

NOW, THEREFORE, it is mutually agreed by and between the Parties that the Agreement shall be amended and extended as follows:

1. This Second Amendment to the Agreement ("Second Amendment") shall become effective on January 25, 2019. Subject to the City's right to terminate Employee's employment at any time as provided in the Agreement, the term of this Second Amendment is four (4) years, and shall expire on January 24, 2023, unless extended for an additional term as determined by mutual agreement in writing between the Parties.

2. SECTION 3, Subsection A of the Agreement entitled "Compensation and Performance Evaluation," is hereby amended to read as follows:

A. Effective January 25, 2019, Employer agrees to increase Employee's annual base salary to Two Hundred Nine Thousand Seven Hundred Twenty-Three Dollars (\$209,723.00), effective January 25, 2019, subject to deduction and withholding of any and all sums required for federal or state income tax, pension contributions, and all other taxes, deductions or withholdings required by then current state, federal or local law, prorated and paid on Employer's normal paydays for the City Manager, City Attorney, City Clerk, and any Department Directors not covered by collective bargaining agreements ("Executive Management Employees"). Employer shall also deduct sums Employee is obligated to pay because of participation in plans or programs described in Section 4 of this Agreement. The annual base salary of Employee shall be established by resolution of the City Council. Based on Employee's performance, as determined by the City Council in the exercise of its sole discretion, Employee may receive an annual cost-of-living adjustment (COLA) to his salary on the first pay period of the calendar year, commencing on January 1, 2020, of the actual COLA, but no greater than two and a half percent (2.5%). The COLA will be based on the California CPI for Urban Wage Earners and Clerical Workers for the 12 months between December and December as calculated by the Department of Industrial Relations as authorized by Government Code section 3511.1 and 3511.2.

This Agreement shall be deemed amended whenever the City Council adopts a resolution changing the base salary of Executive Management in Employees or in the manner (but not the amount) by which Executive Management Employees are paid.

3. SECTION 4, Subsection A of the Agreement entitled "Employee Benefits," is hereby amended to read as follows:

A. Administrative Leave, Vacation Leave, and Sick Leave.

Commencing on January 25, 2019, Employee shall be credited with fifteen (15) days of administrative leave per calendar year. Administrative leave must be taken in the calendar year in which it is credited to Employee. In lieu of time-off, Employee may opt to be paid for the management leave in December of the year in which it

was earned. Administrative leave not paid or taken by December of the year in which it was earned shall be lost and not reimbursed to Employee.

In lieu of vacation and/or sick leave, Employee shall accrue Paid Time Off ("PTO") at 10.158 per pay period with a maximum accrual of 1392 hours. Annual PTO shall be accrued and administered in the same manner as leave is administered for Executive Management Employees. Employee's Sick Leave accrued prior to the effective date of this Agreement shall remain in a separate Sick Leave account and is to be used as such.

4. SECTION 4, Subsection E of the Agreement entitled "Moving and Relocation Expenses," shall be revoked and of no further force and effect.

5. Except as set forth herein, all remaining terms and conditions of the Agreement shall remain in full force and effect.

The effective date of this Second Amendment shall be January 25, 2019.

IN WITNESS WHEREOF, the Parties have caused this Second Amendment to City Manager Employment Agreement to be executed on the date first above written.

EMPLOYER  
CITY OF MERCED

By: \_\_\_\_\_  
Michael Murphy, Mayor


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

EMPLOYEE

By:   
Steve Carrigan

Date: 9/28/18

APPROVED AS TO FORM:

By:   
City Attorney

Date: 9/28/2018

ATTEST:

By: \_\_\_\_\_  
City Clerk

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